



Tax Insights

New South Wales JobSaver Payment

Snapshot (this Tax Insights updated as at 1 October 2021)

On 13 and 28 July 2021, the Federal and New South Wales (NSW) governments announced joint support measures for businesses and employees impacted by the COVID-19 lockdown imposed in Greater Sydney.

The key support measures broadly comprises:

- **Income support for individuals** in certain geographical areas via the existing **Commonwealth COVID-19 Disaster Payment** of \$375 for employees who have lost between 8 and 20 hours of work per week, or \$600 for the loss of 20 hours or more per week. Increased payments of \$450 and \$750 respectively apply from the week 2 August 2021 onwards.
- A **JobSaver** payment for **small and medium businesses** in NSW with an annual turnover of between \$75,000 and \$250 million which can demonstrate a 30% reduction in turnover as compared to a comparable period. Eligible entities will receive a fortnightly payment of 40% of their NSW weekly payroll payments, at a minimum of \$1,500 and a maximum of \$100,000 per week, provided staffing levels are maintained.

This Tax Insights covers the NSW JobSaver scheme only. Please see our Tax Insights 2021/16 for details with respect to the COVID-19 Disaster Payment and other Federal and State-based support measures.

1 October 2021

Details of how the JobSaver payment operates is provided on various different webpages on the Service NSW website, initially published on 25 July 2021 and regularly updated:

- JobSaver application page – link [here](#)
- JobSaver payment guidelines – link [here](#)
- JobSaver payment terms and conditions – link [here](#)
- JobSaver payment common questions – link [here](#)
- JobSaver payment documentation – link [here](#)
- JobSaver payment – large tourism, hospitality and recreation businesses – link [here](#)
- JobSaver confirm your business is still eligible – link [here](#)

On 30 September 2021, the Federal and NSW Governments [announced](#) a transitioning of the JobSaver payment in line with NSW's full vaccination rates.

Recent developments: 1 October 2021

On 30 September 2021, the Federal and NSW Governments announced that the JobSaver payment (**excluding JobSaver extension programs**) will begin to transition in line with NSW's full vaccination rates, as follows:

- When NSW reaches 70% full vaccination around 10 October 2021, the JobSaver payment will taper from **40% to 30% of weekly payroll, at a minimum of \$1,125 and a maximum of \$75,000 per week.**
- When NSW reaches 80% full vaccination, the Federal Government's contribution to the JobSaver program will cease, with the NSW Government continuing to fund the program until 30 November 2021. At this point, the JobSaver payment will be tapered from **30% to 15% of weekly payroll, at a minimum of \$562.50 per week and a maximum of \$37,500 per week.**
- The JobSaver program will **cease on 30 November 2021.**

The Service NSW websites have been recently updated on or about 1 October 2021 to reflect the following key updates:

- A **JobSaver extension program** has been introduced for certain registered charities operating in the **animal welfare and social services sectors with an annual turnover of between \$75,000 and \$250 million that have experienced a decline in turnover of at least 15% and less than 30%.** Such organisations may be eligible for the JobSaver payment where the conditions as set out in [Attachment E](#) of the Guidelines are met. Registered charities that have experienced a decline in turnover of 30% or more should apply to the main JobSaver scheme.
- A business, sole trader or not-for-profit (NFP) located in the **Jervis Bay territory** that was not operating in NSW on 1 June 2021 maybe be eligible for the JobSaver payment, if all other eligibility criteria is met.
- A [hardship review panel](#) is being established to assess NSW businesses that are suffering financial hardship but that are ineligible for JobSaver.
- An employee for the purposes of JobSaver includes a religious practitioner of a religious institution where certain conditions as outlined in the Guidelines are met.

This Tax Insights publication has been updated as at 1 October 2021.

JobSaver Payment for business: introduction

The JobSaver scheme will receive 50% funding from the Commonwealth, however it is implemented and **administered by the NSW Government through Service NSW**. As a result, drafting relevant guidelines is the responsibility of the NSW Government, and delivery of the payments is also the responsibility of the NSW Government, through Service NSW.

