



Revenue Responses to ITI Queries on the Temporary Wage Subsidy Scheme (TWSS)

12 June 2020

Revenue Responses to ITI Members' Queries following points raised on the TWSS Webinar on 8 June

1. Employer Eligibility

The most topical question during the webinar related to employers' eligibility to continue on the TWSS as businesses reopen and the point at which employers should exit the scheme. We received 16 questions on this issue during the webinar and members have continued to contact us, seeking further clarification on the matter, following Revenue's responses during the Q&A on the circumstances when a business that is now reopening can continue to avail of the TWSS.

Based on Revenue's answer to this question during the Q&A, the business must consider whether it is able to pay the specified employees their normal wages, in addition to considering whether the "25% test" for Quarter 2 has been met. In effect, this means it is not sufficient for a business to have predicted and experienced a reduction of at least 25% (in turnover/customer orders) in the quarter. Now that they have reopened, they must also consider whether they can afford to pay normal wages to be eligible and if they can, it was suggested by Revenue that they should cease submitting J9 payroll submissions.

Members' reading of the legislation in section 28(2) and section 28(3) would indicate that the key criterion to avail of the TWSS is that the employer was significantly adversely affected by COVID-19 and as a result is unable to pay employees normal emoluments (section 28(2)) and that this is demonstrated by at least a 25% reduction in turnover or customer orders received in the period from 14 March to 30 June (under section 28(3)).

In addition, Revenue Guidance on eligibility has intensely focused on the "25% test" as the key factor in determining eligibility. The issue of a business having cash reserves did not exclude a business from qualifying for the scheme in the first instance. This was clear in Revenue's Guidance on Employer Eligibility and Supporting Proofs. However, if the business had strong cash reserves that were not required to fund debt, they were expected to pay a significant proportion of the employee's wages.

As Revenue's view stated on the webinar now appears to differ significantly from that of businesses and practitioners' current understanding of the position (and indeed, the basis on which they would have forecast their financials and their plans to rehire staff as the businesses reopen), **we would ask Revenue to provide more information on their basis for this new interpretation and provide updated guidance as soon as possible for businesses that are now reopening.**

Otherwise, there is a risk that such employers will continue to avail of the subsidy, pay it to employees, which Revenue could subsequently seek to recoup at a later stage.

Revenue Response:

The key benchmark for employer eligibility, as set out in law, is the quarter two turnover which must be down by at least 25%. The reference to the ability to pay normal wages being under continued review was a reference to the payment of wages at a level higher than the ARNWP, thus wage subsidy amounts will start to taper off as workers return to the normal work environment, and in some instances, start earning overtime that brings wages in excess of the ARNWP. This may result in payments likely now exceeding ARNWP, leading to tapering to 0 in some instances and the need to revert to Class A PRSI.

Additionally, our guidelines make reference to employers having to pay a 'significant portion' of an employee's wages where they have strong cash reserves not required to fund debt. We would expect to see contributions to wages increasing if cash reserves start to increase during the trading period above that required to service debt.

2. Transferring from the COVID-PUP to the TWSS for monthly paid employees

We received a number of questions regarding employees returning to work, who will be moving from the COVID-PUP, to be paid monthly on the TWSS. Gearóid helpfully explained the difficulties that may arise for Revenue and the DEASP, as the TWSS will cover the full month, and potentially overlap with week(s) where the employee has received the COVID-PUP from DEASP. We understand that Revenue and the DEASP are discussing how to deal with such scenarios. Please confirm the recommended course of action for such employees.

Revenue Response:

It is recommended that employees returning to employment who have been receiving the COVID-PUP from DEASP, notify DEASP of their intention to return to employment to have their PUP ceased or they will suffer an overpayment and are liable to refund this to DEASP.

For pay frequencies other than weekly, employers should consider placing rehired employees on a weekly pay frequency to simplify the alignment between the TWSS payments and to prevent PUP payment overlaps that may trigger a DEASP overpayment situation for the employee, i.e. allowing for a final week of PUP and 3 weekly payments of TWSS.

Revenue will share information with DEASP to ensure that employees availing of the TWSS are also not in receipt of DEASP support payments

Revenue Responses to ITI Other Queries on the TWSS (submitted 21 May)

3. How to understand why the subsidy paid may differ from the amount expected, when employee information cannot be shared with the agent of the employer

We understand that the subsidy may differ from the amount expected and can be tapered for various reasons. For example, an employee may be in receipt of social welfare payments or have a second job which their main employer is unaware of. We also fully appreciate that Revenue cannot share an employee's tax information with the employer's agent (unless the agent is also agent-linked to the employee) for GDPR reasons. However, this can cause difficulty when the amount of the subsidy on the CSV File appears to the agent to be incorrect and is less than the expected amount, due to tapering. The agent cannot explain why it differs from what was expected or identify whether it is an error on the CSV File. Some agents are receiving queries from both the

employers and the employees who are asking whether the agent is applying the scheme correctly.

We have outlined an illustrative example of this issue below in the context of an employee earning less than €412 in January/February, where the employer is choosing to top up by more than 15% to bring the employee to €350. (We can provide case specific information if that would be helpful). The agent has several cases (i.e. different employers/ different employees) where the CSV file is restricting the top up payment to 15% and is not allowing a top up to €350 per week. For example, the employee's average net pay January /February) was €200. The TWSS provides for a subsidy of 85%, which equates to €170. Previously, the normal top up would have been 15% (€30).

