



Ref: 100088-22
Your Ref: S0752 PAC33

21 February 2022

Ms. Sarah Cremin,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.
PAC@oireachtas.ie

Dear Ms. Cremin,

I refer to the request from the Committee for details of any analysis undertaken of companies paying dividends while in receipt of wage supports.

Subsidy payments under the Employment Wages Subsidy Scheme (EWSS) are made pursuant to the Emergency Measures in the Public Interest (Covid -19) (No.2) Act of 2020 ("the Act"). To date payments totalling some €6.45bn have been made to 51,900 employers to support the continued employment of some 715,300 employees.

Under the Act, the principal conditions under which an employer is eligible to receive EWSS subsidies are as follows:-

- an employer must be able to demonstrate that its business has experienced a 30% reduction in turnover or orders between 1 January and 31 December 2021, by reference to the corresponding period in 2019, as a result of disruption caused by the Covid-19 pandemic, and
- an employer must have a tax clearance certificate while in receipt of payments from the scheme.

These criteria do not include any conditions relating to the payment of dividends to shareholders or the making of any other form of distribution by claimant companies. The objective of the scheme is to support continued employment, by maintaining the link between the employer and employee, and the core condition is a decline in turnover.

Therefore, Revenue does not have any basis or the readily available and analysable data on which to perform an analysis of the payment of dividends by EWSS claimant companies.

As noted in my letter to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach, companies making distributions have obligations to deduct and return Dividend Withholding Tax (DWT). DWT applies to a wide range of types of distributions. This includes both intra-group distributions and dividends paid to shareholders, including both cash and non-cash distributions (e.g. distributions made in the form of the issue of additional shareholdings). The DWT return does not distinguish between these different forms of taxable distribution nor does it set out the accounting period to which distributions

may relate. Therefore, it is not possible to determine whether distribution payments relate to profit reserves earned before or during the pandemic.

Revenue recently carried out a short exercise to identify DWT returns filed by EWSS claimant companies in respect of distributions made in 2021. This showed that 641 employers, out of a total of 51,900 who received EWSS payments, filed DWT returns advising of some form of distribution during this period. However, it was not possible to determine whether the distributions were cash or non-cash in nature or whether any dividends were paid to shareholders. The 641 companies received gross EWSS subsidy payments of €267.8m.

In line with international best practice on transparency around recipients of State Aid, the legislation provides that the names and addresses of all employers to whom an EWSS payment is made are published. The published lists are available [here](#) and include details of all employers who received a subsidy payment in the relevant quarter. The published lists include those companies who voluntarily exited the scheme and made either whole or partial repayments of subsidy amounts received.

My letter of 13 January 2022 to the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach is enclosed for the information of the Committee.

If you have any queries please do not hesitate to contact Angela O’Gorman at (01) 8589181 or angelaogorman@revenue.ie

Yours sincerely,



Niall Cody,
Chairman.



Your Ref: JFPERT-I-0443

Ref: 100765-21

13 January 2022

Mr. John McGuinness T.D.
Chair to the Committee,
Joint Committee on Finance, Public Expenditure,
and Reform, and Taoiseach,
Leinster House,
Dublin 2.
D02 XR20
aileen.fallon@oireachtas.ie

Dear Deputy McGuinness,

I refer to your letter dated 17 December 2021 seeking information on VAT on dental services and Covid-19 income support measures.


The information requested is enclosed as follows:

Appendix 1: VAT on Dental Services

Appendix 2: Covid-19 related Income Supports

If you have any further queries in relation to these matters please do not hesitate to contact Angela O’Gorman at angela.ogorman@revenue.ie

Yours sincerely,



Niall Cody,
Chairman.

Appendix 1

VAT on Dental Services

The current VAT exemption provided for in legislation applies to dental services provided to a patient by a clinic, a principal dentist, or an associate dentist.

The supply of facilities to a dentist to enable him or her to carry on a dental practice are subject to VAT and this has always been the case. Some dental practitioners operate a fee-sharing arrangement where a principal dentist provides a premises and other facilities to other dentists in exchange for a fee, and the provision of such premises and other facilities constitutes a service which has always been subject to VAT.

In summary, the exemption from VAT in respect of dental services relates only to a dental service provided to a patient; the supply of premises and other facilities to a dentist in exchange for a consideration is not, and has never been, covered by the VAT exemption.

Revenue's interpretation of this legislation has not changed and is in accordance with the VAT Directive. Exemptions from VAT for certain activities in the public interest are set out in Chapter 2 of Title IX of the Directive. These provisions are transposed into Irish legislation in Part 1, Schedule 1, VAT Consolidation Act 2010. Paragraph 2(5) of Schedule 1 provides for an exemption in respect of the supply of professional dental services. The legislation which transposes Article 132 of the Directive, and Revenue's interpretation of the legislation, ensures that the exemption from VAT to the supply of dental services is applied consistently and in a manner which is not dependent on the legal form of the person supplying the service. In accordance with the Directive and CJEU jurisprudence, the VAT exemption applies to dental services provided by a clinic, a principal dentist, or by an associate dentist, where those services are provided to a patient.

