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JobKeeper changes: turnover test and employment start date

Prime Minister Scott Morrison announced further changes to JobKeeper on 7 August 2020. The changes are intended to ensure that eligibility for the revised JobKeeper scheme – to commence on 28 September 2020 – will be based on a single quarter tax period, rather than multiple quarters as previously announced. Employees hired as at 1 July 2020 will now also be eligible to receive JobKeeper.

Treasury has updated its JobKeeper factsheets as at 7 August 2020 to incorporate the PM's announcements.

The JobKeeper rules implemented in March 2020 in response to the COVID-19 pandemic were due to finish on 27 September 2020. The Government then announced on 21 July 2020 that the scheme would be extended for six months (until 28 March 2021), in an amended form.

The key highlights of JobKeeper Version 2 – to start on 28 September – are that:

- the extended scheme will apply at a top rate of $1,200 per employee (down from the current $1,500) per JobKeeper fortnight from 28 September 2020 until 3 January 2021, then drop to $1,000 until 28 March 2021;
- lower rates will apply for part-time and casual employees; and
- businesses will be required to re-test their eligibility for the payment scheme to access the extension.

Changes to turnover test

The latest changes relate to the eligibility test announced in JobKeeper Version 2.

JobKeeper Version 2 originally required that, from 28 September 2020, businesses and not-for-profits seeking to claim JobKeeper payments would have to meet a further decline in turnover test for each of the two periods of extension, as well as meeting the other existing eligibility requirements. That is, at that time businesses would have been required to reassess their eligibility for the JobKeeper extension with reference to their actual turnover in the June and September quarters 2020.

The PM has eased the proposed changes to turnover tests for businesses Australia-wide.

The changes mean that businesses will now only be required to show the requisite actual decline in turnover for the September quarter, rather than for both the June and September quarters. Similarly, businesses will only need to demonstrate a decline in turnover for the December 2020 quarter, rather than each of the June, September and December 2020 quarters.

JobKeeper reference date now 1 July 2020

For JobKeeper fortnights beginning on or after 3 August 2020, the reference date for determining certain employee eligibility conditions has been changed from 1 March 2020 to 1 July 2020. The purpose of this change is to extend the scope of JobKeeper so that "it also benefits employers of more recently engaged employees".

Importantly, the changed rules preserve the existing eligibility of employees for JobKeeper payments; that is, those for whom employers are currently receiving JobKeeper, termed "1 March 2020 employees" because they satisfied the rules as at that date.

As a result, for JobKeeper fortnights beginning on or after 3 August 2020, an individual can be an eligible employee if they:

- meet the eligibility requirements with reference to the new 1 July 2020 date; or
- qualify as a 1 March 2020 employee.

Newly eligible employees

The later reference date provides the opportunity for qualifying employers to access JobKeeper for those employees who they engaged after 1 March 2020 and who were in an employment relationship as at 1 July 2020. That is, for new employees engaged after 1 March.

The changes also allow employers to qualify for JobKeeper payments for those employees who do not qualify as 1 March 2020 employees, but became eligible by meeting the conditions under the new 1 July 2020 reference date.

Existing and re-employed employees

The amending rules make no changes to the existing eligibility of employees who are already covered by JobKeeper; that is, those for whom the employer has been receiving the benefit based on their status as at 1 March 2020. In other words, eligible 1 March 2020 employees do not need to retest (and potentially lose) their eligibility for their employer due to the introduction of the 1 July 2020 date, or satisfy any new nomination requirements.

Although employees do not qualify as 1 March 2020 employees if their employment has ceased since 1 March, they may qualify for JobKeeper if they are engaged by another employer as at 1 July 2020. Further, if 1 March 2020 employees are made redundant by an employer and are later re-employed by the same employer (including after 1 July 2020), there is scope for them to qualify without further testing.

Employer obligations

Employers that are already participating in the JobKeeper program are required to give a notice to all employees about the revised JobKeeper reference date, other than:

- employees to whom the employer has previously given a notice in writing advising that the employer has elected to participate in the JobKeeper scheme;
- employees who had previous provided the employer with a nomination form in relation to the JobKeeper scheme;
- individuals who the employer reasonably believes do not satisfy the 1 July 2020 requirements; and
- employers that are ACNC-registered charities that have elected to disregard certain government and related supplies and the individual's wages and benefits are funded from such government and related sources.

Further, to be eligible for the JobKeeper payment for any newly eligible employees under the 1 July 2020 reference date, a qualifying employer must provide notice to the ATO of information about that employee and their nomination. Where an employer has provided this notification to the ATO for entitlement to receive JobKeeper payments in respect of the eligible employee, the employer must notify the employee within seven days.

For those employers entering JobKeeper for the first time, the notification requirement will apply to all of their employees.

PM announces pandemic leave disaster payment for Victoria

Prime Minister Scott Morrison announced on 3 August 2020 a Federal Government "pandemic leave disaster payment". The payment will be a one-off amount of $1,500, available to workers in Victoria who have no sick leave available who have to self-isolate for 14 days as a result of an instruction by a public health officer.

It will only apply to workers in Victoria, where the Government has declared a "state of disaster" and imposed Stage 4 lockdowns, which are expected at this point to run until mid-September.

The Victorian Government has already announced that it will provide a disaster payment, principally made to those on short-term visas; that is, those who are not permanent residents or citizens of Australia who otherwise wouldn't have accessed Commonwealth payments. The Federal Government will provide its payment to those who fall outside that scope and who don't have leave available to them because it has been used up.

Accessing the Federal Government payment

Services Australia has provided further details on its website. It states that, to get this payment, the applicant must:

- be at least 17 years old;
- live in Victoria; and
- have no income from paid work, including sick leave entitlements.

