

Accounting and Tax Treatment of the Cash Flow Boost and JobKeeper

Mark Morris

Principal

Morris and Associates

16 July 2020

Accounting and Tax Treatment of the Cash Flow Boost and JobKeeper

Mark Morris

16 July 2020

Published by

Tax & Super Australia

Level 13, 303 Collins St, Vic 3000

ABN 96 075 950 284

Reg No: A0033789T

This material has been researched,
authored, reviewed and produced
by the team at Tax & Super Australia.

© Taxpayers Australia Limited T/A
Tax & Super Australia



All information provided in this publication is of a general nature only and is not personal financial or investment advice. It does not take into account your particular objectives and circumstances. No person should act on the basis of this information without first obtaining and following the advice of a suitably qualified professional advisor. To the fullest extent permitted by law, no person involved in producing, distributing or providing the information in this publication (including Tax and Super Australia, each of its directors, councillors, employees and contractors and the editors or authors of the information) will be liable in any way for any loss or damage suffered by any person through the use of or access to this information. The Copyright is owned exclusively by Tax & Super Australia (ABN 96 075 950 284).

NOTICE FORBIDDING UNAUTHORISED REPRODUCTION

So long as no alterations are made unless approved, you are invited to reprint Editorials provided acknowledgment is given that the Association is the source. No other item covered by copyright may be reproduced or copied in any form (graphic, electronic or mechanical, or recorded on film or magnetic media) or placed in any computer or information transmission or retrieval system unless permission in writing is obtained from Tax & Super Australia. Permission to reproduce items covered by copyright will only be extended to members financial at time of request. Permission may be obtained by email to info@taxandsuperaustralia.com.au or by phone (03) 8851 4555.

info@taxandsuperaustralia.com.au

www.taxandsuperaustralia.com.au

P: 03 8851 4555

F: 03 8851 4588

Accounting and Tax Treatment of the Cash Flow Boost and JobKeeper

Contents

Main steps	5
Background	6
Abbreviations used in this paper	7
1 Is an entity eligible for the cash flow boost?	8
1.1 Eligibility	9
1.2 Delivery of cash flow boost payments	9
1.3 Potential traps	11
1.4 Possible opportunities	12
1.5 Tax treatment of the cash flow boost	13
1.6 Examples.....	13
2 How should the cash flow boost be accounted for?.....	18
2.1 Initial cash flow boost payment	18
2.2 Second cash flow boost payment	19
3 How does an entity distribute the cash flow boost to its owner(s)?	26
3.1 Partnership	26
3.2 Discretionary trust	26
3.3 Unit Trust.....	27
3.4 Private company.....	28
4 How is the cash flow boost treated for tax purposes?	29
4.1 Sole traders.....	29
4.2 Partnerships	29
4.3 Discretionary trust	30
4.4 Unit trust	31
4.5 Private company.....	32

5	Is an entity eligible for the JobKeeper payment?	33
5.1	Eligible Employers	34
5.2	Business owners.....	37
6	How does an eligible employer account for the JobKeeper payment	39
6.1	Employee stood down	39
6.2	Employee receives top-up Jobkeeper allowance	40
6.3	Ordinary wage exceeds JobKeeper payment	41
7	How does a business entity account for the JobKeeper payment?.....	42
7.1	Sole trader	42
7.2	Partnership	42
7.3	Discretionary trust.....	43
7.4	Unit trust	43
7.5	Private company.....	43
8	How is the JobKeeper payment treated for tax purposes by an eligible employer	44
9	How is the JobKeeper payment treated when derived by an eligible business entity?	46
9.1	Sole trader.....	46
9.2	Partnership	46
9.3	Discretionary trust	47
9.4	Unit trust	47
9.5	Private company.....	47
10	What is the impact of receiving the cash flow boost and JobKeeper payments?	48
10.1	Case study	48

Main steps

- 01

 Is an entity eligible for the cash flow boost?
- 02

 How should the cash flow boost be accounted for?
- 03

 How does an entity distribute the cash flow boost to its owner(s)?
- 04

 How is the cash flow boost treated for tax purposes?
- 05

 Is an entity eligible for the JobKeeper payment?
- 06

 How does an eligible employer account for the JobKeeper payment?
- 07

 How does a business entity account for the JobKeeper payment?
- 08

 How is the JobKeeper payment treated for tax purposes by an eligible employer?
- 09

 How is the JobKeeper payment treated for tax purposes by a business entity with an eligible business participant?
- 10

 What is the impact of receiving the cash flow boost and JobKeeper payments?

Background

The cash flow boost and the JobKeeper payment are the centrepiece of the Federal Government's stimulus measures to support small to medium sized businesses during the COVID-19 pandemic.

Essentially, the cash flow boost is designed to provide eligible businesses with additional funds to help them finance their on-going business activities whilst the JobKeeper payment essentially provides a wage subsidy for eligible employers and certain business owners.

Both measures were urgently conceived, legislated and implemented to assist businesses to better cope with the adverse and unprecedented impacts arising from the COVID-19 lockdown.

Whilst both measures have injected considerable stimulus they are essentially temporary measures whose scope only currently applies to the period between 1 March 2020 and 30 September 2020.

Inevitably each initiative has been subject to legislative amendment to address various anomalies and inequitable outcomes which have emerged post-enactment.

This evolving process has been accompanied by a raft of guidance products issued by the Australian Taxation Office (ATO) which has sought to take a measured approach balancing support for the community whilst flagging it will crackdown on opportunistic behaviour.

Accordingly, it is necessary that advisers are aware of all the key elements which must be currently satisfied in claiming each concession, and how those provisions are being applied by the ATO.

A bullet list of the key eligibility criteria for each initiative is therefore set out below.

However, the principal focus of this presentation is to summarise the accounting and tax treatment of any cash flow boost and/or JobKeeper payment which is received by an entity during the year ended 30 June 2020.

In other words, it seeks to clarify how the cash flow boost and/or JobKeeper payment should be disclosed in the entity's financial accounts and income tax return for the 2020 year.

The accounting and tax treatment of such items will in practice vary considerably amongst businesses due to the divergent levels of support available under each measure.

The amount of the benefits ultimately received may also vary depending on the type of legal entity receiving such benefits, and the ways in which such amounts are ultimately distributed by an entity to their business owners.

It is therefore necessary to consider the accounting and tax treatment of both the cash flow boost and the JobKeeper payment from the different perspectives of a sole trader, general law partnership, discretionary trust, unit trust and private company.

Finally, it is important to recognise that many (if not most) small to medium size businesses will need to book and disclose the cash flow boost and the JobKeeper payment in their financial accounts and income tax return for the year ended 30 June 2020 often in a period where there has been a collapse of revenue and changed trading conditions. Accordingly, the paper concludes with a practical case study illustrating the combined impact of receiving amounts under both concessions and their relative impact from both an accounting and tax perspective.

Abbreviations used in this paper

Cash Flow Boost Act	<i>Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020 (Cth)</i>
PAYG Withholding Regime	Subdivisions 12-B to 12-D and Division 13 of Schedule 1 of the Taxation Administration Act (1953) (Cth)
JobKeeper payment rules	The <i>Coronavirus Economic Response Package (Payments and Benefits) Rules 2020</i> issued by the Treasurer by way of Legislative Instrument on 9 April 2020. Such rules were issued pursuant to section 20(1) of the <i>Coronavirus Economic Response Package (Payments and Benefits) Act 2020 (Cth)</i> .
ITAA (1997)	<i>Income Tax Assessment Act (1997) (Cth)</i>
ITAA (1936)	<i>Income Tax Assessment Act (1936) (Cth)</i>
BAS	Business Activity Statement
IAS	Instalment Activity Statement

1 Is an entity eligible for the cash flow boost?

Eligible small or medium sized business entities (and not-for-profit entities of equivalent size) employing staff are potentially entitled to a cash flow boost 'payment' in respect of amounts subject to PAYG Withholding for tax periods between 31 March 2020 and 30 September 2020.

The minimum amount of the payment is \$20,000 whilst the maximum payment is capped to \$100,000.

This payment is essentially being made in two instalments.

Eligible entities will already have received payments between \$10,000 and \$50,000 under the first cash flow boost in relation to tax periods between 31 March 2020 and 30 June 2020.

In practice, the amount of the payment received under this initial cash flow boost depended on the entity's total PAYG withholding liability during this timeframe and whether the entity was lodging activity statements of a monthly or quarterly basis.

For a monthly lodger the total PAYG withholding liability took into account the amount of PAYG required to be withheld in its lodged activity statements for this period being the 31 March 2020 BAS, the 30 April 2020 IAS, the 31 May 2020 IAS and the 30 June 2020 BAS.

Conversely, the total PAYG withholding liability of a quarterly lodger was calculated in relation to the entity's PAYG withholding obligations disclosed in their 31 March 2020 BAS and 30 June 2020 BAS.

Eligible entities are also automatically entitled to receive a second cash flow boost payment equal to the amount of their initial boost payment for tax periods entered between 30 June 2020 and 30 September 2020 provided they lodge a BAS during this period.

It is a deliberate design feature of the regime that eligible businesses receive the final part of their initial cash flow boost in the tax period ended 30 June 2020 after lodging their activity statement at which time they also receive the first payment of their second cash flow boost.

The specific eligibility rules which entities must meet to obtain the cash flow boost payment are discussed further below.

However, as an overarching comment it is important to note that the payment takes the form of a gross tax credit rather than a cash payment.

Broadly, the amount of that credit is applied to reduce the entity's tax liabilities that arise in the same business activity statement to which the credit relates.

Depending on the nature of the entity such tax liabilities could include, amongst others, a liability for PAYG withholding, a net amount of GST payable and the amount of any PAYG income tax instalment payable.

To the extent there is a surplus credit remaining after the gross tax credit has been applied against such tax liabilities that amount will generally be refunded to the entity as a cash refund¹.

Such a payment is available to all types of eligible entities carrying on a business. It therefore extends to sole traders, general law partnerships, discretionary trusts, unit trusts and private companies.

However, it is a critical feature of the regime that the credit arises in respect of an entity's PAYG withholding obligations. Accordingly, it cannot apply where a business owner is operating their business via a company, partnership or trust and is not making any payments to its shareholders, partners or beneficiaries which are subject to the PAYG Withholding Regime.

¹ The ATO has stated that it will not apply any excess credit from the BAS against any of the entity's other tax debts. However, excess amounts may still be applied against any outstanding debts with other Australian Government agencies as set out at [https://www.ato.gov.au/Business/Business-activity-statements-\(BAS\)/In-detail/Boosting-cash-flow-for-employers/?page=4#What_you_will_receive](https://www.ato.gov.au/Business/Business-activity-statements-(BAS)/In-detail/Boosting-cash-flow-for-employers/?page=4#What_you_will_receive)

1.1 Eligibility

The following conditions must all have been met in order for an entity to be eligible for the initial cash flow boost²:

- The entity must have made a payment subject to the PAYG withholding regime during the tax periods between 31 March 2020 to 30 June 2020. This principally comprised payments of salary and wages paid to employees including the payment of any related bonuses, commissions and allowances. However, such payments also included directors fees, return to work payments, payments to working holiday makers, payments to contractors covered by a voluntary agreement to withhold PAYG, payments made under a labour hire agreement, eligible retirement or termination payments and certain workers compensation payments. In addition, a payment was also subject to PAYG withholding if an entity was in receipt of personal services income which was not promptly paid as salary to the individual providing such services³;
- The entity must have been carrying on a business or been a not-for-profit entity whose aggregated turnover was less than \$50 million for the most recent income year for which an assessment of tax was made. Alternatively, the Commissioner must be reasonably satisfied that it is likely that the entity met this eligibility criteria for the year ended 30 June 2020;
- An entity must have derived assessable income from carrying on a business in the 2018-19 income year and lodged its 2019 return on or before 12 March 2020; or made one or more supplies in the course of carrying on an enterprise in Australia in a tax period commencing after 1 July 2018 and ending before 12 March 2020 and lodged an activity statement on or before 12 March 2020;
- The entity must have held an Australian Business Number (ABN) on 12 March 2020 (other than a charity registered with the Australian Charities and Not-for-Profits-Commission (ACNC) which does not have to satisfy this requirement); and
- The entity (and any associate or agent) did not enter into a scheme for the sole or dominant purpose of either creating an entitlement to a cash flow boost payment or to increase the amount of such a payment.

Essentially, the second cash flow boost payment payable in respect of the tax periods ended 30 June 2020 to 30 September 2020 will be available to any entity that received the initial cash flow boost provided that entity lodges a BAS statement during the above tax periods⁴.

1.2 Delivery of cash flow boost payments

Both cash flow boost payments are calculated automatically by the ATO once it has determined that an entity is eligible for such amounts.

Accordingly, unlike the JobKeeper regime no additional forms are required to be completed in order to obtain the benefit of the concession.

Separate rules apply to the calculation of an entity's entitlement under the initial cash flow boost and the subsequent additional cash flow boost as set out below.

² The basic eligibility conditions which need to be satisfied by an entity in respect of the initial cash flow boost are set out in section 5 of the Cash Flow Boost Act.

³ Sections 4(4) and 5(1)(b) of the Cash Flow Boost Act has been amended to include PAYG required to be retained by an entity in respect of alienated personal services income as an amount which is subject to the PAYG withholding regime for the purpose of the cash flow boost. This change is retrospectively effective from the commencement of the cash flow boost following amendments enacted under the *Treasury Laws Amendment (2020 Measures No.3) Act 2020* which received Royal Assent on 19 June 2020.

