



Small Business can Receive Jobkeeper and Cashflow Boost even if only made Sales after 31st December 2019 - ATO Admits it is Wrong but Refuses to Fix their Guidance.

The Taxation Ombudsman has released a report on certain circumstances where small businesses have been incorrectly denied Job Keeper (JK) and the Cash Flow Bonus (CFB). I say certain circumstances because there is a lot more I hope they will look into. What they found was that the making of a supply is not limited to sales, it includes signing a lease, opening a bank account, borrowing money or establishing a company. This is very relevant to start up businesses.

What alarms me about the report is that the ombudsman found that the ATO web site, practice statements and officers were telling people they did not qualify for JK or CFB by not giving them the full information on how to qualify. The ATO agreed that there were other ways of qualifying but refused to amend the web site and their practices. Further, the ATO have been aware of this problem since 11th August, 2020 and continue to deny businesses because ATO officers rely on the information on the web site that the ATO refuses to change. Even after the ombudsman intervened the ATO only agreed to informally check for businesses who might have missed out. Apparently, it would be too confusing to explain the full detail on their web site and it is just too hard to find everyone they have incorrectly denied! No, it is not! There are several algorithms they could use. But I won't go into that. Here I will concentrate on alerting readers to the problem and new business to this opportunity.

There is an example given in PSLA 2020/1 showing a small business operator started to set up their business including obtaining an ABN well before 31st December, 2019 but due to lead times didn't make any sales until after that date. The ATO says the business does not qualify

because they did not make any “taxable supplies” before 31st December, 2019 and they are registered to report GST quarterly, not monthly. The ATO have created their own definition of taxable supplies for JK and CFB purposes that is not in line with the law. A taxable supply for JK and CFB purposes includes things like opening a bank account, signing a lease, incorporating a company or taking out a loan. The business in the example did make a taxable supply before 31st December 2019 but it is not one that needs to be reported on a BAS so relying on the December 2019 BAS is not acceptable and the ATO needs to exercise its discretion to allow the business to report the supply after 12th March 2020. Note in the case of opening a bank account or incorporating a company the business may have already notified the ATO before the 31st December, 2019 by applying for an ABN as the ABN application form requests bank account details and company information.

While PSLA 2020/1 allows businesses, not registered for GST, to obtain discretion from the ATO to be allowed another way of showing they had made a taxable supply. It still limited them to showing that a sale was made before 31st December, 2019. This ombudsman report means these businesses may now be able to prove they had made a supply before the cut off, for example by showing they had signed a lease, opened a bank account, set up a company or taken out a loan before 31st December, 2019.

It was even worse for annual GST reporters, the ATO claimed they had to make sales before 1st July, 2019. Monthly GST reporters ie big business had up to end of February 2020 to have made a sale. Anyway the main point is the definition of taxable supply is much wider than a sale.

The report noted that the discrimination of a stimulus deadline on the basis of GST reporting frequency was not procedurally fair but the ATO was not budging on this.

It should also be noted that if your December 2019 BAS did not include an amount in G1 because you are reporting on a cash basis and had not yet been paid for your work, then you are also entitled to the discretion to report after 12th March, 2020 because you were not required to report before 31st December, 2019 but did actually make a supply.

Small businesses fitting into these categories have been ignored by the ATO, not even a notice sent to ask for further information they just weren't paid the CFB or JK. If they objected they received a template letter saying no way. If they rang the ATO officer would just quote the ATO web site to them. And still now if you think you could qualify it is the taxpayer that will have to take up the fight quoting this IGTO report <https://www.bantacs.com.au/wp-content/uploads/2020/12/Inspector-General-of-Taxations-Report-on-Administration-of-Jobkeeper-and-Cash-Flow-Bonus-for-New-Businesses.pdf>

In short – If you had at least, done any one of these - set up the company, opened a bank account, signed a lease or entered into a loan for the business before 31st December, 2020 or 29th February for monthly GST remitters and had an ABN before 12th March, 2020 then you can qualify for the Commissioners discretion to provide additional information after 12th March, 2020 to support your claim for JK and CFB.

There you have it only 73 words to explain this but the ATO says the topic is too confusing to include in their practice statement or discuss on the web site that taxpayers and tax officers rely on.

While we are at it, here is another bit of smoke and mirrors from the ATO regarding the cashflow bonus, that we hope the ombudsman will eventually look into. The ATO is, without even the benefit of a letter explaining why, just automatically denying employers the cash flow bonus if they registered as an employer after 12th March, 2020. That is not what the law says, they just have to have an ABN by 12th March, 2020, have notified the ATO of taxable supplies as discussed above and paid wages before 30th June, 2020.

The ATO train their officers to say that employers must have been registered as an employer before 12th March, 2020. Yet on this page [https://www.ato.gov.au/Business/Business-activity-statements-\(BAS\)/In-detail/Boosting-cash-flow-for-employers/?anchor=Newtobusiness&fbclid=IwAR2iG62dg8fpQMuaRC0T_nhZgvjM1Gp758INcHS-0G67EXpyUa2GaA9AgN0#EntitiesthatarentregisteredforGST](https://www.ato.gov.au/Business/Business-activity-statements-(BAS)/In-detail/Boosting-cash-flow-for-employers/?anchor=Newtobusiness&fbclid=IwAR2iG62dg8fpQMuaRC0T_nhZgvjM1Gp758INcHS-0G67EXpyUa2GaA9AgN0#EntitiesthatarentregisteredforGST) the truth comes out. Nevertheless, to get the correct interpretation it is our experience that even the objection process will just throw you out. But if you lodge an ATO complaints form we have experienced 100% success in obtaining a minimum of \$20,000 for each client. It is just a question of how hard you push. This again is not procedural fairness, the ATO know you are entitled but will only give it to you when you reach the very last step before going to court or the ombudsman. Maybe this is why the ombudsman's report did not include this issue as they will not consider your case until you put in an ATO complaints application. Am I just becoming a conspiracy theorist?!?!?

The ATO is required to administer the law fairly for all and it is not. You have to stand up and fight for yourself. It has even got to the stage that you cannot accept what their officers tell you or what is on their web site. They have freely admitted to the Ombudsman that the information is incorrect and have refused to fix it because it is too complicated! The report notes that over 80,000 small businesses, so far, received the CFB after fighting the ATO. How many more gullibly trusted the ATO and gave up the fight? The most vulnerable businesses in these circumstances would be the small Mum and Dad operations backed by the family home. The big end of town would not have been caught up in any of this.