JOBKEEPER EXTENSION BULLETIN

INFORMATION FOR CPA AUSTRALIA MEMBERS

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CONTENT

JOBKEEPER PAYMENT EXTENSION

The Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020 amends the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 to revise the existing 'prescribed period' which otherwise ends on Thursday 31 December 2020, to facilitate the extension of the scheme to Sunday 28 March 2021.

The JobKeeper Payment, which was originally due to end on 27 September 2020, will now continue to be available to eligible businesses (including the self-employed) and not-for-profits until 28 March 2021.

The payment rate of $1,500 per fortnight for eligible employees and business participants will be reduced and lower payment rates will apply for employees and business participants that worked fewer than 80 hours during the reference period.

Two periods of extension of have been introduced:

- 28 September 2020 to 3 January 2021 (Period One), and
- 4 January 2021 to 28 March 2021 (Period Two).

If a business or not-for-profit does not meet the additional turnover tests for the extension period, this does not affect their eligibility prior to 28 September 2020.

The JobKeeper scheme will remain open to new participants, provided they meet the eligibility requirements for the relevant period.

Key points include:

- Must use the accounting basis used for GST reporting purposes
- No modification to actual GST turnover allowed for income from sale of capital assets, bad debts or discounts
- Tests for the extension period applied on a quarterly basis
- For the higher rate, eligible business participants to use the month of February as reference period while eligible employees determined on either the period ended 1 March 2020 or 1 July 2020 (whichever is higher)
- Lodge outstanding business activity statements to prevent delays.

Decline in turnover test

To continue to be eligible for the JobKeeper Payment after 27 September 2020, businesses and not-for-profits will be required to reassess their eligibility and meet a further decline in turnover test for each of the two periods of extension, as well as meeting the other existing eligibility requirements for the JobKeeper Payment.

The projected GST turnover test has been removed and businesses and not-for-profits will need to use **actual** GST turnover to calculate their decline in turnover. For many businesses, this will match the GST-exclusive 'total sales' amount reported at G1.

ATO guidance on the application of the actual decline in turnover test turnover test states:

- it must be done for specific quarters only
- you must use actual sales made in the relevant quarter, not projected sales, when working out your GST turnover
- you must allocate sales to the relevant quarter in the same way you would report those sales to a particular business activity statement if you were registered for GST.

For Period One, businesses and not-for-profits will need to demonstrate that their actual GST turnover has fallen by the threshold amount in the September quarter 2020 (July, August, September) relative to the comparable period (generally the corresponding quarter in 2019).

For Period Two, businesses and not-for-profits will then need to demonstrate that their actual GST turnover has fallen by the threshold amount in the December 2020 (October, November December) quarter relative to the comparable period (generally the corresponding quarter in 2019).

Date	Applicable turnover test period
28 Sep 2020 to 3 Jan 2021	Sep 2020 quarter
4 Jan 2021 to 28 Mar 2021	Dec 2020 quarter

The Commissioner of Taxation's existing 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 remains.

The decline in turnover test thresholds remain the same at:

- 50 per cent for those with an aggregated turnover of more than $1 billion,
- 30 per cent for those with an aggregated turnover of $1 billion or less, or
- 15 per cent for Australian Charities and Not for profits Commission-registered charities (excluding schools and universities).

Payment amounts

Fortnightly payment amounts will be tapered with a reduction to $1200 for employees and business participants working 80 hours or more during the reference period (full rate) for Period One and further falling to $1000 for Period Two.

For employees and business participants working less than 80 hours during the reference period (lower rate), the payment amount falls to $750 for Period One and $650 for Period Two.

Date	Full rate	Lower rate
To 27 Sep 2020	$1500	
28 Sep 2020 to 3 Jan 2021	$1,200	$750
4 Jan 2021 to 28 Mar 2021	$1,000	$650

The Commissioner of Taxation has exercised his discretion to allow employers until 31 October 2020 to satisfy the wage condition for the October JobKeeper fortnights.

Eligible employees

Eligible employees or business participants who were working in or actively engaged in the business or not-for-profit for 80 hours or more during the reference period will receive the full rate of payment, with the lower rate applying to other eligible employees and business participants.

The 80-hour threshold will be based on the hours worked during the reference period.

If the individual is:	Reference period
Eligible employee	• the 28-day period ending at the end of the most recent pay cycle for the employee for the entity that ended before 1 March 2020, **or** • the 28-day period ending at the end of the most recent pay cycle for the employee for the entity that ended before 1 July 2020
Eligible business participant	Month of February 2020
Eligible religious practitioner	Month of February 2020

The period with the higher number of hours worked is to be used for employees with 1 March 2020 eligibility.