⁴ The eligibility conditions which need to be met by an entity in respect of the second cash flow boost are set out in section 6 of the Cash Flow Boost Act.

Initial cash flow boost

Eligible entities received payments based on the amount of their PAYG withholding liability during the tax periods covered by the initial cash flow boost between 31 March 2020 and 30 June 2020.

However, the calculation of that amount was subject to the following modifications⁵:

- All eligible entities received a minimum total cash flow boost payment of \$10,000 in the first tax period ended 31 March 2020 even where the entity's total PAYG withholding liability for that period was for a lesser amount. Once that \$10,000 payment had been received such an entity would not be entitled to any more initial cash flow boost until its PAYG withholding total exceeded \$10,000 over subsequent tax periods up to 30 June 2020;
- Any eligible entity whose payment reached \$50,000 in the first tax period ended 31 March 2020 was not entitled to any further amount in any subsequent tax period during the initial cash flow boost timeframe; and
- Where the entity's entitlement to the cash flow boost payment in the first tax period was in excess of \$10,000 but less than \$50,000, the entity could claim additional payments in the tax period ended 31 March 2020 and in subsequent tax periods for the amount of PAYG withheld until the \$50,000 cap was either reached or it expired through the effluxion of time on 30 June 2020.

As discussed, in calculating the amount of such a payment it was also necessary to distinguish between entities which lodged their BAS on a monthly or quarterly basis.

Where the entity was a quarterly lodger the amount of any payment credited to the entity would be in respect of the quarters ended 31 March 2020 and 30 June 2020.

By contrast if the entity's lodged monthly activity statements it was entitled to receive the credit for the monthly tax periods ended 31 March 2020, 30 April 2020, 31 May 2020 and 30 June 2020.

Importantly, the amount of a payment for a monthly lodger in respect of the month ended 31 March 2020 was three times the amount (i.e. 300%) of the PAYG tax withholding obligation for that month.

This 300% grossed up rate ensured that there was some parity in treatment between the amount of PAYG claimed by a monthly lodger for the tax period ended 31 March 2020 and the equivalent amount that would be claimed by a quarterly lodger for the quarter ended 31 March 2020 which would be calculated on the basis of three months liability for PAYG withholding.

Second cash flow boost

The total amount of the second cash flow boost for the tax periods between 30 June 2020 and 30 September 2020 is equal to the full amount of the first cash flow boost payment to which the entity was entitled.

This will be the case even where the circumstances of the entity have changed and the entity is required to remit less PAYG tax withholding after 30 June 2020. However, the entity must continue to lodge an activity statement during the period 30 June 2020 to 30 September 2020 in order to obtain this second cash flow boost entitlement.

Where the entity lodges its BAS on a quarterly basis it will receive a payment equal to 50% of its initial cash flow boost entitlement upon the lodgment of its BAS for the quarters ended 30 June 2020 and 30 September 2020.

Conversely, where the entity lodges its activity statements on a monthly basis it will receive a payment equal to 25% of its initial cash flow boost payment upon the lodgment of the monthly activity statements for the months ended 30 June 2020, 31 July 2020, 31 August 2020 and 30 September 2020.

From a cash flow perspective an entity therefore receives the final part of its initial cash flow boost in the tax period ended 30 June 2020 as well as the first instalment of its entitlement to the second cash flow boost in that same 30 June 2020 tax period.

⁵ Refer to section 7 of the Cash Flow Boost Act.

This can be confusing but essentially means that it is necessary to recognise that there will be two amounts of cash flow boost entitlement that need to be accounted for in relation to the applicable tax period ended 30 June 2020.

1.3 Potential traps

Care should be taken to ensure that an entity is eligible to claim the cash flow boost payment as an entity will be required to repay any amount to which it is not entitled.⁶

This will include situations where the entity entered into a scheme for the sole or dominant purpose of either creating an entitlement to obtain such a payment or to increase the amount of such a payment.

In this context the ATO has flagged that it is on the lookout for employers who have entered into schemes to artificially restructure businesses or change the character of payments to gain access to the cash flow boost, or which have otherwise reported inflated withholding amounts or made false statements to obtain an entitlement to the payment⁷.

Any such overpayments will also be subject to any general interest charge which accrued from the date on which the overpayment arose⁸.

It is also important to recognise that larger entities whose aggregated turnover is in excess of the \$50 million eligibility threshold are not entitled to claim the cash flow boost payment.

Accordingly, it is critical to ensure that an entity's aggregated turnover is correctly calculated and takes into account not only the annual turnover of the entity but also that of any affiliated or connected entity, especially where reliance is placed on the Commissioner forming that view that the aggregated turnover for the year ended 30 June 2020 is less than \$50 million⁹.

This may be particularly important where an entity's prior year aggregated turnover was greater than \$50 million but is likely to be less than \$50 million for the year ended 30 June 2020 in which case it must produce additional evidence to provide to ensure that the ATO could reach this view.

Finally, a newly created business that did not have assessable income during the year ended 30 June 2019 will only be eligible for the initial cash flow boost if it made supplies for GST purposes in a tax period before 12 March 2020.

From a practical perspective this has the effect that such an entity would have had to have lodged a BAS by the quarter ended 31 December 2019 where it is lodging its activity statements on a quarterly basis or by the month ended 29 February 2020 where it is lodging its BAS on a monthly basis.

Essentially, where the entity did not make supplies before 1 January 2020 (for quarterly lodgers) or before 1 March 2020 (for monthly lodgers) the ATO generally takes the view that the entity will not be eligible to claim the cash flow boost.

From a practical perspective such a business would also typically need to have been registered for PAYG withholding purposes by 12 March 2020.

However, the ATO recognises that there may be limited circumstances where the business was not registered for PAYG withholding purposes by 12 March 2020 particularly where employees were engaged before that date but were not required to be paid until after that time.

Where this is the case the entity will need to liaise with the ATO to ensure that they accept this position.

⁶ Section 9 of the Cash Flow Boost Act.

⁷ Refer to the media release 'ATO zeroes in on COVID-19' dated 23 June 2020 which can be downloaded at <https://www.ato.gov.au/Media-centre/Media-releases/ATO-zeroes-in-on-COVID-19-fraud/>

⁸ Section 9 of the Cash Flow Boost Act.

⁹ Refer to the definition of aggregated turnover under section 328-115 of the ITAA (1997).

1.4 Possible opportunities

It is important to recognise that an entity which is registered for PAYG withholding purposes will be potentially entitled to the minimum cash flow boost of \$20,000 for the tax periods between 31 March 2020 and 30 September 2020 even where the entity was not required to withhold such amounts¹⁰.

This could occur where the entity has registered for PAYG withholding purposes and shown the payment of salary and wages on its activity statement but did not retain any PAYG tax as the total amount of salary and wages was below the tax-free threshold.

Accordingly, if an entity has disclosed salary and wages subject to a PAYG withholding provision at Label W1 on a BAS lodged before 12 March 2020 it will be entitled to the minimum cash flow boost of \$20,000 even where no PAYG tax has been reported as having been withheld at Label W2 on such a BAS.

Such an entity should therefore have received an amount of \$10,000 under the initial cash flow boost for the period 31 March 2020 to 30 June 2020 and will also be entitled to a further payment of \$10,000 in respect of the second cash flow boost payment.

As is the case with other employers such an amount will generally be applied to reduce other tax liabilities in the same BAS with only the balance of any remaining net amount being refunded after the payment has been applied to reduce such liabilities.

The same rule also extends to an ACNC registered charity which is registered for PAYG withholding purposes which made payments of salary and wages during the initial cash flow boost period but which was not required to withhold PAYG from such payments.

By contrast a long standing entity which has engaged staff but which has not been registered for PAYG withholding purposes will not be entitled to any cash flow boost entitlement as nil amounts will be disclosed at both labels W1 and W2 of the relevant activity statement.

Lastly, there may be entities which have not yet received the cash flow boost payment who may wish to clarify why they have not yet received such a payment.

For example, this may have arisen because the entity's income tax return or BAS was not lodged by the required time because the entity was granted a deferred due date by which to lodge their income tax return or annual BAS for the year ended 30 June 2019.

In these circumstances the ATO has confirmed that provided an entity's annual income tax return or BAS is lodged before the deferred due date of lodgment such an entity will be entitled to the credit arising under the first cash flow boost.

Accordingly, if the entity did not lodge either the outstanding return or BAS by 12 March 2020 but lodged one of them prior to the deferred lodgment date of 15 May 2020 the entity would be able to receive the credit for the cash flow boost.

This would be particularly relevant where an entity was given an automatic lodgment deferral such as would be the case with certain taxpayers who were affected by bushfires or other natural disasters in late 2019.

Such an extension would also potentially be available where there were exceptional and unforeseen circumstances which prevented the lodgment of a return such as the loss of a significant amount of records due to natural disaster¹¹.

¹⁰ Sections 4(5) and 5(1) of the Cash Flow Boost Act.

¹¹ Practice Statement PS LA 2020/1 sets out the circumstances in which the Commissioner will exercise a discretion to grant further time for an entity to either hold an ABN after 12 March 2020 or give notice that an amount should be included in assessable income or that the entity has made a taxable supply.

1.5 Tax treatment of the cash flow boost

The amount of the cash flow boost received by an entity is tax-free as that payment has been expressly legislated to be non-assessable non-exempt income¹².

Furthermore, any prior year or carried forward tax loss incurred by such an entity is not reduced by any amount refunded under the cash flow boost as it is neither assessable or exempt income.

The payment is also not subject to Goods and Services Tax (GST) as the payment is not consideration for a taxable supply as the entity is not making or agreeing to make a supply in return for the payment.

Finally, the amount of the cash flow boost does not reduce the amount of PAYG tax withheld which is included in the amount of gross salary (or other payments subject to PAYG withholding) which is claimed as deductible by the payer entity.

As a corollary the payee in respect of whom the PAYG tax has been withheld will be entitled to claim a credit for that amount of PAYG tax withheld in reducing their own personal income tax liability upon lodgment of their own returns.

1.6 Examples

As discussed, the application of the cash flow boost payment regime will vary markedly amongst different taxpayers depending on the amount of payments they make which are subject to PAYG withholding during the first cash flow boost instalment as well as whether that entity lodges its BAS on a monthly or quarterly basis.

Such variation in outcomes is best illustrated through a series of examples as shown below.

¹² Section 59-90 of the ITAA (1997).

Example 1 – Sole trader not required to remit PAYG withholding

Michael is a clinical psychologist providing GST free consulting services in Blacktown. He has employed a part-time intern Anna to assist him in managing his practice.

Michael registered for PAYG withholding at the time he commenced employing Anna and made a payment of \$3,500 salary to Anna for the quarter ended 31 March 2020 which was disclosed at label W1 on his BAS lodged for the quarter ended 31 March 2020.

However, as Anna's taxable income for the year ended 30 June 2020 is below the tax-free threshold of \$18,200 he was not required to retain any PAYG tax in respect of such a payment.

Michael was also required to pay his own PAYG income tax instalment of \$4,500 on his BAS for the quarter ended 31 March 2020 which was not paid at the time of lodgment.

No GST was payable on any supplies made by Michael as all his consulting services are GST free supplies.

Michael subsequently received an initial cash flow boost payment of \$10,000 for the quarter ended 31 March 2020 following the lodgment of his BAS.

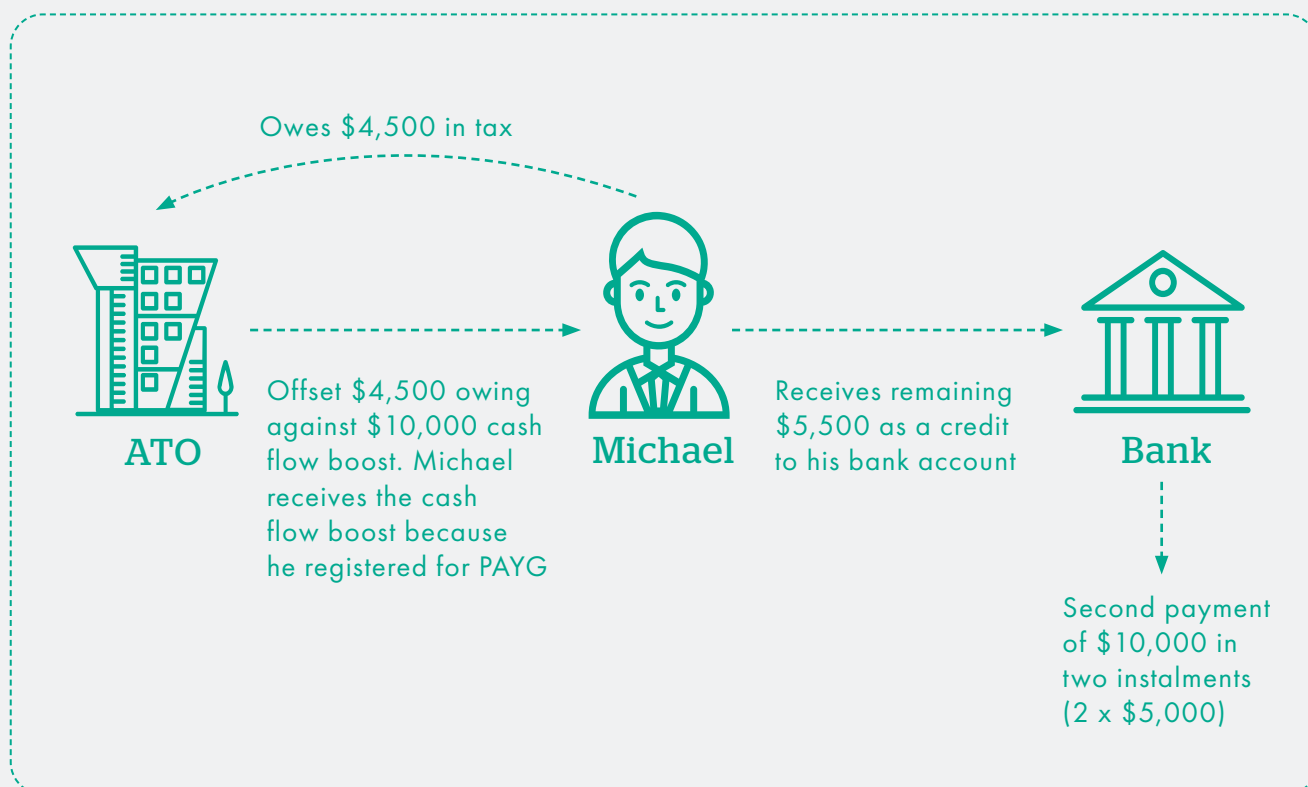
He was required to apply \$4,500 of the credit arising from such a payment against his liability to pay his PAYG instalment for that quarter.

