

JobKeeper amendments

There have been some changes made to JobKeeper since our last newsletter. Businesses will need to meet one of the decline in turnover tests for the September 2020 quarter alone (rather than for both the June and September quarters as announced in July) to be eligible for JobKeeper for the period 28 September 2020 to 3 January 2021. Beyond that, businesses will have to meet the decline in turnover tests for the December 2020 quarter to be eligible for JobKeeper for the period 4 January to 28 March 2021.

For the eligible employee test, the reference date for assessing which employees are eligible for JobKeeper is now 1 July 2020 (previously 1 March) with effect from fortnight 10 (3 August 2020). The reference period for employees regarding their hours worked to determine their tier of payment will be the two fortnightly pay periods prior to 1 March 2020 or 1 July 2020. The period with the higher number of hours is to be used for employees who were eligible at 1 March 2020.

The ATO had already extended the wage condition deadline to 31 August for fortnights 10 and 11.

Businesses can claim previous year tax losses

If your business has made tax losses in years to the current one, but you haven't yet offset all those losses, you can still carry these forward and claim a deduction for them in a later year — as long as you meet all the requirements of the tax law.

Your business structure will affect how you can claim business tax losses from the current year or previous years. If you are:

- a sole trader or an individual partner in a partnership, you can generally offset your current or prior year business losses against other income in the same income year (subject to the non-commercial business loss rules that may prevent you from doing so);

- operating your business through a trust, losses must be carried forward by the trust indefinitely until they are offset against future trust income (they cannot be distributed to beneficiaries) – and, furthermore, there are strict requirements that must be met for the trust to be able to use the losses itself;
- operating through a company, you must meet fairly onerous “continuity of ownership” tests or the “same business” test in order to be able to claim current and/or prior year losses.

It is important to be aware that the ATO expects taxpayers to consider each tax loss separately if you are looking at more than one tax loss across multiple years.

If you carry forward a prior year business loss to the current year or a future year, make sure you have correctly applied your past business losses before lodging a tax return. Check that:

- you have accurately reconciled carried forward losses from a prior year to a later year (errors can occur when poor record keeping of losses accumulate)
- you haven't mischaracterised expenses such as capital expenditure and CGT losses as normal business expenses (because, for example, CGT losses can only be offset against CGT gains)
- if your business is a specific entity, such as a private company, that you have considered the relevant tests linked to same or similar business tests when applying prior year losses to a current year, where the business ownership or the nature of the business activity has sufficiently changed (as indicated above).

Remember, we are here to help if you have any questions or need clarification about claiming business losses.

