Tax Issue - April 2020

Our April Tax Issue focuses solely on the recent Covid 19 Tax Related Measures, which are primarily designed to assist businesses manage cashflows during the Covid 19 Pandemic. We also highlight some other areas to consider in terms of tax planning in these unprecedented times.

We hope you and your family are keeping safe and well and your business is weathering its way through this crisis. RBK remain open for business, albeit remotely, and we encourage you to reach out to your usual RBK contact for any assistance you may need in these very challenging and difficult times.

In this month's issue, we look at the latest developments in:

A. **Covid 19 - Temporary Wage Subsidy Scheme**

B. **Other PAYE Related Measures**

C. **Managing VAT Cashflow**

D. **Corporation Tax**

E. **RCT and PSWT**

F. **Global Mobility**

G. **Other Opportunities**

A. COVID 19 Temporary Wage Subsidy Scheme

Perhaps the most significant measure in the package announced is the Covid 19 Temporary Wage Subsidy Scheme. Please refer to our detailed commentary on 27 March 2020 and overview with regard to the operation of the scheme. The focus of this Tax Issue is to be discuss and highlight a number of key areas of interpretation/ guidance which have emerged since the original announcement as to the general conditions for the operation of the Scheme.

Over the past week, Revenue have also been issuing further detailed guidance notes by way of a Frequently Asked Questions ('FAQ') document, the latest version as which, as of the date of this publication, was released on 5 April 2020. The FAQ document can be accessed here. These guidance notes will form the basis for Revenue's operation of the scheme in practice, and we know that Revenue have been in close contact with the major payroll software providers in the context of tailoring software solutions to work in line with the scheme.

We have summarised below the the key aspects within these guidance notes which we feel are of immediate importance for employers to consider in reviewing the operation of the scheme.

1. Calculation of the Subsidy Due

The level of the subsidy due is linked to Average Net Weekly Pay ('ANWP'). This is calculated by reference to the payroll submissions for the months of January and February 2020, with an average determined by dividing total pay for this period over the number of insurable weeks (which is capped at 9). Gross Pay for purposes of the scheme/calculation of ANWP is defined as "total remuneration which includes emoluments and notional emoluments but without reference to any deduction for pension contributions payable by the employee or any salary sacrifice deduction." Bonus and once-off payments made in January/February 2020 will be taken into account in the calculation of ANWP if they were included as Gross Pay in the January and February 2020 payroll submissions.

This figure will form the basis to determine the level of subsidy to be paid to an employer in respect of an eligible employee under the scheme, notwithstanding the fact that an employee may currently be on a reduced working week/reduced pay as a result of the crisis. The subsidy calculation will operate are outlined below:

- In the case of an employee with ANWP of less than or equal to €586, the employer would be entitled to receive a maximum subsidy being the lesser of €410 or 70% of ANWP.
- In the case of an employee with ANWP of greater than €586 but less than €960, the employer would be entitled to receive a maximum subsidy being the lesser of €350 or 70% of ANWP. In these cases, the subsidy will therefore always be limited to a maximum of €350.
- In the case of an employee with ANWP of greater than €960, the employer would not be entitled to any subsidy as this is above the maximum eligibility of €960 per week.

As previously advised, Revenue will be making payments equal to a flat rate of €410 per eligible employee as part of the Transitional Phase of the Scheme up to 20 April 2020. However, during this period, employers are nonetheless obliged to return the details of the subsidy amount due in line with the calculations above as 'Non-Taxable Pay' during this period. Revenue will then complete a reconciliation exercise to assess cases where the €410 paid exceeds the amount which was due, and seek repayment of the difference from later payments due to the employer.

It is advisable that employers only pay to the employee the subsidy to the amount as calculated, retaining any excess from the €410 received to meet this repayment at a later date.

Employers will be obliged to show the Temporary Wage Subsidy Payment labelled as 'GovC19 WageSub' on the employee's payslip.

2. Treatment of any additional top-up payment to be made

The Scheme does allow for cases whereby an employer may wish to pay employee an additional top-up payment representing the difference between the subsidy due and the employee's ANWP. It has been clear from the outset that such additional payments should not result in the employee receiving more than their ANWP. There had, however, been some degree of doubt as to how such additional top-up payments should be treated for payroll purposes. Revenue have clarified their view as part of their most recent guidance as to how they expect such payments to be treated.

