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Taxman using garnishee orders to get debt repayments straight from SME bank accounts

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James Thomson



There are more signs that the Australian Taxation Office's GFC-inspired leniency is over, with an Adelaide accountant reporting a spike in the use of garnishee orders, which allow the ATO to force a company's bank to transfer bank funds directly to the ATO to repay tax debts.

Des Caulfield, director of MGI Adelaide, says he has had two clients hit by garnishee orders in the last few weeks and discussions with senior bank officials have revealed that the use of the tactic is on the rise.

In the first instance, Caulfield's client was on a payment plan with the ATO and missed its October payment due to the illness of an in-house bookkeeper.

"The first thing the company knew about the garnishee order was when they banked funds and the funds weren't available," he says.

When they asked the bank, they were told the bank had received a garnishee order from the ATO that meant all income in the company's account had to be transferred to the ATO for a period of 14 days.

In the second case, the client (also on a payment plan with the ATO) was hit with a garnishee order that said a third of the funds coming into the company bank account should be transferred to the ATO.

Caulfield says while the ATO does have a legal right to the funds it is the sudden change in the Tax Office's attitude towards SMEs that has caught his clients on the hop. Caulfield says that in 30 years of practice he has only seen one garnishee issue ordered against a client.

"They've gone from sublime to ridiculous. I can understand why they were lenient during the GFC, but there was obviously a change of policy during the last few months," he says.

"I can understand the ATO has a right to get their money, but the impact of these sort of actions could be to send a company under. I could understand if they have tried desperately if they have tried to get the money, but in the case of our two clients it wasn't a situation of them ignoring the Tax Office."

If the ATO's action was to send a company into liquidation, Caulfield says there is a chance a liquidator could try and reclaim monies transferred to the ATO as preferred payments.

A spokesman for the ATO says Commissioner of Taxation Michael D'Ascenzo did highlight the ATO's preparedness to use garnishee orders earlier this year, in a speech to the COSBOA annual conference.

"In balancing our assistance and support for those who are willing to engage with us, we are taking firmer action with those taxpayers who demonstrate an unwillingness to work with us, have escalating tax debts or who are unable to meet their outstanding tax or superannuation guarantee debts," D'Ascenzo said.

"Firmer action can include recovery options such as garnishees, director penalties, statutory demands and wind-up or bankruptcy proceedings."

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