



Between

██

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) pursuant to section 28B(14A) of the Emergency Measures in the Public Interest (Covid-19) Act 2020 as amended (“EMPI Act 2020”) against assessments raised by the Revenue Commissioners (“the Respondent”) in respect of the Employment Wages Subsidy Scheme (“EWSS”). The assessments were raised for the periods of September 2020 to July 2021 inclusive and also October 2021, and were in the total amount of €462,598.01.
2. The assessments were raised on the basis that the Appellant had failed to demonstrate to the satisfaction of the Respondent that its business had expected or was expected to experience a 30% reduction in turnover or customer orders during the relevant periods, in accordance with section 28B of the EMPI Act 2020
3. The appeal proceeded by way of an oral hearing on 21 February 2023.

Background

4. The EWSS was introduced by the Financial Provisions (Covid-19) (No 2) Act 2020, which inserted section 28B into the EMPI Act 2020. The EWSS replaced the Temporary Wage Subsidy Scheme and came into effect from 1 September 2020. The EWSS was introduced in the context of the restrictions implemented on foot of the Covid-19 pandemic, and provided for a flat-rate subsidy to qualifying employers based on the numbers of paid and eligible employees on the employer's payroll, and also charged a reduced rate of employer PRSI of 0.5% on wages paid that were eligible for the subsidy payment.
5. On 10 March 2022 the Respondent raised assessments in the following amounts against the Appellant, on the basis that it had not abided by the terms of the EWSS:

Period of Assessment	Amount €
September 2020	20,367.73
October 2020	34,883.41
November 2020	34,883.41
December 2020	23,400.01
January 2021	36,833.36
February 2021	36,833.38
March 2021	39,866.74
April 2021	39,866.72
May 2021	42,516.75
June 2021	41,166.74
July 2021	50,916.71

October 2021	61,063.05
Total	462,598.01

6. The assessments were appealed by the Appellant to the Commission on 1 April 2021. An oral hearing was held on 21 February 2023.
7. In its Outline of Arguments dated 26 September 2022, the Respondent stated that “*The Appellant claimed €462,598.01 in EWSS payments and was paid €392,831.19...The Respondent seeks repayment of €392,831.19.*” Following the conclusion of the oral hearing, the Commission wrote to the Respondent, noting the discrepancy between the total amount of the assessments and the amount stated on the Outline of Arguments, and requesting the Respondent to clarify the discrepancy and confirm the total amount at issue. In reply, the Respondent’s officer stated that, “*I wish to confirm that the total amount at issue in the appeal is €462,598.01 as per the Notice of Assessments issued, this being the amount of EWSS payments received by the employer. The total amount of EWSS claimed was €577,424.53 and the claims that were actually processed and paid to the company totalled €462,598.01.*” As the appeal concerns the notices of assessment raised by the Respondent against the Appellant, and as the total amount of the assessments corresponds to the amount stated by the Appellant on its Notice of Appeal (albeit with a negligible difference of €0.56), the Commissioner is satisfied that the amount at issue in this appeal is the total amount of the assessments, i.e. €462,598.01.

Legislation and Guidelines

8. Section 28B of the EMPI Act 2020, as in force from 1 September 2020 to 19 October 2020, provided *inter alia* that:

“(2) Subject to subsections (4) and (5), this section shall apply to an employer where

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(i) in accordance with guidelines published by the Revenue Commissioners under subsection (20)(a), the employer demonstrates to the satisfaction of the Revenue Commissioners that, by reason of Covid-19 and the disruption that is being caused thereby to commerce –

- (I) *there will occur in the period from 1 July 2020 to 31 December 2020 (in this subsection referred to as 'the specified period') at least a 30 per cent reduction, or such other percentage reduction as the Minister may specify in an order made by him or her under subsection (21)(b), in either the turnover of the employer's business or in the customer orders being received by the employer by reference to the period from 1 July 2019 to 31 December 2019 (in this subsection referred to as 'the corresponding period'),*
- (II) *in the case where the business of the employer has not operated for the whole of the corresponding period but the commencement of that business's operation occurred no later than 1 November 2019, there will occur in the part of the specified period, which corresponds to the part of the corresponding period in which the business has operated, at least a 30 per cent reduction, or such other percentage reduction as the Minister may specify in an order made by him or her under subsection (21)(b), in either the turnover of the employer's business or in the customer orders being received by the employer by reference to that part of the corresponding period, or*
- (III) *in the case where the commencement of the operation of the employer's business occurred after 1 November 2019, the nature of the business is such that the turnover of the employer's business or the customer orders being received by the employer in the specified period will be at least –*

(A) 30 per cent, or

(B) such other percentage as the Minister may specify in an order made by him or her under subsection (21)(b),

less than what that turnover or those customer orders, as the case may be, would otherwise have been had there been no disruption caused to the business by reason of Covid-19, or

(ii) the employer's name is entered in the register established and maintained under section 58C of the Child Care Act 1991,

and

(b) the employer satisfies the conditions specified in subsection (3).

(3) The conditions referred to in subsection (2)(b) are –

(a) (the employer has logged on to the online system of the Revenue Commissioners (in this section referred to as 'ROS') and applied on ROS to be registered as an employer to which this section applies,

(b) having read the declaration referred to in ROS as the 'Covid-19: Employment Wage Subsidy Scheme' declaration, the employer has submitted that declaration to the Revenue Commissioners through ROS,

(c) the employer has provided details of the employer's bank account on ROS in the 'Manage bank accounts' and 'Manage EFT' fields, and

(d) the employer is throughout the qualifying period eligible for a tax clearance certificate, within the meaning of section 1095 of the Act, to be issued to him or her.

(4) Where on any date in the qualifying period the employer ceases to satisfy the condition specified in subsection (3)(d), the employer shall cease to be an employer to which this section applies as on and from that date.

