

Stapled Super Funds

As part of the 2020-21 Federal Budget the government announced 'Your Future, Your Super' package. The package received royal assent on 22 June 2021 – so is now law. An important inclusion in the Your Future, Your Super package was the introduction of 'stapled super funds'.

From 1 November 2021, where employees do not nominate a super fund for their employer to pay superannuation contributions to, employers will be required to check with the ATO if the employee has an existing super account. The existing super account is known as a 'stapled super fund'; meaning it is stapled to the individual employee and follows them from job to job.

Previously, if employees did not nominate a super fund for contributions to be made to, the employer was required to set up a new super account with their default super fund. The stapled super fund regime is designed to stop the creation of multiple super accounts for employees which result in diminished retirement savings. Currently there are \$6 million multiple super accounts held by \$4.4 million people.

So, how will it work?

When a choice of fund form isn't returned by an employee, employers will need to log into the ATO's online service, enter the employee's details to find their stapled super account and pay the employee's super into that account.

Employers will still need their default fund to create accounts for employees who don't have an existing super fund (e.g. an employee starting their first job).

Superannuation Caps Indexation for 2022

From 1 July 2021, the superannuation contribution caps have been indexed for the 2022 income year. The new **concessional contribution cap** for the 2022 financial year is now **\$27,500** (increased from \$25,000).

The new **non-concessional (i.e., non-deductible) contribution cap** for the 2022 financial year is now **\$110,000** or (where the 'bring forward' rules are applicable) **\$330,000** over three years (increased from \$100,000 or \$300,000 respectively). Please note your non-concessional cap will be reduced to nil in certain circumstances.

The **CGT cap amount** for the 2022 financial year is now **\$1,615,000** (increased from \$1,565,000).

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Please Remember

By necessity the contents of this newsletter are summary only. Clients should contact us on 6431 3933 to discuss matters prior to acting.

Division 7A Benchmark Interest Rate for 2022 Remains Unchanged

The Division 7A benchmark interest rate for the 2022 income year remains unchanged from the 2021 rate of 4.52%.

Changes to STP Reporting from 1 July 2021

Single Touch Payroll (STP) should be familiar to employers; with most employers required to be STP compliant from 1 July 2019. As a quick refresher – STP requires employers to electronically report salary and wages, tax withheld and superannuation information for employees to the ATO each time employees are paid.

Up until 30 June 2021 if you only employed closely held employees (i.e. related parties) you were exempt from the STP reporting requirements. There are also other exemptions which apply in limited circumstances. From 1 July 2021, there have been changes to STP reporting for small employers with closely held employees. Closely held employers are now required to comply with the STP reporting requirements.

They can choose to report such payments via one of three methods, being:

- actual payments each pay day;
- actual payments quarterly; or
- a reasonable estimate quarterly.

If you are a micro employer (with 4 or less employees) and currently reporting STP information quarterly you will be required to report STP information each time you pay your employees unless you meet certain exceptional circumstances.

There will be further changes to STP reporting from 1 January 2022, with employers being required to report more information each pay. There is no action required by businesses; we understand the ATO is working with software providers to ensure there is limited impact on business.

New ATO Data-Matching Programs

Data-matching is an exercise the ATO has been carrying out for many years. They match the data lodged to them by taxpayers to data they receive from third parties such as banks, stock exchanges & share registries, health insurers and state revenue agencies. Data matching allows the ATO to detect taxpayers and businesses operating outside the tax system, detect fraud and recover debt.

The ATO will now engage in two new data matching programs:

- the ATO will acquire novated lease data from McMillan Shakespeare Group, Smartgroup Corporation, SG Fleet Group, Eclix Group, LeasePlan, Toyota Fleet Management, LeasePLUS and Orix Australia for the 2018/19 through to 2022/23 financial years (relating to approximately 260,000 individuals each financial year); and
- the ATO will acquire account identification and transaction data from cryptocurrency designated service providers for the 2021 financial year through to the 2023 financial year inclusively (relating to approximately 400,000 to 600,000 individuals each financial year).



Reduced Minimum Pension Rates Extended

Due to the Covid-19 pandemic, the government had previously temporarily reduced the minimum superannuation pension rates by 50% for the 2019–20 and 2020–21 income years, ending on 30 June 2021.

The government has announced an extension of the temporary reduction in superannuation minimum pension **rates for a further year to 30 June 2022.**

The breakdown of current rates is below:

Age	Minimum Pension Rates	2019–20, 2020–21 & 2021–22 Reduced Rates
Under 65	4%	2%
65–74	5%	2.5%
75–79	6%	3%
80–84	7%	3.5%
85–89	9%	4.5%
90–94	11%	5.5%
95 or more	14%	7%

CLIENT PROFILE

BLACKLEY PIPELINES & IRRIGATION

Elphinstone Stevens would like to congratulate Johnny, Naomie & the Blackley team on their new premises and their extraordinary growth.

