



## Monthly Information Newsletter – Tax & Super

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### Rental (passive) income and ‘carrying on a business’ for JobKeeper eligibility

When assessing eligibility for JobKeeper assistance, the first question that must be answered is whether the entity was carrying on a business as at 1 March 2020. This question is of particular relevance to entities that have solely or predominantly rental income (other than input taxed supplies).

Whereas one Administrative Appeals Tribunal case noted that “the letting of a property by itself is an activity in the nature of investment rather than a business, or an adventure or concern in the nature of trade”. But another High Court case on a similar topic stated that “whether the activities of an entity constitute the carrying on of a business is a question of fact, and must be answered based on a wide survey, and the overall impression gained, of the activities of the entity having regard to the indicia of carrying on a business as a whole”.

The moral of the story is that where an entity with rental income, or more generally passive income, is concluding on the question of whether it is carrying on a business, comprehensive analysis and documentation must be undertaken, particularly where the conclusion is in the affirmative.

This analysis may be irrelevant for entities making solely input taxed supplies (for example, the supply of residential premises) as these supplies are excluded from the determination of a decline in turnover.

Consult this office if this seems to be your circumstances and you’re thinking of accessing JobKeeper.

#### **DISCLAIMER**

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