



JobKeeper 2.0 Q&A

August 2020

JobKeeper 2.0 webinar Q&A

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Question	Answer
What are the general ledger entries for the receipt of the cash flow boost?	Tax & Super Australia has conducted a webinar on this topic. Go here for the details: https://bit.ly/337K8nh
Is a business owner, whose business is in Australia, but working remotely in Bali, entitled to JobKeeper?	We assume that the person is potentially an eligible business participant in relation to the business. First, in relation to the entity, it is a condition that the entity carries on business in Australia on 1 March 2020. This will be a question of fact. Second, in relation to the individual, he or she must be, on 1 March 2020, an Australian resident (within the meaning of section 7 of the <i>Social Security Act 1991</i>) or a resident of Australia for the purposes of the tax legislation and also a holder of a special category visa (Subclass 444). If both of these conditions are satisfied and all other relevant conditions are met, the business will be able to obtain JobKeeper payments. There is no requirement in the JobKeeper rules that the individual, who is being subsidised by JobKeeper payments, need be conducting their work in Australia.
A client has a tourism business involving buses driving down the Great Ocean Road. The income of the business has been nil since March 2020. Can the business claim JobKeeper 2.0?	Yes.
The monthly JobKeeper declaration needs to be done by the 14th day following the end of each month. What happens if the declaration is done a few days late?	Technically, the business will not qualify for JobKeeper in relation to the month being reported on. The business would need to contact the ATO to see if it will permit the business further time to make the declaration.
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If the turnover of a business in the June 2019 quarter is \$0 and is also \$0 for the June 2020 quarter, does this mean the business does not have a 30% decline in turnover?	Yes.
What does it mean to be in business?	The question of whether a business is being conducted has been discussed extensively in case law. Refer to TR 97/11 and TR 2019/1.
If a business is being subsidised with JobKeeper payments due to an individual being an eligible business participant and that individual obtains a permanent job in July 2020, will this affect JobKeeper payments?	<p>The individual would have been required to give a nomination notice to the business (or the Commissioner) stating, among other things, that the individual is not an employee (other than a casual employee) of another entity. However, this condition needs only be satisfied at the time the individual gave that nomination notice.</p> <p>In relation to each JobKeeper fortnight, one requirement is that the individual is actively engaged in the business "at a time in the fortnight". It will be a question of fact as to whether the individual meets this test if the individual also maintains full-time employment. In our view, the ATO is likely to adopt a position that the individual cannot be actively engaged in a business while they maintain full-time employment. There is not much information on what the ATO considers being "actively engaged" means. Please refer to ATO document QC 62814.</p>
Are GST free export sales included in turnover for the purposes of calculating the decline in turnover in relation to qualifying for JobKeeper payments?	Yes.
A long-term full-time casual had a holiday break in February and early March 2020 and resumed full-time work in late March 2020. How does this holiday break impact her JobKeeper eligibility?	<p>The term "full-time casual" is difficult to understand. If a person is engaged in full-time work they are usually not treated as casual employees. However, we will assume that the person is remunerated as a casual employee but is employed on a full-time basis. We also assume that the individual was not entitled to annual leave pay.</p> <p>If the person is a long-term casual employee, this should not have any effect on the employee's eligibility to have their wages subsidised by the JobKeeper payment. As long as she satisfies the necessary conditions on 1 March 2020, their wages will be able to be subsidised by JobKeeper payments.</p> <p>In relation to JobKeeper 2.0, there will be an issue as to how to calculate the average number of hours that she worked during February 2020. We will not know how to do this until the applicable Legislative Instrument issues.</p>

