



COVID-19

TEMPORARY WAGE SUBSIDY SCHEME

EMPLOYER ELIGIBILITY AND SUPPORTING PROOFS

20 April 2020

## **COVID-19 Temporary Wage Subsidy Scheme - Employer Eligibility and Supporting Proofs**

### **Context**

On 24 March 2020, the Government announced measures to provide financial support to workers affected by the COVID-19 crisis. As part of these measures and building on the functionality developed through PAYE Modernisation, Revenue will operate the Temporary Wage Subsidy Scheme. This note sets out the Revenue approach to confirming employer eligibility and examination of supporting proofs. The scheme is a significant investment by Government in supporting both employers and employees through a subsidy that will be paid in real-time.

### **Key Principle**

Revenue's general approach to businesses experiencing cashflow and consequent tax payment difficulties is to work towards agreeing mutually acceptable solutions that assist a return to viability as soon as possible. In any such engagement, Revenue expects businesses to be able to produce relevant supporting documentation when requested to do so and to fully engage with Revenue on any follow up discussions or checks.

Revenue's administration of the COVID-19 Temporary Wage Subsidy Scheme will operate on a similar basis – eligibility will initially be determined largely on the basis of self-assessment and declaration by the employer concerned, combined with a risk focused follow up verification by Revenue involving an examination of relevant business records where that is considered necessary.

### **COVID-19 Temporary Wage Subsidy Scheme Eligibility**

The COVID-19 Temporary Wage Subsidy Scheme is available to employers across all sectors, excluding the Public Service and Non-Commercial Semi-State Sector. To qualify for the scheme, a business must be experiencing a significant negative economic disruption due to the COVID-19 pandemic.

In general, this will be readily apparent; some businesses and some sectors have had to close their premises, while the impact of public health advice on individual businesses in terms of restrictions on trade, physical distancing and the nature of essential and non-essential businesses will be obvious. It will also be obvious that some businesses will continue trading and, in some cases, have an increase in business.

Our purpose is to support businesses through the scheme; our approach will be based on a presumption of honesty and we expect businesses to approach the scheme in a similar manner. Application for the scheme is based on self-assessment principles - a qualifying employer declares that it is significantly impacted by the crisis. Key indicators are that the employer's turnover is likely to decrease by 25% for quarter 2, 2020; that the business is unable to meet normal wages or normal outputs and any other indicators set out in our guidelines.

### **Reduction in Turnover or Customer Orders**

In relation to the likely reduction in turnover of 25% or more, this is a reduction in expected turnover for Q2, 2020. The employer is best placed to determine that and may base this judgement on the decline in orders in March 2020, in comparison to February 2020, or the likely turnover for the quarter compared to Q1 or if appropriate Q2, 2019, or on any other basis that is reasonable.

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 such a 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. 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 has to be looked at. 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. Revenue, having regard to risk indicators, may need to examine closely the evidence/basis for entering the scheme of certain TWSS applications that are made in respect of one or more of a company's Business Divisions rather than made in respect of the overall company.

The 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.

If a reduction in customer orders is being considered as the basis for eligibility for the scheme, the following will apply –

- In the case of a retail business, a pub, a fast-food outlet and similar type businesses: at least a 25% reduction in overall sales (cash, credit and orders, including on-line and telephone orders).
- In the case of a business which operates largely by way of "bookings", such as a restaurant, hotel, B&B, hostel, camp site, caravan park: at least a 25% reduction in bookings for the relevant period.
- In the case of public and private transport service providers: at least a 25% reduction in online bookings for passenger journeys or a 25% reduction in passenger journeys or a 25% reduction in passenger ticket sales.
- In the case of a service provider, such as a call centre: at least a 25% reduction in call services provided, where the calls have not been diverted to be dealt with elsewhere within a group.
- In the case of energy suppliers: at least a 25% reduction in energy consumed.
- In the case of a business involved in the servicing of equipment: at least a 25% reduction in the number of service visits made or service jobs completed.

#### **"Other Reasonable Basis"**

In Revenue's administration of this scheme, the key focus will be on significant negative economic disruption due to COVID-19. In instances where application of the "turnover" and "customer orders" tests do not adequately demonstrate this, an alternative "reasonable basis" should be applied. 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 through the relevant Revenue Division/Branch responsible for the tax affairs of the employer concerned.

