

The Round Up

Keeping accountants & advisers on top of the important details

January 2021

Key dates

- 1 Feb 21 – First JobMaker claim period
- 2 Feb 21 – Parliament resumes
- 28 March 21 – JobKeeper ends



Inside

Coming up	2
Workshops.....	2
Webinars.....	2
From Government	3
Tax-free COVID-19 related grants	3
Opening a bank account might be a supply for JobKeeper eligibility.....	3
Consultation on self-education deduction expansion.....	4
From the ATO	4
Tax and super obligations for foreign employers....	4
80 cent shortcut rate extended again	5
Updated fuel tax credit rates.....	5
More entities fall into expanded SGE definition net	5
Rulings & determinations	6
Elders rural products prepayment scheme	6
Stock taken for private use update	6
Cases	7
Sole trader eligible for JobKeeper with backdated ABN	7
Legislation	7
Detailed JobMaker rules released with enrolment extension	7
Further changes to the immediate expensing measures	8
Cash payments Bill lapses.....	8



A recent case and a report from the Inspector General of Taxation have opened the door to a greater number of businesses accessing JobKeeper (see [Sole trader eligible for JobKeeper with backdated ABN](#) and [Opening a bank account might be a supply for JobKeeper eligibility](#)).

Plus, the specific rules and reporting obligations for the JobMaker scheme have been released. Pleasingly, the deadlines for registration to this complex scheme have been extended. While this takes the pressure off, the Commissioner has warned that no further concessions will be made (see [Detailed JobMaker rules released](#)).

Plus, the further changes to the immediate expensing measures that may complicate the options for SBEs (see [Further changes to the immediate expensing measures](#)).

Andrew Matthews
Tax Adviser, Knowledge Shop

Coming up

Workshops

Graduate training



Tax & Business Services Basics – Online or Face to Face

This workshop is all the things we wish we knew when we were starting out. For graduates and those needing a refresher in the tax and business services fundamentals.

Workshops - [More](#)

- **Melbourne** 5 March 2021
- **Sydney** 10 March 2021
- **Brisbane** 12 March 2021

Online 15, 22 & 29 March 2021 [More](#)

Need to pass the FASEA exam?

Short cut your study and focus on what's important. Join us for face to face workshops, webinars and on-demand training - designed by industry specialists we'll help bring you up to speed as quickly as possible.

[More](#)

Knowledge Shop PD

22 Feb 2021 [Register](#)

- FBT essentials - COVID and ATO risk areas
- COVID-19 Stimulus measures: The devil and opportunities in the detail
- SMSFs & Business Real property

Business Lifecycles Online Workshop

2, 9, 16 & 23 March 2021 [More](#)

Deliver proactive and tangible advice at every stage of a client's business lifecycle!

Webinars

Tax & Trusts Web Series

18 & 25 February 2021 [More](#)

Managing distributions to companies and other trusts, using the streaming rules to achieve the best tax outcome, the recent changes for 'round robin' distributions and testamentary trusts.

The Main Residence Exemption Webinar

23 February 2021 [More](#)

The common problem areas and the new rules.

Perks & Salary Packaging

4 March 2021 [More](#)

Maximise after-tax income of employees with minimal employer impact, steps to ensure packaging is effective, preventing ATO attacks on employee contributions

Ethics in Practice Web Series

17, 19, 22 & 24 March 2021 [More](#)

5.25 Ethics CPD Hours to help you meet your CPD requirements by the 31 March 2021 deadline.

Dealing with Pre CGT Assets

30 March 2021 [More](#)

When tax has to be paid on pre-CGT assets, when assets stop being treated as pre-CGT assets, opportunities to extract profits on sale of pre-CGT assets in a tax efficient manner

Family Trusts Elections

22 April 2021 [More](#)

The who, what, when & how of family trust elections, how to make the most of the concessions for family trusts, how to avoid triggering penalty tax rates.

From Government

Tax-free COVID-19 related grants

Late last year, legislation passed that provided that certain grant payments in response to COVID-19 would be made non-assessable non-exempt income. The legislation requires the Treasurer to declare that a grant program is eligible by legislative instrument if he is satisfied that it was in response to the economic impacts of the coronavirus pandemic and if it was first announced on or after 13 September 2020.

