

JobKeeper payment - guide to the modified decline in turnover test



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What this Guide is about

This Guide provides guidance on key elements of the modified decline in turnover test for certain group structures, as outlined in section 8A of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020*.

It should be read in conjunction with:

- Law Companion Ruling [LCR 2020/1](#) *JobKeeper payment – decline in turnover test*
- Practical Compliance Guideline [PCG 2020/4](#) *Schemes in relation to the JobKeeper payment*
- advice provided on the modified decline in turnover test on the [ATO website](#)

All legislative references in this Guide are to the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Payments and Benefits Rules), unless otherwise indicated.

GST groups and employer entities

Can the modified decline in turnover test apply for an employer entity that forms a GST group after 1 March?

If an employer entity forms a GST group after 1 March 2020 with entities to which it provides employee labour services, that employer entity is able to apply the modified decline in turnover test for group employer entities to determine if it satisfies the decline in turnover test, provided all other eligibility requirements for that test are met.

An employer entity can apply the modified decline in turnover test for group employer entities where it and other group entities to which it supplies employee labour services were carrying on a business on 1 March 2020 and form a GST group after 1 March 2020.

An entity can form a GST group by notifying the ATO on or before the time its business activity statement is due.

If an employer entity forms a GST group after 1 March 2020, the employer entity will only be eligible for JobKeeper payments for JobKeeper fortnights that end on or after the date that the GST group was formed and all other eligibility requirements are met.

Will section 19 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (the Act) apply solely on the basis of a GST group being formed after the Payments and Benefits Rules commenced?

Where a GST group is formed after the commencement of the Payments and Benefits Rules (9 April 2020), the Commissioner would not seek to apply section 19 of the Act solely on that basis. The Commissioner will take a range of factors into account in determining whether this section applies.

Guidance on how the Commissioner will apply his compliance resources to schemes to obtain the JobKeeper payment, or an increased amount of a JobKeeper payment, can be found in PCG 2020/4 *Schemes in relation to the JobKeeper payment*.

Test members of a group

Who can be test members of an employer entity?

To qualify as a test member of an employer entity (as outlined in subparagraph 8A(2)(a)(i)), an entity needs to be in the same consolidated group, consolidatable group or GST group as the employer entity and:

- the employer entity supplies employee labour services to that entity, and
- the entity's principal activity is the making of supplies to entities that are not members of the same consolidated, consolidatable or GST group.

If the entity meets both requirements, they will be a test member. An entity that does not satisfy both of these requirements will not be a test member.

Example 1 – working out the test members of a group

Company C is an employer entity that provides employee labour services to Entity A and Entity B. All three entities are members of the same GST group. Entity A wholly services third parties. Entity B services both internal and external parties equally.

If Entities A and B meet both parts of the test in subparagraph 8A(2)(a)(i) they will be the test members.

In this case, Entity A satisfies both parts of the test and will therefore be a test member.

Entity B does not meet the second part of the test in subparagraph 8A(2)(a)(i). Therefore, Entity B will not be a test member and it is excluded from having its projected GST and current GST turnover counted in the sum of those respective turnovers under subsection 8A(3).

Company C will take into account Entity A's projected GST turnover and current GST turnover in applying the modified decline in turnover test under subsection 8A(3). If Entity A satisfies the decline in turnover test and assuming all the other criteria are satisfied, the employer entity qualifies for JobKeeper payments.

Example 2 – working out the test members of a group and decline in turnover

PartyLife Limited is the head entity of a consolidated group. Within the consolidated group, there are two businesses, each of which consists of entities which are members of two separate GST groups – the Day Party GST group and the Night Party GST group.

The Day Party GST group members includes PoolParties Pty Ltd. PoolParties Pty Ltd owns and operates a pool party venue and is the direct employer of those working for it. The Night Party GST group members include several entities (Night Party 1 Pty Ltd, Night Party 2 Pty Ltd and Night Party 3 Pty Ltd) that operate nightclubs and one employer entity, NightPeople Pty Ltd.

NightPeople Pty Ltd directly employs those whose services are provided to operate the nightclubs.

NightPeople Pty Ltd can calculate its decline in turnover using the modified test for employer entities. In calculating the decline in turnover, NightPeople Pty Ltd as the employer entity, would not include its GST turnover.

NightPeople Pty Ltd would calculate its decline in turnover by adding the projected GST turnovers of those members of the Night Party GST group to which it supplies employee labour services. That amount is compared to the sum of the current GST turnover of those members of the Night Party GST group that are supplied employee labour services by NightPeople Pty Ltd. Those members (the test members) are Night Party 1 Pty Ltd, Night Party 2 Pty Ltd and Night Party 3 Pty Ltd.

PoolParties Pty Ltd is not part of Night Party Pty Ltd's GST group, and is also not an employer entity. PoolParties Pty Ltd would determine its decline in turnover using the basic decline in turnover test under section 8 to determine eligibility for the JobKeeper scheme.

Example 3 – working out test members where the employer entity provides services to entities in both GST and consolidated groups

Hungry Hippos Group is a consolidated group that operates restaurants around Australia. Within the consolidated group there are three GST groups – Hungry Hippos GST No. 1, 2 and 3.

Within the consolidated group and GST groups there are multiple entities operating restaurant businesses and one employer entity, Quicker Payroll Pty Ltd.

Quicker Payroll Pty Ltd is a member of the consolidated group and of Hungry Hippos GST No. 1 group.

