

15 April 2020

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

Dear Barbara

**Re: Advice for colleges on satisfying the JobKeeper employer decline in turnover test**

You have asked for advice for members of University Colleges Australia (**UCA**) on the decline in turnover test for employer eligibility to the Federal Government's COVID-19 JobKeeper financial support measure.

This advice is relevant only to affiliated residential colleges that have their own separate Australian Business Number (**ABN**) and that file their own Business Activity Statements (**BAS**). It does not apply to university owned colleges or affiliated colleges that are subsumed within a parent body corporate (such as a church) and where the college's acquisitions and supplies are reported under the parent body BAS.

**1. Summary**

- 2.1 an affiliated college will be eligible for the JobKeeper payment if the college has faced or will face a 15% fall in GST turnover or projected GST turnover for the relevant periods and also satisfies the other employer tests for JobKeeper;
- 1.2 to work out the decline in turnover for JobKeeper, colleges may choose any one of the following three methods to compare:
  - a. GST turnover for March 2020 with GST turnover for March 2019
  - b. projected GST turnover for April 2020 with GST turnover for April 2019
  - c. projected GST turnover for the quarter starting April 2020 with GST turnover for the quarter starting April 2019;
- 1.3 colleges may elect to choose any one of the above three methods regardless of whether the college reports a quarterly or monthly BAS;
- 1.4 GST turnover is not necessarily the same as BAS Label G1 and can not necessarily be derived from the BAS returns lodged or intended to be lodged with the ATO;

Page 1 of 5

- 1.5 the decline in turnover test method the college elects to adopt may have to account for the timing and quantum of any refunds the college has provided or intends to provide to contracted students who did not commence college or who are no longer in college or who are intending to depart college early;
- 1.6 if a college qualifies under any of the above decline in turnover tests for the first JobKeeper fortnight (from 30 March 2020 to 12 April 2020), the college remains eligible and does not need to keep testing turnover in following months but will nevertheless have on-going monthly reporting requirements to the ATO;
- 1.7 the following section of this letter sets out more detailed advice on how to apply the decline in turnover test but note that the Commissioner of Taxation (**the Commissioner**) has undertaken to provide more information on this test;
- 1.8 the Commissioner has discretion to set out alternative methods to apply this test;
- 1.9 where a college cannot qualify for the JobKeeper payment under any of the above decline in turnover tests and: (1) cannot readily obtain confirmation from the ATO that its particular circumstances do nevertheless qualify; and (2) considers it should have qualified; the college is advised to seek professional advice.

## **2. The Treasurer's Rules and other relevant guidance from the ATO & Treasury**

The *Coronavirus Economic Response Package (Payments and Benefits) Bill 2020* (Cth) (awaiting royal assent) authorises the Treasurer to, by legislative instrument, make rules on how the JobKeeper payment will work.

The Treasurer on 9 April 2020 issued the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Rules)* and associated *Explanatory Memorandum (EM)*. Section 8 of the Rules (see also pages 6-11 of the EM) provided the decline in turnover test for the JobKeeper payment.<sup>1</sup>

The Australian Taxation Office (**ATO**) has released guidance on how to apply the decline in turnover test, in the form of Quick Code (**QC**) instruction 62125: *JobKeeper Payment* and as modified 14 April 2020 (**QC62125**).<sup>2</sup>

The above guidance from the ATO on the decline in turnover test supplements the policy statements on the test in two Federal Treasury Fact Sheets:

- *JobKeeper Payment: Supporting Businesses to retain jobs*, modified 14 April 2020;<sup>3</sup>
- *JobKeeper Payment: Frequently Asked Questions*, modified 11 April 2020.<sup>4</sup>

<sup>1</sup> *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 and Explanatory Memorandum*. Accessed on the Australian Government Federal Register of Legislation web site on 15 April 2020 at:

<https://www.legislation.gov.au/Details/F2020L00419/Download>

<sup>2</sup> ATO QC62125: *JobKeeper Payment*. Accessed on the ATO web site on 15 April 2020 at:

[www.ato.gov.au/misc/downloads/pdf/qc62125.pdf](http://www.ato.gov.au/misc/downloads/pdf/qc62125.pdf)

<sup>3</sup> Treasury Fact Sheet: *JobKeeper Payment: Supporting Businesses to retain jobs*. Accessed on the Treasury web site on 15 April 2020 at: [treasury.gov.au/sites/default/files/2020-04/Fact\\_sheet\\_supporting\\_businesses\\_4.pdf](http://treasury.gov.au/sites/default/files/2020-04/Fact_sheet_supporting_businesses_4.pdf)

### 3. Advice on applying the decline in turnover test

Most colleges have by now adopted refund policies as a result of COVID-19 and in many cases have or are intending to provide full or partial refunds to students or their families or credits to the students' accounts to cover contracted periods where the students were not or will not be in residence in college.

Ordinarily, colleges that report a monthly BAS attribute most of their income for any year in the months of February and July with February often being a larger month than July.

