## JobKeeper Payment Scheme Extension Periods

**Service Entities = Special Rules**

The purpose of this Fact Sheet is to provide you a **quick summary** of the special rules about eligibility for the Government's JobKeeper Extended Payment Scheme where you have an entity that principally provides labour. If you need more information, please **contact us** **immediately** so we may assist you further.

The JobKeeper Payment scheme was announced on 30 March 2020 by the Prime Minister and the Treasurer. The purpose of the scheme is to keep people employed even though the business they work for has suffered a downturn including a ‘hibernation’ or close down for a temporary period.

The JobKeeper extension (**JobKeeper extension**) was announced on **21 July** and will ***extend*** the scheme until ***28 March 2021***. Further refinements were announced by the Treasurer on Friday 7th August 2020.

The original scheme enabled eligible employers to claim a fortnightly payment of ***$1,500*** per eligible employee from 30 March 2020, for a maximum period of **6 months**. The extension of the scheme will see a more targeted and tapered approach with a two-tier wage subsidy and two additional JobKeeper periods of three months each.

**What's new?**

From Monday 3 August 2020:

* the employee eligibility test date will move from 1 March 2020 to 1 July 2020. The new reference date will apply for the **last four fortnights** of the original scheme as well as the **duration of the extended period**. Staff who were hired after 1 March 2020 may now be eligible for JobKeeper.

From 28 September 2020:

* a two-tier payment rate will apply based on the worker’s working hours
* the current $1,500 per fortnight payment rate will be reduced on 28 September 2020 and reduced further on 4 January 2021
* the decline in turnover will be retested on a quarterly basis, and
* the decline in turnover test will be based on actual GST turnover.

From **28 September 2020 to 3 January 2021**, the JobKeeper Payment rates will be:

* ***$1,200*** per fortnight for all eligible employees and for eligible business participants who were working for more than 80 hours or more in the 28 days before the end of most recent pay period ending before 1 March 2020 or for all eligible employees who were working for more than 80 hours or more in the 28 days before the end of most recent pay period ending before 1 July 2020, and
* ***$750*** per fortnight for other eligible employees and business participants.

From **4 January 2021 to 28 March 2021**, the JobKeeper Payment rates will be:

* ***$1,000*** per fortnight for all eligible employees and for business participants who were working for more than 80 hours or more in the 28 days before the end of most recent pay period ending before 1 March 2020 or for all eligible employees who were working for more than 80 hours or more in the 28 days before the end of most recent pay period ending before 1 July 2020; and
* ***$650*** per fortnight for other eligible employees and business participants.

**Is your business eligible for your employees in the extension period(s)?**

An employer is entitled to the JobKeeper payment in respect of an individual (an employee) in relation to an extension period if it meets the revised eligibility rules.

We outlined the general nature of the JobKeeper Scheme in our earlier Fact Sheet.

Some business have structured in a way that, while an entity may conduct the trading activities of the business, there is another entity that may be the provider of **labour** to the business. We shall refer to such an entity as a **Service Entity**. While the decline in turnover may be readily apparent for the **trading entity** it does not have any employees and is therefore unlikely to qualify for the JobKeeper Scheme.

The **Service Entity** although having the employees and meeting most of the criteria, it may not meet the *decline in turnover* test as the arrangements between it and the trading entity may result in very little impact on the service entity's turnover.

The Government recognised this anomaly and changed the rules. The ATO have also taken a reasonable approach to these types of arrangements.

## *Decline in turnover test*

From **28 September 2020**, businesses seeking to claim the JobKeeper payment will be required to demonstrate that they have suffered an actual decline in turnover using **actual** **GST turnover** (rather than **projected** GST turnover). The ATO has provided guidance that **actual GST** **turnover** will be essentially the accounting basis you use for GST reporting purposes.

From **28 September 2020**, businesses will be required to **reassess** their eligibility with reference to their **actual** **GST turnover** in the **September quarter 2020** to be eligible for the JobKeeper Payment from **28 September 2020 to 3 January 2021** (the first extension period).

From **4 January 2021**, businesses will need to **further reassess** their turnover to be eligible for the JobKeeper Payment. They will need to demonstrate that they have met the relevant decline in turnover test with reference to their **actual GST turnover** in the **December quarter 2020** to be eligible for the JobKeeper Payment from **4 January 2021 to 28 March 2021** (the second extension period).

For the first extension period, businesses will need to demonstrate that their **actual** **GST turnover** has fallen the required percentage (see below) in the **September quarter 2020** (July, August, September) relative to a comparable period (generally the **corresponding quarter in 2019**).

For the second extension period businesses will need to demonstrate that their **actual GST turnover** has fallen the required percentage (see below) in the **December quarter 2020** (October, November, December) relative to a comparable period (generally the **corresponding quarters in 2019**).

The Commissioner of Taxation will have discretion to set out alternative tests that would establish eligibility in specific circumstances where it is not appropriate to compare actual turnover in a quarter in 2020 with actual turnover in a quarter in 2019, in line with the Commissioner’s ***existing*** discretions for the original scheme.

## How much does my decline in turnover need to be?

|  |  |
| --- | --- |
| Aggregated Turnover was **> $1 Billion** | **50%** |
| Aggregated Turnover was **<$1 Billion** | **30%** |

The basic test may not accurately reflect the downturn in activity that your business has suffered. The Rules provide the Commissioner with discretion to set out an alternative test, where the Commissioner is satisfied that there is not an appropriate relevant comparison period in 2019. See our Supplementary Fact Sheet on the JobKeeper Scheme.

## Special Rules for Service Entities

Business entity pays service fees to service entity

Affected by COVID-19 — turnover declined by ≥ 30%

Service entity   
(employing entity)

Service entity provides staffing services to business entity

Business entity (carries on a business)

In the above scenario, the service entity will not be eligible to claim JobKeeper in respect of its employees unless its turnover — assessed on a standalone entity basis — has declined by the minimum percentage. It is irrelevant whether the two entities are commonly owned or one owns the other.

Under the basic Rules, whether the service entity’s actual GST turnover will be at least 30 per cent less than the comparison turnover for 2019 may depend on a number of factors, including the contractual basis of the fees that it charges, and whether the service agreement and the nature of the services provided may result in the business entity acquiring fewer services to reflect the downturn in the business entity’s trade.

The Government has provided an alternate decline in turnover test for the eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover. This alternate test will apply where an entity provides the services of its employees to one or more related entities, where those related entities carry on a business deriving revenue from unrelated third parties. The alternate test will be by reference to the **combined** GST turnovers of the **related entities** using the services of the employer entity.

In circumstances where a service entity is utilised within a group of companies, and that employment entity is unable to demonstrate a decline in its own turnover because, for example, it has had its full year of staffing fees paid in advance, the employment entity will be able to refer to the decline in turnover of the operating entities it services. This will provide for eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover.

The special rules for service entities only apply where there is a group structure, defined as a consolidated or consolidatable group, or a GST group.

The integrity rule may apply to deny JobKeeper payments where the service entity reduces the fees it charges the business entity for a sole or dominant purpose of accessing the JobKeeper scheme.

However, the ATO has indicated that it will look favourably on some arrangements where the changes were a result of an economic downturn due to the impact of COVID-19. Example 4 from the ATO's [PCG 2020/4](https://www.ato.gov.au/law/view/document?docid=COG/PCG20204/NAT/ATO/00001) indicates the ATO will be unlikely to devote compliance resources in this situation. We are able to assist you in determining whether your Service Entity arrangements will qualify for the JobKeeper Payment Scheme. Please contact us to discuss your situation.