

JobKeeper

The Commonwealth Government has established the JobKeeper scheme to “provide financial support to entities to assist with the impact of the Coronavirus known as COVID-19”.

The Australian Taxi Industry Association (ATIA) understands that, subject to meeting the respective eligibility criteria, JobKeeper payments may be available to support and assist:

- **taxi drivers** whose *businesses* comprise plying a taxi for hire that they bail (i.e. as a bailee driver), lease or own;
- **taxi operators** whose *businesses* comprise bailing or leasing taxis to self-employed taxi drivers;
- **taxi licence owners** whose *businesses* comprise leasing taxi licences to taxi operators.
- **taxi networks** whose *businesses* comprise facilitating the hire of taxis via booking and dispatching services.

This advice focusses specifically on entities within the taxi industry that *do not have employees*, namely taxi drivers, taxi operators and taxi licence owners (or holders). In such circumstances, the JobKeeper payment becomes payable to the owner of an eligible business, depending on its structure –

- the individual sole trader;
- one (but only one) of the adult beneficiaries of the trust;
- one (but only one) of the adult partners of the partnership; or
- one (but only one) of the shareholders or directors of the company.

Eligibility Criteria - General Requirements

To be eligible, a *business entity* must –

1. be carrying on a business as at 1 March 2020;
2. satisfy the turnover threshold test (e.g. have experienced, or likely to experience a decline in turnover of more than 30%);
3. have an ABN on 12 March 2020;
4. have either:
 - (a) included an amount in its assessable income for the 2018-19 income year (in relation to it carrying on a business); or
 - (b) lodged an activity statement or GST return reporting a taxable supply in an applicable tax period commencing on or after 1 July 2018 and before 12 March 2020;
5. not be a non-profit entity;
6. enrol, and remain enrolled, for JobKeeper with the ATO and in so doing –
 - a. self-access its eligibility in good faith;
 - b. nominate only one *eligible business participant*; and
7. notify the *eligible business participant* in writing of his/her nomination (sole traders excepted).

To be an *eligible business participant*, an individual must –

1. not be employed by the entity nor be an employee of another entity;
2. be actively engaged in the business carried on by the entity;
3. be 16 years or older at 1 March 2020¹;
4. be an Australian resident at 1 March 2020 –
 - a. for social security purposes; or
 - b. a Subclass 444 (Special Category) visa holder;
5. not be a nominated recipient for JobKeeper with any other entity;
6. not be in receipt of parental leave pay, paid day or partner pay, or Workers Compensation payments (in certain circumstances); and
7. have given a nomination notice in writing to the entity (sole traders excepted).

Eligibility of *Taxi Drivers* for JobKeeper

Taxi drivers may typically meet the eligibility requirements for enrolment in JobKeeper as an *eligible business participant*. Their businesses are for-profit and highly exposed to the economic downturn associated with the COVID-19 pandemic, so making the 30% (or more) decline in turnover likely to be readily demonstrable. As taxi drivers, they are required to be registered for GST, and so must have ABNs and should have been reporting income and taxable supplies routinely through their BAS.

Whether their business operates as a sole trader, partnership, trust or company presents is of no particular relevance for taxi drivers, their active engagement in the carrying on their business is usually readily demonstrable. Similarly, the fact that a taxi driver was carrying on his/her business at 1 March 2020 is the pertinent factor for eligibility, not how much or how little a respective taxi driver has or has not driven.

When considering enrolment in JobKeeper, taxi drivers should pay particular attention that –

1. their business already satisfies, or is reasonably expected to satisfy, the turnover threshold (i.e. more than 30% decline); and
2. they meet the requisite residency and/or visa status criteria for eligibility.

Eligibility of *Taxi Operators* for JobKeeper

Taxi operators may typically meet the eligibility requirements for enrolment in JobKeeper as an *eligible business participant*. Like taxi drivers, their businesses are for-profit and highly exposed to the economic downturn associated with the COVID-19 pandemic, so making the 30% (or more) decline in turnover likely to be readily demonstrable. As bailors of taxis to bailee taxi drivers, their businesses provide taxable supplies in their own right, and along with their respective taxi drivers, they are co-adventurers in businesses that are required to be registered for GST. Accordingly, taxi operators in Australia operate with an ABN and should be reporting income and taxable supplies routinely through their BAS.

¹ while unlikely to be relevant for taxi industry stakeholders, for JobKeeper, 16 or 17 year olds must be able to declare they are financially independent or undertaking full-time study

Whether their business operates as a sole trader, partnership, trust or company presents is of no particular relevance for taxi operators, their active engagement in the carrying on their business is usually readily demonstrable. Similarly, the fact that a taxi operator was carrying on his/her business at 1 March 2020 is the pertinent factor for eligibility, not how many or how few taxi vehicles a respective taxi operator owns or leases.

When considering enrolment in JobKeeper, taxi operators should pay particular attention that –

1. their business satisfies, or is reasonably expected to satisfy, the turnover threshold (i.e. more than 30% decline); and
2. they meet the residency and/or visa status requirements for eligibility.

