

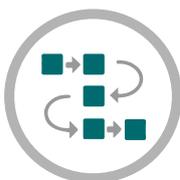


Employment Wage Subsidy Scheme



Guidelines on the operation of the Employment Wage Subsidy Scheme

14 August 2020



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Background and Summary

The Financial Provisions (Covid-19) (No. 2) Act 2020 (Act No. 8 of 2020) which was signed into law on Saturday 1 August 2020 inserted section 28B into the Emergency Measures in the Public Interest (Covid-19) Act 2020. This provides for the introduction of the Employment Wage Subsidy Scheme (EWSS) which is an economy-wide enterprise support that focuses primarily on business eligibility.

EWSS replaces the Temporary Wage Subsidy Scheme (TWSS) which was introduced by Section 28 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 and which ceases on 31 August 2020. Eligible employers who were claiming TWSS in respect of eligible employees may continue to claim TWSS in respect of these employees for pay dates up to 31 August 2020. For pay dates from 1 September 2020, EWSS can be claimed in respect of these employees provided the EWSS eligibility conditions are met. A separate registration process needs to be followed for EWSS as the eligibility criteria differs from the eligibility criteria for TWSS.

The scheme is open to employers who file their payroll submissions electronically through Revenue Online Service (ROS).

The scheme has two elements as follows:

- It provides a flat-rate subsidy to qualifying employers based on the numbers of paid and eligible employees on the employer's payroll; and
- It charges a reduced rate of employer PRSI of 0.5% on wages paid which are eligible for the subsidy payment.

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.

The scheme will be administered by Revenue on a "self-assessment" basis. Revenue will not be looking for proof of eligibility at the registration stage. We will in the future, based on risk criteria,

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review eligibility. In that context, employers should retain their evidence/basis for entering and remaining in the scheme.

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).

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.

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 provided all other conditions are met. Employers 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 an employer 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 while selecting 'EWSS' as the reason tax clearance is being applied for.

Tax Clearance will be granted if the tax affairs of the applicant and 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.

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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>

If there are outstanding returns or liabilities for the applicant 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 liabilities.

July Stimulus Package

Under the provisions of Financial Provision (Covid-19) (No.2) Act 2020 the Government has legislated to allow for debt associated with the COVID-19 crisis to be deferred or 'warehoused'. The scheme allows for the deferral of unpaid **VAT** and **PAYE (Employers)** debts arising from the COVID-19 crisis for a period of 12 months after a business resumes trading (in accordance with the Reopening Roadmap). The debts can then be addressed by way of a phased payment arrangement at a lower interest rate of 3% per annum which represent a significant reduction from the standard rate of 8% or 10% per annum depending on the particular tax owed.

The period covered by the debt warehousing scheme is the time during which the business was and is unable to trade due to the COVID-19 related restrictions and includes two months after the business re-commences trading.

The Financial Provision (Covid-19) (No.2) Act 2020 also introduced a reduced interest rate of 3% per annum to apply to tax debts that cannot be warehoused, i.e. older debts not associated with COVID-19.

The reduced rate is available across all tax types where the agreement is made by 30 September and applies from the date of the agreement.

It is important to note that businesses with COVID-19 related tax debts which are warehoused, or non-COVID-19 debts which are included in a phased payment arrangement,

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(PPA) qualify for tax clearance, despite having these debts. Accordingly, businesses with warehoused debts or debts covered by a PPA can obtain a Tax Clearance Certificate and, provided all other conditions are met, can participate in the EWSS.

Further information on the above initiatives can be found at <https://www.revenue.ie/en/corporate/communications/documents/debt-warehousing-reduced-interest-measures.pdf>

Revenue recommends that employers engage with these initiatives as soon as possible by making contact with the Collector General's Division to ensure they have all returns filed and payment arrangements in place. Once this is done, tax clearance should be applied for through ROS. This is required to facilitate registration for EWSS and timely receipt of subsidies.

