

<p><b>Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 - Covid-19 Temporary Wage Subsidy Provisions</b></p>	
<p><b>Summary</b></p>	
<p>This section provides for the introduction of a new Temporary Wage Subsidy Scheme. The wage subsidy payments will be made as an employment support by the Revenue Commissioners to employers who retain staff on their payroll during the period of Covid-19 pandemic in the State.</p>	
<p><b>Details</b></p>	
<p><b>Definitions</b></p>	(1)
<p>“Act” means the Taxes Consolidation Act 1997 (TCA).</p>	
<p>“applicable period” is the period commencing on 26 March 2020 and expiring on such day as the Minister determines and specified in an order. (The period initially is expected to be 12 weeks).</p>	
<p>“emoluments”, “employer” and “employee” have the same meanings as they have in Chapter 4 of Part 42 of the Act, which contain the primary law governing the administration of the PAYE system.</p>	
<p>“gross pay” has the same meaning as it has in the Regulations.</p>	
<p>“Minister” means the Minister for Finance.</p>	
<p>“Regulations” means the Income Tax (Employments) Regulations 2018.</p>	
<p>“specified employee”, in relation to an employer, means an individual who was on the payroll of the employer as at 29 February 2020 and where the employer-</p> <ul style="list-style-type: none"> <li>(a) has submitted a notification or notifications of the payment of emoluments to the employee in February 2020 in accordance with the Regulations, and</li> <li>(b) has submitted a return under <i>section 985G</i> of the Act for the month of February 2020, on or before the return date for that month, which is 14 March 2020.</li> </ul>	
<p>“temporary wage subsidy” is to be construed in accordance with <i>subsections (5) and (6)</i>.</p>	
<p>The conditions to be satisfied in order for an employer to be eligible to avail of the scheme are as follows:</p> <ul style="list-style-type: none"> <li>(a) the employer’s business must have been impacted by the Covid-19 pandemic such that the employer is not in a position to pay a specified employee the emoluments normally due to be paid to him or her,</li> <li>(b) the employer nonetheless retains the specified employee on the payroll and makes best efforts to pay that employee some of the emoluments referred to in (a) during the specified period, and</li> <li>(c) the employer must satisfy the conditions referred to in <i>subsection (4)</i>.</li> </ul>	(2)

<p>The Revenue Commissioners will publish guidelines setting out the criteria for an employer to be considered as being negatively impacted by Covid-19 to the extent that the employer is not in a position to pay an employee the emoluments normally due to be paid to him or her. The employer would need to be able to demonstrate to Revenue that there will be at least a 25 per cent reduction in the turnover of the business or customer orders in the period of 14 March 2020 to 30 June 2020.</p> <p>Revenue published guidance on employer eligibility and supporting proofs required, which is available at <a href="https://www.revenue.ie/en/corporate/communications/documents/guidance-on-employer-eligibility-and-supporting-proofs.pdf">https://www.revenue.ie/en/corporate/communications/documents/guidance-on-employer-eligibility-and-supporting-proofs.pdf</a></p>	<p>(3)</p>
<p>In order to operate the scheme, the employer must comply with the following obligations:</p> <ul style="list-style-type: none"> <li>(a) The employer has logged on to the online system of the Revenue Commissioners using the tax reference number of the employer for the purposes of Chapter 4 of Part 42 of the Act relating to the collection and recovery of income tax on certain emoluments (PAYE system) and the Regulations,</li> <li>(b) the employer has read and submitted the declaration referred to as the “Covid-19: Temporary Wage Subsidy Scheme” to the Revenue Commissioners through the Revenue Online System (ROS), and</li> <li>(c) the employer has provided its bank account details on ROS.</li> </ul>	<p>(4)</p>
<p>After Revenue receive the notification via the Revenue Payroll Reporting system that the employer is to make a payment of emoluments to a specified employee, the following provisions apply:</p> <ul style="list-style-type: none"> <li>(a) Revenue will pay the employer in relation to the specified employee a sum called a “temporary wage subsidy”, which is to be determined in accordance with <i>subsection (6)</i>,</li> <li>(b) the temporary wage subsidy payment will be made by way of bank transfer to the bank account of the employer,</li> <li>(c) where there are two or more specified employees, the temporary wage subsidy payments in relation to the employees may be aggregated by the Revenue Commissioners when making the payment to the employer’s bank account,</li> <li>(d) where the employer then makes the payment of emoluments to the specified employee as per the payroll notification to Revenue, the employer must include in that payment of emoluments an additional amount equivalent to the temporary wage subsidy payment for the specified employee. In effect, this means that the temporary wage subsidy amount for the employee must be paid to the employee in full.