A legislative instrument released on 23 December 2020 states that six Victorian grants paid to businesses are the first to be potentially classified as non-assessable non-exempt income of the recipients. These are the:

- Alpine business fund
- Business support fund 3
- Licensed hospitality venue fund
- Melbourne city recovery fund - small business reactivation grants
- Outdoor eating and entertainment package
- Sole trader support fund

It is important to remember that grants paid by state governments will not be automatically considered non-assessable non-exempt income. The grants must meet certain criteria and the Treasurer must make a determination confirming that they can qualify for tax-free treatment after an application has been made by the relevant state government.

The ATO's view is that financial assistance payments made by state or territory governments will generally be taxable in the hands of business entities unless they qualify for tax-free treatment under the rules referred to above.

More Information

[Income Tax Assessment \(Eligible State and Territory COVID-19 Economic Recovery Grant Programs\) Declaration 2020](#)

Opening a bank account might be a supply for JobKeeper eligibility

A report released by the Inspector General of Taxation (IGOT) in response to complaints made by businesses deemed ineligible for JobKeeper by the ATO has suggested that in some limited cases, business entities will be able to demonstrate that they made a supply in a tax period ending before 12 March 2020, even though they might not have made any sales through their business.

In order for an entity to access JobKeeper for an eligible business participant (e.g., sole trader), there are some additional conditions that must be met. One of the conditions is that the entity must have had some business income in the 2018-19 income year and notified the ATO of this by 12 March 2020 or made some supplies connected with Australia in a tax period that started on or after 1 July 2018 and ended before 12 March 2020 and notified the ATO of the supplies (e.g., on an activity statement) by 12 March 2020.

The IGOT report points out that where an entity makes or acquires a financial interest (e.g., by opening a bank account), this constitutes the making of a financial supply. This may mean that actions taken during the commencement of the business, potentially some time before trading activities commenced, could enable an entity to meet the additional conditions referred to above.

Further, the requirement to notify the ATO of the supply doesn't necessarily require the supply to be reported on an activity statement. This condition can possibly be met by advising the

ATO of the bank account details (e.g., during the GST registration process).

Having said that, there are still likely to be a number of entities that will not qualify for JobKeeper under the rules dealing with eligible business participants because of these rules. This is because if the entity in question has quarterly tax periods, it must have made a supply on or before 31 December 2019. On the other hand, if the entity has monthly tax periods a supply needs to have been made on or before 29 February 2020.

The ATO has indicated that it will not be actively identifying or contacting potentially eligible entities. If advisers have any clients who could possibly qualify as a result of the IGOT report it would be necessary to contact the ATO to confirm how they may obtain a review of any earlier decision.

More Information

- [Inspector-General of Taxation Report](#)

Consultation on self-education deduction expansion

Following an announcement in last year's Federal Budget with respect to potentially removing FBT on fringe benefits relating to re-training or re-skilling employees, Treasury has released a consultation paper concerning possible amendments to the deductibility of self-education costs. The paper looks at the possibility of allowing deductions for expenses that do not relate to a taxpayer's current income earning activities.

Currently, self-education expenses are normally deductible where the education course enables the taxpayer to maintain or improve their skill or knowledge or is likely to increase the income derived from their current income-earning

activities. However, self-education expenses are not deductible if the taxpayer is undertaking the course in order to obtain new employment or open up a new income earning activity.

The consultation paper discusses whether a new specific deduction should be introduced which would allow for deductions outside these limits, specifically, to allow for deductions in relation to education and training aimed at future employment.

Some of the key points raised relate to potential abuse of the change, which could be overcome by limiting the deduction to nationally recognised training and industry training packages delivered by registered education and training providers. There could also be an exclusion for courses where it is not clear they would lead to an improvement in income earning activities (for example, lifestyle or personal development courses).

Submissions in response to the consultation paper closed during January, and as yet there has not been any response or further proposals released by the government.

More Information

- [Education and training expense deductions for individuals](#)

From the ATO

Tax and super obligations for foreign employers

The ATO has released a fact sheet to assist foreign resident employers to comply with their PAYG and super guarantee obligations for employees in Australia.

In relation to PAYG withholding, the guide states that withholding should apply to:

- Employment income earned by Australian residents; and
- Australian-sourced employment income earned by employees who are foreign residents.

