

Government Stimulus Measure: JobKeeper Payment
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Current as at 9:30am on the 14th of April 2020

Comment: At the time of writing, the Australian Taxation Office have not yet released the various standard forms that are required to be completed in order to claim the benefit. There are a number of unanswered questions in the Jobkeeper rules that we are expecting will be answered following the release of these standard forms and various guidance and rulings that are being developed by the ATO. At this stage it is our view that businesses should wait until this documentation is released before making any additional payments to employees in relation to the Jobkeeper scheme. However, businesses need to be aware that the deadline for the first payment of \$3,000 per employee seems to be **26 April**, so should start thinking about whether their business is eligible and start planning for the cash flow consequences of the scheme.

What is the stimulus/relief?

JobKeeper payment is a subsidy of \$1,500 per fortnight per eligible employee paid to employers and self-employed persons who have experienced a reduction in turnover due to COVID-19.

Affected employers can claim the payments from 30 March 2020 for up to 6 months. The first payment will be received by employers in the first week of May. Payments will be made monthly in arrears (by 14th day of following month). The payment to employers is taxable.

Who is eligible?

Eligible Employers

Employer entities whose **GST turnover** for a **turnover test period** falls short of the entity's GST turnover for the corresponding period in 2019 by:

- 30% unless the below apply
- 15% (for schools and certain charities),
- 50% (if the entity's aggregated turnover for the current year is likely to exceed \$1 billion, or exceeded \$1 billion for the previous income year),

A sole trader, partnership, trust or company with one or more individuals actively engaged in the entity's business (but not as an employee) may be eligible in respect of one eligible person.

Comment: The 'eligible business participant' rules allow for an additional person, usually the principal of the business, to qualify where they don't otherwise pay themselves as an employee of their business. Such businesses can still also claim the payment for their employees in addition to the non-employee person nominated by that business.

GST turnover as defined for GST purposes, but limited to the employer entity's expected or actual turnover for GST purposes occurring in the turnover test period. GST grouping is disregarded.

Comment: GST turnover is not simply the amount reported as ‘total sales’ in your BAS. The sales you report in your BAS are based on supplies that you have invoiced or received payment for, and also include input taxed supplies such as interest income or residential rents. Whereas turnover for the purpose of the decline in turnover test ignores input taxed supplies, and is based on when supplies are *made*, regardless of whether you have raised an invoice or been paid. If you report GST on a cash basis, this method of accounting does not apply for the decline in turnover test. This is likely to be a complex calculation for service based businesses who carry unbilled work in progress (or unbilled completed works) at the end of a calendar month, or for businesses who are paid in advance for products to be delivered to customers later.

Comment: Where there are multiple employer entities in a group, they all test their eligibility separately and are able to qualify individually. Entities who engage in non-arm’s length transactions with associates need to take care in establishing eligibility, as the value of these transactions is deemed to be market value for the purpose of the decline in turnover test.

Turnover test period is a calendar month that ends from March 2020 to September 2020; or a quarter that starts on 1 April 2020 or 1 July 2020.

Comment: you can choose to test your decline in turnover on either a monthly or quarterly basis, regardless of how you report for Business Activity Statement purposes.

Eligible Employees

- those employed by the eligible employer at 1 March 2020
- must be currently employed by the eligible employer at any time in the fortnight (including those stood down or re-hired)
- full-time, part-time, or long-term casuals (a casual employed on a regular basis for longer than 12 months as at 1 March 2020)
- at least 16 years of age
- an Australian resident for social security purposes or a tax resident subclass 444 visa holder
- not in receipt of a JobKeeper Payment from another employer.
- not in receipt of Dad and partner pay, government parental leave pay or workers compensation payments which overlaps with the fortnight

Comment: the explanatory notes issued by Treasury suggest that the scheme operates on a ‘one in, all in’ basis, meaning you must include all eligible employees in the scheme. However there is no express statement in the actual rules that this is the case. We expect this question to be clarified by the ATO in coming days.

How do employers make a claim?

1. Register intention to apply now on the ATO website <https://www.ato.gov.au/Job-keeper-payment/>
2. Notify the ATO that it wants to participate by 26 April 2020 if it wants to participate from the commencement of the scheme on 30 March 2020. Otherwise businesses must notify its participation before the end of the first JobKeeper fortnight for which it wants to participate.
3. Obtain a notification from each employee, confirming the employee's consent to being included in the employer's JobKeeper application.
4. Provide details of eligible employees for each fortnight to the ATO in the approved form. The ATO will use Single Touch Payroll data.
5. Notify eligible employees within 7 days of each fortnightly claim for the subsidy.
6. Report monthly to the ATO by the 7th of each month on its GST turnover for the previous month, and its projected GST turnover for the coming month.

ATO discretion available

If the Commissioner of Taxation (Commissioner) is satisfied that there is no appropriate comparison period for a class of entities he may, by legislative instrument, determine that an alternative decline in turnover test applies to that class of entities (for example new entities or entities with seasonal income).

Employers seeking to receive JobKeeper for a worker who is not an employee (e.g. a sole trader), generally need to have an ABN by 12 March 2020, but the Commissioner can allow a later time.

The Commissioner can choose to pay JobKeeper for the first two JobKeeper fortnights if he is satisfied it is reasonable in the circumstances, even if he is not yet satisfied the entity is eligible. However, the employer could be required to repay the amount if subsequently found to be ineligible

The Commissioner may determine that an employer is not required to repay an overpayment of JobKeeper that the employer has received.

Comment: Businesses should take great care in establishing their eligibility for the scheme, especially where they are close to the relevant decline in turnover threshold. Payments to be received from the ATO under the scheme are likely to be substantial, meaning the risk associated with repaying overpayments is significant.

Employer obligations

The employer must ensure that each nominated employee receives at least \$1,500 pre-tax for each JobKeeper fortnight for which it makes a claim.

Employers who pay monthly will need to adjust this regular payment amount accordingly.

The first JobKeeper fortnight ends on 12 April 2020, and this would be the first payment due date for some employers. The Commissioner has the discretion to treat payment as having been made by 12 April 2020 where reasonable to do so.

The tax treatment of the payment

The JobKeeper amount is taxable income for the employee and the employer must withhold PAYG income tax.

States and Territories are yet to finalise their individual positions on how JobKeeper is treated for payroll tax and Workcover purposes.

Comment: Whilst the Jobkeeper legislation empowers Treasury to make the income tax exempt for employers, the Jobkeeper rules do not stipulate that the payment is tax exempt. As such, the receipts are taxable to businesses as a subsidy.

Other considerations

Employees receiving JobKeeper payment will not be eligible for JobSeeker payments from Services Australia (Centrelink).

This measure has been legislated and Rules made by the Treasurer. The Treasurer has published Rules governing eligibility for the payments, however as of 11am on 14 April 2020 we are still awaiting clarification from the ATO on a number of issues, including the various standard forms that need to be completed and lodged to claim the payment.

Issues

Employers must fund the payments to employees until the funds are received from the ATO each month which will cause cashflow issues.

Employers who make payments to employees and are then not eligible could be left out of pocket for stood down employees rehired.

More guidance in the way of ATO Taxation Rulings and Treasury information will come out in the coming days/weeks.

What next?

The government is moving quickly, and things are changing daily with regards to the response to COVID-19. Should you have any queries regarding this measure, or any Government measure announced in relation to COVID-19, please contact your Brentnalls Tax Specialist.