(5) Where, by virtue of subsection (2) (apart from paragraph (a)(ii) thereof), and subsection (3), an employer is an employer to which this section applies –

(a) immediately upon the end of each income tax month (in this subsection referred to as 'the relevant income tax month') in the qualifying period, apart from July 2020 and the last such month, the employer shall review his or her business circumstances, and

(b) if, based on the result of that review, it is manifest to the employer that the outcome referred to in clause (I), (II) or (III), as the case may be, of subsection (2)(a)(i) that had previously been envisaged would occur will not, in fact, now occur, then –

(i) (the employer shall immediately log on to ROS and declare that, from the first day of the income tax month following the relevant income tax month (in subparagraph (ii) referred to as 'the relevant day'), the employer is no longer an employer to which this section applies, and

(ii) on and from the relevant day, the employer shall not be an employer to which this section applies and shall not represent that his or her status is otherwise than as

referred to in this subparagraph nor cause the Revenue Commissioners to believe it to be so otherwise.

[...]

(11) Where the Revenue Commissioners have paid to an employer a wage subsidy payment in relation to an employee in accordance with subsection (7)(a) and it transpires that the employer was not entitled to receive such payment in relation to the employee, the wage subsidy payment so paid to the employer shall be refunded by the employer to the Revenue Commissioners.

(12) An amount that is required to be refunded by an employer to the Revenue Commissioners in accordance with subsection (11) (in this section referred to as 'relevant tax') shall be treated as if it were income tax due and payable by the employer from the date the wage subsidy payment referred to in that subsection had been paid by the Revenue Commissioners to the employer and shall be so due and payable without the making of an assessment.

(13) Notwithstanding subsection (12), where an officer of the Revenue Commissioners is satisfied there is an amount of relevant tax due to be paid by an employer which has not been paid, that officer may make an assessment on the employer to the best of the officer's judgment, and any amount of relevant tax due under an assessment so made shall be due and payable from the date the wage subsidy payment referred to in subsection (11) had been paid by the Revenue Commissioners to the employer.

[...]

(14A) A person aggrieved by an assessment or an amended assessment to relevant tax made on that person may appeal the assessment or amended assessment, as the case may be, to the Appeal Commissioners, in accordance with section 949I of the Act, within the period of 30 days after the date of the notice of assessment or the amended assessment, as may be appropriate.

[...]

(20) The Revenue Commissioners shall prepare and publish guidelines with respect to –

(a) the matters that are considered by them to be matters to which regard shall be had in determining whether a reduction, as referred to in subsection (2), will occur by reason of Covid-19 and the disruption that is being caused thereby to commerce, and

(b) the matters to which an employer shall have regard in determining the appropriate class of Pay-Related Social Insurance to be operated by an employer in relation to a qualifying employee for the purposes of compliance by the employer with subsection (7) (e).”

9. Section 28B of the EMPI Act 2020 was amended from time to time to *inter alia* account for changes to the qualifying periods as the EWSS continued into 2021. From 1 January 2021, the relevant specified period was 1 January 2021 to 30 June 2021 and the corresponding period was 1 January 2019 to 30 June 2019 (section 28B(2A)). From 1 July 2021, the relevant specified period was 1 January 2021 to 31 December 2021 and the corresponding period was 1 January 2019 to 31 December 2019 (section 28B(2B)). Otherwise in respect of these time periods, and insofar as is relevant for this appeal, section 28B remained as set out above.

10. As required by section 28B(20), the Respondent published Main Guidelines on the operation of the EWSS (“Guidelines”). The Guidelines stated that:

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

11. In respect of the “rolling reviews” mandated by section 28B(5) of the EMPI Act 2020, the Guidelines stated that

“Employers must undertake a review of the six month period on the last day of every month (other than July 2020 and the final month of the scheme) to be satisfied whether they continue to meet the above eligibility criteria and to take the necessary action of withdrawing from the scheme where they do not.

This review must be undertaken on a rolling monthly basis comparing the actual and projected business performance over the specified period...as illustrated below:

Paydates in January to June 2021			
Date review is undertaken	Total of Column A & B equals 2021 figure		2019 Comparative period
	Actual results (A)	Projections (B)	
31 December 2020	N/A	January to June 2021	Actual results for period January to June 2019
31 January 2021	January 2021	February to June 2021	
28 February 2021	January & February 2021	March to June 2021	
31 March 2021	January to March 2021	April to June 2021	
30 April 2021	January to April 2021	May and June 2021	
31 May 2021	January to May 2021	June 2021	

Paydates in 2020			
Date review is undertaken	Total of Column A & B equals 2020 figure		2019 Comparative period
	Actual results (A)	Projections (B)	
31 August 2020	July & August 2020	September to December 2020	Actual results for the period July to December 2019
30 September 2020	July, August & September 2020	October, November & December 2020	
31 October 2020	July to October 2020	November & December 2020	
30 November 2020	July to November 2020	December 2020	

If an employer no longer qualifies, they must deregister for EWSS through “Manage Tax Registration” on 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...

12. The Guidelines further stated:

“Revenue expects that employers will retain evidence of appropriate documentation, including copies of projections, to demonstrate continued eligibility over the specified period. It is reasonably expected that the assumptions which underpin the projections will be reliable, will reflect the operating conditions of the business, and will remain

materially unchanged. However, Revenue appreciates that in exceptional circumstances, certain unforeseen events may occur which require the employer to revise the original budget estimate e.g. imposition of further Government restrictions (post the review date) impacting trade, receipt of an unexpected donation, entering into a significant new sales contract etc.

Where Revenue determines that an employer, at any time over the term of the scheme, claimed and received payment by applying accounting practices that are clearly not appropriate, or by deliberately misrepresenting the true financial position of the business, it will be excluded from the EWSS in its entirety. No further claims will be accepted, and all subsidy paid and PRSI credit issued will be immediately repayable together with interest and penalties. The business may also face possible criminal prosecution.”

Evidence and Submissions

Appellant's Evidence

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13. ██████████ stated that he was the secretary and accountant of the Appellant company. He stated that the Appellant had existed since 2017 or 2018 and carries on ██████████ and ██████████. All the Appellant's work is labour only and during the pandemic it worked with three companies. Currently it has 115 employees and during the pandemic it had around 100 employees.
14. He said that during the pandemic the Appellant tried to contact the Respondent for information on how to make calculations for the purposes of EWSS but that nobody from the Respondent replied to its queries. He stated that the Respondent had sought to rely on the Appellant's corporation tax returns to show that its turnover had increased during the pandemic but these were not calculated by reference to calendar years. He stated that the Appellant included the subsidies received in its corporation tax returns.
15. He stated that the Appellant decided to base its application for EWSS on the basis of value of customer orders rather than invoices, and that it was entitled to so decide. He stated that the Appellant brought employees from ██████████ and did not have any employees from Ireland. Sometimes the Appellant would receive orders one month in advance, sometimes two months and sometimes three months in advance.