The Commissioner of Taxation has issued legislative instruments determining circumstances in which the higher rate applies (p. 7) and alternative reference periods for specified individuals (p. 8).

Next steps

Businesses and not-for-profits claiming JobKeeper should already have adjusted to reporting monthly actual GST turnover information to the ATO as part of the claims process.

This process becomes even more critical as accurate actual GST turnover data becomes the basis for determining eligibility for Periods One and Two of the extended JobKeeper Payment.

Given that Period One commences before the end of the September quarter and with only days between the end of the December quarter and the start of Period Two, ensure that GST reporting systems are up-to-date and reporting correct information in as close to real-time as possible.

The 80-hour test requires businesses and not-for-profits to calculate the hours worked by eligible employees and business participants for the reference period. Payroll and human resources systems should contain the necessary information to calculate the average hours worked per week during this period. Consider the higher rate determination for employees in respect of whom there are no records or incomplete records of hours including where remuneration is not tied to hourly or contracted rates.

From 28 September 2020, the following is required:

- work out if the tier 1 or tier 2 rate applies to each eligible employee and/or eligible business participant
- notify the ATO and eligible employees and/or eligible business participants what payment rate applies to them
- pay at least the required JobKeeper amount per fortnight to eligible employees.

Outstanding Business Activity Statements (BAS) for the September 2019 and December 2019 quarters should be lodged as soon as possible (or for equivalent months, if reporting monthly). Un-lodged BAS statements may hold claims for JobKeeper Payments under the JobKeeper extension.

Ensure that adequate documentation is available to demonstrate the basis of the 20 hours per week calculation and decline in actual GST turnover in the event of ATO compliance checks.

Further information is available from Treasury and the ATO.

JOBKEEPER RULES NO. 8

The Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No 8) 2020 (the Amending Rules) implement the remaining changes in eligibility for the JobKeeper scheme announced by the government on 21 July and 7 August 2020.

The Amending Rules extend the JobKeeper scheme, making it payable for JobKeeper fortnights up to the fortnight ending on 28 March 2021 to qualifying entities in respect of their eligible employees, business participants or religious practitioners.

Eligibility for JobKeeper fortnights beginning on or after 28 September 2020 is subject to a new additional eligibility test for decline in turnover. This ensures that entities that qualify for JobKeeper payments under the extended scheme have had a recent actual decline in turnover. Assistance is tapered in respect of all eligible employees, business participants and religious practitioners.

The rate depends on the hours of work and paid leave for employees, business engagement by business participants and relevant activities by religious practitioners. Eligible employers, business participants and religious institutions can enrol for the JobKeeper scheme during the extension period even where they have not previously enrolled, subject to meeting the eligibility criteria.

Period One (28 September 2020 – 3 January 2021)

Period One applies to JobKeeper fortnights beginning on or after 28 September 2020 and ending on or before 3 January 2021. During this stage, the higher rate of JobKeeper payment is $1,200 and the lower rate is $750.

To qualify, entities must satisfy the original decline in turnover test (now extended) and an additional test. Under this additional test, entities must demonstrate that their actual GST turnover has declined by the required percentage for the quarter ending 30 September 2020, relative to the entity's comparable quarter for this period.

An entity that can demonstrate a fall in actual GST turnover in the quarter ending 30 September 2020 will also satisfy the original decline in turnover test, meaning that most entities enrolling for the first time will only have to demonstrate that their actual turnover has significantly declined in the previous quarter.

Period Two (4 January 2021 – 28 March 2021)

The second stage applies to JobKeeper fortnights beginning on or after 4 January 2021 and ending on or before 28 March 2021. During this stage, the higher rate is $1,000 and the lower rate is $650.

To qualify, an entity must have met the original decline in turnover test and also had the required actual decline in turnover for the quarter ending 31 December 2020.

An entity that can demonstrate a fall in actual GST turnover in the quarter ending 31 December 2020 will also satisfy the original decline in turnover test, meaning that most entities enrolling for the first time will only have to demonstrate that their actual turnover has significantly declined in the previous quarter.

The periods covered by the original decline in turnover test for most entities are also extended to include the months of October, November or December 2020, and the quarter ending on 31 December 2020 if they choose.

Given the additional requirement to test decline in actual GST turnover twice under the extended scheme, the Commissioner of Taxation will have additional powers to specify how turnover is determined for the purposes of the new test. This power does not include a discretion to determine the type of supplies that are included in the test.

