



85TACD2022

Between



**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against the base period to be utilised in calculating the amount payable to the Appellant under the Covid Restrictions Support Scheme (“CRSS”).
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 Revenue Commissioners 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 and in accordance with that section, the Appellant makes their appeal.

**Preliminary Issue – Consideration and Admittance of the Appeal**

6. While neither the Appellant nor the Respondent made any submissions in relation to the jurisdiction of the Commission to determine the matter under appeal, the Commissioner considers that it would be beneficial to outline the basis on which the appeal is admitted before the Commission.
7. As noted at paragraph 5 of this determination, section 485 (24) TCA 1997 provides the legislative framework for an appeal to the Commission. It states:

*“(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.*

...

*(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.”*

8. A “qualifying person” is defined by section 485 (4) (b) TCA 1997 as:

*“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’).*”

9. Section 485 (4) (a) TCA 1997 includes the following definitions:

*“‘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.”*

10. In order for the Commission to admit and determine an appeal the Respondent must establish that that the Appellant is not a “qualifying person”. The legislative references to a qualifying person include within the definition a reference to the turnover of an “established business activity” and a “new relevant business activity”.

11. While the Respondent did not refuse the Appellant eligibility for payment under the CRSS, a dispute arose between the Appellant and the Respondent as to whether the Appellant’s business was an “established business activity” or a “new relevant business activity”. These definitions formed the substantive substance to the appeal and as they are intertwined within the definition of a “qualifying person”, the Commission is of the view that the appeal is within its remit and admits it accordingly.

## **Background**

12. The Appellant commenced trading in [REDACTED] as a café under the trading name “[REDACTED]”. The business “[REDACTED]” sells burritos, salads, bowls and hot and cold beverages. [REDACTED] is a franchise business which was founded in [REDACTED]. The Appellant was a franchisee.

13. The Appellant’s first store (“first store”) commenced trading in [REDACTED]. It was located in [REDACTED]. On the 31<sup>st</sup> January 2020, the Appellant purchased a second store (“second store”) located in [REDACTED] from an unconnected third party. This unconnected third party had operated the second store since May 2015 under the same franchise, [REDACTED] as the Appellant. Hence, both businesses operated under the same trading name offering similar, if not identical products.

14. The Appellant purchased the second store as a going concern. As such there was a transfer of an undertaking rather than a sale of shares. The second store was purchased by the Appellant on the basis that it was an established business and the purchase price paid for the business reflected this reality. Stamp duty was paid by the Appellant on the goodwill arising as a result of the transfer of the business as a going concern at a higher rate than that which would have been chargeable if the Appellant had chosen to acquire the share capital from the previous owner. The directors of the Appellant could never have foreseen a global pandemic when they purchased the second store. This had an effect on the second store, which was as stated above located in [REDACTED]. The Commissioner sets out in some detail below the sequence of events in relation to the various dates and actions by the Appellant and the Respondent, as it is critical to the understanding of this appeal.
15. As such, on the 12<sup>th</sup> November 2020, the Appellant's agent advised the Respondent that he was in the process of registering his client for inclusion on the CRSS. In advance of completing the registration, the agent sought confirmation from the Respondent that the Appellant's acquisition of the second store was to be considered an established business as, albeit under a different entity, it had recorded turnover and operated throughout 2019.
16. On the 13<sup>th</sup> November 2020, the Respondent replied that as the second store was an established business, albeit under a different company name, the turnover figures for 2019 should be used by the Appellant when determining eligibility and if deemed eligible, in calculating the quantum due under the CRSS.
17. On the 23<sup>rd</sup> November 2020, the Appellant's agent registered the Appellant for the CRSS using, as instructed, the turnover figures from 2019 for the second store to determine if they were eligible for the scheme. They did so with the knowledge and understanding that the 2019 figures would be used in determining the quantum of CRSS payable. That CRSS application also included a claim for the Appellant's first store but as this business had been operated by the Appellant throughout 2019 nothing controversial arose in respect of the portion of the application relating to the first store.
18. On the 25<sup>th</sup> November 2020, the Respondent sought clarification from the Appellant's agent that the average weekly turnover provided for January to December 2019 in respect of the second store was correct along with details of how it was calculated. The Respondent further advised that if the figures furnished were

incorrect that the agent provide the correct weekly average turnover figures from January to December 2019 in respect of the second store.

