3 April 2020

The Hon Josh Frydenberg MP
Treasurer
House of Representatives
Parliament House
PO Box 6022
CANBERRA ACT 2600

By email: josh.frydenberg.mp@aph.gov.au

CC:
Dr Steven Kennedy, Secretary, The Treasury
Ms Maryanne Mrakovcic, Deputy Secretary, Revenue Group, The Treasury
Ms Jenny Wilkinson, Deputy Secretary, Fiscal Group, The Treasury
Mr Chris Jordan AO, Commissioner of Taxation, Australian Taxation Office

Dear Treasurer,

Input on JobKeeper Stimulus Package

The National Tax Liaison Group (**NTLG**) is the Australian Taxation Office's (**ATO**) longest standing consultative forum, focusing on strategic taxation matters of national interest. The primary objective of the NTLG is to provide a wide range of stakeholders with the opportunity to discuss the strategic direction of the tax system and to deliver opportunities for improvements to the administration of the tax system. The NTLG's membership is comprised of senior ATO and Treasury officers and representatives of the major tax, law, and accounting professional associations.

Chartered Accountants Australia and New Zealand, Corporate Tax Association, CPA Australia, Institute of Public Accountants, Law Council of Australia and The Tax Institute (together **the Joint Bodies**) are the external members of the NTLG. We write to you as the peak professional accounting and tax practitioner bodies in Australia representing the tax profession at this critical time.

The Joint Bodies have considered the Federal Government's announcement of the JobKeeper Stimulus Package on Monday 30 March 2020. We congratulate the Government on taking this initiative and acknowledge the substantial efforts of both Treasury and the ATO in respect of the COVID-19 crisis in an immensely difficult period, noting that we are only at the beginning of the journey.

We offer our thoughts on issues surrounding the JobKeeper package which have arisen from questions from our members. Hopefully that will feed into the policy and drafting teams. We also offer to review any draft legislation on a confidential basis with a very quick turnaround time. We have divided our comments into Top 5 issues and clarification points, the latter being areas that we assume to be the position, but for which many businesses are seeking confirmation.

Top 5 issues

1. Definition of turnover and basis for grouping

We understand that an Australian only based definition of turnover is likely to be adopted which will probably be based on GST turnover. We believe that the exclusion of foreign turnover is appropriate.

We make the following suggestions:

(a) If GST turnover was to form the basis of aggregate turnover, then adjustment should be made for some input taxed supplies that are excluded from the calculation including financial supplies and supplies of residential premises both sales and rental;

(b) The *prima facie* position should be that groups are able to use either taxation or accounting consolidated accounts;

(c) However, in the case of diversified groups, with distinctly different business operations, then the Commissioner should have the power to apply a split methodology. Not to allow this will give rise to significant retrenchments – and subsequent loss of connectivity - as many businesses will not subsidise unutilised employees in areas that have closed or have severely limited operations;

(d) Where a business has a service entity separate from the main revenue business, it would be appropriate for the two to be linked. This could be done in a number of ways. Given the way in which many service entities are owned, it is likely that a "connected party" or an "affiliate" test would work, whereas an "associate party" test should work, (such that a Service Entity Associate Third Party Turnover test would work). There are other possible ways of linking the Service Entity to the main revenue entity that could work. It should be borne in mind that this is not a small issue. Many businesses in Law, Accounting, Advisory, Engineering and other professions, both small and large, operate with this structure;

(e) When considering when the $1 billion threshold applies, we believe that the employer should have the option of using the previous year or the expected position for the current year following similar rules to the Business Cash Flow Boost measures;

(f) It would be useful if the legislation contained a provision which accepted any other reasonable method at the discretion of the Commissioner.

2. Mergers and acquisitions activity

There will be certain circumstances where M&A activity either from 1 March 2020 or for long-term casuals for the 12 months period before 1 March 2020 was such that an employee had a new employer, but was essentially in the same job. There should be a "same job, different employer" test that caters for this.

3. Adjustments for business disposals

There will be circumstances where there has been a disposal of a substantial part of a business which is the basis for at least a part of the fall in revenue. There is a risk that detailed rules surrounding this issue, would give rise to capricious results and over-engineer the issue. A simple rule may be where more than a substantial portion of a business has been disposed after the comparative period representing more than 40% of the turnover at that time an adjustment should be made on a reasonable basis to determine the appropriate decline in turnover.

4. Sole trader extension to partnerships with active partners and potentially trusts and companies

We would advocate that the JobKeeper provisions be applied to partnerships where the relevant partners are active in the business. This would effectively provide for "multiple sole traders" that are acting together as a partnership. Similar rules could apply to trusts and companies.

5. Fair regime for reasonable mis-estimation

If reasonable efforts are made to estimate turnover and they turn out to be incorrect, even significantly incorrect, then there should be no penalties or interest on the employer. The employer should be required to pay the money back, however, except in circumstances where the threshold was narrowly missed and the Commissioner exercises his discretion.

The no penalties or interest should not apply where there was either fraud or intentional disregard of the law. Where an employer has deliberately not passed JobSeeker funds onto an employee (except by administrative mistake), then the matter should be considered to be a criminal offence.

Clarification points

Below are a number of points for which clarification will be required.

1. Long term casuals will still be eligible even if the hours of work are uneven throughout the 12 month period.

2. Claims can be made both under the Business Cash Flow Boost and the JobKeeper program.

3. Employees on paid leave will still qualify as will employees on unpaid parental leave up to a period of 30 weeks or other short-term unpaid leave up to a period of 15 weeks.

4. JobKeeper will still apply if the employer is in Voluntary Administration.

5. JobKeeper will be assessable income to the employer and its payment will be deductible with the income amount being excluded from the definition of turnover.

6. Confirmation that there will be no adverse secondary impacts from the receipt of JobKeeper, such as failure of the same or similar business test for losses.

7. An employee should have the right not to receive JobKeeper.

We hope this is useful. If there are any points for which you would like clarification, please do not hesitate to contact us. This is particularly true of 1(d) in our Top 5 issues.

We reiterate that we are all willing to review any drafts on a confidential and very timely basis if you would like us to do so.

Should you wish to discussion our submission, please do not hesitate to contact Tax Counsel Stephanie Caredes on 02 8223 0059 in the first instance.

Yours sincerely,

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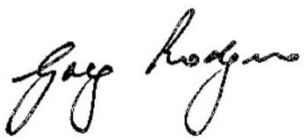

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