Client Newsletter

Fox & Rynne

December 2021

We would like to wish all our clients a peaceful & blessed Christmas, and a happy & prosperous 2022.

Our office will be closed from 24 December 2021 to 4 January 2022.

NEW STAPLED SUPERANNUATION FUNDS RULES INTRODUCED—INFORMATION FOR EMPLOYERS

'Superannuation stapling' is a new measure that was introduced as part of a package of reforms to the superannuation system announced in the 2020/21 Federal Budget.

Under this measure, an existing superannuation account is linked, or 'stapled', to an individual employee so that it follows them as they change jobs. This avoids the creation of a new superannuation account each time a person changes their employment.

Broadly, the new rules require employers to use the 'stapled super fund' details (instead of the employer's default fund) for new employees who do not choose a fund. These changes only apply to **new employees who commence work on or after 1 November 2021** (i.e., existing employees are not affected by the new rules).

Employers must generally provide new employees with a superannuation Standard Choice Form within 28 days of commencing work. From 1 November 2021, if a new employee does not choose a fund, then the employer will need to check if the employee has an existing stapled fund by logging into ATO online services and accessing the 'stapled super fund request service'.

Where the employee has a stapled fund, the employer will be required to contribute to the employee's stapled fund. If an employer makes contributions into their default fund for a new employee rather than checking with the ATO to see if the employee has a stapled super fund, then they may be subject to the choice shortfall penalty.

Importantly, there is no need to request stapled super fund details from the ATO for:

• existing employees (i.e., those who commenced work before 1 November 2021); or

• new employees (who commence work on or after 1 November 2021) and have chosen a superannuation fund.

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Employees will also be notified by the ATO of the stapled super fund request made in relation to them and will be advised of the details provided by the ATO to the employer. The ATO will be monitoring the 'stapled super fund request service' to ensure that employers are using it appropriately and making genuine requests for stapled super fund details. Employers who use the service incorrectly (e.g., to request information for employees who started work before 1 November 2021) may have their access to the service removed.

More information about an employer's obligations with regards to stapled super funds can be found on the ATO's website: www.ato.gov.au/Business/Super-for-employers/Setting-up-super-for-your-business/Offer-employees-a-choice-of-super-fund/Request-stapled-super-fund-details-for-employees/

MARKET VALUE FOR TAX PURPOSES

Many tax laws require the taxpayer to determine the market value of something. Common instances include:

- transfer of real estate or shares between related parties, such as family members, or beneficiaries of a deceased estate
- Non-cash benefit transaction, such as gifts, or other benefits, such as car parking
- Transfers of assets to related parties, or passing the asset threshold tests for the small business capital gains tax concession
- For property developers— the GST margin scheme
- Consolidation events for businesses
- Main residence exemption—change of business use

If you receive **nothing** in exchange for a CGT asset, you are taken to have received the **market value** of the asset at the time of the CGT event. This is the market value substitution rule for capital proceeds.

MARKET VALUE OF HOME USED TO PRODUCE INCOME

If a taxpayer starts to use their home to produce income for the first time after 20 August 1996, there is a special rule for working out the taxpayer's capital gain or loss.

In this case, the taxpayer is taken to have acquired their home at its **market value** at the time it is first used to produce income, if all of the following apply:

- the taxpayer acquired the dwelling on or after 20 September 1985
- the taxpayer first used it to produce income after 20 August 1996
- the taxpayer would only get a partial exemption because the dwelling was used to produce assessable
- income during the ownership period, and
- the taxpayer would have been entitled to a full exemption if they had sold the home immediately before they first used it to produce income.

CGT EXEMPTION ON INHERITED HOMES

There may be CGT implications when an executor or beneficiary sells the inherited home to a third party.

Selling an inherited property

There are different factors that influence whether CGT will apply, including whether the asset was a pre-CGT asset or not. Assets acquired before 20 September 1985 (when CGT was introduced) are considered pre-CGT assets.

For the most part, if a beneficiary sells a dwelling within **two years** of the deceased's death, then CGT does not apply (more below).

For dwellings acquired after 19 September 1985 to be exempt from CGT, a beneficiary must generally satisfy that the dwelling:

– was the deceased's main residence at the time or just before their death

– was not used to produce assessable income at the time of death, and

– is sold within two years of the deceased's death.

Note that there can be exceptions regarding whether the dwelling was a main residence before death. This includes where the owner, say, was in a nursing home before their death and the main residence was rented out. (This is known as the "absence concession").

The two-year rule

When assessing this two-year period, where the property is sold under contract, the settlement (rather than exchange of the contract) must occur within two years of the date of death.

There are some circumstances where an extension to the two-year rule may be granted. These include (but are not limited to):

– if the ownership of a dwelling or a will is challenged

– the complexities of estate delay the completion of its administration

– a trustee or beneficiary is unable to attend to the deceased estate due to unforeseen or serious personal circumstances, and

– the settlement of a contract of sale over the dwelling is unexpectedly delayed or falls through due to circumstances outside the beneficiary or trustee's control.

Further, if the deceased has given someone, such as a spouse or family member, a lifetime right to reside in the property, then the beneficiary may be exempt from the two-year rule.

Partial exemption

If the two-year deadline is not met, it doesn't necessarily mean that the entire capital gain on the property will be subject to CGT. It may be that only part of the gain is subject to CGT. **Each case needs to be dealt with on an individual basis, and is generally best discussed with a tax professional.**

BOOSTING APPRENTICESHIP COMMENCEMENTS

Boosting Apprenticeship Commencements wage subsidy supports employers of any size to take on new apprentices or trainees.

