



Explanatory Statement

Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No. 1)

General outline of instrument

1. This instrument is made under subsection 20(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* and subsection 8B(4) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (the Rules).
2. This Legislative Instrument sets out the time or times a supply is treated as being made when determining the current GST turnover of an entity for the purposes of section 8B of the Rules.
3. The instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.
4. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Date of effect

5. This instrument commences on the day after it is registered on the Federal Register of Legislation.
6. As this instrument only has prospective effect, it does not adversely affect the rights, entitlements or liabilities of any entity in relation to any past period and subsection 12(2) of the *Legislation Act 2003* has no application.

What is the effect of this instrument

7. The effect of this instrument is to set out the time or times a supply is treated as being made for the purposes of calculating an entity's current GST turnover in a test period. Under this instrument, a supply must be treated as being made or partly made in a relevant test period to the extent that any GST payable on the supply would be attributed to that test period.

Compliance cost assessment

8. Compliance Cost Impact: Minor – There will be no or minimal impacts for both implementation and ongoing compliance costs. The legislative instrument is minor or machinery in nature.
9. No Regulation Impact Statement required. Prime Minister's Exemption applies – COVID-19 related measures (OBPR ref ID 42600).

Background

10. According to Explanatory Statement to the Rules, an additional power has been delegated to the Commissioner to ensure that the Rules can deliver the intended policy outcomes, and to address compliance costs that may arise when complying with the actual decline in turnover test under section 8B of the Rules.

11. For the purposes of the actual decline in turnover test, this Instrument sets out the method for determining when supplies are treated as being made at a time during the test period when calculating an entity's current GST turnover. This is relevant to determining an entity's eligibility for the JobKeeper payments for fortnights beginning on and after 28 September 2020.

12. Division 188 of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) provides the meaning of current GST turnover, subject to some modifications under the Rules. Under this definition, current GST turnover includes the 'sum of the values of all the supplies that an entity has made' during a period.

13. When a supply is made (time of supply) is determined in each case by reference to the terms of the particular contract, if applicable, and the nature of the supply. Determining the 'sum of the value of the supplies made' during the relevant period is likely to be difficult for many businesses as:

- I. It is often difficult to determine with certainty the time of supply and largely unnecessary as the practical operation of the GST system is heavily based on payment and invoicing (GST attribution). A supply does not necessarily happen at a single moment in time, but can take place over a period of time.
- II. If the time of supply is different from the time at which an entity has recorded supplies for GST attribution purposes, there is likely to be a high compliance burden on the entity in tracing supplies to the relevant period.

14. The approach outlined in this Instrument provides a simpler alternative to time of supply. It aligns the calculation of current GST turnover for the actual decline in turnover test with how entities would attribute GST payable on supplies to a tax period under the GST Act.

15. Importantly, it aligns with how businesses are required to allocate their supplies to a reporting period when completing their GST return (business activity statement). This should reduce compliance costs and improve integrity, by using these more precise and understood concepts.

When supplies are made during a test period

16. Subsection 6(1) of this Instrument provides that in calculating the current GST turnover a supply is treated as being made at a time in the test period to the extent the GST payable on the supply would be attributable to that test period if:

- I. The supply was a taxable supply;
- II. The GST was payable on the supply by that entity; and
- III. Any reference to a tax period was a reference to the test period.

17. The effect of subsection 6(1) is that supplies are allocated to a test period to the extent that any GST payable would have been attributable to that test period if the supply was a taxable supply. Once the supply, or part of the supply, is allocated to a test period then the corresponding value of the total supply or of the part of the supply is used to calculate the current GST turnover.

18. The test period is a turnover test period, relevant comparison period or another period relevant to an alternative decline in turnover test determined by the Commissioner under subsection 8(6) of the Rules (as relevant). If the entity is calculating their actual decline in turnover under an

alternative test then the current GST turnover for a period shorter than a quarter might be used as a basis for calculating a turnover amount for the relevant comparison period that is a quarter.

Treat as a taxable supply

19. Current GST turnover includes in its calculation supplies that are not taxable supplies (for example GST-free supplies) while the attribution rules under the GST Act only apply to taxable supplies. Paragraph 6(1)(a) of this instrument treats the supplies that are not taxable as taxable in order to allocate these supplies to a test period to the same extent any GST payable on taxable supplies would be attributable to a tax period. This means GST-free supplies, supplies made by entities that are not registered or required to be registered for GST, and supplies that are made between GST group members can also be allocated to a test period despite not being taxable supplies.

Treat entity as if it is the reporting entity

20. Paragraph 6(1)(b) of this instrument ensures the attribution rules apply to the supply by the entity even if the entity is not an entity that is subject to the attribution rules under the GST Act. For example under the Rules an entity that is a member of a GST group is required to calculate their current GST turnover as if they were not part of a GST group, and unless they are the GST group representative, would not be the entity reporting GST payable on their GST return. This paragraph also ensures entities that are not registered or required to be registered are required to follow the attribution rules under the GST Act in calculating their current GST turnover under this instrument.

