# Update on the JobKeeper program

**Incorporating announcements up to 1 May 2020**

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# Summary

Grant Wardell-Johnson

Lead Tax Partner, KPMG
Economics & Tax Centre

## Summary of Jobkeeper changes from 23 April to date

On 1 May the Treasurer signed the Legislative Instrument (LI) Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No.2) 2020 (Rule Modifications) which brings about some welcome changes to the Rules of the JobKeeper program. The Treasurer had signed off on the original Rules on 9 April.

On the same day the Commissioner of Taxation published Practical Compliance Guideline PCG 2020/4 on how the Australian Taxation Office (ATO) will administer the integrity provisions in the JobKeeper legislation, which empower the ATO to reduce an employer's JobKeeper payments where there are contrived circumstances.

These developments follow on from the Commissioner's signature on 23 April of the LI for the Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020 (Discretions), which sets out the alternative decline in turnover tests that are available.

The Rule Modifications and the Discretions will make the JobKeeper program available to many employers, in particular a sole employing entity within certain corporate groups, which may not otherwise have been eligible under the Rules.

However there may still be a number of service entities that do not qualify for JobKeeper because their circumstances do not meet the requirements. While this is regrettable, there has been limited time available to the federal government to make decisions, while still enabling JobKeeper payments to flow to employers from early May.

### Rule Modifications

Many corporate groups are structured with just one entity ("service entity") employing all of the employees who work in the other operating entities of the group. A service entity can now qualify for JobKeeper even if its own projected GST turnover does not decline by the required percentage, provided that:

- The service entity is a member of a tax consolidated or consolidatable group, or a GST group;
- The service entity's principal activity is to provide labour services to one or more operating entities ("test entities") in the group (and its supplies of labour services outside that group are no more than incidental);
- Each test entity's principal activity is making supplies to entities outside the group; and
- The sum of the GST turnovers of the test entities satisfy the necessary decline in turnover.

A principal activity would generally be more significant than any other single activity that the entity carried on, but would not necessarily be the dominant activity. However situations where the service entity carried out a variety of activities could be at greater risk of the Commissioner using his power to disallow access to this additional test.

Importantly in this respect PCG 2020/4 also indicates that the ATO generally regards as low risk a situation where a service entity satisfies the decline in turnover test itself, by reducing its service fees in response to the decline in turnover of the group members who use its labour services. This is regardless of whether the service fee reduction is a consequence of a reduction in employee working hours or not.

Many service entities could be expected to qualify for JobKeeper as a result of the Rule Modifications and the PCG. An illustration of the modified decline in turnover test is on page 3.

Further Rule Modifications included in the Treasurer's LI are:

- The Rules themselves now expressly require the employer to adopt a "one in, all in" approach to claiming JobKeeper for its eligible employees.
- Certain overseas aid organisations can be eligible employers.
- Employees aged under 18 and in full-time education are ineligible, unless they are financially independent. They may remain eligible for fortnights commencing before 1 May.
- Non-employee religious practitioners engaged by a religious institution are eligible.

- Universities must include core federal government funding in their GST turnover for the purposes of the decline in turnover test, and must use a turnover test period of the six months commencing 1 January 2020.
- Certain charities may elect not to include government agency or United Nations funding for certain services in their GST turnover for the purpose of the decline in turnover test.

**ATO PCG 2020/4 on contrived schemes relating to JobKeeper**

Unsurprisingly, the PCG regards the deferral or bring-forward of invoicing, with no dominant commercial purpose, as a high-risk scheme. Similarly, it would treat the transfer of a business to a related party as high-risk.

The ATO would also be likely to apply compliance resources where a service entity reduces its charges to other group members, without those group members having shown a decline in turnover that would justify this.

It is very welcome, on the other hand, that the ATO indicates that it generally regards as low risk a situation where a service entity satisfies the decline in turnover test itself, by reducing its service fees in response to the decline in turnover of the group members who use its labour services.

**The Discretions**

The Commissioner has specified the alternative comparison period that entities can use in a number of circumstances.

If an entity satisfies the basic test, but also would be within the scope of one of the alternative tests, then that entity passes the decline in turnover test, regardless of what the outcome under the alternative test might have been.

Note that the summary below is based on a turnover test period of a month. If the entity has a turnover test period of a quarter, then the principles are adapted accordingly.

- An entity that commenced business less than 12 months before the test period can generally use the average monthly GST turnover for the whole months of trading ending before 1 March 2020, or the average GST turnover for the three months ending before 1 March 2020.

