



Tax Insights

JobMaker Hiring Credit Rules released

Snapshot

On 6 October 2020, as part of the 2020-21 Budget, the Government announced the introduction of the JobMaker Hiring Credit scheme. The estimated cost of the scheme is \$4 billion, with the scheme aimed at supporting businesses to hire additional employees under 35.

Legislation for the scheme was given Royal Assent on 13 November 2020, however like JobKeeper, the detail is in the Treasurer's Rules. On 4 December 2020, following a consultation period, the Government released the final Rules ([Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 9\) 2020](#)) for the scheme. These Rules together with the [Explanatory Statement](#) specify the details of the scheme. A key change in the final Rules relates to the introduction of a specific anti-avoidance provision to protect existing employees.

Further, the ATO issued the [JobMaker Hiring Credit Reporting Obligations Instrument 2020](#). This instrument sets out the information that employers who seek to participate in the scheme must provide to the ATO. On 7 December 2020, further guidance was made available on the ATO's [website](#).

The Rules and the general operation of the scheme are very complex. It is expected that there will be numerous technical and or practical / calculation matters that a potential claimant will need to work through prior to being in a position to determine potential eligibility. Further, the amount of JobMaker payments that will ultimately be received will depend upon various events that will occur after eligible additional employees are hired.

Under the JobMaker Hiring Credit scheme, the Australian Taxation Office (ATO) will pay **eligible employers** a payment for each **additional job** they create between 7 October 2020 and 6 October 2021, for which they hire an **eligible employee** who is aged between 16 and 35.

For a period of up to 12 months from the time an additional employee commences employment, an eligible employer may claim a payment from the ATO of up to:

- \$200 a week for each additional eligible employee aged 16 to 29 years old (a maximum amount of approx. \$10,000 per eligible employee);
- \$100 a week for each additional eligible employee aged 30 to 35 years old (a maximum amount of approx. \$5,000 per eligible employee).

The **Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020** and the **JobMaker Hiring Credit Reporting Obligations Instrument 2020** became effective on 4 December 2020. This publication is based on the final Rules and is current as of 9 December 2020.

Overview

The Jobmaker Hiring Credit payment is, broadly, available to an employer that creates **additional employment** for individuals aged 16 to 35 years during the 12-month period ending on 6 October 2021. The payment is given in respect of the individuals' first 12 months of employment with the employer.

There are two different payment rates:

- Employers are eligible for the **higher rate of \$200 per week** for individuals **aged 16 to 29 years** (inclusive) at the commencement of their employment; and
- Employers are eligible for the **lower rate of \$100 per week** for individuals **aged 30 to 35 years** (inclusive) at the commencement of their employment.

The JobMaker Hiring Credit scheme commences on 7 October 2020 and ends on 6 October 2022, but only applies to eligible individuals who commenced employment in the first year of the scheme: between 7 October 2020 and 6 October 2021.

Entitlement to a JobMaker Hiring Credit payment is determined in relation to three-month periods known as **JobMaker periods**, as follows:

JobMaker period	Dates (inclusive)
1	7 October 2020 to 6 January 2021
2	7 January 2021 to 6 April 2021
3	7 April 2021 to 6 July 2021
4	7 July 2021 to 6 October 2021
5	7 October 2021 to 6 January 2022
6	7 January 2022 to 6 April 2022
7	7 April 2022 to 6 July 2022
8	7 July 2022 to 6 October 2022

Eligible entities

In order for an entity (referred to in the Rules as the **employer**) to be entitled to the JobMaker Hiring Credit payment in respect of its **eligible additional employees** (see below), the employer must:

- Carry on a business in Australia or be a non-profit body pursuing its objectives principally in Australia (or be an international affairs deductible gift recipient¹);
- Have an ABN and are registered for PAYG withholding from the time it elects to participate in the scheme;
- Not be a **disqualified employer** (see below);
- Meet the **additionality criteria** (see below);
- Not be entitled to a **JobKeeper payment** for an individual for a fortnight that begins during the period (see below);
- Meet the **notification and reporting requirements** (see Administration and integrity provisions section below);
- Have no outstanding income tax or GST return which was due in the last two years;
- Not be subject to the major bank levy;
- Not be a Commonwealth, state or local government agency (or an entity wholly owned by such an agency) or a sovereign entity²; and
- Not be in liquidation or bankruptcy.