16. On cross examination he confirmed that the Appellant's registered office in [REDACTED] was shared with other companies, including [REDACTED]. He stated that all of the directors and shareholders of the Appellant lived in [REDACTED] and that the registered office was used as a correspondence address for the Appellant and other companies. He stated that he was not an employee of the company but was in daily contact with it so was in a position to speak on its behalf.
17. He accepted that some of the narratives on the customer order documents related to work already carried out by the Appellant. When asked why the customer orders seemed similar to the invoices issued by the Appellant for the same jobs, he stated that the invoices were issued by the Appellant's bookkeeper. He did not accept the suggestion that the documents purporting to be customer orders were really requisitions for payment. He stated that the engagement with customers predated the issuing of the customer orders. He did not directly agree or disagree with the contention that every one of the customer orders submitted by the Appellant post-dated the work they related to.
18. He again disputed the Respondent's attempt to rely on the Appellant's corporation tax returns to show that its turnover increased during the pandemic. He also disputed the Respondent's attempted reliance on RCT payment details. He agreed with counsel that if a company owed the Appellant money, which subsequently became a bad debt, the Appellant would simply write off the bad debt from the profit and loss account.
19. Counsel brought the witness through the rolling review documents submitted on behalf of the Appellant to support its EWSS claims. He did not directly respond to the contention that the Appellant had failed to carry out a projection based on its actuals for the equivalent six month period in 2019, but had carried out a projection without Covid against a projection with Covid. He stated that, in relation to the earlier rolling review documents submitted, the Respondent was "*not able to use it because we updated the figures.*"
20. He was asked why the Appellant had informed the Respondent that "*the projections without Covid we put in the Excel are just estimated figures and without [sic] Covid the same figures minus 30%.*" He stated that it was not possible to accurately project what the effect of Covid would be on the Appellant's business. He stated that if a factory closed due to Covid all of the Appellant's employees could be out of employment for two weeks and the impact on the Appellant's turnover could be over 30%. He stated that more accurate projections could have been provided if the Respondent had responded to the Appellant's queries.

21. Counsel put it to the witness that the Appellant's first set of projected figures were provided to the Respondent on 22 March 2022, and the second set on 6 April 2022. ██████████ stated that it was difficult to answer why the Appellant's figures differed between the two sets of projections, and also differed between the third and fourth sets subsequently submitted, because he did not have all of the relevant documentation and Excel files before him.
22. He stated that the reason the projection submitted with the Appellant's outline of arguments were different to the earlier versions was because that projection used sales orders while the earlier ones used turnover. He did not provide a direct response to why the figures used on the projections based on turnover were different, although seemed to suggest it was due to different caseworkers from the Respondent sending the Appellant different calculations to use.
23. The witness was asked whether he considered the projection for February 2021 of €1,251 realistic, given the actual figure for January 2021 was €28,053. He stated that he believed it was as "*we don't know what will happen in February.*" He stated that the Appellant carried out rolling reviews and submitted them via the Respondent's ROS website. It was put to him that the Appellant's projections for January to June 2021 always were €1,251, for August to December 2021 always stayed at €38,256 and the projections for the next period always stayed at €47,790, and that this suggested that no ongoing rolling review was carried out. He stated that the projections were the Appellant's point of view based on what could happen.
24. It was put to the witness that the Appellant had allocated invoices for 2020 to 2019 thereby increasing the turnover for 2019 and reducing the turnover for 2020. He replied that this was done because the Appellant decided to use customer orders rather than turnover as its basis for claiming EWSS. It was further put to him that the narrative on the invoices was altered compared to the relevant customer orders, and that this was different compared to the rest of the documentation submitted. He stated that the discrepancies might be due to human mistake, and that the invoices were issued by the Appellant's bookkeeper. He also reiterated that there was a process of engagement with customers before customer orders issued. He accepted that the Appellant did not make any adjustments for the beginning of 2019 in respect of orders that might have been received in 2018.
25. He accepted that the turnover of the Appellant increased "*a little bit*" from 2019 to 2021. He was asked about a bad debt from a customer (██████████) and it was put to him that the

Appellant had issued an invoice which increased turnover for 2019 by €135,000 and had also issued credit notes during 2020 which reduced turnover for that year by the same amount. The witness stated that the Appellant had tried to engage with the customer and receive payment but had been unsuccessful. He did not accept that the proper way to proceed would have been to write off the bad debt from the profit and loss account.

26. He was asked about customer order document 2019/8B, which was inserted between 2019/8 and 2019/9 for 2 and 7 October 2019, and it was put to him that this suggested that the document had been inserted subsequently. He stated that it was probably due to human error and this had happened on other occasions. He was also asked why the customer name was different on the customer order (“██████████”) and on the invoice (“██████████”). He stated that the company on the customer order was a sister company of the Appellant which operated outside of this jurisdiction. He accepted that he was also the agent for ██████████ and had previously told the Respondent that it ceased trading in 2019. He stated that the invoice was in the name of ██████████ because that was the customer for whom the work was carried out.

27. The witness was asked about a customer order for 1 January 2019 for ██████████ which shared the same premises as the Appellant. He stated that he was working on New Year’s Day and issued the customer order. The customer order was numbered 3 and the related invoice was originally numbered 3 but this was crossed out and 1 written in its place. There were other documents relating to ██████████ for 2019 and it was put to the witness that the Respondent did not believe they were genuine. When asked why the ██████████ documents looked different to customer orders and invoices relating to other customers, he stated that a different template had been used.

28. ██████████ agreed that he also did work for ██████████. He was asked what services the Appellant provided to ██████████ in 2019 that warranted total invoices of €182,280 issuing. He stated that the Appellant received commission for work done by a third company (“██████████”). The Commissioner noted that the narrative on the documents included references to work done in ██████████ and asked how that related to the services allegedly provided by the Appellant to ██████████. The witness stated that the Appellant provided an official address for postal correspondence for other companies that did not have an address in the State. Counsel for the Respondent stated that ██████████ accounts showed that it made a profit in €9,621 in 2019, a profit of €217 in 2020 and a loss of €31,210 in 2021, and submitted that it was not credible that such a small company would require services to the value charged by the Appellant in 2019. The witness rejected

the contention that the invoices were a fabrication and included to massage the Appellant's figures for the purposes of its EWSS appeal.

