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Tax alert

Ireland

COVID-19

Temporary Wage Subsidy (TWS) Scheme – Update

The Emergency Measures in the Public Interest (Covid-19) Bill 2020, was passed on 26th March 2020 which put the Temporary Wage Subsidy (TWS) Scheme on a statutory footing. Revenue continue to update their guidelines, the full text of the current Revenue guidance on administration of the TWS can be here.

Revenue's guidance on qualifying employers can be found here.

The scheme replaces the previous Employer Covid-19 Refund Scheme and is expected to last 12 weeks from 26th March 2020. Revenue's guidance states that a Transitional Phase (Phase 1) will operate from 26th March (details set out below). The TWSS will move to a subsidy payment based on 70% of the weekly average take home pay from no later than 20th April for each employee up to a maximum of €410 (Phase 2). We will issue further guidance on this once Revenue issue their instructions.

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Key Features of the Temporary Wage Subsidy (TWS) Scheme

- The expectation is that, where possible, an employer will continue to pay an employee as near as possible to full net pay. However, the TWS applies both to employers who top up employees' wages and those that are not in a position to do so.
- PAYE deductions of income tax, USC and employee PRSI will not apply to the TWS payment made through payroll, however, it will remain taxable (see later for more details).
- Employer's PRSI will not apply to the TWS payment and a rate of 0.5% will apply to any top up payment made by the employer.
- Employers pay the TWS through the normal payroll process as a non-taxable payment.
- Any top up payment made by the employer is taxable and subject to PAYE and USC, but not employee PRSI.
- Employers will then be reimbursed for amounts paid to employees and notified to Revenue via the payroll process, usually within two days of receipt by Revenue of the payroll submission.
- If the net pay received by an employee, combining the TWS and employer top up, exceeds the average net pay received in January and February 2020, Revenue will make a corresponding clawback to the TWS.
- Any tax refunds generated to the employee can be reimbursed through payroll.
- A corporate tax deduction is not available to the employer for the TWS payments made to employees.

Qualifying Criteria

The TWSS only applies to employees for whom a payroll submission has already been made to Revenue in the period from 1 February 2020 to 15 March 2020. Employees laid off as a consequence of Covid-19, can be reinstated on payroll for the purpose of the TWS, provided they were included on February payroll. In addition, an employer must:

- be experiencing significant negative economic disruption due to Covid-19;
- be able to demonstrate, to the satisfaction of Revenue, a minimum of a 25% decline in turnover or in customers' orders;
- be unable to pay normal wages and normal outgoings fully;
- retain their employees on the payroll.

Revenue issued guidelines on how a negative economic disruption will be measured. Whilst in some instances, meeting the qualifying criteria will be obvious i.e. a temporary shutdown of the business, in other cases, the matter will not be so clear cut. Revenue state that their approach will be a presumption of honesty and businesses are expected to approach the Scheme in a likewise manner.

With regards to the reduction in turnover of 25%, this is a reduction in expected turnover for Q2, 2020. The employer self-assesses eligibility and, according to Revenue, can use what basis is most appropriate and reasonable i.e. it can be a reduction in orders in March 2020 from February 2020, or the Q2 2020 expected turnover decreases from either Q1 2020, or Q2 2019 if more relevant. Revenue have indicated that an employer may use whatever measure is most

appropriate to its business to demonstrate the extent of the disruption as a consequence of Covid-19. In the event that the turnover will not drop below 25%, this does not automatically preclude an employer from the TWS but it will be necessary for an employer to demonstrate the rationale used to determine eligibility.

Employers should retain sufficient documentation to support the basis for determining they qualify for TWS, as they may be required to produce it in the event of a future Revenue inspection. Details of the documentation Revenue may require are in the guidance on eligible employers.

Registering for the Temporary Wage Subsidy Scheme

Any employer who already registered within the last week for the Employer COVID-19 Refund Scheme may make payroll submissions from 26th March 2020 under the TWSS arrangements on the same basis and up to a maximum of €410 will be refunded in respect of each eligible employee per week.

