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Our reference: 1-LAHJKVF  
Contact officer: Jenny Lin  
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11 May 2020

Dear Mr Zalai

**Re: Disbursement fees paid by freight forwarders and customs brokers and turnover**

We refer to your letter to the Commissioner of Taxation dated 20 April 2020 requesting a determination under subparagraph 5(1)(d)(ii) of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* to qualify freight forwarders and licensed customs brokerages for the cash flow boost.

Following the discussion between FTA and ATO officers on 24 April 2020 and subsequent emails, we understand that you are now asking us to:

1. confirm that disbursement fees are unlikely to form part of turnover where a principal-agent relationship exists (between an importer and freight forwarder / customs broker), and
2. advise what changes (if any) are required to correct any previously reported turnovers that were inclusive of disbursements for the purposes of Cash Flow Boost and JobKeeper eligibility.

For completeness, we confirmed with you at our meeting on 24 April 2020 that the discretion in subparagraph 5(1)(d)(ii) does not allow the Commissioner to disregard components of an entity's aggregated annual turnover, from being in the entity's aggregated annual turnover. The provision only allows the Commissioner to consider whether there is a reasonable basis that the entity's aggregated annual turnover would be below \$50m in the current income year.

Whether particular amounts charged by the freight forwarders are ordinary income or consideration for a supply will turn on the particular factual and contractual arrangements between the freight forwarder and the importer, however some general principles are provided below.

**Disbursement fees and turnover**

1. We understand that 'disbursement fees' can include a broad range of amounts, including amounts imposed by statute (such as GST, customs duty, and import processing charges) and other amounts charged by freight forwarders but not imposed by statute. These amounts may be remitted by the freight forwarder and then billed to the importer either in their capacity as agent of the importer, or in their own capacity.
2. Amounts that are imposed by statute on the importer (such as GST, customs duty and import processing charges) are paid by freight forwarders in their capacity as agents of the importers. Reimbursements of these costs from the importer are not ordinary income of,

and are not consideration for a supply made by, the freight forwarder. **These amounts are not included in the freight forwarder's annual turnover or GST turnover.**<sup>1</sup>

3. Whether other amounts charged by the freight forwarders but not imposed by statute are ordinary income or consideration for a supply will turn on the particular factual and contractual arrangements between the freight forwarder and the importer.
  - a. As a general principle, if the freight forwarder is acting as agent and the principal (importer) has the liability, then these charges will not be ordinary income of the freight forwarder (and the payment will not be deductible). The reimbursement by the importer is also not consideration for a supply made by the freight forwarder. **These amounts are not included in the freight forwarder's annual turnover or GST turnover.**
  - b. For all other amounts that are charged, these would be included in the calculation of the freight forwarder's ordinary income on the basis that they are derived in the ordinary course of the operations of the freight forwarder's business, even if the amounts are reimbursements on which no mark-up is charged. These amounts would similarly be consideration for a supply made by the freight forwarder. **These amounts are therefore included in the freight forwarder's annual turnover and GST turnover.**

## **Impact on the relevant turnover tests for the Cash Flow Boost and JobKeeper**

### ***Cash Flow Boost***

4. Where freight forwarders have previously reported ordinary income, supplies or turnovers inclusive of disbursement fees and, applying the general principles set out above, those disbursement fees should not have been included, then their aggregated annual turnover may be overstated in ATO-held records which may impact on the ATO's ability to identify whether the freight forwarder is eligible for the Cash Flow Boost.
  - a. Where a freight forwarder:
    - i. meets all the other eligibility criteria for the Cash Flow Boost and had an aggregated annual turnover of \$50m or more for the year of their last income tax assessment, and
    - ii. expects that their aggregated annual turnover for this income year will be less than \$50m by applying the principles set out above,then the freight forwarder should contact us via [CashBoostTeam@ato.gov.au](mailto:CashBoostTeam@ato.gov.au) to provide further information (for example, business records showing year-to-date turnover).
  - b. Where a freight forwarder is uncertain because their particular factual or contractual arrangements whether the amounts charged should be treated as ordinary income then they may contact us via [CashBoostTeam@ato.gov.au](mailto:CashBoostTeam@ato.gov.au).
  - c. Where a freight forwarder's aggregated annual turnover for the year of their last income tax assessment was already less than \$50m and they meet all other eligibility criteria for the Cash Flow Boost, then any Cash Flow Boost they are entitled to will be automatically credited to their activity statement account on lodgment of their March 2020 activity statement.

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<sup>1</sup> Since the amounts are not treated as ordinary income of the taxpayers, no deduction can be claimed for these amounts.

## ***JobKeeper***

5. For the purposes of the decline in turnover test for JobKeeper, it does not matter what an entity may have reported in their business activity statements. It is a theoretical calculation based on whether an entity has legally made a supply and the value of that supply.
6. This means freight forwarders can simply calculate their decline in turnover by applying the principles above. We note that the same principles must be applied in working out the GST turnover for **both** the turnover test period and the relevant comparison period.

If freight forwarders upon review consider they fall within the general principles outlined above for the purposes of the Cash Flow Boost and JobKeeper, then they must also report ordinary income on the same basis for all other tax purposes.

If you would like to discuss this matter further, please do not hesitate to contact Jenny Lin on (02) 6216 1808.

Yours sincerely

**John Ford**  
Deputy Commissioner of Taxation

(per Jenny Lin)