Appellant's Submission

29. The Appellant's agent submitted that all documents were logged by the date of customer orders, and that in some cases there were differences between the dates on customer orders and on invoices. It was submitted that the customer orders showed a 30% decrease compared to the relevant corresponding period. It was submitted that the reductions were as follows:

July 2020	69.59%
August 2020	69.09%
September 2020	71.73%
October 2020	72.15%
November 2020	61.88%
January 2021	86%
February 2021	68%
March 2021	35%
April 2021	35%

30. The Appellant's agent stated that it was appropriate to add the subsidies received to turnover in the corporation tax return. She stated that, for months that the Appellant did not have a decrease of 30%, it did not have a problem returning the subsidies received, but would like to have its application approved for months where it did have a decrease in excess of 30%.

31. The Appellant's agent also stated that if the [REDACTED] customer orders / invoices were not accepted, the first invoice from another customer was dated 2 May 2019, and therefore the projections should be amended to account for 1 January to 30 June 2021.

Respondent's Evidence

[REDACTED]

32. [REDACTED] was an officer of the Respondent. He stated that he had reviewed the Appellant's original projections and had found that when comparing its projections against its actual figures for 2019 it had not met the criteria for receiving EWSS subsidies. Referring to the correspondence from the Appellant's agent that it had applied a reduction of 30%, he noted that this was the same figure required to qualify for EWSS.

33. Regarding the revised projections based on customer orders, he stated that the Respondent expected projections to be revised on a monthly basis, taking into account the actual figures and replacing the projections as required. He stated that if the Appellant had done this, it would have significantly reduced the projected decrease.

34. He stated that he calculated that €391,971 worth of invoices had been misallocated from 2020 to 2019, and that a further €157,897 was mis-recorded in 2021. Generally speaking, he said there was no logic to the customer orders and invoices having the same date, but that the only ones that seemed to differ were the December 2019 customer orders.

35. Regarding the issuance of credit notes for the bad debt from [REDACTED] [REDACTED] stated the bad debt should have been recorded in the company accounts but should not have been managed by way of credit notes. He also stated that it did not make sense that the customer order was for an entity other than [REDACTED]. In respect of the [REDACTED] invoices, he stated the narrative on the document did not relate to the services usually provided by the Appellant.

Respondent's Submission

36. The Respondent submitted that the Appellant had failed to demonstrate to the satisfaction of the Respondent that its business had experienced or was expected to experience a 30% reduction in turnover or customer orders during the claims periods in accordance with section 28B of the EMPI Act 2020.

37. The Respondent submitted that when the Appellant entered the EWSS on 27 August 2020, it made 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.”

38. The Respondent stated that in November 2021, the Appellant was selected for a compliance check but did not engage with the Respondent’s correspondence. Following the raising of the assessments in March 2020, the Appellant’s agent engaged with the Respondent and submitted rolling review spreadsheets. The Respondent determined that these reviews had been calculated incorrectly and contrary to the Guidelines.
39. It was submitted that section 28B of the EMPI Act 2020 was not a taxing statute, and that the normal canons of statutory interpretation applied. It was submitted that there was no ambiguity in the wording of the statute; however, if the Commissioner believed there was, he should look to the intention of the Oireachtas when enacting the EMPI Act 2020. It was submitted that it was not the intention of the Oireachtas to afford employers the benefit of EWSS when it was apparent that the required rolling reviews were completed post facto and that the 30% reduction in turnover was not satisfied.
40. During the hearing counsel for the Respondent clarified that it was normal for companies to insert subsidies such as EWSS in corporation tax returns either under government grants or by netting off the payroll wages and salaries, but that it was not normal for subsidies to alter turnover. Counsel further clarified that until 30 June 2021 there was no requirement to submit rolling reviews to the Respondent when participating in EWSS, but that this changed from July 2021 onwards. He confirmed that the Appellant did submit rolling reviews from July 2021, but that these reviews were not carried on in a way that was acceptable to the Respondent.
41. It was submitted that the Appellant had first sought to justify its receipt of subsidies by reference to turnover, but that it had simply applied a reduction of 30% on projections. It had failed to carry out a rolling review and had failed to adopt the Guidelines provided by the Respondent. The Appellant had subsequently sought to rely on customer orders, but the documents provided post-dated the provision of the service and therefore could not logically be considered a customer order.

42. The Respondent contended that the Appellant had artificially adjusted its customer orders to move figures from 2020 to 2019. Even if what it had done was acceptable, it had not carried out a similar exercise for 2018-2019; it could not have it both ways. Furthermore, the Guidelines stated that employers had to retain their evidence for entering and remaining on the EWSS, but the Appellant had failed to provide documentary proof of contemporaneous documentation regarding rolling reviews. The earliest submissions and calculations were provided as and from March 2022.

Material Facts

43. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

42.1 The Appellant had been in existence since 2017 or 2018 and provided [REDACTED] services to the construction industry. It registered to participate in the EWSS on 27 August 2020.

42.2 On 10 March 2022 the Respondent raised assessments against the Appellant in the total amount of €462,598.01, for the periods of September 2020 to July 2021 inclusive and also October 2021, in respect of the Appellant's participation in the EWSS.

42.3 Following the issuance of the assessments against it, the Appellant submitted rolling reviews in respect of its participation in the EWSS on 21 March 2022, 30 March 2022 and 6 April 2022, which were calculated on the basis of turnover. On 23 September 2022 it submitted a further rolling review which was calculated on the basis of customer orders.

42.4 The Appellant did not submit any documentary evidence of having carried out rolling reviews during the relevant claim periods, i.e. September 2020 to July 2021 and October 2021.

42.5 The rolling reviews subsequently provided by the Appellant suggested that no contemporaneous review had been carried out, as the relevant projections were not altered based on the previous month's actual figures.

42.6 The documents that the Appellant purported to constitute customer orders were not contemporaneous records of orders received from customers. The vast

majority of the customer orders appeared to be substantially identical to their associated invoices, and were requisitions for payment that issued after the work had been carried out.