However, under the Operational Phase, the employer has the option to now top up to €180, to ensure the employee receives €350, without any impact on the TWSS payment. But the CSV file is indicating a max top up of €15 and if you try to enter any more, the subsidy is reduced. The agent contacted Revenue and was told that the CSV file is correct, but Revenue could not explain why this was occurring and that it was related to the employee's circumstances. Revenue could not provide an explanation to the agent as the agent is not the tax agent for the employee.

In this scenario:

- the agent cannot determine if there is in fact an error on the CSV File in dealing with some top ups exceeding the 15% for the cohort of lower paid earners up to €350, or
- whether the CSV File is correct in some instances and why this is happening so they can explain it to the employers and employees contacting them.

While we fully appreciate that Revenue cannot breach taxpayer confidentiality, we believe that there should be some way to help agents/employees/ employers understand why the subsidy is not working in the way they would have expected in some cases, as the FAQ does not provide sufficient information to address this issue. If it is not working due to the employee's personal circumstances, it might be useful to provide further guidance on this point.

Revenue Response:

As you are aware, Revenue has a legal obligation to protect the confidentiality of taxpayer information, personal information is treated with the highest standards of security and confidentiality. Having reviewed each of the cases with the PPS Numbers supplied, we can confirm that the figures on the CSV files provided are correct. There are multiple reasons as to why the subsidy values can differ from those expected, you have already outlined some of these in your query:

- **Multiple Employments:** During the operational phase (from 4th of May), earnings from all active employments will be combined and reconciled and each employer will be provided with an employer Maximum Weekly Wage Subsidy (MWWS) and the Maximum Weekly Employer Pay before Tapering (MWEPT) to apply to the employee's payroll. This personalised information will ensure that the employee's overall position is taken into consideration when calculating the employee's subsidy entitlements. The subsidy will be apportioned appropriately to each employment, due to taxpayer confidentiality reasons Revenue cannot indicate whether an individual has a second employment.
- **DEASP Payments:** As you know Revenue reduces an employee's annual tax credits and rate band to take account of any taxable DEASP payments. The resulting tax

credits and rate band are made available to the employer via the Revenue Payroll Notification (RPN).

4. Submissions “on or before” 15 March

Revenue Guidance in paragraph 5.6.2, notes that for J9 submissions with a pay date before 24 April, the employee must have a Qualifying Payroll Submissions made to Revenue **prior to 15 March 2020**. Given the statutory deadline is 15 March, we would have assumed that this should reflect that the Qualifying Payroll Submission must be made **on or before 15 March**?

Revenue Response:

The guidance you mention in 5.6.2 of the FAQ’s refers to a reason message received in ROS to advise that the TWSS refund to an employer has not been paid. The reason message in 5.6.2 is “Previous Payslip not in time window”.

A qualifying submission is outlined in 3.1 of the FAQ’s and advises that a qualifying submission for an eligible employee regardless of the submission date, with pay dates before 24 April 2020, are submissions where the employer must, for any pay-dates during the month of February 2020, have made payroll submissions for payments to the employee to Revenue before 15 March 2020.

Just to clarify a specified employee is defined in Section 28 Emergency Measures in the Public Interest (Covid-19) Act 2020 and means an individual who was on the payroll of the employer as at 29 February 2020, and their employer has submitted to the Revenue Commissioners a payroll notification or notifications in February 2020, and has submitted the return required under section 985G for the month of February 2020 on or before the return date i.e. 14 March 2020.

So, in relation to the statutory deadline of March 15, I note the following, the statutory requirement (section 985G TCA 1997) to submit payroll data to Revenue is “on or before the making of a payment of emoluments” to an employee. The statutory requirement on an employer to make a return is on or before the return date which is the 14th of the following month.

Also, we have observed that the Revenue Notice that issued to employers who had made an adjustment to individual line items on the payroll after 15 March, resulted in such employers believing that they were completely excluded from the scheme, rather than only excluding them from claiming the subsidy for the individual employees (whose payroll line had been amended).

Of course, we recognise in the interest of time pressures, a blanket notification to employers may have been adopted. However, it did cause some anxiety as it was not clear that it may only refer to specific employees and not to the full complement of employees on the payroll submission.

Revenue Response:

Thank you for pointing out the possible confusion which we take into account when next providing a notice to employers. Please note that Revenue is committed to keeping all stakeholders, including employers, informed of changes to the wage subsidy. We are regularly publishing Frequently Asked Questions, updating the website and responding directly to employers through myEnquiries, as well as webinars and similar conferences. Revenue also operate a National Employer Helpline which operates from 9am–5pm

Monday through Friday. These channels are used to disseminate information and provide any clarifications requested.

5. Query on director and split subsidy between two related companies

Where directors have a split subsidy / max employer top-up between two related companies, can you nominate just one payer for utilising the subsidy for ease of processing?

Revenue Response:

In the case of employees or directors with multiple employments the overall entitlement to TWS payments is based, separately and individually, in relation to each such employment. The system as you are aware was developed quickly to cater for the COVID-19 crisis therefore, it is not possible, even for related companies, to nominate one payer.