Other Employer Eligibility Criteria

In addition to having tax clearance for the duration of the scheme, an employer must be able to demonstrate that:

- 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
- this disruption is caused by COVID-19.

This reduction in turnover or orders is relative to

- the same 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 31st December 2020.

Appendix I includes guidelines for more complex business structures to assist in their determination of eligibility.

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When undertaking a review of the potential drop in turnover, employers need to include all sources of trade income specifically including sales, donations, State Funding etc. This will likely result in employers in the Public, Community and Voluntary Sectors being ineligible as State Funding has mainly remained static and in some sectors, has increased.

Childcare businesses registered in accordance with Section 58C of the Child Care Act 1991 are included in the scheme with no turnover test to be met.

Continued Review of Employer Eligibility required

Employers are required to undertake a review on the last day of every month (other than July 2020 and the final month of the scheme) to ensure they continue to meet the above eligibility criteria. If employers no longer qualify, they must deregister for EWSS through ROS with effect from the following day (that being the 1st of the month) and cease claiming the subsidy. If an employer becomes aware prior to the end of the month that they will no longer meet the eligibility criteria (e.g. unexpected donation or grant received at the start of a month), they should deregister immediately and cease to claim subsidies.

Subsidies correctly claimed in accordance with the terms and conditions of the scheme prior to deregistration will not be repayable.

If circumstances change the following 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 as that correctly reflected the employer's expectation at that time.

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 (subject to limited exceptions below) during the period of the scheme (1 September 2020 to 31 March 2021).

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There are no restrictions on taking on new employees or movement of employees under the Transfer of Undertakings (Protection of Employment) (TUPE) legislation, provided such recruitments/movements are undertaken for bona fide business purposes and not with the intention to maximise subsidy claims.

Certain categories of employees are specifically excluded in legislation, those being:

- **Proprietary Directors.** However, in recognition of key role played by certain proprietary directors in providing employment to others, especially in the SME sector, it has been agreed that EWSS can be claimed in respect of certain proprietary directors. Additional guidance will be provided in due course.
- **Connected Parties** who were not on the payroll and paid at any time between 1 July 2019 and 30 June 2020. Connected parties include brothers, sisters, linear ancestors, linear descendants, aunts, uncles, nieces, nephews of an individual and their spouse. A person is connected to a company if they alone or together with their connected parties can exercise or acquire control of more than 50% of the issued share capital or voting rights, the greater part of distributions, or the greater parts of assets distributed on winding up.

Additional employees for whom subsidy should not be claimed include:

- employees working in a business division or related group entity not expected to suffer a 30% reduction – see Appendix II.
- employees employed otherwise than as part of a business e.g. domestic employees such as childminders, housekeepers, gardeners etc.

Safeguards will be included to minimise abuse specifically to ensure employers are not laying off one employee to replace them with more than one employee earning a lower wage thereby maximising subsidy entitlement, and manipulation of payroll including deferring, suspending, accruing, increasing or decreasing gross wage that would normally be payable.

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Rate of Subsidy

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

Employee Gross Weekly Wage	Subsidy Payable
Less than € 151.50	Nil
From € 151.50 to € 202.99	€ 151.50
From € 203 to € 1,462	€ 203
More than € 1,462	Nil

For pay periods other than weekly, gross weekly wage will be calculated by dividing the returned gross wage by the number of insurable weeks included (subject to maximum divisors set by the system).

As an example, employer A will receive the following subsidies for the following employees:

	Gross Weekly Wage	Subsidy Payable
Employee A	€ 125	Nil
Employee B	€ 170	€ 151.50
Employee C	€ 250	€ 203
Employee D	€ 1,000	€ 203
Employee E	€ 1,500	Nil

In order to provide monthly subsidy payments to employers, EWSS can only be claimed in respect of payroll submissions of at least a monthly pay frequency i.e. quarterly/yearly/bi-yearly/other claims will not be processed. Submissions with those unsupported pay frequencies will be accepted into Revenue's systems but not processed, and a message will be displayed upon submission via ROS advising that they will not be processed for subsidy or PRSI credit purposes.