Disqualified employer: anti-avoidance provision

An entity may be disqualified for the JobMaker Hiring Credit scheme for a period if:

- At or before the end of the period, the entity **terminates the employment, or reduces the ordinary hours of work**, of an employee; **and**
- The termination or reduction is done as part of a scheme for the **sole or dominant purpose** of the entity obtaining, or increasing the amount of, the JobMaker Hiring Credit payment.

This provision is a new anti-avoidance provision introduced in the final Rules that creates additional safeguards for employees, similar to the proposed protections raised in the Senate.

Generally, this rule would not apply to an arrangement voluntarily entered into by an employee whose employment was terminated or whose ordinary hours of work were reduced (at the request of the employee to suit their needs or preferences). However, this arrangement could be in scope of the rule if it was not truly voluntary (for example, because the employee was manipulated or coerced into agreeing to the change).

Additionality criteria

An eligible employer must satisfy **both** of the following to be entitled to the JobMaker Hiring Credit payment for a particular JobMaker period for an eligible additional employee:

- A headcount increase; **and**
- A payroll increase.

¹ Under subsection 30-80(1) of the *Income Tax Assessment Act 1997 (ITAA 1997)*.

² The final Rules clarify that wholly-owned resident subsidiaries of a body politic of a foreign country or foreign government agency may be a qualifying entity.

Headcount increase

To be entitled to the JobMaker Hiring Credit payment for a period, an entity must have created additional employment during the period. Additional employment is measured by reference to the number of employees were employed by the entity on 30 September 2020.

An entity has a headcount increase for the first four JobMaker periods if the number of employees employed by the entity **at the end of the last day of the JobMaker period** is greater than the number of employees that were employed by the entity on 30 September 2020 (the **baseline headcount**).

The headcount increase calculation is more complex for the fifth to eight JobMaker periods, because it becomes necessary to take into account the headcount increase of the entity during the first year of the JobMaker scheme.

Payroll increase

An entity satisfies the payroll increase condition for a particular JobMaker period if relevant salary payments, etc for that period **is greater than its baseline payroll**. In this regard:

- Determine the following **payroll** components for each of the entity's employees **during the JobMaker period**:
 - Amounts paid as salary, wages, commission, bonuses and allowances;
 - Amounts withheld as PAYG amounts;
 - Salary sacrifice superannuation contributions; and
 - Other amounts paid or dealt with forming part of salary sacrifice arrangements
 - Note: Employee termination payments are excluded.
- Determine the **baseline payroll amount** which is broadly the sum of those payroll components paid during a period, comprising the same number of days as the relevant JobMaker period, that ended on 6 October 2020.
- The **excess** of the relevant amounts for a JobMaker period over the baseline payroll amount is the entity's **payroll amount** for the period. For convenience (and whilst not a defined term), we also refer to the payroll amount in this publication as the **excess payroll amount**.

The number of days in the JobMaker period being tested will determine the number of days in the reference period. As the number of days in JobMaker periods varies, the number of days and payroll cycles covered by the relevant reference period may differ from one JobMaker period to the next.

Any payments relating to the entity's pay cycles (e.g. weekly, fortnightly or monthly) that were paid during the JobMaker period will be counted for that JobMaker period .

Where the payroll amount for a JobMaker period is less than or equal to the reference period payroll amount, the entity may **not** claim a JobMaker Hiring Credit for that JobMaker period. An excess payroll amount (i.e., the increase over the baseline payroll amount) is also relevant to the calculation of the JobMaker Hiring payment (see below).

Interaction with JobKeeper and other government payments

As mentioned above, an entity cannot be eligible to receive the JobMaker Hiring Credit payment if it also receives a JobKeeper payment for a fortnight which **begins** during the JobMaker period. This ensures that an entity cannot participate in both the JobKeeper scheme and JobMaker scheme simultaneously.

