

Insolvency Update – ATO Garnishee Notices – August 2015

Key Summary

While the ATO presents them as a 'last resort', a Garnishee Notice can be issued by the ATO at any time in respect of outstanding taxation debts. If a Garnishee Notice is issued, it will likely have a very significant, and immediate, effect on your clients' financial circumstances, as well as create a range of potential 'knock on' problems. We now summarise some key features of Garnishee Notices.

- Notice issued to a third party who owes, or may in the future owe, a taxpayer money. Third party is then compelled to pay funds to the ATO in reduction of any outstanding tax debt – the ATO's '*Nuclear Weapon*'
- Payment by third party is 'good payment' of their obligation to the taxpayer
- Can be issued even if:
 - Taxpayer is in a repayment plan/negotiating with the ATO
 - There are outstanding Director Penalty amounts
- ATO must issue notice to an identifiable party - cannot issue 'blanket notice. This means you need to be aware of what your client is telling the ATO – sources of information for ATO in identifying possible targets for Garnishee Notices include:
 - Tax returns: Shareholding or other investment information, financial institutions
 - Tax agent/ taxpayer discussions with the ATO regarding defaults, payment plans, disclosure of financial circumstances
 - Other government agencies - increased information sharing with ASIC
- Main recipients of Garnishee Notices are banks and financial institutions. However, ATO can issue on any third party, including:
 - Debtors: trade debtors and others who owe taxpayer money (e.g. related party loans)
 - Superannuation funds or life insurance policies: Garnishee Notice is effective once the benefit becomes payable
 - Solicitor's trust account, employers (wages or other benefits – generally only 30c/\$), the purchaser of land or other property from the taxpayer (is entitled to apply funds ahead of mortgagee rights, but as this would generally stop a sale, tends to be issued for balance of proceeds of sale after mortgagee paid out)
- No enforceability if issued after an insolvency appointment takes place
- If issued prior to an insolvency appointment, ATO generally won't withdraw a Garnishee Notice which continues to be effective against the insolvency appointee – any payment made does not constitute an unfair preference or voidable transaction.

*This article was prepared by Colin Brown, a partner in our insolvency and reconstruction team. We invite you to contact Colin, or **Michael O'Neill**, should you have any questions or require any further information about the matters discussed in this article.*

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