However, the balance of the credit of \$5,500 was refundable directly to Michael's bank account as he had no other tax liabilities arising in respect of that BAS.

Michael will be further entitled to a \$10,000 payment under the second cash flow boost payment.

This will be received in two separate instalments of \$5,000 each following the lodgment of his BAS for the quarters ended 30 June 2020 and 30 September 2020.

Such amounts must be applied against his PAYG instalment income of \$4,500 for each quarter with the \$500 balance being refunded to him.



Example 2 – Trust retains and pays PAYG withholding in respect of salary

Roger is a tax agent carrying on a practice in Glenelg. He runs his practice through a discretionary trust called the Mitchell Family Trust of which Mitchell Pty Ltd is the trustee.

The trustee does not pay Roger a salary but has engaged a graduate accountant Libby to assist him on a part-time basis for a gross salary of \$39,000. During the quarter ended 31 March 2020 the trustee paid salary of \$9,750 to Libby which was subject to PAYG withholding of \$1,250. The trust also had a net amount of GST payable for the quarter ended 31 March 2020 of \$3,750. Both amounts were outstanding at the time of lodgment of the BAS.

Following the lodgment of the trust's BAS for the quarter ended 31 March 2020 the trust received a payment of \$10,000 under the initial cash flow boost.

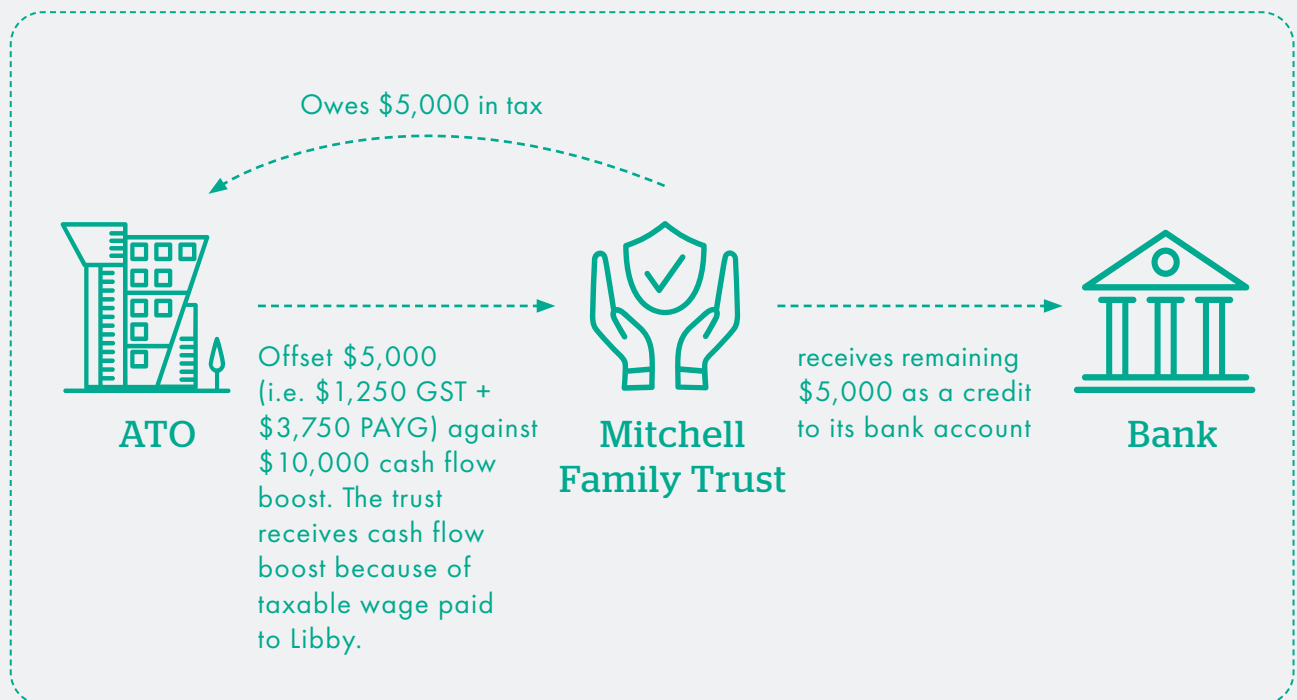
The \$10,000 credit arising under this payment was first applied to reduce the unpaid amount of PAYG withholding of \$1,250 and the net amount of GST payable of \$3,750 payable for that quarter. The resulting balance of \$5,000 was subsequently credited to the trust's bank account.

This amount was lent to Roger as drawings to finance the payment of his own personal PAYG instalment of income tax for the quarter ended 31 March 2020.

As the trust's total amount of PAYG withholding payments for the quarters ended 31 March 2020 and 30 June 2020 will be \$2,500 (i.e. \$1,250 X2) the trust will not be entitled to any further amount under the first cash flow boost payment for the quarter ended 30 June 2020.

However, the trust will be entitled to a further \$10,000 payment under the second cash flow boost payment being amounts of \$5,000 received in respect of the quarters ended 30 June 2020 on 30 September 2020.

The trustee can therefore apply the \$5,000 part of the second cash flow boost received in the quarter ended 30 June 2020 against its PAYG withholding and net GST liabilities for that quarter.



Example 3 – Company with quarterly PAYG withholding, PAYG instalment income and net GST payable amounts

Kennedy Pty Ltd is a private company retailer in Dandenong which sells various IT products including laptops and desktops.

In its BAS for the quarter ended 31 March 2020 the company had liabilities of \$9,000 for PAYG withholding in respect of \$52,000 gross salary payable for the quarter as well as a net amount of GST payable of \$11,000 and a PAYG instalment of income tax of \$10,000. This aggregate amount of \$30,000 tax was outstanding at the time the BAS was lodged.

The company subsequently received the \$10,000 minimum payment under the initial cash flow boost. This was the case even though the PAYG withholding liability was only \$9,000 as each entity which is eligible for the first cash flow boost received a minimum amount of \$10,000 credit for the first tax period in respect of the initial cash flow boost.

This \$10,000 credit was fully extinguished when applied against the outstanding tax of \$30,000. Hence, no amount was refundable as a cash payment to the company for the quarter ended 31 March 2020.

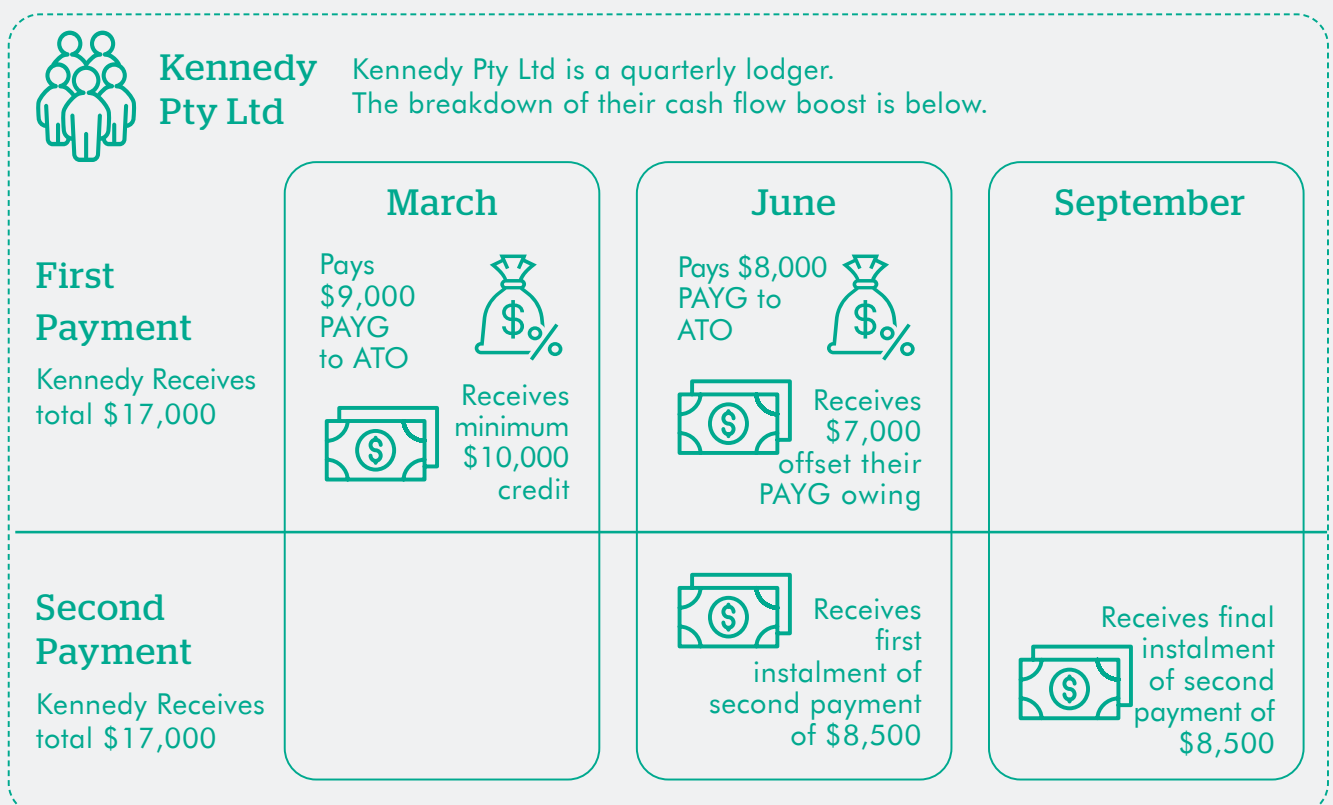
The company subsequently incurred a PAYG withholding liability of \$8,000 for the quarter ended 30 June 2020 together with a net amount of GST payable of \$9,000 and a PAYG instalment of income tax of \$10,000. This \$27,000 total tax amount was not paid at the time the BAS was lodged.

The company was subsequently entitled to a further payment of \$7,000 under the initial boost for the quarter ended 30 June 2020. This amount represented the aggregate PAYG withholding liability for both the March 2020 and June 2020 quarters of \$17,000 (i.e. \$9,000 + \$8,000) less the minimum \$10,000 amount payable in the March 2020 quarter.

However, as the company received an aggregate initial cash flow boost payment of 17,000 (i.e. \$10,000 + \$7,000) it will likewise receive a second cash flow boost payment of \$17,000. This amount will be received in separate instalments of \$8,500 upon the company lodging its BAS for the quarters ended 30 June 2020 and 30 September 2020.

Accordingly, the total amount of the cash flow boost received by the company for the quarter ended 30 June 2020 was \$15,500 being the aggregate of the final part of the initial cash flow boost of \$7,000 for the first instalment of the second cash flow payment boost payment of \$8,500.

This \$15,500 amount was credited against the total tax payable by the company for the quarter ended 30 June 2020 of \$27,000. Accordingly, the company was only liable for aggregate tax payable of \$11,500 in respect of its BAS for the quarter ended 30 June 2020.



Example 4 – Trust with monthly PAYG withholding and net GST payable

The O'Connor Family Trust manufactures specialist medical equipment in Fremantle, and lodges its BAS on a monthly basis.

For the month ended 31 March 2020 its BAS disclosed that it had a PAYG withholding liability of \$15,000 in relation to salaries paid of \$70,000 and had a net GST amount payable of \$10,000.

As a monthly lodger the trust is entitled to a credit of 300% for the PAYG withholding liability for the month ended 31 March 2020.

Accordingly, the trust was entitled to an initial payment of \$45,000 being 300% of its PAYG withholding liability of \$15,000 as shown in its BAS for the month ended 31 March 2020.

This \$45,000 credit was subsequently offset against the trust's total tax payable on its 31 March 2020 BAS of \$25,000 being the sum of its PAYG withholding liability of \$15,000 and its net GST payable of \$10,000. The remaining \$20,000 balance was credited to the trust's bank account as a cash payment.

The trust subsequently incurred a total tax amount of PAYG withholding payable of \$15,000 for the month ended 30 April 2020 but only received a further \$5,000 in relation to the initial cash flow payment for that month as it had fully utilised its \$50,000 cap given the earlier \$45,000 credit in the 31 March 2020 tax period. This \$5,000 credit can be applied to partly reduce the trust's PAYG withholding liability of \$15,000 for the month ended 30 April 2020.

