



17TACD2023

Between

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against a refusal by the Revenue Commissioners (“the Respondent”) to allow the Appellant to avail of the Covid Restrictions Support Scheme (“CRSS”) for the period 21st June 2021 to 26th July 2021.
2. CRSS was introduced by section 11 of the Finance Act 2020. It amends the Taxes Consolidation Act 1997 (“TCA 1997”) by inserting two sections, section 484 and section 485.
3. Section 484 TCA 1997 sets out the objectives of the CRSS which it states are “*to provide the necessary stimulus to the economy.... so as to mitigate the effects, on the economy, of Covid-19...*”
4. Section 485 TCA 1997 sets out the eligibility criteria and details of the scheme. It permits eligible businesses to make a claim to the Respondent for a payment known as Advance Credit for Trading Expenses (ACTE).

5. Section 485 (24) TCA 1997 provides a right of appeal to the Commission where a Revenue Officer determines an entity does not meet the eligibility criteria for the scheme. In accordance with that section, the Appellant makes its appeal.

Background

6. The Appellant operates a public house which trades as "██████████" in Co. ██████.
7. On 19th November 2020, the Appellant registered for the CRSS. Between December 2020 and January 2022, the Appellant received the following payments:

Claim No	Period	Amt Paid
1	13.10.20 – 06.12.20	€9,263.20
2	21.12.20 – 10.01.21	€6,947.40
3	11.01.21 – 07.02.21	€4,631.60
4	08.02.21 – 07.03.21	€4,631.60
5	08.03.21 – 04.04.21	€4,361.60
6	05.04.21 – 09.05.21	€5,789.50
7	10.05.21 – 20.06.21	€6,947.40
8	20.12.21 – 23.01.22	€5,789.50
Total Payments Received		€48,361.80

8. On 6th October 2021, the Appellant's agent wrote to the Respondent as follows:

"As you are aware our client made a submission on the 20th June 2021 and wishes to make further submissions after that date and claim the final payment under the scheme.

Can you advise how this can be done on ROS?"

9. The following day, the Respondent replied as follows:

"In line with the CRSS Guidelines, there is an 8 week limit on all claims for affected periods inclusive of the Restart payment.

If a business does not make a claim for an affected period and that period then goes outside the 8 week limit, it is no longer available to claim unfortunately. In this case, the Restart payment is no longer payable as it is outside the 8 week limit I'm afraid.

Should you require additional support, you may qualify for the BRSS, details of which are available on the Revenue website and are based on a self-assessment."

10. Later that same day, the Appellant's agent replied stating:

"We understood that this was available to the 31st December 2021. As you are aware with the various business supports it has consumed many hours to discuss and advise clients together with the normal compliance matters in relation to filing other statutory returns to both Revenue and the Companies Office.

Can you advise if this 8 week limit can be appealed?"

11. On 8th October 2021, the Respondent advised as follows:

"As with any decision, you have the right of appeal. Please see the details below in relation to claim timelines.

Revenue has published detailed guidelines on the operation of the scheme on its website at www.revenue.ie. Section 5 of those Guidelines explains the time limits for submitting claims under the scheme. There is an eight-week time limit within which eligible businesses have to make their claim for payment under the CRSS.

Section 485 (9) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of Finance Act 2020) provides that a claim for an "advance credit for trading expenses" (i.e. a weekly CRSS payment) must be made no later than 8 weeks from the date on which the claim period to which the claim relates commences."

12. On 11th October 2021, the Appellant's agent further queried:

"Further to your email can you outline the Appeal Process and where do we lodge the Appeal?"

Can you also confirm that the claiming of the final payment (i.e. 3 weeks) must be claimed within 8 weeks of the last claim or is this a separate payment closing off any further payments for CRSS?"

13. The Respondent advised of the appeal procedure on 12th October 2021 and further advised that *"the eight-week limit includes all claims inclusive of the Restart payment"*.

14. On 23rd November 2021, the Appellant's agent stated that:

"As you are aware our client made a submission on the 20th June 2021 and wishes to make further submissions after that date and claim the final payment under the scheme. Can you advise how this can be done on ROS?"

(This submission on the 23rd November 2021 was identical to that received by the Respondent earlier on 6th October 2021.)

15. On 24th November 2021, the Respondent replied as follows:

“The last claims submitted were from May 10th - June 20th. The 8 week time limit for submitting any additional claims after this period has now passed and the CRSS registration is no longer active.

Please see the below from section 3 of the CRSS guidelines for further clarification:-

“A claim may be made through ROS as early as the beginning of the claim period and no later than eight weeks from the date on which the claim period commences. The eight-week time limit applies from the first day of a claim period, which in most cases will be the first day on which the Covid restrictions apply to the business concerned. Where Covid restrictions continue to apply to the business beyond a period of three weeks, the eight- week time limit applies from the first day of each three-week period for which the Covid restrictions continue to apply to the business.”

16. By correspondence dated 15th December 2021, the Appellant's agent wrote to the Respondent explaining why the claim had not been submitted within the eight -week period and further requesting that the payment be made:

“Further to previous correspondence in relation ACTE (Advance Credit for Trading Expenses) for the above we set out our clients claim for ACTE (CRSS restart subsidy)

- Weekly CRSS payment €1,157.90

- Final payment €6,947.40

We were not aware of the 8 week limitation to file claims until the 24th November 2021 [emphasis added]. Despite our best efforts of reviewing all guidelines issued by Revenue the 8 week time limit failed to come to our attention. Revenue guidelines were frequently updated and Revenue documents were voluminous and did not specifically highlight the critical 8 week limit as it clearly stated that CRSS was available to the 31st December 2021.

With respect we draw your attention to CRSS Guidelines – 10th December 2021 issued by your office and in particular to paragraph 7.3 'Triple restart week payments from 7th June 2021'

On reading this paragraph it appears that the 'Restart Subsidy' continues to be available and never expired. The Guideline is informative, specific and clear, however it is silent on the issue of any time limit that exists.

The Covid-19 restrictions have impacted heavily on our client:

- *Complete Cessation' of business was imposed from March 2020*
- *Outdoor dining was permitted subject to agreement from [REDACTED] City Council but our client was refused this facility as set out on correspondence from [REDACTED] City Council – attached.*
- *In June 2021 the order requiring 'Complete Cessation' was lifted and our client was allowed to reopen under significantly restricted trading conditions, Bar Counter closed, Table service only applied, Social distancing limited the company and trading hours were restricted*

With respect we believe that the period of bar closure should not be described as being significantly restricted. The reopening of the business by our client was under significantly restricted conditions and remains so today. We request that the above payment be made to our client.'

17. The Respondent replied to this correspondence on 16th December 2021 as follows:

"I wish to clarify that this decision was made on the basis of the details outlined in the CRSS guidelines under section 4.2.5, pg 23:

"Where the business chooses not to re-open after a period of Covid restrictions, that business will only be entitled to the additional re-start payment when they do re-open (and the claim must be made within 8 weeks of the lifting of the relevant Covid restrictions)."

along with the details on pg 54 under the "Sign & Submit" section:

"Where a business is eligible to claim the restart week, the claim must be made no later than 8 weeks from the date on which the restrictions cease

to apply to the relevant business. This means that the business should have recommenced its activity no later than that date."

In addition to the above referenced sections, the details are additionally included in examples 21, 25, 26, 29, 30 & 31 of the CRSS guidelines. As such and as this business did not submit the claims inclusive of the Restart week claim as outlined in the CRSS guidelines within the 8 week limit as referenced, there are no longer any further payments eligible to be claimed here I'm afraid."

18. A determination notice issued from the Respondent on 17th December 2021 which stated:

"...

Section 485 (9) of the Taxes Consolidation Act, 1997 (as inserted by Section 11 of Finance Act 2020) provides that a claim for an "advance credit for trading expenses" (i.e. a weekly CRSS payment) must be made no later than 8 weeks from the date on which the claim period to which the claim relates commences. For claimants who apply to register within the 8-week period, and whose applications are registered after the expiry of the 8-week period, claims must be made within 3 weeks of the date of registration.

Following full consideration of your application and further submissions, Revenue has determined that you have not submitted a claim for CRSS within the time frame as set out in the legislation. Accordingly, this renders you ineligible to avail of the CRSS for the period involved - June 21st to July 26th Restart - and Revenue has no discretion in the matter. The legislation does not allow for backdating of claims."

19. On 15th January 2022, the Appellant appealed the Respondent's determination notice to the Commission. The oral appeal was heard by the Commissioner on 22nd September 2022. The Appellant was represented by its agent and bookkeeper. The Respondent was represented by Counsel and members of its staff.

Legislation

20. The legislation relevant to this appeal is as follows:

Section 484 TCA 1997 – *"Objectives of Section 485, purposes for which its provisions are enacted and certain duty of Minister for Finance respecting those provisions' operation" provides:*

- (1) (a) *The objectives of section 485 are to—*
- (i) provide the necessary stimulus to the economy (in addition to that provided by Part 7 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and the Financial Provisions (Covid-19) (No. 2) Act 2020) so as to mitigate the effects, on the economy, of Covid-19, and*
 - (ii) if, as of 1 January 2021, no agreement stands entered into between the European Union and the United Kingdom (with respect to the future relations between them on the relevant matters), mitigate the effects on the economy which are apprehended may arise therefrom.*
- (b) In paragraph (a) ‘relevant matters’ means the matters described in Part II of the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom³.*
- (c) The purposes for which the several provisions of section 485 (in this section referred to as the ‘Covid Restrictions Support Scheme’) are, in furtherance of the foregoing objectives, enacted are:*
- (i) in addition to the provision of basic mechanisms to fulfil those objectives, to ensure the efficient use of the Covid Restrictions Support Scheme so as to minimise the cost to the Exchequer of the scheme (so far as consistent with fulfilment of those objectives);*
 - (ii) to avoid, where possible, allocation of resources to sectors of the economy that are not in need of direct stimulus by means of the Covid Restrictions Support Scheme (and which sectors may reasonably be expected to be restored to financial viability and an eventual growth path by the indirect effects of the scheme);*
 - (iii) to protect the public finances through mechanisms for the discontinuance or amendment of one or more of the payments under the Covid Restrictions Support Scheme (or for their variation) in defined circumstances;*
 - (iv) to take account of the need to reflect changes in circumstances of persons who, as businesses, are persons in respect of whom payments under the Covid Restrictions Support Scheme are being made, in cases where such persons avail themselves of other financial supports provided by the State;*
 - (v) to take account of changes in the State’s economic circumstances and the demands on its financial resources which may occur in the remainder of the current financial year and thereafter.*

(d) It shall be the duty of the Minister for Finance to monitor and superintend the administration of the Covid Restrictions Support Scheme (but this paragraph does not derogate from the function of the care and management conferred on the Revenue Commissioners by section 485(21)).

(e) Without prejudice to the generality of paragraph (d), the Minister for Finance shall cause an assessment, at such intervals as he or she considers appropriate but no less frequently than every 3 months beginning on 13 October 2020, of the following, and any other relevant matters, to be made—

(i) up-to-date data compiled by the Department of Finance relating to the State's receipts and expenditure,

(ii) up-to-date data from the register commonly referred to as the 'Live Register' and data related to that register supplied to the Department of Finance by the Department of Business, Enterprise and Innovation (whether data compiled by that last mentioned Department of State from its own sources or those available to it from sources maintained elsewhere in the Public Service),

(iii) such other data as the Minister for Finance may consider relevant in relation to the impact from, and effects of, Covid-19 or the fact (should that be so) of there not being an agreement of the kind referred to in paragraph (a)(ii),

and, if the following is commissioned, by reference to an assessment, on economic grounds, of the Covid Restrictions Support Scheme that may be commissioned by the Minister for Finance and any opinion as to the sustainability of the scheme expressed therein.

(f) Following an assessment under paragraph (e), it shall be the duty of the Minister for Finance, after consultation with the Minister for Public Expenditure and Reform, to determine whether it is necessary to exercise any or all of the powers under subparagraphs (i) to (vi) of subsection (2)(a) so, as appropriate, to—

(i) fulfil, better, the objectives specified in paragraph (a), or

(ii) facilitate the furtherance of any of the purposes specified in paragraph (c), and, if the Minister for Finance determines that such is necessary, the powers under one, or more than one, as provided in that subsection (2)(a), of those subparagraphs (i) to (vi) shall become and be exercisable by the Minister for Finance.