Revenue's current view is that any additional top-up payments **cannot be re-grossed** and any top-up payment calculated by reference to ANWP must be treated as **gross pay** e.g. in the case of an employee with ANWP of €550, the subsidy would amount to €385 (70% of same), thereby giving rise to an maximum top-up is €165. This amount should be treated as **gross taxable pay** as opposed to re-grossing of this amount as a net figure. In the event that an employer were to pay an employee a total gross wage (i.e. being the sum of the Subsidy and the Taxable Additional top-up amount) in excess of the ANWP, the subsidy due to the employer will be reduced accordingly for the excess, with the excess instead being treated as taxable pay. As a result, under the scheme, total gross pay for an employee will never exceed the amount of the ANWP for that employee. Revenue's guidance notes have set out further worked examples and a reference table in this regard.

3. Application of scheme to Full-time employees

It has been clarified that those employees who are still on full time hours can also be eligible employees. The key factors to be considered are that to ensure that the employer is eligible and the employee is eligible (i.e. an employee on the payroll on 29 February 2020 and the employer must, between 1 February 2020 and 15 March 2020, have made payroll submissions for payments to the employee to Revenue with pay- dates between 1 February 2020 and 29 February 2020). It has also been clarified that any other non-eligible employees (e.g. those not on payroll on 29 February 2020) should be processed through payroll as normal if still being paid.

4. Deductibility / Treatment of the Temporary Wage Subsidy Payment for the purposes of Income Tax / Corporation Tax

No deduction will be available in respect of the Temporary Wage Subsidy Payment. The guidance does not refer to the additional top-up amount paid (if any) which would suggest that element of any payment is deductible. It has also been confirmed that the Temporary Wage Subsidy received by the employer is not considered to be a taxable receipt in the hands of the employer.

5. Employer Eligibility and a Group of Companies

A number of questions which have not already been addressed in guidance have been raised with Revenue around the treatment of a group of companies, notably with reference to the issue of cash reserves and the application of criteria in cases where there is one Group Service Company acting as an employer and recharging other group entities. Revenue have advised that further guidance is to issue in due course as to their views regarding the treatment of a group of companies.

6. Employer Eligibility and Charities

Revenue have confirmed that the scheme is available to charities. As regards the turnover test, this can be applied in the context of a forecast in terms of donations receivable. It is likely that during the crisis, especially for those who had plans for fundraising events in March and onwards, charities will experience an immediate drop in donations.

7. Eligibility of Directors and spouses of sole traders who may have an 'excepted employment' for PRSI purposes

It has been clarified that both cases will qualify for the scheme once they meet the employee eligibility criteria for the Scheme.

8. Non-Statutory Deductions / Pensions Contributions

This refers to non-statutory deductions from pay such as credit union, union fees and Local Property Tax ('LPT') and the interaction with net pay. Revenue have advised that, in order to ensure the intention and integrity of the Scheme, an employer should not apply such deduction unless they make an additional payment that exceeds the value of these deductions. This implies that if the employer is only paying the subsidy amount and no top-up, no deductions should be made. In cases where there is a deduction at source agreement with the employer regarding LPT, Revenue advise that the employee such seek an alternative payment method via MyAccount.

This guidance also extends to the deduction of pension contributions i.e. employee contributions should not be deducted in cases where they are only in receipt of the subsidy amount. We would advise any employers with pension schemes in place to also consult with their provider/pension scheme Trustees regarding advice on contributions during the crisis period. Revenue are to issue further guidance in due course on the issue of whether the subsidy and any top-up payment is considered pensionable pay. The general view held at this stage is that they are considered pensionable pay subject to Revenue's guidance/view on the matter.

In addition to the matters outlined above, there are a number of other points to note in terms of the ongoing operation of the Scheme.

> Revenue have indicated that the same ANWP under the Transitional Phase will be used in Phase 2 for the determination of the wage subsidy refund. This confirms the position that those with ANWP of €960 or above for the months of January and February 2020 will remain outside of the scheme, notwithstanding the fact that they may have been the subject to wage reductions/reduced working hours in the intervening period.

> It has been noted that in the case of some lower paid employees, the subsidy amount may fall below €350 and hence less than Pandemic Unemployment payment. In such cases, it would appear that such employees, from a purely financial perspective, would be better off if their employer had formally laid them off/ceased their employment. The position held at present is that such cases should be a matter for the employer and employees involved to decide as to the best course of action. This suggests that there is no immediate intention to address this apparent anomaly in the Scheme (e.g. by introducing a minimum 'floor' on the subsidy amount in certain cases) as part of Phase 2 of the Scheme, which will come into effect from 20 April 2020.

