

23 March 2020

Mrs Barbara Green  
President, University Colleges Australia  
23 Barina Road  
Glen Iris VIC 3146

Dear Barbara

**Re: GST advice for catered residential colleges in the context of the coronavirus pandemic**

You have asked for urgent advice on whether catered residential college members (**colleges**) of University Colleges Australia (**UCA**) are entitled to treat contracted supplies of meals to students in residence in the 2020 academic year as *GST-free* – given the unprecedented financial and operational uncertainty colleges face in the current coronavirus pandemic.

1. Summary

- colleges presently charging GST on student meals are advised to:
  - self assess the meals as *GST-free* with immediate effect and backdated to the start of the period covered by next BAS return to be lodged provided the start of the BAS period is on or after 1 January 2020, and
  - continue to self assess the meals as *GST-free* for the remainder of the 2020 calendar year;
- colleges electing to go under this advice:
  - should provision (set aside) the GST not remitted on student meals,
  - will later be provided by us with a costing method to determine whether to take the provision to their bottom line or forward the provision to the ATO,
  - may not be required to pay general interest charge (**GIC**) or be subject to penalty in circumstances where the provision must be forwarded (see ATO announced administrative measures below);
- the ATO has been provided a proposed simplified costing method by us to consider. The ATO has already announced various administrative concessions to help deal with the coronavirus impacts. These are detailed more fully in this letter;
- this advice applies only to supplies of student meals for the 2020 calendar year.

Page 1 of 7

## 2. Background

There is potential if not likelihood for unbudgeted costs arising from the coronavirus infection outbreaks within individual colleges over the coming weeks and months and for an increase in vacancies (with revenue impact) in the second semester and possibly flowing through into the 2021 academic year as the broader economy goes into recession.

The Prime Minister announced via his media statement of 18 March 2020 that university student accommodation may be subject to closure or reduction of accommodation density if other risk mitigation measures are not possible.<sup>1</sup> As at the time of writing NSW, Victoria and ACT were moving toward a comprehensive shut-down of non-essential services.<sup>2</sup>

## 3. The entitlement of colleges to self assess their student meals as GST-free

Colleges are entitled to self-assess their contracted supplies of student meals as GST-free provided the consideration charged to the student for the meal is less than 75% of the consideration provided by the college to acquire the things to make the supply of the meal per subparagraph 38-250(2)(b)(ii) of the *A new Tax System (Goods and Services Tax) Act 1999 (the GST Act)*.

For those colleges who have elected to use the ATO's *Residential Colleges GST Tool (GST Tool)* the Tool not only tells the college how much of the overall student fee relates to the supply of meals but also permits the college to manually over-ride the Tool advised GST status of the meals where the college self assess meals as GST-free or where the college has a private ruling to that effect (refer to pages 5 & 14 of the GST Tool *Instructions* in ATO publication NAT 72724-07.2017).

Colleges who have not elected to use the GST Tool are still entitled to self assess their student meals as GST-free under subparagraph 38-250(2)(b)(ii) of the GST Act, provided the test at subparagraph 38-250(2)(b)(ii) is satisfied.

In the college sector the subparagraph 38-250(2)(b)(ii) test on the student meals is applied for each catered student contract type on a calendar year basis – to the extent the college wishes to apply the test. The default position for the student meals is that they are taxable.

Under concessions made available under the ATO's *Charities Consultative Committee Resolved Issues Document (CCCRID)* some colleges elect to apply the subparagraph 38-250(2)(b)(ii) test at the start of each calendar year by using their budget to estimate the cost of acquiring things to make the supply of the meals and then compare that cost to the consideration/fee to be charged to the student.

---

<sup>1</sup> Prime Minister Scott Morrison media release issued 18 March 2020 titled 'Update on coronavirus measures'. Accessed on 22 March 2020 from the Prime Minister's web site at:

[www.pm.gov.au/media/update-coronavirus-measures](http://www.pm.gov.au/media/update-coronavirus-measures)

<sup>2</sup> ABC on-line news 22 March 2020 story by Andrew Greene titled 'NSW, Victoria, ACT move to comprehensive shutdown of non-essential services amid coronavirus pandemic'. Accessed on 22 March 2020 from the ABC web site at:

[www.abc.net.au/news/2020-03-22/coronavirus-nsw-victoria-act-shutdown-non-essential-services/12079124](http://www.abc.net.au/news/2020-03-22/coronavirus-nsw-victoria-act-shutdown-non-essential-services/12079124)

Other colleges apply the test at the end of the calendar year by using actual rather than budgeted costs.

