



PS LA 2020/1 - Commissioner's discretion to allow further time for an entity to register for an ABN or provide notice to the Commissioner of assessable income or supplies

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Commissioner's discretion to allow further time for an entity to register for an ABN or provide notice to the Commissioner of assessable income or supplies

This Law Administration Practice Statement provides guidance to staff in relation to the exercising of the Commissioner's discretion to allow an entity further time to:

- register for an ABN, or
- provide notice to the Commissioner that an amount of business income should be included in the entity's assessable income for the relevant period or that the entity made a taxable supply during the relevant period

for the purposes of satisfying the eligibility criteria for the cash flow boost or the JobKeeper payment in respect of an eligible business participant.

This Practice statement is an internal ATO document, and is an instruction to ATO staff.

1. What this practice statement is about

An entity's entitlement to receive benefits under the Boosting cash flow for employers measure¹ and the JobKeeper payment scheme² turns on it meeting a number of eligibility requirements.

For an entity to be eligible for the cash flow boost or to receive the JobKeeper payment for an eligible business participant³, the entity must have:

- had an Australian business number (ABN) on 12 March 2020 (or a later time allowed by the Commissioner)⁴, and
- either⁵
 - had an amount included in its assessable income in the 2018–19 income year in relation to it carrying on a business, or
 - made a taxable supply in a tax period starting on or after 1 July 2018 and ending before 12 March 2020⁶, and

- given the Commissioner notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the amount of income should be so included, or that the entity had made the taxable supply.⁷

This practice statement provides guidance on the relevant circumstances that should be taken into account when the Commissioner is considering whether to grant further time for an entity:

- to register for an ABN, or
- to provide notice of income or taxable supplies during the relevant period to the Commissioner.

This practice statement also outlines the authorisations required to grant further time.

This practice statement only applies for the purposes of determining an entity's eligibility for either the cash flow boost or JobKeeper payment. It does not apply to any other discretion the Commissioner may exercise that is relevant to determining ABN eligibility at a point in time, or deferral of tax returns or business activity statements.

¹ *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (the Boosting Cash Flow Act).

² *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Payments and Benefits Rules).

³ Depending on the entity, an 'eligible business participant' is a sole trader, partner in a partnership, adult beneficiary of a trust, or shareholder or director of a company. See section 12 of the Payments and Benefits Rules.

⁴ Subparagraphs 5(1)(f)(ii) and 6(1)(d)(ii) of the Boosting Cash Flow Act and subsection 11(6) of the Payments and Benefits Rules.

⁵ Paragraphs 5(5)(a) and 6(5)(a) of the Boosting Cash Flow Act and paragraphs 11(7)(a) and 11(8)(a) of the Payments and Benefits Rules.

⁶ In determining whether an entity made a taxable supply (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* for this notification requirement, assume that the entity is registered for GST, the supply is neither GST-free nor input taxed. For an entity carrying on business solely in the external Territories assume they are part of the indirect tax zone: see subsections 5(7) and 6(7) of the Boosting Cash Flow Act and subsection 11(9) of the Payments and Benefits Rules.

⁷ Paragraphs 5(5)(b) and 6(5)(b) of the Boosting Cash Flow Act and paragraphs 11(7)(b) and 11(8)(b) of the Payments and Benefits Rules.

2. Background – policy intent

Both the JobKeeper payment and the cash flow boost measures are designed to provide financial support to active businesses that have been adversely affected by the economic impacts of COVID-19, and to support the retention of employment of their staff.

The JobKeeper scheme temporarily subsidises salary and wage costs where there has been a significant decline in turnover in the business. The cash flow boost provides a credit on the business activity statement to eligible entities.

The JobKeeper payment measure also recognises that many closely-held businesses – such as sole traders and partnerships and family trusts – operate through legal structures that may not make payments of salary or wages to employees. Therefore, the JobKeeper payment also applies to certain eligible participants in qualifying businesses based on their participation in the business of the closely-held entity.

To ensure that only businesses that were existing and active as at 12 March 2020 receive the benefit of these measures, the law for both the cash flow boost and the JobKeeper payment (as it applies to qualifying businesses based on an eligible business participant) require an entity to have held an ABN on 12 March 2020.

Additionally, entities are required to have notified the Commissioner by 12 March 2020 of any assessable income derived in the 2018–19 income year, or provide notice (usually in their business activity statement) that they have made a taxable supply⁸ in a tax period starting on or after 1 July 2018 and ending before 12 March 2020.

These eligibility requirements were included to prevent new entities from being established, or inactive entities being revived, solely to obtain the benefits provided under either measure.⁹

The purpose of both measures was to assist active businesses with employees at the time the COVID-19 pandemic began to affect Australian businesses. Accordingly, the Payments and Benefits Rules require the entity to:

- have held an ABN from the date the Government commenced announcing measures that would comprise the Coronavirus Economic Response Package, and
- be active (by lodging a return to the Commissioner) by that time.

⁸ Taxable supply for this purpose includes any supply including those that may be GST-free or input taxed. See footnote 5 of this practice statement for more details.

⁹ Note that for the cash flow boost credit, charities registered with the Australian Charities and Not-for-profits Commission do not need to meet the ABN requirement.

The discretions to grant further time to meet these requirements are discussed in the Explanatory Memorandum to the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (EM) and the Explanatory Statement to the Payments and Benefits Rules (ES). The EM and ES both state that the exercise of these discretions will only occur in limited circumstances. For example, where an entity may have been conducting an active business on 12 March 2020 but did not have an ABN as the no ABN withholding provisions do not apply to supplies they made, such as in relation to businesses that are conducted solely in the external Territories.

