

Parliamentary Joint Committee on Corporations and Financial Services

Inquiry into Corporate Insolvency in Australia

ANSWERS TO QUESTIONS ON NOTICE

Australian Taxation Office

January 2023

Agency: Australian Taxation Office
Question No:
Topic: Director penalty notices and insolvent companies
Reference: Spoken (13 December 2022)
Senator/MP: Mr Keith Pitt

Question 1:

Mr PITT: Your submission says:

It has not been possible to accurately estimate how many appointments of liquidators are indirectly triggered following issue of DPNs.

Why not? Why wouldn't you know how many businesses have become insolvent that have a DPN?

Ms Kitto: In the information that we are collecting at the moment, and I'm happy to provide this to the committee on notice once we're able to get it in its entirety, we're able to determine, obviously, the number of DPNs—director penalty notices—that we issue. The additional information that we're gathering at the moment is of those directors of those companies—how many of those companies subsequently became insolvent? That is a quantitative figure that we can provide. What will take a little bit more analysis, I think, is working out the actual trigger for those insolvencies. So, we can't necessarily, at this stage, hand on heart, say that the result of those insolvencies was the issuing of the DPN, but we can certainly provide the figures that—

Question 2:

Mr PITT: I understand the tax office not wanting to say, 'It was all our fault. We've created every single one of them.' But I guess my experience is that no-one wants to talk to the tax office. In terms of that trigger threshold, at what point do you get advised, or at what point do you take action? Do you have a watching brief, at a particular point, on companies who have unpaid tax obligations? Does it get to a value? How does that work?

Ms Kitto: In this calendar year, so 2022, we have restarted our firmer and stronger action approach. Part of that approach, as I mentioned in my opening statement, is about being measured and cautious. So, we are not going for a big bang type approach of just turning all our actions back on. One of the best examples I can give of that measured and cautious approach is that we've started off with awareness campaigns. For example, between March and September of this year we issued 45,678 director penalty notice awareness letters. To bring that back to your question around how do we identify those clients, it would be purely a systematic analysis of those companies that have debts to a certain point and have not complied with those debts within a certain time frame.

CHAIR: That's debts to you? Exclusively to the ATO?

Ms Kitto: It would be, in particular, pay as you go withholding debts, GST debts and superannuation guarantee challenge debts.

Mr PITT: But what's the threshold for action?

Ms Kitto: I don't have that number on me, but I am happy to take it on notice and provide that.

Mr PITT: Is it case by case? Is it a value? Where does it sit in terms of the response? That's very helpful.

Question 3:

Mr PITT: How much is lost per year by the ATO in insolvencies that are owed money? How much is out there on average in a 12-month period that is never provided to the ATO because the business went insolvent?

Ms Kitto: Again, could I take that question on notice?

Mr PITT: Of course. Thank you.

Answer:**Question 1**

Of the 2,719 businesses that met the Director Penalty Notices (DPN) awareness campaign selection criteria (starting population of 45,678) but failed to engage with the ATO or take steps to address their debts, 6,140 DPNs were issued to directors of those businesses during the period July to September 2022. As at 21 October 2022, 314 of those businesses had subsequently notified the ATO of insolvency.

The total number of all DPNs issued during the same period was 10,062 DPNs to directors of 7,479 businesses. Of these businesses, 356 had notified the ATO of insolvency as at 21 October 2022.

Question 2

The parameters applied to the DPN awareness letter populations were as follows:

- has at least one PAYG withholding, GST or superannuation guarantee charge (SGC) payment obligation and
- at least one of those PAYG withholding, GST or SGC payment obligations is
 - greater than \$7,500 (not collective) and
 - outstanding for over 90 days (calculated approximately 20 days prior to issue)
- is not in a payment plan or payment deferral, does not have a disputed debt and is not subject to other current ATO action (including case management).

Question 3

Once a client notifies the ATO of insolvency (or the ATO initiates an insolvency), any outstanding amounts are covered by the insolvency administration and may still be recovered up until the insolvency administration is finalised. At that point, the final amount is non-pursued in ATO systems as irrecoverable at law and cannot be legally collected.

The amount non-pursued as irrecoverable at law by the ATO due to insolvency was \$1.36 billion in 2021-22.

The table below represents amounts non-pursued as irrecoverable at law due to insolvency in each financial year from 2017-18 onwards:

	2021-22	2020-21	2019-20	2018-19	2017-18
Corporate	-\$841,666,318.44	-\$1,008,976,642.55	-\$638,635,580.63	-\$2,180,051,529.36	-\$2,400,286,256.84
Non-corporate	-\$522,486,867.88	-\$859,997,378.89	-\$175,493,968.85	-\$523,004,341.15	-\$917,536,890.63
Total	-\$1,364,153,186.32	-\$1,868,974,021.44	-\$814,129,549.48	-\$2,703,055,870.51	-\$3,317,823,147.47