Broadly, under the **JobSaver payment program**, eligible entities with an annual turnover of between \$75,000 and \$250 million will receive payments of 40% of their weekly payroll paid on a fortnightly basis, at a minimum of \$1,500 and a maximum of **\$100,000 per week**. For non-employing businesses such as sole traders, the payment is set at \$1,000 per week.

As an example, if an eligible employer had a weekly payroll of \$250,000 or more, the employer should be eligible for the maximum business support payment of \$100,000 per week.

For non-employing businesses such as sole traders, the payment remains set at \$1,000 per week.

From **10 October 2021**, the JobSaver payment under the main scheme (i.e. excluding JobSaver extension program payments) will be tapered in line with NSW's full vaccination rates as follows:

- At 70% full vaccination (around 10 October 2021), the JobSaver payment will taper from **40% to 30% of weekly payroll, at a minimum of \$1,125 and a maximum of \$75,000 per week**. For non-employing businesses, the payment will reduce to \$750 per week.
- At 80% full vaccination (around 31 October 2021), the JobSaver payment will be tapered from **30% to 15% of weekly payroll, at a minimum of \$562.50 per week and a maximum of \$37,500 per week**. For non-employing businesses, the payment will reduce to \$375 per week.

On 25 August 2021, a JobSaver extension scheme was introduced for **certain larger businesses in the hospitality, tourism and recreation** industries. Under this extension, eligible businesses will receive 40% of weekly payroll for work performed in NSW up to a maximum weekly payment of:

- **\$300,000 per week** for businesses with an **aggregated annual turnover of more than \$250 million and up to \$500 million**; and
- **\$500,000 per week** for businesses with an **aggregated annual turnover of more than \$500 million and up to \$1 billion**.

The JobSaver payment will be **backdated to "the start of the first fortnight the business first experienced the required decline in turnover on or after the commencement of JobSaver on 18 July 2021"**, being the start of the program.

The JobSaver payment will cease on 30 November 2021. In the meanwhile, businesses that no longer require support may withdraw from the program.

JobSaver Payment: turnover up to \$250m (main scheme)

The following relates to the JobSaver scheme generally, being for those businesses with an aggregated annual turnover of up to \$250 million.

We comment separately below on the expanded JobSaver for the hospitality, tourism and recreation industries, also known as "JobSaver Extension Industries".

Eligible entities

An entity will be eligible if all of the following conditions are met:

- The entity has an active ABN or was operating in NSW on 1 June 2021;
- The entity has an **aggregated annual turnover** (refer below) of **between \$75,000 and \$250 million for the year ended 30 June 2020**;
- The entity has experienced a **decline in turnover of 30% or more** due to the Public Health Order¹ over a minimum two-week period within the Greater Sydney lockdown (commenced 26 June), compared to:
 - The equivalent calendar period in 2019; or
 - The equivalent period in 2020; or
 - The two weeks immediately prior to any restrictions, 12 to 25 June 2021 (inclusive);
- For employing businesses, the entity **“maintains their employee headcount on 13 July 2021** if they receive payments from the commencement of JobSaver, or otherwise from the day immediately prior to the fortnight they first experienced the required decline in turnover while they continue to receive JobSaver payments” (businesses that do not maintain the declared headcount must notify Service NSW); and
- For non-employing businesses, the business receiving payments must be the primary income source (i.e. 50% or more of total income) for the associated person. Individuals with more than one non-employing business may only claim payments for one business.

Turnover

Turnover is relevant at two points in the analysis:

- As an initial entry test (turnover threshold): relevant turnover of between \$75,000 and \$250 million.
- As part of a decline in turnover test.

In both cases, these tests seek to draw on the same concepts as were used for JobKeeper, being “aggregated turnover” for the first test and “GST turnover” for the second test.

It is noted that with respect to the decline in turnover substantiation, different rules apply to “Highly Impacted” businesses that are applying for JobSaver payments of \$10,000 or less per week, as opposed to other eligible businesses.

