

Garnishee Notices



ATO ups the ante on garnishee notices



The Australian Taxation Office ("ATO") is fulfilling its promise to increase its debt recovery activity against small to medium business owners. Of particular interest is the increased use of garnishee notices by the ATO.

When there is a tax liability owing to the ATO, garnishee notices operate as follows: where a person (third party) owes money or holds money for a taxpayer, the Commissioner of Taxation ("the Commissioner") is empowered under section 260-5 of Schedule 1 of the Taxation Administration Act 1953 ("TAA") to require the third party to pay that money to the Commissioner.

The ATO is actively using this legislation to serve "garnishee notices" on financial institutions. As a result the financial institution is obliged to comply with the notice and pay the funds in the business's bank account to the Commissioner. Section 260-20 of the TAA provides that it is an offence for a party served with a "garnishee notice" not to comply with the notice. Section 260-15 of the TAA provides for any payment by the third party pursuant to the notice to be deemed to be authorised by the taxpayer.

Whilst a garnishee notice is a very efficient and cost effective method of recovery for the ATO, the effect can be debilitating on a business when their bank account is "cleaned out" and there are no funds available to pay wages, meet supplier commitments, etc.

As well as being issued to financial institutions, the Commissioner can also issue garnishee notices against:

- trade debtors
- the purchaser of land or property, where the taxpayer is selling a property
- salary and wages, however not usually to > 30 cents in the \$
- credit card merchant facilities
- trust funds
- shares
- superannuation funds, but it will not be effective until the member's benefits are payable under the rules of the fund.

Prior to serving a garnishee notice, the ATO may send the taxpayer a "Notice of Intended Legal Action/Garnishee," giving ten days to contact the ATO to discuss payment. These letters should not be disregarded and should be acted upon immediately. This may also be the opportune time to seek professional advice regarding the options available to obtain relief from the ATO's claim. This may include, for example, the appointment of a voluntary administrator, which will prevent the ATO from issuing a garnishee notice.

Should you have any queries regarding garnishee notices or the ATO's recovery action generally, WA Insolvency Solutions Pty Ltd has extensive experience in negotiating with the ATO and a detailed understanding of the ATO's debt collection process and written Receivables Policy. This background knowledge may save you and/or your client considerable time, cost and stress in dealing with the ATO.

Should you have any queries regarding this brochure or if we can be of assistance in any corporate or personal insolvency related matters, please do not hesitate to contact:

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Our initial consultation is always free of charge.



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