Treasury Laws Amendment (2020 Measures No 3) Bill 2020

Treasury Laws Amendment (2020 Measures No 3) Bill 2020 has passed both Houses of Parliament and is now law.

Extending the Instant Asset Write-Off

This legislation amends the income tax law to allow a business with an aggregated turnover for the income year of less than $500 million to immediately deduct the cost of a depreciating asset (instant asset write-off). The asset must cost less than a threshold of $150,000 and be first used or installed ready for use for a taxable purpose by 31 December 2020. Without these amendments the $150,000 instant asset write-off would have ended on 30 June 2020.

It will be interesting to see if this timeframe is further extended at some later point. Note that, come 1 January 2021, if there is no further extension, the $150,000 threshold for the instant asset write-off for depreciating assets will collapse to $1,000 and the turnover threshold for eligibility for the outright deduction of less than $500 million will fall to a turnover of less than $10 million.

Editor: Please contact our office if you are considering purchasing a depreciating asset for your business and want to know if you will be eligible for the instant asset write-off.

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Testamentary trusts and minors

This legislation contains amendments to ensure the tax concessions available to minors in relation to income from a testamentary trust only apply in respect of income generated from assets of the deceased estate that are transferred to the testamentary trust (or the proceeds of the disposal or investment of those assets).

This legislation clarifies that excepted trust income of the testamentary trust must be derived from assets transferred to the testamentary trust from the deceased estate or from the accumulation of such income.

This change will apply in relation to assets acquired by or transferred to the trustee of a testamentary trust on or after 1 July 2019.

Regulations confirm no SG obligation on JobKeeper payments where work is not performed

The federal government has registered the *Superannuation Guarantee (Administration) Amendment (Jobkeeper) Payment Regulations 2020.*

These regulations ensure that amounts of salary or wages that do not relate to the performance of work and are only paid to an employee to satisfy the wage condition for getting the JobKeeper payment are prescribed by the Regulations as excluded salary or wages.

The effect is that these amounts are excluded from the calculations of an employer's superannuation guarantee shortfall and the minimum compulsory superannuation contribution an employer is required to make in respect of an employee to avoid a superannuation guarantee charge liability.

Likewise, the Regulations recognise that an employer is only entitled to a JobKeeper payment for its employees if the business has suffered a substantial decline in turnover. In these circumstances, it is appropriate to require employers to only make minimum superannuation contributions in respect of amounts that are required to be paid to an employee for the performance of work.

Employers would not be required to make contributions in relation to additional amounts paid to satisfy the wage condition (for example, the amount by which $1,500 exceeds an employee's normal pay).

Editor: If you are concerned about the calculation of compulsory superannuation for any employees supported by JobKeeper, please contact our office.

Extension of the JobKeeper Payment

On 21 July 2020, the Government announced that the JobKeeper Payment ('JKP') would be extended until **28 March 2021** (i.e., for a further six months beyond its original end date of 27 September 2020).

As a result, JKPs will now be made over two separate extension periods, being:

- ❑ **Extension period 1** – which covers the seven new JobKeeper fortnights that commence on **28 September 2020** and end on **3 January 2021**; and
- ❑ **Extension period 2** – which covers the six new JobKeeper fortnights that commence on **4 January 2021** and end on **28 March 2021**.

Furthermore, on 7 August 2020, the Government announced adjustments to JobKeeper 2.0 to expand the eligibility criteria for JKP, primarily in the wake of the tougher COVID-19 restrictions recently imposed in Victoria.

These adjustments will apply nationwide, and the crucial amendments include adjustments to the proposed new 'Decline in Turnover' tests applicable from 28 September 2020.

More specifically, to qualify for the JKP in the two new extension periods (outlined above), businesses will now only have to demonstrate that their actual GST turnovers have decreased (in accordance with the applicable rates) in the previous quarter.

For these purposes, the applicable rate of decline in turnover required to qualify for the JKP is determined in accordance with the existing rules (e.g., **30%** for entities with an aggregated turnover of $1 billion or less).

Specifically, to be eligible for the JKP **Extension Period 1** (i.e., from 28 September 2020 to 3 January 2021), businesses only need to demonstrate an applicable decline in turnover in the **September 2020 quarter**.

This differs from the previously announced JobKeeper 2.0, where they would have been required to show that they had suffered an applicable decline in turnover in *both* the June and September 2020 quarters.