- 42.7 No documentary evidence of the Appellant's engagement with its customers prior to work being carried out was submitted.
- 42.8 The Appellant improperly misallocated certain customer orders from 2020 to 2019, and from 2021 to 2020, in order to support its participation in the EWSS. When these customer orders were reallocated, the Respondent calculated that the Appellant had experienced a decrease in customer orders of 17.5% for the July – December 2020 period, an increase of 78.25% for January to June 2021, and an increase of 99.2% for January to December 2021.
- 42.9 Those customer orders that were not substantially identical to their associated invoices had discrepancies that had not been adequately explained by the Appellant. These discrepancies included: the differences in narratives between customer orders and invoices, which was unexplained in circumstances where all of the narratives appeared to refer to past work previously carried out by the Appellant; the differences in dates between the customer orders and invoices, compared to the Appellant's usual practice of seemingly creating customer orders and invoices simultaneously; that all (with one minor exception) related documents had the same total amount and payment due date; and that thirteen of the customer orders purported to be dated on either 30 or 31 December 2019/2020.
- 42.10 The Appellant improperly inserted the customer orders from ██████████ in 2019, and created the credit notes for ██████████ in 2020, in order to artificially decrease its 2020 customer orders compared to 2019. When these customer orders were removed, the Respondent calculated that the Appellant had experienced a decrease in customer orders of 13.51% for the July – December 2020 period, an increase of 416% for January to June 2021, and an increase of 67.14% for January to December 2021.
- 42.11 Regarding the ██████████ customer orders, the Appellant failed to adequately explain why ██████████ allegedly required services to the value of €182,280 from the Appellant in 2019. The Appellant and ██████████ shared a registered office and that there was some commonality regarding the personnel involved.

The Appellant did not adequately explain why its [REDACTED] documents were different in form from the other customer orders on which the Appellant sought to rely. The Appellant failed to explain the nature of the services provided by it to [REDACTED] and its attempt to rely on alleged commission payments for work carried out by a third party, and also provision of post box services, lacked credibility.

42.12 Regarding the credit notes issued by the Appellant for a bad debt incurred by [REDACTED] the Appellant did not adequately explain why it took the approach of issuing invoices and credit notes, rather than simply writing off the bad debt in its accounts.

Analysis

44. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”
45. The EWSS provided for wage subsidies during the Covid-19 pandemic where an employer was expected to experience a reduction of at least 30% in either turnover or customer orders being received during a specified period compared to the appropriate corresponding period. When the EWSS was introduced, the specified period was 1 July 2020 to 31 December 2020 and the corresponding period was 1 July 2019 to 31 December 2019. From 1 January 2021, the specified period was 1 January 2021 to 30 June 2021 and the corresponding period was 1 January 2019 to 30 June 2019. From 1 July 2021, the specified period was 1 January 2021 to 31 December 2021 and the corresponding period was 1 January 2019 to 31 December 2019.
46. The documentation submitted in this appeal shows that the first rolling review submitted on behalf of the Appellant was provided in the form of an email by the Appellant’s agent to the Respondent on 21 March 2022. A more detailed spreadsheet was provided on 24 March 2022. A further rolling review was provided on 30 March 2022. In response to this rolling review, the Respondent replied on 1 April 2022 that it did not appear that the Appellant was eligible for the EWSS. On 5 April 2022, the Appellant’s agent emailed the Respondent and stated that “*the projections without Covid we put in the Excel are just estimated figures and Without Covid [sic] the same figures minus 30%. We could put any*

other figures and that would change the situation. The main point that actual turnover of the company shows the reduction of more than 30% compare to 2019 and this reduction was due to the Pandemic.”

47. The Appellant’s agent submitted an amended rolling review on 6 April 2022. Following a request from the Respondent, the agent submitted a sales invoice analysis on 11 April 2022. A further spreadsheet was submitted on 27 April 2022. In the meantime, the Appellant had appealed the assessments to the Commission on 1 April 2022. On 23 September 2022, the Appellant submitted its Outline of Arguments, and with this document it submitted a revised rolling review calculated by way of customer orders rather than turnover.
48. The Commissioner understood the Respondent to be dissatisfied with the Appellant’s compliance with the terms of the EWSS on a number of different grounds, which will be considered separately.

Requirement to carry out rolling reviews

49. Section 28B(5) of the EMPI Act 2020 required participants in the EWSS to carry out a review of their business circumstances immediately upon the end of each month. If, on foot of this review, it was manifest that the anticipated decrease of at least 30% in either turnover or customer orders would not occur, the employer was obliged to immediately remove him or herself from the scheme. This was confirmed by the Guidelines, which also confirmed that “*This review must be undertaken on a rolling monthly basis comparing the actual and projected business performance over the specified period*” and set out tables providing further details.
50. No evidence has been submitted by the Appellant in this appeal to show that it carried out rolling reviews throughout the time it was registered on the EWSS. The rolling review documentation submitted to the Respondent and to the Commission all appeared to post-date the Appellant’s participation in the scheme. In evidence, ██████████ stated that rolling reviews had been carried out and submitted to the Respondent during the relevant claim periods, and counsel for the Respondent confirmed that from July 2021 it was necessary to submit rolling reviews on ROS in order to be eligible for subsidy payments. Counsel advised that the Appellant did submit rolling reviews from July 2021, but stated that these reviews were not carried on in a way that was acceptable to the Respondent.