- (2) (a) *Where the Minister for Finance makes a determination of the kind lastly referred to in subsection (1) (f), the Minister for Finance shall, as he or she deems fit and necessary—*

(i) make an order that the reference in the definition of ‘Covid restrictions’ in section 485(1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period shall be limited in such respects as are specified in the order (including, if the Minister for Finance considers appropriate, by the specification of a requirement, with respect to the restriction of certain business activity, that particular business activity must be affected by the restriction to a specified extent) and an order under this subparagraph shall make such additional modifications to the provisions of section 485 as the Minister for Finance may consider necessary and appropriate in consequence of the foregoing limitation,

(ii) make an order that the day referred to in the definition of ‘specified period’ in section 485(1) as the day on which the period there referred to shall expire shall be such day as is later than 31 March 2021 (but not later than 31 December 2021) as the Minister for Finance considers appropriate and specifies in the order,

(iii) make an order that the percentage specified in section 485(4) (b) (i) shall be such a percentage, that is greater or lower than the percentage specified in that provision, as the Minister for Finance—

(l) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1)

(a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

And

(ii) specifies in the order,

(iv) make an order that the percentage specified in subparagraph (i) (l) or subparagraph (ii) (l) of section 485 (7) (a) shall be such a percentage, that is greater or lower than the percentage specified in that subparagraph (i) (l) or subparagraph (ii) (l), as the Minister for Finance—

(l) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(v) make an order that the percentage referred to in subparagraph (i) (II) or subparagraph (ii) (II) of section 485 (7) (a) shall be such a percentage, that is greater or lower than that percentage specified in that subparagraph (i) (II) or subparagraph (ii) (II), as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

(vi) make an order either that subsection (8) of section 485 shall cease to be in operation on and from such day, or that the election referred to in paragraph (b) of that subsection, which that subsection enables a qualifying person to make, shall not be exercisable save in such circumstances, as the Minister for Finance—

(I) considers necessary to—

(A) fulfil, better, the objectives specified in subsection (1) (a), or

(B) facilitate the furtherance of any of the purposes specified in subsection (1) (c),

and

(ii) specifies in the order,

and any matter that is provided for in the preceding subparagraphs is referred to in section 485(3) as a ‘modification’.

(b) Where an order under subparagraph (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a) is proposed to be made, a draft of the order shall be laid before Dáil Éireann and the order shall not be made unless a resolution approving of the draft has been passed by that House.

Section 485 TCA 1997, “Covid Restrictions Support Scheme” provides:

(1) *In this section—*

“applicable business restrictions provisions” shall be construed in the manner provided for in the definition of ‘Covid restrictions period’ in this subsection;

“business activity”, in relation to a person carrying on a trade either solely or in partnership, means—

(a) where customers of the trade acquire goods or services from that person from one business premises, the activities of the trade, or

(b) where customers of the trade acquire goods or services from that person from more than one business premises, the activities of the trade relevant to each business premises,

and where customers of the trade acquire goods or services from that person other than through attending at a business premises, that portion of the trade which relates to transactions effected in that manner shall be deemed to relate to the business premises or, where there is more than one business premises, shall be apportioned between such business premises on a just and reasonable basis;

“business premises”, in relation to a business activity, means a building or other similar fixed physical structure from which a business activity is ordinarily carried on;

“chargeable period” has the same meaning as in section 321 (2);

“claim period” means a Covid restrictions period, or a Covid restrictions extension period, as the context requires;

“Covid-19” has the same meaning as it has in the Emergency Measures in the Public Interest (Covid-19) Act 2020;

“Covid restrictions” means restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947, being restrictions for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

“Covid restrictions extension period” has the meaning assigned to it in subsection (2);

“Covid restrictions period”, in relation to a relevant business activity carried on by a person, means a period for which the person is required by provisions of Covid restrictions to prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity

is carried on (referred to in this section as ‘applicable business restrictions provisions’) and is a period which commences on the Covid restrictions period commencement date and ends on the Covid restrictions period end date;

“Covid restrictions period commencement date”, in relation to a relevant business activity, means the later of—

(a) 13 October 2020, or

(b) the day on which applicable business restrictions provisions come into operation (not having been in operation on the day immediately preceding that day);

“Covid restrictions period end date”, in relation to a relevant business activity, means the earlier of—

(a) the day which is three weeks after the Covid restrictions period commencement date,

(b) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(c) the day preceding the first day following the Covid restrictions period commencement date, on which the applicable business restrictions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in paragraph (b)), or

(d) 31 March 2021,

and, for the purposes of paragraph (c)—

(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that paragraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations;

“partnership trade” has the same meaning as in section 1007;

“precedent partner”, in relation to a partnership and a partnership trade, has the same meaning as in section 1007;

relevant business activity” has the meaning assigned to it in subsection (4);

“relevant geographical region” means a geographical location for which Covid restrictions are in operation;

“specified period” means the period commencing on 13 October 2020 and expiring on 31 March 2021;

“tax” means income tax or corporation tax;

“trade” means a trade any profits or gains arising from which is chargeable to tax under Case I of Schedule D.

- (2) (a) *Subject to subsection (8), where, in relation to a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions period, the period for which those restrictions continue to so apply is referred to in this section as a ‘Covid restrictions extension period’, which period commences on the foregoing day (referred to in this section as a ‘Covid restrictions extension period commencement date’) and ends on the Covid restrictions extension period end date.*

(b) In this section, ‘Covid restrictions extension period end date’, in relation to a relevant business activity, means the earlier of—

(i) the day which is three weeks after the Covid restrictions extension period commencement date,

(ii) the day that is specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the day on which the applicable business restrictions provisions shall expire,

(iii) the day preceding the first day, following the Covid restrictions extension period commencement date, on which the applicable business restrictions provisions cease to be in operation (by reason of the terms in which the Covid restrictions stand being different from how they stood as referred to in subparagraph (ii)), or

(iv) 31 March 2021,

and, for the purposes of subparagraph (iii)—

(i) the fact (if such is the case) that regulations made under sections 5 and 31A of the Health Act 1947 are revoked and replaced by fresh regulations thereunder (but the applicable business restrictions provisions continue to apply to the relevant business activity) is immaterial, and

(ii) the first reference in that subparagraph to the terms in which the Covid restrictions stand is a reference to their terms as provided for in those fresh regulations.

(c) Where, in relation a relevant business activity carried on by a person, applicable business restrictions provisions continue to apply, by reason of regulations made or amended under sections 5 and 31A of the Health Act 1947, to the relevant business activity on the day after the end of a Covid restrictions extension period, the period for which those restrictions continue to so apply is also referred in this subsection as a 'Covid restrictions extension period' which period commences on the foregoing day and ends on the Covid restrictions extension period end date.

(3) The following provisions made in this section, namely:

(a) the reference in the definition of 'Covid restrictions' in subsection (1) to restrictions provided for in regulations made under sections 5 and 31A of the Health Act 1947 that are for the purpose of preventing, or reducing the risk of, the transmission of Covid-19 and which have the effect of restricting the conduct of certain business activity during the specified period;

(b) the specification of 31 March 2021 in the definition of 'specified period' in subsection (1) as the date on which the period there referred to shall expire;

(c) the specification of 25 per cent in subsection (4) (b) (i);

(d) the specification of 10 per cent in subsection (7)(a)(i)(I) or (ii)(I);

(e) the specification of 5 per cent in subsection (7) (a) (i) (II) or (ii)(II);

(f) subsection (8) and the election referred to in paragraph (b) of it which a qualifying person is, by virtue of that subsection, enabled to make, shall, together with any other provision of this section that the following modification relates to, be construed and operate subject to any modification that is provided for in an order made under section 485(2)(a) and which is in force.

(4) (a) In this section—

“average weekly turnover from the established relevant business activity” means the average weekly turnover of the person, carrying on the activity, in respect of the established relevant business activity for the period commencing on 1 January 2019 and ending on 31 December 2019;

“average weekly turnover from the new relevant business activity”, means the average weekly turnover of the person, carrying on the activity, in respect of the new relevant business activity in the period commencing on the date on which the person commenced the business activity and ending on 12 October 2020;

“established relevant business activity” means, in relation to a person, a relevant business activity commenced by that person before 26 December 2019;

“new relevant business activity” means, in relation to a person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020;

“relevant business activity”, in relation to a person, means a business activity which is carried on by that person in a business premises located wholly in a relevant geographical region;

“relevant turnover amount” means—

- (i) where a person carries on an established relevant business activity, an amount determined by the formula—*

$$A \times B$$

where—

A is the average weekly turnover from the established relevant business activity, and

*B is the total number of full weeks in the claim period,
or*

- (ii) where a person carries on a new relevant business activity, an amount determined by the formula—*

$$A \times B$$

where—

A is the average weekly turnover from the new relevant business activity, and

B is the total number of full weeks that comprise the claim period.

(b) Subject to subsections (5) and (6), this section shall apply to a person who carries on a relevant business activity and who—

- (i) in accordance with guidelines published by the Revenue Commissioners under subsection (22), demonstrates to the satisfaction of the Revenue Commissioners that, in the claim*

period, because of applicable business restrictions provisions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of the person is carried on—

(I) the relevant business activity of the person is temporarily suspended, or

(II) the relevant business activity of the person is disrupted,

such that the turnover of the person in respect of the relevant business activity in the claim period will be an amount that is 25 per cent (or less) of the relevant turnover amount, and

(ii) satisfies the conditions specified in subsection (5),

(hereafter referred to in this section as a ‘qualifying person’).

(5) The conditions referred to in subsection (4) (b) (ii) are—

(a) the person has logged on to the online system of the Revenue Commissioners (in this section referred to as ‘ROS’) and applied on ROS to be registered as a person to whom this section applies and as part of that registration provides such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of registration and which particulars shall include those specified in subsection (14),

(b) for the claim period, the person completes an electronic claim form on ROS containing such particulars as the Revenue Commissioners consider necessary and appropriate for the purposes of determining the claim and which particulars shall include those specified in subsection (14),

(c) for the claim period, the person makes a declaration to the Revenue Commissioners through ROS that the person satisfies the conditions in this section to be regarded as a qualifying person for that claim period,

(d) the person has complied with any obligations that apply to that person in respect of the registration for, and furnishing of returns relating to, value-added tax,

(e) the person is throughout the claim period eligible for a tax clearance certificate, within the meaning of section 1095, to be issued to the person, and

(f) the person would, but for the Covid restrictions, carry on the business activity, that is a relevant business activity, at the business premises in

a relevant geographical region, and intends to carry on that activity when applicable business restrictions provisions cease to be in operation in relation to that relevant business activity.

- (6) *Where a relevant business activity of a qualifying person does not constitute a whole trade carried on by that person, then, for the purposes of determining whether the requirements in subsection (4)(b) (i) are met, the relevant business activity shall be treated as if it were a separate trade and the turnover of the whole trade shall be apportioned between the separate trade and the other part of the trade on a just and reasonable basis, and the amount of turnover attributed to the separate trade during the claim period shall not be less than the amount that would be attributed to the separate trade if it were carried on by a distinct and separate person engaged in that relevant business activity.*

- (7) *Subject to subsections (10) and (11), on making a claim under this section, a qualifying person shall, in respect of each full week comprised within the claim period, be entitled to an amount equal to the lower of—*

(a)(i) where the qualifying person carries on an established relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the average weekly turnover from the established relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the average weekly turnover from the established relevant business activity as exceeds €20,000,

Or

(iii) where the qualifying person carries on a new relevant business activity, an amount equal to the sum of—

(I) 10 per cent of so much of the person's average weekly turnover from the new relevant business activity as does not exceed €20,000, and

(II) 5 per cent of any amount of the person's average weekly turnover from the new relevant business activity as exceeds €20,000,

and

(b) €5,000 per week,

and any amount payable under this section is referred to in this section as an 'advance credit for trading expenses'.

- (8) (a) *Where, in relation to a relevant business activity carried on by a person—*

(i) applicable business restrictions provisions were in operation such that a qualifying person made a claim under this section in respect of a claim period and that claim, taken together with any claims made by the person immediately preceding that claim, is in respect of a continuous period of not less than three weeks, and

(ii) those applicable business restrictions provisions cease to be in operation, then, where that qualifying person, within a reasonable period of time from the date on which the applicable business restrictions provisions cease to be in operation, resumes or continues, as the case may be, supplying goods or services to customers from the business premises in which the qualifying person's relevant business activity is carried on, that qualifying person may make an election under paragraph (b).

(b) Where no part of the week immediately following the date on which the applicable business restrictions provisions ceased to be in operation in respect of a relevant business activity would otherwise form part of a Covid restrictions period or a Covid restrictions extension period, a qualifying person to whom paragraph (a) applies may elect to treat that week as a Covid restrictions extension period and may make a claim under this section in respect of that period.

(9) A claim made under this section in respect of an advance credit for trading expenses shall be made—

(a) subject to paragraph (b), no later than—

(i) eight weeks from the date on which the claim period, to which the claim relates, commences, or

(ii) if the date on which the qualifying person is registered as a person to whom this section applies (following an application which is made in accordance with subsection (5) (a) and within the period of eight weeks specified in subparagraph (i)) falls on a date subsequent to the expiry of the period of eight weeks so specified, three weeks from the date on which the person is so registered,

and

(b) in the case of a claim made under this section that is referred to in subsection (8), no later than eight weeks from the date on which the applicable business restrictions provisions concerned cease to be in operation.

