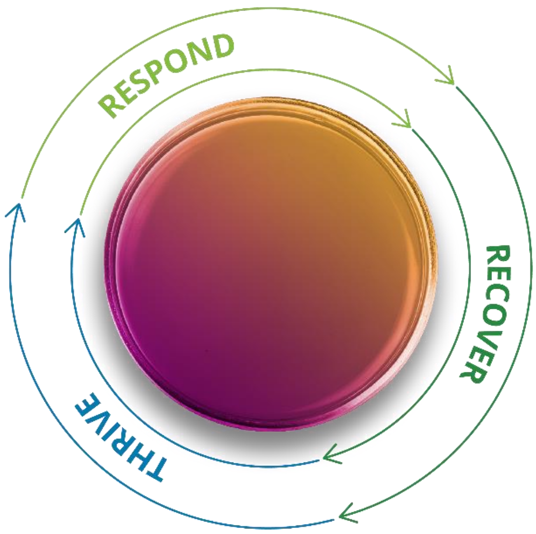
1 April 2020

Australia 2020/9



Tax Insights

JobKeeper scheme: keeping Australians in a job

Snapshot

On 30 March 2020, the Australian Government announced a third round of stimulus and support to the economy. This follows previous announcements on 12 March 2020 and 22 March 2020.

Under the JobKeeper scheme, the Government will pay eligible employers a wage subsidy, being a flat payment of $1500 per fortnight for an estimated 6 million eligible employees. As the name suggests, the scheme is targeted at keeping employees in a job. The scheme is proposed to run for 6 months, at a cost of $130 billion.

The Government issued a media release together with various Fact Sheets on 30 March 2020 and indicated that it will provide updates on further business cashflow support in coming days. Indeed, on 31 March 2020 the Government provided additional information on the measure including the introduction of a Commissioner's discretion.

Labor has announced that it is supportive of the measures. It is expected that once draft legislation is prepared, this will be discussed and agreed with the Opposition. After that, Parliament would return for a brief sitting to pass this and any other necessary legislation. It is assumed that in order for the payments under the scheme to be made in early May 2020, the legislation will need to be passed and receive Royal Assent in April 2020.

This Tax Insights has been **updated as at 1 April 2020**.

Overview

Under the design of the scheme, employers will receive the JobKeeper Payment from the Government (via the Australian Taxation Office), and employees will be paid directly by their employer under the normal pay cycle.

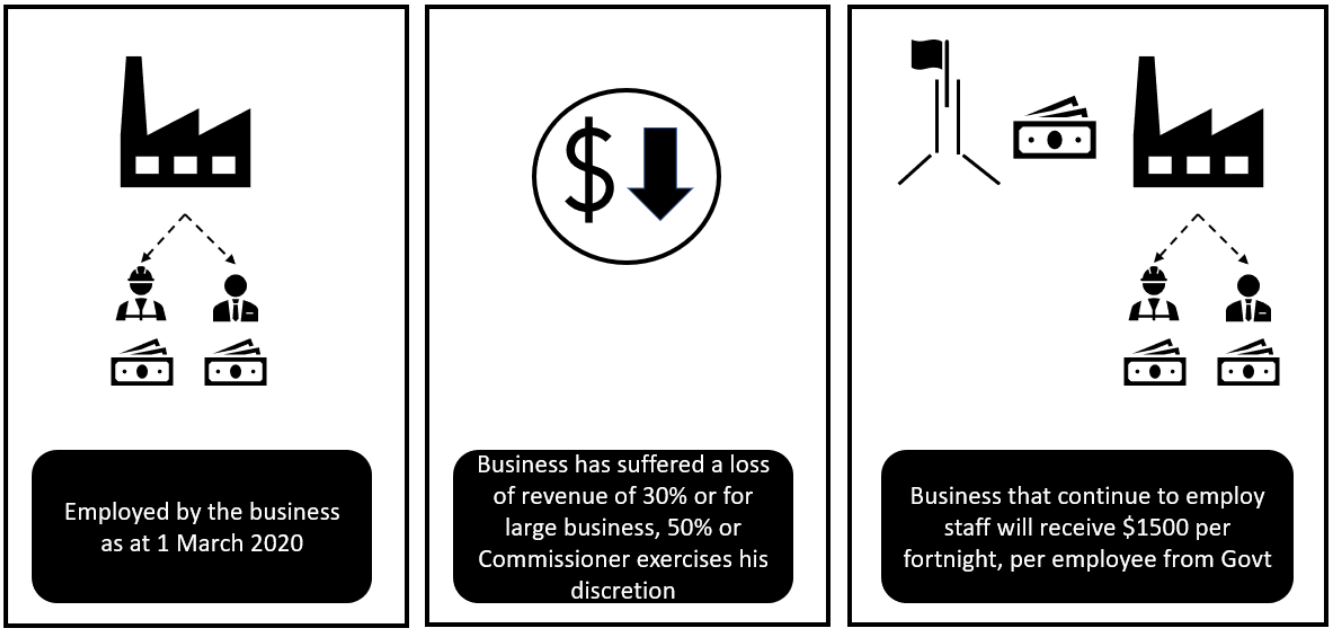
The subsidy will commence with effect from 30 March 2020, with the first payment to employers expected in the first week of May 2020 (covering the period from 30 March 2020).

