



JobKeeper payments

Understanding how the rules may apply to your business

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What we are covering today



Peter Gillies

Overview

Eligible employers

Eligible owners
(business participants)



Chanel Palmer

Satisfying the decline
in turnover test

Alternative tests

Application to
service entities

Integrity rules



Overview

Overview

Key aspects of the JobKeeper Payment regime

Stimulus estimated to cost \$130b over a 6-month period



Eligible Employers

Payable to eligible employers who have requisite decline in their turnover during the relevant period

Receive \$1,500 for each eligible employee per fortnight



Eligible Owners

Eligible business has requisite decline in turnover during the relevant period

Receive \$1,500 for one eligible business participant per fortnight



Employer must notify the Commissioner that they have elected to participate in the scheme by the requisite time

Payment amounts and timing

When will the Commissioner pay the amount



How much is the payment?

The amount of an entity's JobKeeper payment for an individual for a fortnight is \$1,500.



When must the payment be made?

Commissioner must pay the JobKeeper payment if satisfied that an entity is entitled. May also pay the amount if not satisfied in the first two fortnights.



How quickly is the payment made?

No later than the later 14 days after the EOM in which the fortnight ends; and 14 days after Commissioner is satisfied of the entitlement.

First payment will be made once employer has completed April month reporting

Maximum payment per eligible employee is \$19,500 (13 x \$1,500)

Meaning of a JobKeeper fortnight

Employer determines eligibility by end of each fortnight

APRIL						
S	M	T	W	T	F	S
29	30	31	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

MAY						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

JUNE						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

JULY						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

AUGUST						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			



Eligibility for employers

Employer's entitlement to payment

Requirements that must be satisfied



Basic requirements

- 1 ▶ Entity (employer) is eligible on or before end of fortnight
- 2 ▶ Individual is an eligible employee of the employer for the fortnight
- 3 ▶ Employer has satisfied the wage payment conditions
- 4 ▶ Employer has satisfied notification requirements by the due time
- 5 ▶ Employer provided information to Commissioner in approved form

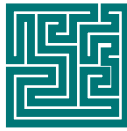
Employer must determine eligibility for each fortnight

Test 1: Employer eligibility

Which entity is tested for the decline in turnover?



**Looks at each
employer
entity
separately**



**There are no
grouping
provisions**



**Must separate if
part of a GST
group**



**Single entity
rule does not
apply for tax
consolidated
group**

Test 1: Employer eligibility

Requirements to be an eligible employer?

- Employer (entity) on 1 March 2020 either:
 - Carries on business in Australia
 - Not for profit that pursues objectives principally in Australia
 - Certain international aid organisations
- **Satisfies the decline in turnover test at or before the time**
- Not Government entity (or wholly owned subsidiary of such) (or other exclusion)
- Liquidator or provisional liquidator has not been appointed
- Trustee in bankruptcy has not been appointed

Test 2: Eligible employees

Who is an eligible employee?



Requirements

- 1 ▶ Employed by the employer as at 1 March 2020
- 2 ▶ At least 18 years of age as at 1 March 2020*
- 3 ▶ Full-time, part-time or long term casual as at 1 March 2020
- 4 ▶ Australian citizen or certain visa holders who are Australian resident
- 5 ▶ **Employed at any time during the fortnight**
- 6 ▶ PPL does not overlap and is not being paid dad and partner pay
- 7 ▶ Not totally incapacitated and being paid workers compensation
- 8 ▶ Individual has given a nomination notice to the employer

* additional tests apply (from 11 May 2020) for individuals that were 16 or 17 as at 1 March 2020

Test 3: Wage payment conditions

What amount must be paid in the fortnight?

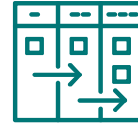
The sum of the amounts must equal or exceed \$1,500



Salary, wages, commissions, bonuses, allowances paid in the fortnight



Amounts withheld in respect of those payments made



Salary sacrifice superannuation amounts



Other amounts applied in fortnight by agreement

Special rule that can allow amounts to be allocated to periods (e.g. if pay monthly) and events to have happened in a different period

Test 3: Wage payment conditions

What amount must be paid in the fortnight? [s.10]

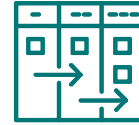
The following amounts are paid in respect of an employee



The employee is paid \$1,200 in net cash before the end of the fortnight



The employer withholds \$260 of PAYGW in respect of the wage payment



A superannuation salary sacrifice payment of \$90 was made for the fortnight



The employees fortnightly salary is reduced by \$50 due to the value of fringe benefits

The wage payment condition is satisfied as the sum of the amounts is equal to \$1,600 (being an amount greater than \$1,500)

Questions

- What happens if the sum of payments equals \$1,499?
- If the payment comprises wages why isn't there an SGC obligation?
- Is there going to be a PRT or Workcover liability on the payment?
- If I previously paid casuals around \$200 a week, will I now need to fund an additional amount in advance (i.e. to pay them \$750 per week)?
- How is the subsidy payment to be funded by the employer?