However, it is important to note that many Australian double tax agreements provide that employment income earned by a foreign resident while working in Australia for a short period (up to 183 days) is not to be taxed in Australia (the short-term visit exception) if the employer is a non-resident and does not have a permanent establishment in Australia.

If it can be confirmed that the employees' employment income is not taxable in Australia it should not be necessary for the employer to withhold amounts under the Australian PAYGW system.

Foreign employers should also note that if they are required to withhold PAYG from payments to employees they may have FBT obligations in Australia.

For superannuation guarantee purposes, foreign resident employers will usually be required to pay super for Australian resident employees and foreign resident employees who perform work in Australia to prevent the super guarantee charge from applying.

There are some instances where employers will not be required to pay super, including for employees earning less than \$450 a month or employees who are under 18. Other exclusions can include employees temporarily working in Australia who are covered by a bilateral super agreement as well as certain foreign executives.

More Information

- [Foreign resident employers - your tax and super obligations](#)
- [Bilateral super agreements](#)

80 cent shortcut rate extended again

The shortcut method that can be used to claim deductions for running costs incurred while working from home due to COVID-19 has again been extended, and can now be used in calculating the deduction available to clients for the period from 1 March 2020 - 30 June 2021.

More information

- [PCG 2020/3](#)

Updated fuel tax credit rates

The ATO has published the new rates for fuel tax credits.

The new rates apply to fuel acquired from 1 February 2021 and that is used in business activities or for domestic electricity generation and by certain emergency vehicles.

More Information

- [Business rates from 1 February 2021 – 30 June 2021](#)
- [Non-business rates from 1 February 2021 – 30 June 2021](#)

More entities fall into expanded SGE definition net

Guidance has been released on the legislative changes that expand the definition of a 'significant global entity'. These changes will mean some entities will need to comply with the extended reporting obligations.

The main change is that an entity can now be a SGE even if it is not part of a group having audited consolidated financial statements. For example, high wealth individuals, partnerships and trusts belonging to certain private groups, entities considered to be non-material to a group under the accounting standards, and

certain investment entities (and those they control) can now be caught.

Entities that are SGEs may be subject to the following:

- The multinational anti-avoidance law (MAAL)
- The diverted profits tax (DPT)
- Increased administrative and other penalties.

If an entity is an SGE, it needs to determine whether it may also be a country-by-country (CBC) reporting entity, which may mean there is a requirement to comply with CBC reporting obligations and a requirement to lodge general purpose financial statements with the ATO.

More information

- [Guidance on the expanded SGE definition](#)

Rulings & determinations

Elders rural products prepayment scheme

[PR 2020/12](#)

This product ruling outlines the ATO's position regarding the tax consequences for small business entity clients that enter into the Rural Products Prepayment Program with Elders. Broadly, the main consideration with these types of arrangements is whether the prepayment rules operate to prevent an immediate deduction for the expenses and whether the arrangements could fall within the scope of the general anti-avoidance rules in Part IVA.

The product ruling for this particular product confirms the following for taxpayers:

- A prepayment paid by a taxpayer to Elders under the program is deductible in the income year it is paid;
- The prepayments rules will not apply to deny an immediate deduction of the prepayment incurred under the program if the taxpayer is classified as a small business entity as the prepayment period does not exceed 12 months and ends in the following income year; and
- The general anti-avoidance provisions in Part IVA will not be applied to deny the deductibility of the prepayment.

Stock taken for private use update

TD 2021/1

Updated estimate amounts that can be used in determining the value of goods taken from trading stock for private use for 2020-21 have been released by the ATO and are summarised below:

Type of Business	Amount (ex GST) for adult / child over 16	Amount (ex GST) for child aged 4 to 16
Bakery	\$1,350	\$675
Butcher	\$900	\$450
Restaurant/cafe (licensed)	\$4,640	\$1,810
Restaurant/cafe (unlicensed)	\$3,620	\$1,810
Caterer	\$3,830	\$1,915
Delicatessen	\$3,620	\$1,810
Fruiterer/greengrocer	\$930	\$465
Takeaway food shop	\$3,670	\$1,835
Mixed business (includes milk bar, general store and convenience store)	\$4,460	\$2,230

Cases

Sole trader eligible for JobKeeper with backdated ABN

[Apted v FC of T \[2020\] AATA 5139](#)

This case concerned a taxpayer who was deemed ineligible for JobKeeper by the ATO on the basis that he did not meet the requirement of having an active ABN on 12 March 2020. At the time the taxpayer applied for JobKeeper, he did not have an active ABN. However, he subsequently applied to have his old ABN reactivated, with an effective date of 1 July 2019.

