Welcome

Our webinar will commence at 12:30pm

Managing tax opportunities in challenging times

Tuesday, 15 December

Your Partner For What's Next

Lunch & Learn

Building Tax Knowledge

Managing tax opportunities in challenging times

Tuesday, 15 December

Your Partner For What's Next

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Corporate tax considerations

Corporate tax residency

General principles

- Irish incorporated = Irish tax resident
- Irish incorporated / managed & controlled outside Ireland = could be tax resident elsewhere (dependent on treaty)
- Foreign incorporated / managed & controlled in Ireland = likely Irish tax resident (dependent on treaty)

Non-resident directors – standard practicalities

- Physical attendance at Irish board meetings
- Minimisation of dialling in from abroad
- Decisions made in Ireland and documented as such

Corporate tax residency

What is the impact on these principles in the context of travel restrictions?

OECD

It is unlikely that the COVID-19 situation will create any changes to an entity's residence status under a tax treaty. A temporary change in location of the chief executive officers and other senior executives is an extraordinary and temporary situation due to the COVID-19 crisis and such change of location should not trigger a change in residency, especially once the tie breaker rule contained in tax treaties is applied.

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

In addition, and where relevant, if an individual is present in another jurisdiction as a result of COVID-related travel restrictions, and would otherwise have been present in the State, Revenue will be prepared to disregard such presence outside the State for corporation tax purposes for a company in relation to which the individual is an employee, director, service provider or agent.

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

Corporate tax residency

Practical ramifications

- Consider jurisdiction directors are based in and whether it increases risk
- Does the entity claim treaty benefits in respect of income?
- What simple steps can be taken now to mitigate risk?
- Document, document, document

Permanent establishment risk

Key tax implications of having a foreign taxable presence

Local tax return filing obligation – increased administration and cost of compliance

Cash tax obligation where branch has taxable profits

Requirement to determine profit attribution, which may require transfer pricing study

Permanent establishment risk

Employee location?

- Is the employee located in a jurisdiction other than that of their employer?
- Does the jurisdiction of employee location have domestic rules which could result in creation of a taxable presence?

Relief in context of pandemic?

- Does the jurisdiction concerned have any relieving provisions in the context of the pandemic?

Does Ireland have a Double Tax Agreement in place with the country?

- Ireland's Double Tax Agreements normally have a permanent establishment article with safe harbour provisions

What role does the employee carry out?

- Treaties generally only protect in circumstances where (i) there is no fixed place of business or (ii) dependent agent with the power to bind

Permanent establishment risk

Guidance published in April 2020 in relation to the interpretation of tax treaties in the context of Covid-19

Work from home

- PE must have a “degree of permanency” and be “at the disposal” of an enterprise
- Clarifies that an employee temporarily working from home as a result of Covid-19 lacks a sufficient degree of permanency to trigger a PE

Agency PE

- Clarifies that an employee / agent’s activity is unlikely to be regarded as “habitual” is working from home / in another country for a short period of time

Permanent establishment risk

Revenue have confirmed they will disregard the presence of an individual in the state due to Covid-19 related travel restrictions

IRS FAQ confirms that US activity carried on by a non-resident / foreign company due to Covid-19 disruption will be disregarded for 60 days

HMRC confirmed that their existing guidance in relation to PEs was sufficient to address Covid-19

The CRA clarified that prolonged stays in Canada that solely result from travel restrictions will not affect the permanent establishment position of a non-resident

Accelerated CT loss relief

Measure introduced as part of July stimulus package, focused on improving cash flow for businesses affected by Covid-19

Allows for 50% of estimated trading losses to be thrown back to prior period before would have otherwise been possible

Accelerated CT loss relief

Accelerated loss relief – key points

1. “Specified Accounting Periods”

   Carry on a trade for some / all of period 1 March – 31 December 2020

2. “Best estimate”

   Genuine attempt to calculate loss based on information available

   Higher burden where profit making

3. Close interaction with existing loss relief rules

   Alignment on corresponding periods / type of income which can be sheltered

4. Requirements

   - Declaration
     - Tax compliance
   - Documentation

5. How to claim

   Form CT1 for the preceding period

   Enter 50% of estimated loss in relevant panel

6. Finalisation / adjustment

   Claims can be increased or reduced after initial claim

   Interest only from date of reduction

7. Further guidance

   Revenue TDM 12-03-05 includes a number of worked examples

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Covid Restrictions Support Scheme (CRSS)

What is CRSS?

- Targeted support scheme
- For businesses significantly impacted by government COVID restrictions
- Introduced in Finance Bill
- The CRSS scheme provides for a weekly cash payment to be made to impacted businesses who meet the qualifying conditions.
- Self Assessment basis claim to made via Revenue’s Online Service (“ROS”)

Amount of Relief Available

1. **10% of the business' average weekly turnover for 2019 up to a €20,000 limit; and**

2. **5% of the average weekly turnover for 2019 that exceeded the €20,000 limit.**

