

Practice Update

April-May 2021

JobKeeper April-May Updates

JobKeeper scheme comes to an end

The ATO has advised that the final JobKeeper payment will be processed in April 2021.

Enrolled businesses do not have to do anything when the program closes, although they will need to have completed their final March monthly business declaration by 14 April 2021.

Once a business is no longer claiming JobKeeper Payments, it may start to be eligible to receive the *JobMaker Hiring Credit* for any additional employees that started employment on or after 7 October 2020.

ATO loses case on JobKeeper and backdated ABNs

On 24 March 2021, the Full Federal Court handed down its decision in a case concerned with the requirement that an entity claiming JobKeeper must have had an ABN on 12 March 2020, or a later time allowed by the ATO.

The Registrar of the Australian Business Register had reactivated the relevant entity's previously cancelled ABN after 12 March 2020, but with a backdated effective date on or before 12 March 2020.

The Court held that backdating an ABN to have an effective date on or before 12 March 2020 did **not** satisfy the requirement for the entity to have had an ABN on 12 March 2020.

However, the Court also held that the ATO's decision not to allow the entity a "later time" to

have an ABN was a "reviewable decision", and that the Commissioner's discretion **should** be exercised in these circumstances (i.e. the Court held that the entity should be entitled to JobKeeper).

The Court's decision does not change the need to satisfy all of the other eligibility requirements.

Note: Where the ATO has postponed finalising a decision regarding a taxpayer's eligibility for JobKeeper (and/or the cash flow boost) pending the Court's decision, the ATO will contact the affected taxpayer shortly to provide them with an update.

First criminal conviction for JobKeeper fraud

A person claiming to be a sole trader was convicted of three counts of making a false and misleading statement to the Commissioner of Taxation, in order to receive \$6,000 in JobKeeper payments to which he was not entitled, as he was not operating a genuine business and he had already agreed to be nominated by his full-time employer for the allowance.

The ATO has a dedicated integrity strategy that supports the administration of the Government's stimulus packages, with robust and efficient compliance systems that make it very easy to identify fraudulent behaviour and stop it.

ATO Deputy Commissioner Will Day said *"Since the first payments were made in April, the ATO has monitored every payment, every day, every month, and will continue to do so until the last payment is made."*

ATO assessing JobKeeper practices

The ATO is using its compliance resources to maintain the integrity of the JobKeeper measure.

While most businesses and employees have done the right thing, the ATO has identified concerning and fraudulent behaviour as well as claims by a small number of organisations and employees, and will actively pursue these claims.

Some of the concerning behaviours the ATO is currently examining include:

- **businesses** that have:
 - made claims for employees without a nomination notice, or have not paid their employees the correct JobKeeper amount (before tax);
 - made claims for employees where there is no history of an employment relationship;
 - amended their prior business activity statements to increase sales in order to meet the turnover test; or
 - recorded an unexplained decline in turnover, followed by a significant increase; and
- **individuals** who have knowingly:
 - made multiple claims for themselves as employees or as 'eligible business participants'; or
 - made claims both as an employee and an 'eligible business participant'.

The ATO encourages all JobKeeper applicants to review their applications and contact the ATO if they have made mistakes (and as stated the ATO may not pursue repayment of an overpayment in certain circumstances, such as for honest mistakes).

If anyone is concerned that someone is doing the wrong thing in relation to the JobKeeper payment, they are encouraged contact the ATO.

The ATO will be examining JobKeeper Tip-Offs and contacting businesses where it has concerns and needs more information.

ATO's taxable payments reporting system update

The ATO has confirmed that more than 60,000 businesses have not yet complied with lodgment requirements under the taxable payments reporting system ('TPRS') for 2019/20.

The TPRS is a black economy measure designed to assist the ATO to identify contractors who don't report or under-report their income.

The ATO estimates that around 280,000 businesses need to lodge a *Taxable payments annual report* ('TPAR') for the 2020 financial year.

Importantly, 2020 was the first year that businesses that pay contractors to provide **road freight, information technology, security, investigation, or surveillance services** may need to lodge a TPAR with the ATO (in addition to those businesses providing **building and construction, cleaning, or courier services**).

Businesses who have not yet lodged need to lodge as soon as possible to avoid penalties.

ATO Assistant Commissioner Peter Holt added that some businesses **may not realise** they need to lodge a TPAR, but may be required to, depending on the percentage of payments received for deliveries or courier services.

"Many restaurants, cafés, grocery stores, pharmacies and retailers have started paying contractors to deliver their goods to their customers. These businesses may not have previously needed to lodge a TPAR. However, if the total payments received for these deliveries or courier services are 10% or more of the total annual business income, you'll need to lodge," Mr Holt said.

FBT rates and thresholds for the 2021/22 FBT year

The ATO has updated its webpage containing the fringe benefits tax ('FBT') rates and thresholds for the 2017/18 to 2021/22 FBT years.

