

Garnishee Notices issued by the Commissioner of Taxation:

There are a number of options available to the Commissioner of Taxation to collect outstanding taxation debts including issuing demand letters, Director Penalty Notices and entering into repayment plans with debtors. The ultimate enforcement action that can be taken by the Commissioner against a corporate debtor is commencing winding up proceedings that may lead to the appointment of an Official Liquidator.

Another strategy more frequently used today is the issuing of a Notice pursuant to Section 260-5 of Schedule 1 of the Taxation Administration Act 1953 to any company or individual owing money to the taxpayer in question to pay that money to the Commissioner. A garnishee notice, as it is commonly known, may be issued by the Commissioner for any debts owed to the Australian Taxation Office.

Take, for example, the following scenario....

The Company owes money to the Commissioner of Taxation. The Bank holds a registered fixed and floating charge over all the assets and undertakings of the Company. The directors of the Company have personally guaranteed the repayment of the Company's debt to the Bank. Due to the Company's inability to comply with its tax obligations, the Commissioner issues garnishee notices to the Company's largest debtors.

As a rule, issuing the garnishee notices does not give the Commissioner absolute priority, but in the above example if the Bank's charge is a floating one, it may. The Commissioner will then be entitled to the debtors' payments before the Bank.

Of course, if the Company cannot discharge the debt it owes the Bank; the Bank may seek to enforce the personal guarantees provided by the directors.

More than often it is only after the Commissioner has served a garnishee notice that a director will seek professional advice. We cannot stress strongly enough the importance of company directors to be aware at all times of the company's ability to discharge its debts as and when they fall due. The issuing of Director Penalty Notices by the Commissioner, and failure to comply with certain instalment arrangements with the Commissioner, may result in personal liability of directors.

Be aware of the importance of being alert to your company's financial position. If your company begins to fall behind with taxation obligations we welcome the opportunity to assist and advise you before the Commissioner may want to commence enforcement action.