



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

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***Exposure Draft: Tax Law Amendments to Strengthen Company  
Director Obligations and Deter Fraudulent Phoenix Activity***

Chartered Secretaries Australia (CSA) is the independent leader in governance, risk and compliance. As the peak professional body delivering accredited education and the most practical and authoritative training and information in the field, we are focused on improving organisational performance and transparency.

Our Members are all involved in governance, corporate administration and compliance with the Corporations Act (the Act), with primary responsibility to develop and implement governance frameworks in public listed and public unlisted companies, as well as in private companies.

CSA welcomes the opportunity to comment on the proposed Exposure Draft: Tax Law Amendments to Strengthen Company Director Obligations and Deter Fraudulent Phoenix Activity.

CSA notes that the proposed reforms are intended to:

- extend the director penalty regime to apply to superannuation guarantee amounts such that directors can be personally liable for their company's unpaid superannuation guarantee amounts
- enable the Australian Taxation Office to commence recovery of a director penalty without providing a 21-day grace period where the company's unreported PAYG or superannuation payments are over three months late
- restrict access to Pay As You Go withholding credits for company directors and their associates where the company has failed to pay withheld amounts to the Tax Commissioner.

CSA supports these amendments in relation to phoenix activity due to the insolvency risks associated with such organisations, but we have strong concerns that there could be very undesirable unintended consequences if the proposals are introduced as they are currently drafted.

The amendments currently apply to all directors — while they are intended to capture those directors who seek to avoid their responsibilities, their ambit spreads to directors who are diligently and responsibly undertaking their responsibilities and duties and who could not reasonably be expected to be aware of a breach such as the above.

For example, consider the case of a large organisation with hundreds or thousands of employees which, due to a technical processing error in the payroll department, resulted in a small number of PAYG or superannuation contributions not being paid and remaining undetected for a period of time. As the proposals are currently drafted, directors of such an organisation would face direct personal liability and penalties, despite having no knowledge of, or involvement in (or any reasonable prospect thereof), the contravention. CSA is strongly of the view that it would be inappropriate to attach derivative liability in such circumstances.

**CSA supports** the extension of directors' liability to unpaid superannuation guarantee amounts, but only in circumstances where the company is insolvent or the director has previously been a director of an insolvent company.

**CSA opposes** the elimination of the 21-day notice period for the Commissioner of Taxation to commence proceedings to recover unpaid superannuation guarantee amounts from directors personally.

**CSA opposes** the introduction of discretion on the part of the Commissioner to reduce the entitlements of directors and their associates to PAYG withholding credits in all circumstances. As with the extension of liability referred to above, this discretion should be confined to situations where the company is insolvent or where the director has previously been a director of an insolvent company.

CSA also notes that Treasury is currently seeking, separately from this proposal, to reform the provisions imposing personal criminal liability on directors for acts of the company. The current proposals counter this other project, which is seeking to address an ongoing move to impose derivative liability on directors by reducing criminal liability provisions and harmonising inconsistent provisions where criminal liability is retained for public policy reasons.

CSA would be more than happy to discuss this issue further with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tim Sheehy', written in a cursive style.

Tim Sheehy  
CHIEF EXECUTIVE