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Question	Answer
How is JobKeeper paid to an eligible business participant in a company? Should it be by way of a director's fee or some other type of payment?	<p>It should first be understood that there is no requirement under the JobKeeper rules to make a payment out of the company to any person. That is, there is no "wage condition" in relation to eligible business participants like there is for employees.</p> <p>If you do wish to make the payment to the eligible business participant, this could be by way of directors' fees or a bonus payment. A dividend could also be paid, provided the shareholding of the company permits the payment of the dividend to a single individual. An amount could be lent to the individual and the debt forgiven, but this is very likely to cause a deemed dividend to arise under Division 7A ITAA 1936.</p>
An individual is an eligible business participant and the entity is receiving JobKeeper payments. The individual has knee surgery planned for August 2020. Following this surgery, he will not work for six weeks but will resume work as soon as possible. Does this affect the entity's eligibility for the JobKeeper payment?	<p>For an eligible business participant in relation to each JobKeeper fortnight, the individual must be actively engaged in the business carried on by an entity at a time in the JobKeeper fortnight. There is not much information on what the ATO considers being "actively engaged" means. Please refer to ATO document QC 62814.</p> <p>This is a difficult question because we do not know what attitude the ATO takes towards a person who is not able to actively engage in a business due to medical reasons but who otherwise would have engaged actively in the business. We trust that the ATO would take an expansive view of what it means to be actively engaged in a business in this scenario. We would recommend that you contact the ATO to clarify this. However, we should note, that the JobKeeper rules do not contain any discretion in relation to the question of whether an individual is actively engaged in a business or not. It is an objective test.</p>
With regard to JobKeeper 2.0, which payment tier will apply to employees who commence work during February 2020?	<p>The answer to this question is not currently known. We expect that under the alternative tests for determining whether an employee has engaged in 20+ average hours per week in the four weeks of pay period prior to 1 March 2020, the average hours will be computed based on the shorter time period that the employee has worked in the month of February. We will need to wait to see the Legislative Instrument that will set out these tests.</p>
Can we clarify that the eligibility for JobKeeper 1.0 is only tested once irrespective of the income that has been earned between the date of application and 27 September 2020?	<p>Yes. Once an entity has become eligible for JobKeeper, under the original scheme, there is no further testing in relation to the decline in turnover before the end of the original scheme on 27 September 2020.</p>

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Will there be only one test of eligibility in relation to the decline in turnover for JobKeeper 2.0?	No. To continue receiving JobKeeper for the fortnights between 28 September 2020 and 3 January 2021 it will be necessary to satisfy the decline in turnover tests, using actual supplies, for the June 2019/2020 quarters and the September 2019/2020 quarters. Further, to continue receiving JobKeeper for the fortnights between 4 January 2021 and 28 March 2021, it will be necessary to satisfy the decline in turnover tests using actual supplies, for the December 2019/2020 quarters.
If a business hires a new employee after September 2020, are they still eligible for the JobKeeper subsidy?	No. An employee must have been employed by the business on 1 March 2020 to be eligible to have their wages subsidised by the JobKeeper payments.
When is the deadline to apply for JobKeeper 2.0?	At the time of writing (29 July 2020), this is unclear. Announcements by the Treasury states that the eligibility requirements for the JobKeeper fortnights commencing 28 September 2020 will need to be satisfied prior to the due date of lodgment of the September 2020 quarter BAS. This may mean that the eligibility requirements must be satisfied prior to the JobKeeper fortnight that commences on 28 September 2020 and ends on 11 October 2020. Nevertheless, there is a suggestion in the information that the ATO may permit the wage condition for that first fortnight to be satisfied later than 11 October 2020. However, it seems that the time period for determining eligibility is going to be short unless the ATO adopts an administratively concessional approach.
How does a business determine decline in turnover? If it reports on a cash basis, must it use the cash basis and for all other businesses do they use the accruals basis?	This issue is dealt with extensively in Law Companion Ruling LCR 2020/1.
How will the decline in turnover operate in relation to a business that started up in the last 12 months and cannot make comparisons to the June 2019 quarter or September 2019 quarter or December 2019 quarter?	The JobKeeper rules already contain a set of alternative decline in turnover tests which cater for this situation. We expect these will need to be adjusted to cater for JobKeeper 2.0. It should be noted if a business commenced after 31 December 2019 and has elected to lodge its business activity statement on a quarterly basis, that the current ATO view is that the business is not eligible to receive JobKeeper.
If a client has registered for PAYG withholding and pays wages after March 2020, are they eligible for JobKeeper 2.0?	Generally, no. Employees must be engaged as at 1 March 2020 for their wages to be subsidised by JobKeeper payments. If the entity registering for PAYG is doing so because of the acquisition of a business that was operating on 1 March 2020, the JobKeeper payments may be available.