To be eligible for the JKP **Extension Period 2** (i.e., from 4 January 2021 to 28 March 2021) businesses only need to demonstrate an applicable decline in turnover in the **December 2020 quarter**.

Whereas under the previously announced JobKeeper 2.0, they would have been required to show that they had suffered an applicable decline in turnover in *each of* the June, September and December 2020 quarters.

Importantly, the dual payment rate system originally proposed in JobKeeper 2.0 will remain, with the full rate of payment decreasing from **$1,500 to $1,200 per fortnight** from 28 September 2020 and then to **$1,000 per fortnight** from 4 January 2021.

The proposed reduced rates (being **$750** from 28 September 2020 and **$650** from 4 January 2021) will also remain for employees and business participants who worked fewer than 20 hours per week in the relevant period.

Ref: Extension of the JobKeeper Payment, Treasury fact sheet, 7 August 2020

JobKeeper 2.0 rules released

Treasurer Josh Frydenberg has now registered the new rules governing the extension of the JobKeeper payments, with ATO guidance set to follow.

The Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 (https://www.legislation.gov.au/Details/F2020L01165) legislative instrument was registered on Tuesday, setting out the decline in turnover test for the extension of JobKeeper to 28 March 2021, and the new two-tiered payment rates.

For the first extension period running from 28 September 2020 to 3 January 2021, employees who worked for 80 hours or more in the 28 day period before either 1 March 2020 or 1 July 2020 will receive $1,200 per fortnight, while all other employees will receive $750.

For the second period running from 4 January 2021 to 28 March 2021, the rate will drop to $1,000 per fortnight and $650 per fortnight, respectively.

To qualify for the first extension period, entities will need to satisfy the new actual decline in turnover test for the quarter ending 30 September.

Depending on whether an entity was an ACNC-registered charity; a business with a turnover of $1 billion or less, or a business with a turnover of over $1 billion, they will be required to demonstrate a decline of either 15 per cent, 30 per cent or 50 per cent, relative to its comparable quarter in 2019.

To qualify for the second extension period between 4 January 2021 and 28 March 2021, the turnover test will need to be applied for the quarter ending 31 December 2020.

The Commissioner of Taxation will be allowed to specify an alternative decline in turnover test, and an alternative reference period for working out if the higher or lower JobKeeper rate applies in respect of eligible employees, business participants and religious practitioners

80 cents per hour 'shortcut' method for home office expenses has been extended

Back in April 2020 the ATO announced that a 'shortcut' method was to be made available to use from **1 March 2020 until 30 June 2020** for individuals claiming home office expenses due to COVID-19. The ATO has recently announced an extension of this shortcut method to also include **1 July 2020 to 30 September 2020**.

In summary, a taxpayer can claim a deduction of 80 cents for each hour they work from home due to COVID-19 as long as the individual is:

- working from home to fulfil their employment duties and not just carrying out minimal tasks such as occasionally checking emails or taking calls; and
- incurring additional deductible running expenses as a result of working from home.

A taxpayer does not have to have a separate or dedicated area of their home set aside for working, such as a private study.

The shortcut method rate covers all deductible running expenses such as: electricity and gas used for heating/cooling and running electronic items used for work purposes; depreciation and repair of assets used for work purposes; work-related phone and internet costs.

Editor: If you are working from home due to COVID-19 and have queries about what deductions you can claim, contact our office.

Expanded eligible employee definition for JobKeeper

Additional recently implemented JobKeeper changes mean **more employees will qualify** for JobKeeper payments from **3 August 2020**.

This is primarily because:

- the **eligible employee test** has been extended from **3 August 2020** to include eligible employees who were employed on **1 July 2020** (in addition to the original 1 March 2020 employment date) who are not currently nominated for the JKP by another entity; and
- from the fortnights commencing on 3 August 2020 and 17 August 2020 (i.e., JobKeeper fortnights 10 and 11) employers will have had until **31 August 2020** to meet the **'wage condition'** for all new eligible employees included in the JobKeeper scheme under the 1 July eligibility test.

Importantly, as a result of these recent tweaks to the JobKeeper scheme, participating employers should have provided any new eligible employees with an employee nomination form.

The onus is on employers to ensure all of their employees now eligible for JKPs as a result of the new 1 July test are given the opportunity to be included.

Ref: More employees now able to access JobKeeper, ATO media release, 19 August 2020.