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Gross wage as reported on the payroll submission includes notional pay and is before deduction of items such as pensions and salary sacrifice. It excludes any DEASP benefits which employees may have mandated to be paid to the employer (e.g. illness/maternity/adoptive, etc.). Such monies should continue to be included in non-taxable pay as normal and are ignored when calculating the quantum of the subsidy to be paid.

Registration for the Scheme

Eligible employers, or their payroll or financial agents, will be able to register for EWSS through ROS from 18th August. The date of registration cannot be back dated prior to the date of application and does not need to be back dated if a claim will be submitted in respect of payments in July/August (see below).

As part of the registration process, employers will be required to agree to the following declaration:

I declare that I have read the eligibility criteria for the Employment Wage Subsidy Scheme and that the business qualifies for the scheme. I undertake that the business will abide by the terms and conditions of the scheme. 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.

Registration applications will only be processed if the employer is registered for PAYE/PRSI as an employer, has a bank account linked to that registration, and has tax clearance.

Where an employer files an EWSS payment submission without first registering for EWSS, it will be rejected in full. As registration cannot be backdated, its imperative registration is undertaken prior to the first pay date in respect of which EWSS is being claimed.

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Operation of Payroll and Processing of Subsidy Claims

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.

As detailed above, employer PRSI will be reduced to 0.5% in respect of employees for whom a subsidy is payable i.e. those whose gross weekly wage is between € 151.50 and € 1,462. There are currently no PRSI classes in existence which apply this combination of employee and employer PRSI rates.

To implement EWSS for 1 September and limit the amount of changes required for the employers and the payroll software providers, employers will continue to operate payroll as normal and report employer and employee PRSI deductions based on the employee's appropriate existing PRSI classes. This ensures employee social insurance contributions will accumulate as normal. To indicate that a subsidy is being requested for an eligible employee, the employer must include 'EWSS' as the payment type in the 'Other Payments' section on the payroll submission and input the digit zero or one cent (depending on the capability of the payroll package being utilised - payroll software providers will advise their users which to input) as the quantum of the corresponding other payment made.

Employers should not include the EWSS 'Other Payment' details on the payslip they provide to the employee.

As already advised, where an employer files an EWSS payment submission without first registering for EWSS, it will be rejected.

Where an employer makes a submission to Revenue with 'EWSS' included in the other payment field for employees who are not eligible for a subsidy (e.g. gross weekly wage below € 151.50 or above € 1,462 or unsupported pay frequency for EWSS), a message will issue through ROS upon submission requesting that this does not occur in the future. Such payslips

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will also not be eligible for the reduced rate of PRSI and will be excluded from the PRSI credit calculation (see below).

On receipt of an eligible EWSS payroll submission from a registered employer, Revenue will calculate the subsidy payable by reference to the gross wage, pay frequency and insurable weeks reported on the payslip.

Where an employer files a payroll submission but is not in possession of tax clearance, a real-time message will issue advising that tax clearance is not in place so the subsidy claimed will not be paid as part of that month's claim unless tax clearance is in place by 14th of the following month (the return filing date). This will provide adequate notice to the employer to regularise the tax clearance position prior to the return due date, that being 14th of the following month, to ensure payment of the subsidy.

At the end of every month, Revenue will process the payroll submitted and post a statement into the ROS inbox of employers by 5th of the following month setting out the quantum of subsidy due to be paid to the employer based on the EWSS submissions made. This will allow time for necessary amendments to be made, prior to the return filing date. It's not anticipated that significant amendments will occur, and repeated amendments will result in a compliance check to ensure compliance with the terms of the scheme.

After the return due date, the system will process the claim and make the payment into the designated bank account as soon as practicable thereafter. If an employer does not have tax clearance on the return due date, their subsidy payment will not be processed and once they have obtained tax clearance, they will need to contact the National Employers Helpline to request that the refund issue.

