

# MEMBERS UPDATE



**DECEMBER  
2021**



In this month's members update we look at:

- Backpackers Tax
- Payroll Tax Amendment (Payroll Tax Waiver) Act 2021
- Additional Public Holiday
- Superannuation Bounce Back - Super Stapling
- ATO: Contractor stapled super fund request form

## Welcome to the December 2021 member's update

This is the last Members Update for the year, and what a year it has been for payroll. This year we have had to work with many changes in awards due to covid, SG rate increase to 10%, the end of JobKeeper, Casual conversion and Super Stapling just to name a few changes in payroll.

In this month we wanted to highlight a high court ruling in regards to certain back packers' taxation as well as the Payroll Tax amendments for NSW.

We are also well into the swing of Super Stapling, in this member update we want to look into a few scenarios that you may not have thought of yet, such as when superannuation bounces back and Super stapling for contractors. Let's end the year well.

## Backpacker Tax

Background: Ms Addy worked as a waitress in two Sydney hotels for five months in 2017 and earned \$26,576. Her legal team successfully argued that her British citizenship meant she was taxed in a more "burdensome" way than locals, which is prohibited by the tax agreement with Britain. The High Court ruled Catherine Addy had been discriminated against because of her British nationality when she was made to pay a higher tax rate than Australian residents.

In a unanimous decision, the court ruled in Ms Addy's favour, finding the levy contravened a tax treaty with the United Kingdom. It allows foreign nationals with 417 visas to be regarded under the law as residents of Australia for tax purposes, avoiding double taxation.

Note: ... this decision does not automatically mean that all backpackers in Australia are treated as Australian residents for tax purposes.

Going forward, the ATO says:

- This decision is only relevant where the working holiday maker is both an Australian resident for tax purposes and from Chile, Finland, Japan, Norway, Turkey, the United Kingdom, Germany or Israel (which is to say, they are the only countries with a 'non-discrimination' clause.)
- Working holiday makers who may potentially be affected by this decision are encouraged to check the ATO website for updated guidance prior to lodging or amending a return or lodging an objection.
- **Employers should continue to follow rates in the published withholding tables for working holiday makers until we update the ATO website with further guidance.**
- A working holiday maker's residency status for tax purposes is determined by the taxpayer's individual circumstances. Most working holiday makers will be non-residents consistent with their purpose of being in Australia to have a holiday and working to support that holiday.

See the ATO announcement [here](#)

## NSW - Payroll Tax Amendment (Payroll Tax Waiver) Act 2021

The Payroll Tax Amendment (Payroll Tax Waiver) Bill 2021 has passed the NSW Legislative Assembly. The Bill received assent on Thursday 18 November 2021.

The Payroll Amendment (Payroll Tax Waiver) Act 2021 provides a 50% payroll tax reduction for the 2021-22 financial year to customers with an annual Australian grouped payroll of no more than \$10 million that:

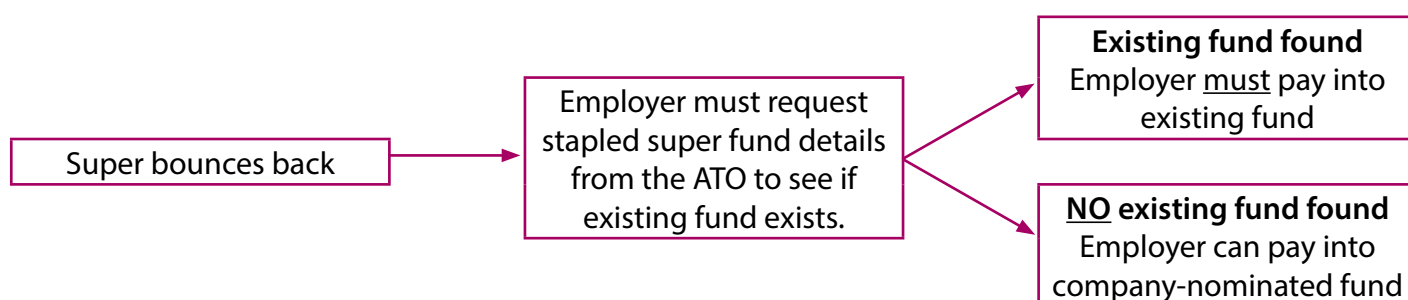
- qualified for the 2021 COVID-19 JobSaver Payment Scheme,
- qualified for the 2021 COVID-19 Business Grant Scheme, or
- did not apply for either scheme but are able to demonstrate a 30% decline in turnover.