- (10) *Where, for any week comprised within a claim period, a person is a qualifying person in relation to more than one relevant business activity carried on from the same business premises, and a claim is made in relation to each relevant business activity, the amount the qualifying person shall be entitled to claim under this section in respect of all of those relevant business activities for any weekly period shall not exceed the amount specified in subsection (7)(b) and subsection (7) shall apply with any necessary modifications to give effect to this subsection.*
- (11) (a) *Where a relevant business activity in respect of which a person is a qualifying person is carried on as the whole or part of a partnership trade, then any claim made under this section for an advance credit for trading expenses in respect of the relevant business activity shall be made by the precedent partner on behalf of the partnership and each of the partners in that partnership and the maximum amount of any such claim made in respect of the relevant business activity in any weekly period shall not exceed the lower of the amounts specified in subsection (7)(a)(i) or (a)(ii), as the case may be.*
- (b) *Where a claim is made under this section by a precedent partner for an advance credit for trading expenses in respect of a relevant business activity carried on as the whole or part of a partnership trade then—*
- (i) *for the purposes of subsections (15) and (16), each partner shall be deemed to have claimed, in respect of that partner's several trade, a portion of the advance credit for trading expenses calculated as—*
- $A \times B$
- where—*
- A is the advance credit for trading expenses claimed by the precedent partner, and*
- B is the partnership percentage at the commencement of the claim period,*
- (ii) *the precedent partner shall, in respect of each such claim, provide a statement to each partner in the partnership containing the following particulars—*
- (I) *the partnership name and its business address,*
- (II) *the amount of advance credit for trading expenses claimed by the precedent partner on behalf of the partnership and each partner,*
- (III) *the profit percentage for each partner,*

- (IV) *the portion of the advance credit for trading expenses allocated to each partner,*
 - (V) *the commencement and cessation date of the claim period, and*
 - (VI) *the chargeable period of the partnership trade in which the claim period commences,*
 - (iii) *for the purposes of subsections (17) and (18), references to a person making a claim shall be taken as references to the precedent partner making the claim on behalf of the partnership and each of its partners, and*
 - (iv) *for the purposes of subsection (19), section 1077E shall apply as if references to a person were references to each partner and the references to a claim were a reference to a claim deemed to have been made by each partner under subparagraph (i).*
- (12) *Any reference to 'turnover' in this section means any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, except for any amount recognised as turnover in that particular period of time due to a change in accounting policy.*
- (13) *Where a person makes a claim for an advance credit for trading expenses under this section, in computing the amount of the profits or gains of the trade, to which the relevant business activity relates, for the chargeable period in which the claim period commences, the amount of any disbursement or expense which is allowable as a deduction, having regard to section 81, shall be reduced by the amount of the advance credit for trading expenses and the advance credit for trading expenses shall not otherwise be taken into account in computing the amount of the profits or gains of the trade for that chargeable period.*
- (14) (a) *The particulars referred to in paragraphs (a) and (b) of subsection (5) are those particulars the Revenue Commissioners consider necessary and appropriate for the purposes of determining a claim made under this section, including—*
- (i) *in relation to a qualifying person—*
 - (I) *name,*
 - (II) *address, including Eircode, and*
 - (III) *tax registration number,*
 - and*

- (ii) *in relation to a relevant business activity—*
- (I) name under which the business activity is carried on,*
 - (II) a description of the business activity,*
 - (III) address, including Eircode, of the business premises where the business activity is carried on,*
 - (IV) where the business activity was commenced prior to 26 December 2019, the average weekly turnover of the qualifying person in respect of the business activity in the period commencing on 1 January 2019 and ending on 31 December 2019,*
 - (V) where a trade is carried on in more than one business premises, the turnover of the qualifying person in respect of the business premises, to which the relevant business activity relates, in the period commencing on 1 January 2019 and ending on 31 December 2019,*
 - (VI) where a business activity is a new relevant business activity, the date of commencement of the activity and the amount of turnover in respect of the new business activity beginning on the date of commencement and ending on 12 October 2020,*
 - (VII) the average weekly turnover in respect of an established relevant business activity or a new relevant business activity, as the case may be,*
 - (VIII) in respect of tax, within the meaning of section 2 of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clauses (IV) and (VI) the amount of tax that became due in accordance with section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010,*
 - (IX) such other total income excluding the relevant business turnover in respect of the total tax returned in respect of section 76 (1) (a) (i) of the Value-Added Tax Consolidation Act 2010, for the taxable periods comprised within the period of time referred to in clause (IV) or (VI),*

(X) expected percentage reduction in turnover of the qualifying person in respect of the business activity in the claim period, and

(XI) such other particulars, as the Revenue Commissioners may require.

(b) Subsequent to receiving the information requested under this section, the Revenue Commissioners may seek further particulars or evidence for the purposes of determining the claim.

(15) Where a company makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the company has not repaid the amount as required by subsection (17)(a)(II)—

(a) the company shall be charged to tax under Case IV of Schedule D for the chargeable period in which the claim period commences, on an amount equal to 4 times so much of the amount under this section as was not so permitted to be made, and

(b) an amount chargeable to tax under this subsection shall be treated as income against which no loss, deficit, credit, expense or allowance may be set off, and shall not form part of the income of a company for the purposes of calculating a surcharge under section 440.

(16) (a) Where an individual makes a claim under this section in respect of a claim period and it subsequently transpires that the claim was not one permitted by this section to be made, and the individual has not repaid the amount as required by subsection (17)(a)(II), the individual shall be deemed to have received an amount of income equal to 5 times so much of the amount under this section as was not so permitted to be made (referred to in this subsection as the 'unauthorised amount').

(b) The unauthorised amount shall, notwithstanding any other provision of the Tax Acts, be deemed to be an amount of income, arising on the first day of the claim period that is chargeable to income tax under Case IV of Schedule D.

(c) Where the taxable income of an individual includes an amount pursuant to paragraph (b), the part of the taxable income equal to that amount shall be chargeable to income tax at the standard rate in force at the time of the payment of the advance credit for trading expenses but shall not—

(i) form part of the reckonable earnings chargeable to an amount of Pay Related Social Insurance Contributions under the Social Welfare Acts, and

(ii) be an amount on which a levy or charge is required, by or under Part 18D.

(d) Notwithstanding section 458 or any other provision of the Tax Acts, in calculating the tax payable (within the meaning of Part 41A) on the unauthorised amount under this subsection, there shall be allowed no deduction, relief, tax credit or reduction in tax.

(e) In applying section 188 or Chapter 2A of Part 15, no account shall be taken of any income deemed to arise under this subsection or any income tax payable on that income.

(17) (a) Where subsequent to a person making a claim under this section, it transpires that -

- (i) the requirements in subsection (4) (b) are not met (and a claim in respect of which those requirements are not met is referred to hereafter in this subsection as an 'invalid claim'), or*
- (ii) the amount claimed exceeds the amount the person is entitled to claim under this section (and a claim to which this subparagraph applies is referred to hereafter in this subsection as an 'overclaim'),*

then the person shall, without unreasonable delay—

(I) notify the Revenue Commissioners of the invalid claim or overclaim, as the case may be, and

(II) repay to the Revenue Commissioners—

(A) in respect of an invalid claim, the amount paid in respect of that claim,

(B) in respect of an overclaim, the amount by which the amount paid in respect of that claim exceeds the amount the person is entitled to claim (hereafter referred to in this section as the 'excess amount').

(b) Where a person makes a claim under this section in respect of a claim period and it subsequently transpires that the claim is an invalid claim or an overclaim, as the case may be—

(i) then, subject to subparagraph (ii), the amount of the advance credit for trading expenses paid by the Revenue Commissioners in respect of the invalid claim, or the amount of the advance credit for trading expenses overpaid by the Revenue Commissioners in respect of an overclaim, as the case may be, shall carry interest as determined in accordance with section

1080 (2) (c) as if a reference to the date when the tax became due and payable were a reference to the date the amount was paid by the Revenue Commissioners, and

(ii) where the invalid claim or overclaim, as the case may be, was made neither deliberately nor carelessly (within the meaning of section 1077E) and the person complies with the requirements of paragraph (a)(II), the amount repaid to the Revenue Commissioners in respect of the invalid claim or overclaim, as the case may be, shall carry interest as determined in accordance with section 1080(2)(c) as if a reference to the date when the tax became due and payable were a reference to the date paragraph (a) is complied with.

(c) Paragraph (b) shall apply to tax payable on unauthorised amounts under subsections (15) and (16) as it applies to overpayments arising on invalid or overclaims.

(18) (a) For the purposes of this subsection, 'claim' and 'overpayment' shall have the same meanings respectively as they have in subsection (1) of section 960H.

(b) In this subsection, a claim period is a 'reduced claim period' where—

(i) in the case of a claim period which is a Covid restrictions period, the claim period ends on a date as provided for (in relation to that Covid restrictions period) by paragraph (c) of the definition of 'Covid restrictions period end date' in subsection (1), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions period commencement date) to be the date on which the applicable business restrictions provisions shall expire, and

(ii) in the case of a claim period which is a Covid restrictions extension period, the claim period ends on a date as provided for (in relation to that Covid restrictions extension period) by subsection (2) (b)(iii), and such date precedes the date that had been specified in the Covid restrictions (being those restrictions in the terms as they stood on the Covid restrictions extension period commencement date) to be the date on which the applicable business restrictions provisions shall expire.

(c) Where a qualifying person makes an overclaim in respect of a reduced claim period, the Revenue Commissioners shall be entitled to recover the excess amount from the person in accordance with paragraph (d) where the following conditions are met:

- (i) the claim is made before the end of the claim period; and*
- (ii) the claim is an overclaim solely by reason of the fact that the claim period is a reduced claim period.*

(d) The Revenue Commissioners shall be entitled to recover the excess amount referred to in paragraph (c) by—

- (i) setting the amount of an advance credit for trading expenses that the person is entitled to be paid in accordance with subsection (7) or (8) against the excess amount, or*
- (ii) where, after the end of the specified period, a repayment is due to the person in respect of a claim or overpayment, setting the amount of the repayment against the excess amount.*

(e) Where the conditions referred to in paragraph (c) are met and the excess amount is recovered by the Revenue Commissioners in accordance with paragraph (d) within a reasonable period of time from the end of the specified period, the excess amount shall not be an unauthorised amount under subsection (15) or (16), as the case may be.

(f) Where the conditions referred to in paragraph (c) are met, the excess amount shall carry interest as determined in accordance with section 1080 (2) (c) as if the reference to the date when the tax became due and payable were a reference to the day after the day on which the specified period ends.

(19) Any claim made under this section shall be deemed for the purposes of section 1077E to be a claim in connection with a credit and, for the purposes of determining an amount in accordance with section 1077E (11) or 1077E (12), a reference to an amount of tax that would have been payable for the relevant periods by the person concerned shall be read as if it were a reference to a claim in respect of a claim period made in connection with subsection (7).

(20) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person—

- (a) knowingly or wilfully delivers any incorrect return or statement, or knowingly or wilfully furnishes any incorrect information, in connection*

with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person, or

(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 furnish any incorrect information in connection with the operation of this section or the eligibility for the advance credit for trading expenses in relation to any person,

and

the provisions of subsections (3) to (10) of section 1078, and section 1079, shall, with any necessary modifications, apply for the purposes of this subsection as they apply for the purposes of offences in relation to tax within the meaning of section 1078.

(21) The administration of this section shall be under the care and management of the Revenue Commissioners and section 849 shall apply for this purpose with any necessary modifications as it applies in relation to tax within the meaning of that section.

(22) The Revenue Commissioners shall prepare and publish guidelines with respect to matters that are considered by them to be matters to which regard shall be had in determining whether—

(a) there are provisions of Covid restrictions that prohibit, or significantly restrict, members of the public from having access to the business premises in which the relevant business activity of a person is carried on in a Covid restrictions period, or Covid restrictions extension period, as the case may be, and

(b) as a result of the provisions referred to in paragraph (a), the turnover of the person in respect of the relevant business activity in the Covid restrictions period, or Covid restrictions extension period, as the case may be, will not exceed an amount that is 25 per cent (or less) of the relevant turnover amount.

(23) Notwithstanding any obligations imposed on the Revenue Commissioners under section 851A or any other enactment in relation to the confidentiality of taxpayer information (within the meaning of that section), the details referred to in clauses (I) and (III) of subsection (14) (a) (ii) shall, for all persons to whom an advance credit for trading expenses has been paid by the Revenue Commissioners under this section, be published on the website of the Revenue Commissioners.