However, an entity is allowed to have a single JobKeeper fortnight **end** at the start of a JobMaker period, thus allowing an entity to transition from the JobKeeper scheme to the JobMaker Hiring Credit scheme. Such an entity can employ an eligible employee during a JobMaker period for which the entity is not entitled to receive the JobMaker Hiring Credit payment.

Other than JobKeeper, entities cannot simultaneously claim the JobMaker Hiring Credits and other Australian wage subsidies such as the:

- Supporting Apprentices and Trainees Wage subsidy;
- Australian Apprentice Wage subsidy;
- Boosting the Apprenticeship Commencements Wage subsidy;
- Restart, Youth Bonus, Youth, Parents or Long-term Unemployed Wage Subsidies.

Eligible additional employees

Qualifying entities can only receive the payment for a JobMaker period in respect of eligible additional employees. An eligible additional employee is an individual who:

- Commenced employment between 7 October 2020 and 6 October 2021;
- Was aged between 16 years or over and less than 36 years at the time they commenced their current employment with the entity;
- Has worked or has been paid for an average of 20 hours a week for the time the individual was employed by the qualifying entity during the JobMaker period: the 20 hours average applies to the number of whole weeks that an employee was employed in a period and includes any hours of paid leave, paid absence on public holidays that the employee takes during the period;
- Meets the **pre-employment** condition (see below);
- Meets the **notice requirement** (see below); and
- Is not an **excluded employee** (see below).

Pre-employment condition

The pre-employment condition is that for at least 28 consecutive days of the 84 days (i.e. for 4 out of 12 weeks) immediately before the commencement of employment of the individual, the individual was receiving at least one of the following payments under *the Social Security Act 1991*:

- Parenting payment;
- Youth allowance (except if the individual was receiving the payment on the basis that they were undertaking full time study or was a new apprentice); or
- JobSeeker payment.

An individual who received a nil payment for a time can meet the pre-employment condition by including days in respect of which they received the nil payment (e.g. due to waiting periods). However, the number of days in respect of which they received the nil rate, or a combination of days paid and nil payment days, must still be at least 28 consecutive days out of the 84 days immediately preceding their employment by the entity.

Notice requirement

The notice requirement for an eligible additional employee is that the individual must give written notice to the employer in the approved form that the individual:

- Met one of the applicable age requirements at the time they commenced employment (that is, they were either aged between 16 and 29, or between 30 and 35);
- Meets the pre-employment condition; and
- Has not provided such a notice to another entity of which they are currently an employee.

Employers must ask their employees to complete the ATO provided employee notice, or create their own employee notice (see [here](#) for details).

The notification can only be given once the employee commences employment with the employer and ceases to have effect once the individual ceases employment with the employer. Employees are not permitted to have valid notices with multiple employers at the same time, and penalties are applicable for false or misleading declarations.

An employee can provide a further nomination to a new employer if the employee changes employment. In order to provide a further notice the individual would again need to meet the qualification requirements such as age and pre-employment conditions.

Excluded employees

Excluded employees broadly include any of the following persons:

- If the entity is a sole trader – a relative³ of the sole trader;
- If the entity is a partnership – a partner of the partnership or a close associate⁴ of a partner in the partnership;
- If the entity is a trust⁵ – the trustee or beneficiary of that trust, or a close associate of a trustee or a beneficiary of the trust; or
- If the entity is a company⁶ – a shareholder in the company or a director of the company or a close associate of a shareholder in or a director of the company.

An exclusion also applies to an individual who:

- Was at any time between 6 April 2020 and 6 October 2020, engaged, other than as an employee, to perform a substantially similar role or substantially similar functions or duties for the entity (for example, as a subcontractor); or
- Commenced employment with the entity 12 months or more before the first day of the period.

³ Subsection 995-1(1) of the ITAA 1997 defines the relative of a person as:

- The person's spouse; or
- The parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse; or
- The spouse of the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse.

⁴ The term 'close associate' is defined in the final Rules and includes a relative of a partner in a partnership, trustee of a trust or shareholder or director in a company. The term also applies on a look-through basis, which disregards an interposed entity.