Key terms:

Aggregated annual turnover of between \$75,000 and \$250 million

- Aggregated Annual Turnover is defined in the website Guidelines and Terms and Conditions to mean **aggregated turnover** as defined in section 328-115 of the ITAA 1997.
- The aggregated turnover concept in the ITAA 1997 is defined to mean the sum of the **annual turnover** for a particular year of:
 - The taxpayer;
 - An entity that is connected with the taxpayer at any time during the year; and
 - An entity that is an affiliate of the taxpayer at any time during the year.

¹ The relevant COVID-19 restrictions for the purposes of the NSW JobSaver payment are the *Public Health (COVID-19 Temporary Movement and Gathering Restrictions) Order 2021* issued on 26 June 2021; stay-at-home order issued on 25 June 2021 and stay-at-home order issued on 27 May 2021.

- Care will need to be taken to identify all entities that are **connected with** or an **affiliate** of the taxpayer. Relevantly, annual turnover is defined as the total **ordinary income** that the entity derives in the relevant year **in the ordinary course of carrying on a business**.
- This test includes the relevant income of the taxpayer on a **worldwide basis**.

Decline in turnover

- Pursuant to the website Guidelines, the current GST turnover as defined in the A New Tax System (Goods and Services Act) 1999 (GST Act) will be applied when assessing whether an applicant experienced a 30% or more decline in turnover for a fortnight.
- Businesses that report GST turnover on their BAS to the ATO on an accrual basis should use the accrual method whilst businesses that report on a cash basis should use the cash method.
- Pursuant to the website Guidelines, current GST turnover has the meaning given by the GST Act, subject to the following modifications:
 - If an entity is part of a GST group, the entity calculates its GST turnover as if it wasn't part of the group. This means that supplies made by one group member to another will be included in GST turnover for the purposes of the decline in turnover test. This replicates the approach taken in JobKeeper;
 - sections 188-15 of the GST Act apply as if a reference to a month is a reference to a fortnight;
 - subsection 188-15(1) of the GST Act is to be applied at the end of the fortnight;
 - subsection 188-15(1) of the GST Act has effect as if the reference in that subsection to “, or are likely to make, during the 12 months ending at the end of that month,” were instead a reference to “during that fortnight”; and
 - Each external Territory is treated as forming part of the indirect tax zone (within the meaning of the GST Act).

Weekly payroll

- This is generally to be determined by referring to the calculations underlying the most recent BAS provided to the ATO prior to 26 June 2021 for the 2020-21 financial year.
- Item W1 in the BAS includes amounts of wages, salaries and other payments that are subject to PAYG withholding tax ([as defined by the ATO](#)).
- Payments subject to withholding tax in W1 includes allowances, leave loading, director fees and termination payments but does not include payments such as superannuation contributions, amount subject to salary sacrifice, interest or dividends. For the purposes of calculating Weekly Payroll, businesses should deduct amounts from W1 that have been withheld on behalf of contractors under voluntary agreements.

Employee headcount

- Pursuant to the website Guidelines, “Employee Headcount” means the total number of persons employed in New South Wales and who are permanent (full-or part time) or casual staff who have been employed for more than 12 months by the business or not-for-profit organisation “as at 13 July 2021, or as at the start of the fortnight in which the business or not-for-profit organisation first experienced the required decline in turnover”.

Maintain their employee headcount

- Pursuant to the website Guidelines, “Maintain their Employee Headcount” means the employer will **not take active steps to end the employment relationship with their employees**.
- Employees who have been stood down under the Fair Work Act 2009 or take leave without pay are considered employees for the purpose of headcount.
- Businesses will remain eligible if their employee headcount declines for reasons including if an employee voluntarily resigns or retires, passes away, concludes a mutually agreed employment contract period or is dismissed for misconduct such as theft, harassment bullying and etc.
- Any reduction in headcount due to redundancies is considered failure by the employer to “maintain their employee headcount”.

