

DLK ADVISORY

ATO DATA-MATCHING: DIRECTORS AND OFFICEHOLDERS



The ATO has announced a data-matching program which will acquire officeholder data from ASIC, the Office of the Registrar of Indigenous Corporations (ORIC) and the ACNC for the 2023-24 to the 2024-25 income years. The aims of the program are manifold, including both compliance and education objectives, however, the main objective is to assist the Australian Business Registry Service (ABRS) in increasing the uptake of the director ID regime and helping to identify unlawful activities, including phoenixing of companies.

In brief, the director ID regime has been in place since late 2021 and requires all directors to have a permanent unique identifier which will follow them throughout their corporate career. Most individuals will need to apply for a director ID before their appointment as a director. Currently, there is no requirement to provide Director IDs to ASIC, however, it is recommended that director IDs are given to the record-holder of the companies.

It is estimated that records relating to approximately 11m individuals will be affected by this program. The information collected includes the following:

- individuals – name(s), DOB, place of birth (country and state), addresses (residential, postal, other), ABN, email, and contract phone number.

- non-individuals – business/corporation/charity name, organisation class/type/status, addresses, ABN, Indigenous corporation number (if applicable), contact name, phone number, email, state of incorporation, charity status (if applicable), CAN or Australian Registered Body Number (if applicable).
- officeholder role details – type (individual or organisation), role type (director, secretary, liquidator), organisation type, officeholder role start/end date, address of officeholder.

According to the ATO, officeholder data will be matched to ATO and ABRS records to establish whether an individual director is meeting their obligations to have a director ID and identify any other officeholders. The data will also be used to support taskforce programs such as the phoenix taskforce which aims to prevent the use of false director IDs and identify or disrupt instances of phoenixing activity.

Civil and criminal offences may apply to those that promote or engage in illegal phoenix activity and includes penalties for removing assets or hiding assets from creditors where a company is wound up. In cases where phoenix activities are suspected, the ATO may estimate liabilities for businesses that are not meeting their lodgment obligations, make directors personally liable for their company's liabilities, or retain refunds where a business has failed to provide an outstanding notification.

These penalties are not merely for show. Up to 31 August 2023, it is reported that the ATO raised more than \$2.11bn in liabilities from audits and reviews of illegal phoenix activities and returned more than \$967m to the community. For the 2022-23 financial year, the ATO completed 2,967 audits and reviews and received more than 2,500 referrals of suspected illegal phoenix activity through the tax integrity centre.

In addition, this program will also be used to link individuals known to the ATO to officeholders and their associated companies as recorded on the ASIC companies register, the ORIC register, and the ACNC charity register. This will then be used in educational programs such as informing individuals of their obligations as well as avoiding unnecessary contact with individuals that are correctly meeting their obligations.

Directors should be aware of their obligations and apply for IDs within the relevant timeframe for their individual situation. Those that have not yet applied for IDs with the ABRS but are required to do so risk a hefty penalty of up to \$16,500 (criminal) and \$1,375,000 (civil). However, directors that held a role before 31 October 2021 but no longer hold any director roles on or after 1 December 2022 do not need to apply for a director ID.

CONTACT

If you have any queries, please feel free to contact us.

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