#### 4. The 'no windfall gain' rule in the GST Act

Where a college has self assessed the student meals as taxable and has reported the meals as taxable in its BAS then any later assessment by the college that the supply of meals was GST-free can generally only result in a GST refund to the college by the ATO after the college has first refunded that GST to the student (the '*no windfall gain rule*'). This provision is covered by Division 142 of the GST Act. See also ATO GST Public Ruling GSTR 2015/1.<sup>3</sup>

Given the no windfall gain rule colleges are at times advised to self assess the supply of student meals as GST-free in circumstances where the college has reasonable grounds for believing the supply will be GST-free but will not be undertaking the detailed compliance calculations until the end of the year (using actual rather than budgeted cost).

If the detailed compliance calculations show the supply of meals was in fact taxable (contrary to the college's reasonably held earlier belief) the college reports the '*GST mistake*' by amending the past BAS return (or the next BAS return if the amount is below a certain figure) and then paying the GST and any GIC that is assessed.

Given it is preferable to avoid any requirement to amend a past BAS return if at all possible (if for no other reason than to avoid refreshing the time limits on amendment of returns by the Commissioner) colleges should be cautious of self assessing the supply of student meals as GST-free in advance of undertaking the detailed compliance calculations, unless there are reasonable grounds for doing so.

#### 5. Whether there are now reasonable grounds to self assess the student meals as GST-free

It is considered colleges now have reasonable grounds for self assessing the student meals as GST-free under subparagraph 38-250(2)(b)(ii) of the GST Act given the colleges do not yet know the extent to which they will face financial loss due to the coronavirus.

Colleges that up until now have been taxing their student meals but who now elect to adopt this advice to self assess their student meals as GST-free due to the anticipated impact of the coronavirus, are advised to provision (set aside in a balance sheet account) the GST not remitted to the ATO.

#### 6. Assessment after the coronavirus crisis is over or no later than end March 2021

Once the coronavirus crisis is over or otherwise no later than three months after the end of the current calendar year colleges who are operating under this advice will need to make a determination on whether or not to forward the provision to the ATO. We will provide

---

<sup>3</sup> ATO GSTR 2015/1 accessed on 19 March 2020 from the ATO web site at:  
[www.ato.gov.au/law/view/pdf?DocID=GST%2FGSTR20151%2FNAT%2FATO%2F00001&filename=law/view/pdf/pbr/gstr2015-001.pdf&PiT=99991231235958](http://www.ato.gov.au/law/view/pdf?DocID=GST%2FGSTR20151%2FNAT%2FATO%2F00001&filename=law/view/pdf/pbr/gstr2015-001.pdf&PiT=99991231235958)

further advice on this issue. We have in the meantime submitted a simplified costing method to the ATO to consider. The proposed simplified costing method is designed to assist colleges to determine whether to take the provision to their bottom line or to forward the provision to the ATO.

It is not considered colleges should have to use audited financial accounts at year end to make the determination. Use of unaudited year end accounts will be satisfactory.

To the extent the supply of meals is later determined to have been taxable rather than GST-free the college will be required to amend the past BAS returns and pay the GST on the meals. The ATO has announced that if your business is affected by the coronavirus the ATO will consider remitting interest and penalties after 23 January 2020. You will need to contact the ATO to request such remission or we can assist you on a fee basis with that request – further details are provided below on how to make the request.

#### 7. Colleges that are already GST-free on student meals

Where a college is already GST-free on student meals then no action needs to be taken under this advice except perhaps to review the ATO and other government forms of support for dealing with the coronavirus and as documented below and to read the section below on the GST treatment of accommodation.

#### 8. The GST treatment of the accommodation part of the supply by colleges

The accommodation part of the mixed supply made by colleges to students in residence is always either input taxed (Division 40) or GST-free (section 38-250).

