New rules for the extension of the JobKeeper Payment (JobKeeper 2.0)

On 21 July 2020, the Government announced that the JobKeeper Payment ('JKP') would be extended by a further six months to **28 March 2021** on a scaled-back basis, with businesses being required to re- assess their eligibility to remain in the scheme (which received Royal Assent on 3 September 2020).

Extension of the JKP to 28 March 2021

The extension of the JKP by six months to **28 March 2021** will see the scheme tapered with respect to both the December 2020 and March 2021 quarters for all eligible employees and business participants to provide appropriately targeted assistance. In addition, a two-tiered payment system will apply based on hours of work or active engagement.

Importantly, employers and entities with eligible business participants are able to enrol for the JKP for the extension period even where they have *not* previously enrolled, subject to meeting all the new and existing eligibility criteria (e.g., a business was carried on in Australia on 1 March 2020).

To qualify for the JKP after 27 September 2020 (i.e., for JobKeeper 2.0) businesses must satisfy two separate decline in turnover tests, being:

- the **original** *projected* GST decline in turnover test – adjusted under the Amending Rules to include a comparison of the *projected* GST turnover of any of the calendar months from March 2020 to **December 2020** (or any of the June 2020, September 2020 or **December 2020** quarters) against the *actual* GST turnover of the relevant 2019 comparison period; and

- the **new** *actua*l GST decline in turnover test – refer below.

However, whilst entities are *technically* required to satisfy **both** the original *projected* GST decline in turnover test and also the additional new *actual* GST decline in turnover test from 28 September 2020, practically speaking, this may be a moot point. This is because:

- entities that are currently in the JobKeeper scheme would have *already* satisfied the original *projected* GST decline in turnover test (and are not required to satisfy it again); and
- entities entering the scheme for the first time would generally also satisfy the original *projected* GST decline in turnover test if they can demonstrate a fall in their *actual* GST turnover for a relevant quarter (i.e., either the September 2020 or the December 2020 quarter, as applicable).

Decline in turnover test – the new *actual* GST decline in turnover test

The new *actual* GST decline in turnover test only applies with respect to the six-month extension of JKP (i.e., JobKeeper 2.0) and is broken up into **two separate extension periods**, as follows:

(a) **Extension Period 1** – applies to JobKeeper fortnights that start on or after **28 September 2020** and end on or before **3 January 2021**. The additional test will be satisfied where the entity's *actual* GST turnover has declined by the required percentage (i.e., 30% for businesses with turnover less than $1B) for the quarter ending **30 September 2020**, relative to its September 2019 quarter.

(b) **Extension Period 2** – applies to JobKeeper fortnights that start on or after **4 January 2021** and end on or before **28 March 2021**. The additional test will be satisfied where the entity's *actual* GST turnover has declined by the required percentage (i.e., 30% for businesses with turnover less than $1B) for the quarter ending **31 December 2020**, relative to its December 2019 quarter.

Effectively, this test will require a business to have had a decline in its *actual* GST turnover for the September 2020 and/or the December 2020 quarter (as applicable), relative to the *actual* GST turnover of its comparable quarter in 2019 (being September 2019 and December 2019 respectively), unless an alternative period is more indicative and one of a selection of Alternative Tests matches your circumstances (refer below).

The Alternative decline in turnover tests for JobKeeper 2.0

On 23 September 2020, the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020* ('the DIT No. 2 Rules') were registered. It is important to note that there is **not** a new tranche of alternative tests that entities can apply for JobKeeper 2.0. Rather, the *DIT No. 2 Rules* have effectively updated the original alternative tests

The *DIT No. 2 Rules*, consistent with the original rules, set out **eight classes of entities** that are eligible to apply the alternative test relevant to their particular circumstances. Also, there have been some slight favourable modifications to some of the alternative tests.

The eight classes of entities identified in the *DIT No. 2 Rules* are as follows:

1. **New businesses**
2. **Business with a substantial increase in turnover**
3. **Business with an irregular turnover**
4. **Business affected by drought or natural disaster**
5. **Business acquisition or disposal that changed the entity's turnover**
6. **Business restructure that changed the entity's turnover**
7. **Sole traders or small partnerships with sickness, injury or leave**
8. **Business that temporarily ceased trading during the relevant comparison period**

For a more detailed explanation of these tests please see here Actual Decline in Turnover Test or contact our office.

Wage condition for employees

From 28 September 2020, a two-tiered payment system will apply with respect to JKPs. In addition, the amount of the JKP will also be dependent on the fortnight in question, as set out below:

	Extension Period 1	Extension Period 2
Higher rate	**$1,200** per fortnight	**$1,000** per fortnight
Lower rate	**$750** per fortnight	**$650** per fortnight

The payment rate applicable to an employee is determined by reference to the actual hours the employee worked, had paid leave and paid absence on public holidays over an applicable **'reference period'** (refer below). Specifically, the applicable rate is determined as follows:

- **Higher rate** – If an employee's total hours were **80 hours or more** for the employer over an applicable 28-day reference period, then the employer is entitled to the **higher rate** in respect of that employee.

- **Lower rate** – If the total hours of work and equivalent paid leave are **less than 80 hours** over the applicable 28-day reference period, the **lower rate** applies.

It is the responsibility of the employer to determine the number of hours that count towards the threshold for an eligible employee, based on existing records that are already maintained in respect of that employee.

'Reference periods' for employees

There are **two standard reference periods** for **all** employees, which consists of *the 28-day periods ending at the end of the most recent pay cycle* for the employee ending before:

- **1 March 2020** – which is the original reference date; or

- **1 July 2020** – which is the additional reference date for conditions that apply to newly eligible employees of qualifying employers for JobKeeper fortnights starting on or after 3 August 2020.

Eligible business participants

Whilst the same payment rates also apply to qualifying entities that have nominated an eligible business participant, the test to determine whether the higher rate or the lower rate applies is based on **the hours of active engagement in the entity's business**.

This will require a consideration of the hours that the business participant was actively operating the business or undertaking specific tasks in business development and planning, regulatory compliance or similar activities in the applicable reference period.

As business participants are not employees, reference periods for business participants are not based on pay cycles, rather, the **standard reference period** is the **calendar month of February 2020**. The Commissioner also has the power to set an alternative reference period where the month of February 2020 is not an appropriate reference period for the business participant.

From 28 September 2020, qualifying entities are entitled to the **higher rate** of JKP in respect of an eligible business participant if:

- the total hours of **active engagement** by the business participant in the business of the entity over any applicable reference period (i.e., generally February 2020) were **80 hours or more**; and

- the business participant has made a **declaration** in the approved form to the entity (or the Commissioner, if the business participant is a sole trader) that their total hours of active engagement are 80 hours or more for the applicable reference period.

Conversely, the lower rate of JKP will apply in respect of an eligible business participant if they have less than 80 hours of active engagement in the business ***or*** they do not provide a declaration to the entity (regardless of the hours of active engagement).