Employers, who fulfil the qualifying criteria, not already registered are advised to do so as soon as possible, as follows:

- Log on to ROS myEnquiries and select the category **'Covid-19: Temporary Wage Subsidy'.**
- Read the **"Covid-19: Temporary Wage Subsidy Self-Declaration"** and press the '**Submit**' button.
- Ensure bank account details on Revenue record are correct. These can be checked in ROS and in '**Manage bank accounts**', '**Manage EFT**', enter the refund bank account to which the refund is to be made.

Penalties for abuse

Revenue have stated that Penalties will apply to any abuse of the TWS by self-declaring incorrectly, not providing funds to employees or non-adherence to Revenue, and any other relevant, guidelines. In addition, the names of all employers operating this scheme will be published on Revenue's website in due course, after the scheme has expired.

Operating the Scheme from Thursday 26th March (Phase 1 – Transitional Phase)

During the Transitional period (26th March to 20th April), the subsidy scheme will initially refund employers up to a maximum of €410 per each qualifying employee regardless of the employee's income. However, for administrative purposes and to allow for future reconciliation of subsidy payments made, employers should enter the following details when running their payroll:

- Set PRSI Class to J9.
- Enter a non-taxable amount equal to 70% of the employee's Average Net Weekly Pay to:
    - a maximum of €410 per week where the Average Net Weekly Pay is less than or equal to €586, or
    - a maximum of €350 per week where the Average Net Weekly Pay is greater than €586 and less than or equal to €960.

- If an employer is not making any additional payment to the employee, they should include a pay amount of €0.01 in Gross Pay.
- If an employer is making an additional payment to the employee, they should include this amount in the Gross Pay.
- It is important that employers do not include the TWS payment in Gross Pay.
- The total net pay (temporary wage subsidy and additional pay) must not exceed previous normal pay.
- The payroll submission must include pay frequency and period number.

PAYE deductions of income tax, USC, LPT, if applicable, and PRSI are not deducted from the TWS. Whilst the subsidy is not subject to PAYE, nonetheless, as currently drafted in the Emergency Measure Bill it remains a taxable payment. How or when this tax will be collected is, as yet, unclear.

In many cases the payment of the TWS and any additional income paid by the employer will result in the refund of Income Tax (PAYE) or USC already paid by the employee. Any Income Tax and USC refunds that arise as a result of the application of tax credits and rate bands can be repaid by the employer and Revenue will also refund this amount to the employer.

Employers must not operate this scheme for any employee who is making a claim for duplicate support (e.g. Pandemic Unemployment Payment) from the DEASP. Where an employee previously laid off has been re-hired, the employee will qualify for the Subsidy scheme if their DEASP claim is ceased. Based on the information provided in payroll submissions and adherence to the maximum limits, described above, Revenue will credit employers with the TWS paid to each employee.

Conclusion

The rationale behind reducing the TWS for employees earning between €38,000 and €76,000 is unclear, as is the reason to deem the TWS taxable in the employees' hands, even if the tax is not being collected at this time. The aim of the TWS is to retain the connection between the employer and employee, as well as ease the pressure on the DEASP. However, for employees on average net pay per week of €500 or less, the TWS is calculated at the lower of net average weekly pay @ 70%, or €350. Where an employer is not paying a top up, it would appear more beneficial for the employee to be laid off and make a claim directly to the DEASP. This seems at odds with the stated intention of the scheme. Finally, whilst any support provided to employers feeling the adverse impact to their business during this difficult time is welcome, uncertainty as to whether an employer meets the qualifying criteria and the consequences if it is subsequently held that the employer was not entitled to claim the TWS is compounding employers' anxieties at this time. It would be useful if an employer could receive approval or clearance from Revenue at the outset. Further Revenue guidance is due to issue and we will issue an updated alert at that stage.

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