**Appendix 1 - Jobkeeper update 14.04.20**

On 8 April 2020, the Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020 (the Bill) was passed by Parliament to introduce the JobKeeper payment. Eligible employers who have been affected by COVID-19 can apply to the Australian Taxation Office (ATO) to access a subsidy from the Government of $1,500 per fortnight for each eligible employee from 30 March 2020 – 27 September 2020. In order to receive the JobKeeper, there are three things you need:

(1) you are an eligible employer;
(2) you have an eligible employee; and
(3) you have met the wage condition.

The legislation has been drafted in such a way that the Treasurer will be able to make rules to govern these payments as he sees fit to allow for flexibility and to allow for changes to be introduced and revisions be made appropriately in a timely manner. To complement the Bill, the Treasurer released the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (the Rules) detailing the eligibility requirements.

The Rules are currently in a ***draft form*** and tend to mirror the Treasury factsheets and FAQs released over the last week or so. We have considered some of the key requirements and changes below.

**Eligible employer**
Eligible employers relate to:

* A business (or not-for profit) whose:
	+ projected GST turnover has reduced by 30% or more (to a comparable period a year ago of at least one month) if their aggregated turnover is less than $1 billion; or
	+ projected GST turnover has reduced by 50% or more (to a comparable period a year ago of at least one month) if their aggregated turnover is more than $1 billion.
* A charity registered with the ACNC (other than schools and certain entities listed in the Higher education Support Act 2003)
	+ whose projected GST turnover has reduced by 15% or more (to a comparable period a year ago of at least one month)

Certain employers are ineligible to receive this payment including (but not limited to) government agencies, local governments, companies in liquidation and individuals undergoing bankruptcy.

The ATO will also have discretion and businesses may be eligible to receive the payment if the turnover reduction requirements are not met– we expect the ATO to release guidance on this soon. Businesses that have not been considered in these rules are those that have been in operation for less than 12 months.

**Meaning of the word turnover**
The key changes introduced in the Rules from the initial Treasury documents are the meaning of the word “turnover” which has various definitions across our tax acts.

For the **purposes of determining whether you need to show a 30% or 50% decline in turnover**, that is whether your turnover is less or more than $1 billion, the Rules specify that you must consider your ***aggregated turnover***which would include the turnover of your affiliates and/or connected entities. For example, if your entity is subject to the Significant Global Entity reporting requirements (which generally apply where a group’s worldwide turnover of more than $1 billion), it is likely that you may need to show a decline of 50% in turnover to show you are entitled to the payment.

For the **purposes of comparison to prior year’s turnover**, you are required to compare your***projected GST turnover*** which is a concept contained in the GST Act.  Put simply it will be the estimated income that you would ordinarily include at G1 on your activity statement, excluding GST.

**Comparing turnover to a comparable period**
The Rules state that an entity satisfies the 30% or 50% drop in turnover at a time (the test time) if its *projected* GST turnover for a month or quarter falls short of the actual GST turnover for a comparable period last year by those percentages.

The following example has been provided by the Treasury on how the comparison works:
*Patrick Enterprises assesses its eligibility for JobKeeper payments on 6 April 2020 based on a projected GST turnover for April 2020 of $6 million. It considers that the comparable period is the month of April 2019 for which it had a current GST turnover of $10 million. The April 2020 turnover falls short of the April 2019 turnover by $4 million, which is 40% of the April 2019 turnover. This exceeds the specified percentage, so the decline in turnover test is satisfied.*

In the original Treasury papers, it was suggested that employers may need to compare their turnover based on their BAS lodgement cycle (either monthly or quarterly) but it appears that requirement is not contained within the Rules giving quarterly lodgers some flexibility in applying for the payment e.g. test eligibility based on April alone rather than having to test their eligibility for the entire April- June period. Employers will need to notify their turnover to the ATO on a monthly basis to ensure they are eligible to claim the payment.

**Eligible employees**
Eligible employees are defined as employees who:

* were employed by the employer at 1 March 2020;
	+ full-time, part-time, or long-term casuals (a casual employed on a regular basis for longer than 12 months as at 1 March 2020);
* are at least 16 years of age at 1 March 2020;
* meet the residency requirements as follows:
	+ must be an Australian citizen / permanent resident and any other visa subclasses where they are considered resident under section 7 of the Social Security Act; or
	+ Be a holder of a subclass 444 visa ***and*** be a resident of Australia for income tax purposes.
* the individual is
	+ Not in receipt of a JobKeeper Payment from another employer.
	+ Not in receipt of paid dad and partner pay
	+ Not totally incapacitated and receiving worker’s compensation during the relevant period

In practical terms, the persons who miss out from the payment include individuals on temporary visas and casual workers who were employed for less than one year.

**Wage Condition**
The eligible employer must pay the eligible employee a minimum amount of $1,500 per fortnight.  These amounts can consist of:

* Salary, wages, commission, bonus or allowances;
* Amounts withheld by the employer, for example union dues;
* Superannuation contributions under a salary sacrifice arrangement; and
* Other amounts applied or dealt with as directed by the employee

**Sole traders and the self-employed**
Sole traders and individuals trading through interposed entities may be eligible for the payment provided they are *eligible employers*, but the payment is restricted on **one nominated** **individual**. This ensures that certain persons who are not employees are entitled to the JobKeeper. The following is a summary of the persons who may be nominated for the payment depending on the type of entity:

* Sole Trader – the individual
* Partnership – any one partner in the partnership
* Trust – any one adult beneficiary of the trust
* Company – one shareholder or director of the company

Note, the person nominated above must also be an eligible business participant and must also meet age and citizenship/visa requirements as outlined above. These payments are not applicable to persons who are employed by the interposed entity, for example if you receive a wage from the trust or company.

An integrity rule is in place for the self-employed which states that the individual/entity is required to have an active ABN on 12 March 2020 (or a later time allowed by the ATO) and:

* The individual/entity has disclosed some business income during the 2018-19 year, generally this would be lodgment of the 2019 income tax return; or
* There is an activity statement lodged with the ATO between 1 July 2018 and 12 March 2020 disclosing a taxable supply, that is an amount at G1.

Certain other exclusions may apply if the person is in receipt of parental pay, dad and partner pay or workers compensation.

**Note :** There may be changes to the draft Rules put forward by the Treasurer.