

# JobKeeper Payment Scheme Fact Sheet – Service Entities

SEDLEY KOSCHEL

FINANCIAL GROUP

1300 00 11 08

[admin@sedleykoschel.com.au](mailto:admin@sedleykoschel.com.au)

## JobKeeper Payment Scheme

### Service Entities = Special Rules

The purpose of this Fact Sheet is to provide you a **quick summary** of the special rules about eligibility for the Government's JobKeeper Payment Scheme where you have an entity that principally provides labour. If you need more information, please **contact us immediately** so we may assist you further.

The JobKeeper Payment scheme was announced on 30 March 2020 by the Prime Minister and the Treasurer. The purpose of the scheme is to keep people employed even though the business they work for has suffered a downturn including a 'hibernation' or close down for a temporary period.

Businesses impacted by the Coronavirus will be able to access a **wage subsidy** from the Government to assist in continuing to pay their employees. Eligible employers will be able to claim a fortnightly payment of **\$1,500** per eligible employee from 30 March 2020, for a maximum period of **6 months**. The Scheme will run from Monday 30 March 2020 to Sunday 27 September 2020.

### **IMPORTANT: Urgent Action Required by 31 May 2020**

If you believe you are eligible *from the 30 March*, you need to act **now!**

Employers **must elect** to take part in the JobKeeper scheme. It is not mandatory for eligible employers to participate.

We outlined the general nature of the JobKeeper Scheme in our earlier Fact Sheet.

Some business have structured in a way that, while an entity may conduct the trading activities of the business, there is another entity that may be the provider of **labour** to the business. We shall refer to such an entity as a **Service Entity**. While the decline in turnover may be readily apparent for the **trading entity** it does not have any employees and is therefore unlikely to qualify for the JobKeeper Scheme.

The **Service Entity** although having the employees and meeting most of the criteria, it may not meet the *decline in turnover* test as the arrangements between it and the trading entity may result in very little impact on the service entity's turnover.

The Government recognised this anomaly and has changed the rules. The ATO have also taken a reasonable approach to these types of arrangements.

### ***Decline in turnover test***

The decline in turnover test operates by comparing:

- your projected turnover for a turnover test period; with
- your current turnover for a relevant comparison period

---

By providing this document, we do not warrant or make representations as to the accuracy, completeness, suitability or fitness for purpose of the materials or information contained in this document (Materials) and accepts no responsibility for any acts or omissions made in reliance of the Materials. These Materials have been produced for reference purposes only and are not intended, in part or full, to constitute legal or professional advice. To the extent permitted by the applicable laws in your jurisdiction, we, our employees, agents and consultants exclude all liability for any loss, damage, claim, proceeding and or expense including but not limited to legal costs, indirect special or consequential loss or damage, arising from acts or omissions made in reliance of the Materials. Where any law prohibits the exclusion of such liability, we limit our liability to the resupply of the information.

For example, you can compare either:

- the whole of the month of March 2020 with March 2019; or
- the June 2020 quarter with the June 2019 quarter.

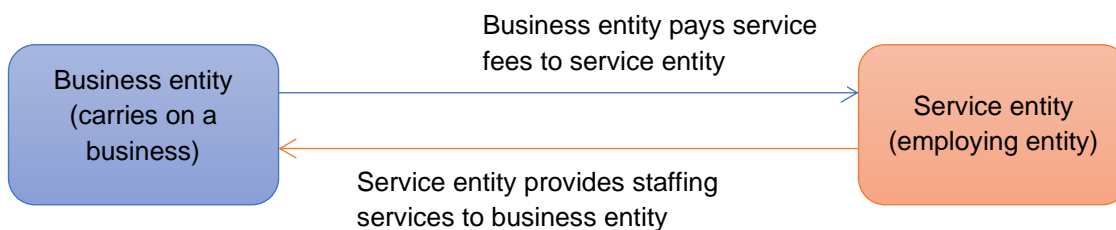
If an entity does not meet the decline in turnover test on 30 March 2020, but does so at a later time, the entity will become eligible for the JobKeeper payment from that later time. The JobKeeper payment is not backdated to 30 March 2020.

### How much does my decline in turnover need to be?

Aggregated Turnover was > <b>\$1 Billion</b>	<b>50%</b>
Aggregated Turnover was < <b>\$1 Billion</b>	<b>30%</b>

The basic test may not accurately reflect the downturn in activity that your business has suffered. The Rules provide the Commissioner with discretion to set out an alternative test, where the Commissioner is satisfied that there is not an appropriate relevant comparison period in 2019. See our Supplementary Fact Sheet on the JobKeeper Scheme.