The trust is also entitled to a second cash flow boost of \$50,000 which will be received in monthly instalments of \$12,500 each in respect of its lodged BAS returns for the months ended 30 June 2020, 31 July 2020, 31 August 2020 on 30 September 2020.

Accordingly, the trust will receive the first instalment of \$12,500 of the second cash flow boost payment in the quarter ended 30 June 2020 which can be applied against the PAYG withholding liability of \$15,000 for that month.

The balance of the second cash flow boost payment will be received in the year ended 30 June 2021.



O'Connor Family Trust

The O'Connor Family Trust lodge their BAS on a monthly basis. The breakdown of their cash flow boost treatment is below

March

Pays
\$15,000
PAYG
to ATO



Receives
\$45,000
credit



Credits
\$20,000
to bank



April

Pays
\$15,000
PAYG
to ATO



\$5,000 is
offset against
PAYG as
O'Connor
have reached
\$50,000 cap

May

No Cash Flow
Boost Re-
ceived

June



O'Connor
receive first
quarterly
instalment of
second cash
flow boost of
\$12,500

July - September



Balance of
\$37,500
to come in
\$12,500
instalments for
the next three
months

2 How should the cash flow boost be accounted for?

The accounting treatment of the cash flow boost should be relatively straightforward provided a separate category of 'other income – non-assessable non-exempt income' is set up in the entity's chart of accounts for the year ended 30 June 2020¹³.

This step is important as it quarantines such income from other categories of revenue that may otherwise be derived by the entity especially as the cash flow boost is non-assessable non-exempt income.

It will also be necessary to ensure that the account of 'other income' set up in the accounts is also not subject to GST, (given that the receipt of the cash flows boost payment is not a taxable supply subject to GST).

This will be the case regardless of the type of entity which has received the cash flow boost.

It will then be necessary to differentiate between the book treatment of the initial cash flow boost payment actually received in respect of the year ended 30 June 2020, and the second instalment of the cash flow boost payment which will be received during the year ended 30 June 2021.

The relevant journal entries that should be booked for each category of instalment for the year ended 30 June 2020 are discussed further below.

2.1 Initial cash flow boost payment

As discussed, the amount of the initial cash flow boost payment is first applied against any tax liabilities of an entity that have arisen in the same business activity statement for the period in which the cash boost credit is received.

Thus, it will be important to identify any liabilities that have arisen in the entity's BAS for the relevant tax period as they will be debited to the extent of cash flow boost payment received for that period.

Such a liability will clearly include any outstanding PAYG withholding tax payable for the relevant period.

Further liabilities will typically include the amount of any PAYG instalment of income tax where the entity is either an individual or a company, and the net amount of any GST payable by the entity where the GST liability in the entity's balance sheet exceed its input tax credit entitlements on creditable acquisitions.

Whilst any remaining balance would notionally be available to be applied against any other outstanding tax debts of the entity the ATO is not adopting that practice but is instead refunding any excess amount to an entity as a cash refund.

Accordingly, the journal entries booked must reflect the receipt of the cash flow boost payment in the applicable tax period as a credit to 'other income – non-assessable non-exempt income' with corresponding debits reducing one or more of the entity's tax liabilities for that period and/or recognising an amount held as cash at bank.

As a corollary any salary or other payments made which are subject to PAYG withholding will continue to be fully expensed with the amount of PAYG withholding liability being reduced to the extent of the credit applied.

¹³ The name of the account may expressly refer to the 'cash flow boost' or 'Government grant' in lieu of other income. The critical point is that the account created in the chart of accounts recognises that it is income tax free and not subject to GST.

2.2 Second cash flow boost payment

Pragmatically an entity will be guaranteed the automatic payment of a second cash flow boost payment for the period 30 June 2020 to 30 September 2020 equal to the amount of the total first initial cash boost payment provided it lodges an activity statement during these tax periods.

As discussed, the second cash flow payment involves a portion of the payment being attributed to the tax period ended 30 June 2020.

This will be either 50% of half the amount of the second cash flow boost payment where the entity lodges its BAS on a quarterly basis or 25% where the entity lodges its BAS on a monthly basis.

To the extent that the cash flow payment relates to tax periods after 30 June 2020 it may be prudent to prepare the entity's financial accounts for the 2020 year to recognise that an entitlement to such income will automatically be crystallised upon the lodgment of an entity BAS after year-end. This is not mandatory and some practitioners may merely prefer to book what they actually receive in terms of the credit by month end. However, it may be helpful monitoring the receipt of the remaining second cash flow boost payment given that in practice it will be automatically received by most entities in the year ended 30 June 2021.

To minimise complexity it is suggested that a journal entry recognising the receipt of such a future payment be booked in the accounts being a credit to the newly created 'other income – non-assessable non-exempt income' account with a corresponding debit to an 'accounts receivable – ATO' to reflect the prospective receipt of such a payment.

This accounts receivable account can be correspondingly credited in the year ended 30 June 2021 when the amount of the payment is received following the lodgment of the required activity statement and the amount is debited to reduce the entity's tax liabilities and/or recognised as cash at bank in the period in which the credit is received during the 2021 year.

2.3 Examples

The following journal entries reflect the amounts of the cash flow boost payment respectively derived by the entities as set out in examples 1 to 4 of the above materials.

Example 5 – Sole trader not required to remit PAYG withholding

Michael was registered for PAYG withholding for the quarter ended 31 March 2020 but he did not withhold any PAYG from the quarterly salary of \$3,500 paid to as his employee Anna as she was below the tax-free threshold. As he did not make any taxable supplies for the period he was not subject to GST in that quarter.

Accordingly, he was only required to apply the \$10,000 cash boost received in respect of the quarter ended 31 March 2020 against his own liability for a PAYG instalment of income tax payable of \$4,500 for that quarter. Thus, the \$5,500 balance received should be booked as cash at bank to reflect the net cash refund received.

He will also receive a credit for \$5,000 for the quarter ended 30 June 2020 being 50% of his second cash flow boost. This amount must be applied against any his PAYG instalment of income tax of \$4,500 for the quarter ended 30 June 2020 with the \$500 balance being refunded to him. He may choose to recognise his future entitlement to the remaining \$5,000 of his second cash flow boost in the quarter ended 30 September 2020.

The relevant book entries for the year ended 30 June 2020 would be as follows:

Payment of salary to Anna – BAS for quarter ended 31 March 2020

Dr	Salary	3,500
Cr	Bank	3,500

Receipt of cash flow boost – BAS for quarter ended 31 March 2020

Dr	Bank	5,500
Dr	PAYG Instalment payable	4,500
Cr	Other income – non-assessable non-exempt income	10,000

Receipt of cash flow boost – BAS for quarter ended 30 June 2020

Dr	Bank	500
Dr	PAYG Instalment payable	4,500
Cr	Other income – non-assessable non-exempt income	5,000

Future receipt of second cash flow boost – BAS for quarter ended 30 September 2020

Dr	Accounts receivable – ATO	5,000
Cr	Other income – non-assessable non-exempt income	5,000

Example 6 – Trust retains and pays PAYG withholding in respect of salary

The Mitchell Family Trust had a PAYG withholding tax liability of \$1,250 in respect of the \$9,750 salary paid to its sole employee Libby for the quarter ended 31 March 2020 being the first tax period of the initial cash flow boost. Its only other tax liability for the quarter was a net amount of GST payable of \$3,750.

The trust therefore applied the \$10,000 cash boost received in respect of the quarter ended 31 March 2020 against its aggregate tax liability for the quarter of \$5,000 being the sum of the \$1,250 PAYG withholding tax payable and the \$3,750 net amount of GST payable. The remaining \$5,000 balance was paid as a cash refund to the trust's bank account.

The trust is also entitled to a second cash flow boost of \$10,000 of which \$5,000 will be separately attributed to the quarters ended 30 June 2020 and 30 September 2020.

In these circumstances the \$5,000 portion of the second cash flow boost for the quarter ended 30 June 2020 would be sufficient to extinguish the total tax liability for that quarter assuming the trust had a PAYG withholding liability \$1,250 and a net GST payable of \$3,750.

The required journal entries as at 30 June 2020 would be as follows:

Payment of salary to Libby – BAS for quarter ended 31 March 2020

Dr	Salary	13,000
Cr	Bank	11,750
Cr	PAYG Withholding	1,250

Receipt of cash flow boost – BAS for quarter ended 31 March 2020

Dr	Bank	5,000
Dr	PAYG Withholding	1,250
Dr	GST liability	3,750
Cr	Other income – non-assessable non-exempt income	10,000

Receipt of cash flow boost – BAS for quarter ended 30 June 2020

Dr	PAYG Withholding	1,250
Dr	GST liability	3,750
Cr	Other income – non-assessable non-exempt income	5,000

Future receipt of second cash flow boost – BAS for quarter ended 30 September 2020

Dr	Accounts receivable – ATO	5,000
Cr	Other income – non-assessable non-exempt income	5,000

Example 7 – Company with quarterly PAYG withholding, PAYG instalment income and net GST payable amounts

Kennedy Pty Ltd had a PAYG withholding liability of \$9,000 for the quarter ended 31 March 2020 being the first tax period in respect of the initial cash boost payment. The company also had a net GST payable of \$11,000 and a PAYG instalment of income tax of \$10,000 payable for that quarter.

It subsequently received the minimum \$10,000 cash boost in respect of the quarter ended 31 March 2020 which is applied to reduce its PAYG withholding liability of \$9,000 with the \$1,000 balance being applied against its net GST payable for that quarter.

The company subsequently received a further cash flow boost of \$7,000 in relation to the quarter ended 30 June 2020 being the amount of its \$8,000 PAYG withholding tax liability for that quarter less the \$1,000 excess of the first boost payment in the 31 March 2020 quarter. Accordingly, the total amount of the initial cash flow boost payment received by the company is \$17,000 (being the aggregate of the above \$10,000 and \$7,000 amounts).

However, the company will also be entitled to a second cash flow boost payment totalling \$17,000 which is equal to the total amount of the initial cash flow boost.

Half of this second instalment of \$8,500 will be received in respect of the quarter ended 30 June 2020 with the \$8,500 balance payable in respect of the quarter ended 30 September 2020. Accordingly, the total cash flow boost payment attributable to the quarter ended 30 June 2020 will be \$15,500 (i.e. \$7,000 plus \$8,500) which can be applied against the PAYG withholding payable of \$8,000 and the net GST amount payable of \$7,500 for that quarter.

The relevant journal entries at 30 June year-end would be as follows:

Example 7 – Cont

Payment of salary – BAS for quarter ended 31 March 2020

Dr	Salary	52,000
Cr	Bank	43,000
Cr	PAYG Withholding	9,000

Receipt of cash flow boost – BAS for quarter ended 31 March 2020

Dr	PAYG Withholding	9,000
Dr	GST liability	1,000
Cr	Other income – non-assessable non-exempt income	10,000

Payment of salary – BAS for quarter ended 30 June 2020

Dr	Salary	43,000
Cr	Bank	35,000
Cr	PAYG Withholding	8,000

Receipt of cash flow boost – BAS for quarter ended 30 June 2020

Dr	PAYG Withholding	8,000
Dr	GST liability	7,500
Cr	Other income – non-assessable non-exempt income	15,500

Future receipt of second cash flow boost – BAS for quarter ended 30 September 2020

Dr	Accounts receivable – ATO.....	8,500
Cr	Other income – non-assessable non-exempt income	8,500

Example 8 – Trust with monthly PAYG withholding and net GST payable

The O'Connor Family Trust had a PAYG withholding liability of \$15,000 in relation to salaries paid of \$70,000 in relation to its BAS for the month ended 31 March 2020. The trust also had a net GST amount of \$10,000 payable for the month ended 31 March 2020.

As it was a monthly lodger the trust received a payment of 300% for the PAYG tax withheld of \$15,000 in the month ended 31 March 2020 being \$45,000. This credit of \$45,000 was applied to fully offset the trust's total tax liabilities in its BAS for the month ended 31 March 2020 of \$25,000 being the aggregate of its \$15,000 PAYG withholding liability and \$10,000 net GST amount payable. The resulting \$20,000 was refunded to the trust.

The trust also received a further credit of \$5,000 in respect of its PAYG withholding liability of \$15,000 on its BAS lodged for the month ended 30 April 2020 being the amount of the unutilised initial cash flow boost payment. In addition, the trust received a further credit of \$12,500 for the month ended 30 June 2020 being 25% of its second cash flow boost payment which can be applied against the trust's PAYG withholding of \$15,000 for the month ended 30 June 2020.

The relevant journal entries for the year ended 30 June 2020 would be as follows:

Example 8 – Cont

Payment of salary – BAS for month ended 31 March 2020

Dr Salary	70,000
Cr Bank.....	55,000
Cr PAYG Withholding	15,000

Receipt of cash flow boost – BAS for month ended 31 March 2020

Dr Bank.....	20,000
Dr PAYG Withholding	15,000
Dr GST liability	10,000
Cr Other income – non-assessable non-exempt income	45,000

Payment of salary – BAS for month ended 30 April 2020

Dr Salary	70,000
Cr Bank.....	55,000
Cr PAYG Withholding	15,000

Receipt of cash flow boost – BAS for month ended 30 April 2020

Dr PAYG Withholding	5,000
Cr Other income – non-assessable non-exempt income	5,000

Payment of salary – BAS for month ended 30 June 2020

Dr Salary	70,000
Cr Bank.....	55,000
Cr PAYG Withholding	15,000

Receipt of cash flow boost – BAS for month ended 30 June 2020

Dr PAYG Withholding	12,500
Cr Other income – non-assessable non-exempt income	12,500

Future receipt of second cash flow boost in year ended 30 June 2021

Dr Accounts receivable – ATO.....	37,500
Cr Other income – non-assessable non-exempt income	37,500

3 How does an entity distribute the cash flow boost to its owner(s)?

As discussed, it is recommended that each entity set up a new separate account disclosing the receipt of the cash flow boost received during the year ended 30 June 2020 as 'other income – non-assessable non-exempt income'.

