

COVID-19 business support

As you will be aware, from 11.59pm 17 August 2021, New Zealand moved to COVID-19 Alert Level Four which requires all non-essential workers to stay at home. Given the change in Alert Level, which will initially last for a period of seven days, the Government announced that financial assistance will be made available for eligible businesses.

A [press release](#) by the Minister of Finance announced that the support that will be made available is essentially the same as for previous alert level increases in New Zealand. We summarise below the key points to note for the Wage Subsidy and Resurgence Support Payment schemes as follows:

Wage Subsidy August 2021

Support for businesses that have experienced a 40% decline in revenue over a consecutive 14-day period between 17 August 2021 and 30 August 2021 (inclusive) so that they can continue to pay employees and retain jobs.

[Guidance](#)

Payment rates

Paid for 2 weeks

- \$600 a week for people working 20 hours or more.
- \$359 a week for people working less than 20 hours.
- The wage subsidy is not subject to GST.

Implemented

Applications opened 9am on 20 August 2021.

Resurgence Support Payment

Payment to help support businesses for each COVID-19 alert level increase to level 2 or higher that lasts 7 days or longer, if they experience a 30% drop in revenue.

[Guidance](#)

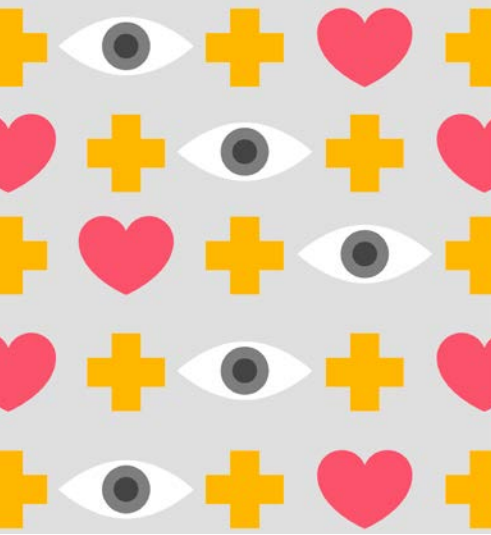
Payment rates

The lesser of:

- \$1,500 plus \$400 per full-time employee up to 50 FTE's; or
- Four times the actual revenue drop experienced by applicant.

Implemented

Applications for the Alert Level increase on 17 August 2021 will open at 8am on 24 August 2021.



The Leave Support Scheme, and Short-Term Absence Payment schemes also continue to apply, and details on this can be found in our [March 2021 Tax Tips](#).

Wage subsidy eligibility criteria – key considerations

The August 2021 wage subsidy, is in many respects, similar to the historical iterations of the scheme. However, as expected, the declaration for this scheme is substantially more detailed than in the past. This additional detail is useful as it addresses many of the previous areas of ambiguity. We set out below some key points to note for this iteration of the scheme:

- **Revenue test** – The guidance for this scheme now discusses a number of different scenarios where historically the Ministry of Social Development’s (MSD) view has been unclear. This includes:
 - Clarification around the application of the revenue test to highly seasonal businesses, where a business can instead compare the 14 day period against the same period in 2020 or 2019.
 - “Start-ups” where you can include a fall in projected capital income as revenue for the purpose of an application if certain tests are satisfied.
 - Groups where one entity employs all the staff but other entities generate the revenue (defined as a “commonly-owned group”). This broadly states that the employing entity must claim, and the revenue test must be considered across the business.
 - It also confirms that revenue comparisons must exclude any amounts paid under previous wage subsidies or other COVID-19 related business support payments.
- **Evidence** – The guidance explicitly states that businesses must prepare and retain evidence to support this declaration, such as records that demonstrate how the decline in revenue was attributable to the move to Alert Level 4 on 17 August 2021. This reinforces the need for businesses to maintain clear evidence of meeting the various requirements as had been noted in previous iterations of the scheme.
- **Employment law obligations** – The declaration explicitly states that businesses receiving the wage subsidy may not make any changes to employment agreements (including to rates of pay, hours of work and leave entitlements), without the written agreement of the relevant employee. It also requires that businesses will not unlawfully compel or require any of the named employees to use their leave entitlements for the period they receive the subsidy in respect of those employees. These requirements mirror the clarifications appearing in subsequent iterations of last year’s scheme (which were introduced due to widespread confusion among employers regarding their employment law rights). As was the case last year, good faith consultation and agreement will be key to mitigating legal exposure.



Some key learnings from the past schemes and our extensive work on wage subsidy claims

Given that we are now on the fifth iteration of the wage subsidy scheme, we have assisted a significant number of clients with their wage subsidy applications both before, during and after their claims were submitted. We've also spent much of the last year in discussions with MSD, and the financial audit teams, on some of the more subjective areas of the wage subsidy scheme.