- An entity that has acquired or disposed of all or part of a business, or businesses, or has undertaken a business restructure during the 12 months preceding the test period with a consequential impact on the entity's turnover, can generally use a comparison period of the first month that commences after the most recent acquisition.

- An entity that has, broadly, experienced an annualised increase in turnover of 50% or more in the quarter, half-year or year immediately preceding the test period can generally use a comparison period of the average of the GST turnover for the three months immediately preceding the test period.

- An entity for which the lowest GST turnover quarter in the 12 months preceding the test period was no more than 50% of its highest GST turnover quarter (other than due to cyclical factors) can use its average monthly turnover for that 12 month period as the comparison.

- An entity whose business was operated wholly or partly in a declared drought or natural disaster zone during the comparison period for the basic test can generally use the corresponding period in the year preceding that declaration as its comparison period.

- A sole trader or small partnership with no employees can use the month immediately after the return to work of a principal or partner as the comparison period, if that individual was unable to work during all or part of the comparison period for the basic test due to sickness, injury or leave.

- In each of the above cases, months for which the entity was entitled to Drought Help concessions or qualified for ATO Bushfires 2019-20 lodgement deferrals are either excluded from averaging calculations or replaced by alternative periods.

# Example of group-based turnover calculation

Example of modified decline in turnover test for group service entities: Group A

| | Actual JobKeeper turnover period A 2019 | Projected JobKeeper turnover period A 2020 |
|---|---|---|
| **Service Entity** | $10,000 | $10,000 |
| **Op Entity 1** | $10,000 | $8,000 |
| **Op Entity 2** | $100,000 | $60,000 |
| **Op Entity 3** | $100,000 | $60,000 |
| **Op Entity 4** | $100,000 | $60,000 |

- Group A (including Service Entity) is eligible for tax consolidation.
- It consists of four operations entities (Op Entities) and Service Entity. The aggregated turnover of all five entities is under $1 billion.
- Service Entity's principal activity is to provide services consisting of the performance of work by individuals employed by Service Entity to the four Op Entities. Service Entity does not provide services to third parties. The principal activity of each of the four Op Entities is making supplies to third parties.[1]
- Period A is a turnover test period for JobKeeper.
- The Commissioner of Taxation has not determined that Service Entity is ineligible for the modified test.
- Service Entity does not individually pass the decline in turnover test. However as the projected turnover of the four Op Entities who each receive the labour services from Service Entity ($188,000) is less than 70% of the comparison turnover ($310,000) the modified decline in turnover test is passed.

[1] These factors mean the Op Entities are all "test members" and are therefore included for the purposes of the modified turnover test calculation.

# JobKeeper timeline and actions

**Summary: Key dates to claim for first two JobKeeper fortnights**

| Which fortnights? | Pay employees by | Enrol by | Obtain Employee Nomination | Identify eligible employees | Monthly declaration |
|---|---|---|---|---|---|
| JobKeeper fortnight 1: 30 March to 12 April<br>JobKeeper fortnight 2: 13 April to 26 April | 8 May | 31 May | Before you identify the eligible employees to the ATO, or earlier | Available from 4 May<br>You must have enrolled and paid your eligible employees $1,500 per fortnight (before tax).<br>Complete before 31 May. | |

**Steps for first two JobKeeper fortnights**

*1. Perform decline in turnover test calculations*

To claim JobKeeper from the first JobKeeper fortnight, ensure that you have documented your analysis of the projected decline in GST turnover for the turnover test period, based on information available as of 12 April or earlier.

*2. Pay employees*

You must pay $1,500 pre-tax per fortnight for fortnights 1 and 2 to eligible employees by 8 May.

*3. Issue eligible employee nomination form to each eligible employee*

Provide your eligible employees with the eligible employee nomination form for them to complete (forms available now on the ATO's website).

*4. Receive completed employee nomination forms*

As employees will not be fully eligible without signing this form, you must receive these back from your employees to claim JobKeeper (i.e. before you proceed to the next steps).

*5. Enrol for JobKeeper with the ATO*

You must enrol by 31 May *at the latest* to receive payments for JobKeeper fortnights 1 and 2 (and May fortnights). Enrolment is open now.

*6. Identify who you are claiming JobKeeper for*

From 4 May, you will be able to identify with the ATO who you are claiming JobKeeper for. You must do this by 31 May to receive JobKeeper for JobKeeper fortnights 1 and 2.