⁵ Other than a widely held unit trust as defined in section 272-105 of Schedule 2F to the ITAA 1936

⁶ Other than a widely-held company as defined in subsection 995-1(1) of the ITAA 1997

JobMaker Hiring Credit payment amount

The amount of payment a qualifying entity may receive in relation to a JobMaker period is worked out as **the lesser of:**

- The **headcount amount** for the period; and
- The payroll amount (**excess payroll amount**) for the period (refer above).

It is expected that the ATO will automate these two calculations for most employers.

Unlike the headcount increase which is worked out on the last day of the JobMaker period, the headcount amount is worked out on a daily basis for the JobMaker period.

The **headcount amount** for a JobMaker period is broadly calculated as the sum of the following amounts:

- Multiply the **higher rate days**⁷ by **\$200** and divide by 7, where the higher rate days is the number of days that each eligible employee (aged 16 years or over and less than 30 years when employment commenced) was employed in that JobMaker period; and
- Multiply the **lower rate days** by **\$100** and divide by 7, where the lower rate days is the number of days that each eligible employee (aged 30 years or over and less than 36 years when employment commenced) was employed in that JobMaker period.

Whilst the headcount amount for the period essentially tracks the \$200 / \$100 payment that could be expected for additional higher rate and lower rate employees, the actual amount of the JobMaker payment for a period may be less than this amount if the payroll amount (excess payroll amount) for the period is less than the headcount amount.

Administration and integrity provisions

Initial registration

Under the rules, an eligible employer must notify the ATO in the approved form of its **election to participate** in the scheme by the end of the JobMaker period that the entity first elects to participate. For example, for an entity that elects to participate for the first JobMaker period of 7 October 2020 to 6 January 2021, the notice must be provided to the ATO by 6 January 2021. The ATO appears to have [extended this initial registration date](#) to the end of the first claim period (being 30 April 2020).

Eligible employers can register for the Scheme from 7 December 2020 through either ATO online services, the Business Portal or registered tax and BAS agents. As part of the registration process, the employer must advise their baseline values for headcount and payroll.

Once an entity has notified the ATO of its election to participate for a period, the election also applies for any subsequent period. Employers will be able to view or amend their registration details after the ATO has processed their registration up until they submit their first JobMaker Hiring Credit claim.

⁷ These higher and lower rate days are subject to a cap of 'maximum payable days' for the JobMaker period.

Making a claim

Employers can submit claims from 1 February 2021 (for new jobs created in the first reporting period of 7 October 2020 to 6 January 2021). Employers will have three months to submit claims following the opening of the claim period.

The **JobMaker Hiring Credit Reporting Obligations Instrument 2020** sets out the reporting requirements for employers who wish to make a claim for the JobMaker Hiring Credit payment. There are two reporting obligations, the first relating to employees and the second relating to the JobMaker Hiring Credit claim. The ATO notes that an employer can only make a claim after the ATO has processed a registration.

Employee reporting (information reported about eligible additional employees)

Employers must notify the ATO of specific details for each employee they intend to claim for as an eligible additional employee, including the full name, tax file number, date of birth, employment commencement and cessation dates and whether the employee met the average hours of work requirement.

The employer must report this information via Single Touch Payroll (STP) unless exempted, and in accordance with the following reporting deadlines:

No	JobMaker Period	STP JobMaker reporting deadline	JobMaker Claim period ends
1	7 October 2020 – 6 January 2021	27 April 2021	30 April 2021
2	7 January 2021 – 6 April 2021	28 July 2021	31 July 2021
3	7 April 2021 – 6 July 2021	28 October 2021	31 October 2021
4	7 July 2021 – 6 October 2021	28 January 2022	31 January 2022
5	7 October 2021 – 6 January 2022	27 April 2022	30 April 2022
6	7 January 2022 – 6 April 2022	28 July 2022	31 July 2022
7	7 April 2022 – 6 July 2022	28 October 2022	31 October 2022
8	7 July 2022 – 6 October 2022	28 January 2023	31 January 2023

As noted above, STP reporting is due three days before the end of the JobMaker claim period. This will enable the relevant information to be pre-filled in the claim form.

Information to be provided as part of the JobMaker Hiring Credit payment claim

Employers must report certain information for **each claim period** for which the employer wishes to make a JobMaker Hiring Credit payment claim, including payroll and headcount data for a JobMaker period and confirmation that each employee included in the claim calculation is an eligible additional employee.