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If the payroll of a business is processed monthly, does it matter on which day the payroll is processed?	This should not matter. The JobKeeper rules state “If there is a regular period for which the employer would usually pay employees in relation to the performance of work by the employees, and that period is longer than a fortnight, then in applying this section [the wages condition section] those payments are to be allocated to a fortnight or fortnights in a reasonable manner.”
What happens with employees who are paid on a monthly basis (the same amount every month) when we need to determine which JobKeeper tier they are in? These employees are paid \$3,500 every month.	For JobKeeper 2.0, the tier that relates to an employee will depend on the average number of hours worked in the four-week pay periods prior to 1 March 2020. It is highly likely that these employees worked for greater than an average of 20 hours per week in the four-week pay periods prior to 1 March 2020 and will therefore be on the top tier (\$1,200 per fortnight commencing 28 September 2020 or \$1,000 per fortnight commencing 4 January 2021).
A company pays wages weekly and in the first fortnight an employee is paid the JobKeeper subsidy by their employer. However, the employment of that employee is terminated at the end of that fortnight. When undertaking the monthly reporting is that employee counted into the number of employees receiving JobKeeper?	<p>If you are using Single Touch Payroll enabled payroll software, in theory, the issue should be taken care of through the use of that software. The information you are presented with in the monthly reporting should take account of the fact that the employee’s employment has been terminated.</p> <p>If the company is not using Single Touch Payroll enabled payroll software, there is an option in the monthly reporting to only claim for one of the JobKeeper fortnights.</p>
For JobKeeper 2.0, will the monthly reporting date change to other than 14 days after the end of the month?	It is expected that the monthly reporting date will not change under JobKeeper 2.0.
Will entities that originally did not qualify for JobKeeper be able to apply for JobKeeper 2.0?	No.
Once an entity becomes ineligible for the JobKeeper subsidy, can the entity later become eligible?	No.
Is it possible for an entity not to satisfy the decline in turnover test for the December 2020 quarter and be eligible for the JobKeeper subsidy in the JobKeeper fortnights 4 January 2021 to 28 March 2021?	No. This is so even if all previous decline in turnover tests have been satisfied.
If a business was originally not registered for GST for the year ended 30 June 2019 but was registered for the year ended 30 June 2020, will the GST that is added into the price of the sales be counted for the purposes of the decline in turnover test?	No.