The amount booked to this account will subsequently appear in the entity's income statement for the year ended 30 June 2020.

This may also potentially include the amount of the second cash flow boost that is booked in anticipation of being received in the year ended 30 June 2021.

Where an entity is a sole trader the amount of the above income will therefore be included in the calculation of a sole trader's total gross revenue for the year ended 30 June 2020 albeit as a one-off item not subject to GST in their 2020 income statement.

However, where the other amount of income is derived by a different type of entity it will be necessary to consider how the amount of the cash flow boost may be ultimately distributed by that entity to its business owners.

This is discussed below in the context of a general law partnerships, discretionary trusts, unit trusts and companies.

3.1 Partnership

A general law partnership carrying on a business will similarly include the full amount of the cash flow boost as an item of other income – non-assessable non-exempt income' in the calculation of its gross revenue for accounting purposes for the year ended 30 June 2020.

In these circumstances each partner in the partnership will effectively obtain a respective share of that amount based on their share of partnership income as set out in their partnership agreement.

However, it should be noted that where the partner in the partnership is a company any subsequent distribution of its share of other income to shareholders will be taken to be a dividend for tax purposes as discussed below.

3.2 Discretionary trust

The book treatment of the cash flow boost in the statement of income for the year ended 30 June 2020 is somewhat more complex for a discretionary trust¹⁴.

In practice, it will be necessary to review the trust deed of each discretionary trust to determine whether it includes a definition of trust income, and if so, whether the terms of that definition would include the cash flow boost payment as trust income for the purposes of the trust deed.

In this context it should be noted that there is a broad range of definitions of trust income included in trust deeds which have progressively changed over time partly due to changes in taxation law.

¹⁴ The above commentary on discretionary trusts is also likely to apply to a hybrid trust which combines the characteristics of a fixed trust and a discretionary trust.

For example, the 'income' of the trust estate may be variously defined as follows:

- Income being ordinary income as defined under trust law;
- Income as determined at the discretion of the trustee but which is treated as ordinary income for trust law purposes if the trustee does not exercise such a discretion;
- Income being the net income (i.e. taxable income) of the trust as defined under section 95(1) of the ITAA (1936) (i.e. an income equalisation clause); or
- Income as determined at the discretion of the trustee but which is treated as the net income of the trust as defined under s. 95(1) of the ITAA (1936) if the trustee does not exercise such a discretion.

Very broadly, the cash flow boost would not be regarded as being ordinary income for trust law purposes given that it is an extraordinary one-off amount that would not be regarded as being derived in the ordinary course of carrying on the trust's activities.

Similarly, such a non-assessable non-exempt amount will be excluded from the calculation of the trust's net income for tax purposes and thus similarly be excluded from the calculation of its trust income where trust income is defined to be the trust's net income under an income equalisation clause in the trust deed.

Such limitations may be overcome if the trustee has an overriding discretion to treat such an amount as trust income under the definition of income of the trust estate in the trust deed.

Alternatively, where the trustee has no such discretion the amount of the cash flow boost may be regarded as accumulated income of the trust and form part of trust corpus. In these circumstances it may transpire that the trustee can later exercise a discretion to distribute such trust capital to beneficiaries where permitted under the trust deed.

Where reliance is placed on the trustee exercising a particular discretion reference should be made to the specific clause of the trust deed entitling them to make such a distribution in the trustee resolution by year-end, (including the preparation of any minutes by a corporate trustee where applicable).

Assuming the trustee can exercise a discretion to treat such an amount as trust income it should not be reduced by any expenses for accounting purposes being essentially a one-off adjustment which did not involve the trustee incurring any costs in respect of receiving such an amount.

However, such trust income would need to be reduced by any trust losses carried forward for accounting purposes in the year ended 30 June 2020.

Where trust income is available for distribution care should be taken to ensure that the amount of any cash flow boost is not distributed to a beneficiary which is a company which may later on-pay that amount as an unfranked dividend to individual shareholders.

For sake of completeness where there is no such discretionary relief available under the trust deed such an amount does not appear to be capable of being distributed to beneficiaries.

It should also be noted that the income derived by a trust will generally retain its character when on-distributed to beneficiaries for trust law purposes.

3.3 Unit Trust

A unit trust deed will similarly include the full amount of the cash flow boost as an item of 'other income – non-assessable non-exempt income' in its income statement for the year ended 30 June 2020.

Broadly, a unit trust is a fixed trust where persons have fixed entitlements to all of the income and capital of the trust.

Whilst the interests of the beneficiary must be fixed it will also be necessary to have regard to the definition of income of the trust estate under the trust deed of the unit trust.

Once again the range of definitions of trust income may vary markedly across different trust deeds, and it will therefore be important to review the specific definition of trust income under the relevant trust deed of the unit trust.

However, in many circumstances it may transpire that the trustee of the unit trust has a discretion concerning the characterisation of particular amounts under the definition of trust income under the trust deed of a unit trust. This is particularly true in relation to more recently drafted unit trust deeds.

For example, the trust deed may define trust income to be equal to the trust's net income for income tax purposes but provide the trustee with a discretion concerning the characterisation of particular amounts which the trustee could exercise to treat the cash flow boost as trust income.

The exercise of any such discretion should also be documented in accordance with the terms of the relevant trust deed including the making of any trustee resolution by year-end.

The amount of the cash flow boost included in other income may need to be reduced by any trust losses for accounting purposes depending on the terms of the trust deed.

3.4 Private company

The amount of the cash flow boost booked as other income will also be included by a recipient private company as an item of gross revenue not subject to GST in its statement of income for the year ended 30 June 2020.

Assuming this amount is not applied against any losses for accounting purposes it should be potentially available for distribution as a dividend by the company to its shareholders which may create tax issues where the payment of such a dividend is unfranked.

4 How is the cash flow boost treated for tax purposes?

The cash flow boost payment is expressly treated as non-assessable non-exempt income for income tax purposes under section 59-50 of the ITAA (1997).

Importantly, unlike items of income which are treated as exempt income for income tax purposes there is no need to offset the amount of non-assessable non-exempt income against an entity's tax losses.

As discussed, a payment which has been subject to PAYG withholding that has been expensed in the accounts will be treated as a deduction by the relevant entity, and the accounts will also disclose the extent to which the amount of the cash flow boost has been fully or partly applied against tax liabilities and/or has resulted in a cash refund.

The respective impacts on the types of entities receiving such an amount for tax purposes is discussed in the following commentary.

4.1 Sole traders

The amount of a sole trader's gross revenue for the year ended 30 June 2020 must be adjusted to exclude the amount of the cash flow boost from the calculation of the sole trader's assessable income as it constitutes non-assessable non-exempt income.

This amount would also be excluded from the calculation of any tax loss incurred for the year ended 30 June 2020¹⁵, and any resulting tax loss for the 2020 year does not need to be applied against any amount of cash flow boost subsequently received as non-assessable non-exempt income in the year ended 30 June 2021¹⁶.

Accordingly, given that such an amount will be included in the calculation of the sole trader's total revenue received for the year ended 30 June 2020 without being taxable such an amount can be essentially treated as tax-free in the hands of the sole trader.

4.2 Partnerships

The amount of the cash flow boost would not be included in the calculation of the net income of the partnership¹⁷ as it does not constitute assessable income of the partnership as it is treated as non-assessable non-exempt income.

Accordingly, a partner will not be required to include any share of the cash flow boost in their share of net income for the year ended 30 June 2020. Hence, any distribution of that amount to a partner in proportion to the partner's interest in the partnership would not be taxable.

However, where the partner is a company such an amount will be effectively treated as a dividend when it is on paid by such a company to its shareholders as essentially any distribution by a company which does not involve a debit to share capital will be treated as a dividend for income tax purposes¹⁸. Such a dividend will be unfranked unless the company has excess carried forward franking credits.

¹⁵ Under section 36-10 of the ITAA (1997).

¹⁶ Under section 36-15 of the ITAA (1997).

¹⁷ Refer to Division 5 of the ITAA (1936) particularly the definition of net income under section 90.

¹⁸ See the definition of dividend under section 6(1) of the ITAA (1936).

4.3 Discretionary trust

As discussed, it will be essential to determine whether the definition of trust income of the discretionary trust includes the amount of the cash flow boost for the year ended 30 June 2020.

This is also important for income tax purposes as a beneficiary's share of trust income will determine its proportional share of net income (i.e. taxable income) for that year.

Accordingly, where a trustee can treat the amount of the cash flow boost as distributable income a beneficiary made presently entitled to a share of such trust income will include a proportional share of the trust's net income in their assessable income¹⁹.

Such net income will exclude the cash flow boost as it is treated as non-assessable non-exempt income for the reasons detailed above.

In calculating such net income the trust must satisfy any applicable trust loss tests²⁰ in calculating the amount of such net income which should not be affected by the trustee's receipt of the cash flow boost for the 2020 year.

However, it is important to recognise that where the trust does not have any trust income (e.g. the trust is in book losses) the trustee cannot make any beneficiary presently entitled to trust income and that no share of the trust's net income can therefore be included in the assessable income of a beneficiary. Accordingly, the trustee will be assessed on any such net income of the trust at the effective highest marginal tax rate²¹.

Hence, in these circumstances it is important to clarify whether the cash flow boost payment may be regarded as trust income as defined in the trust deed. Should this be the case the amount of any cash flow payment boost eligible to be included in the calculation of trust income may be applied by the trustee in making a beneficiary presently entitled to a share of such an amount and therefore proportionally entitled to a share of net income.

It should also be noted that where a share of trust income is subsequently distributed to a corporate beneficiary of the discretionary trust that any later payment of that amount by the company by way of dividend to its shareholders will be potentially treated as an unfranked dividend as the company will not have been subject to tax on that amount.

That is, the dividend will only be franked to the extent there are excess franking credits that have been carried forward by the company which have not previously been utilised.

Such a dividend will be treated as base rate entity passive income in the hands of the company for the purposes of determining whether the company is a base rate entity or not in determining its applicable tax rate for the year ended 30 June 2020²².

This is because the distribution will not be regarded as being a non-portfolio dividend which only arises where the dividend is paid to a company which has a voting interest of at least 10% in the company paying the dividend²³.

¹⁹ Under section 97(1) of the ITAA (1936).

²⁰ Refer to Schedule 2F of the ITAA (1936).

²¹ The trustee will be subject to tax at a rate of 47% under section 99B of the ITAA (1936) assuming such an amount is also subject to the 2% Medicare levy.

²² See the definition of base rate entity passive income under section 23AB of the Income Tax Rates Act (1986).

²³ See paragraph 20 of Law Companion Ruling LCR 2019/5.

Example 9 – Distribution of cash flow boost payment by the trustee of a discretionary trust

The Kumar Discretionary Trust received the maximum \$50,000 amount of the cash flow boost payment for the year ended 30 June 2020 which it subsequently included in the calculation of 'other income – non-assessable non-exempt income' in its income statement for the year ended 30 June 2020.

The discretionary trust otherwise derived trading income of \$100,000 which was fully offset by expenses of \$100,000 resulting in nil distributable income.

In contrast the net income of the trust for the year ended 30 June 2020 is \$80,000.

It would appear that the trustee of the Kumar Discretionary Trust cannot make any beneficiary of the trust presently entitled to trust income as the distributable income of the trust is nil.

Accordingly, as no beneficiary can be made presently entitled to a share of trust income no beneficiary will be entitled to a proportional share of the trust's net income of \$80,000. In these circumstances the trustee would pay tax on the \$80,000 net income at a rate of 47%.

However, clause 3.1 of the trust deed defines trust income to be the net income of the trust unless the trustee exercises a discretion to treat a particular amount as trust income for the particular year.

Accordingly, the trustee of the trust could exercise that discretion to treat the amount of other income of \$50,000 represented by the cash flow boost payment as trust income which must be documented in an accompanying valid trustee resolution.

The trustee can therefore make beneficiaries presently entitled to a share of such trust income which will result in them being proportionally assessed on a share of the trust's net income for the year ended 30 June 2020.

However, if the trustee made a corporate beneficiary presently entitled to all of the income of the trust estate for the year ended 30 June 2020 such a beneficiary will receive the untaxed amount of \$50,000 as part of its distribution of trust income.

If the company subsequently on pays that amount by way of dividend to its shareholders it will be potentially unfranked as that \$50,000 distribution has not been subject to tax in the hands of the company.

4.4 Unit trust

A unit trust will similarly disclose the entire amount of the cash flow boost payment as miscellaneous income in its income statement for the year ended 30 June 2020.

For these purposes a unit trust is a fixed trust where the unit holders have a fixed entitlement to all of the income and capital of the trust which is vested and indefeasible²⁴.

A unit holder will subsequently be assessed on the share of net income of the unit trust based on that entity's share of trust income for that year.

As discussed, it will be important to determine whether the cash flow boost constitutes trust income under the definition of income in the trust deed of each relevant unit trust.

Where such an amount is included any subsequent distribution of that amount to the unit holders it would appear to be the distribution of a non-assessable amount to such beneficiaries.

²⁴ Refer to sections 272-5 and 272-65 of Schedule 2F of the ITAA (1936).