</li> <li>(e) the amount so paid to the specified employee as representing the temporary wage subsidy payment is <u>not</u> regarded as emoluments of the specified employee for the purposes of Chapter 4 of Part 42 of the Act (for PAYE purposes). However, while that amount is not taxable in real-time through the PAYE system, it remains taxable as Schedule E income of the specified employee at the end of the year,</li> <li>(f) the employer must identify details of the amount so paid as representing the temporary wage subsidy on the employee’s payslip and that amount is treated as part of the gross pay of the specified employee for the purpose of employer reporting under the Regulations,</li> </ul>	<p>(5)</p>

<p>(g) where an amount representing the temporary wage subsidy is paid to a specified employee, the specified employee must be classed as PRSI Class J, coded J9, (nil employee % and employer’s % is 0.5%) for Pay-Related Social Insurance for the purposes only of the employer’s reporting obligations under Chapter 4 of Part 42 of the Act and the Regulations,</p> <p>(h) where specified employees are classed as PRSI Class J, coded J9, for PRSI purposes, it shall not impact on their entitlement to benefits or assistance under the provisions of the Social Welfare Acts. Where an employee is in receipt of an amount representing the temporary wage subsidy payment for a specific week, that employee shall not be entitled to any other Covid-19 related support benefit or payment from the Department of Social Protection for that week,</p> <p>(i) the employer is <u>not</u> entitled to a deduction for income tax or corporation tax purposes in respect of the amount paid to the specified employee as representing the temporary wage subsidy payment paid to the specified employee in accordance with paragraph (d), and</p> <p>(j) the employer must comply with any other reasonable direction of the Revenue Commissioners regarding reporting of the payment by the employer of an amount representing the temporary wage subsidy to a specified employee in accordance with paragraph (d), which facilitates the effective administration of this section.</p>	
<p>The amount of the temporary wage subsidy shall be determined by the Minister for Finance in agreement with the Minister for Social Protection with the consent of the Minister for Public Expenditure and Reform.</p>	<p><b>(6)(a)</b></p>
<p>Different amounts of temporary wage subsidy may be determined in relation to different classes of employees, for example, depending on their salary amount or net weekly wage.</p>	<p><b>(6)(b)</b></p>
<p>In determining what is to be the amount of the temporary wage subsidy, the Minister for Finance is to have regard to an amount being determined that would represent a significant contribution to making good the shortfall in the wages that would have been payable in normal circumstances before the Covid-19 pandemic.</p>	<p><b>(6)(c)</b></p>
<p>Where the net weekly emoluments that would have been payable to a specified employee prior to the Covid-19 pandemic are not more than €586 per week, the amount of the temporary wage subsidy will not exceed a weekly amount equivalent to 70% of the net weekly emoluments that would have been so payable.</p>	<p><b>(6)(d)</b></p>
<p>Where the net weekly emoluments that would have been payable to a specified employee prior to the Covid-19 pandemic exceed €586 per week but are not more than €960 per week, the amount of the temporary wage subsidy will be an amount determined from time to time by the Minister for Finance, with the consent of the Minister for Social Protection, given with the concurrence of the Minister for Public Expenditure and Reform.</p>	<p><b>(6)(e)</b></p>
<p>A temporary wage subsidy is not payable to an employer in relation to any employee where the net weekly emoluments of the employee is in excess of €960 per week.</p>	<p><b>(6)(f)</b></p>

<p>Details of the any determination under <i>subsection (6)</i> of a temporary wage subsidy amount shall be published on the website of the Revenue Commissioners.</p>	<p>(7)</p>
<p>Notwithstanding <a href="#">section 851A</a> of the Act which deals with the confidentiality of taxpayer information, the Revenue Commissioner shall publish on its website the names and addresses of all employers to whom a temporary wage subsidy has been paid.</p>	<p>(8)</p>
