19 June 2020

Ms Michelle Rak
Assistant Secretary
JobKeeper Division - Fiscal Group
The Treasury
Langton Crescent
PARKES ACT 2600
michelle.rak@treasury.gov.au

cc:
Office of the Hon Josh Frydenberg, Treasurer
Office of the Hon Michael Sukkar, Assistant Treasurer
Deputy Commissioner James O'Halloran, ATO
Deputy Commissioner Hoa Wood, ATO
Kathleen De Kleuver, Senior Adviser, JobKeeper Division
Coronavirus Business Liaison Unit, Treasury

Dear Michelle,

Treasury Review of the JobKeeper Program

- **Ineligibility of new businesses and start-ups for JobKeeper and cash flow boost payments**
- **Cessation of future JobKeeper payments to new businesses and start-ups already receiving JobKeeper**

The professional associations of the ATO's Tax Practitioner Stewardship Group (TPSG) have been considering the accessibility and administration of the JobKeeper and cash flow boost programs for new businesses and start-ups.

The external members of the National Tax Liaison Group (NTLG) have identified the lack of access to stimulus measures for new businesses and the restrictive nature of the 'notice' in relation to a 'tax period' requirement on certain new businesses. These requirements are reflected in the need for the ATO to have been made aware of business activity via income tax or GST reporting systems by 12 March 2020.

These matters were raised at the NTLG meeting on 8 May and similar discussions have occurred at the TPSG. The inequitable JobKeeper and cash flow boost outcomes for identical businesses starting on the same day simply due to the election of a particular reporting cycle have been noted, yet no policy changes have been forthcoming.

We now understand that the ATO will shortly commence notifying business participant claimants considered not to have satisfied the JobKeeper entitlement requirements. In some situations, these participants have already received JobKeeper payments and the ATO correspondence indicates such payments will now cease with immediate effect.

The scenarios addressed in the ATO correspondence include:

- New businesses that have commenced from 1 January 2020, and who are not registered for GST[1] or are registered for GST on a quarterly cycle
- New businesses that have commenced from 01 July 2019 who are registered for GST on an annual cycle
- Businesses that have not included assessable income in their 2018-19 tax return or provided the ATO with notice of sales or supplies made in the relevant period, and
- Businesses who have been registered for GST since 1 July 2019 on a monthly or quarterly basis but have not provided the ATO with notice of sales or supplies made in the relevant period.

There will also be many other new businesses and start-ups who had an active ABN as at 12 March 2020 but did not enrol for business participant JobKeeper payments based on the rules. Similarly, there are new businesses that were in operation as at 12 March 2020 who had made taxable supplies and were reporting PAYG withholding amounts that did not qualify for cash flow boost payments due to the notice requirements.

We continue to hear from our members who provide professional services to new business and start-up clients about the negative impact of COVID-19 on these new business and start-up operations, concerns about the inability to access existing support and uncertainty as to whether their businesses will be able to survive.

The financial and emotional impact that the ATO JobKeeper payment cessation letters will have on genuine start-up business operators who had already started receiving JobKeeper payments is expected to be substantial. Many will complain, with some justification, that the cessation of JobKeeper is driven more by ATO systems than careful consideration of whether genuine business activity is in fact conducted.

Accordingly, and in the context of the JobKeeper Review, we submit the following for your consideration:

- Remove the restrictive nature of the 'notice' requirement by amending subsection 11(8) and (9) of the JobKeeper rules by importing an assumption that either a monthly or quarterly tax period applies, and to allow the Commissioner to use other evidence of 'making a taxable supply' in those notional tax periods up to 12 March 2020, in order to allow business participants to satisfy eligibility requirements
- Enable retrospective enrolment in the JobKeeper scheme for entities able to satisfy the amended rules
- Remove the restrictive nature of the 'notice' requirement by amending subsections 5(6) and (7) of the Cash flow boost legislation by importing an assumption that either a monthly or quarterly tax period applies, and to allow the Commissioner to use evidence of 'making a taxable supply' in those notional tax periods up to 12 March 2020, in order to allow businesses to satisfy eligibility requirements
- Provide targeted support for start-ups that were operating but who had not made taxable supplies in the period up to 12 March 2020, particularly those with employees, and/or
- Allow temporary refundable tax offsets for new businesses and start-ups who have incurred losses in 2019-20.

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[1] We note that where the entity is not registered for GST, it is our view that the unregistered entity has no specific tax period under the JobKeeper rules or Cash flow boost legislation as the only relevant attribute that subsection s11(9) or subsection 5(7) respectively imports into those measures is an assumption that the entity is registered for GST. For this reason, the unregistered entity arguably has either a quarterly or a monthly tax period that could apply to it hypothetically under Division 27 of the *GST Act 1999*.

Should you wish to contact us in relation to the above, please contact Elinor Kasapidis, Tax Policy Adviser, CPA Australia on 03 9606 9666 or at elinor.kasapidis@cpaaustralia.com.au in the first instance.

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager, Policy & Advocacy
CPA Australia

Michael Croker
Tax Leader Australia
Chartered Accountants Australia and New Zealand

Peter Godber
President
The Tax Institute

Matthew Addison
Executive Chair
The Institute of Certified Bookkeepers

Tony Greco
General Manager Technical Policy
Institute of Public Accountants

John Jeffreys
Tax Counsel
Tax & Super Australia

Geoff Boxer
CEO
National Tax and Accountants' Association Ltd

Peter Thorp
Director
Australian Bookkeepers Association

Rochelle Park
CEO
Association of Accounting Technicians