In addition, the Victorian Department of Health and Human Services must also have told the applicant to self-isolate or quarantine. They must have done this because the applicant:

- has COVID-19;
- has been in close contact with a person who has COVID-19;
- cares for a child, aged 16 years and under, who has COVID-19; and/or
- cares for a child, aged 16 years and under, who has been in close contact with a person who has COVID-19.

If a person has to self-isolate more than once, they can claim this payment each time. However, a person cannot get this payment if they already receive:

- an income support payment, ABSTUDY Living Allowance, Paid Parental Leave or Dad and Partner Pay;

- the JobKeeper payment; or
- the Victorian Coronavirus (COVID-19) Worker Support Payment.

Coronavirus Worker Supplement Payment (Victoria)

The Victorian Government announced its Coronavirus Worker Supplement Payment on 30 July. To be eligible for a one-off $1,500 Coronavirus (COVID-19) Worker Support payment, the claimant must have been instructed by the Department of Health and Human Services:

- to self-isolate or quarantine at home because they are either diagnosed with coronavirus (COVID-19) or are a close contact of a confirmed case; or
- that a child aged aged under 16 in the claimant's care needs to self-isolate or quarantine at home because they are either diagnosed with coronavirus (COVID-19) or are a close contact of a confirmed case.

To receive the payment, the claimant must:

- be 17 years and over;
- be currently living in Victoria (including people on Temporary Protection Visas and Temporary Working Visas 457 and 482);
- be likely to have worked during the period of self-isolation or quarantine and are unable to work as a result of the requirement to stay at home;
- not be receiving any income, earnings or salary maintenance from work;
- have exhausted sick leave entitlements, including any special pandemic leave; and
- not be receiving the JobKeeper payment or other forms of Australian Government income support.

There is no requirement for a claimant to be a citizen or permanent resident to be eligible for the Victorian Government payment.

Loans put on hold and debt forgiveness: ATO's views

The ATO has "clarified" its position on loans put on hold during COVID-19. The ATO will consider a debt to be forgiven for tax purposes if:

- the debtor is somehow relieved from the legal obligation to repay it; or
- there is evidence that the creditor won't insist on repayment or rely on the obligation for repayment.

A debt is not considered to be forgiven if a creditor only postpones an amount payable and the debtor acknowledges the debt – unless there is evidence that the creditor will no longer rely on the obligation for repayment.

Residency and source of income in the COVID-19 era

The ATO has issued an update on residency and source of income. It deals with issues from the perspectives of an Australian resident and a foreign resident in the context of a change of residency due to COVID-19.

In terms of Australian residents, the update addresses those who are temporarily overseas and those who have had to return to Australia early from certain foreign service. The latter may involve the "91 days of continuous foreign service" test.

Where the update is interesting regards what it says about foreign residents who are stuck in Australia because of the COVID-19 pandemic. The ATO acknowledges that "COVID-19 has created a special set of circumstances that must be taken into account when considering the source of the employment income earned by a foreign resident who usually works overseas but instead performs that same foreign employment in Australia".

Whether salary or wages earned from continuing foreign employment working remotely while in Australia temporarily is assessable depends on:

- whether it is from an Australian or a foreign source; and
- whether a double tax agreement (DTA) applies.

Where the remote working arrangement is short-term (three months or less), the ATO readily accepts that income from that employment won't have an Australian source.

For working arrangements longer than three months, the ATO says that individual circumstances need to be examined to determine if a person's employment is connected to Australia.

ATO's employees guide for work expenses updated

The ATO has updated its employees guide for work expenses for 2019–2020. The document is designed to assist employees to determine whether incurred expenses are tax deductible, and outlines the substantiation requirements.

The following are highlighted as being new for 2019–2020:

- The additional method for calculating running expenses incurred as a result of working from home (the "shortcut method" allowing an 80 cents per hour deduction) was introduced to help employees working from home during the COVID-19 pandemic. This method was initially only available to use from 1 March 2020 to 30 June 2020, but has now been extended to 30 September 2020.

- Taxation Ruling TR 2020/1 *Income tax: employees: deductions for work expenses under s 8-1 of ITAA* has been released. This ruling provides guidance on when an employee can claim a deduction for a work expense.

The employees guide highlights "common myths" about expenses – for example, the myths that everyone can automatically claim $150 for clothing and laundry, 5,000 km of travel under the cents per kilometre method for car expenses, or $300 for work-related expenses, even if they didn't spend the money, or that employees can claim gym membership if they need to be fit for work.

FBT: cars garaged at employees' homes during COVID-19

The ATO has published a fact sheet to assist employers in determining if they have an FBT liability where cars are garaged at employees' homes because of COVID-19.

The fact sheet states that the ATO will accept that an employer isn't holding a car for the purposes of providing fringe benefits where the car isn't being driven at all, or is only being driven for maintenance purposes. Provided that the employer elects to use the operating cost method and maintains odometer records, the employer will not have an FBT liability for a car. Without electing to use the operating cost method or not having odometer records, the statutory formula method applies and an FBT liability will arise as the car garaged at the employee's home is taken to be available for private use.

Where a home-garaged car is being driven by an employee for business purposes, the ATO says the employer may be able to reduce the taxable value of the car fringe benefit by taking into account the business use, provided the employer has logbook records and odometer records for the period in question. Logbook records will need to be for at least:

- 12 continuous weeks; or
- until the car stops being garaged at home, if this is less than 12 weeks.

The fact sheet also provides information on logbook requirements for car fringe benefits and options for employers to consider where COVID-19 has impacted driving patterns.