The Amending Rules, registered on the Federal Register of Legislation as F2020L01165, commence on 16 September 2020.

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TIME OF SUPPLY FOR THE ACTUAL DECLINE IN TURNOVER TEST

A supply is treated as being made under the actual decline in turnover test for JobKeeper in a relevant test period to the extent that any GST payable on the supply would be attributed to that test period.

The Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No.1) (the Instrument) sets out the time or times a supply is treated as being made for the purposes of calculating an entity's current GST turnover in a test period. In particular, a supply must be treated as being made or partly made in a relevant test period to the extent that any GST payable on the supply would be attributed to that test period.

This is relevant to determining an entity's eligibility for the JobKeeper payments for fortnights beginning on and after 28 September 2020 under the actual decline in turnover test in s 8B of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.

In calculating an entity's current GST turnover for the purposes of section 8B a supply is treated as being made at a time in the test period to the extent the GST payable on that supply would be attributed to that test period under the GST Act if:

(a) the supply was a taxable supply, and
(b) GST was payable on the supply by that entity, and
(c) any reference to a tax period was a reference to the test period.

The Instrument, registered on the Federal Register of Legislation as F2020L01171 on 16 September 2020, commences on 17 September 2020.

CIRCUMSTANCES IN WHICH HIGHER JOBKEEPER PAYMENT RATE APPLIES

The Commissioner has specified three circumstances in which the higher rate of an entity's JobKeeper payment applies to certain eligible employees.

The JobKeeper scheme has been extended from 27 September 2020 to 28 March 2021. For fortnights beginning on or after 28 September 2020, the amount of an entity's JobKeeper payment will depend on whether the higher or lower rate applies to an individual for the entity. Section 9A of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (the Rules) states that the higher rate applies to eligible employees if the total hours of work, paid leave and paid absence on public holidays for their employer in any reference period was 80 hours or more. Otherwise, the lower rate applies. Where the hours in a reference period for a class of individuals are not readily ascertainable, the Commissioner may determine specified circumstances in which the higher rate is taken to apply to individuals in that class.

The Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 (the Determination) sets out when the higher rate applies to an individual who is an eligible employee of an entity, identifying specific circumstances in which the Commissioner is satisfied that the employee's total hours of the kind referred to in s 9A(1) in the reference period for the individual are not readily ascertainable. In particular, the higher rate of JobKeeper applies if eligible individuals satisfy any of the three tests below.

1. **$1,500 or more in salary, wages, commission**

   The higher rates applies to employees if, in a reference period, the sum of the amounts covered by s 10(2) of the Rules totalled $1,500 or more in respect of a particular employee, if all references to 'fortnight' in that subsection were instead to 'reference period'. For present purposes, s 10(2) sets out amounts that are included in determining whether the wage condition is satisfied. It includes gross salary, wages, commission, bonus payments and allowances, inclusive of pay as you go (PAYG) withholding, and any fringe benefits or superannuation contributions provided under an effective salary sacrifice agreement.

2. **Employment conditions test**

   The higher rate applies to employees if a written industrial award, employment contract or similar instrument governs their employment relationship and under that agreement an employee was required to work 80 hours or more in a reference period (including paid leave and paid absence on public holidays). To satisfy evidentiary requirements, such instruments governing employment relationships must be in written form, rather than being only verbal agreements or understandings.

3. **Reasonable assumptions test**

   The higher rate applies to employees if it can be determined, based on reasonable assumptions, that an employee's hours in a reference period were 80 hours or more (including paid leave and paid absence on public holidays).

   This test requires that the hours are not readily ascertainable. While this is satisfied where the hours are not readily ascertainable, it is also satisfied where, while the hours could be readily ascertainable (albeit in the absence of complete records of the hours worked per subsection 6(1)), the steps necessary to determine the hours are not reasonable having regard to the burden it would place on the employer.

   In either circumstance, employers must make reasonable assumptions to estimate whether the employee's hours in a reference period were 80 hours or more (including paid leave and paid absence on public holidays). For assumptions to be reasonable, they must be based on verifiable information. This could include information on how an employer's business usually operates, such as the ordinary business hours, average staffing level in any given week, common shift lengths for certain types of employees and the average number of shifts of employees.

The Determination, registered on the Federal Register of Legislation as F2020L01172 on 16 September 2020, commences on 17 September 2020.

ALTERNATIVE REFERENCE PERIODS FOR SPECIFIED INDIVIDUALS

Alternative reference periods have been provided for certain classes of individuals in determining the applicable rate of JobKeeper payments.