19. On the 27<sup>th</sup> November 2020, the Appellant's agent replied to the Respondent by submitting the correspondence received by him from the Respondent on the 13<sup>th</sup> November 2020 which stated that the 2019 turnover figures for the second store were the correct figures to be used for the purpose of submitting a claim for the CRSS and that this is what he had provided which was correct.
20. On the 30<sup>th</sup> November 2020, the Respondent requested the computation of the breakdown of the average weekly turnover figure for 2019 as submitted in the CRSS application for both the first and second store.
21. On the 2<sup>nd</sup> December 2020, the Appellant's agent confirmed the average weekly turnover figures for 2019 and detailed the figures for each store by dividing the 2019 turnover for each store by 52 weeks.
22. On the same date, the Respondent sought confirmation of the origin of the 2019 annual turnover for the second store.
23. On the 4<sup>th</sup> December 2020, the Appellant's agent replied advising that the turnover in respect of the second store was provided by the previous business owner (of the second store) and he also provided the Respondent with the previous business owner's tax registration number.
24. On the 12<sup>th</sup> December 2020, the Respondent requested the Appellant's agent to provide details as to why the Appellant's second store should not be considered a new business under the recently published CRSS guidelines.
25. On the 7<sup>th</sup> January 2021, the Appellant outlined their reasons why they considered that the second store should not be considered a new business. These reasons are summarised and included in the Appellant's submissions below.
26. On the 21<sup>st</sup> January 2021, the Respondent advised the Appellant that they were of the view that the response received by them on the 7<sup>th</sup> January 2021 did not contain sufficient grounds which would warrant why the second store was considered an established business and requested the 2020 figures for the new store so that the CRSS registration could be completed and the claims submitted and paid.
27. On the 3<sup>rd</sup> February 2021, the Appellant provided the Respondent with the 2019 turnover figures in respect of the second store rather than the requested 2020 figures.

28. On the 5<sup>th</sup> February 2021, the Respondent advised the Appellant that the CRSS application for both the first and second store was now at the “registered stage”.
29. Subsequently, on the 1<sup>st</sup> March 2021, the Respondent advised the Appellant that they were not eligible to use the 2019 figures for the second store as the acquisition of that business did not meet the reconstruction/amalgamation criteria as set out in the CRSS guidelines.
30. On the 12<sup>th</sup> March 2021, the Appellant made lengthy submissions to the Respondent’s decision that the 2019 turnover figures in respect of the second store could not be used by the Appellant in determining the quantum of CRSS due to them. Those submissions are also included in the Appellant’s submissions detailed below.
31. On the 30<sup>th</sup> March 2021, the Respondent issued the Appellant with a determination notice advising that as the second store was operated by another tax entity and purchased by the Appellant in 2020 at which time the shareholders/beneficial owners changed, it did not meet the amalgamation or reconstruction criteria as set out in the guidelines. Accordingly, the determination advised that the figures to be used in submitting a claim for the CRSS for the second store was to be based on the second store’s turnover from the date of acquisition by the Appellant rather than the 2019 turnover figures.
32. On the 19<sup>th</sup> April 2021, the Appellant lodged an appeal with the Commission against the determination.