You can find further information [here](#)

## Super Stapling

### Superannuation Bounce Back

If the superannuation fund account cannot accept contributions for an employee and bounces back, you should request from your employee another fund. If they do not provide a fund you will need to request via ATO online the employee's stapled superannuation fund, or if there is no stapled superannuation fund, contributions can then be made to your default fund (if there is no alternative fund).



### Incomplete Employee Information

The ATO has provided further guidance (below) to employers in the event that payroll software will not allow you to lodge a pay event without super details. We recommend that you address this with your software provider if this applies to your organisation.

#### From the ATO:

*"Sometimes you don't have enough information from your employee to run an STP pay event, such as:*

- *no TFN declaration has been received*
- *your payroll software won't allow you to lodge a pay event without super details.*

*We have worked with the Fair Work Ombudsman to assist employers to meet the choice of fund rules in this situation.*

*If your payroll software:*

- *allows you to leave the super fund information blank for the first payslip, you can do this and submit your pay event*
- *requires you to include super fund information, you should include details in the fund name field indicating it is pending a stapled super fund request (for example 'Pending stapled super fund request').*

*You should still include the amount of any super guarantee contributions you are liable to pay for the period.*

*This will establish the employer relationship link so you can make a stapled super fund request.*

*Once you have the stapled super fund details, immediately update and reissue your employee's payslip. This will provide accurate details of the name (or name and number) of the super fund to which you will be making*

contributions.”

You can find further information [here](#)

### **Contractor stapled super fund request form**

The ATO has recently issued a “Contractor stapled super fund request form.” This means that employers or their authorised representatives can use this form to request a stapled super fund for a contractor to pay their super guarantee contributions. In this regard, the ATO advises tax agents that under Single Touch Payroll (STP) phase 1, contractors are not included in your STP pay events which means you will not have an employment relationship with them in their systems.

<https://www.ato.gov.au/assets/0/104/2244/2335/9f2a8c47-43d8-4088-8ff9-98d2dc504377.pdf>

**How do I tell if someone is a contractor or an employee?** The ATO provides two online tests to help determine if someone is an employee or contractor for superannuation purposes. They provide guidance as to both taxation and superannuation entitlements.

**Can I agree with my Contractor not to pay superannuation?** You cannot contract out of your responsibility to pay a contractor superannuation. You cannot draft a contract with terms that remove this entitlement.

## **FAQ**

**Q. My employee is taking Leave without pay over the Christmas period. Should they be paid for the public holidays during a period of leave without pay?**

**A.** There is no payment to an employee for a public holiday that falls during a period of leave without pay as the employee’s ordinary hours have, by agreement, been reduced to zero for the duration of the absence. Note that this applies when the employee is on leave without pay on both sides of the public holiday.

**Q. Do I need to pay Public holidays while employees are on unpaid stand down?**

**A.** Yes. Employees who are stood down without pay by their employer under the Fair Work Act are still entitled to be paid for public holidays that fall during the stand down period. This applies if the employee would normally have ordinary hours of work falling on the day of the public holiday.

## **Members Webinar**

We won’t be running a live webinar in the month of December, however we would like to remind you that all webinars throughout the year are available for members to watch in the members resources area.

<https://www.austpayroll.com.au/members-area/webinars/>

## **Holiday Shutdown**

Australian Payroll Association will be taking a well-earned break over the holiday season.

We will be closed from Friday 24th December until Friday the 7th of January.

Monday 10th January 2022 - Open for business as usual

From all of us at APA, we wish our members a Happy Holiday Season and a brilliant, prosperous New Year!