JobKeeper – key dates and transitional rules



Election to participate

by the end of the relevant fortnight



Notify employees

within 7 days of electing to participate in JobKeeper (or by 8 May 2020 if enrolled in April)



Nomination forms

Participating employees must have returned nomination forms for the fortnight*

**16/17 year olds may need to complete an additional form*



Identify employees

notify ATO about each employee's entitlement for the fortnight



Notify employees

in writing within 7 days of notifying the ATO of employee details



Pay min. \$1,500

Pay eligible employees at least \$1,500 (before tax) per fortnight



EOM reporting

Within 7 days after EOM report actual GST turnover for month and projected GST turnover for following month



Eligibility for owners (business participants)

Business participant rules

Requirements that must be satisfied



Additional basic requirements for each fortnight

- 1 ▶ Basically must satisfy requirements for employers
- 2 ▶ Cannot be a non-profit body
- 3 ▶ Individual must be an eligible business participant for the fortnight
- 4 ▶ Individual is the only nominated business participant
- 5 ▶ No other entity is entitled to a JobKeeper payment for that individual
- 6 ▶ 2019 income or pre-12 March taxable supply requirement satisfied
- 7 ▶ Entity has an ABN as at 12 March 2020 (or further time)

Business participant rules

Who can be nominated as a participant?



Entity type

Sole trader

Partnership

Trust

Company



Individual

Entity

A partner

An adult beneficiary

Shareholder or director

The individual must not be an employee of the business and must be actively engaged in the business carried on by the entity. Generally the individual must meet all other requirements of being an eligible employee.

Questions

- Can the entity qualify if it has employees?
- Who receives the payment of the \$1,500 in respect of the business participant?
- Is there a requirement to pay \$1,500 to the business participant?
- If the entity (company) receives the payment and pays this to the individual (shareholder) how will this be treated to both parties?





Satisfying the decline in turnover test

Satisfying the decline in turnover test

Decline in turnover test – the basic test

Projected GST turnover during for the relevant period falls short of the
Current GST turnover for the comparison period and
Shortfall equals or exceeds the specified percentage for the entity



**Entity's aggregated
turnover \leq \$1b**

Threshold is 30%



**Entity's aggregated
turnover $>$ \$1b**

Threshold is 50%



**ACNC registered
charity ***

Threshold is 15%

** This category does not include certain higher education providers or schools*

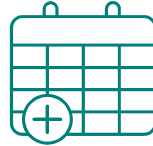
Satisfying the decline in turnover test

What is the relevant period that is tested?

Turnover test period

An entity is able to test two periods for a fortnight

- The relevant **monthly period**
- The relevant **quarterly period**



Monthly period

- 31 Mar 2020
- 30 Apr 2020
- 31 May 2020
- 30 Jun 2020
- 31 Jul 2020
- 31 Aug 2020
- 30 Sep 2020

Quarterly period

- 30 Jun 2020
- 30 Sep 2020

Comparison period must be period in 2019 that corresponds to the turnover test period

Satisfying the decline in turnover test

What is the relevant period being tested?

BizCo carries on business and employs 100 staff.

On 11 April 2020, BizCo makes an estimate of its projected GST turnover.

Month	2019 actual	2020 estimate	2020 actual
April	\$2.5M	\$2.3M	\$2.4M
May	\$3.5M	\$2.2M	\$2.3M
June	\$3.2M	\$1.7M	\$1.9M
Total quarter	\$9.2M	\$6.2M	\$6.6M

The turnover test periods in this example are either the **month of April 2020**, with decline of 8% or the **quarter ending 30 June 2020** with decline of 32.6%.



Questions

- If you satisfy the turnover test in one period is it satisfied for all future periods?
- If your turnover did not decrease from 2019, but has dropped by 50% since March 2020, will I satisfy the turnover test?
- Can I adjust intra-group charges to satisfy the turnover test? What if the adjustment reflects commercial outcomes? What if I don't have an agreement between the related parties?
- Can I continue to re-assess the projected GST turnover test for each of the six fortnights in the June quarter?