### **Legislation and Guidelines**

33. 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 Kingdom<sup>3</sup>.*

*(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—*

*(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*

*specifies in the order,*

*(iv) make an order that the percentage specified in subparagraph (i) (I) or subparagraph (ii) (I) of section 485 (7) (a) shall be such a percentage, that is greater or lower than the percentage specified in that subparagraph (i) (I) or subparagraph (ii) (I), 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*

*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—*

*(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*

*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—*

*(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*

*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—*

*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*

*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*



*(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,*

*(iii) 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*

34. The Appellant’s directors stated that both the first and the second store were severely impacted by Covid-19. The Appellant advised the Commission that they reviewed the CRSS guidelines issued by the Respondent and believed the relevant criteria for applicability of the CRSS were fulfilled as they met the following conditions:

- Their business was carrying on a “relevant business activity” for the purpose of the guidelines.
- The impact of the Level 5 Covid restrictions put in place with effect from 21<sup>st</sup> October 2020 significantly restricted the access of customers to its business activity where the relevant business activity took place.
- The turnover for both stores for the period of the restrictions was reduced by more than 75% when compared to the average turnover generated by the stores in 2019.
- They fulfilled the additional requirements necessary under the legislation including that they had a relevant tax clearance certificate and all books and records were up to date.

35. The Appellant advised that the claim submitted for both stores was approved and based upon that, it has been accepted by the Respondent that both stores were eligible to claim the CRSS. The Appellant considered that given this position, there was no requirement to discuss the eligibility criteria any further.

36. The Appellant’s directors stated that they were unfortunate with the timing of the purchase of the second store as at the time of acquisition of the second store Covid was a relative “unknown”.

37. The Appellant acknowledged that as they purchased the assets and liabilities of the second store rather than the share capital they were ineligible for the business amalgamation or reconstruction relief provided under the legislation as the ultimate beneficial ownership of the “relevant business activity” had changed. The latter

requirement proved fatal to availing of the relief and this was accepted by the Appellant.

38. The Appellant submitted that their business was being prejudiced as they had acquired the assets rather than shares of the second store and the only change was a “minor alteration” to the name of the person operating the store.

39. The Appellant submitted that it was “unjust and inequitable” to consider the acquisition of the second store as a new business. They submitted the following factors in support of their view that the acquisition of the second store was that of an established business and that there was no justification in treating it as a new business:

- Aside from some minor menu alterations, the products of the second store were fundamentally the same as what the second store’s owner had offered to customers prior to the sale of the business to the Appellant.
- The design within the store, the look and feel of the store were identical and the same trading name was operated.
- The assistant manager who was one of the first members of staff with the company in 2015 remained in the business up until late 2020 and her employment was protected under the TUPE regulations on the basis that although the shareholders changed in January 2020, the business remained the same. The Appellant advised that this was the case with all employees of the business and they all remained employees of the business regardless of the ownership change.
- The business used all the same suppliers as the previous owner and also used the same supplier account numbers.
- The business served the same customers for the last number of years and had accounts with a number of customers in the area – for example, the second store had an agreement with insurance companies and banks whereby they provided lunch to the staff with no charge to the employees and then invoiced those companies every month for the services provided. The Appellant advised that those customer account relationships were held since 2015 or 2016 and did not change in any way with the change of ownership.

- The business operated under the exact same lease as the previous owner which was entered into in 2015 and was due a rent review in 2020. The Appellant submitted that if it was a new business then it would not have been due a rent review so soon after acquiring the store.
- The business used the same utility providers such as broadband and the same telephone number.

40. The Appellant advised that there was a significant difference in utilising the 2020, rather than the 2019, turnover figures in calculating the CRSS payment and having been originally advised by the Respondent that they could use the 2019 figures, the Respondent subsequently “changed their mind” and said that they must use the 2020 figures. This, they submitted was fundamentally unfair.

41. In response to the Respondent’s insistence that the Appellant use the 2020 turnover rather than the 2019 figures in respect of the second store, the Appellant provided the following extract from paragraph 4.3.2 of the CRSS Guidelines <sup>1</sup> (the “guidelines”):

*“For the purposes of accessing eligibility for CRSS and the quantum of CRSS payments that may be claimed, in general, where the ownership of a relevant business activity carried on as the whole or part of a trade changes between 26 December 2019 and 12 October 2020, the relevant business activity will be regarded as a new business”.*

The Appellant submitted as the guidelines used the words “in general” this suggested that it “will not happen all the time” and therefore there can be exceptions based on the facts and circumstances of the taxpayer. On the basis of their submissions and the facts and circumstances of their case, the Appellant submitted that this should be such an exception and it would be fundamentally unfair for them to be denied utilisation of the 2019 turnover figures for the second store in calculating the quantum due to them under the CRSS.