In denying the application for JobKeeper the Commissioner stated that although the effective date of the ABN had been backdated, this was not sufficient to be eligible for JobKeeper because on 12 March 2020 the taxpayer did not have an active ABN. Essentially, the Commissioner argued that as the ABN was reactivated after 12 March 2020 the condition was failed.

The taxpayer argued that due to the ABN being reactivated with an effective date of 1 July 2019 it should therefore be considered active at the relevant time, even if the decision to reactivate the ABN was made later.

The AAT held that as long as the ABN has an effective date that pre-dates 12 March 2020, the ABN condition should be satisfied, with the effect in this case that the taxpayer was eligible for JobKeeper.

The ATO has announced that it is appealing the decision to the Full Federal Court and has requested an expedited hearing.

Legislation

Detailed JobMaker rules released with enrolment extension

The Treasurer and Commissioner have released legislative instruments setting out the specific rules and reporting obligations relating to the JobMaker scheme.

The legislative instruments set out the specific eligibility conditions that need to be satisfied, the steps for taxpayers to register for the scheme and the reporting obligations for entities claiming JobMaker payments.

While the deadline for enrolling with the ATO for JobMaker is normally the end of the relevant JobMaker period, this deadline has been extended by the ATO. Rather than having to enrol before the end of the relevant JobMaker period, entities can enrol at any time before the end of the claim period for that JobMaker period. For the first JobMaker period which ended on 6 January 2021 the claim period ends on 30 April 2021. It is important to note that claims cannot be made after the deadline.

More Information

- [Coronavirus Economic Response Package \(Payments and Benefits\) Amendment Rules \(No. 9\) 2020](#)
- [JobMaker Hiring Credit Reporting Obligations Instrument 2020](#)
- [JobMaker Hiring Credit guide](#)

Further changes to the immediate expensing measures

Treasury Laws Amendment (2020 Measures No. 6) Bill 2020

This legislation makes several changes to the operation of the new immediate expensing for depreciating assets provisions which were announced in the 2020-21 Federal Budget.

The first key change is a modification of the rules requiring entities to have aggregate turnover of less than \$5 billion to access the provisions. A new alternative test has been introduced which can be satisfied by companies (it is not available for other entity types) having assessable income of less than the \$5 billion threshold. This effectively excludes the turnover of foreign parent entities, etc. However, the company must also have incurred expenditure on tangible depreciating assets in the 2016-17, 2017-18 and 2018-19 income years (combined) of at least \$100 million.

The other key change allows entities to opt-out of temporary full expensing and the 'backing business investment incentives' (the accelerated depreciation rules introduced earlier in 2020) on an asset-by-asset basis.

However, it seems like this choice is only available to entities that are not small business entities (SBEs) and to SBEs that don't choose to apply the simplified depreciation rules in the relevant income year. At a high level it seems like SBEs that choose to apply the simplified

depreciation rules in the relevant income year might not have the ability to choose not to apply the instant asset write-off rules to assets that would qualify for an immediate deduction.

While it is difficult to find clear guidance on this, if it turns out that SBEs using the simplified depreciation rules are not able to make this choice then it will be necessary for these entities to carefully consider whether they will choose to apply the simplified depreciation rules or not in the 2021 and 2022 income years. This could have flow-on implications. For example, it could impact on the ability of these entities to access the instant asset write-off rules that apply to assets acquired before 6 October 2020 (i.e., subject to the \$150,000 cost threshold).

Cash payments Bill lapses

The legislation which was previously before Parliament seeking to introduce restrictions on entities making or accepting cash payments of \$10,000 or more, the Currency (Restrictions on the Use of Cash) Bill 2019 was discharged from the Senate notice paper, meaning it has lapsed and would need to be reintroduced to Parliament before it could become law.

The Bill proposed establishing a cash payment limit and introduced offences for entities that made or accepted cash payments of \$10,000 or more from 1 January 2020. The proposed legislation has been effectively withdrawn due to the necessity of dealing with the impact of COVID-19 and concerns raised in a review of the Bill as to whether it would be the most effective way of tackling the black economy.