

3 April 2020

Dr Gordon de Brouwer
Coronavirus Business Liaison Unit
The Treasury
Langton Cres PARKES ACT

Via email: coronavirusbusinessliaison@treasury.gov.au

Dear Dr de Brouwer

COVID-19 tax issues

CPA Australia represents the diverse interests of more than 164,000 members working in 150 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

We are working with our members, the tax profession and government departments to assist the Government in maintaining the tax and superannuation systems during this difficult time. We are pleased to see the Government's support for business and employees through the stimulus measures and note that the profession is critical to the effective delivery of the measures.

Members are working tirelessly to support their clients, many of whom are highly distressed and concerned about their business' viability. They are raising tax and superannuation-related issues with us daily.

We provide you with a list of issues identified to date in relation to existing legislation, the JobKeeper announcement and gaps in stimulus measures for your consideration, see **Attachment**.

We are working collaboratively across the professional associations and some of these issues will also be raised in joint correspondence that will be submitted in due course.

We are available to discuss any of these issues and, given the urgency in the context of the COVID-19 crisis, will respond promptly. Please contact Elinor Kasapidis, Tax Policy Adviser, at elinor.kasapidis@cpaaustralia.com.au or 03 9606 9666.

Yours sincerely



Dr Gary Pflugrath CPA

Executive General Manager, Policy and Advocacy

CPA Australia

CC: Lucas Rutherford, Adviser to the Hon. Josh Frydenberg MP, Treasurer
Lucy Connor, Adviser to the Hon. Michael Sukkar MP, Assistant Treasurer
Paul McCullough, First Assistant Secretary, Corporate and International Tax Division, The Treasury
Gareth Kirkby, Principal Adviser, Corporate and International Tax Division, The Treasury

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Table 1: List of considerations for JobKeeper legislation

Issue	Description	Solution
Closely-held trusts and companies	Small businesses operating through companies or trusts, often 'mum and dad' operators, and pay themselves out of dividends and distributions will not have access to either Cash Boost or JobKeeper.	Consider extending JobKeeper access to support small business operators using such structures. Allow the nomination of shareholders and beneficiaries and shareholders who actively work in the business but do not draw a wage as recipients of JobKeeper payments.
Business with employees compared to business without employees	A sole trader without employees appears to be entitled to receive JobKeeper whereas an individual in business with employees may not be entitled. Partnerships with active partners will only receive a single JobKeeper payment for the nominated partner.	Sole traders, regardless of employee numbers, should also receive JobKeeper payments. All active partners in a partnership should be entitled to JobKeeper payments.
'Eligible employee' and 'engaged'	Clear definition required for eligible employee. Clear definition required for engaged as at 1 March 2020.	Clarify if restricted to payments subject to withholding under s12-35 of Schedule 1 to the TAA or include all payments under Subdivision 12B or an alternative definition. Define 'engaged' – on payroll, where workers compensation or other obligations are being maintained, current employment contract, receiving amounts subject to withholding.
Personal services income	Will JobKeeper apply to those attributing personal services income?	Consider including personal services income attribution amounts subject to withholding under Division 13 as 'wages' for the purposes of JobKeeper.
Business restructures, mergers, acquisitions and divestments	Turnover and payroll calculations will be affected by changes to business functions and/or structures over the 12-month period.	Consider rules or tests to address situations where a business may have changed ownership or structure but remains fundamentally the same or where a business has divested or changed its functions.
Commissioner's discretion	The Commissioner's discretionary power will be critical to the applications for many businesses with more complex structures or closely held arrangements. Calculations of turnover, turnover period and eligibility of business operators	Clarity on the scope and limits of the Commissioner's discretion. Inclusion of policy intent in statute, rather than explanatory memoranda, to support Commissioner interpretation.

Issue	Description	Solution
	receiving non-wage income may require significant interpretive discretion.	Inclusion of rights of appeal.
Income as wage payments and SG	Confirm that payments at or above agreed wage entitlements will be considered wage payments and subject to additional SG.	Clarify treatment of JobKeeper payments in relation to SG obligations.
Impact of JobKeeper payments on other entitlements	If an employer uses the JobKeeper payments to keep the employee on, does this create a continuity of employment situation for all leave entitlements redundancies etc. Particularly if the employer is currently shut down.	Clarity on the definition of the payment and its treatment for both tax and other purposes.
JobKeeper vs JobSeeker	Will individuals be able to make the choice between JobSeeker and JobKeeper as it may affect access to other benefits.	Allow employees who receive government benefits to choose whether to accept JobKeeper payments.
Assessability of payments in the hands of the employer and employee	Clear definitions of income in the hands of the employer and the employee.	Where payments are deductible for the employer, then JobKeeper subsidies should be assessable to balance. For employees, which components are assessable, subject to withholding and super guarantee.
Employees with multiple employers	The onus is placed on employees to notify their primary employer. Employees may not be aware of their obligations, or are unable to notify.	Clear definition of primary employer is required, as well as onus to notify non-primary employers of ineligibility. Provide Commissioner with authority to determine primary employer and notify non-primary employers of disallowed payments.
Service entities	Where trading operations are separated from employee management, the trading entity may satisfy decline in turnover rules but the service entity will not, especially where they have maintained payments to staff.	Consideration be given to grouping or flow-on rules to provide support to businesses who continue to pay employees and would otherwise satisfy the requirements, if not for the service entity structure.
Not-for-profit entities	Not-for-profit entities may supplement grant funding with income-generating activities. Even where non-grant income has decreased significantly, they may not be eligible due to stable grant funding.	Consideration of not-for-profit funding models in determining JobKeeper eligibility.
Single Touch Payroll (STP) and reporting	Whether the legislation will require STP reporting or alternative means, and the ability of the ATO to ensure that	Fraud controls would be enhanced if STP can be used, however micro-employers and closely-held payees not yet required to be on the system.