Payment by the ATO

The JobMaker payment is paid three months in arrears to employers and the first claim will be available online from February 2021.

All JobMaker Hiring Credit payments are assessable as ordinary income of the receiving entity and the normal deductions apply for amounts the entity pays to employees. In addition, the payments are not subject to GST and do not need to be included in the BAS. For businesses operating on an accruals accounting basis, JobMaker Hiring Credits will be derived when the entity provides the ATO with a valid claim form after each JobMaker period.

Integrity provisions

As discussed above, an anti-avoidance rule for disqualifying employers that has been introduced in the final Rules is specifically targeted at arrangements where an employer artificially manipulates their employee headcount and/or payroll for a JobMaker period. An employer who is disqualified under this specific rule loses all entitlements to the JobMaker Hiring Credit payment for any JobMaker period that ends after the termination or reduction in hours occurred. This will include a period in which the termination or reduction occurred, as well as any subsequent periods.

In addition, the Rules state that the integrity provisions in the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*, such as the requirements relating to record keeping in section 14 and the disallowance of payments for contrived schemes in section 19 of the Act equally apply to the JobMaker Hiring Credit scheme. These provisions ensure the integrity of the scheme by requiring entities to maintain sufficient records to substantiate their claim and prevent both employers and employees from entering into arrangements for the sole or dominant purpose of obtaining the JobMaker Hiring Credit.

The consequences for such employers include:

- Losing the entitlement to the hiring credit; and
- Being subject to general interest charges in relation to the overpayment of hiring credits and administrative penalties for making false or misleading statements to the ATO.

The existing rights and safeguards for employees and the full range of general Fair Work protections also apply, such that employers who take adverse action against an older employee in order benefit from the scheme would be acting unlawfully under both the *Age Discrimination Act 2004* and the *Fair Work Act 2009*.

Comment

The JobMaker Rules and the general operation of the scheme are very complex. It is expected that there will be numerous technical and or practical / calculation matters that a potential claimant will need to work through prior to being in a position to determine potential eligibility.

Realistically, at the time of hiring an eligible employee, the employer will not know with any certainty what the amount of the JobMaker payment will be for each JobMaker period in the following year.

For example, the headcount increase is determined at the end of a JobMaker period: so it may be that additional eligible employees are hired, and it is expected that there will be a headcount increase for the particular JobMaker period, however, if other employees resign or otherwise leave, the headcount increase may be less than expected, and indeed, there may be a headcount decrease. It may be for example that there is a headcount increase in some JobMaker periods and a headcount decrease in other JobMaker periods.

Related to this is that the payroll amount (excess payroll amount) for the period can also only be determined at the end of the JobMaker period. The relevant payroll for a JobMaker period will be a function of various factors, including levels of hirings / departures over the JobMaker period. Whilst it may be that there is a relevant increase in payroll so as to be eligible for the JobMaker payment for a particular JobMaker period, if it transpires that this excess payroll amount for the period is relatively small, the JobMaker payment for that period will be less than the \$200 / \$100 weekly payment that was otherwise expected for each higher rate / lower rate eligible additional employee.

The maximum JobMaker payment over a year in respect of a higher rate / lower rate eligible additional employee is approx. \$10,000 / \$5,000 per eligible employee.

For eligibility with effect from **JobMaker period 1** (7 October 2020 to 6 January 2021), some key dates are:

- **From 7 December 2020** - An eligible employer must **register with** the ATO in the approved form of its registration to participate in the scheme by the end of the JobMaker period, being 6 January 2021 (now extended to the end of the first claim period). The employer must determine [and advise](#) baseline values for headcount and payroll as part of registration, together with their contact details.
- **1 February 2021** – First claim period (for JobMaker period 1) opens
- **27 April 2021** - **STP reporting** should be up to date
- **30 April 2021** – First claim period (for JobMaker period 1) closes.

Even if an employer is not proposing to claim a JobMaker payment for JobMaker period 1, it may be prudent to nonetheless prudent to notify the ATO of its election to participate in the JobMaker scheme as soon as possible so that this aspect of the compliance is addressed upfront.

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