

***Slatter Building Group Pty Ltd and Commissioner of
Taxation -***

Decision impact statement

Slatter Building Group Pty Ltd and Commissioner of Taxation

Court citation(s):	[2021] AATA 456
Venue:	Administrative Appeals Tribunal (Small Business Taxation Division)
Venue reference no:	2020/6013
AAT member name(s):	Deputy President Bernard J McCabe and Senior Member Robert J Olding
Judgment date:	10 March 2021
Appeals on foot:	No
Decision outcome:	Favourable to the Commissioner

Impacted advice



This decision has no impact on any related advice or guidance.

Précis

This Decision impact statement outlines the ATO's response to this case which concerns the requirement for an entity to make a taxable supply in a tax period that applied to it that started on or after 1 July 2018 and ended before 12 March 2020, as per subsection 5(6) of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (Boosting Cash Flow Act). The entity's legal costs were funded under the Commissioner's test case funding program.

Brief summary of facts

To receive the first cash flow boost, an entity needs to meet the requirements in section 5 of the Boosting Cash Flow Act. For an entity that is not a charity registered with the Australian Charities and Not-for-profits Commission, this includes that an entity must satisfy the 'business activity' requirement under either subsections 5(5) or 5(6) of the Boosting Cash Flow Act, being that:

- either
 - the entity had an amount included in its assessable income for the 2018–19 income year in relation to it carrying on a business, or
 - the entity made a taxable, GST-free or input taxed supply in a tax period that applied to it that started on or after 1 July 2018 and ended before 12 March 2020, and
- the Commissioner had notice of that assessable business income or taxable supply on or before 12 March 2020 (or a later time allowed by the Commissioner).

A similar requirement also exists in section 6 of the Boosting Cash Flow Act, for entitlement to the second cash flow boost.

The entity was created on 17 January 2020, when it was registered with the Australian Securities and Investment Commission. The sole director and shareholder of the entity had previously operated a business, in building and construction, as a sole trader since 2018.

The entity made taxable supplies in the period between its incorporation on 17 January 2020 and 12 March 2020. It accounted for goods and services tax on a quarterly basis and lodged its first activity statement, for the quarter ended 31 March 2020, on 1 May 2020.

The entity requested a review into its eligibility to receive cash flow boost payments but was found ineligible.

The entity objected under Part IVC of the *Taxation Administration Act 1953* to the Commissioner's decision finding them ineligible to receive cash flow boost payments. The entity's objection was disallowed on the basis that the entity could not meet the business activity tests as it did not have a tax period that applied to it that ended before 12 March 2020.

Issues decided by the Court

The Tribunal concluded that the tax period must be one which applies to the entity. Accordingly, the entity was not able to meet the requirements for entitlement to the cash flow boost, as it did not have a tax period that applied to it that ended before 12 March 2020.

The Tribunal noted that although the entity '... appears to have struggled with the impact of the pandemic and may be a worthy recipient of financial assistance', the Tribunal's role was '... solely to determine whether the applicant is entitled to the cash flow boost as a matter of law, on a proper construction of the relevant legislative provisions'.

ATO view of decision

The decision is consistent with the Commissioner's interpretation of subsections 5(6) and 6(6) of the Boosting Cash Flow Act.

Entities that came into existence, or commenced business, after 31 December 2019 and report goods and services tax on a quarterly basis do not have a tax period that applied to them that ended before 12 March 2020.

Similarly, entities that came into existence or commenced business on or after 1 July 2019 and elected to report goods and services tax annually will not have a tax period that applies to them that ended before 12 March 2020.

These entities therefore cannot satisfy the requirements for entitlement to the cash flow boost, as they also would not have assessable business income from the 2018–19 income year (since they did not exist, or were not carrying on a business, during that income year).

An identical requirement exists in subsections 11(6) to 11(8) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*. Those subsections apply for entitlement to JobKeeper payments in relation to an eligible business participant. As the wording of those subsections is the same as the requirement in the Boosting Cash Flow Act, the Commissioner considers the same interpretation applies in that context. As such, the Commissioner's view is that

entities in the circumstances outlined in this Decision impact statement will not be entitled to JobKeeper payments in relation to an eligible business participant.

Comments

We invite you to advise us if you feel this decision has consequences we have not identified. Please forward your comments to the contact officer.

Date issued:	21 April 2021
Due date:	21 May 2021
Contact officer:	Rachel Galea
Email address:	Rachel.Galea@ato.gov.au
Telephone:	(02) 9374 1047

Legislative references

Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020

5

5(5)

5(6)

6

6(6)

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

11(6)

11(7)

11(8)

Taxation Administration Act 1953

Pt IVC