



Director Penalty Notices

What they are, what makes you personally liable, and
what to do when one arrives



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About Director Penalty Notices

Dear Director,

A Director Penalty Notice (DPN) is the ATO's way of turning company tax debt into your personal debt.

It's the most aggressive collection tool the ATO has against directors, and it's been issued more in the last two years than in the previous ten combined. Most directors only learn what a DPN is the day one lands in the letterbox.

This is what they are, what triggers them, the 21-day trap most people walk into, and how a DPN can be remitted or defended.

What you can be held personally liable for

As a director, you can be made personally liable for the company's unpaid:

- PAYG withholding (tax withheld from staff wages).
- GST.
- Super Guarantee Charge (SGC).

These amounts are called director penalties. The ATO can recover them from you personally 21 days after issuing a DPN.

If the company has multiple directors, each director is liable for the same amount -- the ATO can recover from any one or from all of them. Payments by one director or by the company reduce all the parallel liabilities by the same amount.

How a DPN gets to you -- the 21-day clock

The ATO issues a DPN to the address registered with ASIC. If there's no current ASIC address, they use the address last on file.

Keeping your director address current is critical -- the 21-day clock starts the day they post the notice or leave it at the registered address. Not the day you actually receive it.

You don't have to physically have the letter for the clock to be running.

Lockdown vs non-lockdown -- this is the whole game

Whether you can escape personal liability depends almost entirely on whether the company lodged its BAS and SGC reports on time.

Non-lockdown DPN -- BAS was lodged within 3 months of the due date. You have 21 days from the notice to take one of four actions to remit the penalty.

Lockdown DPN -- BAS was not lodged within 3 months of the due date. Personal liability is already locked in. Liquidating the company will not, by itself, remove the penalty. The only way to remit is to pay the company's debt in full.

Estimated amounts -- where the ATO has guessed because nothing was reported -- are treated the same as never reported. Effectively lockdown.

In plain English: lodgement behaviour, not the size of the debt, is what determines whether a director is exposed.

How a DPN can be remitted

If the DPN is non-lockdown, the penalty can be remitted within 21 days by doing one of:

- Paying the company's outstanding amount in full.
- Appointing an administrator (Voluntary Administration).
- Appointing a Small Business Restructuring (SBR) practitioner.
- Beginning to wind up the company (placing it in liquidation under the Corporations Act).

If the DPN is lockdown, the only option is to pay the company's debt in full. Liquidation does not extinguish a lockdown director penalty.

If you're a new director

Before becoming a director of an existing company, check what the company already owes for unpaid PAYG, GST, or SGC. You may be personally liable for amounts that were due before you came on board.

You can avoid liability for pre-appointment debts if, within 30 days of your appointment, the company:

- Pays the amount in full, or
- Appoints an administrator, or
- Appoints a Small Business Restructuring practitioner, or
- Begins winding up.

Resigning within the 30-day window does not remove the liability.

If you've resigned as a director

Resigning does not protect you from director penalties for periods you were a director. You remain personally liable for:

- Liabilities that were due before you resigned.
- Liabilities that became due after your resignation but related to a period when you were still a director (for example, a quarterly BAS where the reporting period ended before your resignation).

You stay personally liable for the director penalty even after the company is deregistered.

When the ATO estimates the debt

If the company doesn't report PAYG, GST, or SGC by the due date, the ATO can estimate the amount themselves and issue a notice of the estimate. That estimated amount is due on the day the estimate is issued, and director penalties apply.

Estimated amounts are treated as never reported -- which puts the DPN squarely in lockdown territory.

Defending a DPN

There are limited statutory defences to a director penalty. You will not be liable if, for the entire period the obligation existed:

- You couldn't take part in management because of illness or other acceptable reason, or
- You took all reasonable steps to ensure the company paid, appointed an administrator, appointed an SBR practitioner, or began winding up, or
- For SGC or GST, the company applied the relevant Act in a way that was reasonably arguable and took reasonable care.

The courts have made it harder than it sounds. Relying on other directors or your accountant is not a defence. The defence must cover the entire period, not just the end. Resigning does not help.

A defence has to be lodged in writing with the Commissioner, addressed to:

Attention: Technical Leadership and Guidance
AUSTRALIAN TAXATION OFFICE
PO BOX 327
ALBURY NSW 2640

If the ATO rejects your defence, you have 60 days from a garnishee or recovery action to seek judicial review in court.

What to do if a DPN has arrived

1. Note the date on the notice -- the 21-day clock has started.
2. Don't ignore it. The clock doesn't stop.
3. Get it to us immediately so we can:

- Identify whether it's lockdown or non-lockdown.
- Pull the lodgement history and reconcile against the notice.
- Brief you on the four remission options.
- Coordinate the right specialist (registered liquidator, SBR practitioner, accountant, solicitor) within the 21-day window.

The earlier we're in the picture, the more options stay on the table.

The Nature of Our Role

Resolve provides administrative support, coordination, and acts as your point of contact. We are not licensed to provide financial, legal, or investment advice -- where that's needed for your matter, we coordinate the right specialist practitioners (accountants, solicitors, registered liquidators, trustees) around you.

That way you get the experience and firepower of a full team -- with us holding the whole picture together so nothing falls through the cracks.

A DPN isn't a warning -- it's a starting gun. The 21 days is short, the lockdown rules are unforgiving, and the cost of doing nothing is your house, your car, and your name.

— Resolve Business Solutions -- Over 35 Years Helping Australians Through Financial Distress

Next Steps

Director, if a DPN has landed -- or you think one is coming -- get it to us today. Not next week. The 21-day clock doesn't stop for weekends.

Whenever you're ready, you can:

- Reply to this email
- Call us directly on 0499 499 899
- Email us at advisor@resolve.net.au

We'd rather take the call now than have you miss the window.