### Special Rules for Service Entities



Affected by COVID-19  
— turnover declined  
by  $\geq 30\%$

In the above scenario, the service entity will not be eligible to claim JobKeeper in respect of its employees unless its turnover — assessed on a standalone entity basis — has declined by the minimum percentage. It is irrelevant whether the two entities are commonly owned or one owns the other.

Under the basic Rules, whether the service entity's projected GST turnover will be at least 30 per cent less than the comparison turnover for 2019 may depend on a number of factors, including the contractual basis of the fees that it charges, and whether the service agreement and the nature of the services provided may result in the business entity acquiring fewer services to reflect the downturn in the business entity's trade.

The Government has provided an alternate decline in turnover test for the eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover. This alternate test will apply where an entity provides the services of its employees to one or more related entities, where those related entities carry on a business deriving revenue from unrelated third parties. The alternate test will be by reference to the **combined** GST turnovers of the **related entities** using the services of the employer entity.

In circumstances where a service entity is utilised within a group of companies, and that employment entity is unable to demonstrate a decline in its own turnover because, for example, it has had its full year

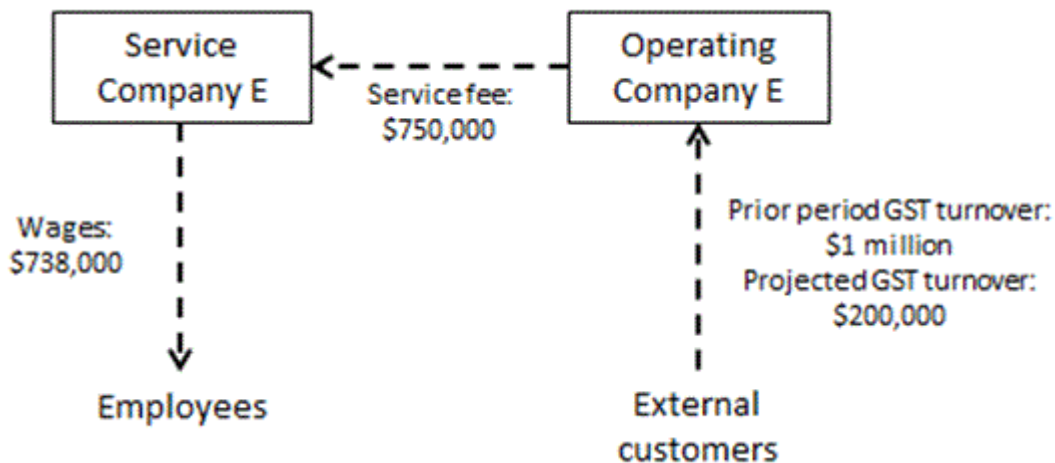
of staffing fees paid in advance, the employment entity will be able to refer to the decline in turnover of the operating entities it services. This will provide for eligibility of special purpose service entities that provide employee labour to group members and that have not met the basic test for decline in turnover.

Unfortunately, the Government amendments only apply where there is a group structure. They have defined this as a consolidated or consolidatable group, or a GST group. Many Service Entity structures will not meet this definition and will fall outside these amendments. Accordingly, such a structure may seek to alter the commercial arrangements in order to qualify for the JobKeeper Scheme.

The integrity rule may apply to deny JobKeeper payments where the service entity reduces the fees it charges the business entity for a sole or dominant purpose of accessing the JobKeeper scheme.

However, The ATO has indicated that it will look favourably on some arrangements where the changes were a result of an economic downturn due to Coronavirus impact.

Example 4 from the ATO's PCG 202/4 indicates the ATO will be unlikely to devote compliance resources in this situation



*Without any change to the agreement between Service Company E and Operating Company E, Service Company E would not have satisfied the decline in turnover test as there had been no reduction in its projected GST turnover.*

*The group of entities then enter into a scheme the result of which is a reduction in the service fee by an amount that is proportional to the reduction in Operating Company E's external turnover. This scheme results in a reduction of the service fee from \$750,000 to \$150,000.*

*This means Service Company E does satisfy the decline in turnover test in subsection 8(1) of the Payments and Benefits Rules.*

*Because this scheme is entered into in response to the significant impact the external operating environment has had on the business of Operating Company E where the employees of Service Company E serve (and those external factors are beyond the group's control), there is a low risk the Commissioner would apply his compliance resources to consider the application of the integrity rule.*

We are able to assist you in determining whether your Service Entity arrangements will qualify for the JobKeeper Payment Scheme.

Please contact us to discuss your situation.