

JOBKEEPER PAYMENT FAQS

TURNOVER TEST

Is the turnover on an accrual or cash basis?

You may use an accruals basis of accounting to calculate both the current GST turnover and projected GST turnover as both calculations require you to include sales that you have made or are likely to make without any reference to when you are paid.

If you prepare your activity statement on a cash basis, the ATO will allow you to calculate both the current and projected GST turnovers on a cash basis. The basis used must be the same for calculating your projected and current GST turnover.

What if the entity is not registered for GST?

An entity is not precluded from the JobKeeper scheme if they are not registered for GST, assuming they meet all the other eligibility tests. For the turnover test, at a practical level we would be inclined to use the method that the client is using to recognise income for income tax purposes.

Does the test turnover period have to run from beginning of month to the end of the month? Is there the option to use a mid-month period covering the same test period. e.g., 15 March to 15 April etc.

There is no option for the test period to run across months. It must be for either a nominated calendar month between March and September 2020, or for the quarters commencing 1 April or 1 July.

How does grouping apply?

Grouping rules are used to determine whether a 30% or 50% turnover reduction test applies for the JobKeeper rules. The rules require you to work out the aggregated turnover of the entity. They use the concepts in section 328-115 ITAA 1997, which require you to include the turnover of the entity, its connected entities and affiliates.

If aggregated turnover is less than \$1bn then a 30% turnover reduction test should generally apply.

However, when it comes to actually applying the turnover reduction test this needs to be done separately for each entity. This aspect doesn't seem to be done on a group basis. That is, there might be some entities in the group that pass the turnover reduction test while other entities in the group might fail this condition.

What if an entity is part of a significant global entity?

If the entity is part of an SGE then they are likely to be subject to a 50% threshold, but they would need to work through the connected entity / affiliate rules in detail to confirm this.

What about service entities?

There are some practical problems associated with service entities and the JobKeeper measure. Unfortunately, it seems like the rules don't deal particularly well with service entity arrangements.

First, you need to check whether the service entity actually carries on a business in its own right under general principles.

If the service entity is a company, then TR 2019/1 suggests that it probably will be treated as carrying on a business if it is operated with the expectation of making a profit.

However, if it is not a company then the position is less clear and will likely depend on the situation. Example 1 in TR 2006/2 looks at this to some extent, but is dealing with a poorly structured arrangement and suggests that the service entity probably isn't carrying on a business. If the service entity doesn't carry on a business, then it presumably can't access the JobKeeper package (unless it is a non-profit entity).

Even if the service entity does carry on a business, there will often be the challenge of passing the turnover reduction test. This needs to be applied by looking only at the turnover of the service entity, the rules don't seem to allow you to take into account the turnover or circumstances of a related entity that carries on the main business activity.

The ATO does have the power to make alternative tests for the turnover reduction condition but these have not been released yet. We have also raised this specific issue with the ATO team dealing with this area and hope that additional guidance will be provided shortly.

Employee eligibility – 1 March 2020 commencement

To be eligible for JobKeeper, the rules require that the employee was “an employee (other than a casual employee) of the entity; or a long term casual employee of the entity.”

If an employee signed an employment contract or on before 1 March but had not actually started work, are they eligible for JobKeeper?

If the employee did not commence employment until after 1 March they would not be eligible for JobKeeper. The general employment law principle is that the employee is employed when they start work.

If employees are put off do you need to reemploy them and then register?

If the employees have been terminated (as opposed to stood down) then they would need to be reinstated to be eligible for JobKeeper.

An employee works as a casual and still holds a full time position at another employer. If the full time employer does not qualify for jobkeeper, can they get jobkeeper payments from their casual employer?

No. The casual employee would be ineligible in respect of their casual employment because they are a permanent employee of another employer.

The employee has been stood down/ on leave/ on long service leave, are they eligible?

If they pass the eligibility tests and agree to be a nominated employee, then they qualify. The main test here is that they are employed by the employer. Parental leave and employees on dad and partner pay are excluded.

ELIGIBLE BUSINESS PARTICIPANTS

Sole traders, partnerships, co, trusts if drawings/Distributions/dividends irregular and not \$1500/fn - eligible?

For eligible business participants, there is no requirement for a minimum \$1,500 payment to be made as they are not employees. When they are nominated, they will provide the bank account details of the individual and the JobKeeper payment will be made directly to them by the ATO.

Partnerships. Can really only one partner apply for the JobKeeper? Seems very unfair to the other partners.

Yes, unfortunately that is one of the anomalies in the Scheme.

