TAX TALKS

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UPDATE 8 | Jobkeeper Rules

The Jobkeeper rules are out – filling in a lot more gaps, still leaving some behind.

Jobkeeper Rules

In this episode Andrew Henshaw of Velocity Legal in Sydney will walk you through the Jobkeeper rules and answer a long list of questions.

Here is what we learned but please listen in as Andrew explains all this much better than we ever could.

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1 – Legislative Instrument

The Jobkeeper rules look and feel like a proper law, even though not passed by Parliament and Senate with Royal Assent, but issued by Treasury. And they our in a way. They are issued as a legislative instrument by Treasury within the powers it received through the Jobkeeper Act that set the framework for all this.

The rules were published on Thursday 11 April 2020 – quietly – just before the long Easter weekend. They answer a lot more questions. But there are still some huge gaps.

The two biggest one are the alternative test to prove a sufficient drop in turnover and to what extent the jobkeeper payments attract super.

2 – Turnover Test

The turnover test is the gateway to the Jobkeeper payment. Everybody needs to pass this one – no matter what. You either have to pass the primary test or an alternative test to show a drop in turnover of 15%, 30% or 50%.

To pass the primary test, you need a drop in turnover of:
15% if you are a registered charity with the ACNC.
30% if you are a business with a turnover below $1b.
50% if you are a business with a turnover over $1b.

If you don't pass the primary test, then you need to pass an alternative test. But how this works is still a big question mark.

3 – Primary Test

If you compare quarters, you take your GST turnover in Q4 2020 (so the quarter started on 1 April 2020) and compare it to Q4 2019 (so the quarter started on 1 April 2019). These are your test and comparison period. You could also compare Q1 2021 to Q1 2020, but then you can't claim the Jobkeeper payment for Q4.

If you compare months, you take your GST turnover in April 2020 and compare it to April 2019. You could also compare April 2020 to April 2019 and so on, but this means that you can't claim the Jobkeeper payment in any months before your test period.

You only need to pass the test once. The requirement to continuous re-test is off the table. So once is enough. So the Jobkeeper is like a door you only need to get through once and you are in.

If – as an example – your turnover dropped by 50% in April and hence you pass the test for April, then it doesn't matter what your turnover does in the subsequent months. You can still claim the payment for as long as the program runs, even if your turnover doubles or triples after April.

4 – Alternative Test

If your business was established or expanded after 1 April 2019, then you can't pass the primary test and need to pass an alternative test. You might – for example – compare Q3 2020 to Q4 2020 or similar. Treasury is expected to issue more guidelines soon.

5 – Choice

The employer chooses whether they want to enrol in the jobkeeper scheme or not and who to offer the payment to. But after that employees decide whether they want to accept their employer's offer.

Treasury would prefer if all employees were offered the same deal – 'One in, All in" – but how practical this mantra is remains to be seen.

Employees with two employers can choose which employer is to claim the payment for them. But with one limitation. If one of the employments is casual and the other part-time or full-time, then the payment can only be claimed through the non-casual employer.

6 – Superannuation Guarantee

The jobkeeper payment is not subject to superannuation guarantee (SG), but it is unclear at the moment whether that only applies when the employee doesn't work for the payment.

There are voices that suggest that to the extent the employee works for their money, it will always be subject to SG under the normal rules.

7 – Eligible Employers and Employees

There are two groups that can qualify for the jobkeeper. The first group is eligible employers and employees.

Employers need to meet 6 conditions to be eligible: 1) in business at 1 March, 2) Not an excluded entity, 3) has eligible employees, 4) pays at least $1500 per fortnight, 5) drop in GST turnover of 15%, 30% or 50%, 6) Notifies the Commissioner.

Employees must meet 4 conditions to be eligible: 1) at least 16, 2) an Australian resident per the Social Security Act, 3) full-time or part-time employee or long-term casual and 4) advise in the approved form that they want to participate, satisfy all requirements and are not excluded.

8 – Business Participation

The 'second' group qualifies based on business participation. Sole traders, partnerships, trusts and company directors just have to meet 4 of the 6 conditions: 1) in business at 1 March, 2) Not an excluded entity, 3) skip, 4) skip, 5) drop in GST turnover of 15%, 30% or 50%, 6) Notifies the Commissioner. So this group doesn't need eligible employees and $1500 payment to qualify.

The business participation group is limited to 1 partner, director or beneficiary. The so-called 'eligible business participant'.

If a company or trust pays some directors/beneficiaries a wage, then those go into the first group, while one other goes into the second group.

Legally, a sole trader can't pay themselves a wage, so they are always in the 2nd group. To what extent this applies to partners is unclear. Legally, partners can't pay themselves a wage either, but many do, so it remains to be seen whether the ATO picks this one up and how they handle this.

9 – Charities

ACNC registered charities can only qualify through the first group as an employer. They can't qualify through the second group since not conducting a business, hence no business participation.

10 – Unit Trust

Unit trusts held by discretionary trusts don't qualify for the Jobkeeper since there are no individual beneficiaries. The discretionary trusts have individual beneficiaries but don't carry on a business. So a catch 22. The only way out would be a hybrid clause in the unit trust deed, that allows a distribution to other individual beneficiaries. So read the deed.

So this is a short summary of what Andrew Henshaw goes through in this episode about the Jobkeeper rules, but please listen in as Andrew explains this much better than we do.

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