- (24) (a) *Where a Revenue officer determines that a person is not a qualifying person within the meaning of subsection (4) (b), the Revenue officer shall notify the person in writing accordingly.*
- (b) *A person aggrieved by a determination under paragraph (a), may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date on the notice of the determination.*
- (c) *Where the Appeal Commissioners determine that a person is a qualifying person within the meaning of subsection (4)(b), the 8 week period specified in subsection (9), shall commence in respect of such a person on the date that determination is issued.*
- (d) *The reference to the Tax Acts in paragraph (a) of the definition of ‘Acts’ in section 949A shall be read as including a reference to this section.*

Submissions

Appellant

21. The Appellant stated that despite best efforts of reviewing all the guidelines issued by the Respondent, the eight-week limit failed to come to its attention. The Appellant submitted that these guidelines were voluminous, frequently updated and did not specifically highlight the eight-week deadline in which a claim was required to be submitted.
22. The Appellant advised that it had submitted CRSS claims both pre and post the periods under appeal on a timely basis. The Appellant stated that the CRSS claims for the periods under appeal comprised of “restart” payments and one “ordinary” payment. The Appellant submitted that it was unaware that the eight-week time period applied to both types of CRSS payment (i.e. both restart and ordinary). The restart payment was available to certain businesses on reopening after a period of lockdown, such as that of the Appellants, whereas the ordinary payment was made when a business was required to remain closed under Covid restrictions. This restart payment was provided to assist these businesses with the additional costs of reopening and was calculated over a three-week period at double the normal weekly CRSS rate which it had ordinarily received.
23. The Appellant submitted that the CRSS Guidelines, in particular paragraph 7.3 **[Appendix 1]**, entitled “*Triple restart week payments from 2 June 2021*” indicated

that the “Restart subsidy” continues to be available and no deadline was indicated for the making of a claim. The Appellant further submitted that the guidelines were informative, specific and clear but were silent on any deadline which existed for the making of a claim.

24. The Appellant made a number of submissions based upon the CRSS guidelines published on 22nd December 2021. In summation these submissions contended that the information published within those guidelines was published “*after the horse bolted*” and at the time the Appellant was required to submit his claim inadequate guidance was available informing it that its claim was required to be submitted within an eight-week period. The Commissioner disregards these submissions on the basis of the Respondent’s submissions outlined at paragraphs 33 to 36 below.
25. The Appellant further submitted that it was unfair that it had neither been provided with a copy of the CRSS guidelines by the Respondent nor informed by its trade association of the essential requirement to submit its CRSS claims within an eight-week period from the date which the claim arose.
26. The Appellant stated that its business was forced to close under government guidelines from the onset of Covid restrictions in March 2020 through to June 2021. The Appellant stated that it had tried to reopen for outdoor dining during this period but it was refused planning permission to accommodate outdoor seating by █████ Country Council and accordingly remained closed for business. The Appellant submitted that as its business had been severely affected by the prolonged closure and as the CRSS was implemented to assist such businesses, then the Commission should allow its appeal.
27. The Appellant further submitted that the eight-week time period was an unfair obligation to impose on the Appellant as there was no such restriction imposed upon the Respondent and as such section 485 TCA 1997 was disproportionate.
28. In summation, the Appellant submitted that it was unaware and not adequately informed that an eight-week deadline applied to its CRSS claims and as no such obligation was imposed on the Respondent, the CRSS legislation was disproportionate. Given that position, the Appellant requested that the Commission allow its appeal.

Respondent

29. The Respondent acknowledged that the Appellant was entitled to receive the payments for the period under appeal subject to complying with the legislative requirements governing those payments.
30. The Respondent stated that neither they nor the Commission enjoyed the jurisdiction to infer words into the legislation and as such both it and the Commission were required to implement the legislation as enacted by the Oireachtas without deviation or expansion.
31. Turning to the legislation, the Respondent stated that in order for a payment to be paid under the CRSS the Appellant was required to submit a claim within a timeframe of eight weeks from the date on which the claim arose. The Respondent submitted that as the Appellant had not so done, then eligibility for the periods under appeal must be denied to the Appellant.
32. The Respondent submitted that the provisions of section 485 (9) (a) (1) TCA 1997 which provide the criteria for submitting a claim was not a discretionary provision of the TCA 1997 owing to the inclusion of the word “*shall*” in those provisions. The Respondent submitted that as the legislation required the Appellant to have made the claim within the eight-week period and as there was no discretion within the provision then the Appellant’s claim could not succeed.
33. The Respondent submitted that not alone was the legislation clear in relation to the time period but the guidelines (see – **Appendix 1**) which were published by the Respondent on 23rd October 2020 at page 11 stated:
- “A claim may be made through ROS as early as the beginning of the claim period (see Section 5.2 for guidance on the term “claim period”) and no later than 8 weeks from the date on which the claim period commences.”*
34. The Respondent submitted that from the date the original CRSS guidelines were published on 23rd October 2020 to the closure of the CRSS, there was 23 amendments to those guidelines and each time those guidelines were amended they were made publically available by the Respondent on its website following an advertising campaign.
35. The Respondent submitted that at the time the Appellant was required to submit its claim, the original guidelines had been amended at paragraph 7.4 which was entitled

“How to claim a Re-start week”. It began, “There is a four stage process for making a claim of the restart week “ and proceeded to detail step 4 as:

“Step 4 sign and submit - where a business is eligible to claim the restart week the claim must be made no later than eight weeks from the date on which the restriction ceased to apply to the relevant business.”

36. The Respondent further submitted that those guidelines specifically referenced the eight-week timeline for the submission of CRSS claims, in particular at paragraphs 4.2.5 and 7.4, in addition to providing numerous illustrative examples which were listed as examples 21, 25, 26, 27 29, 30 and 31 of those guidelines. Counsel for the Respondent opened a number of these examples as follows:

“Example 25

Family Hotel Limited can make a claim for a restart week when it is about to recommence its activities. The claim must be made no later than eight weeks from the date on which the restrictions to which the restart week relates are lifted.

Example 26

The claim must be made no later than eight weeks from the date on which the restrictions to which the restart week claim relates are lifted.”

Example 27

The claim must be made no later than eight weeks from the date on which the restrictions to which the restart claim relates are lifted.”

[Emphasis given to underlined sections.]

37. The Respondent submitted the extensive guidance and examples which were available when the Appellant submitted its claim were sufficiently clear and as such the Commission should disregard the Appellant’s submissions to the contrary.

38. The Respondent further submitted that the Appellant’s submissions which contended that section 485 TCA 1997 was unfair and disproportionate were beyond the scope of the Commission and as such should be disregarded.

39. In summation, the Respondent submitted that the Appellant was required to submit a claim for CRSS payments within a period of eight weeks and as it had not so done, the Commission were required under the strict confines of the legislation to dismiss the appeal.

Material Facts

40. The Commissioner found the following material facts from the documentary evidence, which were not contested by the Respondent:

40.1.1 On 19th November 2020, the Appellant registered on the CRSS scheme.

40.1.2 The Appellant submitted and received payments under the CRSS scheme from the date of registration until 20th June 2021.

40.1.3 On 6th October 2021, the Appellant applied for CRSS payments which covered the period 21st June 2021 to 26th July 2021.

40.1.4 Subject to complying with the legislative requirements, the Appellant was entitled to receive CRSS payments for those periods.

40.1.5 On 8th October 2021, the Respondent provided the legislative provision which detailed that CRSS claims were required to be submitted within a period of eight weeks from the date on which the claim arose.

40.1.6 A determination notice was issued by the Respondent on 17th December 2021 which refused the Appellant CRSS payments for the periods 21st June 2021 to 26th July 2021.

40.1.7 This determination notice explained that the reason for the refusal was because the Appellant did not satisfy the applicable legislative requirements.

40.1.8 The Appellant submitted further CRSS claims after the 26th July 2021 which were submitted in accordance with the time requirements of the legislation and were paid by the Respondent.

41. In addition, the Commissioner found the following facts which are required eligibility conditions for inclusion in the CRSS:

41.1.1 The Appellant carried on business activities after the “Covid-19 restrictions” were lifted.

41.1.2 The Appellant had complied with all their VAT registration and return obligations.

41.1.3 The Appellant held a tax clearance certificate at all material times.

41.1.4 The Appellant’s business was operated from a business premises.

Analysis

42. Before embarking on exploration of the substantive issue, owing to the Appellant's submissions that section 485 TCA 1997 is unfair and disproportionate, the Commissioner deems it desirable that an understanding is provided of the jurisdiction and scope of the Commission.
43. The jurisdiction of the Commission was considered by the Court of Appeal in the recent seminal case of *Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*"). In *Lee*, it was held that the Commission are a "creature" of statute and so must live by statute and as such the Commission's functions are limited to those expressly conferred by the TCA 1997.
44. Those functions are substantially set out in the provisions of section 940 to 949 TCA 1997 and in summation provide that the function of the Commission is to adjudicate, hear and determine appeals against decisions and determinations of the Respondent regarding taxes and duties. In so doing the Commission is required to apply the law as enacted by the Oireachtas without deviation or expansion. It follows that the Commission does not have the power to insert words into the legislation and must in fulfilling its functions operate within the strict confines of the legislation.
45. As it is not in dispute that the Appellant was entitled to avail of CRSS for the periods under appeal (subject to satisfying the requisite criteria), this leaves the net issue to be determined by the Commissioner as to whether the claim submitted by the Appellant on 6th October 2021 is a valid claim.
46. In order to so do, regard must be had by the Commissioner to the provisions of section 485 (9) TCA 1997 which sets out the legislative basis for a valid claim. It states "*A claim made under this section in respect of an advance credit for trading expenses **shall** [emphasis added] be made...no later than ... eight weeks from the date on which the claim period, to which the claim relates*".
47. As that provision is clear and unambiguous the Commissioner rejects the Appellant's proposition that the provision is unclear in any respect. Put simply, it states that for a valid claim to exist, the Appellant must have submitted the claim within a period of 8 weeks subsequent to the period to which it relates. The use of the word "*shall*" in that section mandates that there is no discretion conferred on the Commissioner to deviate from that wording and the requirements contained within the provision.
48. As the Appellant submitted its claim for the period under appeal being 21st June 2021 to 26th July 2021 on 6th October 2021, it did not fulfil the statutory requirement to

submit the claim within the specified period of eight weeks. Thus, the appeal must fail and the Appellant's claim is denied.

49. Section 485 (8) TCA 1997 sets out the legislative basis which provides for payment of the "restart payment". As that section provides that the payment made is identical in nature to an "ordinary payment" of CRSS (albeit a multiple of the amount ordinarily paid) and having regard to the provisions of section 485 (9) which require a claim for CRSS payments, simpliciter, to be made within an eight-week period, it follows that the Appellant's submissions that the ordinary and restart payments have different requirements attached to them void.

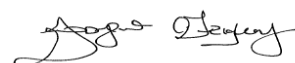
50. The burden of proof lies with the Appellant. As confirmed in *Mennolly Homes Limited v The Appeal Commissioners & Anor* [2010] IEHC49, the burden of proof is, as in all taxation appeals, on the taxpayer. The Commissioner finds that the Appellant has not discharged the burden of proof in this appeal and finds that the Appellant has not shown that they were entitled to avail of the CRSS payments for the periods 21st June 2021 to 26th July 2021.

Determination

51. For the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in demonstrating its eligibility for inclusion in the CRSS for the periods 21st June 2021 to 26th July 2021.

52. It is understandable that the Appellant may be disappointed with the outcome of his appeal but the Commissioner has no discretion to deviate from the legislation. The Appellant was correct to avail of its right of appeal and to check its legal entitlements.

53. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
04 November 2022

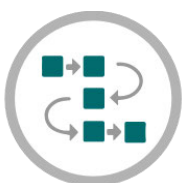


Covid Restrictions Support Scheme



Guidelines on the operation of the Covid Restrictions Support Scheme

23 October 2020



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1. Overview of the CRSS

Details of the proposed Covid Restrictions Support Scheme (“CRSS”) were published in the Finance Bill 2020. The CRSS is a targeted support for businesses significantly impacted by restrictions introduced by the Government under public health regulations to combat the effects of the Covid-19 pandemic.

