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### **ATO Takes Hard Line on Unremitted PAYG**

On 21 June 2010 a Sydney Company director, James Soong, was sentenced to three years jail for failing to remit \$6.7 million to the Australian Taxation Office (ATO).

Between October 1995 and July 1998 two companies operated by Mr Soong deducted instalments totalling \$6.7 million from the wages of their employees. This money was not remitted to the ATO. When the first of these companies was liquidated the employees were moved into the second company where Mr Soong continued to withhold funds from his employees' wages without forwarding them to the ATO.

In addition to obtaining a successful prosecution of Mr Soong the ATO and the government have made changes from 1 July 2010 to the Director Penalty Notices (DPN) regime and extended the Security Deposit regime to deal with the problem of unremitted PAYG.

The changes to the Director Penalty Notice Regime are as follows:

- Confirm that a DPN is effective from the date the ATO posts it rather than when it is received;
- Extend the period of notice that the Commissioner must give directors before commencing recovery action from 14 days to 21 days;
- Extend the period that the Director must either pay the tax, enter into an instalment arrangement, place the company in liquidation or appoint a Voluntary Administrator from 14 to 21 days;
- Entry into an instalment arrangement does not remit the directors obligations or the DPN, it merely precludes the Commissioner from commencing recovery actions;
- Tighten the definition about when a director can rely on the "illness or other good reason" defence for not participating in the management of the company;
- Ensure that a Court cannot under Section 1318 of the Corporations Act grant relief to a Director who has been issued a DPN.

In respect to Security Deposits, the Commissioner may require a tax payer to give security for an existing or future tax-related liability if the Commissioner has reason to believe that the taxpayer is establishing or carrying on an enterprise in Australia, intends carrying on that enterprise for a limited time or the Commissioner "reasonably believes that the requirement is otherwise appropriate, having regard to all other circumstance" (a wide ranging provision!)

The Commissioner must give a notice which explains why the security is required and how much the security is. The security may be cash (including by way of instalments) or in any other form the Commissioner deems appropriate. The Commissioner can increase or decrease the required amount of security deposit as is determined at anytime.

Non-compliance with a request for a security deposit is punishable by a fine of 100 penalty units (\$11,000) for individuals and 500 penalty points (\$55,000) for corporations.

**DISCLAIMER:** This bulletin is intended to provide a general summary only and should not be relied on as a substitute for professional advice.