Unpaid Super and Director Bankruptcy

How company super becomes personal, and what happens in bankruptcy

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Prepared for: Company Directors & Business Owners
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Why super is one of the most dangerous debts a director carries

Dear Director,

Unpaid superannuation is one of the most dangerous debts a director can carry. It starts as a company liability -- but the moment the ATO issues a Director Penalty Notice (DPN), it can become personal.

This fact sheet covers who owes the super, when it becomes personal, what bankruptcy actually does to it, and why the lockdown DPN is the high-risk case most directors don't see coming.

Who owes the super

Superannuation is initially owed by the company.

It only becomes personal when the ATO issues a Director Penalty Notice. Up until that point, it sits on the company's balance sheet as a Super Guarantee Charge (SGC) liability.

How super becomes personal: the DPN

A Director Penalty Notice (DPN) makes the director personally liable for the company's unpaid PAYG withholding and Super Guarantee Charge.

Once the DPN is issued and the 21-day clock expires without one of the four remission actions being taken, that company debt is now your personal debt. The ATO can recover it from you directly.

What happens in bankruptcy

With a DPN:
The super debt is now personal. It's included in your bankruptcy estate, dealt with by the trustee, and usually cleared on discharge -- not immediately.

Without a DPN:
The super debt stays with the company. The director is not personally liable. Bankruptcy of the director doesn't capture it.

The takeaway: whether unpaid super follows you into bankruptcy depends entirely on whether the ATO has issued a DPN before bankruptcy starts.

The high-risk case: a lockdown DPN

If BAS or SGC lodgements are more than 3 months late, the DPN becomes a lockdown DPN.

With a lockdown DPN:

- You cannot avoid liability.
- Liquidation of the company will not remove the personal liability.
- The debt follows the director personally -- including into bankruptcy if it gets that far.

This is why lodgement timing is everything. A late lodgement that crosses the 3-month line turns a manageable problem into a personal one.

Employee entitlements -- what FEG covers, and what it doesn't

If a company is wound up, employees may be able to access the Fair Entitlements Guarantee (FEG) for:

- Unpaid wages.
- Annual and long service leave.
- Payment in lieu of notice.
- Redundancy pay.

FEG does not cover unpaid superannuation.

That means employees with unpaid super often need to chase it through the ATO's SGC process or wait for any liquidator distribution -- which is rarely full recovery. It's a real human cost that sits behind the numbers.

Does bankruptcy end the responsibility

Yes -- but only after the bankruptcy process is completed.

During bankruptcy, the debt is managed by the trustee. It's typically cleared on discharge of the bankruptcy, not at the moment bankruptcy is declared.

While the bankruptcy runs, you may still face income contributions, asset realisation, and the standard bankruptcy restrictions (no directorships, travel restrictions, credit reporting impact).

How super becomes personal, and what changes the outcome

The flow looks like this:

Company owes super -> ATO issues DPN -> Director personally liable -> Bankruptcy (if required) -> Debt cleared on discharge.

Lodgement timing changes the outcome at every step:

- Lodged on time: DPN can be managed or remitted via payment, VA, SBR, or liquidation.
- Late, under 3 months: Personal risk increases but options remain.
- Late, over 3 months: Lockdown DPN. Personal liability is unavoidable. Liquidation will not remove it.

Doug's view: super is one of the most dangerous debts directors face. Timing is everything. Early action keeps your options open. Late action closes them, one by one.

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.

> *Super is one of the most dangerous debts a director carries. The line between a company problem and a personal problem is the 3-month BAS lodgement window. Early action keeps your options open -- the longer it sits, the fewer of those options remain.*
>
> — Resolve Business Solutions -- Over 35 Years Helping Australians Through Financial Distress

Next Steps

Director, if your company has unpaid super -- or BAS or SGC lodgements are running late -- the time to talk is before the lodgements cross the 3-month line, not after.

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 walk you through the options now than have you face a lockdown DPN you couldn't undo.