Tax period equals test period

21. The GST attribution rules in the GST Act allocate supplies to a tax period. Paragraph 6(1)(c) of this instrument replaces tax period with the relevant test period that applies to the entity under the Rules. Under section 8B of the Rules the turnover test period or periods for which the actual decline in turnover test has to be satisfied are the quarter ending 30 September 2020 (for fortnights that begin on or after 28 September 2020) and the quarter ending 31 December 2020 (for fortnights that begin on or after 4 January 2021).

Supplies not covered by this instrument

22. This instrument does not apply to supplies that are disregarded from the current GST turnover test under Division 188 of the GST Act and the Rules. For example, this instrument has no application to input taxed supplies, supplies that are not connected with Australia and supplies for which the consideration is for certain government grants received by ACNC-registered charities as per paragraph 8(8)(h) of the Rules.

23. Also, the legislative power to create this instrument under section 8B of the Rules did not extend to things that are taken to be supplies covered by paragraphs 8(8)(g), and 8(8)(f) of the Rules. For these deemed supplies the Rules have allocated these supplies to the relevant period according to when the gift or donation was received.

Adjustments

24. This instrument treats supplies as being made in a test period if the 'GST payable' on the supply would be attributed to that test period under the attribution rules. The attribution rules in the GST Act in relation to adjustments for supplies do not refer to the amount of 'GST payable'. Rather, they attribute an 'increasing adjustment' or 'decreasing adjustment' to a tax period. Therefore,

increasing or decreasing adjustments under Divisions 19 and 134 of the GST Act have no role in determining the time or times a supply is treated as being made under this instrument.

25. Adjustments for bad debts under Division 21 of the GST Act are also excluded from the current GST turnover calculation, as bad debts do not change the value of the supply made.

Accounting method

26. Subsection 6(2) provides rules regarding the basis of accounting that an entity is required to use (either a cash basis or non-cash basis). This ensures that entities that are not registered for GST have an accounting basis and so must apply the GST attribution rules for the purpose of determining when they are treated to have made their supplies. This also ensures that entities use a consistent accounting method for each relevant period in working out their actual decline in turnover.

27. In applying subsection 6(1), the entity must adopt the following rules regarding the accounting methods in order to determine whether the GST is attributable to a test period:

- I. If an entity is not registered for GST during either test period – the entity may choose to account on a cash basis or a non-cash basis (paragraph 6(2)(a))
- II. If an entity has always been registered for GST and never changed their accounting basis – the entity needs to use that accounting basis
- III. If an entity is registered for GST at the beginning of the relevant comparison period – the entity needs to use the accounting basis from the first tax period of the relevant comparison period (paragraph 6(2)(b))
- IV. If the entity became registered for GST during the relevant comparison period – the entity needs to use the accounting basis from the first tax period of the relevant comparison period (paragraph 6(2)(b))
- V. If an entity changed their accounting basis during or after the start of the relevant comparison period – the entity needs to use the accounting basis from the first tax period of the relevant comparison period (paragraph 6(2)(b))
- VI. If an entity cancelled their GST registration during or after the relevant comparison period – the entity needs to use the accounting basis from the first tax period of the relevant comparison period (paragraph 6(2)(b))
- VII. If an entity registered for GST after the end of the relevant comparison period – the entity needs to use the accounting basis at the beginning of its turnover test period (paragraph 6(2)(c)).

Example – Business makes GST-free and taxable supplies

28. Hearing Support Pty Ltd is registered for GST, reports its GST payable on a quarterly basis and has accounted for GST on a cash basis since 2016. Hearing Support Pty Ltd's only supplies are GST-free goods, such as hearing aids, and taxable supplies of goods, such as mobile phone accessories. All of Hearing Support Pty Ltd's supplies are included in calculating its current GST turnover (section 188-15 of the GST Act and there is no relevant modification under section 8B of the Rules).

29. In order to determine JobKeeper eligibility for the fortnights beginning 28 September 2020, Hearing Support Pty Ltd needs to determine if it has an actual decline in turnover. Under the basic test this can be calculated by comparing its current GST turnover for supplies made in the quarter

ending 30 September 2020 with the current GST turnover for the quarter ending 30 September 2019.

30. Hearing Support Pty Ltd's sales terms are as follows:

- hearing aids, up to \$9,000 each are sold to customers through a payment plan over 4 monthly instalments or payment is accepted in full upon delivery with a 5% discount
- regular customers are issued with invoices upon delivery of the goods with 30 day payment terms
- all other supplies of goods are typically paid for at the time goods are made available to the purchaser.