Eligibility of *Taxi Licence Owners (or Holders)* for JobKeeper

Taxi licence owners may typically meet the eligibility requirements for enrolment in JobKeeper as an *eligible business participant*. Like taxi drivers and taxi operators, their businesses are for-profit and highly exposed to the economic downturn associated with the COVID-19 pandemic, so making the 30% (or more) decline in turnover likely to be readily demonstrable. When their businesses comprise leasing taxi licences to taxi operators and/or taxi drivers, the leasing constitutes a taxable supply, and in collection with their respective taxi operators and taxi drivers, they are co-adventurers in businesses providing taxi services for profit. Accordingly, the usual practice for taxi licence owners is to have an ABN, be registered for GST, and be reporting income and taxable supplies routinely through their BAS.

Whether their business operates as a sole trader, partnership, trust or company is of some potential relevance for taxi licence owners because their active engagement in the carrying on their business may not be as readily evident as in the case of taxi operators and taxi drivers.

Neither common law or legislation sets out a precise test for whether an entity is carrying on a business as distinct from carrying on a hobby or an enterprise pursuing passive income. Importantly, taxi licence owners' businesses must be able to be distinguished from passive income enterprises where they simply lease out their licence for a set amount and do not actively participate in the business activity.

Under the State-based legislation that establishes taxi licences, taxi licence owners are held by chain-of-responsibility and other provisions to be party to the carrying on of the service businesses that operate with/under their licence².

When considering enrolment in JobKeeper, taxi licence owners should pay particular attention that –

1. their business satisfies, or is reasonably expected to satisfy, the turnover threshold (i.e. more than 30% decline); and
2. their *eligible business participant* –
 - a. meets the residency and/or visa status requirements for eligibility; and
 - b. was actively engaged in the business.

Active engagement in their business may be demonstrated by a taxi licence owner (or eligible business participant) in various of ways, for example -

² Unlike other property owners, taxi licence owners uniquely do not have a power or discretion to have their licence not carrying on a business – providing a 24/7 taxi service is a material condition for continuing to hold the licence.

1. in the structure of arrangements -
 - a. the lease of the taxi licence to a taxi operator includes other material tools of trade bundled with the licence (e.g. a vehicle and/or taxi specific equipment such as an approved security camera system, taximeter etc);
 - b. the lease of the taxi licence to a taxi operator includes payment arrangements that share the risk of reward (profitability) with the taxi operator and/or taxi driver (e.g. lease incomes to taxi licence owners being subject to adjustment by a lessee based on the business performance of the respective taxi to which the licence is affixed);
 - c. the collective peak value and/or number of the taxi licences owned for leasing purposes is substantive (e.g. 3 or more licences);
2. by their conduct -
 - a. incomes from leases have been consistently recorded on the taxi licence owner's income tax returns as business income;
 - b. a system for business record keeping is maintained, including tax invoices and receipts;
 - c. the profitability of leases is monitored and reviewed on an ongoing basis;
 - d. the taxi licence owner engages in activities and/or holds interests in entities that promote the profitability of taxi services and/or their taxi licence leasing businesses, such as -
 - i. holding shares in a taxi network related to their taxi licence; and/or
 - ii. holding membership of substantive industry representative bodies that promote the interests of taxi licence owners and/or taxi services;
 - e. in decisions taken by the taxi licence owner -
 - i. choosing the taxi network with which their taxi licence affiliates (e.g. and so on an ongoing basis determining -
 1. the livery of the taxi associated with the licence;
 2. the network rules applying to respective drivers associated with the licence;
 3. the business model for the taxi associated with the licence as to whether it will be predominantly hail/rank or booked-hire or a mix);
 - ii. for proper discharge of their legislated Chain-of-Responsibility obligations and duties;
 - iii. promoting compliance by taxi businesses related to their licence (e.g. licence owners remain vicariously liable for the actions of taxis and taxi drivers operating with their licence, such as discrimination claims, and so must act to minimise such events);
 - iv. promoting service availability (e.g. licence owners are responsible for taxi services being available in the area to which their taxi licence applies and so must act to ensure there is an operating taxi vehicle continuously attached to their licence);

Example – Eligibility of a *Taxi Driver*

Joanne is a bailee taxi driver, driving 2-3 shifts per week, who was averaging an income of \$1,000 per fortnight prior to the implementation of social distancing regulations associated with COVID-19.

As a sole trader, actively engaged in her business of driving a taxi, Joanne would be eligible to enrol for JobKeeper payments of \$1,500 per fortnight.

Example – Ineligibility of a *Taxi Driver*

Gupta is a bailee taxi driver who has been in Australia and driving taxis for 2 years while his spouse is studying at a tertiary institution. Gupta's visa conditions provide him with restricted work entitlements. His income from taxi driving has been devastated to the same extent as virtually every other taxi driver in Australia.

Notwithstanding Gupta being a sole trader, and actively engaged in his business of driving a taxi, he would not be eligible to enrol in JobKeeper because Gupta is not an Australian resident or a Subclass 444 (Special Category) visa holder resident at 1 March 2020.