Employers are required to make submissions to Revenue by the pay date. To avoid any delay in payment of subsidy to an employer or posting of the employer PRSI credit, submissions need to be made by the return filing date of the relevant month e.g. September pay dates need to be filed by 14 October to be included in the October payment. Any amendments or

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submission of EWSS payroll after the return due date will be subject to a review by Revenue which will unavoidably lead to a delay in payment.

An EWSS submission for a pay period outside of the scheme dates (i.e. before 1st September 2020 and after 31st March 2021) will trigger a ROS message advising that the claim will not be processed as it's outside the scheme date range.

Any subsidies due will not be offset against outstanding tax liabilities unless requested by employers.

Reduced Employer PRSI rate of 0.5%

As employer PRSI will have been returned as part of the payroll submission at a higher rate than the 0.5% available under the scheme, an adjustment to the liability returned which becomes part of the monthly payroll return will need to be made. Revenue will undertake this by calculating a PRSI 'credit' due to the employer. This is undertaken by recalculating employer PRSI using the scheme rate of 0.5% (where employer PRSI returned is more than 0.5%) and subtracting this from employer PRSI due as reported in the submission.

Overnight on the return due date of the 14th of the following month, Revenue will post the PRSI 'credit' due for that month to the employer's monthly payroll return to reduce the overall payroll taxes balance due. This reduced liability is what becomes due and payable for the relevant month.

To avoid any delay in posting the employer PRSI credit, submissions need to be made by the return filing date of the relevant month e.g. September pay dates need to be filed by 14 October to be included in the October calculation. Any amendments or submission of EWSS payroll after the return due date will be subject to a review by Revenue which will unavoidably lead to a delay in the posting of the credit.

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Example

We will look again at Employer A who is eligible and registered for EWSS and has tax clearance. September has 4 pay dates and employees are paid the same amounts weekly. PAYE, USC and PRSI are calculated on the full gross weekly wage paid to each of the employees utilising the most up to date Revenue Payment Notification (RPN) available.

The following table shows the relevant calculation of net wage, subsidy and employer PRSI credit.

		A	B	C	D	E	F	G	H	I	J
		Gross Weekly Wage	Weekly Subsidy Payable	Weekly PAYE due	Weekly USC Due	Weekly employee PRSI due	Net Weekly Wage	Weekly Employer PRSI at 'normal' rate	Recalculated employer PRSI at 0.5%	Weekly employer PRSI credit due	Net employer PRSI due
1.	Employee A	€ 125	Nil	Nil	€ 1	Nil	€ 124	€ 11	N/A	Nil	€ 11
2.	Employee B	€ 170	€ 151.50	Nil	€ 1	Nil	€ 169	€ 15	€ 1	€ 14	€ 1
3.	Employee C	€ 250	€ 203	Nil	€ 2	Nil	€ 248	€ 22	€ 1	€ 21	€ 1
4.	Employee D	€ 1,000	€ 203	€ 264	€ 32	€ 40	€ 664	€ 111	€ 5	€ 106	€ 5
5.	Employee E	€ 1,500	Nil	€ 464	€ 60	€ 60	€ 916	€ 166	N/A	Nil	€ 166
6.	Weekly totals	€ 3,045	€ 557.50	€ 728	€ 96	€ 100	€ 2,121	€ 325	€ 7	€ 141	€ 184

7.	Monthly Totals (4 weeks)	€ 12,180	€ 2,230	€ 2,912	€ 384	€ 400	€ 8,484	€ 1,300	€ 28	€ 564	€ 736
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The 'other payments' field would not have included 'EWSS' in respect of employee A or employee E as they are not eligible employees as their gross weekly wages are not within the relevant limits.

On 5 October, employer A will receive a statement into their ROS inbox advising that EWSS of € 2,230 is due to them for the month of September (column B, row 7). Provided no amendments are made by employer A in respect of any pay dates in September, this claim will be processed overnight on 14 October and will be paid into employer A's nominated bank account as soon as practicable after 15 October.

