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## Legislative Instrument

# Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020

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I, Louise Clarke, Deputy Commissioner of Taxation, make this determination under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*

**Louise Clarke**

Deputy Commissioner of Taxation  
Policy, Analysis and Legislation  
Law Design and Practice  
Dated: 23 April 2020

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**1. Name of instrument**

This determination is the *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020*.

**2. Commencement**

This instrument commences on the day after it is registered on the Federal Register of Legislation.

**3. Application**

This instrument applies to provide alternative bases for a class of entities to satisfy the decline in turnover test for the purposes of seeking to be a qualifying employer for JobKeeper payments, when the Commissioner is satisfied that there is not an appropriate relevant comparison period for the purposes of an entity in the class of entities satisfying the decline in turnover test under subsection 8(1) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (F2020L00419) registered on 9 April 2020 (the Rules).

**4. Determination**

This determination applies to entities, in the classes of entities described in this determination, seeking to be a qualifying employer for JobKeeper payments covered by sections 6 to 12 of this instrument.

**5. Definitions**

Subject to any addition or change contained in another paragraph, an expression used in this instrument that is defined in section 4 of the Rules (including, for the avoidance of doubt subsection 4 (2) of the Rules) has the same meaning in this instrument as it has in the Rules.

In this instrument:

**Business** includes any profession, trade, employment, vocation or calling, but does not include occupation as an employee.

**Current GST turnover** has the same meaning as in the Rules.

**Drought Help concessions** means any concessions given by the Australian Taxation Office where drought has caused financial difficulty and any Disaster Recovery Funding Arrangements 2018 assistance measures.

**Entity** means an individual, a body corporate, a body politic, a partnership, any other unincorporated association or body of persons, a trust, a superannuation fund, and approved deposit fund.

**Relevant comparison period** has the same meaning as in the Rules.

**Small partnership** is a partnership as defined in subsection 995-1(1) of the *Income Tax Assessment Act 1997* with four or fewer individual partners.

**Turnover test period** has the same meaning as in the Rules.

## Alternative decline in turnover tests

### 6. Business commenced

- (1) An entity applies either of the alternative tests under this section if the entity commenced business before 1 March 2020 but after the relevant comparison period.
- (2) The first alternative test is:
  - (a) if the relevant comparison period is a calendar month, the entity uses the average monthly current GST turnover instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) if the relevant comparison period is a quarter, the entity multiplies the average monthly current GST turnover by three and uses that figure instead of the entity's current GST turnover in section 8 of the Rules.
- (3) The average monthly current GST turnover is:
  - (a) if the entity commenced business before 1 February 2020, the entity's current GST turnover for each whole month after the entity commenced business and before 1 March 2020 added together and divided by the number of whole months, or
  - (b) if the entity started business before 1 March 2020, but on or after 1 February 2020, the entity's current GST turnover before 1 March 2020, divided by the number of days the entity was in business and multiplied by 29.
- (4) The second alternative test is:
  - (a) if the relevant comparison period is a calendar month, the entity divides the 3 months' current GST turnover by 3 and uses that figure instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) if the relevant comparison period is a quarter, the entity uses the 3 months' current GST turnover instead of the entity's current GST turnover in section 8 of the Rules.
- (5) The second alternative test in subsection (4) is not available if the entity had not commenced business at least 3 months before 1 March 2020.
- (6) The 3 months' current GST turnover is the total current GST turnover in the 3 months immediately before 1 March 2020.

- (7) For the purposes of subsections (3) and (6), if the entity:
- (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals, then exclude the calendar months covered by the Bushfires 2019–2020 lodgment and payment deferrals from the calculation, unless those are the only months since the entity commenced the business, or
  - (b) received Drought Help concessions, then exclude the months covered by the Drought Help concessions from the calculation, unless those are the only months since the entity commenced the business.

## **7. Business acquisition or disposal that changed the entity's turnover**

- (1) An entity applies the alternative test under this section if:
- (a) there was an acquisition or disposal of part of their business after the relevant comparison period and before the applicable turnover test period, and
  - (b) the acquisition or disposal changed the entity's turnover.
- (2) The alternative test is:
- (a) if the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately after the month in which the acquisition or disposal occurred instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) if the relevant comparison period is a quarter, the entity multiplies the current GST turnover from the month immediately after the month in which the acquisition or disposal occurred by three and uses that figure instead of the entity's current GST turnover in section 8 of the Rules.
- (3) For the purposes of subsection (2), if there is more than one acquisition or disposal that occurs sequentially after the relevant comparison period and before the applicable turnover test period, then use the whole month immediately after the last acquisition or disposal.
- (4) For the purposes of subsection (3), if there is no whole month after the last acquisition or disposal and before the applicable turnover test period, then use the month immediately before the applicable turnover test period.
- (5) For the purposes of subsections (2), (3) and (4), if the entity:
- (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals, then exclude the months covered by the Bushfires 2019–2020 lodgment and payment deferrals and use the nearest month before or after the acquisition or disposal as appropriate, unless the months covered by the concession are the only months available, or
  - (b) received Drought Help concessions, then exclude the months covered by the Drought Help concessions and use the nearest month before or after the acquisition or disposal as appropriate, unless the months covered by the concession are the only months available.