The scale of this scheme is huge. The cost of $130 billion is not over the 4 year forward estimates period, it is not over the next 12 months. It is the cost of the scheme over a six month period. It has been described as equivalent to half the nation's wages bill for that period. The first Government response on 12 March 2020 was a $17.6 billion package, the 22 March 2020 announcement was initially costed at $66.1 billion. The long term impacts on the nation's balance sheet are profound, but in the short term, the risks to our economy and communities are so great they demand a response on an unprecedented scale.

The cost is massive, the need is great, the legislative drafting task is complex, the timeframe for rollout is short and there will no doubt be challenges in implementation. Despite this, the scheme is a critical and necessary measure to assist business and support workers and has the essential feature of keeping employers and employees connected in a financial sense, and hence connected in a wider sense, both through the challenging period in the short term and in the recovery phase beyond.

The immediate response by employers is to assess their eligibility based on the details as announced so far, determine the potential financial impact of the scheme based on employee numbers at 1 March 2020 and then ensure that relevant employee and payroll data is readily available to permit the business to register for the scheme with the ATO.

Given the limited information available so far, the comments in this Tax Insights are necessarily high level and preliminary and based on how it is expected that the arrangements will operate. It will however be necessary for businesses to continue to monitor the ongoing development of the framework of the scheme, as well as the registration and implementation steps.



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Treasury Fact Sheets

As at 1 April 2020, the current relevant Fact Sheets are set out below:

- Supporting businesses to retain jobs, last updated as at 31 March 2020
- JobKeeper Payment - Information for Employers, last updated as at 31 March 2020
- JobKeeper Payment — Information for employees, last updated as at 31 March 2020

Eligible employers

Employers (including not-for-profits) will be eligible for the subsidy as follows:

- Where the turnover of the business is less than $1 billion: the business self-assesses that its turnover will be reduced by **more than 30%** relative to a comparable period (of at least a month) a year ago;

- Where the turnover of the business is $1 billion or more: the business demonstrates that its turnover will be reduced by **more than 50%** relative to a comparable period (of at least a month) a year ago; and

- The business is not subject to the Major Bank Levy.

Turnover tests

At this stage, there is no detail of how to calculate the relevant turnover amounts and to undertake the comparison. The process appears to be a two- step testing process as follows:

- Firstly, is the turnover (presumably annual turnover) greater than or less than $1 billion?

    - This is presumably for the last income year (eg, 30 June 2019) based at first instance on income tax returns as lodged by the relevant taxpayer.
    - It is expected that the definition of Significant Global Entity (SGE), which involves various tests including whether the annual global income is $1 billion or more, will be used as a check-point for this test
    - Consideration will also need to be given to the extent to which turnover of associates, connected entities or affiliates needs to be taken into account.

- Next, to determine the reduction in turnover, this will contemplate a comparison of the turnover for at least a one-month period: as an example, say March 2020 turnover as against the turnover for March 2019.

    - In the case of some businesses, it may be that they have not yet suffered the relevant 30% / 50% loss of revenue. However, over the course of the next month or months, if revenues continue to fall, it may be that the 30% / 50% loss of revenue outcome occurs. It is not clear in that case whether eligibility would be effective from 30 March 2020 or from a later date.
    - In the meantime, it would be prudent for businesses who expect that revenues may drop away in coming months to start the registration process with the ATO in any event.

Updated details on comparing with prior year revenue

In a significant and practical clarification of the employer eligibility tests, the Government provided further details on 31 March 2020:

- As a general position, it is expected that businesses undertake the comparison between current year revenue and prior year revenue based on their activity statement reporting period, whether that be monthly or quarterly
- In the case where the 30% or 50% loss of revenue test is not satisfied, the Commissioner will be provided with a discretion to consider additional information that a business provides to establish that it

has nonetheless been adversely affected by the impacts of the Coronavirus. For example, it may be the case that
  - A business was not in operation a year earlier; or
  - The turnover a year earlier was not representative of their usual or average turnover, (e.g. because there was a large interim acquisition, they were newly established or their turnover is typically highly variable),
- The Commissioner will also have discretion to set out alternative tests that would establish eligibility in specific circumstances. By way of example, eligibility may be established as a result of a business ceasing or significantly curtailing its operations.

The updated factsheets also noted that there will be some tolerance where employers, in good faith, estimate a greater than 30% or 50% fall in turnover but actually experience a slightly smaller fall.