31. An entity that accounts on a cash basis needs to report GST for their supplies in the tax period in which the payments for supplies are received and not in the tax period the goods may have been supplied (for example, when handed over or delivered to the customer). The effect of this instrument for Hearing Support Pty Ltd is the supplies are treated as being made in the quarter in the same way Hearing Support Pty Ltd would normally attribute its supplies for GST reporting purposes when completing its GST return (business activity statement).

32. When completing the GST return for the quarter ending 30 September 2019, Hearing Supplies Pty Ltd included all its GST-free and taxable supplies that it received payment for in the G1 label (total sales) and also placed a tick on the form indicating the G1 amount included GST on its business activity statement.

33. In calculating the current GST turnover for the quarter ending 30 September 2019 (the relevant comparison period) under this instrument the amount will be equal to label G1 (total sales) less label 1A (GST payable). It is this amount that will equal the sum of the 'value' of the supplies (current GST turnover) treated as being made in the quarter as the value of a supply does not include the GST payable. The value of a GST-free supply is the amount paid.¹

34. The G1 amount on Hearing Support Pty Ltd's GST return for the tax period quarter ending 30 September 2019 was \$410,000 being \$110,000 of taxable supplies and \$300,000 of GST-free supplies. The amount at 1A was \$10,000. Under this instrument the 'value' of all the supplies made by Hearing Support Pty Ltd for the quarter ending 30 September 2019 is \$400,000 (G1 less 1A, given the G1 amount included GST).

35. Hearing Support Pty Ltd will also take the same approach to determine its current GST turnover for the quarter ending 30 September 2020. Using these two calculations Hearing Support Pty Ltd can then determine if the actual decline in turnover test is satisfied.

Consultation

36. The Commissioner routinely publishes draft legislative instruments seeking public feedback for a minimum period of 4 weeks. To avoid the detrimental effects for employers and employees that delays in making the legislative instrument would cause, the Commissioner undertook targeted consultation to ensure it could be made as quickly as possible. In these circumstances, the Commissioner has undertaken reasonable and appropriate consultation over a shorter period than would otherwise have been used.

37. Consultation was undertaken with various representatives of professional and industry associations, business representatives and the Treasury. In consultation scenarios were identified that needed to be addressed expressly, such as the types of supplies that are covered by the instrument and giving a choice of accounting method to entities that are not registered for GST.

¹ This is the effect of section 188-30 of the GST Act in calculating the value of a supply for non-taxable supplies under Division 188 of the GST Act.

Most, but not all, suggestions have been adopted in the instrument or addressed in this Explanatory Statement.

Legislative references

Acts Interpretation Act 1901

A New Tax System (Goods and Services Tax) Act 1999

Coronavirus Economic Response Package (Payments and Benefits) Act 2020

Coronavirus Economic Response Package (Payments and Benefits) Rules 2020

Legislation Act 2003

Statement of compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Coronavirus Economic Response Package (Payments and Benefits) (Timing of Supplies Made and Decline in Turnover Test) Rules 2020 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

This Legislative Instrument sets out the time or times a supply is treated as being made when determining the current GST turnover of an entity for the purposes of section 8B of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020. This is relevant to determining an entity's eligibility for the JobKeeper payments for fortnights beginning 28 September 2020.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms listed in the following covenants:

- [the International Covenant on Civil and Political Rights \(ICCPR\)](#)

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) provides:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Applying the actual decline in turnover test in section 8B of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 may require the provision of information to the Commissioner including the turnover of a business. To any extent to which the provision of this information constitutes a limitation of a person's right to be protected from interference with his or her privacy, the limitation is justified because the provision of information is:

- contingent on the affected person giving consent to the disclosure of information by nominating to participate in the JobKeeper scheme, or in the case of an employee, agreeing to be nominated;
- in pursuit of the legitimate objective identified – which is to respond to the economic downturn caused by the Coronavirus by providing a wage subsidy to affected businesses, and
- rationally connected and proportionate to the objective sought as the information is required to determine eligibility for the higher rate of payment under the JobKeeper scheme and to ensure that it is administered according to the policy objective.

For these reasons, the Rules do not unnecessarily restrict a person's right to privacy.

- [the International Covenant on Economic, Social and Cultural Rights \(ICESCR\)](#)
- [the International Convention on the Elimination of All Forms of Racial Discrimination \(CERD\)](#)
- [the Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#)
- [the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT\)](#)

- [the Convention on the Rights of the Child \(CRC\)](#), and
- [the Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

This disallowable legislative instrument does not engage with any human rights because it merely provides additional opportunities for business entities to obtain Government assistance where the entities have experienced a decline in business turnover as a consequence of the COVID-19 pandemic.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues. Importantly, this instrument positively engages the right to work as it is aimed at assisting employers and keeping people in jobs.