51. The Commissioner notes that the Guidelines stated that “*employers should retain their evidence/basis for entering and remaining in the scheme*” and he is satisfied that the Appellant has failed to provide evidence of carrying out rolling reviews during the course of its participation in the EWSS, albeit he accepts that it did submit some form of rolling review from July 2021 onwards via the ROS online system.
52. Furthermore, the Commissioner considers that the plain meaning of section 28B is that the carrying out of monthly rolling reviews was a necessary condition for participating in the EWSS. Subsection (2) states that section 28B shall apply to an employer, but that this is subject to subsections (4) and (5). As discussed herein, subsection (5) requires the carrying out of monthly rolling reviews. Therefore, it is clear that if an employer failed to carry out monthly rolling reviews, it was not entitled to participate in the EWSS.
53. Additionally, the Commissioner considers that the rolling reviews subsequently provided by the Appellant strongly suggests that no contemporaneous review was carried out. He notes that the documentation submitted shows that the projection for each of October, November and December 2020 was €47,790, the projection for February to June 2021 was €1,251 for each month, and for July to December 2021 was €38,256 for each month. The Commissioner considers that section 28B and the Guidelines clearly require that projections were updated on a monthly basis based on actual figures experienced, but it seems that this was not done by the Appellant, as the relevant projections were not altered based on the previous month’s actual figures.
54. Consequently, in the absence of any documentary evidence that the Appellant carried out monthly reviews from September 2020 to June 2021 inclusive, the Commissioner finds that the Respondent was entitled to disentitle the Appellant to the subsidies received for those months. As set out above, the Commissioner considers that there is no evidence to suggest that a meaningful rolling review that accorded with the requirements of section 28B and the Guidelines was carried out by the Appellant at any stage during the claim periods. However, as it was accepted by the Respondent that some form of rolling reviews were submitted for July and October 2021, but no evidence of these was submitted by the Appellant to the Commissioner, no finding is made in respect of those months under this heading.

Whether documentation submitted constituted customer orders

55. As set out above, the final version of the rolling review documentation submitted by the Respondent was based on customer orders rather than turnover. Section 28B(2) permits an employer to base its application to participate in the EWSS on the ability to demonstrate a reduction of at least 30% in “*either the turnover of the employer’s business or in the customer orders being received by the employer*”. While “*customer orders*” is not defined in section 28B, the Commissioner is satisfied that it clearly should be understood as being different to turnover of business.
56. The Commissioner has reviewed the customer order documentation submitted by the Appellant to the Respondent. He agrees with the Respondent that the vast majority of the customer orders appear to be substantially identical to their associated invoices, and are better understood as requisitions for payment. For example, customer order 2019/1 is dated 2 May 2019 and has a narrative of “*Payment for the month of April 2019 for Contracting Agreement made on 29/03/2019 – 743.25 h at rate 33.00 EUR.*” The total due is €24,527.25 and the payment due date is 1 June 2019. The associated invoice 2019/1 has the same date, the same narrative, the same total and the same payment due date.
57. Likewise, customer order 2020/25 is dated 5 August 2020, and has the same date, narrative, total and payment due date as associated invoice 2020/25. The Commissioner is satisfied that the same pattern persists for all the submitted customer orders and invoices, except for those documents that the Respondent has considered were not included in the appropriate month. While the Appellant’s witness stated that the Appellant engaged with its customers prior to the work being carried out (and the Commissioner does not doubt that this was the case), no documentary evidence of such engagement has been submitted.
58. In respect of the customer orders that the Respondent considers should be reallocated, the Commissioner has noted discrepancies compared to the others already considered. For example, customer order 2019/16 is dated 30 December 2019 and the narrative is “*Payment for the month of October 2019 – 1673h at rate 33.20 EUR*”. The total is €55,543.60 and the payment due date is 15 February 2020. The associated invoice 2020/16 is dated 5 February 2020 and has a narrative “*Payment for the month of January 2020 – 06 January 2020 to 31 January 2020 – 1673h at rate 33.20 EUR.*” The total is the same as the customer order, as is the payment due date. The Commissioner is satisfied that similar discrepancies exist in the other documents identified by the Respondent, and considers that the Appellant has failed to provide a credible explanation for these

discrepancies. These customer order documents will be considered in further detail under the next heading.

59. Consequently, the Commissioner is satisfied that the Respondent was entitled to consider that the customer order documents submitted by the Appellant were not properly customer orders, but rather were requisitions for payment that were, in most cases, substantially identical to the associated invoices, and otherwise had unexplained discrepancies.
60. The Guidelines stated that “*We will in the future, based on risk criteria, review eligibility. In that context, employers should retain their evidence/basis for entering and remaining in the scheme.*” The Commissioner considers that the documents submitted by the Appellant fail to demonstrate the basis for its entering and remaining in the scheme. Therefore, the Commissioner is satisfied that the Appellant has failed to demonstrate that the Respondent was wrong to consider the documents submitted to substantiate its participation in the EWSS insufficient. As a result he is satisfied that the Respondent was entitled to refuse the Appellant’s claims on this basis.

Whether Appellant misallocated customer orders in December 2019 and December 2020

61. Turning now to consider the figures provided by the Appellant, the Respondent analysed the rolling review based on customer orders submitted with the Appellant’s outline of arguments, and concluded that, on their face, they demonstrated: a decrease in customer orders of 35.86% between July to December 2020 compared to the corresponding period (Jul - Dec 2019); an increase of 52.13% between January to June 2021 compared to the corresponding period (Jan – Jun 2020); and an increase of 21.51% between January to December 2021 compared to the corresponding period (Jan – Dec 2021).
62. The Respondent then reallocated certain customer orders that it believed had been misallocated by the Appellant to December 2019 and also to December 2020. Following this reallocation, the Respondent calculated that the Appellant had experienced a decrease in customer orders of 17.5% for the July – December 2020 period, an increase of 78.25% for January to June 2021, and an increase of 99.2% for January to December 2021. On this basis, the Respondent concluded that the Appellant was not entitled to subsidies.
63. This issue has already been addressed to some extent under the previous heading, in the consideration of whether the documents submitted as customer orders should properly be

treated as such. The Commissioner will now set out brief details of each of the customer orders, and associated invoices, that have been reallocated by the Respondent:

- Customer Order 2019/14: Dated 17 December 2019. Narrative *“Payment for the month of November – December 2019...”* Total €15,139.20. Payment due date 17 January 2020.

Invoice 2019/14: Dated 6 January 2020. Narrative *“Payment for the month of December 2019 – 02 December 2019 to 03 January 2020 ...”* Total €15,139.20. Payment due date 15 January 2020.

- Customer Order 2019/15: Dated 17 December 2019. Narrative *“Payment for the month of November December 2019 for Contracting Agreement made on 29/03/2019 ...”* Total €17,556.00. Payment due date 15 January 2020.

Invoice 2019/15: Dated 14 January 2020. Narrative *“Payment for the month of December 2019 for Contracting Agreement made on 29/03/2019 ...”* Total €17,556.00. Payment due date 15 January 2020.

- Customer Order 2019/16: Dated 30 December 2019. Narrative *“Payment for the month of October 2019 ...”* Total €55,543.60. Payment due date 15 February 2020.

