


PS LA 2020/1 - Commissioner's discretion to allow further time for an entity to hold 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 tax 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 that applied to it 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

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.

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.

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 boosts are credits delivered to eligible entities in the activity statement system, generally equivalent to the amount withheld from wages paid to employees for each monthly or quarterly period from March to June 2020.^{7A}

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 that applied to it starting on or after 1 July 2018 and ending before 12 March 2020. This requirement ensures that only active businesses which are visible in the tax system with a lodgment period that ends prior to the date the Government commenced announcing measures that would comprise the Coronavirus Economic Response Package would be eligible for the cash flow boost or JobKeeper payment (as it applies to

qualifying businesses based on an eligible business participant).

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.

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

^{7A} Eligible businesses are entitled to a minimum of \$10,000 across March to June 2020, even if their total withholding is less than \$10,000, and total cash flow boosts for March to June 2020 cannot exceed \$50,000. Eligible businesses who received initial cash flow boosts will also receive additional cash flow boosts from June to September 2020 equivalent to the total initial cash flow boosts received, which will be delivered in either two or four instalments, depending on their reporting cycle.

⁸ Taxable supply for this purpose includes GST-free or input taxed supplies. See footnote 6 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.

¹⁰ As outlined in the ES.

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 and all relevant facts and circumstances of an entity's situation. The law allows the Commissioner to give further time to provide the notice but this does not mean that the entity is entitled to extra time. Rather the law enables the Commissioner to give further time where it is warranted. Relevantly, 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 nor required to be registered for GST, but have made supplies in a tax period ending between 1 July 2019 and 12 March 2020, or
- there were exceptional and unforeseen circumstances; such as the loss of a significant amount of records due to the recent bushfires.¹¹

An entity's lodgment history may be a relevant consideration for the Commissioner in determining whether further time to give notice is warranted. For example, if an entity has a history of failing to meet their lodgment obligations without good reason, then this fact may mean extending the time to give notice is not warranted.

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 1 – 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 2 – operating an enterprise in Australia

Helen operates a business in Australia as a sole trader. She sells handmade kids clothing online to retailers to on-sell to end users, and also takes orders for tailor-made speciality clothing for end-user customers. 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 the discretion to allow her to hold an ABN later than 12 March 2020.

The Commissioner does not exercise the discretion to grant further time to register for an ABN as Helen does not fit within the limited circumstances outlined in this

¹¹ Paragraph 3.31 of the EM.

practice statement. While Helen was running an active business prior to 12 March 2020, she deliberately did not hold an ABN at this time, despite the no-ABN withholding provisions applying to her sales to other businesses for them to resell. 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 3 – adverse consequences of not holding an ABN don't apply

Thanh operates a business selling juice made from fruit grown in a small orchard on his property and does not have an ABN. Thanh is also not registered or required to be registered for GST because his turnover is below the GST registration threshold. Thanh has included business income in his tax returns, including his return for the 2018–19 income year which was lodged before 12 March 2020.

Thanh only sells directly to customers at markets and fairs, and he does not sell to other businesses. As a result, the adverse consequences of not holding an ABN, particularly no-ABN withholding, don't apply to Thanh's business.

Upon hearing about JobKeeper payments for eligible business participants, Thanh registers to get an ABN on 14 April 2020 and requests that the Commissioner exercise the discretion to allow him to hold an ABN later than 12 March 2020.

The Commissioner exercises the discretion to grant further time to register for an ABN as Thanh's circumstances fit within the limited circumstances outlined in this practice statement. As Thanh is also able to satisfy the other eligibility requirements, he is eligible to receive JobKeeper payments for an eligible business participant.

7. Example 4 – 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 however did not undertake any further activities. In January 2020, Jack 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 supplies¹² 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 for Jack to notify the Commissioner that he made a taxable supply during the relevant period for the purposes of being eligible for both the cash flow boost and JobKeeper payment.

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 2020.¹³ 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.

8. Example 5 – non-compliance with lodgment obligations

Mahmoud commenced running a coffee shop in 2017 using his company structure and registered for GST. The coffee shop picked up business very quickly and Mahmoud found he was always busy doing ordering, staff rosters and keeping the shop going.

Mahmoud uses a tax agent but had not engaged with them since opening the coffee shop because he was too busy. At 12 March 2020, no business activity statements or company tax returns had been lodged. Mahmoud worked with the tax agent to bring all outstanding lodgments up to date in April 2020.

The Commissioner does not exercise the discretion to give Mahmoud more time to provide notice of his business income or taxable supplies.

¹² Taxable supply for this purpose includes any supply including those that may be GST-free or input taxed. See footnote 6 of this practice statement for more details.

¹³ New businesses that do not have a tax period that ends before 12 March 2020 are similarly not eligible for any cash flow boosts, this includes both the first and second cash flow boosts.

9. Example 6 – new business not registered for GST

Pam started her consulting business in August 2019 employing an office administrator to assist her.

As a new business she does not expect her annual turnover to be above \$75,000. She does not register for GST and does not include GST in her invoices.

Pam's business may be eligible for the cash flow boost, however because the business started after 1 July 2019 she cannot lodge a 2018–19 return for the business. She must seek a discretion for more time to notify a taxable supply being made before 1 January 2020.