Alternative tests



Decline in turnover test – the alternative test

The Commissioner may ...
determine that an alternative
decline in turnover test applies to
**a class of entities, if the
Commissioner is satisfied that
there is not an appropriate
relevant comparison period**
for the purpose of an entity in the
class of entities satisfying the
[basic] decline in turnover test ...





Explanatory Statement

Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020

“... the Commissioner can only determine an **alternative** decline in turnover test if the Commissioner is

satisfied that **there is not an appropriate relevant comparison** period for the purpose of an entity (emphasis added) in the **class of entities** satisfying the decline in turnover test in subsection 8(1) of the Rules.”

“If there is not an **event or circumstance**, be it internal or external, **outside the usual business setting** which results in the relevant comparison period in 2019 not being appropriate for the purpose of an entity in the class of entities satisfying the decline in turnover test, the **Commissioner cannot determine an alternative** decline in turnover **test**.”

Alternative test

Overview

#	SCENARIO	DESCRIPTION
1	Commenced business	Entity commenced business before 1 March and after the comparison period in 2019
2	Acquisitions and disposals	Entity acquired or disposed of part of their business and the acquisition or disposal changed the entity's turnover
3	Restructure of business	Entity restructured part or all of its business and the restructure changed the entity's turnover
4	Substantial increase in turnover	Entity's turnover has increased substantially under the 50% / 25% / 12.5% rule
5	Irregular turnover	Non-cyclical business has irregular turnover during a quarter over the last 12 months
6	Sole trader or small partnership	Impact where sole trader or partner of small partnership is effected by sickness, injury or leave
7	Drought or natural disasters	Some or all of the business carried on in a declared drought or other natural disaster zone

Commenced business

SCENARIO

Entity commenced business before 1 March 2020 and after the relevant comparison period

ALTERNATIVE TEST 1

Compare projected GST turnover to average monthly turnover:

- **If commenced in Feb 2020:** Calculated as GST turnover for February 2020 multiplied by 29 and divided by the number of days the entity was in business.
- **Otherwise:** Calculated as the average of the current GST turnover for each whole month after the entity commenced business and before 1 March 2020
- **If quarterly:** Result is multiplied by 3

ALTERNATIVE TEST 2

Compare projected GST turnover to 3 months current GST turnover being the 3 months immediately before 1 March 2020 (i.e. December 2019, January 2020, February 2020).

Divide the result by 3 if the test period is a month.

Must have commenced at least 3 months before 1 March 2020 (i.e. before 1 December 2019)

Alternative tests

Commenced business

BizCo commenced business
on 15 October

On 11 April 2020, BizCo
estimated its projected GST
turnover to be **\$0.55M**

Using the alternative tests,
BizCo's turnover for April
does not satisfy

Alternative 1 (24.66% decline),
but satisfies **Alternative 2**
(38.89% decline)

Month	Actual	Test 1	Test 2
October	\$0.1M	N/A	N/A
November	\$0.2M	\$0.2M	N/A
December	\$0.6M	\$0.6M	\$0.6M
January	\$0.9M	\$0.9M	\$0.9M
February	\$1.2M	\$1.2M	\$1.2M
March	\$1.0M	N/A	N/A
Total	\$3.6M	\$2.9M	\$2.7M
Number months		4	3
Average		\$0.73M	\$0.90M
Decline		24.66%	38.89%

Irregular turnover

SCENARIO

For the quarters ending in the 12 months immediately before the applicable turnover test period, the entity's lowest turnover quarter is no more than 50% of the highest turnover quarter; and the entity's turnover is not cyclical



ALTERNATIVE TEST

- **Comparison period is month** – the entity uses the average monthly current GST turnover
- **Comparison period is a quarter** – entity multiplies the average monthly current GST turnover by three

Alternative tests

Irregular turnover

BizCo had an industrial dispute which affected its turnover in April 2019. The lowest quarter in the last 12 months (June) is less than 50% of the highest quarter (December)

The variance is not cyclical

As April (test period of \$25) represents a decline of 52.83% as compared to the average monthly GST turnover (\$53), **the alternative test is satisfied**

Period	Actual	Low / High
April-2019	\$30	
April-2020	\$25	
June -19 Qtr	90	Low
September-19 Qtr	170	
December-19 Qtr	195	High
March-20 Qtr	180	
% of low to high point	46.15%	
Average month to March 2020	\$53	

Are these alternatives to the basic test?

QUESTION

If you pass the basic test, do you need to consider these alternatives?