Ineligible entities

Certain entities, such as those earning passive income such as rent, interest, dividends and royalties that is more than 50% of the business’ income, government agencies, local governments, banks, and universities are not eligible for JobSaver. It is noted that where passive income is more than 50% of a business’ income but the business is actively providing services that relate to the passive income, the business should contact Service NSW to discuss their circumstances.

See [here](#) for the full list of ineligible businesses which are similar to the entities excluded from JobKeeper, however also includes a business that registered its ABN after 1 June 2021, or a business that has backdated its ABN to before 1 June 2021 in order to be eligible.

The website Guidelines also clarify that:

- Non-employing businesses are not eligible for the JobSaver payment if individuals associated with and deriving income from the business have received a Commonwealth COVID-19 Disaster Payment for the same period.
- Where the annual turnover of non-employing businesses is aggregated with employing business(es) for the purpose of calculating aggregated annual turnover, the non-employing businesses are ineligible to apply.
- Registered charities are not eligible for the JobSaver payment if they receive COVID-19 support from the NSW Department of Communities and Justice Social Sector Support Fund or Commonwealth-funded Business Continuity Payments (e.g. in the early childhood education and care sector).

Highly impacted businesses

The JobSaver scheme identifies certain businesses that are ineligible (as covered above) and also identifies certain businesses that are deemed to be “Highly Impacted”. The list of Highly Impacted businesses identifies particular industries and industry categories, referenced to specific ANZSIC codes. The [list](#) is quite broad and may be amended from time to time.

In addition, the JobSaver scheme further segregates between businesses that are “**Highly Impacted that are applying for weekly JobSaver payments of \$10,000 or less**”, and all other eligible businesses. The main difference between such businesses and all other eligible businesses is that they do not need to provide independent evidence to support their decline in turnover: they can self-declare such a decline. All other eligible businesses will be required to provide from a qualified accountant or other specified person to support the decline in turnover.

An overview of the evidentiary requirements for potentially eligible businesses is shown in the table below.

Potentially eligible businesses	
Businesses on the Highly Impacted Industries List applying for a maximum weekly payment of \$10,000 or less	All other eligible businesses applying for a weekly payment of more than \$10,000
Submit an Australian Income Tax Return (or Notice of Assessment) or other documentation to demonstrate their business had an aggregated annual turnover of between \$75,000 and \$250 million (inclusive) for the year ended 30 June 2020. [refer comments below]	
Declare their employee headcount “on 13 July if they receive payments from the commencement of JobSaver, or from the day immediately prior to the fortnight they first experienced the required decline in turnover”.	
If they have employees, declare they will maintain their employee headcount “from 13 July if they receive payments from the commencement of JobSaver, or from the day immediately prior to the fortnight they first experienced the required decline in turnover, while the business is receiving JobSaver payments”.	

Businesses must notify Service NSW if employee headcount declines over the period of the payment due to any actions of the business.	
If they do not have employees, declare the business is the primary income source for the owner of the business.	
Provide evidence of how the weekly payroll was calculated and:	
<ul style="list-style-type: none"> • For businesses that submit a BAS with a W1 amount (wages and salaries) recorded – their most recent BAS that was submitted to the ATO prior to 26 June 2021 within the 2020-21 financial year; • For businesses that submit a BAS without a W1 amount (wages and salaries) recorded – their 2019-20 NSW payroll tax reconciliation return and copies of the payroll report/s filed with the ATO using single touch payroll, after redacting all personally identifiable information, which include information used in the calculation of Weekly Payroll; • For businesses that do not submit a BAS – copies of the payroll report/s filed with the ATO using single touch payroll, after redacting all personally identifiable information, which include information used in the calculation of Weekly Payroll; • For businesses that do not submit a BAS or payroll reports using single touch payroll – contact Service NSW to discuss alternate evidence of wages and salaries. 	
Lodge other supporting documents, as required, to demonstrate that they meet the eligibility criteria.	
Self-declare they experienced a decline in turnover of 30% or more due to the Public Health Order over a minimum two-week period within the Greater Sydney lockdown (commenced 26 June), compared to the same period in 2019 or the same period in 2020, or the two-week period immediately prior to any restrictions, 12 to 25 June 2021 (inclusive).	Submit evidence through a letter from a qualified accountant, registered tax agent or registered bas agent that they experienced a decline in turnover of 30% or more due to the public health order over a minimum two-week period within the Greater Sydney lockdown (commenced 26 June), compared to the same period in 2019 or the same period in 2020, or the two-week period immediately prior to any restrictions, 12 to 25 June 2021 (inclusive).
Provide details of their qualified accountant, registered tax agent or registered BAS agent for compliance checking.	n/a

