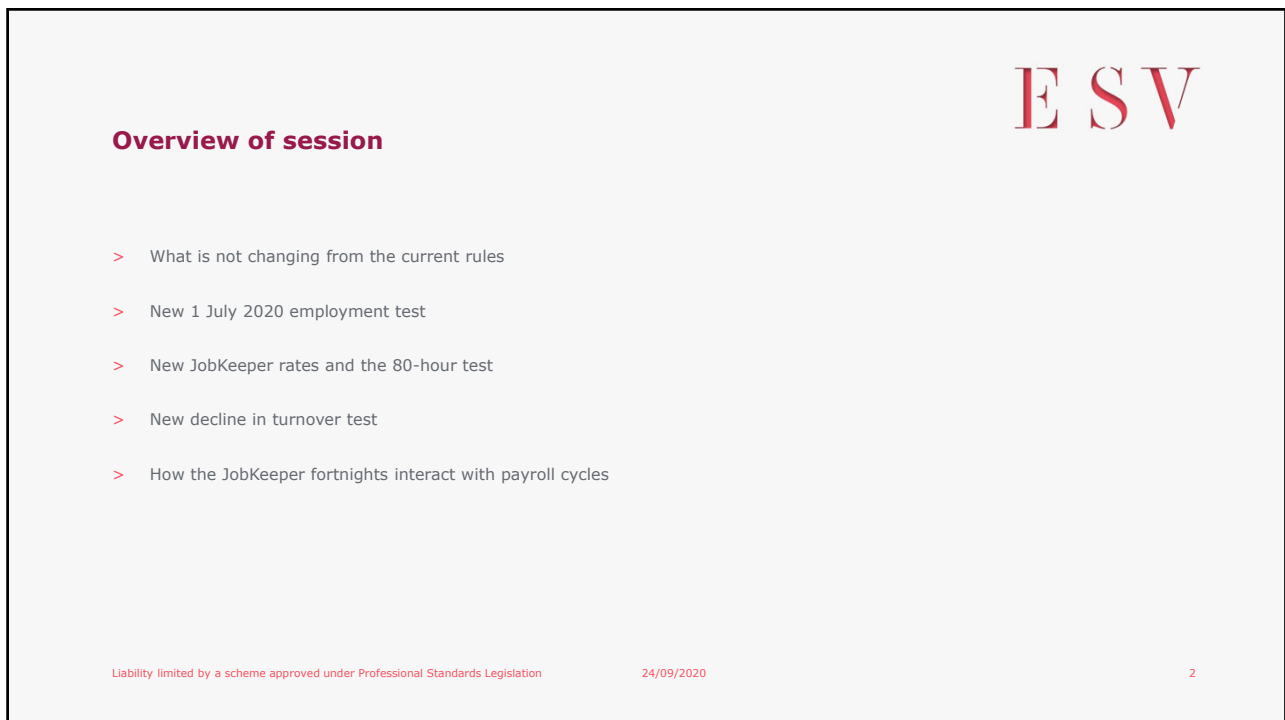




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Overview of JobKeeper

- > JobKeeper 1 – ending 27 September 2020
- > JobKeeper 2 – 28 September 2020 – 28 March 2021 – two stage extension
- > All entities must satisfy a “decline in turnover test” (“DIT”)
- > Wage condition

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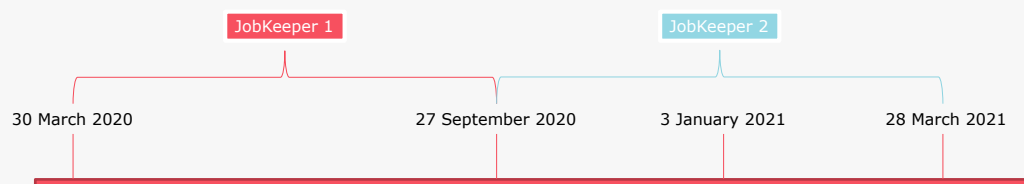
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Timeline



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No change to certain rules

- > Eligible employer – in business on or before 1 March 2020
- > Eligible employee definition has not changed
 - Reference date for employment has changed – now 1 July 2020
- > Requirement for employers to meet the wage condition
- > Specified percentage (DIT test) – 15% | 30% | 50%
- > Ability to elect to exclude government grants from turnover (time limits apply)
- > Ineligibility
 - Business sold to new entity after 1 March 2020 and new entity did not carry on business on 1 March 2020 (even though employees may be eligible)
 - Restructure (e.g. rollover of business) after 1 March 2020 and new entity did not carry on business on 1 March 2020

