



16 November 2023

Erika Whittome
fyi-request-24499-2a496ee4@requests.fyi.org.nz

Dear Erika Whittome

Thank you for your request made under the Official Information Act 1982 (OIA), received on 22 October 2023. You requested the following regarding the COVID-19 Support Payment (CSP):

- 1. Would you kindly share the process and policy documentation etc for approving these payments which specifically cover the business' use of CVCs (Covid Vaccination Certificates)? I request your process to assess businesses eligibility for following both the CVC and for following the non-CVC rules. CVC rules are in the Covid19 Public Health Response Protection Framework 2021 (2nd December) under Sub Part 3: you've got CVC rules and non CVC rules.*
- 2. Would you also kindly define your criteria or policy document(s) what you state as "all reasonably practical steps" in the following from your website: "They did not include circumstances where businesses that were able to operate under the Red setting of the COVID Protection Framework, but had chosen to close temporarily without taking all reasonably practical steps to minimise their revenue losses. "*

Background

The CSP was administered under a process pursuant to which applicants:

- declared that they met the published CSP eligibility criteria (published on Inland Revenue's website in accordance with s 7AAB(3)(c) of the Tax Administration Act 1994 (TAA)); and
- agreed to the terms and conditions (the CSP terms and conditions).

As part of the CSP terms and conditions, applicants also undertook to comply with their declarations (including declarations about compliance with the CVC criteria and taking all reasonable steps to minimise revenue decline), and to keep evidence, materials and records of such compliance, which they could provide to Inland Revenue for audit purposes (as required) (cl 4.1(d)(ii) of the CSP terms and conditions). Section 7AAB(4) of the TAA also required applicants to provide such information as required by the Commissioner for review purposes.

The CSP terms and conditions are attached as an **Appendix** to this response for your reference.

Questions 1 and 2

Two documents are within scope of your request. The policy documents regarding approval of CSP applications are provided in the table on the following page, which include references to the CVC criteria (items 1 and 2) and taking all reasonable steps to minimise revenue decline (item 1). Therefore, your request is refused in part under section 18(d) of the OIA, as the information requested is publicly available.

Item	Date	Document description	Website address
1.	September 2022	Cabinet Paper: CAB-22-SUB-0030: Economic Supports under Omicron	treasury.govt.nz/sites/default/files/2022-09/c19-cab-22-sub-0030-4663882.pdf
2.	September 2022	Report IR2022/059 T2022/256: Final design decisions of the COVID-19 Support Payment	treasury.govt.nz/sites/default/files/2022-09/c19-t256-4616583.pdf

Inland Revenue did not provide any specific guidance to staff about assessing compliance with CVC requirements beyond the following information (in italics) found on Inland Revenue's intranet:

COVID-19 Vaccine Certificate (CVC) requirements

For CVC requirements, eligible applicants for the CSP include:

- Businesses or organisations which are not a regulated business or service under the COVID-19 Protection Framework and meet the relevant CSP criteria.*
- Businesses or organisations which are a regulated business or service under the COVID-19 Protection Framework, and have been operating in compliance with the requirements for regulated businesses or services (whether following the CVC rules or non-CVC rules) for both the affected period and the comparison period (or part of that period) - in so far as those CVC requirements applied to all or part of those periods.*

Inland Revenue could – in line with the CSP terms and conditions that applicants agreed to - request evidence, materials, and records from the applicant to demonstrate that they had complied with the CVC requirements and taken all reasonably practicable steps (if any) to minimise the decline in revenue. A repayment event could be actioned under the CSP terms and conditions if the applicant could not demonstrate that they met these requirements (i.e., if they could not demonstrate that they had complied with the CVC requirements and taken all reasonably practicable steps (if any) to minimise the decline in revenue).

The published CSP criteria can be found on Inland Revenue's website at ird.govt.nz/covid-19/business-and-organisations/covid-19-support-payment/eligibility-for-the-csp. This includes examples in relation to approval of CSP applications with CVC rules/non-CVC rules and reasonably practicable steps (if any) to minimise revenue decline.

Right of Review

If you disagree with my decision on your OIA request, you can ask an Inland Revenue review officer to review my decision. To ask for an internal review, please email the Commissioner of Inland Revenue at: commissionerscorrespondence@ird.govt.nz.

Alternatively, under section 28(3) of the OIA, you have the right to ask the Ombudsman to investigate and review my decision. You can contact the office of the Ombudsman by email at: info@ombudsman.parliament.nz.

If you choose to have an internal review, you can still ask the Ombudsman for a review.

Publishing of OIA response

Please note that Inland Revenue regularly publishes responses to requests that may be of interest to the wider public on its website. We consider this response is of public interest so will publish this response in due course. Your personal details or any information that would identify you will be removed prior to it being published.