It is therefore important to determine whether the distribution of such an amount may trigger CGT event E4 which has the effect of either reducing the cost base of the units held in the unit trust, (or causing a capital gain to the extent to which such a distribution exceeds the cost base of the units)²⁵.

However, CGT event E4 does not apply to any distribution of income that would constitute non-assessable non-exempt income²⁶. Accordingly, any distribution by the trustee of an amount representing the cash flow boost will not cause CGT event E4 to occur as it is expressly treated as non-assessable non-exempt income under section 59-90 of the ITAA (1997).

Accordingly, such an amount can be effectively distributed tax-free to the unit holders provided the cash flow boost falls within the definition of trust income as set out in the trust deed.

Where a unit holder is a company any later distribution of such an amount will also be treated as an unfranked dividend (subject to there being any excess carry forward franking credits).

Such a dividend will also be regarded as base rate entity passive income for the reasons given above.

4.5 Private company

The full amount of the cash flow boost will also be reflected in the income statement of the private company receiving such an amount for the year ended 30 June 2020.

The subsequent payment of that amount to the shareholders of the private company will constitute an unfranked dividend as it has not been subject to tax.

As discussed, it may transpire that the company has excess carry forward franking credits particularly due to the progressive reduction in the tax rate over recent years where the company is a base rate entity. Hence, depending on the circumstances there may be some scope to frank the dividend if only to some limited extent.

²⁵ Refer to section 104-70 of the ITAA (1997).

²⁶ This exemption is provided under section 104-71(1)(a) of the ITAA (1997).

5 Is an entity eligible for the JobKeeper payment?

The JobKeeper payment is the pivotal stimulus measure introduced by the Federal Government to assist businesses significantly impacted by the disruption caused by the COVID-19 lockdown.

Details on the operation of this concession are principally set out in a Legislative Instrument which details the JobKeeper payment rules that must be satisfied by claimants.

Broadly, a business can qualify for the JobKeeper payment if it has suffered a 'substantial decline' in turnover and the claimant is either an employer with eligible employees or a business entity which can access the payment in respect of an eligible business participant (being essentially one of its business owners).

The scheme allows eligible employers and business entities to potentially receive a fixed payment of \$1,500 in respect of an individual employee or eligible business participant in respect of 13 fortnightly periods between 30 March 2020 and 27 September 2020.

From an employer's perspective the JobKeeper payment is fundamentally a wage subsidy where the \$1,500 payment must be fully passed on as gross salary to an eligible employee less any PAYG withholding tax and other salary sacrificed amounts.

By contrast a business entity may be potentially entitled to the \$1,500 payment in respect of a nominated individual business owner if certain eligibility criteria is met.

Accordingly, a sole trader and a trust, partnership or company may be able to obtain the JobKeeper payment in respect of a single nominated beneficiary, partner or company director. There is no prescriptive rule that this amount must be paid by the business entity to that nominated eligible business owner. However, it is a prerequisite to obtaining the payment that such an individual cannot be employed by any other entity.

The JobKeeper scheme operates on a prospective basis as claimants must elect to be registered in respect of each fortnight on a rolling basis over the life of the scheme. This is done by completing an on-line declaration each month which is available on the ATO's on-line services for agents.

Practitioners should be aware that specific anti-avoidance provisions apply to deny the JobKeeper payment where an entity entered into or carried out a scheme for the sole or dominant purpose of obtaining that payment or to obtain an increased amount of payment. For example, such provisions could apply where an entity has deliberately altered its business arrangements to reduce its GST turnover in order to be eligible to claim the wage subsidy. The Commissioner of Taxation has issued guidance as to when such anti-avoidance provisions may be invoked and their potential consequences²⁷.

Separate eligibility rules apply to employers and businesses where a claim is being made to an eligible business participant as discussed below.

²⁷ See Practical Compliance Guideline PCG 2020/4.

5.1 Eligible Employers

An employer receives a JobKeeper payment in respect of a fortnight during the period of the scheme in which they are entitled to claim the payment.

An employer will qualify for the scheme in a particular fortnight if:

- On 1 March 2020 it carried on business in Australia (or was a non-profit body pursuing its objectives principally in Australia);
- The employer met the applicable decline in turnover test;
- The payment received during that fortnight was in respect of an eligible employee;
- The employer satisfies a wage condition that requires that it pay each participating eligible employee at least \$1,500 during that fortnight; and
- The employer has notified the Commissioner that it has elected to participate in the JobKeeper scheme and satisfies certain reporting obligations including providing details of each eligible employee each fortnight²⁸.

Each of the above requirements is separately discussed below.

Ineligible employers as at 1 March 2020

The following entities are not eligible employers for the purpose of the JobKeeper payment:

- An entity which is an Australian government agency or a local governing body (e.g. a council) or a wholly-owned entity of such an organisation;
- A company where a liquidator (or provisional liquidator) has been appointed; or
- An individual where a trustee in bankruptcy has been appointed in relation to that individual's property.

Decline in turnover test²⁹

Broadly, an entity with an aggregated turnover of less than \$1 billion satisfies the decline in turnover test if the entity's projected GST turnover for a month that ends after 30 March 2020 and before 1 October 2020 (or a quarter that starts on 1 April 2020 or 1 July 2020) is at least 30% less than the current GST turnover for a corresponding month (or quarter) in 2019³⁰.

For these purposes, an entity's projected GST turnover includes the value of all the supplies that an entity has made or is likely to make in the relevant period.

A supply is likely to be made where, on the balance of probabilities, it can be reasonably predicted that the supply is more likely than not to be made based on the particular facts and circumstances of the specific business.

Conversely, current GST turnover includes the value of all the supplies that an entity made in the relevant period being compared in 2019 under the decline in turnover test.

To complicate matters an ACNC-registered charity is only generally required to meet a lower threshold being a comparative decline in turnover of at least 15%.

²⁸ Refer to sections 6 to 10 of the JobKeeper payment rules.

²⁹ The Commissioner has provided further clarification regarding the calculation of the decline in turnover test in Law Companion Ruling LCR 2020/1.

³⁰ By contrast an entity whose aggregated turnover is likely to exceed \$1 billion in the income year in which the JobKeeper payment is received or whose aggregated turnover did exceed \$1 billion in the immediately preceding income year must be able to demonstrate a comparative 50% decline in turnover in respect of the relevant reporting period.

Donations that ACNC-registered charities are likely to receive (including the non-monetary value of gifts) are included in the calculation of current GST turnover and projected GST turnover for these entities to ensure that the decline in turnover test can be satisfied as such charities may only make limited supplies.

Importantly, the decline in turnover test only currently needs to be satisfied once by an entity in order for it to be eligible for the JobKeeper payment. Accordingly, there is no on-going requirement that the decline in turnover test needs to be met each month after the employer has initially qualified for the payment.

Moreover, it is not essential that the entity satisfy this condition at the commencement of the scheme as it can retest its turnover in later periods to determine if it is eligible for the scheme.

For example, if an entity does not qualify for JobKeeper payment for the month of April 2020 because its turnover has not been sufficiently affected, it can test in later months to determine if the test is met in a subsequent period.

This allows entities that only become affected part way through the six month operation of the JobKeeper scheme to continue to monitor for any decline in turnover until they qualify for the scheme in a later period.

The Commissioner of Taxation can also apply an alternate turnover test to a class of entities where there is not an appropriate relevant comparison period for that class of entities in the 2019 year.

This might be the case for a new business which commenced in, say, January 2020 or a business that made a major business acquisition in 2020. In these circumstances the basic decline in turnover test may not accurately reflect the downturn in activity that the business has suffered.

The Commissioner has issued a Legislative Instrument which explains the circumstances in which such an alternate decline in turnover test will be applied to particular classes of entities³¹.

However, the application of the alternate decline test still requires the entity to demonstrate the required decline in turnover for the comparative period which is 30% for most claimants.

Eligible employee

An individual is an eligible employee for a fortnight if the individual:

- Is employed at any time in the fortnight;
- Was aged 16 years or over on 1 March 2020;
- Was a full-time or part-time employee or a long-term casual employee (being an employee who was employed by the employer entity as a casual employee on a regular and systematic basis during a period of 12 months as at 1 March 2020);
- Was an 'Australian resident' at 1 March 2020;
- Was not a recipient of parental leave pay or dad and partner pay under the *Paid Parental Leave Act (2010)* during the relevant fortnight;
- Was not totally incapacitated throughout the fortnight and receiving a payment under Australian workers compensation law in respect of that person's total incapacity to work during the fortnight; and
- The individual provides a notice in the approved form to their employer that they satisfy the above requirements and that they agree to be nominated by the employer for the purposes of the JobKeeper scheme. The employee must also specify in the notice that they have not agreed to be nominated by any other employer or business as an eligible employee.

³¹ Refer to the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020* which can be downloaded at <https://www.legislation.gov.au/Details/F2020L00461>

Wage condition

The wage condition requires that an employer pay each participating eligible employee at least \$1,500 for each JobKeeper fortnight less applicable PAYG withholding and any salary sacrificed amounts.

The requirement that the gross amount paid be at least \$1,500 applies regardless of whether the employee ordinarily receives more or less than that amount.

For example, if an employee:

- Ordinarily receives \$1,500 or more in income per fortnight before PAYG withholding and other salary sacrificed amounts, and their employment arrangements do not change, they will continue to receive their regular income according to their workplace arrangements;
- Ordinarily receives less than \$1,500 in income per fortnight before PAYG withholding and other salary sacrificed amounts, the employer must pay the employee at least \$1,500 per fortnight, subject to PAYG withholding and other salary sacrificed amounts to the value of \$1,500;
- Has been stood down, the employer must pay the employee at least \$1,500 per fortnight, before PAYG withholding and other salary sacrificed amounts to the value of \$1,500; or
- Was employed on 1 March 2020, subsequently ceased employment with the employer, and then has been rehired by the same eligible employer, the employer must pay the employee at least \$1,500 per fortnight, before PAYG withholding and other salary sacrificed amounts to the value of \$1,500.

A Legislative Instrument has been issued by the Treasurer confirming that an employer only needs to make mandatory employer superannuation contributions for the amount payable to the employee in respect to their actual employment disregarding any extra payments made by the employer to satisfy the above wage condition³².

For example, if the work actually done by an employee over a period entitled them to be paid \$1,000, but the employer instead paid them \$1,500 to satisfy the wage condition for a JobKeeper fortnight, then the employer will only be required to make mandatory employer superannuation contributions in relation to the normal salary of \$1,000³³.

Satisfying reporting obligations

An employer must notify the Commissioner of Taxation in a JobKeeper Employee Nomination Notice of the employee's election to participate in the scheme before any JobKeeper payments are made in order for the employer to be entitled to the payments³⁴. After 1 May 2020, this must be done within seven days of enrolling for the JobKeeper scheme. An employee must agree to be nominated in order for the employer to receive JobKeeper.

The employer must also identify their eligible employees. This is done by providing details of each eligible employee via either their Single Touch Payroll enabled software or via the Business Portal. An employer only needs to identify their eligible employees once. However, this must be done by the end of the month of claim in order for an employee to be treated as an eligible employee by the employer.

Finally, an eligible employer will be required to complete a business monthly declaration. When making this declaration, an employer must reconfirm the number of their eligible employees each month. They must also report their current GST turnover for each reporting month (and the projected GST turnover for the following month) within 14 days after the end of the reporting month.

³² *Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020* which can be downloaded at <https://www.legislation.gov.au/Details/F2020L00655>

³³ The amount of any 'top-up payment' may not attract any leave entitlements unless there is an agreement between the employer and employee to that effect. However, specialist legal advice should be obtained where required from an employment law specialist.

³⁴ Further information on this process can be found on the ATO website at <https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Enrol-for-the-JobKeeper-payment/>

Example 10 – Different Eligible Employees

Steve, Amir, Cheryl and Priya are four good work friends who have worked for the same employer for years. Upon qualifying for the JobKeeper their employer is going to claim JobKeeper payments for all four employees and must therefore pay each at least \$1,500 before tax to each:

- Steve ordinarily receives \$2,000 a fortnight before tax and his salary sacrificed amounts, and is continuing his normal hours, so he will continue to receive his regular income and the JobKeeper payment will help his employer by subsidising part of his ordinary income.
- Amir ordinarily receives \$1,000 a fortnight before tax and his HECS-HELP repayment, so he will receive \$1,500 a fortnight before tax and his HECS-HELP repayment is withheld.
- Cheryl has been stood down, so she receives at least \$1,500 per fortnight (before tax and any other amounts ordinarily withheld).
- Priya was employed as at 1 March 2020, but ceased employment on 20 March and was re-hired on 1 April, so she will receive at least \$1,500 per fortnight (before tax and other amounts ordinarily withheld).

5.2 Business owners

The JobKeeper scheme is also available to a business entity (or nominated individual of the business entity) on a fortnightly basis if all of the following conditions are met for each particular fortnight throughout the duration of the scheme:

- The relevant entity must qualify for the JobKeeper scheme before the end of the fortnight;
- The entity must not be a non-profit body;
- The entity qualifies for the JobKeeper scheme before the end of the fortnight including satisfying the applicable decline in turnover test (which is calculated on the same basis as that of an eligible employer);
- The entity has notified the Commissioner of Taxation of its election to participate in the JobKeeper scheme including details of the nominated individual of that business;
- The entity is not entitled to the JobKeeper payment for more than one individual;
- The entity must have had an Australian Business Number (ABN) as at 12 March 2020 (subject to certain limited exceptions);
- The entity must have included an amount in its assessable income for the 2018-19 income year in relation to it carrying on a business and the Commissioner had notice on or before 12 March 2020 that the amount was so included; or the entity made a taxable supply in a tax period that applied to it that started on or after 1 July 2018 and ended before 12 March 2020 and notice was provided on or before 12 March 2020; and
- The individual nominated to receive the JobKeeper payment must be an individual that is an 'eligible business participant'³⁵.