<p>Where the Revenue Commissioners have paid an employer the temporary wage subsidy payment for an employee and it transpires that the employer has not paid over that additional amount to the specified employee, or that the employer was not entitled to receive a temporary wage subsidy in respect of any individual, the amount of the temporary wage subsidy paid to the employer shall be refunded by the employer to the Revenue Commissioners.</p>	<p>(9)</p>
<p>Where the employer falsely retains the temporary wage subsidy payment or any portion of it or was not entitled to it in accordance with <i>subsection (9)</i>, the amount overpaid (referred to as “relevant tax”) shall be treated as if it were income tax due and payable by the employer from the date it had been paid to the employer. The “relevant tax” is so due and payable without the making of an assessment. Thus, the amounts in question are automatically legally refundable by the employer to the Revenue Commissioners.</p>	<p>(10)</p>
<p>Notwithstanding <i>subsection (10)</i>, in the case where temporary wage subsidy payments are found to be refundable by the employer to the Revenue Commissioners in accordance with <i>subsection (9)</i>, an officer of the Revenue Commissioners can make an assessment on the employer as if it were income tax due. The tax due under such an assessment shall be due and payable from the date the temporary wage subsidy payment was paid by the Revenue Commissioners to the employer.</p>	<p>(11)</p>
<p>The provisions of the Income Tax Acts relating to assessments to income tax, appeals against such assessments, and the collection and recovery of income tax, apply to the assessment, collection and recovery of relevant tax. Thus, the Revenue Commissioners can collect and enforce the amount due as if the amounts concerned were income tax due by the employer.</p>	<p>(12)</p>
<p>Interest is charged on the amounts of relevant tax to be recovered at the rate of 0.0219 per cent for each day or part of a day from the date when the amount is due and payable.</p>	<p>(13)</p>
<p>Subsections (3) to (5) of <a href="#">section 1080</a> of the Act shall apply in relation to interest payable under <i>subsection (13)</i> as they apply in relation to interest payable under <i>section 1080</i> of that Act.</p> <p>Thus, the interest is payable by the employer on a gross basis (that is, it is not subject to deduction of tax on payment) and it is not allowed as a deduction in computing for tax purposes any income, profits or gains. The interest is deemed to be a debt due to the Minister for Finance for the benefit of the Central Fund and is payable to the Revenue Commissioners.</p> <p>The machinery for the recovery of tax charged and the rules of court relating to the recovery of tax apply to the recovery of unpaid interest as if such interest were part of the tax. In addition, unpaid interest ranks equally with unpaid tax in relation to priority of debts in bankruptcy or liquidation proceedings.</p>	<p>(14)</p>

<p>In any proceedings for the recovery of interest, a certificate signed by an officer of the Revenue Commissioners stating that the amount of interest is due is evidence that such amount is due until the contrary is proven. Any certificate that purports to be so signed may be submitted in evidence without proof and is deemed to have been so signed until the contrary is proven.</p>	
<p>Where an employer fails to comply with the provisions of <i>subsection (5)(f)</i> in relation to the identification of the wage subsidy provided to a specified employee on the statement of wages and deductions from wages (payslip) provided to the employee, the employer shall be liable to a penalty as if that failure were a failure to comply with the Regulations. Thus, the employer shall be liable to a penalty of €4,000 under the provisions of <a href="#">section 987</a> of the Act, <i>Penalties for breach of regulations</i>. Where the employer who fails to comply is a body of persons, the secretary of that body is liable to a separate penalty of €3,000.</p>	<p>(15)</p>
<p>A person shall be guilty of an offence if the person -</p> <ul style="list-style-type: none"> <li>(a) knowingly or wilfully delivers any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection with the temporary wage subsidy scheme or</li> <li>(b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection with the temporary wage subsidy scheme.</li> </ul> <p>The provisions of subsections (3) to (10) of <i>section 1078</i>, and <i>section 1079</i> of the Act shall apply for the purposes of the above-mentioned offences.