

## EMPLOYMENT

## COVID-19: Employer Alert

22 April 2020

Revenue has helpfully clarified a number of significant issues in its latest guidance on the Temporary Wage Subsidy Scheme.

The updated Guidance on the Operation of the Temporary COVID Wage Subsidy Scheme is available [here](#), while the updated Guidance on Employer Eligibility and Supporting Proofs is available [here](#).

The most important clarifications, which will be welcomed by employers, are set out below:

1. One of the eligibility criterion for the Temporary Wage Subsidy Scheme is that the employer is able to demonstrate, to the satisfaction of Revenue, a minimum of a 25% decline in turnover. The guidance clarifies that, in relation to group companies, the 25% reduction in turnover or customer orders may be applied at the level of the company or, if a company is formally structured into individual Business Divisions, at the level of the individual Business Division. In the latter case, each of the Business Divisions of such a company, which has suffered a significant decline in turnover or customer orders as a result of the COVID-19 Pandemic, may be eligible for the subsidy. In order to avail of this approach, the decline in turnover or customer orders in each Business Division of the company must be capable of being separately identified, or otherwise the company as a whole must be looked at. To avail of the subsidy, each Business Division in a company must have a clearly defined and separate management structure separate to the other Business Divisions in the company and those structures must be formalised and have been well established before the advent of the COVID-19 Pandemic.
2. Another eligibility criterion for the scheme is that the employer must be unable to pay normal wages and normal outgoings fully. The guidance clarifies that a company formally structured as a single entity generating income from both trade and non-trade activities should consider the accumulated cash reserves at the company level, including reserves derived from other investments not linked with the trade, when assessing the company's financial capacity to be able to pay normal wages and normal outgoings fully. The company should have regard to accumulated reserves committed to service ongoing debt obligations and working capital requirements as part of this review.
3. The guidance acknowledges that corporate structures may involve a number of closely entwined entities which use a single employer registration for a number of separate Divisions or entities within a group, or single entities may have a number of separate Divisions within the standalone entity. Where it can be demonstrated that specific employees were, wholly or mainly (i.e. more than 50%), employed in the impacted Divisions, the subsidy may be paid to the employer in respect of those employees, subject to meeting other eligibility criteria. As an example, where there are clearly 2 or more separate and distinct Business Divisions within the one company carrying on distinct businesses in their own right, an employer may apply the eligibility tests to each Business Division of the company separately. However, the employer will need to be able to prove that each such separate Business Division meets the eligibility tests in its own right. To the extent that one or other of the Business Divisions qualify for the subsidy, then the subsidy will be available to the employees of that Division only. In any such case, employers will need to show that the employees concerned are not transferable across different businesses in the company.
4. The guidance provides examples of what a 25% reduction in customer orders might look like for different sectors, including a reduction in overall sales, bookings, passenger journeys, call services provided, energy consumed or service visits.
5. The guidance confirms that where application of the "turnover" and "customer orders" tests do not adequately demonstrate this 25% reduction, an alternative "reasonable basis" should be applied. It reiterates that it is not possible to be prescriptive in guidance as to what might or might not constitute such a reasonable basis. However, the starting position is that neither the turnover test nor

the reduction in customer orders test is capable of being applied to the business in question. It is not sufficient that the business does not meet either of these tests. It must be the case that neither of those tests are capable of being applied to the business in question before an alternative basis for assessing eligibility is used. In all such cases, guidance from Revenue should be sought by the employer concerned.

6. Helpfully, the guidance states that where employees provide services for a company adversely affected by the COVID-19 pandemic but, for payroll purposes, are employed by an associated company, then the subsidy may be available provided the group can show, and provide supporting documentation to the effect, that the employees concerned were, wholly or mainly (i.e. more than 50%), employed in one or other of a group's trading companies which is/are experiencing trading difficulties because of the COVID-19 Pandemic. The companies adversely affected must be able to

show that they are otherwise eligible, in respect of those employees, for the subsidy. The subsidy, if applicable, will be paid to the payroll company regardless of whether it itself is eligible.

7. The guidance clarifies the position on a transfer of undertakings: where employees have transferred to a new employer as part of a company reconstruction underpinned by regulation 4 (1) of the European Communities (Transfer of Undertakings), the eligibility criteria will be applied as if the employer did not change. The 'new' employer should contact the relevant Revenue Division in advance of submitting any payroll that includes subsidy scheme J9 submissions, providing details of the reconstruction and the related legal TUPE agreement, as well as details of all affected employees.
8. The guidance also contains information on the new scheme announced by the Department of Children and Youth Affairs (DCYA). The DCYA COVID-19 Temporary Wage Subsidy Childcare

Scheme (WSCS) was announced as a supplement to the broader temporary wage subsidy scheme, to address the particular needs of the Early Learning and Care (ELC) and School Age Childcare (SAC) sectors. The DCYA WSCS is designed to enhance the supports available to ELC and SAC providers and their employees. It provides ELC and SAC providers with a contribution to overhead costs that are still being incurred during COVID-19 closures and, for ELC and SAC providers with employees, it enables these providers to retain their employees through the provision of additional funding to be used to top-up employees under the TWSS. Further information is available in the Revenue's Guidance on the Operation of the Temporary COVID Wage Subsidy Scheme, linked above.

Further information on the operation of the Temporary Wage Subsidy Scheme, please see our [COVID-19 Practical Considerations: Employment FAQs](#) briefing.

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