Determination of eligible employees and registration

Employers will need to determine the number of employees as at 1 March 2020.

It will be necessary for employers to elect to participate in the scheme. The ATO has launched a new page at which employers register their initial interest, followed by the provision of further details. Employers will need to provide information on the number of eligible employees as at 1 March 2020, and those currently employed. It is expected that the ATO will pre-populate a registration form for a particular employer based on Single Touch Payroll data as at 1 March 2020.

Employers will be required to notify eligible employees that they are receiving the JobKeeper Payment, and will also be required to provide information to the ATO on a monthly basis (e.g. number of eligible employees continued to be employed by the business). In this regard, the Treasurer made reference to a "legal obligation" on employers: in other words, it can be expected that ongoing entitlement to the JobKeeper Payments will require an employer to confirm on an employee by employee basis that the person is still employed and that the employee is receiving at least $1500 per fortnight.

Payment process

The liquidity injection from the JobKeeper Payments will be received by eligible employers in the first week of May 2020, some 4-5 weeks away. In the meantime, employers will need to continue to manage their business and workforce through the intervening period, and ensure that all necessary employee and payroll data is available to register for the funding under the JobKeeper Payments.

Employers will also need to prepare for the ongoing management of eligible employees. For example, staff who were terminated post 1 March 2020 may be re-hired, staff who have been stood down on no pay will need to be transitioned back onto the payroll to receive the minimum amount of $1500 per fortnight. At the same time, it may be that the working hours or other conditions of employment are altered for the workforce.

It will also be necessary to ensure that the pay as you go withholding (PAYGW) amounts and superannuation contributions in respect of the employee's income are correctly calculated. At this stage, there is no detail on how PAYGW interacts with payments to employees that are wholly or partly funded by the JobKeeper Payments. With respect to superannuation, the initial announcement indicates that an employer can decide if they want to pay superannuation on any additional amount paid to an employee because of the JobKeeper Payment.

It is expected that the JobKeeper Payments should be treated as assessable income of the employers, and will effectively be offset by a deduction as the funds are used directly or indirectly to meet payroll or other expenses.

In addition to managing the tax aspects of possible changes in employment arrangements, employers will need to ensure compliance with all relevant employment related matters and should seek appropriate advice.

Eligible employees

The threshold requirement is that an eligible employer employed a particular person as at 1 March 2020. The scheme will cover persons who continue to be engaged by that employer – whether full-time, part-time, long-term casuals (with the employer on a regular basis for at least 12 months as at 1 March 2020) or stood down employees.

Persons who ceased to be employees prior to 1 March 2020, or who first commenced employment after that date, appear to be outside the scheme. Where a person was employed as at 1 March 2020 and their employment has been terminated in say, mid March 2020, the employer and employee can agree that person be re-engaged by the employer. Where this occurs, the employer will be entitled to the JobKeeper Payment for that employee. The person would be required to advise Services Australia of this so that they cease to be registered for the JobSeeker Payment. Persons who were employed at 1 March 2020 and have since been stood down (including being stood down on no pay) should remain eligible employees.

Irrespective of the employee's employment status and salary, the subsidy will be a flat amount of $1500 per fortnight:

- Where an employee's current income is more than $1500 per fortnight, before tax, it is expected that they will continue to receive their regular income according to prevailing workplace arrangements, and the JobKeeper Payment will assist the employer by subsidising part of the payment to the employee

- If a person's current income is less than $1500 per fortnight (including a case where an employee has been stood down without pay), the employer must pay their employee a minimum of $1500 per fortnight, before tax.

An eligible employee must be at least 16 years of age, and be an Australian citizen or have a particular these visa status (the holder of a permanent visa, a Protected Special Category Visa Holder, a non-protected Special Category Visa Holder who has been residing continually in Australia for 10 years or more, or a Special Category (Subclass 444) Visa Holder).

The employer must notify the employee if they are claiming the JobKeeper Payment on their behalf.

Employee obligations

The majority of employees will need to do nothing further to receive the payment. However, employees who have more than one employer will need to notify their primary employer to claim the JobKeeper Payment. The claiming of the tax free threshold will generally be sufficient to identify who is the primary employer.

Employees will be able to both receive the JobKeeper payment and their wages from their second job. However, employees that are currently in receipt of an income support payment must notify Services Australia.

Self-employed individuals

Self-employed individuals will also be eligible to receive the payment where they have suffered or expect to suffer a 30% decline in turnover relative to a comparable period (of at least a month) a year ago.
Businesses without employees will need to provide an ABN for their business, nominate an individual to receive the payment and provide that individual's Tax File Number and provide a declaration as to recent business activity.

People who are self-employed will need to provide a monthly update to the ATO to declare their continued eligibility for the payments. Payment will be made monthly to the individual's bank account.

Further details for the self-employed will be provided on ato.gov.au.

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