## **8. Business restructure that changed the entity's turnover**

- (1) An entity applies the alternative test under this section if:
- (a) there was a restructure of their business, or part thereof, after the relevant comparison period and before the applicable turnover test period, and
  - (b) the restructure changed the entity's turnover.

- (2) The alternative test is:
- (a) if the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately after the month in which the restructure occurred instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) if the relevant comparison period is a quarter, the entity multiplies the current GST turnover from the month immediately after the month in which the restructure occurred by three and uses that figure instead of the entity's current GST turnover in section 8 of the Rules.
- (3) For the purposes of subsection (2), if there is more than one restructure that occurs sequentially after the relevant comparison period and before the applicable turnover test period, then use the whole month immediately after the last restructure.
- (4) For the purposes of subsection (2), if there is no whole month after the last restructure and before the applicable turnover test period, then use the month immediately before the applicable turnover test period.
- (5) For the purposes of subsections (2), (3) and (4), if the entity:
- (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals, then exclude the months covered by the Bushfires 2019–2020 lodgment and payment deferrals and use the nearest month before or after the restructure as appropriate, unless the months covered by the concession are the only months available, or
  - (b) received Drought Help concessions, then exclude the months covered by the Drought Help concessions and use the nearest month before or after the restructure as appropriate, unless the months covered by the concession are the only months available.

## **9. Business had substantial increase in turnover**

- (1) An entity applies the alternative test under this section if the entity had an increase in turnover of:
- (a) 50% or more in the 12 months immediately before the applicable turnover test period, or
  - (b) 25% or more in the 6 months immediately before the applicable turnover test period, or
  - (c) 12.5% or more in the 3 months immediately before the applicable turnover test period.
- (2) The alternative test is:
- (a) if the relevant comparison period is a calendar month, the entity divides the 3 months' current GST turnover by 3 and uses that figure instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) if the relevant comparison period is a quarter, the entity uses the 3 months' current GST turnover instead of the entity's current GST turnover in section 8 of the Rules.
- (3) The 3 month's current GST turnover is the total current GST turnover in the 3 months immediately before the applicable turnover test period.
- (4) For the purposes of subsection (3), if the entity:
- (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals, use the 3-month period before the Bushfires 2019–2020 lodgment and payment deferrals commenced to calculate the 3 months' turnover, or
  - (b) received Drought Help concessions, use the 3 month period before this concession commenced to calculate the 3 months' turnover.

## **10. Business affected by drought or natural disaster**

- (1) An entity applies the alternative test under this section if:
  - (a) the entity conducted business or some of the business in a declared drought zone, or declared natural disaster zone, during the relevant comparison period, and
  - (b) the drought or natural disaster changed the entity's turnover.
- (2) The alternative test is the entity uses the entity's current GST turnover for the same period in the year immediately before the declaration for the purposes of the basic test in section 8 of the Rules.

## **11. Business has an irregular turnover**

- (1) An entity applies the alternative test under this section if:
  - (a) for the quarters ending in the 12 months immediately before the applicable turnover test period, the entity's lowest turnover quarter is no more than 50% of the highest turnover quarter, and
  - (b) the entity's turnover is not cyclical.
- (2) The alternative test is:
  - (a) if the relevant comparison period is a calendar month, the entity uses the average monthly current GST turnover instead of the entity's current GST turnover in section 8 of the Rules, or
  - (b) If the relevant comparison period is a quarter, the entity multiplies the average monthly current GST turnover by three and uses that figure instead of the entity's current GST turnover in section 8 of the Rules.
- (3) The average monthly current GST turnover is the current GST turnover for each whole month in the 12 months immediately before the applicable turnover test period added together and divided by 12.
- (4) For the purposes of subsection (3), if the entity:
  - (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals, then exclude the calendar months covered by the Bushfires 2019–2020 lodgment and payment deferrals from the calculation, or
  - (b) received Drought Help concessions, then exclude the months covered by the Drought Help concessions from the calculation.

## **12. Sole trader or small partnership with sickness, injury or leave**

- (1) An entity applies the alternative test under this section if:
  - (a) the entity is a sole trader or small partnership that has no employees
  - (b) the sole trader or at least one of the partners did not work for all or part of the relevant comparison period due to sickness, injury or leave, and
  - (c) the turnover of the sole trader or partnership was affected by the sole trader or partner not working for all or part of that period.
- (2) The alternative test is:
  - (a) if the relevant comparison period is a calendar month, the entity uses the current GST turnover from the month immediately after the month in which sole trader or partner returned to work instead of the entity's current GST turnover in section 8 of the Rules, or

- (b) if the relevant comparison period is a quarter, the entity multiplies the current GST turnover from the month immediately after the month in which the sole trader or partner returned to work by three and uses that figure instead of the entity's current GST turnover in section 8 of the Rules.
- (3) For the purposes of subsection (2), if the entity:
- (a) qualified for the ATO's Bushfires 2019–2020 lodgment and payment deferrals in the month immediately after the month in which the sickness, injury or leave occurred, then use the month immediately after the last month covered by the Bushfires 2019–2020 lodgment and payment deferrals, or
  - (b) received Drought Help concessions in the month immediately after the month in which the sickness, injury or leave occurred, then use the month immediately after the last month covered by the Drought Help concessions.