

9 April 2020

Ms Louise Clarke, Deputy Commissioner – Policy, Analysis and Legislation  
Ms Kirsten Fish, Chief Tax Counsel  
Mr James O'Halloran, Deputy Commissioner – Superannuation and Employer Obligations  
Australian Taxation Office  
52 Goulburn Street  
SYDNEY NSW 2000

By email: [Louise.Clarke@ato.gov.au](mailto:Louise.Clarke@ato.gov.au); [Kirsten.Fish@ato.gov.au](mailto:Kirsten.Fish@ato.gov.au); [James.O'Halloran@ato.gov.au](mailto:James.O'Halloran@ato.gov.au)

CC:

Jeremy Hirschhorn, a/g Second Commissioner – Client Engagement  
Jeremy Geale, a/g Second Commissioner – Law Design and Practice

Dear Deputy Commissioners and Chief Tax Counsel,

### **JobKeeper Payment and the Commissioner's Discretion**

The JobKeeper Payment presents one of the greatest challenges that the Revenue system has ever seen – that is, paying a substantial amount of money to the right people in a very short period of time without highly refined black letter law.

The shape and form of the program reflects the very high regard and trust that the Federal Government, and indeed the public, has in the Australian Taxation Office (ATO). This regard and trust is well founded.

One of the challenges of the JobKeeper Payment will be the considerable power given by the Federal Government to exercise discretion in those areas which are uncommon or unique, where there is limited information and where the nature of the business is complex and multifaceted or has changed over the last 12 months, amongst others. Importantly, these include measurement of decline in turnover where there is no appropriate comparison, but also where there is the potential for contrived schemes which are not in the spirit of the legislation.

The external members of the National Tax Liaison Group (**NTLG**) would like to offer our assistance in helping the ATO identify potential issues, many of which are being raised by our membership now, and formulate sensible guidance to the community on the exercise of the Commissioner's discretion. This would clearly be done in the spirit of the policy intent behind the JobKeeper Payment, with the aim of ensuring minimal abuse of the system, which could potentially be far from insignificant.

All members of the NTLG will be giving this a very high priority over the coming days and can provide assistance at a level of confidentiality that you see as appropriate, while recognising that we are a source of clear guidance to our members on decisions made by the ATO.

We propose that a special meeting of a NTLG JobKeeper Working Group be held around Wednesday or Thursday of next week. In the meantime, we will seek to develop a list of issues for discussion around the various discretions provided in the JobKeeper Payment Scheme.

We look forward to hearing from you. Stephanie Caredes (02 8223 0059) can arrange the logistics from our end.

Yours sincerely,

***The External Members of the NTLG***

*Alexis Kokkinos (CPA representative)*

*Angela Lee (LCA Representative)*

*Bob Deutsch (TTI Representative)*

*Clint Harding (LCA Representative)*

*Elinor Kasapidis (CPA Representative)*

*Grant Wardell-Johnson (CAANZ Representative)*

*Michael Croker (CAANZ Representative)*

*Michelle de Niese (CTA Representative)*

*Peter Godber (TTI Representative)*

*Tony Greco (IPA Representative)*