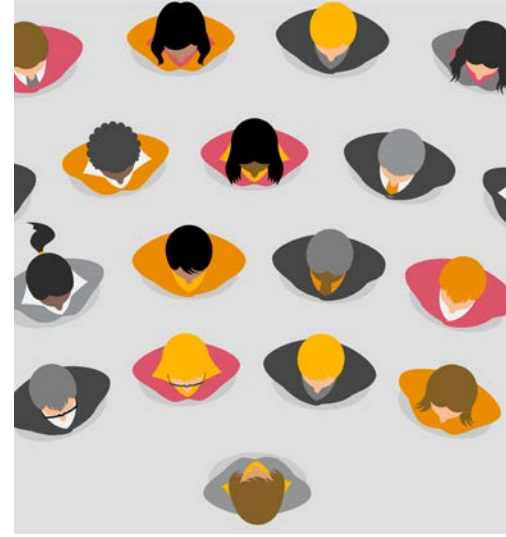
As such, we share below some key learnings gained over the last year which are worth bearing in mind before making a claim for the August 2021 Wage Subsidy.

Subjectivity of tests

- Whilst at a high level the criteria to claim the wage subsidy appears straightforward, in practice there is often a large level of subjectivity in the application and limited guidance. Specific considerations include:
 - The revenue test and how this is calculated. Give careful consideration to what actually constitutes revenue, the basis of any predicted falls in this, and how you will measure this for the relevant period. Where predictions were made previously, many could not be substantiated, and under the new declaration, if you ultimately don't meet the criteria, you will need to repay the subsidy.
 - The "active steps" test. It is often difficult to determine what level of steps need to be taken before this requirement is satisfied. Whilst our view is that a wage subsidy claim does not need to be a last resort, it is necessary to ensure that relevant steps are taken prior to seeking government funding (e.g. potentially utilising non-earmarked cash reserves, deferring dividends, reducing non-essential costs etc.). Also consider the impact of insurance – a number of clients found the impact of the previous lockdowns was mitigated by there being at least some insurance cover.
- For multinational clients, we have seen Inland Revenue raise enquiries in respect of transfer pricing, including if the wage subsidy was taken into account. This raised an additional layer of complexity that was not envisaged back in March 2020 when the wage subsidy was first introduced.

Audits and reviews of eligibility criteria

- MSD audit activity to date has not been significant, however we have seen wage subsidy claims coming under a large level of scrutiny as part of the financial audit process. Where there is subjectivity involved in the application of the requirements and the auditors take a different view to the business, this has led to disagreements with auditors, inclusions of a contingent liability within the financial statements, or a repayment of the wage subsidy to MSD.
- The wage subsidy is also a key question we have seen in the context of M&A transactions. Due diligence completed during these transactions frequently involved scrutiny into whether a business was entitled to the wage subsidy funding or if a repayment was expected. This demonstrates the importance of evidencing the reasons for both the initial application, and why it is appropriate for the wage subsidy to be retained by the business after the relevant period has elapsed.
- It also became clear that prior to making a claim, the wage subsidy application was not always being discussed with the relevant teams in the wider business. For example the payroll team puts in a claim before discussing the revenue test with the finance team, or discussing the public perception of making a claim with management. Communication across the relevant areas of the business is key to ensuring all the relevant factors have been considered.



Public perception and media scrutiny

- We have seen many businesses who can comfortably demonstrate that their revenue dropped by the required 30% or 40% for the relevant period, but when looking at their results as a whole for the year, the business had actually experienced improved financial performance as compared to the prior year. These situations led to unfavourable media attention and debates around the ‘morality’ of retaining the wage subsidy even if the conditions were satisfied at the time.
- There were also a large number of businesses who attracted unwanted attention as a result of dividend and incentive/bonus payments which were paid shortly after the wage subsidy periods. Whilst such payments were not prohibited by the rules, it again raised the question of whether the subsidy should have been repaid by the business as part of their corporate social responsibility.
- It is therefore necessary to consider not only the requirements set out within the declaration, but also the optics of making a claim, particularly for businesses who are subject to reputational risks if they attract unwanted attention.

Ultimately, for larger businesses this is a genuine consideration which the executive leadership team and Board should be taking responsibility for based on management recommendations and reports. With increasing focus on Environmental Social Governance responsibilities, do not underestimate the importance of this.

Legal implications and employee changes

- In the initial panic of the 2020 lockdowns, many businesses felt compelled to rush through major workforce changes without fully considering the interaction between the wage subsidy and their employment law obligations. In particular, many employers overlooked their core good faith obligations in respect of making changes to employees’ terms and conditions, e.g. reducing salary/wages or changing contractual hours, or redundancy/redeployment. This resulted in a number of grievances progressing through the Employment Relations Authority and the courts late last year.
- In addition, businesses did not consider the impact of employee changes on their ability to retain the wage subsidy. Changes could include (but are not limited to): redundancies, voluntary resignations, contractual changes, parental leave and ACC payments.

As you can see there is a large level of uncertainty, particularly when considering the wage subsidy requirements, public perception and employment law. Our team is happy to discuss any of these points in more detail if you think they may apply to your business.

Useful links

Our [March 2021 Tax Tips](#) article summarises the range of support offered by the Government and some of the key eligibility criteria. Much of which is still relevant now.

Key contacts

Any questions, please contact your usual PwC team, or one of our Wage Subsidy experts:



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