3. The discretion to grant further time

Further time to hold an ABN after 12 March 2020

In determining whether to grant further time to hold an ABN, the Commissioner will have regard to the policy intent of the measures. While all relevant facts and circumstances of an entity's situation should be taken into account, a key relevant consideration will be evidence that the relevant entity was conducting an active business on 12 March 2020, and was entitled to hold an ABN but did not obtain one because the adverse requirements of not holding an ABN (such as no-ABN withholding) would not apply to the entity.¹⁰

It is expected that further time will only be granted in limited circumstances where to do so would be consistent with the policy intent.

Further time to give notice that an amount should be included in assessable income, or that the entity had made the taxable supply

Once again, in determining whether to grant further time to give notice, the Commissioner will have regard to the policy intent of the measures. While all relevant facts and circumstances of an entity's situation should be taken into account, the Commissioner will likely grant further time where an entity has not lodged by the relevant due date because either:

- they have a pre-existing lodgment deferral in place, such as through the tax agent lodgment program or the deferrals for taxpayers affected by the recent bushfires, or
- they are a new business established from 1 July 2019 that is not registered or required to be registered for GST, but have made supplies during a period ending between the 1 July 2019 to 12 March 2020 period, or

¹⁰ As outlined in the ES.

- there were exceptional and unforeseen circumstances; such as the loss of a significant amount of records due to the recent bushfires.¹¹

When having regard to all the relevant facts and circumstances of an entity's situation the ATO may need to contact the entity and obtain more information before we can determine whether the discretion should be exercised. Additional supporting documentation will depend on the entity's circumstances.

The kinds of supporting documents we ask for will depend on the entity's circumstances and may include:

- tax invoices
- records of merchant payment facilities
- evidence of corporate structure, including Australian Securities and Investment Commission registration for companies, partnership agreement, executed trust deed
- bank statements in the business name
- council permits (for example, for building use, selling food or storage of dangerous goods)
- occupancy agreements (such as leases) for business premises
- documents showing business financing arrangements
- business contracts
- advertising of business services.

4. Example – Norfolk Island

Amy is a sole trader who runs a local small business on Norfolk Island selling goods to local residents. She does not sell her goods to the Australian mainland, nor have any employees or fringe benefits tax reporting obligations.

As Amy's business operates solely on Norfolk Island, she is not required to have an ABN as the no-ABN rules and GST provisions do not apply within Norfolk Island. Amy does not choose to voluntarily obtain an ABN or register for GST.

Amy's business has suffered as a result of the economic impacts of COVID-19, and she would like to apply for the JobKeeper payments.

However in order to be eligible for the payments, Amy will need to obtain an ABN, apply for the Commissioner's discretion to allow a time later than 12 March 2020 to hold an ABN, and have that discretion be exercised.

5. Example – operating an enterprise in Australia

Helen operates a business in Australia as a sole trader. She sells handmade kids clothing online and takes orders for tailor-made speciality clothing. She has operated the business for a number of years and has a clear intention to make a profit from the activity as demonstrated by her business plan. Her turnover is \$40,000 and she is not registered for GST. She also operates her business without an ABN. Upon hearing about the sole trader entitlement for the JobKeeper payment she registers to get an ABN on 14 April 2020 and requests that the Commissioner use his discretion to allow her to hold an ABN later than 12 March 2020.

The Commissioner does not exercise his discretion to grant further time to register for an ABN as Helen does not fit within the limited circumstances outlined in this practice statement. While Helen was running an active business prior to 12 March 2020, she deliberately did not hold an ABN at this time. Even if she requests that the ABN registration be backdated to the time she started her business, this does not change the fact that on 12 March 2020 she did not have an ABN. Helen is not eligible for the JobKeeper payment to sole traders.

6. Example – eligibility of a business with no supplies in a tax period that ends before 12 March 2020

Jack commenced a new business selling toys at the start of December 2019.

Jack completed all the necessary registration requirements for his new business, including obtaining an ABN and registering for quarterly GST reporting. Jack also incurred numerous costs in establishing his business.

However due to delays in setting up the business, Jack did not manage to make any sales during the month of December. Rather the businesses' first sales eventuated in late January 2020.

Because Jack's business did not make any taxable supplies in the December quarter reporting period, the business will not be eligible for either the cash flow boost or JobKeeper payment because it did not make a taxable supply in a tax period that ended prior to 12 March 2020.

As the business did not commence until after 30 June 2019, it is not able to include an amount in its assessable income in the 2018–19 income year.

On behalf of his business, Jack asks the Commissioner to exercise the discretion to allow further time to notify the Commissioner of the made taxable supplies for the purposes of being eligible for both the cash flow boost and JobKeeper payment.

¹¹ Paragraph 3.31 of the EM.

The Commissioner does not exercise the discretion under either measure because Jack's business is ineligible as it did not make a taxable supply in a tax period ending prior to 12 March 2020. The Commissioner does not have the discretion to extend the date by which an entity can make a taxable supply. The Commissioner can only extend the date by which notice of the made supply is provided.

Exercising the discretions in any other situation will need approval at the EL 2 level (in addition to otherwise applicable delegations).

7. Who is authorised to exercise the discretion on behalf of the Commissioner?

If an applicant entity operates in the external Territories or has an ATO-instigated lodgment deferral already in place on 12 March 2020, officers at the APS 6 level and above are authorised to exercise either of the discretions addressed in this practice statement.

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