

Phoenix Companies

The phoenix phenomenon is an issue which is gaining the attention of tax professionals, media and also the Australian Tax Office.

What is the phoenix phenomenon?

The phoenix phenomenon simply refers to a company closing down, then reopening to do business again. Hence the phoenix analogy. The classic phoenix scenario is a small business being run, as Company 1, and whose directors are closely associated. The business will run up debts to the Australian Tax Office ("ATO"), but are careful to pay trade creditors to retain their future "goodwill". The directors then close Company 1 (perhaps via voluntary liquidation) failing to pay its ATO debt.

The directors then use Company 2 to run the business as before, having acquired the assets, client base and employees of Company 1. Within a short time, usually one or two years, Company 2 repeats the example of Company 1 and Company 3 takes over.

Phoenix operators typically act with little regard to the non-payment of PAYE and/or PPS deductions. Deliberate steps are often taken to avoid or mislead the ATO and other government agencies. The practice appears to be growing and has been assessed by the Australian Securities and Investments Commission ("ASIC") as draining the economy of \$1.3 billion per annum.

How will the ATO focus its resources?

The ATO phoenix Team is directing its energies to the following areas:

- using internal and external information sources to review specific directors and associates whose entities appear to have a history of debt with the ATO;
- reviewing the behaviour of certain industry groups (e.g. building and construction industry) which appear to be more likely to develop phoenix arrangements;
- reviewing specific tax agents and other professionals whose clients have been involved in phoenix type activity;
- conducting targeted audits on identified "high risk" individuals and entities;
- liaising with professional associations;
- supporting a "whole of government" approach by liaising with other government agencies, e.g. Australian Federal Police, ASIC.

What are the results to date?

To date, cases addressed in NSW have raised more than \$35 million in tax and penalties. Currently, another 107 entities are being closely examined. In some cases, criminal prosecution of the individuals driving these activities is likely.

It is also expected that similar enquiries will follow in other states during 1999.

For more information on this initiative or to discuss any matters you may believe relevant, please contact Milton Terzis on (02) 9374 5630.