The Commissioner may determine an alternative reference period to establish if the higher or lower JobKeeper rate applies in respect of certain classes of individuals. The Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period Determination 2020 sets out circumstances in which the Commissioner considers the "standard reference period" (see below) may not be a suitable reference period for the purpose of applying s 9A(1), 12AA(1) or 12BA of the Rules to eligible employees, business participants or religious practitioners. The Determination also sets out alternative reference periods that apply in those circumstances.

Alternative reference periods have been made available for classes of eligible business participants as follows:

Class of eligible business participant	Alternative reference period
Less than 80-hours and not representative	The most recent 29-day period, wholly within a calendar month, ending before 1 March 2020 in which any circumstances that cause the eligible business participant's total number of hours of active engagement not to be representative of the eligible business participant's total number of those hours in a typical such 29-day period did not exist.
Individual first began to be an individual covered by the Rules for the entity on or before 1 March 2020 but after 1 February 2020	The 29-day period starting on the day the individual first began to be an individual covered by the Rules for the entity.
Entity conducted business or some of its business in a declared drought zone, or declared natural disaster zone, during February 2020.	The most recent 29-day period, wholly within a calendar month, ending before 1 March 2020 during which the entity did not conduct business or some of its business in a declared drought zone, or declared natural disaster zone.

Alternative reference periods have been made available for classes of eligible employees as follows:

Class of eligible employee	Alternative reference period
Less than 80-hours and not representative	The 28-day period ending at the end of the most recent pay cycle for the employee before 1 March 2020 or 1 July 2020 in which the employee's total number of hours of work, paid leave and paid absence on public holidays was representative of a typical 28-day period.
Employed part-way through the reference period	First 28-day period ending on or after 1 March 2020 or 1 July 2020 that wholly occurs during: • consecutive pay cycles, or • a pay cycle of the employee.
First pay cycle ends after 1 March or 1 July	First 28-day period ending on or after 1 March 2020 or 1 July 2020 that wholly occurs during • consecutive pay cycles, or • a pay cycle of the employee.
Businesses that change hands or changes within a wholly owned group.	First 28-day period ending on or after 1 March 2020 or 1 July 2020 that wholly occurs during: • consecutive pay cycles, or • a pay cycle of the employee.

The Determination, registered on the Federal Register of Legislation as F2020L01173 on 16 September 2020, commences on 17 September 2020.

DECLINE IN TURNOVER CERTIFICATE (FAIR WORK)

The Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020 amends the Coronavirus Economic Response Package (Payments and Benefits) Act 2020 introduces requirements in the Fair Work Act 2009 on certain businesses to obtain a certificate from an 'eligible financial service provider' stating that they have satisfied the 10 per cent decline in turnover test per JobKeeper rules and legislative instruments.

The certificate is issued under section 789GCD of the Fair Work Act only for the purpose of qualifying for the extended JobKeeper provisions as a legacy employer.

This is to enable legacy JobKeeper employers to be able to give JobKeeper enabling stand down directions and JobKeeper enabling directions in relation to duties and location of work and can make agreements about days and times of work.

An eligible financial service provider is required to confirm that the test has been met based on the information provided, however this does not constitute an audit or assurance engagement.

Eligible financial service providers are a registered tax agent, BAS agent or a qualified accountant.

In order to use the JobKeeper provisions in the periods below, legacy employers need to have a certificate for the relevant quarters before the start of each period.

Period for JobKeeper direction or agreement (inclusive)	Quarter to meet 10% decline in turnover test	Comparison quarter
28 Sep to 27 Oct 2020	Jun 2020	Jun 2019
28 Oct 2020 to 27 Feb 2021	Sep 2020	Sep 2019
28 Feb to 28 Mar 2021	Dec 2020	Dec 2019

Employers must provide an eligible financial service provider with all the information they need to accurately determine whether the employer meets the 10% decline in turnover test.

An employer can face penalties if they knowingly provide an eligible financial service provider with false or misleading information.

The Fair Work Ombudsman has published information in relation to the Extension of JobKeeper provisions in the Fair Work Act including guidance for eligible financial service providers on the 10% decline in turnover certificate. The Fair Work Ombudsman engaged with CPA Australia and other professional associations to develop a template certificate for use by eligible financial service providers.

CPA Australia will provide a member resource to support public practitioners soon.

Further resources and information are available on our COVID-19 Resource Hub.

Contact us at policy.advocacy@cpaaustralia.com.au