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No change to other rules

- > Enrolment process
- > Timing of monthly payment by the ATO in arrears
- > Monthly reporting of turnover
- > Rule that prevents more than one employer claiming for same employee – note ability to nominate new employer
- > Tax treatment of JobKeeper payments

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New employment test

- > Eligible employees – must be employed as at 1 July 2020
 - Legislation rewritten using 1 July but 1 March status is also preserved
- > Designed to reflect that the recovery is a W shape not a U or V
- > New employment date is effective for payment fortnights from 3 August onwards
- > Nominations:
 - Employer must have given new employees a notice by 24 August 2020
 - Employees who agree to be nominated must return the notice to their employer
 - '1 March 2020 employee' of an old employer can re-nominate with their new employer

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New 1 July 2020 employment test

- > Change in date means you need to re examine your employee base
 - Previously ineligible employees may now be eligible
- > Potential newly eligible employees include
 - Individuals (other than casuals) employed after 1 March 2020 and before 1 July 2020 who meet the age and residency requirements
 - Casuals who were not a long term casual on 1 March 2020 but became a long term casual employee by 1 July 2020 – 12 month rule
 - Employees who did not qualify on 1 March 2020 due to their age / visa status but these changed between March and July

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New JobKeeper rates

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New 1 July 2020 employment test

JobKeeper period	Tier 1: Higher rate	Tier 2: Lower rate*
30 March 2020 to 27 September 2020	\$1,500	-
28 September 2020 to 3 January 2021	\$1,200	\$750
4 January 2021 to 28 March 2021	\$1,000	\$650

*Part time workers

- > Question – what is part time and how do you measure it? – 20 hours a week or 80 in a reference period?
- > Multiple testing points and alternative tests

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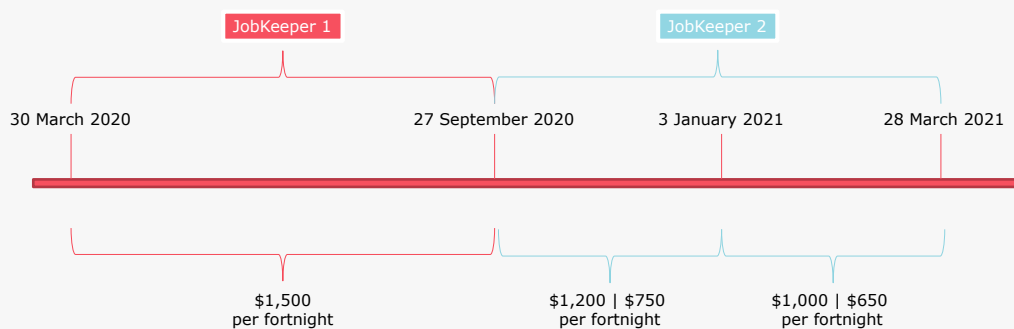
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Timeline



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JobKeeper fortnightly payment rates

Hours worked by the individual in the reference period	30 March 2020 to 27 Sep 2020	28 Sep 2020 to 3 Jan 2021	4 Jan 2021 to 28 Mar 2021
80+ hours	\$1,500 per fortnight	\$1,200 per fortnight	\$1,000 per fortnight
< 80 hours		\$750 per fortnight	\$650 per fortnight

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80-hour reference period

Individual	Higher rate applies if, in the reference period:	Reference period
Eligible employee	Total hours of work, paid leave/absence was 80 hours or more	2 standard periods – 28 day period ending at the end of the most recent pay cycle that ended before 1 March 2020 or 1 July 2020
Eligible business participant	Total number of hours the individual was actively engaged in the business carried on by the entity was 80 hours or more – must give a notice to that effect to the entity (or the Commissioner if a sole trader)	1 standard period – February 2020
Eligible religious practitioner	Total number of hours the individual spent doing activities was 80 hours or more	1 standard period – February 2020

Key take homes

- > You need to assess both periods for employees and ensure they get the best result
- > Its not always 28 days from 1 March or 1 July – it depends on your pay cycle

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Example 1 (fortnightly)

28-day period ending at the end of the most recent fortnightly pay cycle before 1 March 2020	Hours worked	28-day period ending at the end of the most recent fortnightly pay cycle before 1 July 2020	Hours worked
24-30 January 2020 21 January – 6 February 2020	20 hours 17 hours	23-29 May 2020 30 May – 5 June 2020	20 hours 15 hours
7-13 February 2020 (on leave) 14-20 February 2020	15 hours 23 hours	6-12 June 2020 13-19 June 2020	5 hours 10 hours
Total hours in reference period	75 hours	Total hours in reference period	50 hours