Where a college is currently input taxing some or all of its student accommodation supply and later, as a result of the financial impact of the coronavirus upon the college, is advised the accommodation supply was GST-free (pursuant to subparagraph 38-250(2)(b)(i) of the GST Act) then the 'no windfall gain rule' does not apply. This is because the GST was never 'passed on' to use the language of GSTR 2015/1.

In circumstances where a college later changes the GST characterization of the student accommodation supply from input taxed to GST-free the college is entitled to simply amend the past BAS returns and claim back the input tax credits (ITCs) not previously claimed – subject only to the four year statutory time limit for amendments.

Given the colleges in these circumstances will have more than three years left in which to amend past returns it is not proposed to seek a simplification formula from the ATO to cover the accommodation cost test unless the coronavirus impact is of such magnitude that cashflow has become a critical issue for a sufficient number.

Colleges can if they wish seek their own professional advice on whether there is an entitlement to make a claim upon these accommodation related ITCs.

## 9. ATO support measures to assist those affected by the coronavirus

Anyone impacted by the coronavirus is advised to contact the ATO to request assistance on the ATO's Emergency Support Infoline 1800 806 218 (option 5), when they are ready, to discuss their situation. You can also visit *COVID-19*<sup>4</sup> or type in QC61775 in the search bar on [www.ato.gov.au](http://www.ato.gov.au)

Other relevant contact numbers include:

- The Tax agent disaster hotline – 1800 700 724 (for use by the college's tax agent)
- NFP Premium phone service - 1300 130 248 Monday to Friday, 8am to 6pm AEDT if you have any questions about your DGR obligations or tax concessions

Some of the options available to assist businesses impacted by the coronavirus include:

- deferring by up to four months the payment of tax amounts due through the BAS (including PAYG instalments) and FBT assessments
- allowing entities on a quarterly reporting cycle to opt into monthly GST reporting to get quicker access to any GST refunds
- allowing entities to vary PAYG instalment amounts to zero for the April 2020 quarter. Entities that vary their PAYG instalment to zero can also claim a refund for any instalments made for the September 2019 and December 2019 quarters
- remitting any interest and penalties charged by the ATO, incurred on or after 23 January 2020, that have been applied to tax liabilities (see QC61775)
- allowing entities to enter into low-interest payment plans for their existing and ongoing tax liabilities
- reference to the ATO the coronavirus taxpayer FAQs at:

[www.ato.gov.au/individuals/dealing-with-disasters/in-detail/specific-disasters/the-coronavirus/?anchor=COVID19frequentlyaskedquestions#COVID19frequentlyaskedquestions](http://www.ato.gov.au/individuals/dealing-with-disasters/in-detail/specific-disasters/the-coronavirus/?anchor=COVID19frequentlyaskedquestions#COVID19frequentlyaskedquestions)

AUSKEY will be retired on 27 March 2020 and you need to transition to myGovID and RAM:

- for colleges who have not yet made this transition **this is now urgent**
- your college will not be able to access government online services unless it has its new myGovID and has that linked to the Relationship Authorisation Manager (**RAM**)

---

<sup>4</sup> Refer to the ATO web page dealing with the coronavirus or COVID-19 support measures. Accessed on 22 March 2020 via the ATO web site at:

[www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/COVID-19/](http://www.ato.gov.au/Individuals/Dealing-with-disasters/In-detail/Specific-disasters/COVID-19/)

- when AUSkey ends, so does your ability to use the 'Import AUSkey users' feature that allows you to transfer multiple AUSkey users into RAM
- the attached ATO factsheet provides the steps an authorised contact or primary person needs to follow to link their agency and set up the required authorisations for others in RAM
- each of the college employees (authorised users) who need to access government online services will also need to set up their own myGovID
- colleges can find out more about the changes and how to set up a myGovID on the [ABR website](#) or [ato.gov.au/mynewkey](https://ato.gov.au/mynewkey)
- colleges requiring assistance with AUSKEY transition or that have further questions can email ATO's Government team at [PWGovernment@ato.gov.au](mailto:PWGovernment@ato.gov.au)

Importantly, assistance measures for taxpayers impacted by the coronavirus will not be implemented automatically by the ATO. Colleges impacted by the coronavirus that are wanting to access any of the above ATO support measures are required to contact the ATO Emergency Support Infoline on 1800 806 218 when they are ready to request assistance. After contact is made with the ATO a tailored support plan will be prepared.

