

## *March 2017*

### *ATO Garnishee and Voluntary Administration*

#### **BACKGROUND**

Section 260-5 of Schedule 1 of the Taxation Administration Act 1953 allows the ATO to give notice (ie Garnishee Notice) to a Third Party ie Bank or Debtor that may be holding funds or owe funds to a Company that is in default of its obligations to the Deputy Commissioner.

#### **GARNISHEES ON DEBTORS**

There has been an increasing trend for the ATO not only to issue the Garnishees on bank accounts as more often than not they are in overdraft and do not have unencumbered cash but to instead issue against the Company's debtors or purchasers of assets (ie sales of business proceeds etc) prior to the sale being completed.

The service of this notice has the effect of making the ATO a secured creditor in respect to the monies detailed within the notices and does not require to be registered on the PPSR.

These notices are appearing more in the lead up to Voluntary Administration appointments as Directors cogitate their options which ordinarily arise due to ATO default and more often failed proposals.

Once served the Deputy Commissioner is able to even post a VA Appointment to recover against the Debtors served which leaves the Company in effect devoid of working capital etc should a Deed of Company Agreement be proposed.

In summary a delay by the Company in addressing their Financial Affairs can leave the door ajar for the ATO to gain an advantage over other Creditors to the detriment of the Company being able to trade forward and propose a DOCA if that be their intentions. Timing is Everything!!

#### **2017 IN HOUSE TRAINING**

***As always we at Chamberlains SBR are more than open to coming to your firm and running an in house session to your middle management and staff should you be interested in arranging a free session do not hesitate to contact us.***

*Chamberlains SBR, Chartered Accountants - Specialises in Personal & Corporate  
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