42. The Appellant further submitted that the Respondent’s interpretation of the legislation was discriminatory to their business. They submitted that the guidelines issued by the Respondent in October 2020 were revised in February 2021 and the revised guidelines were contradictory to its claim. The Appellant stated that the revised guidelines had been updated to take into account circumstances where

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<sup>1</sup> Appendix 1.

someone had died or where there was an inter-generational transfer of a business and the established business was being operated by a new person. They stated that the guidelines provided in circumstances where there was no substantial change to the nature or the operation of the business and the business continued to be carried on from the same premises in those circumstances, the 2019 turnover figures could be used. The Appellants submitted that this differential treatment was “grossly discriminatory” for businesses transferred on normal commercial terms.

43. The Appellant submitted that the reason for the distinction between a new business and an established business was that a new business would not have had turnover in 2019 and that was the intent of the legislator providing the distinction. They submitted that as the second store had 2019 turnover then it was not within the remit of the legislation.
44. The Appellant submitted that the Respondent’s application of the legislation was not within the “spirit or intention” of the legislation as the purpose and objective of the CRSS scheme was to support businesses such as its which had been grossly impacted by Covid 19. The Appellant submitted that a new businesses would not have had a trade before Covid 19 and this was the intent of the legislation in distinguishing between new and established businesses.
45. The Appellant opened the case of *Bookfinders v Revenue Commissioners* [2019] IECA 100 (“*Bookfinders*”) and submitted as there was ambiguity in the legislation in that the acquisition of the second store by them could not be considered a new business as it had previously operated, *Bookfinders*, they stated, specified that the ambiguity should be interpreted in their favour and in adopting this principle the correct base period to use was the 2019 figures rather than the 2020 figures.
46. In summation, the Appellant submitted that it did not commence the business, as the previous owners had, but rather that they expanded an established business and as this was not accommodated under the legislation, the Commission should find in its favour and permit the utilisation of the 2019 figures in quantifying the CRSS claim for the second store.

#### *Respondent*

47. The Respondent submitted that the correct approach to be used when interpreting taxation issues was set out by McDonald J. in *Perrigo Pharma International DAC v McNamara, The Revenue Commissioners, The Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”).

48. The Respondent submitted that section 485 TCA 1997 should be given its plain and ordinary meaning and in adopting this approach provided under *Perrigo*, there was no ambiguity arising therefrom. The Respondent stated that section 485 TCA 1997 distinguished between businesses that are “new” and “established” by clear reference to calendar dates. It submitted that the Appellants acquisition of the second store was a “new relevant business activity” as it had been acquired after 26 December 2019 which was the cut-off date provided under section 485 (4) (a) TCA 1997 for a business to be considered established.
49. The Respondent submitted that if the Commission found that there was ambiguity in the legislation, then in adopting *Perrigo*, regard must be had to the intent of the legislator. This approach, they submitted, would not permit the Commissioner to interpret section 485 TCA 1997 by widening the provisions or in providing financial assistance that was “not clearly provided for”.
50. The Respondent submitted that consideration should be had by the Commission to the guidelines, in particular Section 4.3.5 of those guidelines regarding business amalgamations or reconstructions as these clearly stated that the Appellant’s acquisition of its second store did not meet the criteria required and as such the Respondent was correct in issuing their determination which detailed that the basis period to be used by the Respondent in claiming the CRSS for the second store was to be based on the 2020 rather than the 2019 figures.
51. The Respondent submitted that the Commission did not have jurisdiction to adjudicate on the fairness of the application of section 485 TCA 1997 and the matter can only be determined in accordance with the legislation. Accordingly, it submitted that the Appellant was precluded from arguing points of public law before the Commission as the Commission does not have any jurisdiction to grant any form of declaratory relief.