To be an eligible business participant the individual must be actively engaged in the operations and activities of the entity.

Where this condition is satisfied a sole trader will be regarded as the individual who is the eligible business participant.

On the other hand, where the entity carrying on the business is a trust, partnership or company the eligible business participant will be the particular individual who has been nominated as the beneficiary, partner or company director of such an entity. Such an individual also needs to agree to be nominated as the eligible business participant of the entity.

³⁵ Refer to sections 6 to 10 of the JobKeeper payment rules.

Consistent with the eligibility criteria applicable to eligible employees the individual who is regarded as an eligible business participant must also have been aged 16 years or over at 1 March 2020 and satisfy the same residency requirements as those applicable to eligible employees (as described above). Moreover, a person is not an eligible business participant for a fortnight if parental leave pay or dad and partner pay is payable to the person, or the person is totally incapacitated for work and an amount is payable to that person under Australian workers compensation law.

As an integrity measure an entity cannot be entitled to the JobKeeper payment as an eligible business participant if they are also receiving a JobKeeper payment as a nominated individual of another business entity or as an employee of another entity.

Example 11 – Sole Trader with Employee

Stephanie is a sole trader and actively manages her florist business, Flowers by Stephanie. She is also employed in another business owned by another entity on a permanent part-time basis as an administrative assistant.

Flowers by Stephanie has suffered a significant downturn due to COVID-19. Stephanie's hours at her permanent part-time job have also been cut as a result of COVID-19, causing a decline in the business of her employer.

Stephanie is an eligible employee for the purpose of the JobKeeper Payment scheme for her permanent part-time job, and her employer qualifies for a JobKeeper payment for her employment.

Stephanie, in her capacity as a sole trader, is not eligible for the JobKeeper payment because she is a permanent (not casual) employee of another entity. This conclusion would be the same whether her employer qualifies for JobKeeper payments or not.

A business entity claimant must also notify the Commissioner of Taxation of its election to receive a JobKeeper payment on behalf of an eligible business participant by completing the 'JobKeeper Eligible Business Participant Nomination Notice' and lodging it via the ATO's on-line services for agents or the Business Portal. An eligible business participant must be identified through the ATO's on-line services or the Business Portal. This must only be done once and can only be done through these ATO channels. In order to maintain JobKeeper status, an eligible business participant must be reconfirmed through their monthly declaration which is also lodged through the above ATO digital channels.

6 How does an eligible employer account for the JobKeeper payment?

From the perspective of an employer the JobKeeper payment is effectively a subsidy which reimburses the employer for the gross salary paid to an eligible employee up to a fixed threshold of \$1,500 for each fortnight in respect of which the payment is received.

In practice, it is a prerequisite that the employer pay the employee the base amount of the \$1,500 gross salary (or higher gross salary where applicable) prior to obtaining the reimbursement of the \$1,500 subsidy being a 'wage condition' that each employer must meet in each particular fortnight in order to be eligible for the subsidy³⁶.

To facilitate this process the subsidy received should be booked to a separate miscellaneous income account set up in the employer's chart of accounts to recognise the receipt of this amount.

Such an account may be referred to as 'Other income – JobKeeper' and should be quarantined from the other income account set up in relation to the cash flow boost as these amounts are treated differently for income tax purposes.

Like the cash flow boost the JobKeeper payment is a supply which is out of scope for GST purposes and therefore not subject to GST.

However, unlike the cash flow boost payment the amount of the income received under the JobKeeper regime will be included in the employer's assessable income for income tax purposes.

Such assessable income should fully offset the amount of wages (or employee payments) claimed as a deduction in respect of employees up to the amount of the JobKeeper subsidy received to ensure that the effect of receiving the wage subsidy is revenue neutral.

From an accounting perspective the journal entries required to be booked by an eligible employer receiving the JobKeeper payment may vary depending on whether the employee has been stood down or whether the employee's on-going salary and wages is greater or less than the base amount of the \$1,500 fortnightly payment.

Each of these scenarios is separately considered below.

6.1 Employee stood down

As discussed, it is a prerequisite under the JobKeeper regime that a participating employer must satisfy a wage condition which requires the employer to pay each participating eligible employee at least \$1,500 for each JobKeeper fortnight less applicable PAYG withholding and any salary sacrificed amounts.

This will continue to be the case even where the employee has been stood down by the employer because of the downturn.

Accordingly, it may be prudent to set up a separate expense account for the payment made to such a person so that it could be differentiated from conventional salary and wages payments.

For example, it could be referred to as an 'allowance' or 'JobKeeper top up payment' in the chart of accounts after deducting the amount of PAYG tax required to be withheld from such a payment. For illustrative purposes below this amount is referred to as the Jobkeeper allowance.

³⁶ Section 10 of the JobKeeper payment rules.

It should be stressed that it is not mandatory for an entity to make such a differentiation between wages and a top-up payment but it may simplify compliance as the top-up is not subject to mandated superannuation guarantee contributions or possibly payroll tax and workers compensation depending on the rules in the applicable jurisdiction.

Assuming such a top-up payment is separately monitored the relevant journal entries in respect of the base \$1,500 JobKeeper amount paid to the stood down employee would be as follows:

Payment of JobKeeper allowance to stood down employee

Dr JobKeeper allowance	1,500
Cr PAYG Withholding	192
Cr Bank.....	1,308

Receipt of JobKeeper payment for stood down employee

Dr Bank.....	1,500
Cr Other income – JobKeeper	1,500

For accounting purposes the JobKeeper allowance would be fully offset by the amount of 'Other income' received in respect of the subsidy in the entity's income statement.

This mirrors the tax outcome where the deduction for the payment made under the Jobkeeper allowance will over time offset the amount of the fully assessed subsidy income.

6.2 Employee receives top-up Jobkeeper allowance

In some circumstances an employee may ordinarily receive a salary of less than \$1,500 per fortnight before PAYG withholding and other salary sacrificed amounts even though the employer must pay that employee are grossed up amount of \$1,500 per fortnight inclusive of PAYG withholding and any other salary sacrificed amounts.

For example, an employee may ordinarily be entitled to receive a gross salary of \$1,000 per fortnight and there is a top up payment of \$500 as a JobKeeper allowance in anticipation of subsequently receiving the wage subsidy of \$1,500.

The relevant journal entries under this scenario are set out below:

Payment of wages and top up JobKeeper allowance

Dr Wages	1,000
Dr Jobkeeper allowance	500
Cr PAYG Withholding	192
Cr Bank.....	1,500

Receipt of JobKeeper payment

Dr Bank.....	1,500
Cr Other income – JobKeeper	1,500

In these circumstances the total amount expensed to wages and the top up JobKeeper allowance will fully offset the amount of other income attributable to the JobKeeper payment for accounting purposes thereby ensuring a revenue neutral outcome in the income statement.

6.3 Ordinary wage exceeds JobKeeper payment

A further variation can arise where the employee ordinarily receives a wage which is in excess of the gross amount of \$1,500 required to be paid under the JobKeeper scheme.

Where this occurs the employee should continue to receive the ordinary gross salary albeit partly subsidised by the Federal Government for the duration of the scheme.

Thus, where the employee ordinarily receives a gross salary payment of \$2,000 the employee will pay the employee their salary and the accompanying PAYG withholding liability but only receive a partial reimbursement under the subsidy as illustrated below.

Payment of ordinary salary to employee

Dr Wages	2000
Cr PAYG Withholding	386
Cr Bank.....	1,614

Receipt of JobKeeper payment for employee

Dr Bank.....	1,500
Cr Other income – JobKeeper	1,500

In this case the employer will incur an unreimbursed wages expense of \$500 being the difference between the \$2,000 gross wages and the \$1,500 gross JobKeeper payment which will need to be separately financed by the employer.

7 How does a business entity account for the JobKeeper payment?

A key point of differentiation between an eligible employer and a business entity with an eligible business participant under the JobKeeper payment is that a business entity's eligibility for the scheme is not contingent on making a payment of the gross subsidy received to that nominated individual in order for it to be eligible for the payment.

Accordingly, the amount of the subsidy will not necessarily be offset against any corresponding expense paid to the nominated business participant.

Hence, the entity will book a debit for cash held at bank on receipt of the subsidy and will be entitled to a corresponding credit to the miscellaneous income account it has set up to account for the receipt of the payment.

In these circumstances the amount of other income generated by the JobKeeper payment will merely form part of the gross revenue of such an entity and be potentially included in any profit distribution made by that entity to the business owners in respect of that year.

However, added complications may arise if that amount was distributed by the relevant partnership, trust or company to that eligible business participant.

Accordingly, the discussion below concerning the disclosure of 'other income' attributable to the JobKeeper payment is primarily directed towards different types of business entities who have obtained the payment and distributed it to a single nominated eligible business participant who is not engaged as an employee.

7.1 Sole trader

Where the business owner is a sole trader the amount of any JobKeeper payment received in respect of that person as the eligible business participant will be included in the calculation of the gross revenue of the sole trader as reflected in their income statement for the year ended 30 June 2020.

7.2 Partnership

The receipt of the JobKeeper payment will also be included in the total gross revenue of the partnership for the year ended 30 June 2020 and therefore the calculation of the net partnership profit available for distribution according to their share of partnership income as set out in their partnership agreement.

Where the partners have agreed to distribute such an amount to the particular partner nominated as the eligible business participant it will be necessary to determine whether such an amount was a loan or alternatively requires an adjustment to partnership net profits available for distribution amongst the partners.

7.3 Discretionary trust

The amount of the JobKeeper payment received should generally be included in gross revenue in the trust's income statement for the year ended 30 June 2020 provided such an amount constitutes trust income for the 2020 year.

However, once again it will be necessary to review the definition of trust income under the relevant trust deed of each discretionary trust to determine whether trust income would include the receipt of such an amount.

Importantly, unlike the cash flow boost the JobKeeper payment will be included in assessable income and thus will constitute trust income where the definition of trust income in the trust deed equates income of the trust estate with the net income of the trust.

Alternatively, where the trust deed defines trust income to be ordinary income for trust law purposes it may be necessary to determine whether the trustee has an overriding discretion to characterise certain receipts as trust income such as the JobKeeper payment.

In the event that the trustee has distributed all or part of the JobKeeper payment to the particular beneficiary nominated as the eligible business participant it will be further necessary to review the trust deed to determine whether such an amount could be treated as either an interim distribution to that beneficiary or alternatively constitute a loan made to that beneficiary.

7.4 Unit trust

Similarly, it will be necessary to review the definition of trust income in the trust deed of each unit trust to determine whether it would include the amount of any JobKeeper payment received. Should this be the case the relevant amount will be included as other income in the trust's income statement for the year ended 30 June 2020.

As is the case with discretionary trusts this will automatically be the case where trust income is defined as being akin to net income under an income equalisation clause in the trust deed.

Otherwise, it will be important to determine whether such an amount could be regarded as trust income as defined under the relevant deed, and whether it would be necessary for the trustee to exercise a discretion to treat such an amount as trust income where permitted under the trust deed.

Like discretionary trusts it would be necessary to review the terms of any advance or interim distribution made by the trustee to the nominated unit holder to determine how it should be appropriately treated under the terms of the trust deed.

7.5 Private company

A private company receiving the JobKeeper payment would include such an amount in the other income account specifically created to record the receipt of that amount which would form part of the gross revenue of the company for the year ended 30 June 2020.

To the extent that the private company has either paid or advanced some or all of this amount to a shareholder as an eligible business participant during the year ended 30 June 2020 there may be an effective distribution of profits by way of the payment or loan. Such amounts may need to be reversed before year-end or alternatively have potentially adverse tax issues for the shareholder as discussed below.

8 How is the JobKeeper payment treated for tax purposes by an eligible employer?

The ATO recently updated their guidance concerning the assessability of the JobKeeper payment on their website³⁷.

Somewhat surprisingly the ATO is contending that the payment is assessed as ordinary income under section 6-5 of the ITAA (1997), (rather than as a subsidy which would be specifically assessable under section 15-10 of the ITAA (1997)).

Having determined that the subsidy is assessable as ordinary income the ATO has then considered when such a subsidy would be taken to have been respectively derived by an accruals and cash taxpayer.

Where a business entity operates on an accruals accounting basis the ATO's view is that the JobKeeper payments will be taken to be derived when the entity provides a valid completed business monthly declaration to the ATO as required under the JobKeeper rules.

The rationale for this view is that the JobKeeper payments are only derived when the entity has a legal entitlement to those payments which is only triggered when the ATO receives the business monthly declaration of an entity's entitlement to the JobKeeper payment and the payment of that entitlement.

Accordingly, an entity recognising income on an accruals basis will only generally be taken to have derived the JobKeeper payments for fortnights ending in June 2020 in July 2020 (or in a subsequent month) and will therefore return such amounts as assessable income in the year ended 30 June 2021.

For a business entity which operates on a cash accounting basis, the payments made in respect of a JobKeeper fortnight will be only taken to be derived when the entity actually receives those payments.

Hence, payments made in relation to JobKeeper fortnights ending in June 2020 will only be received later in July 2020 (or a later month) following the ATO's receipt of the entity's business monthly declaration. Accordingly, such amounts will only be assessable when received in the year ended 30 June 2021.