#### 10. Support measures announced by Federal Government and relevant to many colleges

The Federal Government's coronavirus support measures for employers includes the 'boosting cash flow for employers' program which was announced progressively via the Prime Minister's media releases dated 12 and 22 March 2020.<sup>5,6</sup>

Under this program the Government is providing up to \$100,000 to eligible small and medium sized businesses, and not-for-profits (including charities) that employ people, with a minimum payment of \$20,000.

Small and medium entities with an aggregated annual turnover under \$50 million and that withhold tax to the ATO on their employees' salary and wages will receive a payment equal to 100 per cent of the amount withheld, up to a maximum payment of \$100,000.

This program will be administered by the ATO. Further details were on 22 March 2020 accessible on the Federal Treasury web site at:

[https://treasury.gov.au/sites/default/files/2020-03/Fact\\_sheet-Cash\\_flow\\_assistance\\_for\\_businesses\\_0.pdf](https://treasury.gov.au/sites/default/files/2020-03/Fact_sheet-Cash_flow_assistance_for_businesses_0.pdf)

---

<sup>5</sup> Prime Minister Scott Morrison, media release issued 12 March 2020 titled 'Address to the Nation'. Accessed on 22 March 2020 from the Prime Minister's web site at:

[www.pm.gov.au/media/address-nation](https://www.pm.gov.au/media/address-nation)

<sup>6</sup> Prime Minister Scott Morrison, media release issued 22 March 2020 titled 'Supporting Australian workers and business'. Accessed on 22 March 2020 from the Prime Minister's web site at:

[www.pm.gov.au/media/supporting-australian-workers-and-business](https://www.pm.gov.au/media/supporting-australian-workers-and-business)

In addition to the above program the Prime Minister has previously indicated some form of financial support may be provided for the university sector. Details as to how that support will work, how much it is and whether it might extend to affiliated entities of universities are not yet to hand. There have been reports of urgent discussions with Government at the university sector wide level and facilitated by Universities Australia.

If you have any questions or comments concerning this advice could please let me know.

Yours sincerely



Peter McDonald, FIPA FFA  
Director, Tertiary Balance Pty Ltd  
(Registered Tax Agent Number: 03626002)

encl. Factsheet: *ATO assisted linking of MyGovID to Relationship Access Manager*, dated 17 February 2020

# ATO Assisted Linking in Relationship Authorisation Manager (RAM)

## FACTSHEET FOR PRIMARY PERSON

### WHAT IS ATO ASSISTED LINKING?

- **ATO Assisted Linking** is an ATO support process to assist businesses or entities which do not have an individual associate listed in the Australian Business Register (ABR), and instead require a primary person to link their Australian business number/s (ABNs) in Relationship Authorisation Manager (RAM) with ATO assistance.
- As a primary person, you will only need to complete **one of the two** options that is applicable to you.