The key features of the proposed scheme are:

- The CRSS will provide support for companies and self-employed individuals carrying on a trade or trading activities, either solely or in partnership, the profits from which are chargeable to tax under Case I of Schedule D, from a business premises located in a region subject to restrictions introduced in line with the Living with Covid-19 Plan, with the result that the business is required to prohibit or considerably restrict customers from accessing their business premises. Generally, this refers to Covid restrictions at Level 3, 4 or 5 of the Government’s Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation.
- Where a company or a self-employed individual is either forced to temporarily close their business, or the business is required to operate at significantly reduced levels, because of the restrictions, the company or self-employed individual will qualify for the support.
- To qualify under the scheme, a business must be able to demonstrate that, because of the Covid restrictions, the turnover of the business in the period for which the restrictions are in operation, and for which a claim is made, will be no more than 25% of an amount equal to the average weekly turnover of the business in 2019 (or average weekly turnover in 2020 in the case of a new business) multiplied by the number of weeks in the period for which a claim is made.
- A qualifying person will be able to make a claim to Revenue under the CRSS for a cash payment to be known as an “Advance Credit for Trading Expenses”. This payment will be equal to 10% of their average weekly turnover in 2019 up to €20,000 and 5% thereafter, subject to a maximum weekly payment of €5,000, for each week that their business is affected by the Covid restrictions. For businesses established between 26 December 2019 and 12 October 2020, the claim will be based on their weekly average turnover in the period between the date of commencement and 12 October 2020 (subject to the weekly cap of €5,000).
- The person must register to claim on the Revenue Online Service (ROS), provide certain information and make a declaration that they satisfy the conditions to make a claim. Where Covid restrictions for a geographical region are extended beyond the date on which they were due to expire, a new claim may be made.

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- To make a claim under the scheme, a number of other conditions must be satisfied including that the person has an up to date tax clearance certificate and complied with their VAT obligations.
- Provision is made for the publication of the names of claimants on the Revenue website.

The scheme will operate on a self-assessment basis. A person registering their details and the details of their business activity for the purposes of a making a claim should retain evidence supporting their basis for making a claim under the scheme, which may be requested by Revenue under future eligibility checks.

The scheme will operate from 13 October 2020 to 31 March 2021 and there is provision for the Minister for Finance to vary aspects of the scheme by order, specifically the restrictions, the end date, the percentage rate payable and the turnover test to determine a person's eligibility.

In this document, information is provided on how the CRSS will operate, based on proposed legislation contained in Finance Bill 2020, as initiated.

2. Who is eligible to make a claim under the CRSS?

Companies and self-employed individuals will be eligible to make a claim for an Advance Credit for Trading Expenses (“ACTE”) under the CRSS where:

- (a) the company or self-employed individual carries on a trade or trading activities, either solely or in partnership, from a business premises located wholly within a region of the country for which restrictions announced by the Government to combat the effect of Covid-19 are in operation – referred to as a ‘**relevant business activity**’ (refer to section 4.1), and
- (b) under the specific terms of the **Covid restrictions** in operation for the region in which the relevant business activity is carried on, members of the public are either prohibited from accessing, or restricted from accessing, the business premises in which the relevant business activity is carried on (refer to section 4.2), and
- (c) as a result of the Covid restrictions, the company or self-employed individual’s turnover from the relevant business activity in the period for which the restrictions are in operation, will be **no more than 25%** of an amount based on the average turnover of the business in 2019 (or in the case of a new business, an amount based on the average turnover of the business in 2020) (refer to section 4.3), and
- (d) the company or self-employed individual meets **certain other conditions** such as having a tax clearance certificate and having complied with obligations in relations to VAT (refer to section 4.4).

The above eligibility criteria must be met by a claimant in respect of each period for which an ACTE is being claimed under the CRSS, referred to as a “claim period” (refer to section 5 for information on how a claim period is determined). Where a person meets the eligibility criteria, the person will be able to make a claim under the CRSS (section 4).

3. How to make a claim

Where a company or self-employed individual is eligible to make a claim under the CRSS, a **claim may be made through the Revenue Online System (ROS)** for an ACTE.

Detailed guidance on the eligibility criteria is provided in Section 4. The amount of an ACTE that a qualifying person can claim for a claim period will be calculated by reference to a weekly amount based on the qualifying person's previous turnover in respect of the business activity, subject to a weekly cap of €5,000. Further information on the computation of the amount of an ACTE that can be claimed is set out in section 6.

A claim may be made through ROS as early as the beginning of the claim period (see Section 5 for guidance on the term "claim period") and no later than 8 weeks from the date on which the claim period commences.

A two-step process is necessary to make a claim under the CRSS. The qualifying person must:

1. first register for CRSS on ROS, and
2. then complete a claim in respect of a claim period or claim periods.

Where a qualifying person is satisfied that they are eligible to claim the CRSS, having regard to the eligibility criteria outlined in Section 4 and will maintain the necessary supporting documentation to demonstrate that eligibility, they may register for the CRSS on ROS. Once successfully registered, it will be necessary for the person to complete a claim on ROS in respect of each claim period as outlined in Section 3.2. While supporting documentation is not required to be submitted with the claim, Revenue may request documentation to substantiate the claim at a later date (see Section 4.4.2 for details of the type of documentation Revenue will expect in support of a claim).

3.1. Step 1: Registration

It will be necessary to register for CRSS via the eRegistration system on ROS and the facility to register will be available soon. It is important to note that the person must have an up to date tax clearance certificate in order to successfully register (see Section 4.4.1 for details on how to obtain a tax clearance certificate).

As part of the registration process, the person will be required to provide details in respect of the business premises from which the person carries on their relevant business activity or, if there is more than one, each business premises from which the person carries on a relevant business activity.

The following information is required for registration;

- Business / Premises Name (required for each business premises in which a relevant business activity is carried on and for which a claim will be made),

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- Address including Eircode (required for each business premises in which a relevant business activity is carried on and for which a claim will be made),
- Business Sector,
- Average weekly turnover in respect of 2019 (required for each business premises in which a relevant business activity is carried on and for which a claim will be made) for business established before 26 December 2019,
- Average actual weekly turnover for 2020 (required for each business premises in which a relevant business activity is carried on and for which a claim will be made) for businesses established on or after 26 December 2019 and before 13 October 2020,
- Date of commencement for new business,
- VAT in respect of T1 on VAT 3 (i.e. VAT on outputs),
- Other Income in respect of which VAT was charged.

3.1.1. Registration Declaration

As part of the registration process, taxpayers will be required to declare that they meet the eligibility criteria for the scheme and that the information provided is correct and complete.

3.2. Step 2: Making a claim for CRSS

A claim portal in respect of CRSS will be available via the eRepayments system on ROS from mid-November. It is important to note that the CRSS 'Tax Head' will only be visible to those taxpayers who have successfully completed the CRSS eRegistration process.

Qualifying persons can make a claim for each claim period in which they meet the eligibility criteria and a new claim should be made for each claim period. Before any new claim, taxpayers should review the eligibility criteria in Section 4 and ensure they meet all conditions before making a claim for each claim period.

The following information will be required at the claim stage:

- Business Premises (in which a relevant business activity is carried) in respect of which a claim is made,
- Claim period start week,
- Claim period end week.

3.2.1. Claim Declarations

As part of the claim process, taxpayers will be required to declare that the information provided is correct and complete and to acknowledge that, as a recipient of the CRSS, details of the business will be published on the Revenue website.

4. Eligibility criteria for making a claim under the CRSS

4.1. Requirement 1 – Relevant business activity

To make a claim under the CRSS, a person must carry on a relevant business activity.

A **relevant business activity** is a **business activity** carried on by a person in a **business premises** located in a geographical region subject to Covid restrictions.

Where a person carries on a business activity from multiple business premises, then the business activity carried on from each business premises located in a geographical region subject to Covid restrictions will be regarded as a relevant business activity.

4.1.1. What is a business premises?

For the purposes of the CRSS, a **business premises** is the building, or similar fixed physical structure, in which a business activity is ordinarily carried on. Mobile premises, or premises which are not permanently fixed in place, do not meet the definition of business premises. Examples of what would not meet the definition of a business premises for these purposes include vans, trucks or similar vehicles and stalls such as market stalls or trade fair stalls.

4.1.2. What constitutes a business activity?

A **business activity** is, depending on the circumstances, a person's trade or trading activities carried on from a business premises, the profits from which are chargeable to tax under Case I of Schedule D.

Where customers of the person's trade acquire goods or services from the person from a single business premises, then the person's business activity is the trade carried on from that business premises. Where customers of the person's trade acquire goods or services from that person from multiple business premises, trading activities carried on from each of the business premises will be regarded as a business activity.

Example 1

Mr. B carries on a retail trade, a gift shop, from a premises in Westport, Co. Mayo. In this example, Mr. B's business activity is the trade carried on from that business premises.

Where Covid restrictions (see Section 4.2) apply for Co. Mayo, that business activity will be regarded as a relevant business activity.

Example 2

Ms. C carries on a retail trade consisting of the sale of Aran jumpers from two small shops, one in Co. Galway and the other in Co. Clare. For the purposes of the CRSS, Ms. C has two business activities, one relating to the trading activities carried on from her business premises in Co. Galway and the other relating to her trading activities carried on from her business premises in Co. Clare.

Where Covid restrictions are in operation for both Co. Galway and Co. Clare, Ms C will have two relevant business activities.

4.1.3. More than one relevant business activity carried on from the same business premises

A person may carry on more than one relevant business activity from the same business premises, such as where the person carries on separate trades from that premises. Depending on the particular circumstances, some or all of those relevant business activities may qualify for an ACTE under the CRSS. However, where a person qualifies for an ACTE in respect of more than one relevant business activity carried on from the same business premises, the maximum amount of an ACTE that can be claimed in respect of all of them cannot exceed the cap of €5,000 per week (see Section 6).

Example 3

Mr. S operates two trades from the same premises in Rosslare, Co. Wexford – a pub and a supermarket (which is attached but with a separate entrance). The Government Covid restrictions in force for Co. Wexford are such that the pub must prohibit customers from entering the premises, although a takeaway and delivery service is allowed. There are no restrictions in place which would require Mr. S to significantly prohibit customers from entering the supermarket, although general public health advice does apply around social distancing and general protective measures. Mr. S is not set up to operate a takeaway or delivery service from the pub, so he is forced to temporarily close the pub, and although he continues to run the supermarket, he has noticed a significant drop in turnover.

Mr. S has two relevant business activities operating from the same business premises. However, only one relevant business activity, being the pub trade, is eligible for support under the CRSS. This is because, under the terms of the Covid restrictions, customers of the pub trade are prohibited from accessing the part of the premises in which the pub trade is carried on (see Section 4.2.1 below). No such restrictions apply in connection with the supermarket.

To make a claim under CRSS, Mr. S must satisfy the turnover conditions in relation to the relevant business activity (pub trade), and other qualifying criteria (see Section 4.4).

4.2. Requirement 2 – Impact of Covid restrictions; access to the business premises

In order to be eligible to make a claim for an ACTE under the CRSS in a claim period, a person must be able to demonstrate to Revenue that, as a direct consequence of **Covid restrictions**, customers are prohibited or significantly restricted from accessing their business premises (see 4.1.1 for what is regarded as a business premises for these purposes), and as a result, that person's relevant business activity in the claim period (see Section 5) will either be temporarily suspended or disrupted, with the result that turnover for that claim period will be no more than 25% of the average weekly turnover in 2019 for a period equal to the same number of weeks in (or using 2020 turnover figures for new businesses) (see Section 6.2).

4.2.1. What are the Covid restrictions?

On 15 September 2020, the Government published "[Resilience and Recovery 2020-2021 – Plan for Living with Covid-19](#)" for managing the Covid-19 pandemic in the short to medium term. Included in the publication is a "Framework for Restrictive Measures" which was developed based on a five "Levels" approach. Each level contains guidelines which are intended, collectively, to contribute to lowering the risk of transmission of Covid-19 and which aligns with the deemed risk level at the time. The various measures apply to society as a whole with many also having direct impact on the business community. In certain instances, the public health restrictive measures introduced by the Government may result in businesses having to close completely for a period of time and, in other instances, they may significantly restrict how customers may access a business premises, and they may impact the goods and services offerings that can be provided by a business from its business premises.

The public health restrictive measures, as referenced in the Level 1-5 Framework for Restrictive measures broadly apply to the following business:

- Commercial wedding venues
- Commercial indoor and outdoor events
- Commercial sporting events
- Gyms, leisure centres and swimming pools
- Museums, public galleries and other similar cultural attractions
- Bars, cafes and restaurants (including Hotel bars, cafes and restaurants)
- Pubs, Nightclubs, discos and casinos
- Hotels, B&B's, Guesthouses and similar accommodation providers
- Retail (inclusive of services)
- Commercial park, commercial children's play centres and theme parks

The CRSS scheme is targeted at those businesses which, under the specific terms of public health restrictions, introduced in line with the Living with Covid-19 Plan, **are required to**

prohibit or considerably restrict customers from accessing their business premises such that the business is required to temporarily suspend its activities or its business is significantly disrupted. Generally, this refers to restrictions at Level 3, 4 or 5 of the Government's Plan for Living with Covid-19 but certain businesses may qualify for the support where lower levels of restrictions are in operation, and as a result they have had to temporarily suspend their business or they have been significantly disrupted as a result of having to prohibit or considerably restrict customers from accessing their business premises.