> The subsidy payment will be subject to Income Tax and USC on the employee after the expiration of the Scheme, notwithstanding the fact that the employer is not obliged to operate PAYE at source on making the payment. Revenue have advised that the subsidy payment will be taxed as part of an Employee End of Year Review, further guidance on which is to issue in due course. This will also extend to any Benefit-in-Kind ('BIK') which has been deferred during the period of the Scheme, as the Scheme allow for the operation of BIK to be suspended for all eligible employees within the Scheme.

> The tax treatment of the Pandemic Unemployment Payment is still under consideration and further guidance will be issued by Revenue in due course on the issue.

B. Other PAYE Related Measures

PAYE Deferral

Revenue have suspended the charging of interest on late payments of February, March and April PAYE (Employers) liabilities. This automatic exemption applies to SMEs only – other taxpayers are dealt with on a case by case basis. See further detail in VAT section below.

Relaxation of Benefit in Kind rules / Employee deductions

EWorking from home

- No BIK will arise where employers provide equipment such as laptops, printers, scanners and office furniture in order for employees to set up a working space in their homes.
- Revenue allow an employer make a tax free payment of €3.20 per day to an employee to reimburse home office costs.
- Alternatively the employee can claim a deduction for expenses incurred based on the formula:

Allowable utility bills x number of days e-working/365 x 10%*

***as a rule of thumb Revenue will accept 10% of home as being attributable to home office**

Employer-Provided Vehicles

For the duration of the Covid-19 restrictions, where an employee is in receipt of a vehicle (car or van) provided by his or her employer, the following may apply:

(a) Employer Takes Back Possession of the Vehicle

Where an employer takes back possession of the vehicle and an employee has no access to the vehicle, no BIK applies.

(b) Employer Prohibits Use

Where an employee retains possession of a vehicle, but the employer prohibits the use of the vehicle, no BIK shall apply if the vehicle is not used for private use. Records should be maintained to prove same.

(c) Employer Allows Private Use

Where an employee has a car provided by his or her employer and

- limited or reduced business mileage (if any) is undertaken during the period of the COVID-19 crisis and
- personal use is limited

the amount of business mileage travelled in January 2020 may be used as a base month for the purposes of calculating the amount of BIK due.

Small Benefit Exemption

There has been a relaxation to the rules around vouchers, namely that Revenue in 2020 will allow more than one voucher to be awarded in the calendar year (normally this is limited to one voucher per tax year) to allow scope for employers to recognise exceptional efforts for staff working during the crisis. This concession can only apply to staff who work during the restricted period, which would be the case for a supermarket. The overall cumulative tax-free limit of €500 still remains, only now you can pay by way of multiple vouchers over the year if desired for these key staff.

Flights / Holidays

No BIK will arise on reimbursements by an employer to an employee regarding holiday/flight cancellations or in relation to costs of assisting employees returning to the State provided:

- Provided the employee is integral to the business and was required by his employer to return to deal with COVID-19 related issues,
- the costs incurred are reasonable and o the employee is not otherwise compensated (i.e. via an insurance policy or direct claim to the service provider).

This may include costs related to family members who were on holiday or due to go on holidays with the employee.

Employer Provided Accommodation

No charge to BIK arises for the duration of the COVID-19 crisis on the provision of employer-provided temporary accommodation provided:

- the accommodation is temporary in nature and
- the reason is to mitigate against the risk of transmission.

C. Managing VAT Cashflow

Deferral of VAT Liabilities

- Revenue have suspended the charging of interest on late payments for March/April VAT and April PAYE (Employers) liabilities. This follows on from the previous announcement that the charging of interest on late payments is suspended for January/February VAT and both February and March PAYE (Employers) liabilities. This applies to SMEs only.
- Businesses, other than SMEs, who are experiencing difficulties in paying their tax liabilities are advised to either:
  - Contact the Collector-General's office through MyEnquiries or
  - Engage directly with their branch contacts in Revenue's Large Corporates Division or Medium Enterprises Division.

For the purposes of the suspension of interest, an SME is a business with turnover of less than €3 million which is not dealt with by either Revenue's Large Corporates Division or Medium Enterprises Division.

Importantly, Revenue still requires all businesses experiencing temporary cash flow difficulties to continue to send in tax returns on time.

If key personnel are unavailable, best estimates can be used to prepare the VAT returns and self-corrected subsequently without penalty if required.

Existing tax clearance and RCT rate status will remain in place over the coming months and will not be impacted by availing of any of the measures as outlined above.