Example – Eligibility of a *Taxi Operator*

Fred and Mary run a small fleet of taxis through a trust of which they are both adult beneficiaries rather than employees. Together, they were earning around \$5,500 per fortnight prior to the implementation of social distancing regulations associated with COVID-19. The downturn in demand for taxi services has reduced the trust's income by 70%.

Fred and Mary's trust would be eligible to enrol in JobKeeper but it is only entitled to nominate Fred (or Mary) as its eligible business participant to receive JobKeeper payments of \$1,500 per fortnight.

Example – Eligibility of a *Taxi Licence Owner (Company)*

John is a director of a company, ThatsMyTaxi Pty Ltd, a company established for the purpose of owning taxi licences for operating (itself) and/or leasing (to third parties) for profit. ThatsMyTaxi Pty Ltd was leasing one licence to a taxi operator for \$1,000 per month prior to the implementation of social distancing regulations associated with COVID-19. As of 1 April 2020, the lease rate was adjusted by the lessee to \$1 per month due to the desperate lack of demand for taxi services locally plus difficulties sourcing drivers to cover shifts.

ThatsMyTaxi Pty Ltd is demonstrably carrying on an eligible business as a company, and John as an executive director of ThatsMyTaxi Pty Ltd could be entitled to be nominated as its eligible business participant to receive JobKeeper payments of \$1,500 per fortnight.

Example – Eligibility of a Taxi *Licence* Owner (Partnership)

Harry and Sally through their partnership own 5 taxi licences which were successively acquired and that at one time had a collective asset value of around \$2.5 million. Harry originally entered the industry as a bailee taxi driver, then progressed to becoming a lessee operator of a single taxi, from which he and Sally built their business operating a small fleet of taxis and owning 3 taxi licences. Some time ago, Harry and Sally reorganised their taxi business, divesting the fleet operation elements, and acquiring 2 more licences. Prior to the regulatory changes in the industry, Harry and Sally's partnership was earning \$14,000 per month from leasing out its 5 taxi licences and leasing taxi licences constituted the core business of the partnership. Post the regulatory changes in their State, the lease income from the 5 taxi licences dropped to an average of \$5,000 per month and was around that mark prior to the implementation of social distancing regulations associated with COVID-19. As of 1 April 2020, the lease rates were adjusted by Harry's and Sally's lessee down to \$4 per month due to a lack of demand for taxi services and difficulties sourcing drivers.

Harry's and Sally's partnership has demonstrably been carrying on an eligible business, and notwithstanding their both being actively engaged in the business, only one of them would be able to be nominated as its eligible business participant to receive JobKeeper payments of \$1,500 per fortnight.

Example – Ineligibility of a Taxi *Licence* Owner (Passive Income)

Don bought a taxi licence a few years ago from a mate as an opportunity to create a steady and reliable, passive income stream. Don leased his licence to a large taxi network who he trusted to take care of all his obligations and responsibilities associated with the licence and to pay into his bank account the lease fees owing on the first day of every month. Don considered his investment to require no active involvement in a business and so he did not have an ABN. Don was keeping records of payments from the large taxi network for declaring income on his taxation returns, but was not issuing any tax invoices or receipts in relation to the lease.

Don would not be eligible as an individual (or sole trader) to enrol for JobKeeper because he did not have an ABN on 12 March 2020. Even if that was not the case, Don may not be eligible for JobKeeper because his overall conduct was not consistent with being *actively engaged* in the carrying on of an eligible business.

Example – Eligibility of a Taxi *Licence* Owner (Trust)

Beth, through a trust, owns 4 taxi licences which were successively acquired and that at one time had a collective asset value of around \$2 million. Beth became involved in the taxi industry through her husband Robert who was taxi driver. Over years, Beth and Robert built their taxi business from a single taxi to where they were operating a small fleet of taxis and owning 2 taxi licences. Beth's role in the business included managing administration, account keeping, and sometimes driving while Robert took care of mechanical repairs and maintenance plus sometimes driving. After Robert passed away, Beth restructured the taxi business by divesting the fleet management roles previously performed by Robert, and expanding the leasing side of the business through the acquisition of 2 more licences. Beth considers her knowledge and experience within the industry, plus her strong network of

business connections, allows her to lease out taxi licences as a professional and with competitive advantages to some other lessors. Beth's trust was achieving a lease income from the 4 taxi licences averaging of \$4,400 per month prior to the implementation of social distancing regulations associated with COVID-19. As of 1 April 2020, the lease rates dropped down to \$400 per month due to a lack of demand for taxi services and difficulties sourcing drivers.

Beth's trust has demonstrably been carrying on an eligible business, and given Beth's active engagement in the business, she should be able to be nominated as its (sole) eligible business participant to receive JobKeeper payments of \$1,500 per fortnight.



Disclaimer: While ATIA has used its best endeavours to source the most accurate information available for this Taxi Industry Update, it is general in nature. It does not constitute specific tax advice and should not be relied on as such. Readers should seek expert advice from a taxation professional familiar with their particular circumstances to determine their eligibility for JobKeeper payments.

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