Result

- > Assuming other requirements are met:
- > Required to choose the February period however still less than the 80 hour threshold for higher rate
- > If employee worked 25 hours per week in a fortnight in October and was paid more than \$750 for the fortnight, only entitled to claim \$750
- > Rate does not change for the rest of the Jobkeeper program

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Example 2 (monthly)

28-day period ending at the end of the most recent fortnightly pay cycle before 1 March 2020	Hours worked	28-day period ending at the end of the most recent fortnightly pay cycle before 1 July 2020	Hours worked
21 January – 20 February 2020 (31 Days)	75 hours + 65 hours (leave)	21 May–20 June 2020 (31 days)	84 hours
	140 hours × 28/31 days		84 hours × 28/31 days
Total hours in reference period	126.5 hours	Total hours in reference period	75.9 hours

Outcome

- > Assuming other requirements are met:
- > Required to choose the February period and meets required 80-hour threshold for higher rate so eligible for JobKeeper at the higher rate of \$1,200
- > If employee took 8 days leave without pay and worked 15 hours 2–25 October so paid less than \$1,200 a top up will be necessary for the fortnight, but employer entitled to claim \$1,200
- > Rate does not change for the rest of the Jobkeeper program

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Higher rate of JobKeeper applies

Where hours are not readily ascertainable, the Commissioner has determined that the higher rate applies in 3 circumstances:

In the reference period:

- > Eligible payments totalled \$1,500 or more;
- > Under an industrial award, enterprise agreement, individual contract or similar instrument, the eligible employee was required to work 80 hours or more; or
- > It can be determined based on reasonable assumptions that an eligible employee's hours were 80 hours or more

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Alternative reference period: eligible employee

Alternative reference period (alternative 28-day period) applies for the employee where	Alternative reference period for the employee is:
1 Total hours of work or paid leave/absence was not representative of the employee's hours in a typical 28-day period	Most recent 28-day period pay cycle before 1 March / 1 July 2020 in which the employee's total hours of work and paid leave/absence was representative of a typical 28-day period
2 Employee not employed during all or part of the reference period	
3 Employee's employment started before 1 March 2020 or 1 July 2020 but their first pay cycle ended on or after 1 March 2020 or 1 July 2020	The first 28-day period ending on or after 1 March 2020 or 1 July 2020 that wholly occurs during consecutive pay cycles
4 Business changed hands and employee treated as having been employed at earlier time, but employee was not employed by the entity for all or part of the reference period	

- > Cannot use the alternate test to apply a lower rate – if they are in under the basic test you cannot push employees down or out with the alternate

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Alternate tests – common areas

- > No guidance on what if “representative” – grey area and likely area of differing interpretations
- > Various types of unpaid leave during the standard reference period for any reason, for example, sick leave, parental leave and emergency services leave during bushfires
- > Hours were affected due to the employer conducting business or some business in a declared drought zone or declared natural disaster zone
- > Hours varies due to rostering schedules, such as fly-in-fly-out employees; or
- > The employee worked less hours in the standard reference period despite generally working on average 80 hours or more hours over earlier periods – the catch all clause – Jobkeeper is meant to be inclusive!
- > Presumably if apprentices are suspended or on unpaid leave (eg they injured themselves outside of work and cannot undertake duties etc) they would fit under the last category

Practical matters

- > Once determined rate does not change irrespective of amount of work performed
- > Entity must notify the Commissioner relevant rate for each eligible employee
- > Failure to notify Commissioner of higher or lower rate — not eligible for payments until valid notification is made
- > Entity must give a notice to each eligible individual (within 7 days of notifying the Commissioner) advising whether the higher or lower rate applies but only need to notify the employee once

Practical matters

- > Wage condition to be met
- > Assessable to employee and subject to PAYG withholding
- > SG optional on JobKeeper payments

Example below: fortnight ending 11 October 2020

Employee earnings without JobKeeper	Payment to employee with JobKeeper	JobKeeper received by employer from ATO	OTE subject to SG
\$3,000 full-time	\$3,000 OTE \$0 JobKeeper top-up	\$1,200 Net benefit: \$1,200	\$3,000
\$600 part-time	\$600 OTE \$150* JobKeeper top-up	\$750 Net benefit: \$600	\$600 Optional on \$150
\$0 full-time (stood down)	\$0 OTE \$1,200* JobKeeper top-up	\$1,200 Net benefit: \$0	No mandatory SG Optional on \$1,200