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Question	Answer
With regard to JobKeeper 2.0, by what date does the decline in turnover test information need to be submitted to the ATO in order to be able to obtain the JobKeeper subsidy for the JobKeeper fortnights 28 September 2020 to 3 January 2021?	At the time of writing (29 July 2020), this is not known. We are informed that the eligibility test must be passed prior to the time at which the activity statement for September 2020 needs to be lodged. Hopefully, the ATO will inform us of this date shortly.
I have a client with a service business who has had no work and not billed anything since March 2020 and does not expect to bill anything through to 30 September 2020. In July 2020 the business received a large outstanding amount due from work done and billed before March 2020. As the business reports on a cash basis, this will mean the September 2020 quarter reported supplies will not be 30% less than the September 2019 reported supplies. My understanding is he thus fails the new test and will not be eligible for JobKeeper after 27 September 2020.	You may be correct in this assessment, but it will largely depend on the precise terms of the Legislative Instrument that will enact JobKeeper 2.0. If the ATO permits its current rules to be used to determine turnover (LCR 2020/1), you likely to be able to use the methods in that law companion ruling to satisfy the basic decline in turnover test. Also, there may be scope for you to use the alternative decline in turnover tests. When advising on eligibility for the JobKeeper subsidy you need to ensure that you don't give up until you have exhausted all of the various methods of determining whether the decline in turnover test has been satisfied.
What happens with GST groups of businesses? Do they need to meet the 30% decline per quarter in each of the individual businesses or if the overall GST group has a 30% decline, do all businesses remain eligible for JobKeeper?	Broadly, GST grouping of businesses is irrelevant for the decline in turnover test. That is, the test is applied to each individual entity and not to the overall turnover of the group. However, the turnover of a GST group can be relevant if an employer entity is part of a GST group and the principal activity of that employer entity is to supply other members of the group with employee labour services.
We are settling on the purchase of a rent roll on 1 September 2020. Therefore, the business income will significantly increase and so will the expenses. There will be 12 employees transferring to us as part of the purchase and, unfortunately, these people won't qualify for JobKeeper. Is there any ability to apply for JobKeeper under the alternative decline in turnover test?	Firstly, it may be possible to claim JobKeeper for the 12 employees that are transferring to your business. Please refer to subsection 9(6) of the JobKeeper rules. The alternative decline in turnover tests contain an alternative test where a business has been acquired. We expect if your business, prior to the acquisition, would have satisfied the decline in turnover test that it will continue to be able to receive the JobKeeper subsidy. However, you will not be able to determine this for JobKeeper 2.0 until the Legislative Instrument issues setting out the alternative decline in turnover tests for JobKeeper 2.0.
How can the decline in turnover test be based on the information given in the BAS where we declare our sales on a cash basis for GST purposes and the government wants us to use accruals basis?	Under the current JobKeeper rules, there is no compulsion for a business that is lodging BASs on a cash basis to be forced to use the accruals basis.
How is the decline in turnover calculated if a client has lodged a BAS on an annual basis in the prior year and this year has lodged a BAS on a quarterly basis?	It is expected that the Legislative Instrument will have something that will cater for this situation. Presumably the client will be asked to take, for example, the April, May and June 2019 supplies and add them together as if a quarterly BAS had been lodged for that quarter.

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Question	Answer
My understanding is that GST turnover would include asset sales. Should these be included, or can they be left out?	<p>Yes, the actual GST turnover does include the value of taxable supplies of assets.</p> <p>This issue does confuse some people because in determining the projected GST turnover, you disregard supplies that are by way of transfer of ownership of a capital asset. Projected GST turnover will not be used for the decline in turnover test under JobKeeper 2.0.</p>
Can two separate sole traders who are eligible business entities that are husband-and-wife both receive the JobKeeper?	Yes.
Under JobKeeper 2.0, if a business fails the decline in turnover test for the June 2020 quarter, but does satisfy the decline in turnover test for the September 2020 quarter, please confirm that they will cease to receive JobKeeper. If the business also satisfies the decline in turnover for the December 2020 quarter, will it be able to claim JobKeeper for the fortnights between 4 January 2021 and 28 March 2021?	Once a business has failed the decline in turnover test for the June 2020 quarter, it can no longer obtain JobKeeper under any circumstances.
If a business did not pass the basic test under JobKeeper 1.0 but subsequently passed the tests for JobKeeper 2.0, does the business qualify to claim JobKeeper from 28 September 2020?	<p>If the business was not initially eligible for JobKeeper, it will not be eligible for JobKeeper 2.0. We note in the question that the business did not pass the "basic test". Please ensure that the business does not pass the alternative decline in turnover test and thus make it eligible for JobKeeper.</p> <p>Also, if a business satisfies the decline in turnover test in relation to either the June 2020 quarter or September 2020 quarter under JobKeeper 2.0, it will be virtually certain that the business will have satisfied the decline in turnover test for the current JobKeeper scheme in some manner.</p>
Is the test for hours worked in February 2020, 20 hours in total or 20 hours per week?	The test determines whether the employee or eligible business participant worked 20+ hours (or not), on average, in the four weeks of pay period prior to 1 March 2020. The precise details of how this will be calculated will only be known when the Legislative Instrument is made.
If an eligible business participant is in a bushfire affected area in February 2020 and were evacuated and could not work as per usual, how does that affect the calculation of the average hours worked in that month?	This situation is specifically mentioned in the Treasury information. Although there are no specific details, it is said that there will be an alternative method of determining the average hours that such people have worked in February 2020. Very likely, another time period where the individual is working as normal will be used as a proxy for the work undertaken in February 2020.

