

ATO more aggressive in winding up businesses owing 100K+

21 May 2015

Businesses owing the ATO \$100,000 have been wound up as a new crackdown gathers momentum. This indicates a clear change of focus and increased enforcement for the ATO and the message is clear - get a payment plan in place ASAP, or face a real risk of being wound up.

In June 2013 the ATO published its' approach to taking firmer action in circumstances where taxpayers had not worked with it to meet their payment obligations, however it seems the action has been significantly trailing the policy...until now.

Over the course of the last six weeks, the ATO has significantly ramped up applications for winding up which is a strong indicator of the government's attempt to recover unpaid revenue to plug the deficit hole. Applications by the ATO to wind up companies in April were more than double the March tally, and the May numbers reflect even higher activity.

This is a sign of the times. In the 1980's and 90's most small business relied on bank or business finance of some type to fund their working capital requirements. Roll forward to 2015, and it is clear that many small businesses are using unpaid superannuation and GST/PAYG as an artificial form of finance.

Where companies are wound up, unfortunately it is usually the employees who suffer most, as although other entitlements are covered under the FEG scheme, unpaid superannuation is not. The loss caused by unpaid GST and PAYG obligations is also ultimately borne by the taxpayer when companies are wound up and there is no distribution to creditors.

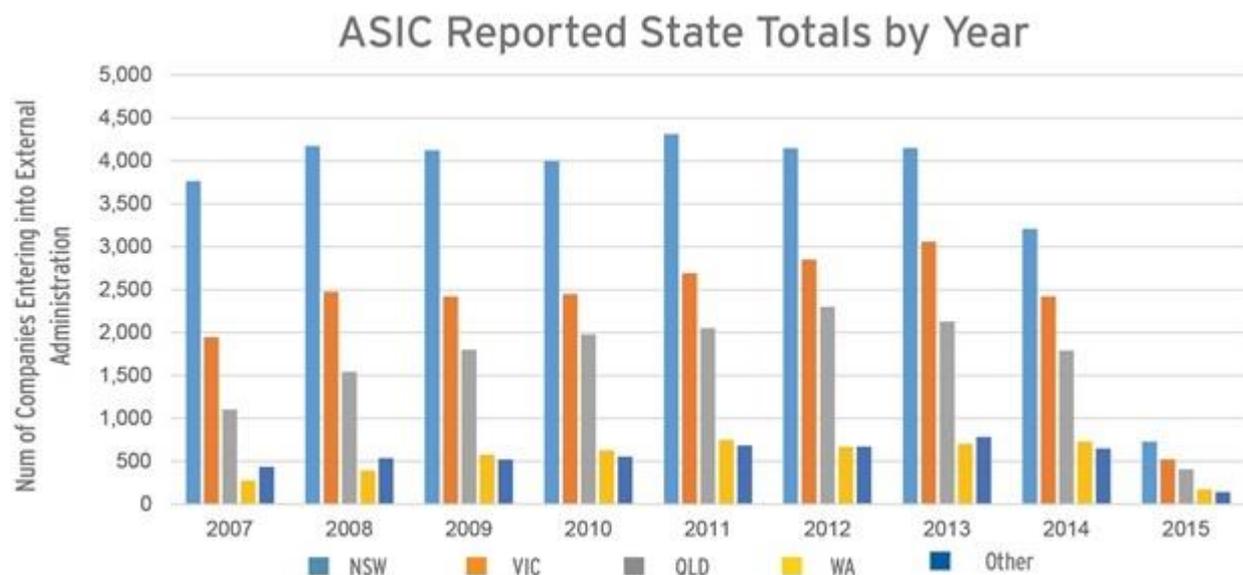
Whilst during the GFC, the government took a softly, softly approach, the ATO is now warning businesses that they will be taking legal action earlier, and will couple this with their other statutory powers to issue director penalty notices and garnishee notices to try to collect unpaid revenue.

In addition to the employee and taxpayer losses, where unpaid GST, PAYG and superannuation are being used to fund trading losses, those businesses enjoy an unfair advantage over those businesses which are properly meeting their obligations.

External administration appointments in 2014 were much lower than in the previous three years, however if the majority of ATO winding up applications on foot are successful, this could result in a significant increase in insolvency appointments nationally.

The best opportunity for recovery for a business is to seek professional advice early. He says that far too many businesses are leaving it too late to seek assistance, which drastically inhibits his ability to assist directors to save their business. The following can be observed from the recent ATO activity:

1. The ATO are more aggressively pursuing debts as low as \$100K
2. A winding up application is the last step the ATO will take after the ATO has exhausted all other recovery options, so act early
3. Any business with an outstanding taxation debt of \$100K and no current repayment arrangement in place is at risk of being wound up by the ATO



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