Overall the above assessed amount of JobKeeper payments under section 6-5 of the ITAA (1997) should over time fully offset the amount of gross wages incurred by the entity under section 8-1 of the ITAA (1997).

However, there would appear to be a timing difference based on the above ATO interpretation which may result in the deductibility of wages paid by an eligible employer in June 2020 and the assessability of the JobKeeper payments which will be derived by both accruals and cash taxpayers in July 2021.

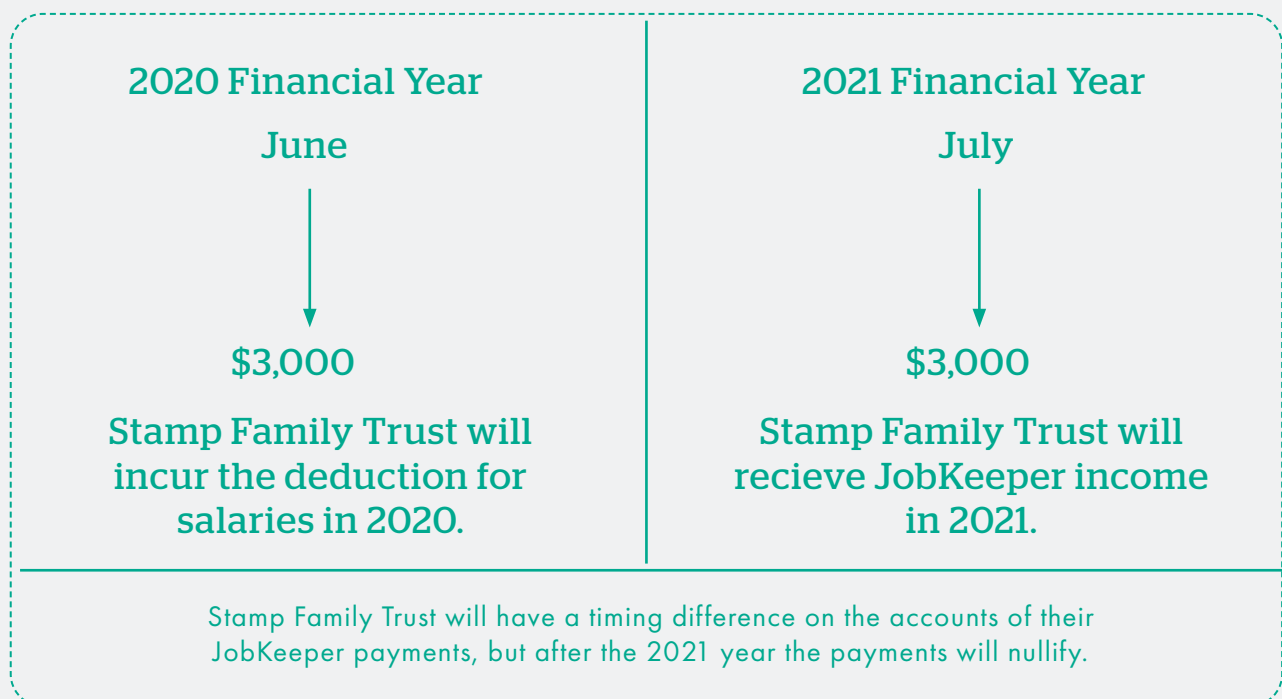
Care should therefore be taken to ensure that an entity's income tax returns for both the 2020 and 2021 years are prepared in accordance with the ATO's interpretation.

³⁷ See the commentary entitled 'Paying your eligible employees' which can be downloaded at <https://www.ato.gov.au/General/JobKeeper-Payment/Employers/Paying-your-eligible-employees/#Taxconsequences>

Example 12 – Timing difference on salary payments incurred and receipt of Jobkeeper

The Stamp Family Trust has two eligible employees who each received salary payments of \$3,000 for the month ended 30 June 2020 as reflected in the trust's accounts for that period. Upon lodging the trust's monthly declaration on 1 July 2020 the trust received its JobKeeper payment in respect of the preceding June month on 5 July 2020 totalling \$6,000.

For income tax purposes the Stamp Family Trust will claim a deduction for the salary payments totalling \$6,000 attributable salary payments for the month ended 30 June 2020 in its income tax return. However, the corresponding JobKeeper amount received to essentially reimburse this amount will be taken to have been derived in the year ended 30 June 2021 as there was no legal entitlement to the JobKeeper payment until the trust lodged its monthly declaration.



9 How is the JobKeeper payment treated when derived by an eligible business entity?

Whilst the JobKeeper payment will be tax neutral over time where received by an eligible employer the tax ramifications of receiving the subsidy are different where the recipient is a business entity with an eligible business participant.

In these circumstances there will not be a specific offsetting expense for the salary and wages and the amount of the assessable payment will merely increase the entity's assessable gross revenue.

Such an amount may then be either retained by the entity or more likely be applied to fund the payment of its on-going expenses.

However, complications may arise where the subsidy is paid or lent to such a nominated individual during the year ended 30 June 2020 as discussed below.

9.1 Sole trader

The sole trader's assessable income will include the amount of the JobKeeper payment in its income tax return for the year ended 30 June 2020 other than for amounts which relate to the tax period in which the June fortnightly JobKeeper payments were made.

Any amount paid or lent to the sole trader will merely be disclosed as drawings in that entity's financial accounts.

9.2 Partnership

The JobKeeper payment will similarly be included in the calculation of the partnership's assessable income for the 2020 year other than payments relating to the June fortnightly payments which will be deferred to the 2021 tax year.

Accordingly, such assessable amounts will be included in the calculation of the partnership's net income that will be allocated amongst the partners according to their partnership interest as set out in the partnership agreement.

Where the partnership paid the above amount received to the partner who was nominated as its eligible business participant, and that amount is not repaid before year-end, the payment may be regarded as an adjustment to partnership profits in respect of the partner who has notionally received an amount akin to 'salary'.

The payment of such an amount is not deductible but rather will be distributed from the partnership's profits in the same way as salary is effectively added back for the purpose of calculating the distribution of partnership profits where a particular partner has received a salary.

This adjustment does not therefore alter the amount of the net profit of the partnership but rather changes the basis on which partnership profits are distributed amongst the partners³⁸.

The partner receiving such a payment will treat such an amount as a profit distribution together with their share of partnership net income assuming there is sufficient available partnership net profit.

³⁸ See Taxation Ruling TR 2005/7.

Conversely, where the current year partnership profits are not sufficient to cover the amount of such drawings the excess distribution over that partner's share of net income is assessable in a future tax year when the partnership does have such sufficient net profits.

Any agreement to vary the interests of the partners in such a way must have been entered into before the end of the year ended 30 June 2020.

9.3 Discretionary trust

The trustee of the discretionary trust will return the amount of the JobKeeper payments received during the year ended 30 June 2020 as assessable income.

The trustee will therefore include such an amount in the trust's net income available for distribution to the beneficiaries of the trust based on their present entitlement to a share of trust income.

Where such an amount is advanced to the particular beneficiary nominated as the eligible business participant of the discretionary trust it will be necessary to determine whether such an amount should be treated as either an interim distribution of trust income or alternatively a loan made to that particular beneficiary.

Once again it will be necessary to have regard to the specific terms of the trust deed to determine the correct treatment of such amounts, and any steps which would need to be taken to ensure that an effective interim distribution or loan was made.

9.4 Unit trust

The unit trust will similarly include the JobKeeper payment received in the calculation of its assessable income for the year ended 30 June 2020 and therefore the net income assessed to the unit holders as presently entitled beneficiaries.

In the event that any amount was distributed or lent by the trustee to a unit holder it will likewise be necessary to review the terms of the trust deed to determine whether the trustee had the capacity to do so.

9.5 Private company

The private company will also treat the JobKeeper payment received as being assessable income other than for the amount receivable in respect of the month ended 30 June 2020.

Any subsequent distribution of assessable income will be potentially franked to the extent there is no offsetting deduction as such a fully assessable amount would have been subject to tax. This should be the case with a company receiving such an entitlement in respect of an eligible business participant.

However, where the private company has either paid or lent an amount to a shareholder which is referable to the subsidy a deemed dividend for that amount may potentially arise under Division 7A of the ITAA (1936). In these circumstances the shareholder and the private company may need to enter into complying loan agreement in respect of such an amount before the due date of lodgment of the private company's income tax return for the year ended 30 June 2020 to ensure that such a deemed dividend does not arise.

10 What is the impact of receiving the cash flow boost and JobKeeper payments?

In practice, many small businesses will have been in receipt of both the cash flow boost and the JobKeeper payment for the year 30 June 2020.

Accordingly, for such entities it is critical that they calculate the correct amount of these payments especially as the cash flow boost payments attributable to the year ended 30 June 2020 constitute non-assessable non-exempt income whilst the JobKeeper payments received from the ATO during this period are fully assessable.

Such amounts will of necessity have been received during a period of economic downturn which will inevitably be reflected in reduced revenues being generated by the business during this period especially in relation to the latter half of the 2020 year.

As will be evident from the above commentary the treatment of the above stimulus payments can be further complicated in some situations based on the type of entity receiving these amounts. This is especially true in relation to discretionary trusts where it is essential that trust income be derived by the trust so that beneficiaries can be made presently entitled to a share of trust income and therefore receive a proportional share of the trust's net income. Where such book income is not present the trustee will be assessed on any net income of the trust at the highest marginal tax rate.

10.1 Case study

The Harris Family Trust has run a highly profitable cafe in Carlton for many years. However, the trust experienced a collapse in its revenue following the lockdown in March 2020 and thereafter was limited to providing home delivery services to loyal patrons.

Richard Harris as the trustee of the Harris Family Trust sold a number of long-standing shareholdings in blue-chip companies to help source the capital to continue funding the business. The trust subsequently made a gross capital gain of \$150,000 on the sale of these investments on 1 June 2020. The amount of such a gain may be reduced by the trust applying the 50% CGT Discount to \$75,000.

The trust lodged its BAS on a monthly reporting basis and was subsequently eligible to receive an initial cash flow boost totalling \$24,000 and a first quarterly instalment of its second cash flow boost of \$6,000 in relation to the year ended 30 June 2020. Accordingly, its total cash flow boost was \$30,000 for the year ended 30 June 2020.

The trust also received JobKeeper payments totalling \$100,000 for the year ended 30 June 2020.

From a trading perspective the trust derived trading income of \$500,000 for the 2020 year which is less than its expenses of \$600,000 for the entire year. The trust does not have any trust or capital losses for either accounting or tax purposes.

Richard has confirmed that he has an overriding discretion under the trust deed to characterise the payment of the cash flow boost as trust income. The trust deed also provides Richard with the capacity to make any of the beneficiaries specifically entitled to any capital gain made by the trust. He subsequently identified that his wife Elizabeth had a capital loss carry forward of \$60,000 which could be applied to absorb part of the gross \$150,000 capital gain if she was made specifically entitled to that amount.

The beneficiaries of the trust comprise Richard, Elizabeth and their 21 year old daughter Rebecca and 15 year-old son Jared. Richard's and Elizabeth have both derived taxable income of \$140,000 of the 2020 year and are therefore taxed at an effective marginal tax rate (inclusive of the Medicare levy) of 39%. Their daughter Rebecca is a university student who derived a taxable income of \$24,000 and is taxed at an effective marginal tax rate (inclusive of the Medicare levy) of 21%. Jared is taxed at penalty tax rates applicable to minors deriving income which is in excess of \$416.

The relevant amounts of trust income and net income derived by the trust for the year ended 30 June 2020 are as follows depending on whether Richard fully streams the capital gain of \$60,000 to Elizabeth:

	Pre-streaming	Post-streaming
Gross sales	\$500,000	\$500,000
Operating expenses	(\$600,000)	(\$600,000)
Gross capital gain	\$150,000	\$90,000
Other income – Cash flow boost	\$30,000	\$30,000
Other income – Jobkeeper	\$100,000	\$100,000
ACCOUNTING PROFIT	\$180,000	\$120,000
<i>Less</i>		
Cash flow boost – non-assessable non-exempt	(\$30,000)	(\$30,000)
50% CGT discount on gross capital gain	<u>(\$75,000)</u>	<u>(\$45,000)</u>
NET INCOME	\$75,000	\$45,000

As trustee Richard resolved to make Elizabeth specifically entitled to \$60,000 of the gross capital gain of \$150,000 thereby reducing the amount of that gain to \$90,000. The amount of the gross capital of \$60,000 was therefore assessed to Elizabeth under Subdivision 115-C of the ITAA (1997). She reduced the amount of that capital gain to nil by applying her \$60,000 capital loss.

The above \$60,000 amount was accordingly removed from the calculation of both trust income and net income applying Division 6E of the ITAA (1936). The resulting amount of trust income was \$120,000 whilst the trust's net income was reduced to \$45,000.

The trustee subsequently resolved to make Rebecca presently entitled to all of the trust income of \$120,000 for the year ended 30 June 2020 with the effect that she was assessed on all of the net income of the trust of \$45,000. Even though this caused her taxable income to significantly increase from \$24,000 to \$69,000 she paid tax at an effective rate of 34.5% which is still lower than Richard or Elizabeth who would both be on the highest effective marginal rate of 47% if either of them was made presently entitled to that amount.

However, if the trust had not received the JobKeeper payment of \$100,000 and cash boost payment of \$30,000 it would have made a book loss of \$10,000 and Richard as trustee would have paid tax on the resulting net income of \$45,000 at the effective highest marginal tax rate of 47%.