Any business that engages an Australian Apprentice between 5 October 2020 and 31 March 2022 may be eligible for a subsidy of 50% of the apprentices gross wages paid.

The subsidy is for a maximum of $7000 per quarter, per eligible apprentice, for wages paid in the 12-month period from the date they start.

The subsidy is available to employers of any size, industry or geographic location.

Your business may be eligible if:

- you engage an Australian Apprentice between 5 October 2020 and 31 March 2022
- your Australian Apprentice or trainee is undertaking a Certificate II or higher qualification and has a training contract that is formally approved by the state training authority.

The subsidy is not available for an apprentice receiving any other form of Australian Government wage subsidy, for example, Supporting Apprentices and Trainees or JobKeeper.

DIRECTOR IDENTIFICATION NUMBER (DIN)

From November 2021, company directors in Australia will need to begin applying for a director identification number (DIN). This is a unique identifier given by the Australian Business Registry Services (ABRS). These new obligations for directors are part of the wider anti-phoenixing initiative implemented by the Australian Federal Government.

A DIN will be required if you are a director or alternate director of:

- **New company director (appointed after October 2021)**—from 1 November 2021, you need to apply for a director ID within 28 days of when you're appointed, including new company registrations. From 5 April 2022, you need to have a director ID prior to your appointment.
- **Existing company director (appointed before November 2021)**—you need to have a director ID by 1 November 2022.
- **Aboriginal and Torres Strait Island corporations company director**—you have extended timeframes.

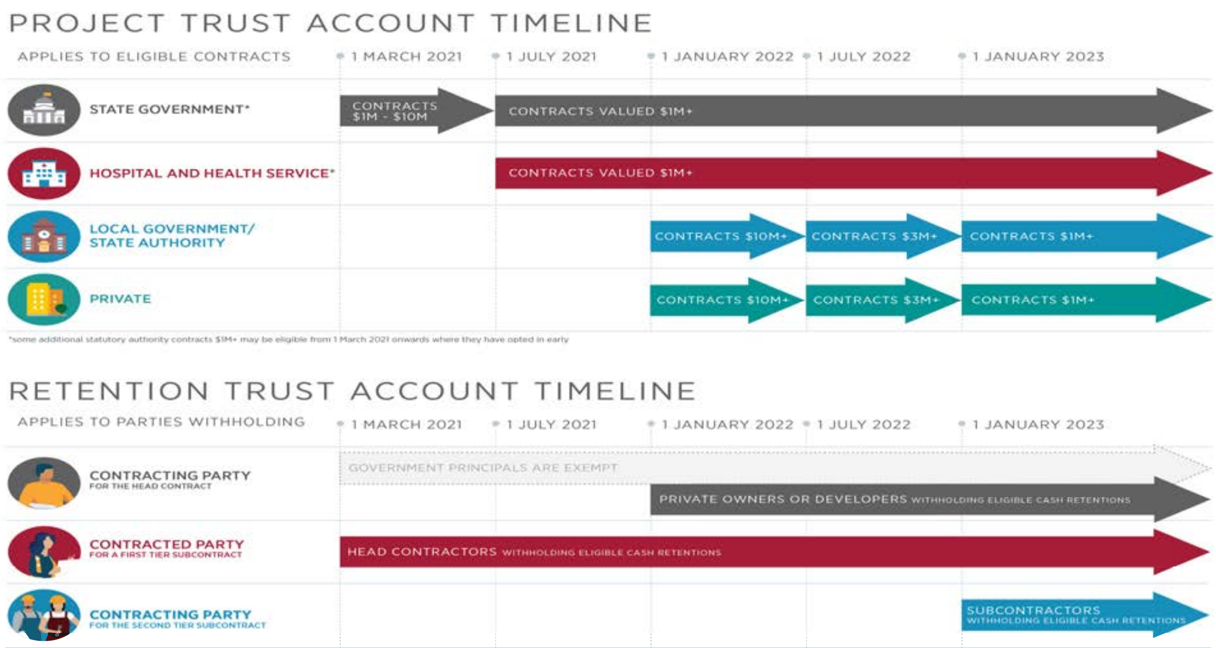
Directors will apply for a DIN through the Australian Business Registry Services (ABRS) website *(abrs.gov.au)*. The simplest way to apply is online using your **myGovID**. Further information on setting up a myGovID can be found at *mygovid.gov.au*.

If you can’t get a myGovID, then **from 1 November 2021** you will be able to apply either by **phone** or by using a downloadable **paper application form** available on the ABRS website. This form requires identity documents, which can be found at the ABRS website.

QBCC TRUST ACCOUNT FRAMEWORK

The new Queensland Building and Construction Commission's trust account framework will be rolled out between 1 March 2021 and 1 January 2023.

Delivered over five major phases, the framework progressively expands over time to capture more projects and contractors. When fully implemented by 1 January 2023, trust accounts will apply to all public and private sector projects valued at $1 million or more.



FOX & RYNNE CONTACT DETAILS

45 Marian Street

PO Box 163

Miles Q 4415

Telephone:

(07) 4627 1500

Fax: (07) 4627 1878

admin@foxrynne.com.au

Yaldwyn Street

PO Box 356

Taroom Q 4420

Telephone:

(07) 4627 3225

Fax: (07) 4627 3426

admin@foxrynne.com.au