The majority of colleges that report a monthly BAS have already attributed most of the contracted student income for the 2020 calendar year or for the first semester 2020, to the February 2020 BAS (which in almost all cases has already been filed with the ATO). The student refunds in the case of the colleges that report a monthly BAS will most likely be attributed to a later BAS than the February 2020 BAS.

The majority of colleges that report a quarterly BAS have already attributed or will attribute most of the contracted student income for the 2020 calendar year or for the first semester 2020, to the March quarter 2020 BAS. The refunds in the case of the colleges that report a quarterly BAS may in some cases be attributed to the March quarter 2020 BAS but in most cases will be attributed to a later BAS.

Basing the test on either of the months of March or April or on the quarter beginning in April does not capture the seasonally large income month of February. The test is further disrupted (arguably) by the timing mismatch between the attribution (for GST purposes) of income and refunds.

Finally the exclusion of input taxed student accommodation from the test, for those colleges that have input taxed some or all of their student accommodation in either or both of the 2019 and 2020 academic years, serves to exclude from the test (for one or both years) the single largest source of student income these colleges have.

In summary none of the decline in turnover test methods offered by the Commissioner is likely to give an accurate indication of the extent of financial impact of COVID-19 on an individual residential college.

Notwithstanding this reality colleges are advised to apply the tests in exactly the manner instructed by the Commissioner, working through the three tests in the order of least difficult to most difficult to apply (for the particular college's circumstances) until one of the tests is passed. If none of the tests is passed then professional advice or assistance from the ATO, should be sought.

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<sup>4</sup> Treasury Fact Sheet: *JobKeeper Payment: Frequently Asked Questions*. Accessed on the Treasury web site on 15 April 2020 at: [https://treasury.gov.au/sites/default/files/2020-04/JobKeeper\\_frequently\\_asked\\_questions\\_2.pdf](https://treasury.gov.au/sites/default/files/2020-04/JobKeeper_frequently_asked_questions_2.pdf)

GST turnover includes both taxable and GST-free supplies but does not include input taxed supplies. The timing of the turnover is driven by the GST attribution rules inclusive of reference to the terms of the student contract (see paragraph 24 of GSTR 2001/7).

Ordinarily the meanings of the terms *GST turnover* and *projected GST turnover* are as defined in Division 188 of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* and as are described at paragraph 14 and in other parts of the Commissioner's GST Public Ruling GSTR 2001/7 (**GSTR 2001/7**)<sup>5</sup> and relevantly operate to exclude input taxed supplies of student accommodation (but do include GST-free supplies of student accommodation).

Section 8 of the Rules amends the meaning of *GST turnover* in the GST Act (for the purposes of the decline in turnover test only) so that instead of applying (from a given month) to supplies made over the past year or to be made over the projected year, it applies to the periods to be used for the decline in turnover test.

GST turnover for these purposes also includes donations received inclusive of the non-monetary value of any gifts received, taxable or GST-free conference trade, day conferencing, casual student stays and student visitor meals.

To apply these tests and in the absence of further guidance from the Commissioner refunds should be disregarded to the extent the refunds relate to income that is attributed for GST purposes to a different period to the test period.

For example, if a student pays a semester in advance and is invoiced and pays in February 2020 and then in March 2020 is provided with a 50% refund then for purposes of comparing GST turnover in the month of March 2020 to GST turnover in the month of March 2019 (the first of the three methods) both the February 2020 payment and the March 2020 refund are disregarded.

When applying the decline in turnover test colleges are advised for JobKeeper compliance purposes to keep records of the test showing the relevant calculations and to also keep the reports used for the test (for example, GST audit reports produced by the accounting system for the periods concerned). Records must be retained for five years.

Colleges that input taxed some or all of their student accommodation in the 2019 calendar year are advised to continue to input tax their student accommodation to the same extent in the 2020 year (assuming any input tax credits foregone are of less significance to the College than the JobKeeper payment) at least until such time as it is clear that to do otherwise will not have any impact upon entitlement to the JobKeeper payment.

At page 4, section 8 of my advice to UCA dated 23 March 2020 I discussed the GST treatment of student accommodation in the context of COVID-19. I noted that colleges will have more than three years in which to amend past BAS returns to change the GST characterisation of

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<sup>5</sup> ATO GSTR 2001/7: *meaning of GST turnover, including the effect of section 188-25 on projected GST turnover*. Accessed on the ATO web site on 15 April 2020 at:

[www.ato.gov.au/law/view/document?DocID=GST/GSTR20017/NAT/ATO/00001](https://www.ato.gov.au/law/view/document?DocID=GST/GSTR20017/NAT/ATO/00001)

student accommodation from input taxed to GST-free for the 2020 calendar year, if the relevant provisions of the non-commercial supply rules were satisfied.

Colleges should continue to monitor updates by the ATO on how the JobKeeper decline in turnover test must be applied. It is considered unlikely any updates will invalidate results obtained by colleges that have applied the methodology in ATO QC62125 and as published 14 April 2020.

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

Yours sincerely



Peter McDonald, FIPA FFA  
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