

16 August 2021

Shaun Milner  
Australian Taxation Office

Via email: [shaun.milner@ato.gov.au](mailto:shaun.milner@ato.gov.au)

Dear Sir/Madam

## **SPR 2021/D2 and explanatory statement**

CPA Australia and Chartered Accountants ANZ represent over 200,000 professional accountants in Australia and New Zealand. Our members work in diverse roles across public practice, commerce, industry, government and academia throughout Australia and internationally.

The legislative instrument *Superannuation Guarantee (Administration) - stapled fund - guidelines for the reduction of an employer's individual superannuation guarantee shortfall for late contributions due to non-acceptance by notified stapled fund determination 2021* (SPR 2021/D2 or the "draft determination") applies to decisions by the Commissioner of Taxation (the Commissioner) about whether or not to reduce an employer's individual superannuation guarantee shortfall in situations where Commissioner discretion is available. These situations may arise due to payments of superannuation contributions to a fund which has been advised by the Australian Taxation Office (ATO) as a single default account (stapled fund), which are then rejected due to the fund being unable to accept contributions. As a result of the rejected contribution, the employer is then required to take action which results in late payments and in turn can lead to Superannuation Guarantee penalties.

A draft explanatory statement has also been issued with the draft determination for separate consultation. Our comments in this submission are in response to both drafts.

We agree that the draft determination generally achieves its objective, and do not make substantive comments in relation to specific parts of the draft determination.

However, we note that the context for the draft determination may have been avoidable. In our joint submission to Treasury in response to the *Your Future, Your Super Regulations* and associated measures in May this year, we noted that the mandatory nature of a stapled fund meant that it was possible for an employer to breach the choice of fund requirements in the in a situation where a fund, notified by the ATO as a stapled fund, was unable to accept contributions.

Whilst we welcome the fact that the Commissioner has chosen to provide discretion, we reiterate a comment made in our submission that we believed that a better course of action was for the ATO to undertake a verification of the ability of a fund to accept contributions, prior to notification to employers of stapled fund details. Had this recommendation been adopted, it is unlikely that this draft determination would have been required.

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaaustralia.com.au](mailto:richard.webb@cpaaustralia.com.au) or Tony Negline, Superannuation Leader at Chartered Accountants ANZ at [Tony.Negline@charteredaccountantsanz.com](mailto:Tony.Negline@charteredaccountantsanz.com).

Yours sincerely

**Tony Negline CA**

**Superannuation Leader  
Advocacy and Professional Standing,  
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