Thank you again for your request.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S.M.R.', enclosed within a simple oval scribble.

Sharyn Rea
Project Programme Director
Customer & Compliance Services

**COVID-19 Support Payments Scheme
General Terms and Conditions for Grants
as at 18 February 2022**

1 Introduction

- 1.1 These are the general terms and conditions applying to grants made under the COVID-19 Support Payments Scheme ("**these General Terms**"). Additional definitions used in these General Terms are set out below.
- 1.2 These General Terms form part of your "CSP terms" for the purposes of section 7AAB of the Act and will be binding on you when your Application is completed by you or on your behalf and we notify you that your Application is accepted.
- 1.3 You agree and confirm that:
- (a) by your Application being completed and submitted to us online, in other electronic form or in any other manner specified or permitted by us from time to time, you agree to be bound by your CSP Terms; and
 - (b) any declarations, representations and statements that have been indicated as agreed or confirmed in your Application (whether by ticking a checkbox or otherwise, and whether by you or on your behalf) are to be treated as declarations, representations and statements made by you.

2 Definitions and interpretation

- 2.1 In these General Terms:

"we", "us", "our" and related terms means the Crown acting by and through the Commissioner of Inland Revenue.

"you" and **"your"** mean the person listed in the Application. If a person listed in the application is a partnership, an unincorporated joint venture, the trustees of a trust or otherwise does not have separate legal personality, "you" and "your" (unless the context requires otherwise) also include each partner, joint venturer, trustee or member jointly and severally. You are still bound by your CSP Terms despite any changes to your membership or formation, including by death, incapacity, or retirement of any partner, joint venture, trustee or member, the admission of any new partner, joint venture, trustee or member, or in any other way.

"your CSP Terms" means your Application, these General Terms and all eligibility requirements and other terms forming "CSP terms" as defined in section 7AAB of the Act.

"Act" means the Tax Administration Act 1994.

"Application" means an application for a grant under the COVID-19 Support Payments Scheme (including each declaration, representation, statement, consent, confirmation and undertaking) completed and submitted through our myIR online service or in such other manner as we may specify or permit from time to time, and whether by you or by a Tax Agent or other person on your behalf.

“Crown” means Her Majesty the Queen in right of New Zealand.

“Grant” means a grant made or to be made to you under the Act and the COVID-19 Support Payments Scheme.

“Independent Trustee” means, if you are the trustee(s) of a trust, any such trustee that is a solicitor, accountant, professional adviser or other person acting in an independent role that is not a beneficiary or settlor of the trust (and whose relatives, spouse or partner, direct or indirect shareholders, directors or other members are not beneficiaries or settlors of the trust).

“COVID-19 Support Payments Scheme” means the COVID-19 Support Payments Scheme established and administered by the Crown to provide support to persons financially affected by a public health measure, business circumstance, or matter, that is related to COVID-19 (COVID-19 circumstance), or by a group of such circumstances.

“Repayment Event” has the meaning given in clause 5.1.

“Tax Agent” means a “tax agent” as defined in the Act who completes and submits your Application on your behalf.

2.2 In addition, in these General Terms and unless the context requires otherwise:

- (a) headings and examples are for reference only;
- (b) the singular includes the plural and vice versa;
- (c) a reference to these General Terms and your CSP Terms, includes in each case these General Terms and your CSP Terms as amended, varied, or substituted from time to time;
- (d) a reference to a time of day is a reference to New Zealand time;
- (e) a reference to any monetary amount is to New Zealand currency;
- (f) a Repayment Event is continuing until it has been waived in writing by, or remedied to the satisfaction of, us;
- (g) any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and
- (h) a reference to **“in writing”** (or equivalent) includes provision by email or through online services operated by us (including the myIR online service).

3 The Grant

3.1 We will make a Grant to you in the amount set out in your Application, subject to your CSP Terms. The Grant will be paid in a single lump sum advance to the bank account nominated in your Application.

3.2 You must use the Grant in accordance with the declarations, representations, statements and undertakings made in your Application.

3.3 You are not entitled to a Grant unless:

- (a) you have fully and accurately completed your Application, and provided (and not withdrawn) all declarations, representations, statements, consents, confirmations and undertakings (and any other information,

including evidence and other materials) requested from you in connection with your Application, including from any Tax Agent; and

- (b) all declarations, representations, statements, consents and confirmations made (and any other information, including evidence and other materials, provided) by you or on your behalf in your Application are true and accurate and not misleading; and
- (c) the requirements of section 7AAB of the Act are otherwise satisfied in relation to the Grant.