ANSWER

No. ATO have stated clearly that the alternative tests do not supplant the basic test



Application to service entities

Modified employment entity test

Conditions for eligibility

#	Tests	Short description
1	Employment entity satisfies the grouping test	It is a member of a consolidated group, consolidatable group or a GST group
2	Employment entity satisfies the principal activity test	Principal activity is to supply group members with employee labour services
3	The Group satisfy the external supply test	One or more test members of the group that have the principal activity of making supplies to non-group members
4	Employment entity satisfies the merely incidental test	No employee labour services are supplied to members outside of the group (other than merely incidental)
5	Commissioner does not apply integrity rule	Must not have made a determination in writing that disallows the entity from using the test

Modified employment entity test

Modified employment entity test



Ordinary basic decline test

Compare the employer entity's **projected GST turnover** for the turnover test period

With the employer entity's **current GST turnover** for a relevant comparison period



Modified test

Instead use the sum of the **projected GST turnovers** for that period of each test member

Instead use the sum of the **current GST turnovers** for that period of each test member

Test member can use 'alternative test' for the purpose of determining the current GST turnover where the alternative test applies to that test member

ATO compliance guide for service entities

Practical Compliance Guideline (PCG) 2020/4

#	Example	Tests	Risk level
1	Employer entity reduces service fee	An employment service entity reduces its fee to other business entities in line with their reduction in revenue due to COVID.	Low
2	Employer entity stands down employees	An employment service entity reduces staff hours which causes an indirect reduction in fees (in a cost plus agreement). The reduction of employment is due to COVID.	Low
3	Operating entity unable to pay service fee	The employment service entity can include the 'expected reduction' in the service fee (e.g. through future credit notes) when estimating projected GST turnover. <i>Note</i> – bad debts may not reduce projected GST turnover.	Low
4	Parent company reduces management fees	Similar to example 1, the parent entity reduces its fee to the subsidiary entities affected by COVID.	Low
5	Parent company changes timing of management fee	Similar to example 4, however the fee is not reduced or deferred due mainly to factors associated with COVID.	High

ATO compliance guide

Additional issues to consider

- PCG is not a signoff by the ATO. Just risk of ATO compliance.
- Should you approach the ATO on any reductions?
- Does the employment entity satisfy the basic conditions for Jobkeeper?
- Does the employment entity carry on a business?
- Has it ever made a profit or have a prospect of profit?
- Is there a legal agreement in place for the services?
- Is the arrangement commercial?
- Can you alter the fees?
- Will the Service Entity make losses and will they be deductible?



Integrity measures

Coronavirus Economic Response Package Omnibus Act 2020





If the Commissioner is satisfied ... it would be concluded (having regard to certain matters) that any of the participants entered into or carried out the scheme, or any part of the scheme, for the **sole or dominant purpose** of achieving either:

- (i) an entity **being entitled** to a Coronavirus economic response payment ...;
- (ii) **increasing the amount** of such a payment to which an entity is entitled; then the **Commissioner may determine** that ...:
 - the entity never became entitled to the payment; or
 - the amount of the payment was always the amount specified in the determination.

Section 19, Coronavirus Economic Response Package (Payments and Benefits) Act 2020





Integrity measures

Significant number of integrity measures

Integrity provision	Provisions contained in Coronavirus Economic Response Package (Payments and Benefits) Bill 2020
Overpayment debts	 If not entitled to the JobKeeper payment then need to repay the amount not entitled to and general interest charge
Joint and several liability where overpayment debts	 If another entity made a statement that is false or misleading or due to fraud of another entity – e.g. employee provides false statement of eligibility in notice
Record keeping requirement	 No entitlement unless entity complies with pre and post payment record keeping (i.e. retain records for 5 years)
Contrived schemes	 Scheme entered into for sole or dominant purpose of being entitled to payment or increasing entitlement to payment

Integrity measures

Additional measures that can apply to fraudulent activities

Integrity provision	Other potential consequences
False or misleading statements	 Financial penalty of 75 percent of the amount of overpayment, potential imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Failure to comply with taxation law	 Potential imprisonment for up to 12 months and a fine of up to 50 penalty units (250 penalty units for corporate entities)
Obtaining financial advantage by deception	 Imprisonment for up to 10 years under the Criminal Code
Conspiracy to defraud	 Imprisonment for up to 10 years under the Criminal Code
Obtaining financial advantage	 Imprisonment for up to 12 months



Key actions

Key actions

Payroll

Understand the system and how payments will be processed

GST turnover calculations

Obtain calculations for comparison periods

Put together appropriate budgets for projected GST turnover

Ensure budgets acceptable to the ATO (*see LCR 2020/1*)

Funding

Understand requirements and considering short term funding

Administrative

Ensure appropriate documents and nominations are completed

Be very careful of any potential breaches of the integrity provisions!

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