Evidence to be submitted: Income tax return

The website guidance states that businesses must submit an Australian Income Tax Return or 'other documentation' to demonstrate the business had an aggregated annual turnover of between \$75,000 and \$250 million for the year ended 30 June 2020.

A business that has a **substituted accounting period** can provide a copy of its lodged Australian Income Tax Return for the last financial year ended **prior** to 30 June 2020.

It is understood that 'other documentation' referred to above may include:

- Accountant's letter;
- Prior Business Activity Statements;
- Income tax declarations - note this may include income tax declarations connected entities and affiliates;
- Audited accounts of the group of which the entity is a member;
- Receipts and invoices from purchases; and
- NSW payroll tax reconciliation returns."

1 October 2021

It will typically be the case that the disclosures in the tax return (including a consolidated income tax return) do not show the aggregated turnover of the entity **and** its connected entities and affiliates. Accordingly, it will be the regular case that this additional documentation will be required. It is not clear how much information will be required to establish this point to the satisfaction of Service NSW so as not to delay the processing of the application and making of payments.

Application and payments

Application for the JobSaver payment opened on 26 July 2021 and closes on 18 October 2021. Entities will need to apply for payments via their MyServiceNSW account, with payments expected to start from 31 July.

JobSaver payments will be made in arrears. Businesses applying for JobSaver will need to nominate the two-week period in which they first experienced the required decline in turnover on or after the commencement of JobSaver on 18 July 2021. Once approved, **payments will begin from that nominated fortnight.**

Businesses will not need to re-apply but must notify Service NSW if they are not maintaining the number of employees they had from 13 July 2021. As mentioned above, reductions in employee headcount resulting from circumstances outside the control of the employer (such as voluntary resignations, death of an employee) will not be taken as a reduction in employee headcount from 13 July.

Reconfirming eligibility every fortnight

On or around 13 September 2021, the JobSaver website guidance was updated to require JobSaver business recipients to reconfirm their eligibility on a fortnightly basis, in order to continue receiving payments under the program.

The policy objective for this requirement is to ensure that recipients do not continue to receive NSW COVID business support if circumstances have clearly changed since applications were first made. Businesses that no longer require support may withdraw from the program.

The JobSaver "Common Questions" website [here](#) and the JobSaver "Confirm your business is still eligible for JobSaver" website [here](#) were updated on or around 20 September with more details, as summarised below.

- A business will need to reconfirm its eligibility to continue to receive the JobSaver payment for the period from **13 September to 26 September 2021**. The business will need to confirm that it has experienced a decline in turnover of 30% or more due to the impact of the public health order in the preceding fortnight, and that the business continues to maintain their employee headcount.
- As eligibility will be reconfirmed each fortnight, some businesses **may be eligible one fortnight and not eligible the next fortnight** if their circumstances change. Becoming ineligible for one fortnight does not disqualify a business from becoming eligible again in a future fortnight where they meet the eligibility conditions, and such businesses will not need to re-apply. They will be given the opportunity to declare their eligibility every fortnight through email reminders.
- Businesses that don't reconfirm by the due date will not miss out on the payment for that fortnight. **The reconfirmation option will remain open for each payment period for the duration of the program.** Payment will be received within five business days of a business reconfirming their eligibility. **September payments will continue even if a business doesn't reconfirm eligibility,** however any payments after that will be processed once eligibility is confirmed.
- Businesses can delay their reconfirmation if, for example, they need to finalise their month-end accounting records. They can reconfirm for multiple fortnights in one go and their [MyServiceNSW Business Profile](#) will show the fortnights for which confirmation is still required.
- The person that submitted the initial application is required to submit the reconfirmation of eligibility. If an accountant, registered tax agent or registered BAS agent applied on behalf of the business, such persons will need to reconfirm eligibility for the business.
- Where a business is still closed and cannot trade during the fortnight for which it is reconfirming its eligibility, the business can indicate that it has continued to experience a decline in turnover of at least 30% by selecting 'yes' on the confirmation screen. Such businesses are **not required to perform a calculation of decline in turnover.**