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What is the status of the cash flow boost after September 2020?	There has been no change to the cash flow boost as announced in March 2020. The first part of the cash flow boost should now have been received by eligible entities and instalments in relation to the second cash flow boost should now start to be flowing by way of credits on an entity's account with the ATO.
In relation to the calculation of the hours worked in February 2020 for an eligible business participant, can the level of sales be used as a method to determine the number of hours that have been worked by that individual during that month if the individual is the only person in the business?	This is not currently known and will not be known until the relevant Legislative Instrument is made. We consider it unlikely that the level of sales will be used as a proxy for the amount of work that a person has undertaken, however, it is a possibility particularly where the sales are based on services provided.
How strict will the ATO be in targeting eligible business participants to justify the number of hours they have worked in February 2020?	The answer to this question is currently unknown. The JobKeeper Act requires that records be kept that can substantiate the information needed to qualify for the JobKeeper subsidy. When the applicable Legislative Instrument issues, there may be further information about this. However, we expect that the ATO will probably place information on its website or issue a law companion ruling/practical compliance guideline that will discuss the record keeping requirements and what compliance resources will be committed by the ATO to auditing this area. We trust that the ATO will continue to use a reasonable and commercial approach to the eligibility of businesses for JobKeeper.
When referring to the four weeks of pay period prior to 1 March 2020, is that a reference to the pay, per pay period, or the pay for the whole of the month?	<p>Details of this are currently unknown. The inference we obtain is that there will be an examination of the pay periods applicable to an entity that cover the four weeks prior to 1 March 2020. We are unclear whether this refers to the whole weeks prior to 1 March 2020 all the weeks that immediately proceed that date.</p> <p>We note that 1 March 2020 was a Sunday. It may be that for many employers the pay period finished on the prior Saturday and so the question of whole or part weeks may not arise. Nevertheless, we will not be able to resolve this until the Legislative Instrument is made.</p>
How will sole traders be able to prove the number of hours they have worked in February 2020?	This is unknown but the ATO is aware of the issue and it is understood that rules will be developed to assist with this issue.
A café business was purchased on 17 March 2020. The entity purchasing the business was eligible for the cash flow boost and JobKeeper under the provisions that related to the continuation of the same business. Will an individual (that purchased the business) be able to qualify as an eligible business participant? The individual did not work in the business until 17 March 2020.	No. There can be no JobKeeper claim for this individual. With regard to eligible business participants, there is no equivalent provision to the employer/employee situation that enables JobKeeper to continue to be claimed where there has been a sale of a business.