An example may be where the majority of a company's contracts take 6 months or longer to complete and that the business otherwise is eligible for the subsidy; then such a business will be treated as meeting the eligibility criteria, where no substantive work has taken place on any order since the business stopped working due to the COVID-19 Pandemic.

### **Retention of Employees**

Regarding retention of employees, the scheme is confined to employees who were on the employer's payroll at 29 February 2020, and for whom a payroll submission has already been made to Revenue in the period from 1 February 2020 to 15 March 2020. Employees who were laid off after 29 February 2020 may be taken back onto the payroll for the purposes of the scheme.

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.

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.

There are situations where corporate structures affecting employees will vary. 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. Each Business Division in a company must have a clearly defined and separate management structure to the other Business Divisions in the company, and those structures must have been well established before the advent of the Covid-19 Pandemic.

In any such case, employers will need to show that the employees concerned are not transferable across different businesses in the company.

Employees based in the Head Office Division can be treated as being eligible for the subsidy by reference to those head office employees whose working time is spent, wholly or mainly (i.e. more than 50%), performing functions that relate to the business Division that is eligible for the subsidy.

Any staff member whose duties include working in more than one Division is to be excluded, unless the employer can prove that such an individual's working time is spent, wholly or mainly (i.e. more than 50%), working in the business Division that is eligible for the subsidy.

Only a company which can clearly demonstrate, by reference to pre-existent documentation, that it is organised in a structured way into a Head Office Division and various clearly separate Business Divisions will qualify for the subsidy.

These guidelines are equally applicable to Irish branches of foreign entities.

### **Eligibility Supporting Proofs**

Revenue will not be looking for proof of qualification at this stage. We may in the future, based on risk criteria, review eligibility. In that context, employers should retain their evidence/basis for entering the scheme. It will, of course, be very clear to us from our normal relationship with businesses and our normal interaction with businesses that there was no doubt about their qualification and most importantly it will be very clear that the businesses were so impacted.

In any check, Revenue will focus on the types of business records, having regard to the nature and scale of the business, that should normally be readily available for such a business. Where, for example, a business has negotiated relief measures with a financial institution, Revenue will not seek to duplicate the relevant information and the documentation from the financial institution will generally be adequate for verification purposes as evidence of financial disruption.

As stated already, the critical requirement is to be able to show significant negative economic disruption due to COVID-19. The evidence in that regard will contribute in large part to demonstration of compliance with the other criteria.

The proofs mentioned below are intended to be **illustrative rather than exhaustive** and Revenue is open to considering other relevant evidence that reasonably demonstrates eligibility for the COVID-19 Temporary Wage Subsidy Scheme and, as other examples are brought to our attention, we will update our Guidelines accordingly.

- If for some reason, the decline in turnover was less than 25%, the business should retain documentation supporting its rationale of believing that it would suffer such a decline.
- Copies of documentation submitted to a financial institution as part of the negotiation of relief measures with the financial institution.
- Copies of notifications or communications to employees or Trade Unions or staff representative bodies of salary/wage cuts implemented as a direct result of the COVID-19 pandemic.
- Copies of documentation that shows that any cash reserves in the business are required to fund debt that is equal or greater than the reserve amount.
- Evidence of reliance on the Government Credit Guarantee Scheme or overdraft facilities or other borrowings for capital purposes.
- In the case of start-up businesses, for example, evidence of a decline in investment by at least 25% arising from the COVID-19 crisis.

An employer that has been hit by a significant decline in business but has strong cash reserves, which 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.

To emphasise, the examples listed are illustrative only and Revenue is open to considering other relevant evidence that reasonably demonstrates eligibility for the COVID-19 Temporary Wage Subside Scheme.

### **Conclusion**

In operating the scheme, Revenue's priority is to ensure that all employers experiencing significant negative economic disruption from COVID-19 can register for and start to receive payment as quickly as possible.

The declaration by the employer 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.

Revenue does not consider that any employer will require professional advice or assistance in being able to prove to the satisfaction of Revenue that these criteria are met. Should Revenue seek to validate employer eligibility for the scheme, it will adopt a reasonable, fair and pragmatic approach in considering whether the criteria have been met.