

Director's Personal Liability to the ATO

Many people with company financial problems avoid paying certain debts that come through the door, but if there comes a time when you receive what is known as a 222AOE notice under the Income Tax Assessment Act 1936 you need to make some decisions about the future of your company.

A 222AOE notice is served upon a director at the time when a company fails to remit withheld amounts to the Australia Taxation Office. Examples of these items are PAYG withholding tax, superannuation contributions, and GST liabilities. A failure to comply or remit withheld amounts to the ATO may render a director personally liable for these debts.

When you receive a 222AOE notice you have a (14) fourteen day period in which to make some important decisions about your company's future. These can include:

- Paying or remitting the outstanding amount to the ATO;
- Entering into a formal payment arrangement with the ATO;
- Putting the company into Administration; or
- Putting the company into Liquidation.

Should you avoid the notice and not make a decision about the company's future within 14 days of receipt of the notice, you may as a director of the company become personally liable for the debt.

There are statutory defences that may be available to a director for not complying with a notice, such as:

- You did not participate in the management of the company; and/or
- You took all reasonable steps to comply with the notice.

These statutory defences should not be relied upon as a given. You should see a solicitor for advice as to whether you have a defence available.

Some ways to avoid risking a breach of your obligations include:

- Being in close contact with your accountant as to the direction of your company.
- Knowing your company's financial position. Don't leave it up to an employee to tell you when it's too late.
- Making sure all correct information about directors is lodged with the ASIC. This will ensure that you receive any notice relating to the company. It's not a defence to argue that you did not receive a notice which was sent to a previous residential or company address.
- Not using withheld monies as working funds in your company.
- Seeking the correct advice. If you are unsure of your obligations as a director or are in a financial crisis, speak to a solicitor or financial adviser who can help you.

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News Release Vendor Stamp Duty

Stamp duty is payable by the Vendor on the sale of land following the passing of the State Revenue Legislation Amendment Bill 2004 by the New South Wales Government. The Vendor stamp duty applies to all Contracts entered into on or after 1st June, 2004.

The stamp duty is 2.25% of the sale price of the property. The Vendor stamp duty is payable on or before completion of the sale.

Land Tax – From 2005 non exempt land (including strata lots), will be liable for land tax. The most common exemptions apply to the principal place of residence and land used for primary production.

Land tax will be assessed at the following rates from 2005 (for property owned as at 31 December 2004):

Taxable value of land owned	Rates of land tax
Not more than \$400,000	0.4 cents for each \$1
More than \$400,000 but not more than \$500,000	\$1,600 plus 0.6 cents for each \$1 by which the taxable value exceeds \$400,000
More than \$500,000	\$2,200 plus 1.4 cents for each \$1 by which the taxable value exceeds \$500,000

The Vendor stamp duty does not apply in the sale of:

Principal Place of Residence

The residence must be occupied by a natural person (ie not a company) who owns a 50% or more share.

Deceased Estates

No duty is payable by a Beneficiary if the property is sold within 12 months of the date probate is granted if it was the principal place of residence of the deceased. However, vendor duty is payable by the estate if the property sold was not the principal place of residence of the deceased.

Farms

Vendor duty does not apply to the land where it has been used for the business of primary production for at least 2 years immediately prior to the sale OR if it has been used for the business of primary production for at least 3 years out of the last 5 years prior to the sale.

First Sale of New Buildings

No duty is payable on new buildings where they have remained unoccupied prior to the sale. No duty is payable on tenanted newly constructed property as long as it is sold within 12 months of the completion of the building. The exemption also covers the first sale of off the plan properties.

No Significant Increase in Dutiable Value

Vendor duty is not payable where the value of the property has not increased by more than 12% from when the property was purchased. There are discounts on the Vendor duty on a sliding scale where the value of the property has increased by more than 12% but not more than 15%. Full Vendor duty is payable if the value of the property has increased by more than 15% since the date of purchase.

Vacant Land that has been substantially improved

It must have been improved at the Vendor's expense.

Land Sold in Connection with Sale of a Business

No duty is payable if the dutiable value of the land related property comprises less than 60% of the total value of all dutiable property agreed to be sold.

Couples Who Separate

No duty is payable where a couple separates and one buys the other's share in the principal place of residence.

Sub-division of Land

No duty is payable on land which was sub-divided from your principal place of residence or farm.

If you are selling a property which is liable to Vendor stamp duty then you will need to take into account the duty when negotiating the sale price.

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Superannuation and Wills

Most of us incorrectly believe that our super is just like all of our other assets, and can be left via our Will. This is almost never the case.

Superannuation funds fall outside of your estate, unless there is a specific nomination by you to your Fund that it should be paid to your estate on your death.

Usually, it is the Superannuation's Trustee who will determine how the moneys will be paid. Usually it will be paid to your "dependents". This can have a terrible result in many cases, particularly in these times of "blended" families.

It is possible to make a "binding nomination" to your super fund. This means the Trustee MUST pay your super to whom you nominate. However, these "binding nominations" must be renewed every 3 years.

If you have substantial super assets, we strongly recommend you find out from your Super Fund who will receive your super money when you die. This is essential information to have when determining who your beneficiaries should be in your Will.

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If your address or contact details have changed, please let us know.

Or, if you would prefer not to receive future newsletters, please tell us.