### **Evidence Presented at the Hearing**

52. The following evidence was presented by the Appellant’s two directors during the course of the hearing:
- The Appellant purchased the second store on the 31st January 2020 from an unconnected third party who had operated that store since May 2015, under the same franchise as the Appellant operated their store from and the second store was operated by the Appellant under the same trading name and offered substantially the same menu as its predecessor.



- The Appellant acquired the second store as a transfer of undertaking and did not acquire the share capital of the previous owner.
- The transfer of undertaking resulted in a complete change of ownership of the second store and none of the shareholders who previously owned the second store had any interest in the business of the Appellant post sale.
- The price paid by the Appellant for the second store was based on it being an established business.
- The Appellant was required under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (“TUPE regulations”) to keep the staff of the second store in employment and was further required to be obligated by certain commitments associated with the second store such as the “5 year rent review” which occurred shortly after the Appellant acquired the second store.

53. The evidence was not disputed by the Appellant or the Respondent and the Commissioner accepts this evidence.

#### **Material Facts**

54. The Commissioner found the following material facts:-

- (i) The Appellant fulfilled the eligibility criteria required under section 485 TCA 1997, in particular subsections 4 (b), 5 and 6 of that section and as such was eligible to be included and to receive payment under the CRSS.
- (ii) The Respondent acknowledged that the Appellant was considered eligible for inclusion in the CRSS and that it was entitled to payment under that scheme.
- (iii) No dispute arose between the Appellant and the Respondent in respect of the Appellant’s first store as it had been owned and operated by the Appellant throughout 2019.
- (iv) A dispute arose between the Appellant and the Respondent under section 485 (7) TCA 1997 in determining the base period to be utilised in quantifying the amount of payment due to the Appellant for its second store.
- (v) While the Appellant accepted that they did not fulfil the eligibility criteria for “Amalgamation and Reconstruction” reliefs published in the guidelines, the

Appellant was of the view that they felt prejudiced in their acceptance of the position.

- (vi) The Appellant's felt that various provisions of section 485 TCA 1997 were unjust, inequitable and discriminatory in their provision or application by the Respondent.
- (vii) The Appellants were of the view that the Respondent's determination notice which issued on the 30<sup>th</sup> March 2021 stating that they were not permitted to use the 2019 turnover figures was not within the "spirit or intent" of section 485 TCA 1997.
- (viii) The Appellant submitted that the provisions of section 485 TCA 1997 contained ambiguities and as a result of this, they should be afforded a favourable interpretation of the legislation.

### **Analysis**

55. The scope of the jurisdiction of the Commission was discussed in a number of Irish cases, including; *The State (Whelan) v Smidic* [1938] 1 I.R. 12 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49, *The State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 and notably the most recent case between *Kenny Lee and the Revenue Commissioners* [2021] IECA 18. These cases have confirmed that the jurisdiction of the Commission is generally confined to the determination of the amount of tax owing by a taxpayer based on findings of fact adjudicated by a Commissioner or based on undisputed facts as the case may be. Due to the nature of section 485 TCA 1997, it also includes the statutory remit to adjudicate on whether an Appellant is entitled to avail of a payment under the statutory scheme, CRSS. These cases have further confirmed that the jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings, such as whether the application of a particular provision of the tax acts is discriminatory or otherwise.

56. Insofar as the Appellant seeks that the Commission determine the application of section 485 TCA 1997 prejudiced their rights, or a declaration that the provisions of section 485 TCA 1997 are unjust, inequitable or discriminatory, such grounds of appeal do not fall within the jurisdiction of the Commission and thus do not fall to be determined as part of this appeal.