### WHO IS THIS FACTSHEET FOR?

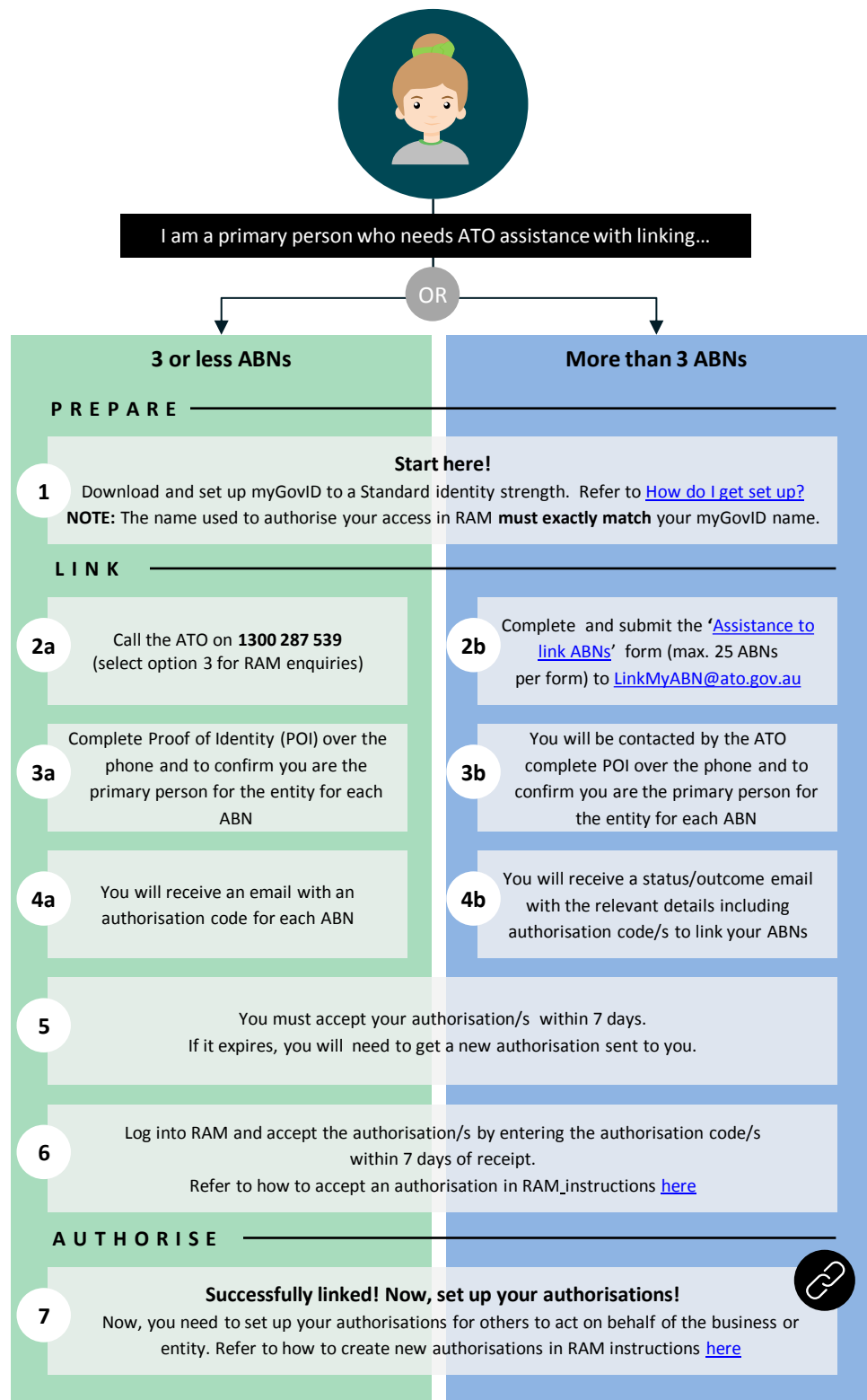
- A **primary person** of a business or entity who requires ATO assistance to link their ABN/s in RAM.

### WHO IS THIS FACTSHEET NOT FOR?

- If you are a **sole trader, partner or listed associate** in the ABR, you can link your ABN in RAM without ATO assistance. You do not need to refer to this factsheet.

### HOW DO YOU KNOW IF YOU ARE A PRIMARY PERSON?

- A **primary person** is:
  - A **director or public officer** of a corporate trustee or deceased estate.
  - A **responsible authority** of a company, association, not-for-profit, charity or private school. (E.g. Alternate director, director or responsible person).
  - An **authorised contact** of a government entity, including government agencies, public schools and hospitals.
- **NOTE:** The primary person must be listed as a contact in the relevant registers including:
  - ABR
  - Australian Securities and Investment (ASIC)
  - Office of the Registrar of Indigenous Corporations (ORIC)
  - the Australian Charities and Not-for-profits (ACNC)



### Key supporting links and contacts

- Assistance to link ABNs form <https://info.authorisationmanager.gov.au/primary-person-link-abns-in-ram>
- myGovID website <https://www.mygovid.gov.au/>
- RAM website <https://info.authorisationmanager.gov.au/how-do-i-get-set-up>

### If you require further assistance

- Contact your key ATO Client Manager (if applicable)
- Contact ATO on 1300 287 539 (select option 3 for RAM enquiries)