Acceleration of Refunds

Revenue will continue to prioritise the approval and processing of VAT refunds to taxpayers. Where checks are necessary to allow repayment/refund claims, they will be conducted via MyEnquiries service or by telephone. Business should review and follow up on any outstanding VAT refunds for prior periods in light of this and seek to progress/expedite any open aspect queries.

Bad Debt Relief

As the economic impact of Covid 19 deepens, many business will unfortunately suffer increased bad debts.

Remember that a VAT deduction can be claimed for the VAT component of the write off by adjusting the current VAT return for the period in which the debt is written off.

Electronic VAT Refund (EVR) Reclaims

EVR reclaims allow a business to request a refund of VAT which they have been correctly charged by a supplier based in another EU Member State. A business should review their records to see if any such claims can be made. You can submit a maximum of 5 claims in any one calendar year.

Accounting for VAT/VAT Reporting

A cash receipts basis of accounting for VAT may be used where either 90% of sales are to non-registered persons or gross turnover is less than €2million per annum.

The cashflow benefit under the cash receipts basis is that VAT is due at the point of receipt from the customer, not on invoicing.

With declining sales, more businesses may be eligible to switch to the cash receipts basis.

Also, consider whether it is possible to switch from bi-monthly VAT filings to:

- Quarterly - where annual VAT payments are between €3,001 and €14,400
- Bi-annual if VAT payments are less than €3,000 annually or
- Annually (subject to direct debit setup and bi-monthly VAT liabilities of €50,000 or less)

For taxpayers in a permanent VAT refund position an application may be made to Revenue to lodge monthly VAT returns which should also improve cash flow.

Delayed Payments to Creditors

Remember where an invoice has not been paid within 6 months an adjustment must be made to the VAT return to repay the VAT reclaimed to Revenue.

This has always been and is likely to remain an area of focus for Revenue.

D. Corporation Tax

Early Refunds of R&D Tax Credits

In another welcome measure Revenue have announced that early payments are available for excess R&D tax credits that are due to be paid in 2020. Any company in an R&D tax credit refund position should avail of this opportunity to maximise cash flow.

Given the exceptional circumstances of the COVID-19 pandemic, Revenue have agreed to expedite the payment of any installments of excess R&D tax credit that are due to be paid in 2020. For eligible companies, the refunds due in 2020 would include:

- The final installment in respect of FY 2017
- The second installment in respect of FY 2018
- The first installment for FY 2019.

Once the form CT1 for 2019 is submitted, a request can be made via MyEnquiries to expedite the refund. Repayments will be processed even if iXBRL accounts have not been filed – the iXBRL accounts information should be filed as soon as possible.

Companies with a year end up to March 2020 would also be entitled to a refund in 2020 and are therefore entitled to avail of the new measures.

Please contact you usual RBK team if you wish to submit:

- Your corporation tax return for 2019 early to avail of the early refund mechanism.
- Expedite March 2020 accounts/tax returns

Preliminary Tax Payments

Large companies (with corporation tax liabilities in excess of €200,000 in the prior year) must make a payment on account of preliminary tax in the 6th month of the accounting year. This payment can be based on 50% of the prior year liability or 45% of the estimated current liability. For companies impacted by the Covid 19 crisis, a payment based on current year position may be preferable. Companies with a December year end are due to make preliminary tax payments on 23rd June 2020.

Loss making entities

Companies that have incurred losses should expedite the filing of tax returns so a claim can be made to utilise this loss against prior year profits.

Presence in the State or outside the State resulting from COVID-related travel restrictions

A taxable presence for corporation tax purposes can be triggered by an individual's presence in a State, in certain circumstances. Where such presence results from Covid-19 travel restrictions Revenue will:

- Disregard such presence in the State for corporation tax purposes and
- if an individual who would otherwise have been present in the State is present in another jurisdiction, Revenue will disregard such presence outside the State for corporation tax purposes

The individual and the company should maintain a record of the facts and circumstances of the **bona fide** relevant presence in the State, or outside the State, for production to Revenue if evidence that such presence resulted from COVID-related travel restrictions is requested.

E. RCT and PSWT

Information for Subcontractors

Revenue has suspended the Relevant Contracts Tax ("RCT") rate review that was scheduled to take place in March 2020 on the basis that a subcontractor's RCT rate may increase due to changes in their compliance position as a result of this review. Despite the RCT rate review being suspended to prevent any increase in a subcontractor's RCT rate, subcontractors can still check if their rate should be lower on the Revenue Online Service ('ROS') and can then 'self-review' to avail of a lower deduction rate.

Existing tax clearance and RCT rate status will remain in place over the coming months and will not be impacted by availing of any of the deferral mechanisms referred to in earlier sections.