Issue	Description	Solution
	employees have been notified of and are receiving JobKeeper payments.	Clarity on notification and reporting requirements.
Timing issues	The mechanics of turnover calculations and timing of payments remains unclear. There are examples where March quarter won't experience the decrease but it will manifest in June, or where different results occur depending on whether cash or accruals accounting is used. Eligibility for backdated payments is also unclear and whether payments may be switched on or off.	Clarity of timing of payments and eligibility over the six-month period is required. A 'once-in, all-in' provision will provide certainty. JobKeeper payments back-dated to 1 March where turnover decreases manifest later in the six-month period.
Penalties	Where it is found that a business has incorrectly claimed JobKeeper (but where it is not a scheme), penalties and mechanisms to repay amounts are required.	Consider penalty provisions similar to those for taxation laws and include Commissioner discretion to waive.
Integrity measures	Strong integrity measures required to minimise fraud and schemes without limiting access to valid recipients.	Similar provisions to Cash Flow Boost legislation, but with potentially further controls given that the funds are intended to flow to employees not the business.
Insolvency	To whom is the debt owed, if payment is not made to the employee but the JobKeeper subsidy is received by the employer who is or becomes insolvent.	Clear priority of entitlement for the employee in the case of employer insolvency.

Table 2: List of existing issues for legislative amendment

Issue	Description	Solution
Boosting Cash Flow for Employers: certain start-ups and new businesses or new entities may not satisfy the eligibility requirements	Due to eligibility requirements in legislation, businesses operating from January 2019 are not eligible for the cash boost. Similarly, those that have not yet made a taxable supply but may have costs and wages paid are not eligible.	Provide the Tax Commissioner with discretion to set out alternative tests that would establish eligibility in specific circumstances, as proposed in the JobKeeper announcement.
Boosting Cash Flow for Employers: personal services income attribution	Amounts withheld under Division 13 for attributed personal services income not within scope of cash boost.	Consider including Division 13 amounts in the cash flow boost stimulus.
Superannuation Guarantee Charge: penalty waiver	The Commissioner has made tax penalty and interest waivers available to affected taxpayers. The legislation prevents him from doing this for SG.	Provide the Tax Commissioner with the ability to waive penalties, interest and charges on SG, similar to that provided under the SG amnesty.
Superannuation Guarantee Amnesty: defer end date	The review of records and tracing required to participate in amnesty takes time. Concerns that September deadline may not be met due to COVID-19 impacts.	Extend amnesty end-date by a further six months. Alternatively, reduce penalties for non-disclosure during amnesty period.
Early Access to Superannuation: Superannuation voluntary contributions	Enable individuals who have accessed early superannuation payments to pay back these amounts in future years without penalty.	Exempt personal and salary sacrifice contributions from concessional contribution limits up to the amount of the amount accessed early.
Division 7A: benchmark interest rate and minimum loan repayment	Relief from minimum yearly repayment for business-to-business loans. Consider whether repayments for the 2020 year could be interest-only at a lower benchmark rate which may be considered commercial at present due to the measures adopted by the banks in response to COVID-19.	Temporary reduction in benchmark interest rate to medium business variable lending rate (currently 3.46 per cent) or lower [section 109N(2) of the ITAA 1936]. Temporary relief from minimum yearly loan repayments. [section 109E of the ITAA 1936].
Non-resident CGT main residence exemption: extend transitional measure	The transitional measure requires that the contract of sale must be signed by 30 June. Real estate sales have been significantly impacted by COVID-19.	Request extension of transitional measures to 30 June 2021.
Enhancing the instant asset write-off: extend the end date	Current COVID-19 uncertainty is delaying business take-up of this measure. Supply issues such as manufacturing or shipping delays and domestic shutdowns mean that business unwilling to commit as no guarantee they can install ready for use by 30 June.	To achieve intended benefits of this measure, end date should be extended to 30 June 2021.

Issue	Description	Solution
Commissioner's Remedial Power instrument – deceased estates	The commencement of the Taxation Administration (Remedial Power – Disclosure of Protected Information by Taxation Officers) Determination 2020 (CRP 2020/1) has been delayed due to the reduction the number of parliamentary sitting days.	Amendment to add a further category of covered entity under proposed paragraph (h) of section 355-25(2) of Schedule 1 of the TAA 1953 to include a registered tax agent, BAS agent or legal practitioner appointed by the LPR of a deceased estate where the primary entity was a deceased individual.

Potential new measures

1. Tax loss carry-back

Some businesses will be in a taxable position for 2019-20 but COVID-19 impacts will place them in a taxable loss position for 2020-21. A temporary provision to provide the option to carry-back losses will support business viability and mitigate COVID-19 impacts on longer-term business health and the revenue.

2. Small business support

A form of 'catch-all' payment for businesses and business owners who are excluded from the cash flow boost or JobKeeper measures. In particular, consideration for many small business owners who operate through trusts, partnerships and companies where they do not pay wages or make payments to themselves under Subdivisions 12B, C or D of the TAA 1953.