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JOBKEEPER EXTENSION

Special Edition Newsletter

24 September 2020

WELCOME

Welcome to this special edition of the StewartBrown newsletter where we update you on the recently enacted changes to the JobKeeper program. The **JobKeeper Extension** changes were previously referred to as **JobKeeper 2.0** and **JobKeeper 3.0** in previous newsletters.

The changes are quite complex and this newsletter cannot possibly cover all situations so we strongly advise you to seek guidance from your StewartBrown Manager or Partner if further assistance or clarification is needed.

JOBKEEPER EXTENSION-KEY POINTS TO UNDERSTAND:

- JobKeeper has been extended to 28 March 2021 over two distinct periods:
  1. **Extension period 1 -** 28 September 2020 to 3 January 2021 (December 2020 quarter); and
  2. **Extension period 2** - 4 January 2021 to 28 March 2021 (March 2020 quarter).
- The extension periods are open to businesses that were previously ineligible for JobKeeper, provided they meet the new criteria.
- New turnover eligibility tests will apply from 28 September 2020, based on **actual quarterly GST turnover.** Importantly, the basis of accounting to be used for this purpose (i.e cash or accruals) will be dependent on the entity's circumstances; the same basis must be used as that for GST reporting.
- There are no changes in the required turnover decline percentages (being 50%, 30% or 15% depending on type of entity as before).
- JobKeeper Payment amounts will reduce from $1,500 to $1,200 per fortnight (December 2020 quarter), then to $1,000 (in the March 2021 quarter). Lower payment rates will apply to employees and business participants who worked fewer than 80 hours in a relevant 28 day period.
- The Employee eligibility date has changed from 1 March to 1 July 2020. JobKeeper Payments need to be made to all eligible employees, due to the 'one in, all-in' rule.
- The ATO will allow employers to pay the necessary top-up payments for JobKeeper fortnights 14 and 15 by **31 October 2020**.

JOBKEEPER EXTENSION-THE DETAILS:

New rules for the extension of the JobKeeper Payment

On 21 July 2020, the Federal Government announced that the JobKeeper Payment would be extended by a further six months to 28 March 2021 on a scaled-back basis, with businesses being required to reassess their eligibility to remain in the program. *The Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020* (which received Royal Assent on 3 September 2020) gave effect to the extension of the program to 28 March 2021 and also made some adjustments to the existing Fair Work Act 2009 ('FWA') concessions that were put in place when the JobKeeper program was originally implemented.

Subsequently, the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No.8) 2020 legislative instrument* (the 'Amending Rules') was registered on 15 September 2020 (effective from 16 September 2020), setting out the new rules that will govern how the program will operate in the extension period. Importantly, these Amending Rules do not replace the existing JobKeeper rules, rather, they are an amendment to the existing rules to incorporate the previously announced dual payment rate system, the adjustments to employee eligibility relating to the relevant dates of employment (i.e. including both 1 March 2020 and 1 July 2020) and the new modified decline in turnover test.

Decline in turnover test – the new actual GST decline in turnover test

To qualify for the JobKeeper Payment after 27 September 2020 businesses must satisfy the new **actual GST decline** in turnover test for the relevant period. The test will be satisfied where the entity's actual GST turnover has declined by the required percentage for the relative quarter.

Refer to the table below for the appropriate comparison period:

For the relevant period:	**Compare:** Actual GST Turnover	**With:** Actual GST Turnover
Extension period 1: 28 September 2020 to 3 January 2021	September 2020 Quarter	September 2019 Quarter
Extension period 2: 4 January 2021 to 28 March 2021	December 2020 Quarter	December 2019 Quarter

Businesses will need to re-test for eligibility for each subsequent period.

Note that the testing period is a calendar quarter whereas under the original test it may have been for a month only.

The percentage rate of decline in turnover is determined using the existing rules (i.e. 50% for entities with an aggregated turnover of more than $1 billion, 30% for entities with an aggregated turnover of $1 billion or less and 15% for ACNC registered charities).

The basis of accounting used for this purpose (i.e cash or accruals) will be dependent on the entity's circumstance. There has been no change to these rules from the original JobKeeper rules.

Alternative tests will be available in limited circumstances. Please contact us if you need assistance in this matter.

Qualifying for the first time under JobKeeper
An entity is not excluded from qualifying for either of the JobKeeper Extension periods simply because it did not qualify for the previous JobKeeper period. In other words, the new additional test for each period is not contingent on a business having qualified for any, or all, of the earlier periods.

Two tiered payment system
From 28 September 2020, a two-tiered payment system will apply with respect to JobKeeper Payments, as follows:

Tier	Tier 1: Higher rate	Tier 2: Lower rate
Extension period 1	$1,200 per fortnight	$750 per fortnight
Extension period 2	$1,000 per fortnight	$650 per fortnight

The payment rate applicable to an employee is determined by reference to the actual hours the employee worked, had paid leave and paid absence on public holidays over an applicable 'reference period' (refer below). Specifically, the applicable rate is determined as follows:

1. **Tier 1 –** If an employee's total hours were 80 hours or more for the employer over an applicable 28-day reference period, then the employer is entitled to the higher rate in respect of that employee.
2. **Tier 2** – If the total hours of work and equivalent paid leave are less than 80 hours over the applicable 28-day reference period, the lower rate applies.