Invoice 2020/16: Dated 5 February 2020. Narrative *“Payment for the month of January 2020 – 06 January 2020 to 31 January 2020 ...”* Total €55,543.60. Payment due date 15 February 2020.

- Customer Order 2019/17: Dated 30 December 2019. Narrative *“Payment for the month of October 2019 ...”* Total €5,146.00. Payment due date 15 February 2020.

Invoice 2019/17: Dated 30 December 2019. Narrative *“Payment for the month of October 2019 ...”* Total €5,146.00. Payment due date 15 February 2020.

- Customer Order 2019/18: Dated 31 December 2019. Narrative *“Payment for the month of September 2019 for Contracting Agreement made on 29/03/2019....”* Total €40,062.00. Payment due date 15 February 2020.

Invoice 2020/18: Dated 6 February 2020. Narrative *“Payment for the month of January 2020 for Contracting Agreement made on 29/03/2019...”* Total €40,062.00. Payment due date 15 February 2020.

- Customer Order 2019/19: Dated 31 December 2019. Narrative "*Payment for the month of November 2019 ...*" Total €65,868.20. Payment due date 15 March 2020.
Invoice 2020/19: Dated 4 March 2020. Narrative "*Payment for the month of February 2020 – 03 February 2020 to 28 February 2020...*" Total €65,868.20. Payment due date 15 March 2020.
- Customer Order 2019/20: Dated 31 December 2019. Narrative "*Payment for the month of October 2019 for Contracting Agreement made on 29/03/2019...*" Total €66,816.21. Payment due date 15 March 2020.
Invoice 2020/20: Dated 10 March 2020. Narrative "*Payment for the month of February 2020 for Contracting Agreement made on 29/03/2019...*" Total €66,816.21. Payment due date 15 March 2020.
- Customer Order 2019/21: Dated 31 December 2019. Narrative "*Payment for the month of December 2019 ...*" Total €36,818.80. Payment due date 15 April 2020.
Invoice 2020/31: Dated 25 March 2020. Narrative "*Payment for the month of March 2020...*" Total €36,818.80. Payment due date 15 April 2020.
- Customer Order 2019/22: Dated 31 December 2019. Narrative "*Payment for the month of November 2019 for Contracting Agreement made on 29/03/2019...*" Total €63,993.36. Payment due date 15 April 2020.
Invoice 2020/22: Dated 7 April 2020. Narrative "*Payment for the month of March 2020 for Contracting Agreement made on 29/03/2019...*" Total €63,993.36. Payment due date 15 April 2020.
- Customer Order 2019/23: Dated 31 December 2019. Narrative "*Payment for the month of December 2019 for Contracting Agreement made on 29/03/2019...*" Total €25,027.20. Payment due date 15 June 2020.
Invoice 2023/23: Dated 2 June 2020. Narrative "*Payment for the month of May 2020 for Contracting Agreement made on 29/03/2019...*" Total €25,027.20. Payment due date 15 June 2020.
- Customer Order 2020/41C: Dated 31 December 2020. Narrative "*Construction...*" Total €22,108.50. Payment due date 15 April 2021.

Invoice 2021/46: Dated 31 March 2021. Narrative "*Payment for the month of March 2021...*" Total €22,108.50. Payment due date 15 April 2021.

- Customer Order 2020/41D: Dated 31 December 2020. Narrative "*Payment for the month of October 2020...*" Total €31,224.60. Payment due date 15 April 2021.

Invoice 2021/45: Dated 6 April 2021. Narrative "*Payment for the month of March 2021...*" Total €31,224.60. Payment due date 15 April 2021.

- Customer Order 2020/41E: Dated 31 December 2020. Narrative "*Payment for the month of November 2020...*" Total €12,616.00. Payment due date 15 May 2021.

Invoice 2021/48: Dated 20 April 2021. Narrative "*Payment for the month of April 2021...*" Total €12,616.00. Payment due date 15 May 2021.

- Customer Order 2020/41F: Dated 28 July 2021. Narrative "*Payment for the month of September 2020...*" Total €91,948.19. Payment due date 30 July 2021.

Invoice: illegible

64. The Commissioner considers that there are a number of discrepancies apparent in respect with the above customer orders that have not been adequately explained by the Appellant. In particular, he notes the differences in narratives between customer orders and invoices, which have not been explained in circumstances where all of narratives on the customer orders set out above appear to refer to past work already carried out by the Appellant. Furthermore, he considers that no adequate explanation has been put forward by the Appellant for the apparent differences in dates between the customer orders and invoices as set out above, compared to the Appellant's usual practice, as demonstrated by the other documents submitted, of seemingly creating customer orders and invoices simultaneously. Additionally, no explanation has been provided as to why, notwithstanding the differences between the customer orders and invoices, all related documents have the same total amount and payment due date (with one minor exception in the first set of documents set out above: payment dates of 17 and 15 January 2020). Furthermore, the Commissioner notes that thirteen of the above customer orders purport to be dated on either 30 or 31 December 2019/2020.

65. Consequently, the Commissioner is satisfied that the Appellant has not demonstrated that the Respondent acted incorrectly in reallocating the relevant customer order documents, and therefore, as the reallocation resulted in the Appellant not satisfying the requirement

to demonstrate a reduction of at least 30% in customer orders, he finds that the Respondent was entitled to refuse the Appellant's claim for participation in the EWSS on this basis.

The Respondent's objections to customer orders relating to [REDACTED] and credit notes relating to [REDACTED]

66. The Respondent carried out another analysis on the figures submitted by the Appellant, which included the customer orders discussed in the section above as allocated by the Appellant but which removed the customer order documents concerning [REDACTED] and also the invoice/credit notes concerning the bad debt from [REDACTED]. These found a decrease in customer orders of 13.51% for the July – December 2020 period, an increase of 416% for January to June 2021, and an increase of 67.14% for January to December 2021.

67. Turning first to the [REDACTED] documents, the Commissioner notes the Respondent's contention that €182,280 worth of customer orders/invoices issued for 2019. He also notes that the Appellant and [REDACTED] share a registered office and that there is some commonality regarding the personnel involved; for example, [REDACTED] is listed as a director of [REDACTED] on the CRO documentation submitted. He further notes [REDACTED] is a [REDACTED] company and the Respondent provides labour for [REDACTED].

