

EMPLOYMENT
TAX

COVID-19: Employer Alert – Employment Wage Subsidy Scheme

20 August 2020

The Employment Wage Subsidy Scheme (“EWSS”) will operate from **1 September 2020 to 31 March 2021** and replaces the Temporary Wage Subsidy Scheme (“TWSS”) which will cease on **31 August 2020**.

Revenue published its EWSS Guidelines on **14 August 2020** in relation to the operation of the EWSS (available [here](#)) (the “Guidelines”).

It is worth noting from the outset that the Guidelines advise that the Minister for Finance will continue to monitor the economy and may amend the terms of the scheme, specifically the **end date**, the **rate of subsidy payable** and the **turnover test** to determine employer eligibility. Employers who will be availing of the EWSS should therefore keep up to date with the most recent Revenue and Government guidelines.

We have set out below an overview of the current Guidelines.

TWO ELEMENTS

The EWSS has the following two elements:

1. It provides a flat-rate subsidy to qualifying employers based on the numbers of paid and eligible employees on the employer’s payroll; and
2. It charges a reduced rate of employer PRSI of 0.5% on wages paid to eligible employees.

Importantly from an employment law perspective, the Guidelines provide that *“The scheme does not affect any legal obligations that the employer may have to their employee as regards any terms, conditions or entitlements of their employment, including pay.”* Employers

availing of the EWSS continue to be bound by mandatory statutory employment obligations as well as the terms of an employee’s contract of employment. Any changes to an employee’s terms and conditions of employment that employers may need to make as a result of the impact of the COVID-19 pandemic on their business such as reductions to pay or hours, should be done following consultation and with the express or implied agreement of employees. Failure to do so may expose an employer to employment claims in either the civil courts or the Workplace Relations Commission.

REGISTRATION FOR THE EWSS

Employers can register for the EWSS through ROS from **18 August**. Employers will be required to agree to a declaration on registration which includes *“I understand and accept that failure by the business to adhere to the terms of the scheme could result in recoupment of monies together with interest, penalties and prosecution. I undertake that the business will retain all records relating to the scheme, including the basis of eligibility, for review by Revenue.”*

Employers must:

- Be registered for PAYE/PRSI as an employer
- Have a bank account linked to that registration

- Have a tax clearance certificate

TAX CLEARANCE

Employers must possess a valid tax clearance certificate to enter the EWSS and continue to maintain tax clearance for the duration of the scheme, in order to receive the applicable EWSS payments. If there are outstanding returns or liabilities for the applicant or any of their connected parties, tax clearance will be refused. Further information in relation to applying for tax clearance is available on the Revenue website [here](#).

EMPLOYER ELIGIBILITY

30% Test

An employer must be able to demonstrate that:

1. their business is expected to experience a 30% reduction in turnover or orders between **1 July and 31 December 2020** looking at the period as whole rather than on a monthly basis; and
2. this disruption is caused by COVID-19.

This reduction in turnover or orders is relative to:

- the same 6 month period in 2019 where the business was in existence prior to 1 July 2019;
- where the business commenced

trading between 1 July and 1 November 2019, the date of commencement to 31 December 2019; or

- where a business commenced after 1 November 2019, the projected turnover or orders for 1 July 2020 to 31 December 2020.

Employers should include all sources of trade income when considering turnover specifically including sales, donations and State Funding.

Appendix I of the Guidelines provides additional guidance on determining reduction in turnover or customer orders. The 30% reduction in turnover or customer orders may be applied at the level of the entity as a whole or, if an entity is formally structured (and has been since before the COVID-19 pandemic restrictions in March 2020) into individual Business Divisions, at the level of the individual Business Division.

- Each of the Business Divisions of such an entity which meets the eligibility criteria may be eligible for the subsidy.
- Each Business Division must have a clearly defined and distinct management structure in place separate to the other Business Divisions.
- These structures must be formalised and have been well established prior to the pandemic.

Helpfully, the Guidelines set out a number of examples of the application of the test for different businesses such as retail, hotels, transport service providers and service providers.

Reasonable Basis

Where application of the “turnover” and “customer orders” tests do not adequately demonstrate the disruption to a business

caused by the pandemic, an alternative “reasonable basis” should be applied. The Guidelines state that it is not possible to be prescriptive as to what will satisfy this test. It must however be the case that the 30% test cannot be applied to the business in question before an alternative basis for assessing eligibility is used. In all such cases, guidance from Revenue should be sought through the relevant Revenue Division/Branch responsible for the tax affairs of the employer concerned

MONTHLY REVIEW OF EMPLOYER ELIGIBILITY

Employers are required to undertake a review on the last day of every month (other than July 2020 and the final month of the EWSS) to ensure they continue to meet the eligibility criteria. If the business no longer qualifies, they should deregister for the scheme from the following day and cease claiming the subsidy.