- If the business has continued to trade and experienced a decline in turnover of at least 30% for the fortnight for which it is confirming its eligibility, the business can demonstrate the decline in turnover using **one of three options relating to comparison periods**, as outlined in the table below and available [here](#). Note that the **same option must be used when reconfirming the business' eligibility in the future**. Such businesses do not need to provide any additional evidence or attach any documentation when reconfirming eligibility. However, they will need to maintain adequate records to show evidence of their eligibility if required at a later date.

Option	Comparison period	Example
Option 1	If your initial comparison period was in 2019 or 2020, use the same year but the corresponding fortnight as the current fortnight (rolling comparison period)	For example, if you initially compared the period 26 July to 8 August 2021 to 26 July to 8 August 2019, and you are now testing 13 September to 26 September 2021, then your comparison period is 13 September to 26 September 2019. You cannot use 13 September to 26 September 2020 as your comparison period in this example.
Option 2	If your initial comparison period was in 2019 or 2020, use the same comparison period that was used in the initial application (static comparison period)	For example, if you initially compared the period 26 July to 8 August 2021 to 26 July to 8 August 2019, and you are now testing 13 September to 26 September 2021, then your comparison period remains 26 July to 8 August 2019. This comparison period will remain fixed for all future periods.
Option 3	If you used 12 June to 25 June 2021 as your initial comparison period, you must use that same period that was used in the initial application (static comparison period)	For example, if you initially compared the period 26 July to 8 August 2021 to 12 June to 25 June 2021, and you are now testing 13 September to 26 September 2021, then your comparison period remains 12 June to 25 June 2021. This comparison period will remain fixed for all future periods.

JobSaver Payment: tourism, hospitality and recreation industries (JobSaver extension program)

On 25 August 2021, the JobSaver scheme was expanded for businesses with **aggregated annual turnover of more than \$250 million and up to \$1 billion** in the **tourism, hospitality and recreation** industries (also known as JobSaver Extension Industries).

Eligible entities

An entity will be eligible if all of the following conditions are met:

- The entity has an active ABN or was operating in NSW on 1 June 2021;
- The entity has an **aggregated annual turnover of between \$250,000 and \$1 billion for the year ended 30 June 2020**;
- The entity has experienced the "JobSaver Extension Required Decline in Turnover" of:
 - 50% for businesses with aggregated annual turnover of more than \$250 million and up to \$500 million; or**

- **70% for businesses with aggregated annual turnover of more than \$500 million and up to \$1 billion.**
- The entity can demonstrate the relevant decline in turnover over a **minimum one-month period within the lockdown (commenced 26 June), compared to the same period in 2019 or another agreed period;**
- The entity **maintains its "JobSaver Extension Employee Headcount"** from the day immediately prior to the month they first experienced the required decline in turnover while they continue to receive JobSaver payments (businesses that do not maintain the declared headcount must notify Service NSW); and
- The entity operates (or one of the entities in a Group operates) in **one of the industries outlined** and as referenced to specific ANZSIC codes in Attachment D to the Guidelines (also in Attachment B in the Terms and Conditions).

