

JobKeeper – Payroll Tax Exemption

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Purpose

This practice note provides guidance to employers in NSW that are registered for payroll tax and have made payments to their employees as part of the JobKeeper program. The Practice Note explains when, and the extent to which, an exemption from payroll tax applies to the JobKeeper payment.

Background

JobKeeper Payment scheme

The JobKeeper Payment scheme is to help businesses significantly affected by COVID-19 pandemic to access a wage subsidy from the Commonwealth Government so they could continue to pay their employees. See also <https://www.ato.gov.au/general/JobKeeper-payment/> for more information.

To be entitled to a JobKeeper payment for an eligible employee, an employer must pay the employee an amountⁱ that is equal to or greater than the JobKeeper rate applying for the relevant period. This is called the wage condition.

If the total amount of ordinary wages paid to an employee is less than the Jobkeeper amount, the employer must pay an additional amount, called a “top-up” payment, to bring the total amount paid to the employee up to the relevant JobKeeper rate for that period.

From 30 March 2020 to 19 September 2020 the JobKeeper rates are:

- \$1,500 per fortnight for eligible employees who were working for 20 hours or more a week on average in the four weeks of pay periods before either 1 March 2020 or 1 July 2020 and for eligible participants who were actively engaged in the business for 20 hours or more per week on average.
- \$1,500 per fortnight for other eligible employees and business participants.

From 20 September 2020 to 3 January 2021 the JobKeeper rates are:

- \$1,200 per fortnight for eligible employees who were working for 20 hours or more a week on average in the four weeks of pay periods before either 1 March 2020 or 1 July 2020 and for eligible participants who were actively engaged in the business for 20 hours or more per week on average.
- \$750 per fortnight for other eligible employees and business participants.

From 4 January 2021 to 28 March 2021 the JobKeeper rates will be:

- \$1,000 per fortnight for eligible employees who were working for 20 hours or more a week on average in the four weeks of pay periods before either 1 March 2020 or 1 July 2020 and for eligible participants who were actively engaged in the business for 20 hours or more per week on average.
- \$650 per fortnight for other eligible employees and business participants.

Commissioner's Practice Note

What are "ordinary wages"?

Ordinary wages of an eligible employee for the purpose of calculating the amount paid as a "top-up", consist of the sum of the following amounts (before income tax and agreed deductions paid to third parties):

- salary,
- wages,
- commission,
- bonus,
- allowances
- salary sacrifice superannuation contributions.

What are “Top-up” payments?

If the total of ordinary wages paid to an employee per fortnight is less than the Jobkeeper amount, the employer must pay an additional amount to the employee so that the total amount equals or exceeds the JobKeeper payment for that period.

The “top-up” payment is the difference between the Jobkeeper amount, and the total of ordinary wages paid for a fortnight (if ordinary wages are less than the Jobkeeper amount).

If ordinary wages are equal to, or greater than the Jobkeeper amount, there is no top-up payment.

When are payments to an eligible employee exempt from payroll tax?

If an employer receives the JobKeeper subsidy in relation to an eligible employee, the amount of the “top-up” payment (if any) by the employer to an eligible employee is exempt from payroll tax under s.66D of the *Payroll Tax Act 2007* (“the Act”). Other amounts of wages paid or payable to or in relation to a subsidised employee, including amounts that are taken to be wages under the Act are not entitled to exemption under s.66D eg. Employer superannuation contributions, fringe benefits and ESS interests.

Example

An employer who is liable for payroll tax employs an eligible employee for more than 20 hours per week for the period from 30 March to 27 September and pays the employee \$1,500 per fortnight, consisting of ordinary wages of \$1,000 per fortnight plus a top-up payment of \$500 per fortnight. The employee also receives a car fringe benefit and the employer pays employer superannuation contributions in accordance with the Superannuation Guarantee (Administration) Act 1992 (Cth).

The top-up payments of \$500 per fortnight are exempt from payroll tax. The ordinary wages of \$1,000 per fortnight, the car fringe benefit and the employer superannuation contribution remain liable.

What if an employee is stood down but is paid the relevant Jobkeeper amount?

If an eligible employee is stood down (ie, not required to work) but the employer pays the employee the amount of the Jobkeeper subsidy for the relevant period, the whole of the Jobkeeper payment is exempt from payroll tax.

However, if the employee is required to take leave, amounts paid in relation to leave entitlements remain liable. Only the top-up component (if any) of the employer's payments is exempt from payroll tax.

Example

Tom and Jack are both employees of B W Mechanics Pty Ltd. Tom was stood down, but B W Mechanics Pty Ltd paid Tom the JobKeeper subsidy of \$1,500 fortnightly for the period up to 19 September 2020. The whole payment is exempt from payroll tax.

Jack was also stood down. As Jack was entitled to 3 months leave, he took his leave and was being paid \$1,500 a fortnight made up of the \$1,000 salary and \$500 top-up payment. Only the top-up payment of \$500 is exempt.

Liability of employers who do not make top-up payments

If an employer makes total payments to or in respect of a subsidised employee which are greater than the JobKeeper subsidy for a fortnight, the whole payment from the employer is liable to payroll tax.

Example

Maxwell is employed by Greater Furniture Pty Ltd and receives a salary of \$3,000. Greater Furniture Pty Ltd pays Maxwell a salary of \$3,000 which includes the JobKeeper subsidy of \$1,500. The total amount received is greater than the JobKeeper subsidy and the whole payment is liable to payroll tax.

Liability of employers who are ineligible for a Jobkeeper subsidy

If an employer receives a JobKeeper subsidy for an employee, but the employer was not entitled to the payment for any reason, the whole payment by the employer to or in respect of the employee is liable to payroll tax.

Example

Patron Pty Ltd employed Trina on a casual basis. Trina is not an eligible employee for the purposes of the JobKeeper subsidy. Patron Pty Ltd received the JobKeeper subsidy for Trina. However, since Trina is not an eligible employee, the whole payment is liable to payroll tax.

Record keeping requirements

In accordance with s.48 of the *Taxation Administration Act 1996*, employers are required to keep such records as are necessary to enable the person's payroll tax liability, including eligibility for the Jobkeeper exemption to be properly assessed.

However, employees who maintain records and lodge information with the Australian Taxation Office (ATO) regarding the Jobkeeper subsidy, as required by the relevant Commonwealth legislation, do not have to maintain additional records for payroll tax purposes.

Employers who use Single Touch Payroll (STP) are required to lodge Jobkeeper information, including top-up payments, with the ATO via STP.ⁱⁱ

Employers who do not use STP to report to the ATO must disclose whether they paid a top-up amount to an eligible employee in their monthly applications for the JobKeeper subsidy.ⁱⁱⁱ

Note: *The Chief Commissioner and the Commissioner of Taxation are permitted to exchange information under reciprocal arrangements authorised by State and Commonwealth legislation.*

Cullen Smythe Commissioner of State Revenue

ⁱ The amount paid to an employee includes amounts paid to third parties for the benefit of, or as directed by the employee, or as required by law e.g. employer superannuation contributions, mortgage payments, or withholding amounts paid to the ATO etc.

ⁱⁱ <https://www.ato.gov.au/General/JobKeeper-Payment/In-detail/Reporting-eligible-employees-and-JobKeeper-top-up-payments-via-STP/#table2>

ⁱⁱⁱ <https://www.ato.gov.au/general/jobkeeper-payment/In-detail/JobKeeper-guide---employers-not-reporting-through-STP/#Step3>