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## **ATO must clarify if JobKeeper repayments are tax deductible**

Tax & Super Australia (TSA) commends companies that repay JobKeeper payments to the ATO if they determine the money is in excess of their needs, but urges the ATO to confirm if these repayments are tax deductible or not.

JobKeeper amounts received by a company are assessable income and considered to be “ordinary income” by the ATO. However, the JobKeeper rules and the tax law do not specify if JobKeeper amounts voluntarily repaid to the ATO are tax deductible.

Under the provision that businesses obtain most of their tax deductions (Section 8-1 of the Income Tax Assessment Act 1997), a business can obtain a deduction for:

1. Amounts incurred in gaining or producing assessable income (“the first limb”); or
2. Amounts necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income (“the second limb”).

The first limb will likely not apply because a voluntary payment/donation to the ATO will not produce any assessable income for the business. The issue is whether the ATO considers that the second limb applies. The debate will concern whether the JobKeeper amounts refunded to the ATO are “necessarily incurred” and, if so, whether the amounts are “in carrying on a business”.

Will the ATO adopt the view that voluntary payments to the ATO are not “necessarily incurred” and thereby be not tax deductible?

Also, if the JobKeeper funds held by the company are in excess of needs (which it is assumed they are) the payment by the company to the ATO of the excess JobKeeper amounts may be a “loss or outgoing of capital”. If that is the case, one of the “negative limbs” of the general deduction provision will deny the tax deduction.

Another view the ATO could adopt is that the repayments are a reduction of an amount that was previously assessable to the company. However, there are technical difficulties with that approach.

TSA tax counsel John Jeffreys commented: “It would be grossly unfair for companies that have been assessed on JobKeeper receipts to not be allowed a tax deduction for voluntarily refunding these amounts to the ATO. The ATO or the Treasurer should urgently clarify that such amounts are fully tax deductible — this would be in keeping with the good spirit in which the repayments have been made.”

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