It is the responsibility of the employer to determine the number of hours that count towards the threshold for an eligible employee, based on existing records that are already maintained in respect of that employee.

Employees: 28 Day Reference periods
The reference period are the 28 days which finish on the last day of the last pay cycle that ended before either:

- 1 March 2020 (the pre-March period); or
- 1 July 2020 (the pre-July period)

The reference period or periods are based on when your pay cycle ends, therefore won't be the same for all employers or employees.

These reference periods effectively cover the last two consecutive fortnightly pay periods (or the last four consecutive weekly pay periods) ending prior to 1 March 2020 or 1 July 2020. For monthly or pay cycles longer than 28 days, a pro-rata calculation will need to be performed.

Alternative tests are available in limited situations (i.e. where the period is not representative, or where employees are employed part-way through a period).

Additionally, employers **must** choose the reference period that results in a **higher rate** applying for each employee. In other words, the employer is required to apply the most beneficial reference period for their employees.

Eligible Business Participants ("EBP")
The same payment rates apply for qualifying entities that have nominated an EBP, however the test to determine whether the higher rate or the lower rate applies is based on the hours of active engagement in the entity's business. This will require a consideration of the hours that the EBP was actively operating the business or undertaking specific tasks on behalf of the business during the reference period.

The standard reference period for EBP's is the calendar month of February. From 28 September 2020, qualifying entities are entitled to the higher rate of JobKeeper Payment in respect of an EBP if:

1. The total hours of active engagement by the EBP in the business of the entity over any applicable reference period (i.e. generally February 2020) were 80 hours or more; and
2. The EBP has made a declaration in the approved form to the entity (or the Commissioner, if the EBP is a sole trader) that their total hours of active engagement are 80 hours or more for the applicable reference period. Conversely, the lower rate of JobKeeper Payment will apply in respect of an EBP if they have less than 80 hours of active engagement in the business or they do not provide a declaration to the entity (regardless of the hours of active engagement).

Notification requirements
To qualify for JobKeeper Payments, entities are required to comply with separate notification requirements for their eligible employees and/or EBP's. As most of these notification requirements must be done in the approved form, it is anticipated that the ATO will release the appropriate forms to be completed by eligible entities in due course.

Notification requirements – Employees
From 28 September 2020, employers must provide details relating to eligible employees and also the applicable rate for which they are eligible in respect of their employees as part of the information that must be provided to the Commissioner.

There will be no requirement to notify the Commissioner a second time for JobKeeper Payments relating to Extension Period 2 as no further testing of the hours of work is required to determine the rate of payment. Where an employer fails to notify the Commissioner of the applicable payment rate in respect of an employee for JobKeeper fortnights commencing on or after 28 September 2020, the employer is not eligible for JobKeeper Payments until a valid notification is made. This applies regardless of whether the employer has been receiving JobKeeper Payments in respect of the employee prior to 28 September 2020. In addition, employers must also notify their employees in writing within seven days of advising the Commissioner of the payment rate applicable to the employee.

Notification requirements – Eligible Business Participants
Entities must notify the Commissioner (in the approved form) about whether the higher or the lower rate applies to an EBP for fortnights commencing on or after 28 September 2020. With the exception of sole traders, entities must also notify the EBP within seven days once such a notice is provided to the Commissioner.

JOBKEEPER EXTENSION-ACTION POINTS

As the JobKeeper rules come into effect from September 28 2020, and given the complexity concerning eligibility criteria and payment rates etc. we recommend the following steps be taken in preparation for these changes:

- Ensure all accounting records are brought up to date to ensure timely preparation of the September 2020 management accounts. As the decline in turnover test is based on the actual September 2020 quarter, timely finalisation of the quarterly accounting processes will be critical to assess eligibility under the new turnover tests.
- Review historical payroll records to determine if employees (and any EBP's) qualify for the Tier 1 \$1,200 or Tier 2 \$750 fortnightly rate.
- For EBP's document and keep on file how you have assessed their 80 hours of active involvement in the business during the reference period.
- Top up payments for fortnights 14 (ending 11 October 2020) and 15 (ending 25 October 2020) need to be made by 31 October 2020.
- Entities that cease to be eligible for the JobKeeper Payment may be eligible to access certain temporary Fair Work provisions, however they must satisfy a 10% decline in turnover test.

Speak to your StewartBrown Manager or Partner sooner rather than later if you have any concerns about the new JobKeeper Payment rules or if you need any assistance.

CONTACT US
Address:
Level 2, Tower 1, 495 Victoria Avenue
CHATSWOOD NSW 2067
Phone:
61 2 9412 3033
Fax:
61 2 9411 3242
Email:
info@stewartbrown.com.au
Web:
www.stewartbrown.com.au