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Question	Answer
An employee worked full-time in a business prior to February 2020. In February 2020 the employee was on parental leave. After parental leave the individual is now working two days per week in the business. Will they be eligible for the top tier of JobKeeper payments under JobKeeper 2.0?	This will depend on how the alternative tests are framed in relation to the determination of whether the person has worked, on average, 20 hours per week in the four weeks prior to 1 March 2020. We suspect that you will be able to use the hours worked in January 2020 as a proxy for the hours worked in February 2020, but we will not know this until the applicable Legislative Instrument issues.
Can you give us a timetable for the JobKeeper 2.0 changes?	At the time of writing (29 July 2020), this is not possible. All that we currently know is that the new test for eligibility will need to be satisfied in advance of the date on which the September activity statements are due to be lodged. Also, we expect that the wage condition in relation to the JobKeeper subsidy will remain unchanged. That is, employees will need to be paid the \$1,200/\$750 in the JobKeeper fortnight in order to be eligible for the JobKeeper subsidy for the applicable employees.
With regard to an employee that has two jobs in February 2020, will both jobs be taken into account when determining the average hours that are worked for the four weeks prior to 1 March 2020?	The information from Treasury is that the only hours that will be counted for an individual are in relation to the work performed by the individual for the business that is seeking to claim the JobKeeper subsidy. That is, only the hours for one business will be counted.
If a taxpayer made an error in the June business activity statement turnover which may affect their eligibility for JobKeeper 2.0, is there any way to amend or would it be okay to support by paper records?	It is highly recommended that you amend the applicable BAS to ensure that the information is correct. No doubt, the ATO will be running integrity checks based on the information that has been submitted to it. If the information indicates that there has not been a sufficient decline in turnover, presumably it will cease to pay the JobKeeper subsidy.
Has the amount a partner can earn changed for JobSeeker?	Information from the Treasury says: "Partner income testing - the partner income test cut out will increase to \$3,086.11 per fortnight, or \$80,238.89 per annum, for individuals with no personal income, from 25 September 2020. The taper rate will increase from \$0.25 - \$0.27, with the higher income cut-out a result of changes to income testing for JobSeeker Payment. No one will be worse off under these temporary changes."
What do you suggest can relieve the headaches from these changes?	Paracetamol and aspirin-based products are often recommended by medical professionals in relation to head pain.
Is it still too late to register for the JobKeeper due to a sudden decrease in turnover after 30 June 2020?	No, it is not too late. The business will only be able to claim JobKeeper for the fortnights after it has enrolled. Eligibility for the original JobKeeper subsidy will remain until the JobKeeper fortnight ending 27 September 2020.

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Question	Answer
Can more than one business participant be eligible for JobKeeper 2.0?	No, unless the Legislative Instrument makes this permissible. The announcement by the Government does not indicate that this will be the case.
If a business has an employee who was employed prior to 1 March 2020, but had not worked in the four weeks prior as they were employed on a casual basis and were not rostered on, is there an entitlement to JobKeeper if they commence work after 1 September 2020?	<p>It must be the case that on 1 March 2020, the individual was considered to be a long-term casual. That will be a question of fact. If the employee was not rostered on during the month of February, there may be some difficulty in concluding that the employee was a long-term casual.</p> <p>We assume that the Legislative Instrument applicable for the JobKeeper 2.0 changes will contain provisions that deal with employees that are employed on a casual basis for the purpose of determining the number of hours that have been worked in the four weeks prior to 1 March 2020.</p> <p>The question implies that the JobKeeper subsidy has not been claimed for this employee to date. This suggests that there is something that has made this particular employee ineligible. If that is the case, the employee will remain ineligible. Alternatively, the employee may have had their employment terminated after 1 March 2020 and the employee is to be reinstated as at 1 September 2020. If that is the case, the JobKeeper subsidy should be able to be claimed from those fortnights in which the employee was re-employed.</p>
For a sole trader client (for example an Uber Driver), they are currently receiving JobKeeper and will continue to do so until the end of September 2020. They will not have earned any income from this business since 1 April 2020. When determining the eligibility for JobKeeper 2.0, the client will have no income for the June 2020 quarter. Compared with the June 2019 quarter, there will be a 30% decrease in turnover. Is it correct that the client will be eligible for JobKeeper 2.0?	<p>Yes. It will also be necessary to show that there has been a greater than 30% decline in turnover for the September 2020 quarter compared with the September 2019 quarter. This appears highly likely as you state that no income has been earned since 1 April 2020.</p> <p>There is an issue that needs to be raised in relation to this question. If this individual is claiming as an eligible business participant, there is a requirement that the individual is actively engaged in the business in each JobKeeper fortnight. Why does the individual have nil income since 1 April 2020? Has the individual been actively engaged in conducting the business?</p>
What happens when you have paid your employees JobKeeper payments from October 2020 and you realise that your turnover has not dropped by 30% for the December 2020 quarter when compared with the December 2019 quarter?	The business can validly claim the JobKeeper subsidy in relation to the JobKeeper fortnights between 28 September 2020 and 3 January 2021 if there has been a 30% decline in turnover in relation to the June 2020 and September 2020 quarters. The notion of projected GST turnover will no longer be applicable and therefore having a situation that results in there not being a decline in turnover of more than 30% in relation to the December 2020 quarter will not be relevant for the JobKeeper fortnights that end on 3 January 2021. This will be relevant for the JobKeeper fortnights that commence on 4 January 2021 and conclude on 28 March 2021.

