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## Concerns growing over crackdown on directors who lodge late accounts

Wednesday, 18 May 2011 11:58

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Accountants and financial experts are becoming increasingly concerned over new laws that will crack down on directors who lodge their accounts three months late, claiming they could potentially hit innocent taxpayers although they are designed to catch operators of phoenix schemes.

The laws, flagged in the budget, state that directors who lodge their returns three months late could become personally responsible for any debts. The Government argues this could catch fraudulent directors and will potentially raise up to \$260 million in extra revenue, but experts aren't so sure.

The Australian Institute of Company Directors said last week they are concerned about the scope of the laws, wondering whether innocent directors who simply lodge their statements late could be caught in the fray.

Other experts agree.

"I don't think these have anything to do with phoenix activities in the proposed laws," says Cliff Sanderson head of corporate turnaround firm Restructuring Works.

"The point is that these laws could apply to a phoenix company, but there is certainly nothing exclusive about that. It's certainly going to broaden the Tax Office's power."

There are two new measures designed to crack down on phoenix operations. The first would expand directors' personal liability to include employee superannuation payments, and the other does away with the need for a 21-day notice of liabilities are unreported for three months.

Sanderson points out there are plenty of business owners that are late in turning in their BAS forms and other returns, for various reasons, and says while catching the operators of phoenix schemes is good, he wonders if the tax office may inadvertently target innocent directors.

"But have you noticed – both measures significantly broaden the potential personal liability of company directors for company debts. But neither measure has anything to do with phoenix company activity," he says in a recent blog post.

Sanderson says business directors struggling to pay debts "should be wary", especially as the ATO seems to be increasing the number of liability notices being sent out.

"Over the last couple of years the Tax Office has been quite kind to directors in not issuing a lot of notices, and that came as a result of Kevin Rudd issuing an order to the ATO to be nice to SMEs. That's turned around now and we are seeing more notices being given."

"It's not dramatic right now, and many of the ones I see are quite justified... but these new laws are going to increase Tax Office power."

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Sue Prestney, head of MGI Melbourne, says she is supportive of any move to dismantle phoenix schemes but agrees there are worries over innocent directors being painted with the same brush as fraudulent directors.

"I think there is a general concern of being labelled as a phoenix operator, when business directors may have been in the unfortunate circumstances of putting a company through liquidation."

"I don't think this is a bad thing... I think the general description of this and how it's being described could be wrong."

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