The general public health guidelines around social distancing and related protective measures apply to society as a whole and are important and necessary measures for lowering the risk of transmission of Covid-19. However, these measures are not the level of Covid restrictions that are required to demonstrate eligibility for the CRSS. For the CRSS, the restrictions must require the person to either prohibit, or significantly restrict, customers from accessing their business premises.

4.2.2. A business must ordinarily operate from a fixed business premises to which specific Covid restrictions apply

Where businesses ordinarily operate from a fixed business premises (generally a building) located in a region for which restrictions are in operation, they may qualify under the scheme provided they meet the eligibility criteria, including the requirement that customers are either prohibited, or significantly restricted, from accessing their business premises to purchase goods or services due to the specific terms of the Covid restrictions announced by Government.

Example 4

Showtime Theatres Limited operates a large theatre in Dublin city centre. The business premises encompass a 1,000-seat theatre, a bar and cloakroom facilities. The Covid-19 restrictions in place in Co. Dublin in October 2020 prohibit all theatres from opening their doors to the public and as a result Showtime Theatres Limited has temporarily closed but does intend to re-open when allowed in the future.

As the company ordinarily operates from a fixed business premises and, under the terms of Covid restrictions, it is not permitted to allow customers to access its business premises, the company will be entitled to make a claim under CRSS provided all other criteria of the scheme are met.

Where a person does not ordinarily operate from a fixed business premises to which Covid restrictions apply, that person will not meet the eligibility criteria.

Example 5

Ms P runs an online gift store. She operates the website from her home in Bray Co. Wicklow and rents a small unit in a local warehouse for storing her stock. All of Ms. P's business is transacted through her website, and all of the products are delivered directly to the customer.

Although there are Government restrictions in place for Co. Wicklow, there are no restrictions on Ms. P running her business. Ms. P does not have a fixed business premises to which Covid restrictions apply and therefore does not meet the eligibility criteria to claim under the CRSS.

4.2.3. What if a business is prohibited or significantly restricted from allowing customers to access parts of a business premises in which a trade is carried on?

There may be cases where, under the terms of Covid restrictions, customers of a relevant business activity may be restricted from accessing substantial elements of the business premises in which a relevant business activity is carried on, with the result that substantial parts of the relevant business activity will either be suspended or significantly disrupted. In those circumstances, provided that all other eligibility criteria are met (as outlined in this section 4) in relation to the entire relevant business activity, it will be accepted that the business will be eligible to make a claim under the CRSS.

Example 6

Large Hotels Limited operates a hotel in Kilkenny city. The hotel business premises incorporate 200 hotel rooms, a large banqueting hall used for weddings and conferences, a hotel bar and a restaurant. Whilst the hotel has separate revenue streams, these are all part of the one trade of hotel keeping.

Government restrictions in place for Co. Kilkenny are such that while the hotel may remain open, hotel services are restricted to residents only. As a result, Large Hotels Limited is significantly restricted from allowing customers into parts of its premises given that conferences are prohibited, weddings are restricted to 25 patrons and restaurants and bar service to non-guests is restricted to takeaway and delivery only.

Large Hotels Limited will be entitled to make a claim under CRSS provided all other eligibility criteria of the scheme are met. For these purposes, turnover from all trading activities carried on from the hotel will be taken into account for the purposes of determining eligibility.

4.2.4. What if a business is not prohibited or significantly restricted from allowing customers to access its business premises but its customers base has significantly reduced because of Covid-19?

The business must meet the requirement that it ordinarily operates from a fixed business premises and, under the specific terms of the Covid restrictions announced by the Government, customers of the business are prohibited, or significantly restricted, from accessing those business premises.

It is not sufficient that the trade of a business has been impacted because of a reduction in customer demand as a consequence of Covid-19, or that the business supplies goods or services to another business that qualifies for the support because, under the Covid restrictions, that other business is required to temporarily close, or significantly reduce, its business activity.

Example 7

StockUp Limited is a wholesaler to the catering and restaurant industry. The company operates from a premises in Clones, Co. Monaghan and delivers to customers nationwide. Under the restrictions in place across the country, many of the customers in the restaurant trade have cancelled their upcoming orders. While StockUp Limited has spotted an opportunity for additional business in the delivery and take-away sector, the company is experiencing a significant drop in turnover in the interim.

Whilst StockUp Limited has experienced a reduction in turnover as a result of Government restrictions impacting its customers, the business itself, is not subject to restrictions prohibiting or restricting customers to its business premises. Therefore, it does not meet the eligibility criteria.

4.3. Requirement 3 - Impact of Covid restrictions; turnover requirements

To make a claim for an ACTE under the CRSS, the claimant must be able to demonstrate that, because of the Covid restrictions, the **turnover** of the relevant business activity in the claim period will be no more than 25% of the **relevant turnover amount** (see Section 4.3.2 below for the meaning of that term).

4.3.1. Turnover of relevant business activity

For the purposes of the CRSS, turnover will include any amount recognised as turnover in a particular period of time in accordance with the correct rules of commercial accounting, with the exception of any amount recognised as turnover in that particular period of time due to a change in accounting policy. Where applicable, companies should have regard to the meaning given to turnover in the Companies Act 2014.

For the majority of claimants, turnover will simply be the total sales made by the person (exclusive of VAT) in respect of the relevant business activity in a particular period of time. Where the person is in receipt of other types of income, such as grants and public funding, whether that income is included in turnover will depend on the specific nature and terms of the funding arrangement, having regard to the applicable accounting standards and required recognition treatment of such income.

4.3.2. Relevant turnover amount

Relevant turnover amount will be calculated by reference to the claimant's average weekly turnover (VAT exclusive) for the relevant business activity in a **prior period**.

For **established businesses** (i.e. businesses that commenced prior to 26 December 2019), the relevant turnover amount will be calculated by reference to turnover for the period from 1 January 2019 to 31 December 2019, as follows:

Average weekly turnover for 2019 x Number of weeks in claim period

For **new businesses** (i.e. businesses that commenced between 26 December 2019 and 12 October 2020), the relevant turnover amount will be calculated by reference to turnover for the period commencing on the date on which the business commenced and ending on 12 October 2020, as follows:

Average weekly turnover for trading period x Number of weeks in claim period

Example 8

Mr. E has been operating a retail business since 2005. Most of the trade is carried on from a building in Galway city, however recently Mr. E launched his website and has started selling online and delivering direct to customers. For the purposes of the CRSS, Mr. E's relevant business activity is made up of the trade carried on from the premises in Galway city including that part of the trade carried on online.

His turnover from the clothes sales trade in 2019, was €115,700 (VAT exclusive), which means that his **average weekly turnover** for 2019 was €2,225.

Due to Government restrictions in place for Co. Galway prohibiting Mr. E from allowing customers on his premises, Mr. E is forced to temporarily close his shop for the 6 weeks the restrictions have been announced for. For the purposes of determining whether Mr. E is eligible to claim under the CRSS, on the basis that the turnover from his relevant business activity during the claim period will not exceed 25% of the average weekly turnover for 2019 over the same number of weeks, turnover from online sales in that period must be taken into account.

Based on his previous experience of the Government restrictions in place between March and June 2020, he expects that his turnover for this 6-week period will be approximately €2,700 from online sales, and nil from shop sales given that he will be closed to customers.

To qualify for an ACTE, Mr. E must be able to demonstrate that, as a result of having to close his premises to customers for 6 weeks, the turnover of the relevant business activity in that period will be no more than 25% of the relevant turnover amount.

Relevant turnover amount = €13,350 (i.e. €2,225 x 6)

$$\frac{€2,700 \times 100}{€13,350} = 20.23\%$$

Based on the expected turnover amount, Mr. E satisfies the 25% reduction in turnover condition and may proceed to make a claim for the ACTE, provided all other conditions are satisfied.

At the end of the claim period, Mr. E should review his actual turnover figure for that claim period to ensure that the reduction in turnover condition was met (See Section 4.3).

Example 9

Ms H. set up a café in January 2020 in Schull Co. [REDACTED] specialising in hand roasted coffees and home-made pastries. Ms. H rents a premises on the main street, and despite a number of closures due to Government restrictions earlier on in the year, she was still operating her business until Government restrictions in place for Co. [REDACTED] from 22 October meant that it is restricted to take-away service only. As a result, Ms. H must significantly restrict access to customers entering her business premises. As a relevant business activity set up in 2020, to be eligible to claim an ACTE under the CRSS, Ms. H must demonstrate that the turnover for the duration of the restrictions (the claim period) will not exceed 25% of the average weekly turnover for the same number of weeks, in the period from when she commenced to 12 October 2020.

Her turnover from the date of commencement to 12 October was €28,000, which means that her **average weekly turnover** during that period was €700 i.e. €28,000/40 (no of trading weeks to 12 October).

Relevant turnover amount = €4,200 (i.e. €700 x 6)

Ms. H expects her turnover for this 6-week restricted period (the claim period) will be approximately €1,000.

$$\frac{€1,000 \times 100}{€4,200} = 23.80\%$$

Based on the expected turnover amount, Ms.H satisfies the 25% reduction in turnover condition and may proceed to make a claim for the ACTE, provided all other conditions are satisfied.

At the end of the claim period, Ms. H should review her actual turnover figure for that claim period to ensure that the reduction in turnover condition was met (See Section 4.3).

4.3.3. Relevant business activity carried on as part of a wider trade

Where a person carries on a relevant business activity as part of a wider trade, that relevant business activity is to be treated as a separate trade for the purposes of determining the relevant turnover amount. The total turnover of the trade must be allocated between the separate trade and the wider trader on a just and reasonable basis.

Example 10

NewCars Limited runs two car dealerships in Co. Donegal and Co. Roscommon.

Government restrictions in place in Co. Donegal have meant that NewCars Limited is prohibited from allowing customers into its premises in Donegal, and as a result, NewCars Limited is forced to temporarily close the dealership. Similar restrictions are not in place for Roscommon (this is a hypothetical example), and that dealership can operate without restrictions.

In this case, the Donegal dealership is a relevant business activity which is part of the wider trade of NewCars Limited. To determine the relevant turnover amount of the Donegal dealership to establish whether NewCars Limited is eligible to make a claim under CRSS, that relevant business activity is to be treated as a separate trade, and the total turnover of NewCars Limited's trade must be allocated between the separate trade (the Donegal dealership) and the wider trader on a just and reasonable basis.

NewCars Limited's total turnover in 2019 was €2,550,000 (VAT exclusive), of which 65% (€1,657,500) is attributable to the Donegal dealership. The **average weekly turnover** for 2019 for the Donegal dealership was €31,875.

Relevant turnover amount = €95,625 (i.e. €31,875 x3)

Due to Government restrictions in place for Co. Donegal, NewCars Limited expects that during the expected 3 weeks of restrictions that the Donegal dealership will be forced to be closed, turnover will be nil and therefore the company is eligible to make a claim under the CRSS in respect of that relevant business activity, provided all other conditions are satisfied.

4.3.4. Seasonal businesses

A relevant business activity which is “seasonal” in nature is not restricted from qualifying under CRSS where they are subject to Covid restrictions and as a result, are prohibited or significantly restricted from allowing customers access their business premises, and they meet all other qualifying criteria.

Example 11

YuleTime Limited runs a business specialising in Christmas decorations. For much of the year, the company would have very little turnover but is busy sourcing stock and preparing for the Christmas period. The company rents a vacant unit in a shopping centre in Co. Dublin every year from September to December, and it is during this period that the company makes its annual turnover.

The Government restrictions in place means that after only a few weeks of opening, YuleTime Limited is forced to close its unit as a non-essential retail outlet prohibited from allowing customers access its premises. For the purposes of determining whether YuleTime Limited is eligible to claim under the CRSS, the company must be able to demonstrate that the turnover from its relevant business activity during the claim period will not exceed 25% of the average weekly turnover for 2019 over the same number of weeks (i.e. $(\text{total turnover in 2019} / 52) \times \text{number of weeks in the claim period}$). YuleTime Limited is not restricted from CRSS on the basis that the company has a seasonal business, where all qualification criteria are met.

4.3.5. Partnerships

Where the person carries on the relevant business activity in partnership with another person, the person’s turnover in relation to the relevant business activity will be determined as such proportion of the turnover of the partnership trade (or trading activities relating to the particular business premises) as corresponds to that proportion of the partnership profits which the person is entitled to under the agreed profit-sharing ratio of the partnership that is in place at the commencement of the claim period. See Section 6.3 below for the details of the maximum amount of relief that can be claimed a person who carries on a relevant business activity in partnership.

4.4. Requirement 4 – Other Qualification Conditions

A company or self-employed individual must meet certain other conditions in order to be eligible for an ACTE with respect to a claim period. The following other conditions must be met by the claimant for each claim period:

1. The claimant has been issued a **tax clearance certificate** (see Section 4.4.1) for the claim period and has complied with any obligations in relation to registering for and accounting for VAT;
2. The claimant intends to resume trading after the Covid restrictions are lifted;
3. The claimant has registered for the CRSS on ROS, providing all of the information requested by Revenue (see Section 3.1 above for further details);
4. The claimant applies for the ACTE on the Revenue Online Service (ROS), providing all of the information requested by Revenue and making a declaration that they qualify for the ACTE (see Section 3.2 above for further details).