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<p>How do we measure actual figures for the September 2020 quarter before the quarter actually ends? If the JobKeeper 2.0 period starts 28 September 2020, there is still a couple more days of actual income that could appear.</p>	<p>You have identified a very time sensitive piece of work that accountants, tax agents and BAS agents will be involved with. Unless the applicable Legislative Instrument provides otherwise, it will obviously not be possible to determine whether the decline in turnover test for actual supplies in the September 2020 quarter has occurred until that quarter ends. The first JobKeeper fortnight for JobKeeper 2.0 is from Monday, 28 September 2020 to Sunday, 11 October 2020. If the requirement to satisfy the wage condition in the JobKeeper fortnight continues, it will be necessary for a business to have determined that it has satisfied the decline in turnover between 1 October 2020 and 11 October 2020 (provided the ATO systems are operating on Sunday, 11 October 2020).</p> <p>We trust that the ATO is acutely aware of the enormous amount of work that will need to be done in this very short timeframe and will administer the JobKeeper system in a reasonable manner. Standby for further ATO announcements.</p>
<p>I would like to confirm the JobKeeper payment received for a partnership/trust (assumed to be for an eligible business participant) should be included as the entity's income. Please confirm that these amounts should not be considered as the eligible business participant's personal income.</p>	<p>Yes. That is correct. Tax & Super Australia has conducted a webinar on this topic. Go here for the details: https://bit.ly/337K8nh</p>

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Question

A sole trader is currently not in Australia due to COVID-19 and, accordingly, the business turnover is nil. Can the sole trader apply for JobKeeper as an eligible business participant? Are there any time limits for the sole trader staying overseas but still being eligible for JobKeeper?

Answer

The fact that an eligible business participant is outside Australia does not necessarily preclude the business from claiming the JobKeeper subsidy in respect of that individual.

The business must have been carried on in Australia on 1 March 2020. That will be a question of fact. Also, on 1 March 2020 the individual must be an Australian resident (within the meaning of section 7 of the *Social Security Act 1991*) or was a resident of Australia for the purposes of the income tax law and was the holder of a special category visa (Subclass 444).

It must also be the case, for an eligible business participant, that the individual is actively engaged in the business at some time in each JobKeeper fortnight. If the income of the business is nil, you will need to be ready to provide evidence that the individual is actively engaged in the business.

The length of time that the individual spends overseas does not, of itself, have any immediate impact on the ability to claim the JobKeeper subsidy. However, while the individual remains overseas and the business is not deriving any income, there is an evidentiary issue in relation to proving that the individual is actively engaged in the business.

The question of whether an individual is actively engaged in a business is an objective test. That is, would an independent observer determine that the individual is actively engaged in the business. Unfortunately, there seems to be no allowance in the rules in relation to the situation where an individual is prevented from actively engaging in their business due to a reason that is beyond their control, including being stuck in an overseas location due to COVID-19. No discretion is given to the Commissioner of Taxation in this regard.