Blackley Contracting Services (TAS) Pty Ltd trading as Blackley Pipelines and Irrigation began trading in Tasmania in May 2017. Specialising in the design, supply, installation and maintenance of complete pipeline, pumping and irrigation systems in the agriculture, viticulture and mining industries. Their products include Reinke Centre Pivots & Lateral move irrigation systems, Nettuno Hard Hose Irrigators and Pumps, Franklin Electric Pumps, Spitwater Industrial Cleaning & Heating Equipment and Plasson polyethylene connectors.

Originally only employing the directors Naomie and Johnny, the business, through hard work and determination, has grown to a team of 21 highly qualified and experienced personnel operating state-wide in only 4 years.



After experiencing significant growth, Blackley Pipelines quickly outgrew their original premises. Recently they moved into their new purpose built premises at Reservoir Drive, Wynyard. They are also currently moving into their second store and workshop at Western Junction, Launceston Airport.

Johnny Blackley says that the key to their growth has been the hard work and dedication of their team and the support of their clients. The success of the growth of the business was recently highlighted with the Prime Minister Scott Morrison visiting and even attempting a Poly weld in his visit to NW Tasmania in May.



Tax Traps for Subdivision of Land

As property prices increase across Australia, subdivision of land becomes a financially attractive undertaking for investors. Unfortunately, there are potentially complex tax issues involved that the taxpayers may not be aware of. It is not uncommon for taxpayers to assume that any profits they generate from the sale of subdivided blocks of land are either tax-free because they used the land (before the demolition of the old building) as main residence or taxed as capital gains. This is not necessarily the outcome for many cases. A case in point is the recent Administrative Appeals Tribunal (AAT) case, *McCarthy and FCT* [2021] AATA 1511.

Facts

The taxpayer and her husband purchased a residential property in Western Australia at auction for \$675,000 as joint tenants on 27 August 2016. The Taxpayer and her husband then lodged an application for approval of a plan for the subdivision of the Property into two lots to the local council on or about 10 November 2016 (less than 2 weeks after the settlement). The plan of the subdivision submitted for approval was dated 21 October 2016 (around 2 weeks before the settlement).

At the time of the property purchase, there was a long-term tenant in residence. The tenant vacated the property in May 2017 and the house was demolished in July 2017. The two lots were sold for \$480,000 on 3 August 2017 and \$490,000 on 2 January 2018 respectively. The taxpayer and her husband then applied for a private ruling to the ATO through their tax agent on the income tax implications of the sale of the lots. The ATO ruled the profits from the sale of the lots were assessable as ordinary income under section 6-5 of the Income Tax Assessment Act 1997 (ITAA97), being an isolated transaction carried out for profit and commercial in nature. As such, the taxpayer and her husband had to pay tax on the full profit rather than 50% of the profit under the Capital Gain Tax (CGT) provisions. The taxpayer then took the matter to the AAT after their objection to the assessment was disallowed by the ATO.

Decision

The AAT upheld the ATO's assessment and held that the profits were ordinary income under section 6-5 of the ITAA97. The AAT found that, at the time of the purchase of the property, one of the taxpayer's purposes for the purchase was a potential profit by subdivision and sale and that it was not an insignificant purpose. In particular, it was significant that the subdivision activities were undertaken shortly after the auction. Further, the AAT rejected the Taxpayer's submission that it was their intention to hold the property as a rental investment but decided to subdivide and sell the lots instead, as they could not afford to keep the Property as a rental investment property. Ultimately, the Taxpayer failed to convince the AAT that it was their original intention to keep the property as a rental investment but had to sell, as they could no longer afford to keep the property. That is, the taxpayer was unable to provide any calculation, enquiry or action as a support to their intention.

Ultimately, the taxation consequences will depend on the facts in each case. If the facts don't support the view that it was the intention to keep the property as a long term investment, it will be very difficult to argue the gain should be treated as a capital gain.

The Commissioner contended that the facts (including the enquiries as to the property's subdivision potential at the time of purchase, the amount borrowed (\$750,000) being in excess of the purchase price, and the subdivision work undertaken) led to a clear inference that the acquisition of the property was a commercial transaction entered into with the intention or purpose of generating a profit or gain through the subdivision and sale of the property. It was submitted that the taxpayer's contentions were not supported by the evidence. However, even if the taxpayer's asserted facts were proven, one of the alternatives at the time of the purchase of the property was the subdivision and sale of the property, which was enough to evidence the relevant profit-making purpose.



Taxable Payments Annual Reports due 28 August

2021 TPARs are due to be lodged for businesses who have paid contractors to provide the following services:

- building and construction;
- cleaning;
- courier, delivery or road freight;
- information technology ('IT'); or
- security, surveillance or investigation.

TPARs can be lodged electronically through your software provider or via ATO Online Services. They can also be lodged via paper.