Also overnight on 14 October, the calculated PRSI credit due of € 564 (column I row 7) will be posted against the employer PRSI liability due for September 2020 of € 1,300 (column G row 7) leaving net employer PRSI due of € 736 (column J).

The monthly payroll return liability for September will be:

	€
PAYE (column c)	2,912
USC (column d)	384
Employee PRSI (column e)	400
Employer PRSI (column j)	<u>736</u>
Total monthly payroll return liability for September 2020	<u>4,432</u>

July/August 2020

In recognition of the exclusion from TWSS of new entities, seasonal employees and new hires, EWSS eligible employers, in respect of eligible employees, can backdate a claim for EWSS to 1 July 2020 in certain limited circumstances as follows:

- The employer was not eligible for TWSS; or
- The employer had employees not eligible for TWSS. This does not extend to employees whose net wages exceed that which allowed TWSS be claimed in respect of them due to tapering.

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These will be dealt with as part of a 'sweepback' with payment made in September. This will operate as follows:

- Before 5 September, employers will provide electronically using a template which will be available on revenue.ie in late August requisite information including employee name, PPSN, employment ID, payment frequency, insurable weeks, commencement date, etc.
- Revenue will upload this information and calculate the total subsidy due to be paid.
- The subsidy will be paid into the designated bank account as soon as practicable after 14 September.
- No additional submissions or amendments will be processed on or after 14 September in respect of July/August.

The reduced rate of employers PRSI of 0.5% is also applicable to eligible payments in July and August 2020. As employer PRSI will have been returned at the normal rate, Revenue will calculate the difference between the employer PRSI returned and 0.5% and overnight on 14 September, will credit any excess returned against the employer PRSI liability for August 2020.

Compliance Checks

As already advised, the scheme will be administered by Revenue on a "self-assessment" basis. To ensure compliance, Revenue will undertake assurance checks in relation to the scheme. Further details on how this future assurance check program will operate will issue in due course.

It is imperative all records relating to the operation of the scheme are retained specifically including those supporting the expectation that turnover or customer orders will reduce by the requisite 30%, together with details of the monthly reviews that must be undertaken.

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Other Important Points to Note

Subsidies received are taxed on the employers as part of their trading income but are ignored in the calculation of the 30% reduction in turnover.

Some employees have more than one employment with more than one eligible employer. In such instances, each employer makes its own claim (where appropriate) for the employee ignoring any other employments that an employee may have.

Where employees are included in more than one payroll by an employer (e.g. on a weekly payroll for wages and monthly payroll for bonuses), subsidy entitlement must be calculated by aggregating monies paid under both payrolls. Where additional payments are being made for the same payment date whereby two payslips are being processed for the same pay date, these also must be aggregated when calculating subsidy entitlement.

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Appendix I – Additional Guidance on determining Reduction in Turnover or Customer Orders

As detailed above, businesses need to demonstrate their basis for an expected 30% reduction in turnover or customer orders between 1 July and 31 December 2020. This reduction in turnover or customer orders is relative to:

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

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. In such a case, each of the Business Divisions of such an entity which meets the eligibility criteria may be eligible for the subsidy. The decline in turnover or customer orders in each Business Division must be capable of being separately identified or otherwise the entity as a whole has to be assessed. Each Business Division must have a clearly defined and distinct management structure in place separate to the other Business Divisions and these structures must be formalised and have been well established before the advent of the COVID-19 pandemic. Revenue, having regard to risk indicators, may need to examine closely the evidence/basis for entering the scheme of certain EWSS applications that are made in respect of one or more Business Divisions rather than made in respect of the overall entity.

If a reduction in customer orders is being considered as the basis for eligibility for the scheme, the following are examples of how it will apply –

- In the case of a retail business, a pub, a fast-food outlet and similar type businesses: at least a 30% reduction in the value of overall sales (cash, credit and orders, including on-line and telephone orders).