MANAGING JOBKEEPER PAYMENTS

One question that came up a lot during the webinar is whether employers can pick and choose which eligible employees receive JobKeeper.

Firstly, you need to determine if the employees are eligible. When it comes to casuals, many will not be eligible as, they don't meet the definition of a long-term casual, they have a permanent employer, or they do not meet the residency conditions.

So, for those that are eligible, can you discriminate? For example, only employees earning over \$1,500 per fortnight will receive JobKeeper as the employer does not want to have to pay the top up in advance.

The EM states:

Once an employer decides to participate in the JobKeeper scheme and their eligible employees have agreed to be nominated by the employer, the employer must ensure that all of these eligible employees are covered by their participation in the scheme. This includes all eligible employees who are undertaking work for the employer or have been stood down. The employer cannot select which eligible employees will participate in the scheme. This 'one in, all in' rule is a key feature of the scheme.

But, the legislation itself does not enforce this. If an employer does not have a signed nomination form from the employee, or if the employer does not register them for JobKeeper with the ATO, then the employee will not be eligible.

On the website, the ATO says, "You need to identify which employees you intend to claim the JobKeeper payment for and tell them you intend to claim the JobKeeper payment for them."

But then answering a question about this same issue, the [ATO says](#):

The JobKeeper Payment is a reimbursement scheme that will be paid by the ATO monthly in arrears.

In cases where this presents cash flow difficulties, businesses may want to speak to their bank to discuss their options. The banks have said businesses may be able to use the upcoming JobKeeper payment as a basis to seek credit in order to pay their employees until the scheme is making its first payments.

Then they point back to Treasury before stating "We are also currently working out some more of the finer details and should have information available soon."

However, the issue that is not entirely clear is how you apply the EM to situations where an employee normally receives less than \$1,500 per fortnight and the employer won't be paying them (or doesn't want to pay them) at least \$1,500 for the relevant fortnight. In this case it would seem that they are not actually an eligible employee, so you might argue that leaving them out of the JobKeeper application is OK. However, it is not entirely clear whether this is the correct interpretation, especially if the only thing that makes the employee ineligible is the employer choosing not to pay them \$1,500 per fortnight. The worst case scenario is that by leaving them out the ATO might argue that the employer doesn't qualify for the JobKeeper package at all.

It's possible this is not an ATO administrative issue as such but a Fair Work Act issue regarding consistent treatment of employees.

More will come on this issue.

Does payroll have to be on the same cycle as JobKeeper fortnights?

No. Where employers pay employees less frequently than fortnightly (e.g., monthly), then the payment should be allocated between fortnights in a reasonable manner. For example, if the employer pays employees every four weeks, then it would be reasonable for the purposes of satisfying the wage condition if the employee is paid at least \$3,000 for every four week period.

Can the top up payment for the fortnight ended 12 April be made say today 15/04/2020.

Yes, in the month of April you can make a top up payment to ensure eligible employees are paid at least \$1500 per fortnight.

Is JobKeeper payment assessable to the employer?

Yes, the JobKeeper subsidy received by the employer represents assessable income in their hands.

Why is 26 April a key date?

Jobkeeper requires employers to nominate to participate in the scheme before the end of a JobKeeper fortnight for the employer to be entitled to a payment for that fortnight.

However, for the first two fortnights (30 March 2020 and 13 April 2020), the EM says that *“the employer has until the end of the second JobKeeper fortnight, that is, 26 April 2020, to provide the Commissioner with its election to participate.”*

Is an employee earning less than \$1,500 eligible for JobKeeper? You said that if they get less than \$1,500 they are not eligible.

The amount an employee was paid before being in the JobKeeper scheme is not one of the eligibility criteria for the employee to be nominated for JobKeeper payments. Employees that have been earning less than \$1,500 per fortnight are eligible.

The eligibility issue comes in with the management of the JobSeeker payment. To be eligible for payment, employers need to meet a wage condition. This is an ongoing condition for eligibility. That is, the employer has paid the employee at least \$1,500 in the relevant Jobkeeper fortnight. If this payment is not made, the employer is not eligible to receive the JobKeeper payment.

JobKeeper payments are paid to the employer in arrears.

Does the test month indicate when the payments start? i.e., May 2020 test for payments in May?

No. The test month or quarter does not influence when the payment commences. The month of application influences when payments will commence from. Other than for the month of April, payment only commences for periods after the date of application e.g., if you register in June, then you cannot be paid for April or May.

Should you wish to discuss this subsidy further or need assistance with the registration process & calculations, please contact **SRJ Walker Wayland** on 07 3409 9988.