COVID-19 and Corporate Insolvency: New tax legislation directors need to know

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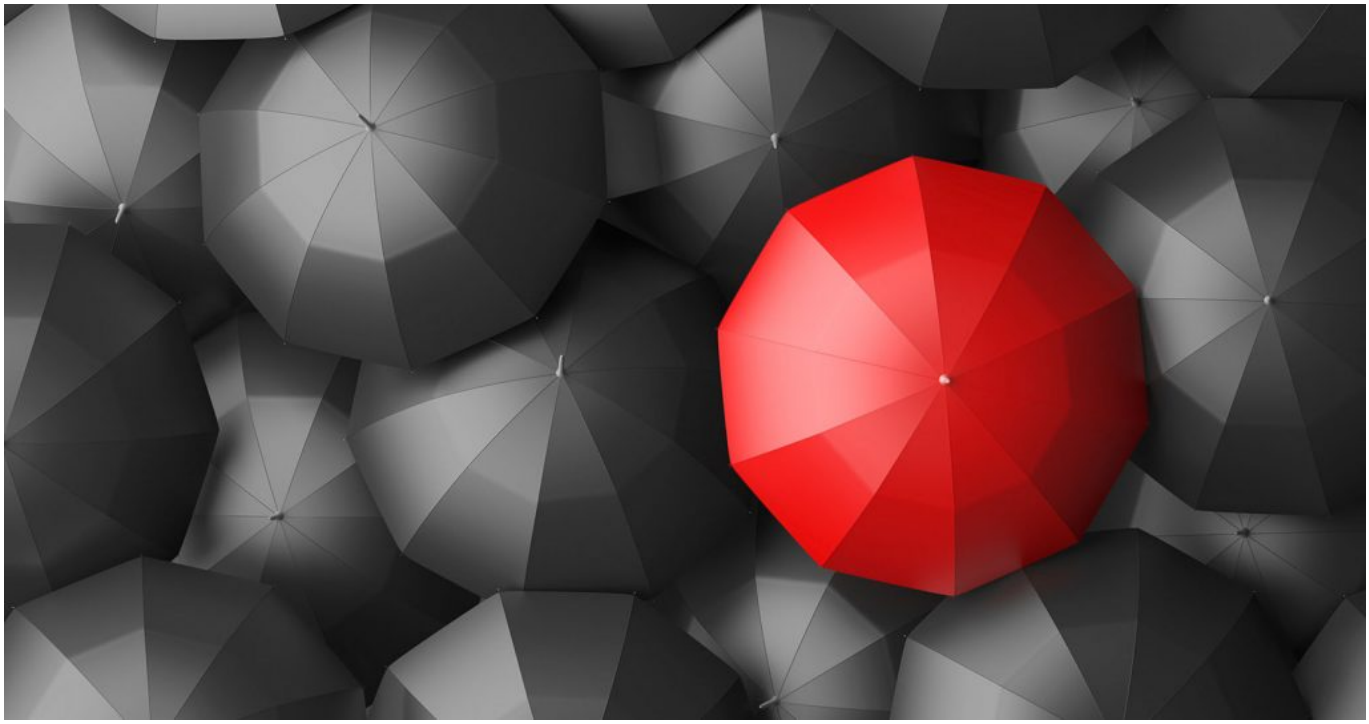

By Andrew Hack, Solicitor, and Stephen Mullette, Principal, of Matthews Folbigg Lawyers, in our Insolvency, Restructuring and Debt Recovery Group.

In the light of the COVID-19 outbreak, the Federal Government has acted to ameliorate some risks to directors. This includes recently introduced risks to directors. Directors should be aware of new amendments to the *Taxation Administration Act 1953* (Cth) ("**the TAA**"). The amendments include:

1. New rules about post-dating ASIC notification of a director resignation;
2. An estimates regime for GST payments;
3. Application of the Director Penalty Notice ("**DPN**") regime to account for the estimates regime for GST payments; and
4. Retention of tax refunds for failing to comply with obligations.

Director Resignations

These new rules provide that any notification of a director resignation lodged with ASIC 28 days after the resignation date will only be effective from date of notification. This means that even if a director resigned several years ago, he or she will remain a director (with all of the liabilities associated with such appointment) until their resignation is lodged with ASIC. Therefore, directors who resign should ensure that they lodge a Form 370 with ASIC as soon as possible.

If they fail to notify ASIC within 28 days, they may find themselves liable in respect of any non-compliance by the remaining directors.

GST Estimate Regime

The regime for estimating a company's liability to pay PAYG withholding tax and superannuation guarantee charges now also applies similarly to GST, in circumstances where a company has failed to lodge a GST return on time. The DPN regime has also been extended to include liability based on this GST estimates regime. Bearing in mind the new rules on the resignation of directors, it is critical that prudent directors intending to resign ensure that the company's GST returns have been lodged and liabilities paid prior to resigning.

Withholding Tax Refunds

New provisions allow the ATO to withhold tax refunds where a company has failed to comply with its obligations, such as the payment of other tax debts, lodging tax returns or provide other information to the ATO.

COVID-19 Tax Relief

However, the Australian Government's economic response to COVID-19 intends to provide tax relief to affected businesses, including:

1. Reduction of payments;
2. Deferral of payments;
3. Withholding enforcement actions (including DPNs and wind-ups); and
4. Increasing instant asset write-off threshold;

These amendments will assist in directors seeking to trade through a difficult period. The Australian Government's media announcements can be accessed here.

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If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Andrew Hack at andrewh@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

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