

Employment Support Scheme Update – Applications open for the second tranche of wage subsidies



The second tranche of the Employment Support Scheme (“ESS”) is underway. Eligible employers and self-employed persons have until 13 September 2020 to apply for this tranche of subsidies for paying wages for September to November 2020.

Some of the key points with respect to the second tranche of the ESS are highlighted below.

Who is eligible to apply for wage subsidies under the second tranche?

The eligibility requirements for the second tranche of the ESS are the same as that of the first tranche and can be found in detail in our previous [e-alert](#) on the subject.

Employers which have been making contributions to their employees’ MPF accounts or ORSO scheme (set up on or before 31 March 2020) are eligible to participate in the second tranche of ESS.

Self-employed persons who have set up an “MPF SEP account” on or before 31 March 2020 are eligible to apply for the one-off lump-sum subsidy of HK\$7,500 assuming they have not already done so.

How should applications be made?

Employers and self-employed persons can submit their online applications via ESS’ website (www.ess.gov.hk).

Employers who have applied for the first tranche (whether successful or not) must submit a new application for the second tranche.

For employers who have applied for the first tranche of ESS:

- The application number and password for the first tranche application should be used in the second tranche application;
- It is not necessary to re-submit the MPF scheme-related information or documents unless they choose a “specified month” which is different from that used in the first tranche. If so, the employer will need to follow the instructions on the online application form to upload documents and/or update their information where necessary (e.g. providing additional MPF account information).
- Bank account information can only be changed in special circumstances and the employer will be required to provide the relevant bank statement or other related supporting documents.

Employers who are making a first time application (i.e. they did not apply during the first tranche or employers which applied but did not receive subsidies in the first tranche) are required to complete and submit the online application forms and upload the necessary supporting documents.

How much wage subsidies can be claimed?

The calculation method of the wage subsidies remains unchanged. The amount of subsidies is calculated based on 50% of the actual wages paid to each employee in the “specified month” (being any month between December 2019 and March 2020 at the choice of the employer), capped at HK\$18,000 per employee per month. The maximum wage subsidy per employee is HK\$9,000 per month.

For employers which have received subsidies in the first tranche, they may choose another month between December 2019 to March 2020 as the “specified month” when making an application for the second tranche.

Under the second tranche, the Government has relaxed the requirements for employees aged 65 or above who have MPF accounts as follows:

- If information on the employment of employees aged 65 or above (but not their wages nor the MPF voluntary contributions made for them by their employers) is shown on their employers' MPF record certificates, the amount of wage subsidies will be calculated based on the number of those employees engaged in the "specified month", with a subsidy of HK\$5,000 per employee per month.
- If the amount of wage subsidy for any of the employees aged 65 or above calculated based on 50% of the actual wages or 10 times of the voluntary MPF contributions is below HK\$5,000 per month, the employer may receive a wage subsidy of HK\$5,000 for each such employee per month.

What about the undertakings that the employers are required to provide?

There is no change in terms of the undertakings that employers are required to provide, which are:

- not to implement redundancies during the subsidy period (i.e. the number of employees on payroll in each of September, October and November 2020 should not be less than the total number of paid and unpaid employees in March 2020); and
- all of the wage subsidy should be spent on paying wages to their employees.

Under the second tranche, certain employers in the property management sector and supermarket chains are required to provide the following additional undertakings:

- Major property management companies must undertake to give back at least 80% of the wage subsidies to the owners/owners' associations (e.g. by offering time-limited waiver or reduction in management fees).
- ParknShop and Wellcome must undertake to provide cash coupons or additional discounts to customers and non-government organisations during the subsidy period.

The Government explained that such major companies suffered mild or even no losses amid the pandemic and therefore should take up extra commitments by way of the additional understandings.

What are the penalties if the employers are found to have breached the undertakings?

There is no change in terms of the calculation method of "claw back" (applicable where employers fail to use all wage subsidies for a particular month during the subsidy period to pay for employees' wages) and the "penalty" (applicable where the number of employees on the payroll in any one month of the subsidy period is less than the total number of employees in March 2020). For more details, please see our previous [e-alert](#).

In order to deter employers from making substantial redundancies and/or acting contrary to the objectives of the ESS, the following new penalties have been introduced under the second tranche:

- For employers who have received subsidies under the first tranche and take part in the second tranche, the Government may reject an employer's second tranche application if:
 - the magnitude of redundancies made during the subsidy period of the first tranche (i.e. from June to August 2020) was substantial and the employer fails to prove its intention to employ persons to replace those being laid off and/or re-employ those who have been laid off, or there is no reasonable explanation provided for the redundancies made; or
 - the employer has, during the subsidy period of the first tranche (i.e. from June to August 2020) engaged in conduct which directly or indirectly violates the objective of retaining employment under the ESS, or is contrary to public interest. If this happens, the Government may also require the employer to return any subsidies received (in full or in part) within a specified period.
- For all employers who receive subsidies under the second tranche, the Government may:
 - claw back the second tranche subsidies disbursed to an employer (in full or in part) if the magnitude of redundancies made during the subsidy period of the second tranche (i.e. September to November

2020) was substantial and the employer fails to prove its intention to employ persons to replace those being laid off and/or re-employ those who have been laid off, or there is no reasonable explanations provided for the redundancies made; and

- require the employer to return the second tranche subsidies received (in full or in part) if the employer has, during the subsidy period of the second tranche (i.e. from September to November 2020) engaged in conduct which directly or indirectly violates the objective of retaining employment under the ESS, or is contrary to public interest.

At this stage, the Government has not defined the meaning of “substantial redundancies” or illustrated what conducts would amount to violating “the objective of retaining employment” or “contrary to public interest”. It remains to be seen how these terms will be interpreted and applied by the Government. However, it is at least helpful for employers to note that:

- it is recognised that some redundancies during these challenging times might be inevitable. Employers could still lawfully participate in the second tranche if some redundancies are made (as long as they are not substantial or could reasonably be explained); and
- the penalties are not intended to be punitive in nature and would only result in rejection of the second tranche applications and/or returning of wage subsidies received.

Employers who have violated the undertakings given under the first tranche of wage subsidies will have to return the unspent balance of wage subsidies and/or pay the required penalty to the Government. These amounts will be deducted from the wage subsidies of the second tranche to be disbursed to the employers (if applications are approved).

When will the wage subsidies under the second tranche be paid?

It is expected that eligible employers who have provided accurate and complete information can receive the wage subsidies in three to four weeks after submission of their applications.

Please do get in touch with Karis Yip, Jezamine Fewins or your usual Stephenson Harwood contact if you require advice on the issues arising out of this client alert.

Get in touch



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