Quicker Payroll Pty Ltd provides employee labour services predominantly to the Hungry Hippos GST No. 1 group, and a very small amount of employee labour services to other members of the consolidated group. For this it receives a payroll recharge from members of the group, and it employs all employees and pays their wages. It does not provide employee labour services to anyone outside the consolidated group.

Quicker Payroll Pty Ltd wants to test its eligibility for the JobKeeper scheme in the month of April 2020. Quicker Payroll Pty Ltd does not meet the basic decline in turnover test so it will need to use the modified decline in turnover test for group employer entities.

As Quicker Payroll Pty Ltd is a member of both the consolidated and GST groups, it can choose to test eligibility based on its membership in either of those groups. Quicker Payroll Pty Ltd chooses to include the test members of Hungry Hippos GST No. 1 group as it meets the 50% decline in turnover threshold. The test members will be the members of Hungry Hippos GST No. 1 group to which it supplies employee labour services.

Quicker Payroll Pty Ltd will need to use the projected and current GST turnovers for each of the test members of the Hungry Hippos GST No. 1 group to which it provides employee labour services. Its projected GST turnover for the April 2020 period will be the sum of GST turnovers of all the test members to which it provides employee labour services in Hungry Hippos GST No. 1 group. Its current GST turnover for the April 2019 period will be the sum of the current GST turnovers of each of the test members to which it provides employee labour services in Hungry Hippos GST No. 1 group.

Example 4 – test member turnover exceeds threshold

Video Gamers Limited is the head entity of a consolidated group (Video Gamers Group) that owns Play Instore Pty Ltd, a video game arcade business, Play Online Pty Ltd, an online video game business, and Employee Co Pty Ltd, an employee service entity.

All 100 employees of the Video Gamers Group are employed by one entity within the group, Employee Co Pty Ltd. Employee Co Pty Ltd's principal activity is providing employment services to Play Instore Pty Ltd and Play Online Pty Ltd.

Due to a large decline in business experienced in late March 2020, Play Instore Pty Ltd closed all its video game arcades. Employee Co Pty Ltd stood down 90 of its employees who provided their services to the video game arcade business but continued to pay those employees their normal wage each fortnight. Play Online Pty Ltd continued to operate. Employee Co Pty Ltd retained the services of the remaining 10 employees who provided their services to the online video gaming business. As their aggregated turnover is less than \$1 billion, Employee Co Pty Ltd uses the 30% threshold for the decline in turnover test.

Play Instore Pty Ltd suffered a 100% decline in its GST turnover for April 2020 when compared to its GST turnover of \$5 million for April 2019. Play Online Pty Ltd experienced a rapid increase in demand for its business in April 2020. Play Online Pty Ltd's GST turnover was \$8 million in April 2020 and \$2 million in April 2019. Play Online Pty Ltd also received intra-group services from Play Instore Pty Ltd to the value of \$500,000 in April 2019.

Employee Co Pty Ltd can work out whether it is eligible for the JobKeeper scheme by applying the modified decline in turnover test. Under this test, Employee Co Pty Ltd can work out the decline in turnover by using the sum of the projected GST turnovers of Play Instore Pty Ltd and Play Online Pty Ltd. For the period of April 2020 this is \$8 million. Employee Co Pty Ltd calculates that the sum of the current GST turnovers for the period of April 2019 was \$7.5 million (including the intra-group services). In comparing the turnover between April 2020 and April 2019, the decline in turnover is less than 30%. Therefore, Employee Co Pty Ltd will not satisfy the decline in turnover test and will not be

eligible for the JobKeeper scheme. Employee Co Pty Ltd will not be able to nominate any of its employees under the JobKeeper scheme.

Merely incidental supply

When is a supply ‘merely incidental’?

To apply the modified decline in turnover test for group employer entities, one of the eligibility requirements is that the employer entity does not supply employee labour services to entities that are not members of the group. However, the employer entity can disregard supplies that are merely incidental to its principal activity of supplying employee labour services.

Determining when a supply is ‘merely incidental’ to the principal activity of an employer entity, being the supply of employee labour services, is only relevant if it is first determined that the principal activity of an entity is the supply of employee labour services to members of the entity’s group.

A supply will not be merely incidental for the employer entity simply because it is not the principal activity of the employer entity. To be merely incidental, the supply must be:

- related to the principal activity of supplying employee labour services to members of its group, and
- involve an insubstantial supply of employee labour services to entities that are not members of the group.

Holding or head companies

Can a holding or head company’s principal activity be supplying other members of the group with employee labour services for the purposes of applying the modified decline in turnover test for group employer entities?

Whether a holding or head company’s principal activity is supplying other members of the group with employee labour services, for the purposes of applying the modified decline in turnover test, will depend on the facts and circumstances.

In order to be an employer entity, amongst other requirements, the holding company or head company’s principal activity must be supplying other members of the group with employee labour services consisting of the performance of work by individuals the head or holding company employs.

If the holding or head company is earning trading income, it is unlikely to be principally providing employee labour services.

Where the holding company’s main activity is the provision of employee labour services to the group, but it is also in receipt of dividends from its subsidiary members, this will not detract from the holding company’s principal activity of providing its group with employee labour services.

Commissioner of Taxation

29 May 2020

References

ATO law topic(s)	Income tax ~ COVID-19 Income tax ~ JobKeeper payment
Legislative references	Coronavirus Economic Response Package (Payments and Benefits) Act 2020 Coronavirus Economic Response Package (Payments and Benefits) Act 2020 19 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 8 Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 8A
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