

COVID-19

THE DANGER LURKING IN USING TAX TO MANAGE CASH FLOWS

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It is tempting to use tax, especially other people's tax, to manage cash flows and get you through tough times. It is a desperate sign and could end with time behind bars.

	PAYMENTS OF YOUR OWN TAX LIABILITIES	PAYMENTS OF AMOUNTS WITHHELD FROM OTHERS OR OTHERS' BENEFITS
 AT ALL TIMES	<ul style="list-style-type: none"> + Public officer is personally responsible for the tax obligations (including debts) of the company. + Directors are at risk of insolvent trading if they suspect that the company is unable to pay its debts (including tax liabilities) as and when they become due and payable. 	<ul style="list-style-type: none"> + Public officer is personally responsible for the tax obligations (including debts) of the company. + Directors are at risk of insolvent trading if they suspect that the company is unable to pay its debts (including tax liabilities) as and when they become due and payable.
 IMMEDIATE CONSEQUENCES	<ul style="list-style-type: none"> + Interest starts accruing, calculated on a daily compounding basis. Current rate is 7.89% (effective rate of 8.21%). The interest is deductible. + Refunds and credits you are entitled to will be applied to reduce other amounts due. 	<ul style="list-style-type: none"> + Interest starts accruing, calculated on a daily compounding basis. Current rate is 7.89% (effective rate of 8.21%). The interest is deductible. + Refunds and credits you are entitled to will be applied to reduce other amounts due. + Tax deductions will be denied for amounts from which tax has been withheld but not remitted to the ATO.
 ESCALATION	<ul style="list-style-type: none"> + Debt collection processes commence, including referral to external debt collectors. + Claim or summons in court, with non-deductible judgement interest. + Garnishee notices may be issued to customers and others who owe you money or hold your assets to pay that money or those assets to the ATO. + Wind up action. 	<ul style="list-style-type: none"> + Debt collection processes commence, including referral to external debt collectors. + Claim or summons in court, with non-deductible judgement interest. + Garnishee notices may be issued to customers and others who owe you money or hold your assets to pay that money or those assets to the ATO. + ATO may estimate liabilities and require payment. + Wind up action.
 SERIOUS OR REPEATED BREACHES	<ul style="list-style-type: none"> + It is a criminal offence to enter into arrangements with the intention that a company will not be able to pay its taxes. Imprisonment up to 10 years and fine of up to \$210,000. + Aiding or abetting such conduct is also a criminal offence. Imprisonment up to 10 years and fine of up to \$210,000. 	<ul style="list-style-type: none"> + Director penalty notices may be issued to directors in respect of amounts withheld but not remitted, estimates issued by the ATO and superannuation entitlements not paid. Directors become personally liable for those amounts. Legal proceedings can then be commenced against the directors. These liabilities can persist even if the company enters administration or is wound up.

These implications apply to most Federal taxes, such as income tax, GST, FBT and superannuation. Similar implications also arise with State and Territory taxes.

In addition, where returns, statements or records are falsified, misleading or are simply not lodged, additional non-deductible penalties and prosecutions can arise. If you are a significant global entity, those penalties can be very hefty – for example, \$525,000 for being 4 months late on a lodgement.

YOUR OPTIONS

The Federal, State and Territory governments are providing some relief. It is likely that this relief will extend in time to non-payment or deferral of taxes as in other disasters and as is happening overseas. The ATO and other revenue offices are sympathetic and will consider each individual taxpayer's circumstances in providing relief.

Contact G+T's Tax Group at taxgroup@gtlaw.com.au for more information.