*7. Complete your first monthly declaration*

From 4 May, you will be able to confirm you have paid your eligible employees and make your first monthly declaration of your turnover and reconfirm your eligibility. You must make your first monthly declaration by 31 May.

Notify the ATO of any employees who have ceased to be eligible, for example due to ceasing employment with the employer or starting to receive government paid parental leave, as part of this declaration.

# Total value of economic support measures

| Measure | Rounded to nearest $5 billion |
|---|---|
| **Balance Sheet Support (RBA and Federal Government)** | |
| RBA – Banks funding $90 billion at 0.25% to lend to businesses | 90 |
| AOFM – markets used by smaller lenders | 15 |
| SME Guarantee Scheme for 50% loans with banks | 20 |
| **SUBTOTAL** | **125** |
| **Fiscal Support (Federal Government)** | |
| Wage subsidy for employers of $1,500 per fortnight per employee | 130 |
| Boosting cashflow for SMEs / Supporting apprentices & trainees | 35 |
| Coronavirus JobSeeker supplement ($550 per fortnight) / Household support to social security recipients | 20 |
| Increasing instant asset write-off / Accelerated depreciation | 5 |
| Other (inc. two health packages, aged care support, support for regions and aviation industry) | 10 |
| **SUBTOTAL** | **200** |
| **State Government Support (mix of fiscal and balance sheet)** | |
| SUBTOTAL (Including waivers and deferrals of payroll tax, grants and health funding packages) | 20 |
| **TOTAL FEDERAL AND STATE SUPPORT** | **345** |

# Contact us

## KPMG Leadership

**Chief Executive Officer**
**Gary Wingrove**
+61 2 9335 8225
gwingrove@kpmg.com.au

**National Chair**
**Alison Kitchen**
+61 3 9288 5345
akitchen@kpmg.com.au

**Deals, Tax & Legal**
**David Linke**
+61 2 9335 7695
davidlinke@kpmg.com.au

**Audit, Assurance & Risk Consulting**
**Andrew Yates**
+61 2 9335 7545
ajyates@kpmg.com.au

**Management Consulting**
**Ian Hancock**
+61 2 9335 8161
ianhancock@kpmg.com.au

**KPMG Enterprise**
**Paul Howes**
+61 2 9346 6073
paulhowes@kpmg.com.au

## Deals, Tax and Legal Leadership

**Corporate Tax Services**
**Carlo Franchina**
+61 8 9263 7239
cfranchina@kpmg.com.au

**Tax – Deal Advisory**
**Len Nicita**
+61 2 9335 7888
lennicita@kpmg.com.au

**Tax Technology & Innovation**
**Mathew Herring**
+61 3 9288 6845
mherring@kpmg.com.au

**Tax Compliance – Delivery & Data Excellence**
**Justin Davis**
+61 2 9335 8854
jcdavis@kpmg.com.au

**International Tax**
**Frank Putrino**
+61 3 9838 4269
fputrino@kpmg.com.au

**People Services**
**Ben Travers**
+61 3 9288 5279
btravers1@kpmg.com.au

**Tax Dispute Resolution & Controversy**
**Angela Wood**
+61 3 9288 6408
angelawood@kpmg.com.au

**Economics & Tax Centre**
**Grant Wardell-Johnson**
+61 2 9335 7128
gwardelljohn@kpmg.com.au

**Economics & Tax Centre**
**Brendan Rynne**
+61 3 9288 5780
bjrynne@kpmg.com.au

**Restructuring Services**
**James Stewart**
+61 3 8667 5728
jhstewart@kpmg.com.au

**Restructuring Services**
**Matt Woods**
+61 8 9263 7515
mwoods1@kpmg.com.au

**Head of Law in Australia**
**Kate Marshall**
+61 3 9288 5767
katemarshall@kpmg.com.au

**Transaction Services**
**Craig Mennie**
+61 2 9335 8671
cmennie@kpmg.com.au

## Industry Leadership

**Corporates**
**Trent Duvall**
+61 2 9335 8871
tduvall@kpmg.com.au

**Energy & Natural Resources**
**Cassandra Hogan**
+61 2 9455 9642
cjhogan@kpmg.com.au

**Financial Services**
**Daniel Knoll**
+61 2 9455 9148
danielknoll@kpmg.com.au

**Infrastructure, Government & Health**
**Paul Low**
+61 7 3233 9771
plow@kpmg.com.au