4 Your undertakings to us

4.1 You undertake to us that you will:

- (a) promptly obtain, comply with and do everything needed to maintain any authorisations required to enable you to submit your Application and comply with your CSP Terms;
- (b) promptly supply us with such further information (including evidence and other materials) that we may reasonably request in connection with the Grant or for the purposes of your CSP Terms, including its administration or enforcement and for audit purposes (and you acknowledge that we may, at our discretion, also or instead exercise any powers we have under the Act to require such information, evidence and other materials);
- (c) promptly notify us if any Repayment Event occurs;
- (d) comply with each declaration, statement and undertaking made in your Application including in relation to (without limitation):
 - (i) use of the Grant (including restrictions as to application and distribution of proceeds); and
 - (ii) keeping of evidence, materials or other records, and provision to us for audit purposes (as required).
- (e) If you are a partnership, an unincorporated joint venture, the trustees of a trust or otherwise do not have separate legal personality, you are required to ensure that each partner, joint venturer, trustee or member (including any person who becomes a partner, joint venturer, trustee or member after the date of your Application) is jointly and severally bound by your CSP Terms.

5 Repayment Event

5.1 Each of the events and circumstances set out in this clause is a **"Repayment Event"**:

- (a) you breach or otherwise do not comply with any requirement in s 7AAB of the Act;
- (b) you breach or otherwise do not comply with any undertaking set out in clause 4.1;

- (c) any declaration, representation, statement, consent or confirmation (or any other information, including evidence and other materials) made, deemed to be made or provided by you or on your behalf or by any Tax Agent in connection with your CSP Terms (including your Application) is untrue, inaccurate or misleading in any material respect when your Application is made or on the date the Grant is made to you.

5.2 If a Repayment Event occurs then, without prejudice to any other rights which we may have under any other document or at law and without requirement for notice from us or any other formality:

- (a) the Grant will be immediately repayable in full by you to us; and
- (b) interest in accordance with clause 5.3 will immediately become payable by you to us.

5.3 Interest payable under clause 5.2 will not compound or itself bear interest, will be calculated by us and will accrue:

- (a) at an annual rate equal to our use of money interest (UOMI) rate for underpayments of tax (being the taxpayer's paying rate (as defined in the Act) and currently available as the "debit rate" at <https://www.ird.govt.nz/managing-my-tax/penalties-and-interest/interest-on-overpayments-and-underpayments>);
- (b) from the date the Grant was first made available to you until the actual date of repayment of the Grant in full to us (both before and after judgment); and
- (c) from day to day on the amount of the Grant (as reduced by any repayments of the Grant in accordance with this clause 5);
- (d) on the basis of the actual number of days elapsed and a year of 365 days (or 366 days in a leap year).

5.4 If you are required to make payment under this clause 5, that payment must be made:

- (a) in New Zealand dollars in such manner notified by us to you or published on our website from time to time (if applicable);
- (b) without any set-off, counterclaim or condition, and without any deduction or withholding for any tax or any other reason.

5.5 Any payment from you under this clause 5 will be applied first towards payment of accrued interest and then towards repayment of the Grant.

6 General

6.1 Notices:

- (a) Any communication to be made under your CSP Terms must be made in writing and shall be:

- (i) provided through the myIR online service or any other online service as we may designate from time to time; or
 - (ii) delivered or sent to the address or email address of the relevant party, and marked for the attention of the person or office holder, set out in your Application (in the case of communications from us to you) or for that purpose on our website (in the case of communications from you to us); or
 - (iii) such other address or email address as that party may from time to time designate to the other.
- (b) Any communication to be made under or in connection with your CSP Terms shall be deemed to have been made:
- (i) if delivered through any online service or by hand, upon delivery;
 - (ii) if sent by pre-paid post, 3 working days after posting; and
 - (iii) if sent by email, when actually received in the recipient's inbox in readable form.

6.2 **Amendment:** We may change your CSP Terms (including by way of amending these General Terms) from time to time by at least 30 days' notice to you.

6.3 **Independent trustees:** if you are the trustees of a trust, the liability of any Independent Trustee under your CSP Terms is limited to the trust property available to meet that liability. However, this limitation does not apply if the Independent Trustee loses its right to be indemnified out of the trust property, or diminishes the value of the trust property through its fraud or wilful breach of trust (in which case we can claim against the Independent Trustee personally to the extent we are unable to recover amounts due to us from the trust property).

6.4 **Publication of information:** You acknowledge that your name, the amount of the Grant and the period of the Covid-19 circumstance(s) for which you received the Grant may be published on a publicly available website administered by Inland Revenue. You have a right to access and correct any personal information about you under the Privacy Act 2020.

6.5 **Governing law:** Your CSP Terms are governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

6.6 **Offences:** We may take action against you or prosecute you for offences under the Crimes Act 1961 or the Act. You may be liable to pay penalties, fines or subject to imprisonment as a result. Such prosecution does not stop other legal actions being taken against you.