If circumstances change in a later month and the employer is again eligible, they can reregister and claim from the date of reregistration. It is not possible to backdate the claim to include the period of deregistration.

COMPLIANCE CHECKS

The EWSS is operated on a “self-assessment” basis. Revenue will undertake assurance checks and details on the operation of these checks will be provided in the coming weeks. Employers should therefore retain evidence of their basis for entering and remaining in the scheme.

ELIGIBLE EMPLOYEES

A subsidy can be claimed in respect of employees of an impacted business on

the payroll and in receipt of **gross wages of between € 151.50 and € 1,462 per week** during the period of the EWSS.

The following categories of employees are specifically **excluded** in the legislation underpinning the EWSS¹:

1. Proprietary Directors

However, it was subsequently announced by the Minister for Finance, Paschal Donohoe TD on 31 July 2020 that the EWSS can be claimed in respect of certain proprietary directors (see details of announcement [here](#)). It is understood that a decision is being awaited on this point from the Department of Finance and that the Revenue Guidelines will be updated as soon as a decision has been made.

2. Connected Parties who were not on the payroll and paid at any time between 1 July 2019 and 30 June 2020.

Where an employee has more than one employment with more than one eligible employer, each employer will make its own claim for the employee, ignoring any other employment.

Where employees provide services for a company who meet the eligibility criteria, but, for payroll purposes, they are employed by an associated company, then the subsidy may be available provided the group can demonstrate, with supporting documentation, that the eligible employees were, wholly or mainly (i.e. more than 50%), employed in one or other of a group’s trading companies which meet the criteria.

RATE OF SUBSIDY

The rate of the weekly EWSS subsidy the employer will receive per eligible employee is as follows:

GROSS WEEKLY PAY	SUBSIDY
Employee paid more than €1,462 gross per week	No subsidy
Employee paid between €203 and €1,462 gross per week	€203
Employee paid between €151.50 and €202.99 gross per week	€151.50
Employees paid less than €151.50 gross per week	No subsidy

¹ Financial Provisions (Covid-19) (No. 2) Act 2020 (No. 8 of 2020) which was enacted on 1 August 2020

Gross weekly pay includes notional pay (e.g. BIK) and is before deduction of items such as pensions and salary sacrifice. It excludes any Department of Employment Affairs and Social Protection benefits which employees may have mandated to be paid to the employer (e.g. illness/maternity/adoptive benefit, etc.). These monies are disregarded when calculating the amount of the subsidy to be paid (if any).

The subsidy will be paid directly into the employer’s designated bank account once a month in arrears, as soon as practicable after the return due date (14th of the following month). Subsidies received are taxed as part of an employer’s trading income but are disregarded in the calculation of the 30% reduction in turnover.

As mentioned above, the scheme does not impact an employer’s existing obligations to employees in relation to terms and conditions of employment. On that basis, the expectation seems to be that employers availing of the EWSS will

pay employees their full gross weekly pay. Unlike with the TWSS however, there will be no tapering of the subsidy.

PAYE AND PRSI

EWSS will re-establish the normal requirement to operate PAYE and normal PRSI on all payments. This includes the regular deduction and remittance of income tax, USC and PRSI at the normal rates.

Significantly, employer PRSI will be reduced to 0.5% in respect of employees for whom a subsidy is payable. The reduced employer PRSI rate applies to the gross weekly pay of the eligible employee and not just the subsidy.

There are currently no PRSI classes in existence which apply the correct combination of employee PRSI and this reduced employer PRSI rate so employers PRSI will initially be given at the normal rate and a PRSI credit for the difference between this rate and PRSI at the 0.5% rate.

BACKDATED CLAIMS IN LIMITED CIRCUMSTANCES

Seasonal employees and new hires were excluded from the TWSS. EWSS eligible employers, can backdate a claim for EWSS to 1 July 2020 in certain limited circumstances:

- The employer was not eligible for TWSS; or
- The employer had employees not eligible for TWSS but who are eligible for EWSS (this excludes any employee that was ineligible for TWSS as their net wages exceeded the permitted threshold due to tapering).

These employees will benefit from the EWSS as part of a “sweepback” with payment to be made in September 2020.

This briefing is not intended as legal advice and employers are advised to consult the most recent Revenue Guidelines and their tax and financial advisors in relation to the Employment Wage Subsidy Scheme.

KEY CONTACTS

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