The Commissioner exercises the discretion to grant further time to notify a taxable supply. Pam provides invoices made out to clients in August and September 2019 to the Commissioner and bank statements showing their payment. If Pam satisfies all other eligibility requirements, she will be eligible to receive the cash flow boost.

10. Example 7 – exceptional circumstances

Iris has been running a cleaning service as a sole trader for the past 11 years under her ABN, which she has held for 11 years. Iris is registered for GST. Although lodgments may have been a little late on occasion, Iris lodges tax returns with business income from her cleaning service and business activity statements with taxable supplies, both of which support the fact that Iris has been running an active business for many years.

At 12 March 2020, Iris has outstanding lodgments, being all business activity statements since 1 July 2018 and her 2019 tax return. Iris sought extensions for some of her lodgments, but any extensions that were granted have since passed. Iris brings all of her lodgments up to date in May 2020.

Iris requests that the Commissioner exercise the discretion to grant further time to provide notice of business income or taxable supplies. Iris provides a letter from her treating doctor to the Commissioner with the request for the exercise of the discretion. The letter outlines that Iris has suffered from depression and anxiety for the past nine years, which impacts on her ability to deal with normal life activities like tax obligations. The guilt of not meeting her obligations on time then further enhances Iris's anxiety.

The Commissioner exercises the discretion to grant further time on the basis that:

- Iris has shown exceptional circumstances which reasonably explain the outstanding lodgments and which are supported by a letter from her doctor, and*

- Iris was meeting her lodgment obligations prior to 1 July 2018, has a history of good compliance and has continued engagement with the ATO post-2018. As the ATO has had visibility of Iris's business and is not concerned that it is an inactive business being brought back to life, exercising the discretion would not be outside of the policy intent of the integrity provisions.*

11. Example 8 – non-ATO initiated deferral

Misha lodges her own tax returns each year. After starting her sole trader business making cupcakes in 2018, Misha finds it is more difficult keeping on track with her tax lodgment obligations.

In October 2019, before her 2019 tax return is due, Misha calls the ATO and requests an extension to lodge until 30 March 2020, which is approved.

On 12 March 2020, Misha had a pre-existing lodgment deferral and had not provided notice to the Commissioner of business income in the 2018–19 income year. The Commissioner exercises the discretion to grant further time to provide notice of business income for reason that Misha had a non-ATO initiated deferral in place for her 2019 tax return.

12. Example 9 – impact of tax agent conduct

Jane has operated her business as an independent valuer for a number of years. She obtained an ABN on commencement of her business and the ABN was active on 12 March 2020. Jane has always used a tax agent to complete her tax returns each year and to provide tax advice.

Jane provides all her 2019 documentation to her tax agent in January 2020, when they meet and discuss her 2019 return. Following that meeting the tax agent advises Jane by email that the return would be submitted that week and tells Jane that, once submitted she would be informed how much tax would be required to be paid to the ATO.

Over the next few weeks Jane didn't receive confirmation from her tax agent that her return was lodged. Jane makes a couple of follow-up calls to her tax agent in May, however her calls are not returned.

In early July, Jane sends a follow up email to her tax agent enquiring about the progress of the return and the amount of additional tax required to be paid, however still receives no response from her tax agent. Due to the lack of response, Jane makes contact with another tax agent at the same firm who advises that Jane's 2019 return has not yet been lodged. Jane's 2019 return was lodged on 28 July 2020.

Jane's business suffered as a result of the economic impacts of COVID-19 and she wanted to enrol for

JobKeeper as an eligible business participant but requires the Commissioner to exercise the discretion to grant further time to provide notice of business income.

The Commissioner exercises the discretion to grant further time on the basis of the emails provided by Jane from the tax agent showing that her return should have been lodged in January. It was the tax agent who caused the return not to be lodged before 12 March 2020.

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

Staff should refer to Schedule 9 of the [Taxation Authorisation Guidelines](#) (link available internally only) to find who is approved to exercise the discretions discussed in this practice statement.

Date issued 1 May 2020

Date of effect 1 May 2020

Amendment history

Date of amendment	Part	Comment
16 September 2020	Section 2	Language providing a description of the cash flow boost clarified and footnote 7A added Footnote 8 corrected to cross-reference to footnote 6. Language describing the requirement to notify the Commissioner of assessable income in the 2018-19 income year or provide notice that they have made a taxable supply in a tax period that applied to it starting on or after 1 July 2018 and ending before 12 March 2020 expanded.
	Section 3	Preliminary paragraphs expanded to clarify that an entity is not entitled to extra time. Lodgment history of an entity added as a relevant consideration.
	All examples	Numbered to allow easier referencing.
	Section 5 – Example 2	Description of Helen’s business clarified, and statement that no-ABN withholding provisions would apply added. .
	Section 6 – Example 3	Added.
	Section 7 – Example 4	Description of Jack’s business activities clarified, and other minor language changes. Footnotes 12 and 13 added.
	Sections 8 to 12 –Examples 5 to 9	Added.
13 August 2020	Section 7	Removed - authorisations are now included in the Taxation Authorisation Guidelines (link available internally only)
11 May 2020	Section 3	Clarified the second dot point to indicate that further time will likely be granted for new businesses established from 1 July 2019 that are not registered nor required to be registered for GST.