PSWT Interim Refunds

To accelerate interim refunds of Professional Services Withholding Tax (PSWT) during the Covid-19 pandemic, Revenue have announced that PSWT interim refunds will be paid on the basis of a written statement issued by the accountable person where the relevant F45 form cannot be issued to the specified person due solely to the current Covid-19 circumstances.

F. Global Mobility

Special Assignee Relief Programme (SARP)

The 90-day employer filing obligation to avail of SARP is extended for a further 60 days. In exceptional cases where this extended deadline still does not provide sufficient time for employers to file the required return, an application may be submitted to Revenue for consideration on a case by case basis.

Trans-Border Workers Relief

Employees otherwise entitled to claim this relief who are required to work from home in the State due to COVID-19, are not precluded from claiming the relief.

PAYE Dispensation Applications

Given the restrictions on travel as a consequence of COVID-19, Revenue will not strictly enforce the 30-day notification requirement for PAYE dispensations applicable to short term business travellers from countries with which Ireland has a double taxation treaty who are going to spend in excess of 60 workdays in the State in a tax year.

Foreign Employments - Operation of PAYE

Revenue will not seek to enforce Irish payroll obligations for foreign employers in genuine cases where an employee was working abroad for a foreign entity prior to COVID-19 but relocates temporarily to the State during the COVID-19 period and performs duties for his or her foreign employer while in the State.

Multi-State workers

A foreign employer may continue to operate Irish payroll on the basis of a non-resident employee's established work pattern pre-COVID-19 where:

> the non-resident employee had been carrying out duties of a foreign employment partially in the State and partially in the foreign jurisdiction prior to COVID-19

> the foreign employer had applied payroll taxes in the State and the foreign jurisdiction based on the established work pattern prior to COVID-19

> the employee cannot return to the foreign jurisdiction as a result of the travel restrictions imposed by COVID-19

and

> the employee continues to carry out their duties of employment in the State.

The employee and the company should maintain a record of the facts and circumstances of the bona fide relevant presence in the State for production to Revenue if evidence is requested that such presence resulted from COVID-19 related travel restrictions.

PAYE Exclusion Order - Irish Contract of Employment

Regarding employees who are working abroad for a foreign employer under an Irish contract of employment where a PAYE exclusion order is in place, the position will not be adversely impacted where the employee works more than 30 days in the State due to COVID-19.

Residence rules - Force Majeure circumstances

Existing guidance states that where an individual is prevented from leaving the State on his or her intended day of departure due to extraordinary natural occurrences or an exceptional third party failure or action – none of which could reasonably have been foreseen and avoided – the individual will not be regarded as being present in the State for tax residence purposes for the day after the intended day of departure provided the individual is unavoidably present in the State on that day due only to 'force majeure' circumstances. Where a departure from the State is prevented due to COVID-19, Revenue will consider this 'force majeure' for the purpose of establishing an individual's tax residence position.

G. Other Opportunities

Business valuations during the Crisis

The turbulence and uncertainty in global and domestic markets makes a business valuation a very difficult exercise now. Business owners who had been considering involving employees or family members in the business are naturally focused solely on the business itself as they work their way through this crisis, with such succession planning being temporarily put on hold. However, now may be an opportune time to proceed with same, particularly if it can be established that the business valuation has been adversely impacted. The valuation itself will need careful consideration but in the event that there is a reduced valuation, some benefits are:

> Lower personal income tax implications on awarding shares to staff – for key staff that a business wishes to retain share schemes may be a very good alternative particularly where pay cuts/reduced bonuses are in play

> Lower capital gains tax for the shareholder on transferring the shares/business to family

> Lower gift tax for the beneficiary on receipt of a gift of shares/interest in the business

> Lower stamp duty costs.

Losses on investment portfolios

If, from an investment perspective, you have decided to realise losses on your portfolio, be mindful that:

> Capital losses can be used against gains in the current year or carried forward – they cannot be carried back.

> If shares disposed of at a loss are re-acquired within 4 weeks, the loss realised can only be used against that particular investment when subsequently disposed of

> If you have not used existing gift tax thresholds, a share portfolio that is breakeven or sitting at a loss could be transferred to a family member without any CAT liability or CGT liability. However, if losses arise on the transfer, such loss is a restricted connected party loss and can only be used to offset against gains on subsequent disposals to that family member. Stamp duty at 1% will apply on any transfer of shares.

How can RBK help?

If you need assistance to avail of any of the above measures or wish to discuss in confidence, please contact your usual RBK contact or:

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