4.4.1. Tax Clearance

Claimants must possess an up to date tax clearance certificate and continue to maintain tax clearance for the duration of the claim period. Claimants can check their current tax clearance status through ROS. After logging in, current tax clearance status is displayed in blue writing above the grey banner for “My Frequently Used Services”.

If a claimant does not currently hold tax clearance, an application can be made online and assessed in real-time through the ROS e-Tax clearance service by selecting “Manage Tax Clearance” under the “Other Services” section on the ROS home screen and following the online instructions.

Tax Clearance will be granted if the tax affairs of the claimant and, where applicable, their connected parties, are up to date. Connected parties for tax clearance purposes are as follows:

- Business Partners (not civil partner or spouse);
- Partnerships;
- Directors/Shareholders of a company;
- Previous Business Entity/Licence holder where the applicant is succeeding to the licenced trade;
- Employer where the applicant is SPSV Driver or CAB applicant; and
- VAT Group remitter if the applicant is a member of a VAT Group.

Further information can be found at <https://www.revenue.ie/en/online-services/services/manage-your-record/apply-for-tax-clearance-online-using-etc.aspx>.

If there are outstanding returns or debts for the claimant or any of their connected parties, tax clearance will be refused. Therefore, it is imperative that all tax returns are filed, and payments made, or payment arrangements entered into to cover all outstanding debts.

Claimants with COVID-19 related tax debts which are warehoused, or non-COVID-19 debts which are included in a phased payment arrangement (PPA), will not be prevented from qualifying for tax clearance. Further information on these initiatives and all Covid-19 related information and advice for taxpayers and agents, can be found at the following link on the Revenue website;

<https://www.revenue.ie/en/corporate/communications/covid19/index.aspx>

4.4.2. Books and Records

Any person making a claim for an ACTE is required to maintain and have available such books and records as may be reasonably required for the purposes of demonstrating that the person is eligible to make a claim under the scheme and to fully support any amount claimed. Should the person's claim be selected for verification by Revenue, these books and records will be examined by Revenue to verify the person's entitlement to the ACTE.

To avail of the CRSS the person must be in a position to demonstrate:

- the link between the Covid restrictions in operation for a geographical region at the time the claim was made and their impact on that person's relevant business activity during the claim period, and
- that turnover of the relevant business activity in the claim period will not exceed 25% of an amount equal to the average weekly turnover of the business in 2019 (or average weekly turnover in 2020 in the case of a new business) multiplied by the number of weeks in the claim period, and
- that the business intended to resume/ continue trading once the relevant Covid restrictions were removed, and
- that they would have operated the business in the Covid restriction claim period but for the Covid restrictions being in operation.

Where a person operates from a number of business premises, it will be necessary for the person to demonstrate the turnover directly attributable to each business premises. Example of records include till reports, copies of invoices, sales daybooks etc. Where a business carries on a number of different trades from one business premises it will be necessary to demonstrate the turnover of the trades separately. Where the person is trading through a partnership, the relevant partnership agreement(s) should be retained, specifying details of the partnership profit allocations.

Claimants should refer to Revenue's guidance on the requirement for persons who are registered for any tax to maintain proper books and records contained in [Tax and Duty Manual 38-03-17](#).

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In addition to the usual types of books and records that a tax-registered person is required to maintain to complete their tax returns, claimants must be able to demonstrate that, during the claim period (see Section 5 for details), members of the public were either prohibited from accessing, or restricted from accessing, the business premises in which the relevant business activity is carried on.

5. How to determine a claim period

5.1. Significance of a claim period

A person carrying on a relevant business activity will be required to assess whether they are eligible for support under the CRSS with respect to a **claim period** (see Section 5.2 below). If the person does qualify for support with respect to a claim period, then the amount they are entitled to claim will be determined by the number of full weeks the claim period covers. Therefore, determining the start and end dates of a claim period is important for the purposes of making a claim.

For a claim period that commences before mid-November 2020 (see Section 5.3 below), a person who meets the eligibility criteria will be able to make a claim from mid-November 2020, when the relevant portal on ROS is available to make a claim. As outlined in Section 5.4 below, for a claim period that commences after mid-November 2020, a person who meets the eligibility criteria will be able to make a claim as early as the first day of a claim period in respect of the number of weeks that are covered by that claim period.

5.2. What is a claim period?

A **claim period** comprises a period of time during which Covid restrictions¹ are in operation for a particular geographical region and will equate to either a **Covid restrictions period** or a **Covid restrictions extension period**.

A **Covid restrictions period** is generally a period which:

- begins on the date that Covid restrictions are in operation for a particular geographical area (or 13 October if restrictions are in operation prior to that date), and
- ends on the date on which the Covid restrictions in operation for the particular geographical area were, at the time they were introduced, due to end².

If the restrictions that are in operation in the **Covid restrictions period** are subsequently amended or extended, the Covid restrictions period will be immediately followed by a **Covid restrictions extension period**.

A **Covid restrictions extension period** is generally a period which:

- begins on the day after the day on which the Covid restrictions period was due to end, and

¹ **Covid restrictions** are restrictions introduced by Government regulations for the purpose of preventing or reducing the risk of the transmission of Covid-19 and which restrict certain business activity (see Section 4.2 for further details).

² The exception to this is where the Covid restrictions are ended before the date on which they were due to end (and they were not amended or extended). In such a case, the Covid restrictions period will end on the date they actually ended.

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- ends on the date on which the extended period of Covid restrictions is, at the time the period is extended, due to end.

If the period during which restrictions are in operation is further amended or extended, there will be a further Covid restrictions extension period, the beginning and end dates of which will be determined in the same way.

With the exception of claim periods commencing prior to mid-November 2020, the design of a claim period, based on a Covid restrictions period or a Covid restrictions extension period, allows a person to make a claim as early as the first day of a claim period (where they meet the eligibility criteria) for the number of full weeks that are expected to comprise the period in which Covid restrictions are in place. Therefore, where Covid restrictions are extended for a geographical region, it is appropriate that a new claim period should only begin after the end of a period for which support may have already been claimed under the CRSS.

5.3. Claim periods commencing between 13 October and mid November 2020

Each Covid restrictions period and Covid restrictions extension period will constitute a separate claim period, with each claim period starting on the day after the previous claim period began. When the online CRSS system becomes operational on mid-November 2020, it will be possible for claimants to combine claims for claim periods commencing between 13 October and mid-November 2020 within one claim, provided that the claimant qualifies for support in respect of each claim period (see Example 12). From that point on, separate claims must be made for each claim period (see Example 13).

5.4. Claim period treated as commencing on an earlier date in certain circumstances

It is acknowledged that certain businesses that do not qualify for relief during an initial period of Covid restrictions may be significantly restricted from operating during a later period of Covid restrictions. For example, a clothes shop that trades as normal during an initial period of Covid restrictions (where the restrictions are at Level 3 under the Plan for Living with Covid-19), but is required to close during a later period of restrictions (where the restrictions are at Level 4 or 5 under the Plan for Living with Covid-19). To ensure that they can benefit fully from the CRSS, the claim period for such businesses will be treated as commencing on the day on which the later period of restrictions commences (rather than on the day after the initial period of Covid restrictions ends, which could be a later date) (see Example 14).

5.5. Claim period examples

Illustrative examples of how to determine a claim period are provided below.

Example 12 – Claim period commences on 13 October 2020

As of 13 October, Covid restrictions are in operation across Ireland, which were due to expire on 28 October in accordance with the Government regulations providing for the restrictions. Therefore, the period 13 to 28 October 2020 is a **Covid restrictions period** and constitutes a **claim period**.

On 22 October³, further restrictions are introduced by Government regulations across Ireland. They are due to end on 1 December 2020. The period 29 October (the day after the Covid restrictions period is due to end) to 1 December is a **Covid restrictions extensions period** and constitutes a new **claim period**.

A company running a nightclub located in Galway city, which has been closed in accordance with Government regulations since March 2020, qualifies for support in respect of both claim periods. When the online CRSS system becomes available in mid-November, and as a practical matter, the company may lodge **one claim** in respect of both claim periods. If there are further claim periods, the company will be required to lodge separate claims in respect of each one.

Example 13 – Claim period commences after mid-November 2020

Restrictions come into operation for Co. X on 3 January 2021 for a period of 3 weeks. In the Government regulations providing for the restrictions, they are due to expire on 23 January 2021. A **Covid restrictions period** runs from 3 January 2021 to 23 January 2021 and constitutes a claim period. Provided the eligibility criteria are met, Co. X can make a claim for the claim period as early as 3 January 2021 for an ACTE for a period of 3 weeks.

On 18 January 2021, the Government announces that the restrictions that have been in operation since 3 January 2021 are being extended to 6 February 2021. A **Covid restrictions extension period** runs from 24 January 2021 (the day after the Covid restrictions period ends) to 6 February 2021. This constitutes a new **claim period**. Provided the eligibility criteria are met, Co. X. can make a claim for the claim period as early as 24 January 2021 for an ACTE for a period of 2 weeks.

³ The Covid restrictions in operation at 13 October 2020 were varied and amended with effect from 18 October to 9 November 2020, before being further varied and extended with effect from 22 October to 1 December (with Level 5 restrictions coming into operation nationwide). For simplicity, the extension that came into effect on 18 October is not factored into this example (and Example 14). Of note, one claim can be made for the entire period from 13 October to 1 December 2020 where the person meets the eligibility requirements.

Example 14 – Claim period commences on 22 October 2020

As of 13 October, Covid restrictions are in operation across Ireland, which were due to expire on 28 October in accordance with the Government regulations providing for the restrictions. Therefore, the period 13 to 28 October 2020 is a **Covid restrictions period** and constitutes a **claim period**. These restrictions do not have a negative impact on a hairdressing business run by Mr. P and he does not qualify for support under the CRSS in respect of this claim period.

However, on 22 October, further restrictions are introduced by Government regulations across Ireland. They are due to end on 1 December. The period 29 October (the day after the Covid restrictions period ends) to 2 December is a **Covid restrictions extension period** and constitutes a new **claim period**.

Under the restrictions introduced on 22 October, Mr. P is forced to temporarily suspend his business. As Mr. P was only affected by the restrictions from 22 October (and did not qualify for support during the first claim period), he may use the 6-week period 22 October to 1 December 2020 as a claim period for the purposes of assessing his eligibility for the CRSS and, if he is eligible, the amount of an ACTE he can claim. From mid-November, he can make a claim for an ACTE in respect of that 6-week period.

6. Amount that can be claimed under the CRSS

Companies and individuals that satisfy the eligibility criteria in relation to a relevant business activity for a claim period will be entitled to apply for an **ACTE** for the duration of that claim period.

Subject to a weekly cap of €5,000, the ACTE will be calculated by reference to a weekly amount based on the person's previous turnover in respect of the relevant business activity, as follows:

6.1. Established businesses

For **established businesses** (i.e. businesses that commenced prior to 26 December 2019), the weekly amount will be calculated by reference to turnover for the business activity for the period from 1 January to 31 December 2019:

- 10% of average weekly turnover for 2019, so long as it does not exceed €20,000, and
- 5% of so much of average weekly turnover for 2019 that exceeds €20,000.

The ACTE will comprise this weekly amount multiplied by the number of weeks in the claim period (up to the €5,000 weekly limit).

Where a person carries on more than one relevant business activity in the same business premises, the amount of an ACTE that can be claimed in respect of all relevant business activities will be capped at €5,000.

6.2. New businesses

For **new businesses** (i.e. businesses that commenced between 26 December 2019 and 12 October 2020), the weekly amount will be calculated by reference to turnover for the period commencing on the date on which the business commenced and ending on 12 October 2020 (referred to as 'the trading period'):

- 10% of average weekly turnover for the trading period, so long as it does not exceed €20,000, and
- 5% of so much of average weekly turnover for the trading period that exceeds €20,000.

The ACTE will comprise this weekly amount multiplied by the number of weeks in which the restrictions are in place (up to the €5,000 weekly limit).

Where a person carries on more than one relevant business activity in the same business premises, the amount of the ACTE that can be claimed in respect of all relevant business activities will be capped at €5,000.

6.3. Partnerships

Where the person is carrying on the relevant business activity in a partnership, the person (and any other partner seeking to make a claim), is required to apportion the amounts of turnover and the weekly turnover of the partnership to correspond with that proportion of the partnership profits which the person is entitled to, as determined under the agreed profit-sharing ratio of the partnership in place at the commencement of the claim period (referred to as a 'partner's proportionate share').