Revenue is aware that dental practitioners are seeking the VAT exemption on dental services for patients to also apply to the supply of premises and other facilities provided by one dentist to another. Aside from the central legislative position that has already been outlined, there is also an issue of fairness in such an approach. It is quite possible for a person other than a dental practitioner to provide some or all of these services to a dentist, and in such a case, the supply of the services would be chargeable to VAT in the normal way. Therefore, it would distort competition if the service were to be exempt solely on the basis that it was provided by a dental practitioner. The EU principle of fiscal neutrality ensures that where economic operators are carrying on the same, or closely related, activities, then those operators should not be treated differently in relation to VAT.

Appendix 2

Covid-19 related Income Supports

Over the course of 2020 and 2021 the Oireachtas enacted legislation to support businesses impacted by the Covid-19 pandemic. These supports have been provided in the form of the Temporary Wage Subsidy Scheme (TWSS), Employment Wage Subsidy Scheme (EWSS)¹, Covid Restrictions Support Scheme (CRSS)² and the Business Resumption Support Scheme (BRSS)³. The legislation enacted by the Oireachtas places the administration of the subsidy schemes under the care and management of Revenue, which includes ensuring that this very significant investment of public funds is properly allocated to eligible employers and businesses in line with the legislation enacted by the Oireachtas. Revenue's experience to date is that the vast majority of beneficiary businesses have operated the subsidy schemes in good faith and in accordance with the underpinning legislation.

The TWSS operated from March 2020 to August 2020. To qualify for the TWSS, a business had to be experiencing a significant negative economic disruption due to the Covid-19 pandemic. Key indicators were that the employer's turnover was likely to decrease by 25% for Quarter 2 2020, and that the business was unable to meet normal wages or normal outgoings.

In the case of EWSS, which replaced TWSS from September 2020, qualification is based on the employer demonstrating that the business is likely to experience a 30% reduction in turnover or orders during a specific reference period (for example, 30% decrease in 2021 turnover compared to 2019 turnover) and that this disruption to business is caused by the Covid-19 pandemic. The qualifying criteria for the scheme also required businesses to have tax clearance.

With regard to the application of the CRSS, to qualify a business must, under the specific terms of Covid-19 restrictions set out in public health regulations, be required to prohibit or significantly restrict customers from accessing its business premises, such that the turnover of the business during the period of restrictions is no more than 25% of the average weekly turnover in a reference period, which in most cases is 2019. Among the qualifying conditions for the CRSS is that the business must have tax clearance.

For the BRSS, a business must have tax clearance and operate a trade that was significantly impacted by Covid-19 health restrictions, including where the impact continued after an easing of the restrictions.

These support schemes operate on a self-assessment basis, with Revenue carrying out risk-based checks to ensure businesses meet the eligibility conditions, as set out in legislation. Any amounts incorrectly claimed are recouped by Revenue through its compliance checking programmes. Of note, some businesses did make bona fide claims for wage subsidies but, in the light of their subsequent financial performance, voluntarily repaid some or all of the subsidy received.

In relation to the wage subsidy schemes (TWSS and EWSS), the primary purpose was to ensure, as much as possible, that employers would keep employees in employment, thereby maintaining the employer/employee relationship, so that normal operations could quickly restart once the restrictions are lifted, rather than making them redundant and eligible for the Pandemic Unemployment Payment (PUP). In this regard, it should be noted that the EWSS has supported

¹ <https://www.revenue.ie/en/employing-people/documents/ewss/ewss-guidelines.pdf>

² <https://www.revenue.ie/en/corporate/press-office/budget-information/2021/crss-guidelines.pdf>

³ <https://www.revenue.ie/en/self-assessment-and-self-employment/documents/brss-guideline.pdf>

almost 52,000 employers to keep over 700,000 employees on their books since September 2020. The schemes were developed to deal with a situation where businesses were restricted from trading due to public health guidelines and not because of any economic or other trading conditions. It was considered that the best metric to determine the impact of the public health restrictions was a decline in turnover. At the outset of the restrictions nobody could anticipate how long or what impact the restrictions would have or how businesses or customers would react. Qualification for TWSS and subsequently EWSS was based on projections of the business.

As the restrictions ebbed and flowed and as business models changed fundamentally with a significant pivot to e-commerce, online sales, click and collect, takeaway and outdoor sales, individual businesses were required to review their eligibility and, if necessary, leave the scheme. Revenue carried out various checks throughout the 20 months of the schemes to confirm eligibility and businesses left (and re-joined) the schemes as circumstances changed. Where a business joined the scheme based on reasonable projections which subsequently turned out to be too pessimistic our general approach was to cancel the registration with effect from when it became clear that the business would not qualify. This meant that we would not seek to recoup the subsidy paid from the start where the projections were reasonable at the time they were made.