*Payroll tax treatment will depend on state – Vic / NSW less concessional but top ups generally exempt

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Employers perspective: receiving JobKeeper 1 payments

JobKeeper fortnight	Wage condition deadline for every eligible employee	Month of payment by ATO (once turnover reported)	Monthly JobKeeper payment per eligible employee
1. 30 March – 12 April 2. 13-26 April	8 May 2020 (transitional)	May 2020	\$3,000
3. 27 April – 10 May 4. 11 – 24 May	10 May 2020 24 May 2020	June 2020	\$3,000
5. 25 May – 7 June 6. 8 – 21 June	7 June 2020 21 June 2020	July 2020	\$3,000
7. 22 June – 5 July 8. 6 – 19 July	5 July 2020 19 July 2020	August 2020	\$3,000
9. 20 July – 2 August 10 ² . 3 – 16 August 11. 17 – 30 August	2 August 2020 16 August 2020 ¹ 30 August 2020 ¹	September 2020	\$4,500
12. 31 August – 13 September 13. 14 – 27 September	13 September 2020 27 September 2020	October 2020	\$3,000

¹ 31 August 2020 for newly eligible employees

² New 1 July 2020 relevant employment test applies from FN 10

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Decline in Turnover

- > Original Test
 - This was based on “projected GST turnover” – looks forward
 - Does not include the sale of capital assets
- > New test
 - Based on “Current GST turnover” – looks backwards
 - Includes sale of capital assets
- > Terminology change is subtle but important – if sold capital assets to assist with cashflow then could potentially be out of JobKeeper
- > Thresholds unchanged but has your status (and therefore threshold) changed?

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Turnover test period

To be eligible	Must suffer decline in turnover in	DIT test	GST turnover
30 March 2020 to 27 September 2020	• Months March to September 2020 (inclusive) or Quarters June / September 2020	Original	Projected
28 September 2020 to 3 January 2021	• Months March to September 2020 (inclusive) or Quarters June / September 2020 or December 2020 quarter; and	Original	Projected
	• September 2020 quarter	Additional	Actual
4 January 2021 to 28 March 2021	• Month between March and December 2020 (inclusive) or June, September or December 2020 quarter; and	Original	Projected
	• December 2020 quarter	Additional	Actual

Decline in Turnover

- > If you pass the DIT in March / April etc to access JobKeeper 2.0 for the quarter to December you need to have suffered an ACTUAL decline in turnover for the September quarter
- > If you pass the DIT in March / April etc to access JobKeeper 2.0 for the quarter to March you need to have suffered an ACTUAL decline in turnover for the December quarter
- > If you pass the DIT in March / April etc and do not meet the turnover threshold for the September quarter you can still access the January to March period **IF** you have suffered an ACTUAL decline in turnover for the December quarter
- > You do not need to re register to continue to receive JobKeeper but you need to provide relevant employee notifications to the ATO and employees.

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Key points - Entity has previously participated in JobKeeper

- > Not required to enrol again
- > Additional actual DIT test does not affect any JobKeeper entitlements arising before 28 September 2020
- > Not required to apply original DIT test again but required to satisfy additional actual DIT test from 28 September 2020

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Key points - Entity has NOT previously participated in JobKeeper

- > Need not have previously enrolled in JobKeeper to apply original DIT test after 27 September 2020
- > Need not have received JobKeeper payments in an earlier period
- > Required to satisfy:
 - both original DIT test; and
 - the additional actual DIT test from 28 September

In practice, if demonstrate a decline in actual GST turnover in the September or December quarter, entity will also satisfy the original DIT test

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Example 1

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
April 2020	125,000	340,000	180,000	525,000	35.24%
May 2020	115,000		170,000		
June 2020	100,000		175,000		
July 2020	90,000	290,000	175,000	530,000	45.28%
August 2020	105,000		190,000		
September 2020	95,000		165,000		

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Example 1

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
October 2020	105,000	350,000	165,000	490,000	28.57%
November 2020	120,000		170,000		
December 2020	125,000		155,000		

Outcome

> Eligible from 28 September 2020 to 3 January 2021 Ineligible from 4 January 2021



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Example 2

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
April 2020	130,000	370,000	180,000	525,000	29.52%
May 2020	125,000		170,000		
June 2020	115,000		175,000		
July 2020	90,000	135,000	175,000	530,000	74.53%
August 2020	30,000		190,000		
September 2020	15,000		165,000		