Where the business is part of a Group structure:

- The decline in turnover will be calculated for eligible entities, being entities that fall into one of the specifically listed ANZSIC codes;
- The weekly payroll of eligible entities that meet the decline in turnover test will be calculated and aggregated;
- The Group will receive 40% of this weekly payroll, up to a maximum weekly payment of \$300,000 or \$500,000 depending on the turnover of the Group;
- The Group will distribute JobSaver payments to eligible entities within the Group.

One entity will apply on behalf of the Group. This entity could be the Designated Group Employer (DGE) or Single Lodger (SL) for payroll tax purposes.

Further details and the evidentiary requirements for applicants under this scheme are provided [here](#).

JobSaver payments generally

The following matters relate to JobSaver payments generally, meaning the items are relevant to **both**:

- JobSaver for businesses with aggregated turnover of up to \$250 million; and
- Expanded JobSaver for the tourism, hospitality and recreation industries.

Alternative circumstances

Where a business operates through a **trust structure**, the applicant will be required to provide additional information to demonstrate an aggregated annual turnover of between \$75,000 and \$250 million (inclusive) is derived through the trust. The entity operating the business is eligible for JobSaver, not other entities that are receiving passive income from the business.

Businesses operating in New South Wales with their **ABN registered outside New South Wales** will be able to apply if they can provide evidence their business was operating in New South Wales on 1 June 2021. Evidence to demonstrate this includes commercial rates notices or lease agreements.

An **alternate comparison period or alternative supporting evidence** can be applied for businesses or not-for-profit organisations in the following circumstances which may not meet the eligibility criteria and supporting evidence requirements, but still may be eligible for JobSaver. These circumstances may include:

- Not operating for the full year to 30 June 2020 (e.g. new businesses);
- Were affected by drought, bushfires or other natural disasters;
- Business acquisition, disposal, or business restructure that has impacted the business' turnover;
- A sole trader or small partnership impacted by sickness, injury or leave; or
- Businesses that are a **group employing entity** with a principal function of supplying employee labour to other members of the group (see below).

1 October 2021

The alternative rules for these circumstances are covered in Attachment C to the website Guidelines [here](#).

Group employer entities

The alternative rule for group employing entities relates to the calculation of the **decline in turnover** and broadly follows the modified group employer test in JobKeeper. Under this modified test, group employer entities can use the **sum of the current GST turnovers of the group members to which it supplied employee labour services during the relevant testing periods**, in order to determine whether the decline in turnover condition is met.

An entity will be a group employing entity with a principal function of supplying employee labour to other members of the Group where:

- The circumstances described in paragraphs 8A(1)(a)-(b) of the Coronavirus Economic Response Package (Payments & Benefits) Rules 2020 ("JobKeeper Rules") would apply to the entity for the whole of the period within the lockdown that is used for the purpose of assessing decline in turnover, and for the whole of the relevant comparison period; and
- The circumstances described in paragraph 8A(2)(a) of the JobKeeper Rules would also apply to the business, if the reference to "a turnover test period during which the test time occurs" were instead a reference to "period within the lockdown".

Integrity measures

The JobSaver payment program contains some integrity measures as outlined in the website Terms and Conditions. In this regard, the JobSaver payments are made on the basis of meeting certain conditions including:

- The JobSaver recipient uses the payments to cover **Eligible Expenses** (see below) incurred due to the impacts of the public health order in NSW (and if requested, the JobSaver recipient provides evidence of the Eligible Expenses for which a payment is sought under the program);
- The JobSaver recipient complies with the law at all times, including public health orders and COVID-19 restrictions; and
- The JobSaver recipient immediately notifies Service NSW if, due to their actions, the employee headcount declines over the period that payments are received.

The meaning of **Eligible Expenses** was expanded on or around 13 September 2021 to mean any costs related to help a business or not-for-profit to **survive, maintain relationships with their employees and be in a position to trade when restrictions are lifted**, including, but not limited to, salaries and wages, utilities and rent, financial, legal or other advice, marketing and communications, perishable goods, or other business costs.