One of the policy decisions made at the outset was to publish the recipients of the scheme periodically to ensure transparency. At the introduction of TWSS this met some negative commentary from business interests. Our publication of TWSS recipients took place on 30 October 2020 on the Revenue website. By that stage a number of businesses had decided to refund the subsidy in full for various reasons but mostly because the impact of the COVID restrictions was not as severe as originally anticipated. We advised businesses that if they withdrew from the TWSS, refunded the amounts received and regularised Employer's PRSI (for both EWSS and TWSS, a rate of 0.5% has applied compared to the normal 8.8%/11.05% rates) and their employees tax, PRSI and USC they would not be published – 227 businesses who received payments of €4.6 million met these conditions prior to publication of the original list. If a business subsequently met the conditions post publication, their name was removed from the published list. The total number of cases that have reversed out voluntarily or are in process of reversing out and therefore not published or were subsequently removed from the published list is 633 employers. The total TWSS attributable to these employers is €6.3 million.

The position is different with EWSS in that any business who receives a payment through the scheme is published and if they reverse out of the scheme the published list is not amended. We set out details on our compliance activity in relation to EWSS below. In addition to our compliance activity a number of employers who met the eligibility criteria have either wholly or partially refunded EWSS because the impact of the restrictions was not as severe as they originally feared. Since the scheme commenced, 16 employers advised Revenue they were voluntarily removing themselves from the scheme, 9 of whom withdrew and fully repaid nearly €21 million and 7 withdrew and partially repaid just over €4.5 million.

A comprehensive compliance and reconciliation programme has been completed for the TWSS. The programme began in June 2020, which included a phased programme of compliance checks on all participating employers. Employers were contacted to confirm eligibility for the TWSS by reference to the decline in their turnover in Quarter 2 of 2020 due to Covid-19 related restrictions and were requested to provide sample payslips confirming payment of the subsidy to their eligible employees. The documentation and level of detail requested should have been readily available to employers as they formed part of the core eligibility criteria for the TWSS. Audited accounts were not requested as part of the compliance checks as this was not an eligibility requirement for the

scheme. Employers were advised that if they considered that they did not meet the qualifying criteria they should immediately cease claiming the subsidy.

Compliance checks as at 31 December 2021 are now 99.8% complete with 153 checks ongoing. Completed checks have confirmed 97.3% compliance by employers with the conditions of the scheme with Revenue accepting that the employers concerned had a reasonable expectation on entry into the scheme that turnover would decrease significantly. To date, Revenue has recouped over €31.5 million in TWSS related overpayments from 1,786 or 2.7% of participating employers.

Revenue also completed a reconciliation exercise which identified an aggregate liability of €308 million, the majority of which related to the transitional period up to 5 May when we paid €410 per week per eligible employee to employers. Bringing the compliance and reconciliation exercises together the aggregate amount of TWSS identified for recovery amounts to €324 million, this includes the €4.6 million refunded by businesses prior to publication. €255.9 million of this has been repaid to Revenue and €58 million is included in the tax debt warehouse.

The Comptroller and Auditor General examined controls over the TWSS as part of his Report of the Accounts of Public Services 2020.

Revenue has undertaken a multi-faceted approach to compliance checks to safeguard the integrity of the EWSS. This includes systematic checking of submissions, real time checking of payroll submissions from employers availing of the scheme, and cross-referencing claim data against other Revenue data sources to identify anomalies or trends requiring attention. The real time checking procedures include engagement with employers, to ensure timely resolution of issues, and to also ensure employers claim their correct EWSS entitlement, or cease claiming where they no longer have an entitlement. For pay dates after 1 July 2021, employers were required to complete and submit to Revenue an additional online monthly Employer Eligibility Review Form (ERF) to confirm continued eligibility and access to the scheme. Where the ERF is not completed or confirms ineligibility, no subsidy payment is made.

Revenue has also been undertaking a risk-focused follow-up program of EWSS related compliance interventions. These checks include data analysis to identify participating employers who may not meet the eligibility criteria, and where appropriate, checks are followed up with risk interventions in accordance with The Code of Practice for Revenue Audit and Other Compliance Interventions. In most cases, the matters are concluded with repayment of the amounts overclaimed or the liability is 'warehoused' under the Debt Warehouse Scheme. Where issues are identified and agreement is not reached, Revenue will raise a notice of assessment quantifying the liability owed, which then becomes collectible in the same manner as any outstanding tax liability. The legislation provides employers with the right to appeal the assessment to the independent Tax Appeals Commission (TAC) within 30 days if they disagree with the amount due. Revenue has to date raised assessments in 60 EWSS cases amounting to €5.1 million. Of these, 4 have been appealed to the TAC.

Overall, Revenue has finalised EWSS related interventions with 3,500 employers, recouping €19.2 million, which equates to 0.3% of the total subsidy paid. There are further compliance checks with 2,306 employers ongoing, which will be finalised in due course.

Wage subsidies received are taken into account in computing profits of a business for both accounting and tax purposes, either by being added to trading income or in charging wages net of subsidy amounts. If the receipt of wage subsidies, when taken together with the results from general trading activities, mean that a business is in a net profit position, the business will be chargeable to tax on that profit. Finally, the legislative eligibility criteria for the COVID support schemes do not include any conditions related to the payment by a company of a dividend or

dividends to its shareholders. However, it should be noted that where companies pay dividends to their shareholders they may have obligations to apply Dividend Withholding Tax to such payments.