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- In the case of a businesses which operates largely by way of “bookings” such as a restaurant, hotel, B&B, hostel, camp site, caravan park: at least a 30% reduction in the value of bookings for the relevant period.
- In the case of public and private transport service providers: at least a 30% reduction in the volume of online bookings for passenger journeys or a 30% reduction in the number of passenger journeys or a 30% reduction in the value of passenger ticket sales.
- In the case of a service provider, such as a call centre: at least a 30% reduction in the volume of call services provided, where the calls have not been diverted to be dealt with elsewhere within a group.
- In the case of energy suppliers: at least a 30% reduction in the volume of energy consumed.
- In the case of a business involved in the servicing of equipment: at least a 30% reduction in the number of service visits made or service jobs completed.

“ Other Reasonable Basis”

In Revenue’s administration of this scheme, the key focus will be on disruption to commerce as a result of COVID-19. In instances where application of the “turnover” and “customer orders” tests do not adequately demonstrate this, an alternative “reasonable basis” should be applied. It is not possible to be prescriptive in guidance as to what might or might not constitute such a reasonable basis. However, the starting position is that neither the turnover test nor the reduction in customer orders test is capable of being applied to the business in question. It is not sufficient that the business does not meet either of these tests. It must be the case that neither of these tests are capable of being 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.

An example may be where the majority of a company’s contracts take 6 months or longer to complete and that the business otherwise is eligible for the subsidy, then such a business will

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be treated as meeting the criteria where no substantive work has taken place on any order since the business stopped working due to COVID-19.

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Appendix II – Additional Guidance on employees

In recognition of arrangements in place within entities with separate business divisions or whose activities are undertaken across several separate entities, we have included here additional guidance to assist employers in determining what employees they can claim subsidy in respect of.

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 show, and provide supporting documentation to the effect, that the employees concerned were, wholly or mainly (i.e. more than 50%), employed in one or other of a group's trading companies which meet the criteria. The companies adversely affected must be able to show that they are otherwise eligible, in respect of those employees, for the subsidy. The subsidy, if applicable, will be paid to the payroll company regardless of whether it is itself eligible.

There are situations where corporate structures affecting employees will vary. Corporate structures may involve several closely entwined entities which use a single employer registration for a number of separate Divisions or entities within a group, or single entities have a number of separate divisions within a standalone entity. Where it can be demonstrated that specific employees were wholly or mainly (i.e. more than 50%) employed in the impacted Divisions, the subsidy may be paid to the employer in respect of those employees, subject to meeting other eligibility criteria.

As an example, where there are clearly 2 or more separate and distinct Business Divisions within the one company carrying on distinct businesses in their own right, an employer may apply the eligibility tests to each Business Division of the company separately. However, the employer will need to be able to prove that each such separate Business Division meets the eligibility tests in its own right. To the extent that one or other of the Business Divisions qualify for the subsidy, then the subsidy will be available to the employees of that Division only. Each Business Division in a company must have a clearly defined and separate

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management structure to the other Business Divisions in the company and these structures must have been well established before the advent of the COVID-19 Pandemic.

In any such case, employers will need to show that the employees concerned are not transferable across different businesses in the company.

Employees based in the Head Office Division can be treated as being eligible for the subsidy by reference to those head office employees whose working time is spent, wholly or mainly (i.e. more than 50%), performing functions that relate to the Business Division that is eligible for the subsidy.

Any staff member whose duties include working in more than one Division is to be excluded unless the employer can prove that such an individual's working time is spent, wholly or mainly (i.e. more than 50%), working in the business Division that is eligible for the subsidy.

Only a company which can clearly demonstrate by reference to pre-existent documentation (prior to COVID-19 pandemic restrictions in March 2020) that it is organised in a structured way into a Head Office Division and various clearly separate Business Divisions will qualify for the subsidy.

These guidelines are equally applicable to Irish branches of foreign entities.