Income tax treatment of JobSaver payments

On 10 August 2021, **Treasury Laws Amendment (COVID-19 Economic Response No. 2) Bill 2021** received Royal Assent.

Amongst other matters, this Bill allows the Treasurer to make rules for establishing a new Federal payment scheme for businesses adversely affected by a significant lockdown imposed by a state, in the period between 1 July 2021 and 31 December 2022. This will facilitate the Federal Government's establishment and administration of a scheme similar to the NSW JobSaver, for other states and territories, if circumstances require. It is expected that the Treasurer will shortly issue Rules that will provide the relevant detail for this scheme.

In addition, this Bill amends the income tax law to make payments received by certain eligible entities under certain COVID-19 business support payments administered by the Commonwealth non-assessable non-exempt (NANE) income. Broadly, an entity is eligible for NANE tax treatment if:

1 October 2021

- The payment was made under a program administered by the Commonwealth (or a Commonwealth authority) that has been declared eligible by the Minister;
- The payment was received by the entity in the 2021-22 financial year; and
- The entity carries on a business and has an aggregated turnover of less than \$50 million.

In respect of State and Territory payments and grants to businesses affected by COVID-19, section 59-97 of ITAA 1997 provides that certain payments will be NANE if, inter alia, the Treasurer has made a relevant declaration by way of legislative instrument. On 23 August 2021, the Treasurer registered [Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Amendment Declaration \(No. 2\) 2021](#). This declaration identifies specific grant programs administered by NSW and Victoria as eligible programs for the purposes of section 59-97, including the JobSaver payment as administered by the NSW government.

It should be noted that an entity would be eligible for NANE tax treatment if:

- The payment was received by the entity in the 2020-21 or 2021-22 financial year; and
- The entity carries on a business and has an aggregated turnover of less than \$50 million.

Although the JobSaver payment has been expanded to cover businesses with aggregated turnover of up to \$250 million, and up to \$1 billion in the tourism, hospitality and recreation industries, pursuant to existing legislation, the NANE treatment appears to be limited only to entities with aggregated turnover of less than \$50 million.

Deloitte is committed to helping businesses manage and mitigate their risks, and recover from the COVID-19 pandemic.

Visit our external site, [Connecting for a Resilient World](#), for articles and thought leadership pieces from around the world to help businesses thrive post-COVID-19 and beyond.

Contacts

Brett Greig

Tax & Legal
Managing Partner
Tel: +61 3 9671 7097
bgreig@deloitte.com.au

David Watkins

Tax Insights & Policy
Partner
Tel: +61 2 9322 7251
dwatkins@deloitte.com.au

Mark Hadassin

National Leader
Business Tax Services
Tel: +61 2 9322 5807
mhadassin@deloitte.com.au

Spyros Kotsopoulos

Deloitte Private Tax & Advisory
Partner
Tel: +61 2 9322 3593
skotsopoulos@deloitte.com

Elizma Bolt

Global Employer Services
Partner
Tel: +61 2 9322 7614
ebolt@deloitte.com.au

Robert Nguyen

Tax & Legal
Partner
Tel: +61 2 9322 7239
robertnguyen@deloitte.com.au

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the "Deloitte Network") is, by means of this publication, rendering professional advice or services.

Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/au/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 244,000 professionals, all committed to becoming the standard of excellence.

About Deloitte Australia

In Australia, the member firm is the Australian partnership of Deloitte Touche Tohmatsu. As one of Australia's leading professional services firms, Deloitte Touche Tohmatsu and its affiliates provide audit, tax, consulting, and financial advisory services through approximately 7,000 people across the country. Focused on the creation of value and growth, and known as an employer of choice for innovative human resources programs, we are dedicated to helping our clients and our people excel. For more information, please visit Deloitte's web site at www.deloitte.com.au.

Liability limited by a scheme approved under Professional Standards Legislation.

Member of Deloitte Touche Tohmatsu Limited

© 2021 Deloitte Touche Tohmatsu.