</p> <p><a href="#">Section 1078</a> of the Act criminalises (i.e. makes an offence) tax/duty evasion in general and specifically various actions or failures in the context of obligations imposed by all the statutes and instruments dealing with taxes and duties under the care and management of the Revenue Commissioners. The section also provides for the maximum liability of a person convicted of such an offence – the actual liability is a matter for the Court. The Probation Act does not apply in respect of these offences.</p> <p>The following liability applies to a person convicted of any offence under <i>section 1078</i> of the Act-</p> <ul style="list-style-type: none"> <li>○ on summary conviction of an offence committed on or after 14 March 2008, a fine not exceeding €5,000 – which may be mitigated to not less than one fourth part of such fine – or at the discretion of the court, a term of imprisonment not exceeding 12 months, or both, and</li> <li>○ on conviction on indictment, a fine not exceeding €126,970 or at the discretion of the court, a term of imprisonment not exceeding 5 years, or both.</li> </ul> <p><a href="#">Section 1079</a> of the Act provides that all auditors and tax advisers who become aware in the course of their normal work of material tax evasion or non-compliance committed by a client company must report this to the company and request that the matter be rectified or that the company should report the offence to Revenue. It further provides that if, at the end of 6 months, it is not established to the satisfaction of the auditor or adviser that the matter has been so rectified or reported, the auditor or adviser must cease to act as auditor, or cease to assist or advise the company in tax matters, for a period of either 3 years from the date of the (auditor/adviser’s) report to the company or until the auditor or adviser is satisfied that the matter had been rectified or reported, whichever is the earlier. Any resignation under this section must also be reported to Revenue. Nothing in</p>	<p>(16)</p>

<p>the section is to prevent a person assisting or advising a company in preparing for or conducting legal proceedings, either civil or criminal, which are extant or pending at the end of the 6 month period in question. The list of reportable offences all relates to serious tax evasion. The question of whether there is <i>material tax evasion</i> is a matter for the auditor or adviser in any particular case to assess taking account of his/her own professional standards and the requirements of the section.</p> <p>The penalties to which a relevant person is subject if convicted of an offence under <i>section 1079</i> of the Act are —</p> <ul style="list-style-type: none"> <li>○ on summary conviction, a fine of €1,265 which may be mitigated to not less than one-fourth part of such fine, or</li> <li>○ on conviction on indictment, a fine not exceeding €6,345 or, at the discretion of the court, imprisonment for a term not exceeding 2 years, or to both the fine and imprisonment.</li> </ul>	
<p><i>Subsection (17)</i> provides for the exchange of data relevant to the effective operation of the scheme between the Department of Social Protection (DSP) and the Revenue Commissioners, notwithstanding any obligation imposed on the Revenue Commissioners under <a href="#">section 851A</a> of the Act or any other enactment in relation to the confidentiality of taxpayer information within the meaning of that section and equivalent measures imposed on the DSP.</p>	(17)
<p>The administration of this section is to be under the care and management provisions of the Revenue Commissioners in the like manner as income tax is in accordance with <a href="#">section 849</a> of the Act.</p>	(18)
<p>Revenue will prepare and publish guidelines with respect to what matters are to be considered in determining whether there is a reduction in the turnover of the employer’s business, or in customer orders being received by the employer, to the extent of at least 25% by reason of the Covid-19 pandemic and the consequent disruption that is being caused to commerce.</p> <p>Revenue published guidance on employer eligibility and supporting proofs which is available at <a href="https://www.revenue.ie/en/corporate/communications/documents/guidance-on-employer-eligibility-and-supporting-proofs.pdf">https://www.revenue.ie/en/corporate/communications/documents/guidance-on-employer-eligibility-and-supporting-proofs.pdf</a></p>	(19)
<p>The Minister shall determine a day for which the applicable period will expire as referred to in <i>subsection (1)</i>. This date will be specified by Ministerial Order.</p>	(20)
<p><i>Subsection (21)</i> provides that the section, in so far as it relates to income tax, is to be construed with the Income Tax Acts, and, in so far as it relates to corporation tax, with the Corporation Tax Acts.</p>	(21)
<p><i>Subsection (22)</i> provides that that <i>subsections (5)(g) and (h)</i> in so far as they relate to PRSI shall be construed with the Social Welfare Acts.</p>	(22)