

16 August 2021

Lee Wilkes  
Australian Taxation Office

Via email: [lee.wilkes@ato.gov.au](mailto:lee.wilkes@ato.gov.au)

Dear Sir/Madam

## **SPR 2021/D1 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) - choice of fund - written guidelines for the reduction of an increase in an employer's individual superannuation guarantee shortfall determination 2021* (SPR 2021/D1 or the "draft determination") provides written guidelines the Commissioner of Taxation (the Commissioner) must have regard to in deciding the reduction to apply to an increase in an employer's individual superannuation guarantee shortfall in situations where Commissioner discretion is available. These situations may arise due to payments of superannuation contributions which do not meet the choice of fund requirements from 1 November 2021, due to the single default account (stapled fund) requirements.

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.

We note that the draft determination provides for Commissioner discretion for a first offence during the transition period. As there may only be manual processes initially, we welcome the grounds for this discretion, where the employer genuinely has a lack of knowledge of stapled fund processes.

Additionally, we welcome the inclusion of point (b) of paragraph 4(10) of the determination, which allows an error or honest mistake to be considered as a relevant factor when making a determination. This will ensure that going forward, employers are able to access ongoing discretion after the transitional period has ended. We believe that this could apply also to errors made by the Australian Taxation Office (ATO) in the provision of stapled fund details, and that any doubt as to this point would be resolved by the inclusion of an additional, specific point at paragraph (10).

Finally, we believe that there may be scope within the draft determination to ensure that employers are not in a position to influence employees in respect of choice of fund decisions.

The policy intention of the single default account (stapled fund) reform is to ensure that where eligible employees commence with a new employer, they use their stapled fund unless they make a decision regarding choice of fund. We believe that it is possible that an employer may, for a number of reasons, prefer that employees join a new fund, such as the employer's default fund. In the event that employees are unnecessarily encouraged by the employer to take such action, we recommend that this be express grounds for the ATO to not reduce penalties.

For further information in relation to our submission, please contact Richard Webb, Policy Advisor Financial Planning and Superannuation at CPA Australia at [richard.webb@cpaustralia.com.au](mailto:richard.webb@cpaustralia.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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