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Example 2

Month	Actual monthly GST turnover	Actual quarterly GST turnover	Actual monthly GST turnover (RCP)	Actual quarterly GST turnover (RCP)	Decline
October 2020	55,000	230,000	165,000	490,000	53.06%
November 2020	80,000		170,000		
December 2020	95,000		155,000		

Outcome

> Eligible from 28 September 2020



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Hours worked by the individual in the reference period	30 March 2020 to 27 Sep 2020	28 Sep 2020 to 3 Jan 2021	4 Jan 2021 to 28 Mar 2021
80+ hours	\$750 per week	\$600 per week	\$500 per week
< 80 hours	\$750 per week	\$375 per week	\$325 per week

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Payroll cycle: fortnightly

Minimum amounts that employers need to pay to meet the wage condition

Hours worked by the individual in the reference period	30 March 2020 to 27 Sep 2020	28 Sep 2020 to 3 Jan 2021	4 Jan 2021 to 28 Mar 2021
80+ hours	\$1,500 per fortnight	\$1,200 per fortnight	\$1,000 per fortnight
< 80 hours		\$750 per fortnight	\$650 per fortnight

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Payroll cycle: monthly

Minimum amounts that employers need to pay to meet the wage condition

Hours worked by the individual in the reference period	30 March 2020 to 27 Sep 2020	28 Sep 2020 to 3 Jan 2021	4 Jan 2021 to 28 Mar 2021
80+ hours	\$3,000¹ per month if based on actual JobKeeper entitlement for the month	\$2,400 per month (actual) \$2,400 per month (average)	\$2,000² per month (actual) \$2,400 per month (average)
< 80 hours	\$3,250 per month if based on average over period	\$1,500 per month (actual) \$1,525 per month (average)	\$1,300³ per month (actual) \$1,525 per month (average)

¹ August 2020: \$4,500² January 2021: \$3,200³ January 2021: \$2,050

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Supply v Cash/accruals

- > Tightening of rules concerning the basis of determining whether you use cash or accruals etc to determine the value of the supply provided
 - Complex area of law
 - Generally tied to your current method of preparing your BAS but not always
 - » never registered for GST
 - » Changed method during period

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Legislative framework

Purpose	Act Legislative Instrument
JobKeeper legislation	Coronavirus Economic Response Package (Payments and Benefits) Act 2020 Enacted 9 April 2020
JobKeeper rules	Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 Treasurer's legislative instrument, registered 9 April 2020
FWA changes, consequential amendments	Coronavirus Economic Response Package Omnibus (Measures No 2) Act 2020 Enacted 9 April 2020
Alternative decline in turnover test	Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020 Commissioner's legislative instrument, registered 23 April 2020
Various amendments to JobKeeper rules	Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 Treasurer's legislative instrument, registered 1 May 2020
SG amendments	Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020 Treasurer's legislative instrument, registered 28 May 2020
Childcare sector	Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 5) 2020 Treasurer's legislative instrument, registered 6 July 2020

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Legislative framework

Purpose	Act Legislative Instrument
Rules for 1 July 2020 relevant employment test	Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020 Registered 14 August 2020
Extend JobKeeper to 28 March 2021 and FWA changes	Coronavirus Economic Response Package (JobKeeper Payments) Amendment Bill 2020 Enacted 3 September 2020
JobKeeper 2.1 rules	Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 Treasurer's legislative instrument, registered 15 September 2020
Determining timing of supplies	Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No. 1) Commissioner's legislative instrument, registered 16 September 2020
Determining rate where hours not readily ascertainable	Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 Commissioner's legislative instrument, registered 16 September 2020
Determining alternative period where reference period is not suitable	Coronavirus Economic Response Package (Payments and Benefits) Alternative Reference Period Determination 2020 Commissioner's legislative instrument, registered 16 September 2020

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ATO guidance products

ATO guidance	Title and issue date
PCG 2020/4	Schemes in relation to the JobKeeper payment > Issued 1 May 2020 > Last updated 26 May 2020
PS LA 2020/1	Commissioner's discretion to allow further time for an entity to register for an ABN or provide notice to the Commissioner of assessable income or supplies > Issued 1 May 2020 > Last updated 16 September 2020
LCR 2020/1	JobKeeper payment – decline in turnover test > Issued 4 May 2020 > Last updated 10 May 2020 (Consolidated with Addendum)
TD 2020/D1	Income tax: notional deductions for research and development activities subsidised by JobKeeper payments > Draft determination issued 27 July 2020

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**Further questions?****David Prichard****Partner****02 9283 1666****davidp@esvgroup.com.au**

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