57. Accordingly, the central issue to be determined by the Commissioner is whether the business is to be regarded as a “new” or “established” business with reference to the provisions of section 485 TCA 1997 and since they have legislative force, the guidelines issued by the Respondent in accordance with section 485 (22) TCA 1997.
58. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo*, where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

(g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible".*

59. Section 485 (4) (a) TCA 1997 states that an established business activity means "*in relation to a person, a relevant business activity commenced by that person before 26 December 2019*". As is clear from the evidence, in relation to a "person" and a business commenced by "that person", the Appellant did not commence the operation of the second store before the 26<sup>th</sup> December 2019 as they only acquired it on the 31<sup>st</sup> January 2020. Accordingly the Commissioner determines that the acquisition of the second store by the Appellant would not constitute an "established business activity" under the above statutory provision as they do not meet the test set out in this statutory provision. To be considered an established business activity under this statutory provision, it must have been commenced by "that person" before 26 December 2019. The definition relates to the person who commenced the business before 26 December 2019. The Appellant does not come under that definition based on the plain and ordinary meaning of the words and the guidelines on statutory interpretation summarised in *Perrigo*.

60. In relation to a "new relevant business activity" the definition follows the same formula and links the person who commenced the business by a date. As such, a "new relevant business activity" is further defined by the section as "*in relation to a*

*person, a relevant business activity commenced by that person on or after 26 December 2019 and before 13 October 2020*". The Appellant did commence a relevant business activity by that person on or after 26<sup>th</sup> December 2019 but before 13<sup>th</sup> October 2020. Hence, they are eligible under this definition.

61. The central argument submitted by the Appellant is based on the premise that they did **not** commence the business activity of the second store on the 31<sup>st</sup> January 2020, as it was the previous owner who did so somewhat earlier in May 2015. Hence, section 485 TCA 1997 contained ambiguities. The Commissioner does not agree with this interpretation as the wording of a "new relevant business activity" refers to the business activity being commenced by **that** person rather than "a person" which would be a necessary distinction for the Appellant's argument to succeed. Hence, the Appellant falls within the definition of "new relevant business activity". The Commissioner must follow the direction in *Perrigo* and "*if the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail*". The wording of the statutory provision relates to "that person" and hence the words must be given their plain and ordinary meaning.
62. The Commissioner understands the obligations the Appellant was required to incorporate as part of the acquisition of the second store such as the retention of the staff under the TUPE regulations and the obligation to submit to a rent review under the terms of the lease. However, the Commissioner also notes that the acquisition of the second store enjoyed many advantages as a result of the manner in which the Appellant's acquired it, such as not being held accountable for any tax underpayments which may have arisen from the previous owners operation of the business or indeed most third party claims arising from the previous second stores business operation.
63. The Commissioner empathises with the Appellant originally being advised by the Respondent that they could use the 2019 figures only for them to be subsequently advised that the 2020 figures must be used in place. This was unfortunate. However, regard must be had to the relative speed by which the new legislation was necessarily brought into force, the flood of applications received by the Respondent for the new scheme and the societal circumstances when implementing and processing the claims.
64. In the interest of completeness, the Commissioner reviewed the Amalgamation and Reconstruction section of the guidelines (contained at paragraph 4.3.5) and noted

that an essential criteria for the relief to be provided was that the Appellant claimed or was deemed to have been eligible to claim capital gains relief on the transfer of the trade under one of the following sections of the TCA 1997:

- Section 600 TCA 1997 (Transfer of business to a company); or
- Section 615 TCA 1997 (Company reconstruction or amalgamation: transfer of assets); or
- Section 633D TCA 1997 (Mergers where a company is dissolved without going into liquidation); or
- Section 617 TCA 1997 (Transfer of assets other than trading stock).

The guidelines further stipulate that a person making a claim for ACTE in those circumstances was required to retain documentary evidence to demonstrate to Revenue, if required that:

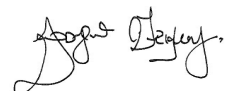
- (i) The relevant CGT relief is available and the basis for the claim;
- (ii) The trade was the whole of the trade carried on by the predecessor and is the same trade carried on by the person making the claim. This is to ensure that Revenue can carry out verification checks on the relevant turnover amount using the books and records of the predecessor;
- (iii) There has been no change in the ultimate beneficial ownership of the relevant business activity.