The maximum weekly amount of an ACTE that each partner can claim will be the lower of—

- 10% of that partner's proportionate share of weekly turnover up to an amount equal to such percentage of the €20,000 threshold as corresponds to that partner's proportionate share, and 5% of any balance of the partner's proportionate share of weekly turnover above that threshold, and
- such percentage of the maximum weekly limit of €5,000 as corresponds to that partner's proportionate share.

6.4. Examples of ACTE calculations

Illustrative examples of how an ACTE is calculated are set out below. Please note that the beginning and end dates of the claim periods referred to in these examples are hypothetical.

Example 15

Mr. A has been running a pub (that does not serve food) in Dublin City for many years. In the year ended 31 December 2019, his turnover from the business was €663,000 (excluding VAT). His VAT returns are up to date and he has tax clearance. On 15 March 2020, he closed the pub to customers in line with Government restrictions. The pub has remained closed for business since that time.

As of 13 October 2020 (the date the CRSS was announced), restrictions under the Living with Covid-19 Plan are in place for Co. Dublin and are expected to be in place for 6 weeks. The restrictions mean that the pub will have to remain closed until 3 December. As a result of these restrictions, Mr. A expects that he will have no turnover in the period 13 October to 2 December.

Based on:

- a) the fact that official Covid restrictions are in place which prohibit customers from accessing the pub, requiring him to temporarily close his pub between 13 October and 2 December, and
- b) Mr. A's reasonable expectation that he will have no turnover between 13 October and 2 December,

he is entitled to apply to Revenue for an Advance Credit for Trading Expenses (ACTE) for the period 13 October to 2 December, which constitutes a claim period.

The amount of the ACTE that he is entitled to for this claim period will be calculated by reference to his turnover for 2019 and the number of full weeks that comprise the claim period, as follows:

Average weekly turnover 2019	€12,750 (i.e. €663,000 / 52)
10% of €12,750	€1,275
Number of full weeks	7
€1,275 X 7	ACTE is €8,925

If the restrictions are extended, with the result that his pub remains closed and the pub will have no turnover, he can make a subsequent claim for the extended period of restrictions, which will constitute a new claim period, and on making a further claim he will be entitled to a payment of €1,275 for every week of the new claim period.

Example 16

Yummy Nibbles LTD carries on a café trade operating from separate business premises, one located in Letterkenny and the other in Sligo town. Because the cafes are operated from separate business premises, they are treated as separate relevant business activities for the purposes of the CRSS.

Yummy Nibbles Letterkenny café

In the year ended 31 December 2019, turnover for the Letterkenny café was €195,000 (excluding VAT). As of 13 October 2020 (the date the CRSS was announced), restrictions under the Living with Covid-19 Plan are in place for Co. Donegal are expected to stay in place until 3 December, at which point the situation will be reviewed by the Government. In this period of restrictions, the café can stay open for take-away and delivery only. However, the café has a thriving take-away service. As a result, Yummy Nibbles LTD expects that while turnover in period of restrictions will be reduced, it will not be less than 25% of the relevant turnover amount for the cafe.

Yummy Nibbles Sligo town café

In the year ended 31 December 2019, turnover for the Sligo town café was €221,260 (excluding VAT). As of 13 October 2020, restrictions under the Living with Covid-19 Plan are in place for Co. Sligo and are expected to be in place for 6 weeks. While the restrictions are in place, the café can operate on a take-away only basis. Yummy Nibbles LTD expects that in the 7-week period of restrictions, turnover will be approximately €4,900. This represents 16.45% of the relevant turnover amount for the café, i.e. 16.45% of €29,785 (average weekly turnover for the café in 2019 x 7).

Yummy Nibbles LTD claim

Although both business premises from where the cafés operate are subject to Government restrictions, the company is not entitled to claim an ACTE in respect of the Letterkenny Café because turnover for the period during which the restrictions are in place will not be less than 25% for the comparable period in 2019. However, Yummy Nibbles LTD is entitled to apply to Revenue for an ACTE in respect of the Sligo Café for the claim period 13 October to 2 December. The amount of the ACTE that the company is entitled to for this claim period is calculated by reference to the Sligo town café's turnover for 2019 and the number of full weeks that comprise the claim period, as follows:

Average weekly turnover 2019	€4,255 (i.e. €221,260 / 52)
10% of €4,255	€425.50
Number of full weeks	7
€425.50 X 7	ACTE is €2,978.50

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If the restrictions for Co. Sligo are extended, Yummy Nibbles LTD can make a new claim for the extended period of restrictions, where the Sligo business continues to qualify. Yummy Nibbles LTD will be entitled to a payment of €425.50 for every week of the new claim period.

If it later transpires that the Letterkenny café did not do as well as had been expected, the company may then be entitled to apply for an ACTE, as long as a claim is made within 8 weeks of the commencement of the restricted period. Similarly, the company may be entitled to make a claim for an ACTE in respect of the Letterkenny café for a later period of restrictions.

The company has filed VAT returns and has tax clearance.

Example 17

Ms. Y runs a small dance studio from premises in Co. Clare, from which she teaches contemporary dance to groups of children and teenagers on a part-time basis. Her turnover in 2019 was €35,100 and she is not registered for VAT. As of 13 October (the date the CRSS was announced), Level 3 restrictions under the Living with Covid-19 Plan are in place for Co. Clare and are expected to be in place until 2 December. As dance classes may not take place during the period of restrictions, she cancels all classes for the 7-week period in which the restrictions are in place and issues refunds to affected customers. As a result, she expects to have no turnover for the 7-week period.

Based on the foregoing, she is entitled to apply to Revenue for an ACTE for the claim period, 13 October to 2 December (she will need to apply for tax clearance) as follows:

Average weekly turnover 2019	€675 (i.e. €35,100 / 52)
10% of €675	€67.50
Number of full weeks	7
€67.50 X 7	ACTE is €475.50

If the restrictions for Co. Clare are extended, Ms. Y can make a new claim for the extended period of restrictions, where her business continues to qualify. She will be entitled to a payment of €67.50 for every week of the new claim period.

Example 18

Style Ltd operates a clothing retail outlet from a business unit in the [REDACTED] Shopping Centre in Co. [REDACTED]

The Covid restrictions in place require all non-essential retail outlets to close, [REDACTED] Shopping Centre will remain open for the period of these restrictions to the public as other essential retail outlets operate in the centre such as a pharmacy and food retail outlet.

Style Ltd is required to close as they are prohibited from allowing customers into the business premises, therefore Style Ltd may make a claim for the restricted period announced of 3 weeks.

Based on the foregoing, Style Ltd is entitled to apply to Revenue for an ACTE for the claim period, 8 November to 29 November (Style Ltd will need to apply for tax clearance) as follows:

Average weekly turnover 2019	€2,885 (i.e. €150,000 / 52)
10% of €2,885	€288
Number of full weeks	3
€288 X 3	ACTE is €864

7. Withdrawal and amendment of claims

7.1. Can a claim be withdrawn?

Where a person claims an ACTE and it later transpires that the person is not entitled to it, for example when the person's turnover for the claim period is greater than expected, the person can withdraw the claim by:

- notifying Revenue that the person is withdrawing the claim; and
- repaying the ACTE to Revenue.

Provided the person does so as soon as is reasonably practical, penalties and interest will not be applied.

7.2. Can a claim be reduced?

Where a person claims an ACTE and it later transpires that the amount claimed exceeded the amount that the person was entitled to, for example because the person miscalculated their average weekly turnover for 2019 (or 2020 for new businesses), the person can reduce the amount claimed by:

- notifying Revenue that the person is reducing the claim; and
- repaying to Revenue the amount that was claimed in error.

Provided the person does so as soon as is reasonably practicable, penalties and interest will not be applied.

7.3. Withdrawal of an ACTE by Revenue

Where a claim for an ACTE is subsequently found to be unauthorised or overstated, then there are implications relating to the following:

- Clawback of the additional tax due
- Interest
- Penalties
- Possible publication

Where a clawback arises on the ACTE amount, a Schedule D Case IV assessment will be made by Revenue.

7.3.1. Company clawback - Case IV of Schedule D

The clawback amount is calculated on the ACTE amount that is as unauthorised or overstated, which is an amount equal to 4 times the excess ACTE claimed. Where the ACTE is clawed back, a company is prohibited from offsetting any credits, losses, expenses or

allowance against that tax liability. The clawback amount will not attract the close company surcharge.

Example 19

A company makes a claim for an ACTE in respect of a claim period. The amount of the ACTE for the year ended 31/12/2020 was €15,000. On a compliance review, the ACTE claim was amended to €5,000. The unauthorised claim related to the incorrect allocation of turnover from a business premises in a geographical location which was not significantly impacted by Government restrictions.

To recover this amount, an assessment is made under Case IV of Schedule D in the sum of 4 times the amount of the unauthorised amount [€10,000*4], which will be charged to corporation tax at 25%;

Assessed

Case IV	€40,000
Charged to CT @ 25%	€10,000*

* This ensures that the amount that should not have been claimed is fully recovered. Interest and tax geared penalties will apply from the day the unauthorised claim was paid.

7.3.2. Individual clawback - Case IV of Schedule D

The clawback amount is calculated on the ACTE amount that is as unauthorised or overstated, which is an amount equal to 5 times the excess ACTE claimed. Where the ACTE is clawed back, no deduction, relief, tax credit or reduction in tax is permitted against that tax liability.

Example 20

An individual sole trader makes a claim for an ACTE in respect of a claim period. The amount of the ACTE for year ended 31/12/2020 was €10,000. On a compliance review, the ACTE claim was amended to €nil. The unauthorised claim related to a takeaway. The takeaway was not a relevant business as they were not restricted from customers attending their business premises under Government restrictions.

To recover this amount of tax, an assessment is made under Case IV of Schedule D in the sum of 5 times the amount of the unauthorised amount [€10,000*5], which will be charged at the standard rate of income tax;

Assessed

Cases IV Income	€50,000
Charged to standard rate of income tax @ 20%	€10,000*

* This ensures that the amount that should not have been claimed is fully recovered. Interest and tax geared penalties will apply from the day the authorised claim was paid.

7.3.3. Penalty and publication application

Where a penalty is chargeable on the Case IV assessment, section 1077E of the Taxes Consolidation Act 1997 and the [*Code of Practice for Revenue Audit and other Compliance Interventions*](#) will apply. Publication on the list of tax defaulters under section 1086 of the Taxes Consolidation Act 1997 may also apply, where the criteria in relation to tax, interest and penalties are met.

8. Is an Advance Credit for Trading Expenses taxable?

An ACTE will be taken into account when calculating the taxable trading profits of a claimant by reducing the amount of deductible expenditure – expenditure which is revenue in nature, and incurred wholly and exclusively for the purpose of the trade – which would include all common business fixed costs such as rent, insurance, light & heat and wages.

Whilst an ACTE will reduce the amount of trading expenses that are deductible in computing the taxable income of a business, it will not result in an additional tax liability unless that business has trading profits for the year. Where a business is in a loss-making position, an ACTE will have the effect of reducing the amount of trading losses available for offset against future or previous profits of the business.

In the example below, a CRSS payment of €1,000 will result in additional tax of €125 for the profitable business. For the business in a loss-making position, the CRSS payment will have the effect of reducing the amount of trading losses available for offset against future or previous profits of the business, again a reduction in available tax losses of €125 for every €1,000 CRSS payment received.

Example 21		
	Profit Making Company	Loss Making Company
<u>Income</u>	€	€
Turnover from operations	100,000	50,000
<u>Expenses</u>		
Rent	25,000	25,000
Rates	5,000	5,000
Insurance	25,000	25,000
Utilities	10,000	10,000
CRSS Payment	(1,000)	(1,000)
	64,000	64,000
Profit / (Loss) per accounts	36,000	(14,000)
Corporation Tax Charge:	4,500	NIL

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In the example below based on an individual, the CRSS payment will not result in additional tax unless the individual has trading profits for the year. In the example above, a CRSS payment of €1,000 resulted in additional tax of €240. This would increase for individuals at the marginal rate of tax.

Example 22		
	Profit Making Individual	Loss Making Individual
<u>Income</u>	€	€
Turnover from operations	30,000	50,000
<u>Expenses</u>		
Rent	2,500	25,000
Rates	500	5,000
Insurance	2,500	25,000
Utilities	1,000	10,000
CRSS Payment	(1,000)	(1,000)
	5,500	64,000
Profit / (Loss)	24,500	(14,000)
Standard rate of Income tax at 20%	4,900	
PRSI @ 4%	980	
USC*	405	
Less tax credits **	(3300)	
Tax liability	2,985	NIL
*based on rates applying from 1 January 2021		
** Single person credit plus Earned income credit (€1,650 from 1 January 2021)		

9. Contact Us

You can also contact us by e-mail using the secure 'MyEnquiries' service available in myAccount or ROS.