

COVID-19: Temporary Wage Subsidy Scheme – Dillon Kelly Cregan ('DKC')

Introduction

The Government announced a Temporary Wage Subsidy Scheme on 24 March 2020. This replaces the previous COVID-19 refund scheme, which provided for a special support payment of €203 per week (for up to 6 weeks) in respect of workers who were temporarily laid off as a result of COVID-19.

The Temporary Wage Subsidy Scheme will be available to employers whose business activities are adversely impacted by the COVID-19 pandemic where employers want to retain employees on their payroll for the duration of the COVID-19 pandemic. This should allow employers to retain links with employees for when business picks up after the crisis.

This scheme is open to employers who retain staff on payroll whether some employees are temporarily not working or on reduced hours and/ or reduced pay. Further, the scheme is available to employees who were on their employer's payroll as at 29 February 2020 and for whom a payroll submission was made by their employer at any point between 1 February 2020 to 15 March 2020.

Initially this scheme provides for a wage subsidy of up to €410 per week in respect of each qualifying employee. From sometime in April onwards (date to be confirmed), in respect of each qualifying employee, the scheme will provide for a wage subsidy of 70% of an employee's normal net weekly pay up to a maximum of €410 per week.

Emergency Measures in the Public Interest (COVID-19) Bill 2020

The legislation providing for the Temporary Wage Subsidy Scheme was enacted on 27th March 2020. We have highlighted the main elements of the legislation below and made further observations on the scheme.

Application of Temporary Wage Subsidy Scheme

There is widespread confusion about the eligibility criteria for the scheme. In the event of a review by Revenue of the application of the scheme by an employer, the wording of the legislation will be critical in resolving any disputes over its application.

The legislation indicates the following:

The wage subsidy scheme shall apply where

- a) the business of an employer has been **adversely affected** (see below) by COVID-19 to a significant extent with the result that the employer is **unable to pay** to a specified employee the emoluments the employer would otherwise have normally paid to him or her,
- b) notwithstanding the existence of the circumstances referred to in paragraph (a), the employer has **the firm intention** of continuing to employ the specified employee (and to pay to him or her emoluments accordingly) and is making best efforts to pay to the employee some of the emoluments referred to in paragraph a) above during the applicable period, **and**
- c) the employer has satisfied the conditions specified in subsection (4) (i.e. logged onto ROS to register, submitted the requisite declaration and provided bank account details).

All the above **three** conditions must be met for the scheme to be available to employers.

Meaning of adversely affected

The legislation indicates that the business of an employer shall be treated as being adversely affected where, in accordance with guidelines published by the Revenue Commissioners..., the employer demonstrates to the satisfaction of the Revenue Commissioners that, by reason of COVID-19 and the disruption that is being caused thereby to commerce, there will occur in the period of 14 March 2020 to 30 June 2020 at least a 25 per cent reduction **either** in the **turnover** of the employer's business or in **customer orders** being received by the employer.

DKC Commentary

Employers must be able to show that they meet the criteria laid out in Revenue's published Guidance on Employer Eligibility and Supporting Proofs – see

<https://www.revenue.ie/en/employing-people/documents/pmod-topics/guidance-on-operation-of-temporary-covid-wage-subsidy-scheme.pdf>

It will be important for employers to review these criteria and retain the relevant supporting documentation.

Where employers have cash reserves, the guidance notes indicate that "An employer that has been hit by a significant decline in business but has strong cash reserves, that are not required to fund debt, will still qualify for the Scheme but the Government would expect the employer to continue to pay a significant proportion of the employees' wages".

Revenue have also indicated that the declaration to be made by employer on ROS is not a declaration of insolvency. The declaration is simply a declaration which states that, based on reasonable projections, there will be, as a result of disruption to the business caused or to be caused by the COVID-19 pandemic, a decline of at least 25% in the future turnover of, or customer orders for, the business for the duration of the pandemic and that as a result the employer cannot pay normal wages and outgoings fully but nonetheless wants to retain its employees on the payroll.

Application of scheme to directors

With regard to the application of scheme to directors, if directors are paid through the payroll system and are included in the relevant payroll submissions for an eligible employer, then they are eligible to receive the wage subsidy.

Salary cap

The scheme does not apply to employees earning in excess of €76,000 gross p.a. (€960 net per week).

Taxation of wage subsidy taxable in hands of employee?

While the wage subsidy paid to an employee is not taxable in real-time through the PAYE system, such payments received by employees are liable to income tax and USC (not PRSI) and this will be reviewed at the end of the tax year. ***This is an issue that employers need to raise with employees so that their expectations are managed, particularly if an employee does not have unused tax credits to cover the tax liability.*** Revenue have indicated that where an income tax liability arises, it is normal Revenue practice to collect any tax owing in manageable amounts by reducing an individual's tax credits for a future year(s) in order to minimise any hardship.

Corporation tax deduction

A corporate tax deduction is not available to the employer for the temporary wage subsidy scheme top up payments made to employees.

Publication

The names of all employers operating this scheme will be published on Revenue's website in due course, after the scheme has expired.

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