65. The Appellant did not provide the Commission with any of the above documentary evidence. As it could not be so furnished and given the ultimate beneficial ownership of the second store did change, the Commissioner determines that the “Reconstruction/Amalgamation” relief afforded under the guidelines was, as noted by the Appellant not available to it in any event.

66. As in all tax appeals, the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, 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 are entitled to use the 2019 turnover figures for the second store in calculating the quantum due to them under the CRSS.

## Determination

67. For the reasons set out above, in particular as the Appellant is considered a “new business” under the legislation, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in demonstrating its eligibility to use the 2019 turnover figures for the second store in its CRSS claim. Accordingly, the entitlement to receive payments of ACTE is to be based on the turnover of the second store for the period 31st January 2020 to 12<sup>th</sup> October 2020. For clarity, and while not forming the substance of this appeal, the Commissioner further determines that the relevant base period to be used in the calculation of the Appellant’s ACTE due for the first store is the period 1 January 2019 to 31 December 2019.
68. The Commissioner further determines in accordance with section 485 (24) TCA 1997, that the Appellant is to be afforded an eight week period commencing on the date of the within determination in which to submit the necessary documentation to the Respondent, to enable the Respondent to calculate and pay the amount of ACTE due to the Appellant in respect of both stores.
69. It is understandable that the Appellant and its directors might be disappointed with the outcome of this 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.
70. 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  
16 May 2022



# Covid Restrictions Support Scheme



## Guidelines on the operation of the Covid Restrictions Support Scheme

23 October 2020





# CRSS Guidelines – 23 October 2020

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# CRSS Guidelines – 23 October 2020

## 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.

# CRSS Guidelines – 23 October 2020

- 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),

# CRSS Guidelines – 23 October 2020

- 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.

# CRSS Guidelines – 23 October 2020

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.

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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. Cork 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. Cork from 22 October meant that 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>.

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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 restrictions<sup>1</sup> 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 end<sup>2</sup>.

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

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<sup>1</sup> **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).

<sup>2</sup> 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 October<sup>3</sup>, 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.

<sup>3</sup> 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.

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## Example 18

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

The Covid restrictions in place require all non-essential retail outlets to close, Cork 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



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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.

| <b>Example 21</b>              | <b>Profit<br/>Making<br/>Company</b> | <b>Loss<br/>Making<br/>Company</b> |
|--------------------------------|--------------------------------------|------------------------------------|
|                                | €                                    | €                                  |
| <b><u>Income</u></b>           |                                      |                                    |
| Turnover from operations       | 100,000                              | 50,000                             |
| <b><u>Expenses</u></b>         |                                      |                                    |
| 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)                           |
| <b>Corporation Tax Charge:</b> | 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.

| <b>Example 22</b>  | <b>Profit<br/>Making<br/>Individual</b> | <b>Loss<br/>Making<br/>Individual</b> |
|--|---|---------------------------------------|
| <b><u>Income</u></b>   | €                                       | €                                     |
| Turnover from operations   | 30,000                                  | 50,000                                |
| <b><u>Expenses</u></b>   |   |                                       |
| Rent   | 2,500                                   | 25,000                                |
| Rates  | 500                                     | 5,000                                 |
| Insurance  | 2,500                                   | 25,000                                |
| Utilities  | 1,000                                   | 10,000                                |
| CRSS Payment   | <b>(1,000)</b>                          | <b>(1,000)</b>                        |
|  | <hr/> 5,500                             | <hr/> 64,000                          |
| <br>Profit / (Loss)  | <br><hr/> <b>24,500</b>                 | <br><hr/> <b>(14,000)</b>             |
| <br><b>Standard rate of Income tax at 20%</b>                                  | <br>4,900                               |                                       |
| <b>PRSI @ 4%</b>   | 980                                     |                                       |
| <b>USC*</b>  | 405                                     |                                       |
| Less tax credits **  | <hr/> (3300)                            |                                       |
| Tax liability  | <hr/> <b>2,985</b>                      | NIL                                   |
| <br>*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.