Two amounts that were not previously announced for the 2021/22 FBT year are:

- the FBT record keeping exemption is \$8,923 (up from \$8,853 for the 2020/21 FBT year); and
- the statutory or benchmark interest rate is 4.52% (down from 4.80% for the 2020/21 FBT year).

The ATO also separately released two taxation determinations setting out further rates and thresholds for the FBT year commencing on 1 April 2021, being:

- Motor vehicle (other than a car) — cents per kilometre rate; and
- Reasonable food and drink amounts for employees living away from home.

Warning regarding new illegal retirement planning scheme

The ATO has recently identified a new scheme where SMSF trustees were informed that they could set up a new SMSF to roll-over the fund balance from the old SMSF and then liquidate their old SMSF, in an attempt to avoid paying potential tax liabilities.

The ATO warns that taking part in this arrangement and others like it can result in civil and criminal actions and could ultimately put the members' retirement savings at risk.

If a trustee of an SMSF believes they have been approached by a promoter of a retirement planning scheme, the ATO recommends they seek a second opinion from a registered tax agent or appropriately qualified financial adviser, and also report the promoter to the ATO.

New succession planning guide for family businesses

The Australian Small Business and Family Enterprise Ombudsman, in conjunction with Family Business Australia, has released a new online guide to succession planning — the *“Introductory Guide to Family Business Succession Planning”* — which provides a step-by-step guide to passing the family business on to the next generation. This is partly in response to a recent report which revealed that 54% of family businesses have no documented succession plan in place and no retirement plan for the current CEO.

The guide offers tips on how to handle conversations that can arise between family members throughout the transition phase. It is available on both the Family Business Australia and the ASBFEO's websites.

Government proposal to modernise business communications

The Government has committed to modernising certain laws so that they are 'technology neutral', to enable easier communication between businesses, individuals and regulators.

The first phase of legislative reform will focus on key areas raised by stakeholders which are implementation-ready (ideally by the end of 2021), including:

- expanding the range of documents that can be validly signed electronically;
- increasing the range of documents that can be sent electronically to shareholders and amending requirements to contact lost shareholders;
- improving flexibility for customers when changing address and consenting to electronic communication with credit providers;
- removing prescriptive requirements for notices to be published in newspapers,

where suitable alternatives have been identified; and

- addressing provisions in Treasury legislation where only non-electronic payment options are in place.

Subsequent phases will consider reforms in additional areas that could benefit from greater technology neutrality, including communication with regulators, and product disclosure and recordkeeping requirements.

Independent review service for small businesses made permanent

Following a successful multi-year pilot, the ATO's small business independent review service will be offered permanently as a dispute resolution option for eligible small businesses.

ATO Deputy Commissioner Jeremy Geale said the service is all about ensuring small businesses are given the opportunity to achieve an independent, fast, free, and fair resolution when they disagree with the ATO's audit position:

“Independence is critical when handling a dispute, so we ensure each and every independent review is done by an officer from a different part of the ATO who was not involved in the original audit”.

The ATO's small business independent review service is available to eligible small businesses with an annual turnover of less than \$10 million in relation to disputes about income tax, GST, excise, luxury car tax, wine equalisation tax, and fuel tax credits, and is in addition to other dispute options.

Disputes about employer obligations like superannuation and FBT are **not** eligible for the independent review service.

More information about the ATO's independent review service, including how to request a review and eligibility criteria, is available on the ATO's website.

ATO asks businesses to check if they are still using their ABNs

The ATO has advised that, if a business hasn't used its ABN for a while, the ATO may contact them about cancelling their ABN.

The ATO may also contact them about their ABN if their business situation has changed.

To ensure businesses don't miss out on Government support, including during unfortunate events, it's essential that they regularly review their ABN details and keep them up to date (or cancel their ABN if the business is no longer operating, so that Government agencies can tailor their support to those that need it).

It's also important to check that the business has listed the physical address of the business, as otherwise it can be difficult for emergency services and Government agencies to make contact.

A business' mailing address and physical location address can be listed separately on its ABN data, and these (and other ABN details) can be checked and updated online at any time.

Passenger movement data-matching program

The ATO will access data from the Department of Home Affairs on passenger movements during the 2016/17 to 2022/23 financial years, and match it with certain sections of ATO data holdings to identify taxpayers that can be provided with tailored information to help them meet their tax and superannuation obligations, or to ensure compliance with taxation and superannuation laws.

Data items include names, dates of birth, arrival and departure dates, passport information, and status types (visa status, residency, lawful, Australian citizen).

The ATO estimates that records relating to approximately 670,000 individuals will be obtained each financial year.

Super contribution caps to increase from 1 July 2021

The ATO has confirmed that, from 1 July 2021, the superannuation concessional and non-concessional contribution caps will be indexed.

The new caps for the 2021/22 year will be:

- **Concessional Cap:** \$27,500
- **Non-Concessional Cap:** \$110,000 (or \$330,000 over 3 years)

The **total superannuation balance** limit that determines if an individual has a non-concessional contributions cap of nil will also increase from \$1.6 to \$1.7 million, effective from 1 July 2021.

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