3. **Weekly Cash Payment- Capped at €5,000**

Example

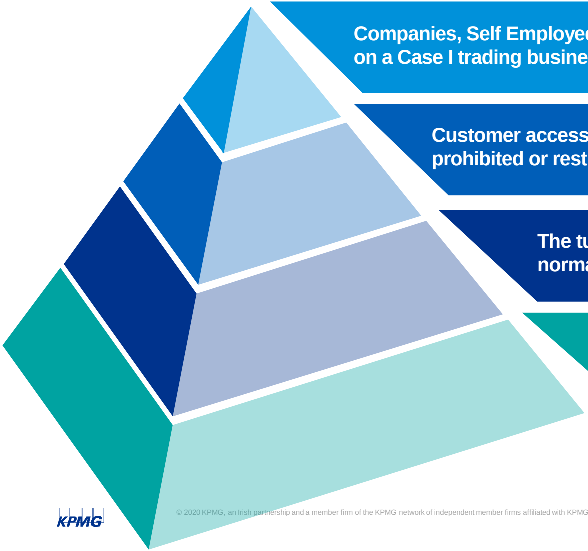
Restaurant business which operated in Dublin had been forced to close under Level 3 restrictions.

As at 13 October (the date CRSS was announced) restrictions were in place and expected to stay in place until 1 December, a period of 7 weeks.

The 2019 turnover of the restaurant was €225,000 meaning average weekly turnover was €4,326.

As turnover is less than €20,000 per week the CRSS payment should equal 10% of weekly turnover being €433. The CRSS payment entitlement is €3,028 (€433 x 7 weeks).

Key Conditions



Companies, Self Employed Individuals and Partnerships carrying on a Case I trading business

Customer access to the business premises must be prohibited or restricted and intention to trade after restrictions

The turnover of the business no more than 25% normal average weekly turnover

Tax Compliant and hold tax clearance certificate

What Type of Business Qualifies?

Qualifying Businesses	Non-Qualifying Businesses
• Hotels, B&B's and Guesthouses • Bars, Pubs, Restaurants and Cafes • Hairdressers, Barbers, Beauticians • Nightclubs • Conference Centres • Museums, Galleries, Cinemas and Theatres • Other types of indoor visitor attractions • Gyms, Leisure Centres, Swimming pools • Commercial Kids Play Area	• Tour companies: Bus, Bike and Boating • Outdoor attractions: Parks, Forests, Waterways • Pop Up or Mobile businesses, • Outdoor markets • Outdoor events and activities: Walking, Hiking, Horse Riding, Biking, any activity carried on outdoors • On track Bookmakers • B2B/Secondary Suppliers • Wholesalers • Manufacturers • Suppliers

Example- 25% Turnover Test

For example, a retail business with average weekly turnover of €3,000 in 2019.

Business is closed for a 6 week period during Level 5 restrictions.

Undertakes online sales during this time earning €2,000 in total over the 6 week period.

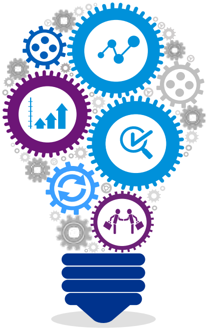
The €2,000 earned in the 6 week period must be compared to the "normal" expected earnings based on 2019 of €18,000 (€3,000 x6 weeks).

The online sales results in 11% of the 2019 average turnover and on this basis the reduction in turnover test should be satisfied.

Points to Watch

- Claim per Business Premises
- Taxable Payment
- New Businesses
- Not B2B

Process for making claims



- Online via Revenue Online Services ("ROS")

1. Registration for the CRSS
2. Submission of claim for relief

- 8 weeks from start of claim period.

- Publication on Revenue Website

- Up to 4 December 12,900 businesses have registered 14,600 premises for the CRSS with Revenue. Claims for CRSS payments of €79.3 million

Employment tax considerations

Work from Anywhere - International Considerations

When agreeing to such an employee working arrangement, consider:

- Where are they liable to pay personal income tax & social security ?
- Is there employer withholding -what reliefs are available ?
- Are there immigration requirements?
- Is there a corporate tax / Permanent Establishment risk?
- Are there specific industry regulations and workers' rights in the country?

Key Considerations

Policy design and support – Identification of suitable employees and design of Work from Anywhere /Travel policies

Risk reviews – employee by employee assessments for effective decision making and risk management across multiple jurisdictions.

Technology solutions – consider technology to monitor and manage compliance with policy

Working from Home - Irish Considerations

Covid19 Specific Reliefs

- Small Benefit Exemption
- Payment of Certain Taxi fares
- Company Cars
- Virtual Parties

Tax relief for e-Working Costs

- Meaning of “e-Working”
- Per Diem vs Employee Claim

Impact on Normal Place of Work

- Mileage & “Lesser of” Rule

Reliefs apply where work is impacted **due to Covid19**
Care required where **normal working patterns** resume

A Formal e-working Agreement should be in place between parties
The Expense Policy should include e-Working arrangements

“Lesser of” rule applies when a business journey starts or ends at home
This may impact the distance for a **mileage claim**

Employment Wage Subsidy Scheme - 2021 updates

Employer Eligibility

- 30% decline in turnover, customer orders or some “other reasonable basis” between 1 July and 31 December 2020
- Monthly monitoring
- Cannot backdate claims

New basis for 2021

- Committee Stage Amendments to Finance Bill 2020 provide for “second phase” of the EWSS
- 30% decline in turnover, customer orders or some “other reasonable basis” between 1 January 2021 and 30 June 2021
- Compare to 1 January 2019 – 30 June 2019

Q&A

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