68. Given this, the Commissioner finds it very hard to understand the basis on which [REDACTED] apparently required services to the value of €182,280 from the Appellant in 2019. He does not consider that the customer orders and invoices provide much assistance in aiding understanding. For example, the first customer order for 2019 is numbered 3 and dated 1 January 2019. The narrative states "*Project by catalyst handling in Europe*" before listing further information, e.g. "*Pnk Orlen Poland*". The total amount is €51,331.24. The associated invoice has the number 1 replaced and overwritten in pen with '3'. The date is also overwritten, with 8 November 2018 replaced with 1 January 2019. The same narrative and total as on the customer order is repeated. Notably, there is no payment due date on either document.

69. The Commissioner has also considered the other [REDACTED] customer order documents. While the narratives change somewhat, he considers that they do not assist in understanding the services provided. He also notes that none of the documents have payment due dates, unlike all the other customer orders submitted. In his evidence, [REDACTED] stated that he had prepared the documents and had copied and pasted from

a template. However, the Commissioner considers that the witness did not adequately explain why the [REDACTED] documents were different in form from the other customer orders on which the Appellant sought to rely.

70. More fundamentally, the Commissioner found that the witness failed to explain the nature of the services provided by the Appellant to [REDACTED] and considered that his reference to commission payments for work carried out by a third party, and also provision of post box services, lacked credibility. In the circumstances, the Commissioner is fully satisfied that the Respondent was entitled to disregard the [REDACTED] customer orders / invoices when assessing the Appellant's projections against its performance in 2019.

71. In respect of the [REDACTED] bad debt, the Commissioner firstly notes the evidence of [REDACTED] for the Respondent that the bad debt should have been recorded in the company accounts but should not have been managed by way of credit notes. Additionally, he notes that [REDACTED] agreed in cross examination, when talking in general terms, that if a company owed the Appellant money, which subsequently became a bad debt, the Appellant would simply write off the bad debt from the profit and loss account.

72. Customer Order 2019/8B is dated 2 October 2019 and stated to concern "[REDACTED]". The narrative states "*Payment for the month of June, July and August 2019*" and the total was €135,260.00. The related invoice is numbered 2019/8B and also dated 2 October 2019. It is stated to concern "[REDACTED]" and the narrative and total amount is substantially the same as the customer order. Subsequently, a number of credit notes issued in respect of [REDACTED] throughout 2020.

73. The Commissioner accepts the submission of the Respondent that the effect of the above was to increase the Appellant's figures for 2019 and decrease them for 2020. He further accepts the Respondent's evidence that the issuance of credit notes was not the correct way of recording a bad debt. Consequently, he is satisfied that the Respondent was entitled to disregard these documents when analysing the Appellant's figures, and he does not consider that the Appellant adequately explained why it took the approach of issuing invoices and credit notes, rather than simply writing off the bad debt in its accounts.

74. Consequently, the Commissioner is satisfied that the Respondent was entitled to disregard both the [REDACTED] customer orders / invoices, and the [REDACTED] bad debt invoice and credit notes, in its analysis of the Appellant's figures for 2019 and 2020. Therefore, as this has the effect of altering the Appellant's projections so that it can no longer demonstrate a

reduction of at least 30% in customer orders, the Commissioner finds that the Respondent was entitled to reject the Appellant's claim to participate in the EWSS on this ground.

75. Finally, the Commissioner rejects the submission of the Appellant that, if the [REDACTED] customer orders are disregarded, this should alter the relevant comparison period for the purposes of EWSS calculations. The Commissioner understood this to be a reference to section 28B(2)(i)(II), but he does not consider this provision to be applicable to the Appellant, because the evidence of [REDACTED] was that the Appellant had been in existence since 2017 or 2018. In any event, the Appellant did not make any attempt to show how, even if the provision was applicable, it would have altered the projections in its favour.

Conclusion

76. It follows from the above that the Commissioner is satisfied that the Respondent was entitled to raise the assessments against the Appellant under each of the four grounds set out above. Consequently, the appeal is not allowed. Before concluding, the Commissioner considers it appropriate to note a couple of matters that arose during the course of the appeal.

77. Firstly, the Appellant contended that its failure to adequately perform rolling reviews during its participation in the scheme was due to the Respondent not responding to queries on how the reviews should be carried out. Strictly speaking, such complaints are outside the jurisdiction of the Commission and, in any event, even if correct, could not operate to disapply the obligations of the Appellant under section 28B and the Guidelines to carry out accurate monthly rolling reviews. However, the Commissioner notes that no documentary evidence of the contended attempts by the Appellant to correspond with the Respondent have been submitted to him. Conversely, the evidence before him demonstrates that [REDACTED] on behalf of the Respondent promptly responded to queries received from the Appellant's agent following the issuance of the assessments, and indeed that on a number of occasions [REDACTED] sent reminders to the agent asking for a response to previous correspondence issued by him.

78. Secondly, the appeal proceeded on the basis of the rolling reviews submitted by the Appellant that concerned customer orders, rather than the earlier rolling reviews based on turnover. For the reasons set out above, the Commissioner is satisfied that the Appellant has failed to demonstrate that the rolling review based on customer orders properly

showed a reduction of at least 30% compared to the corresponding periods in 2019. However, the Commissioner notes that the evidence submitted to him suggests that the Appellant experienced a significant increase in its earnings in 2020 and 2021, compared to 2019. While the Commissioner accepts the Appellant's contention that its corporation tax returns are not directly comparable to the relevant test set out in section 28B(2), he notes that they demonstrate a turnover of €464,101 to year end 30 September 2019, €939,444 to year end 30 September 2020, and €1,667,661 to year end September 2021. Likewise, the Appellant's Relevant Contract Tax ("RCT") payments were €454,297 for the calendar year 2019, €764,753 for 2020 and €1,730,114 for 2021. In the circumstances, and given that the clear reason for the introduction of the EWSS was to assist employers who had suffered a significantly negative impact on their businesses due to the imposition of Covid-19 restrictions, the Commissioner considers it surprising that the Appellant considered that it was entitled to subsidy payments under the EWSS.

Determination

79. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in raising EWSS assessments to tax against the Appellant in the total amount of €462,598.01 for September 2020 to July 2021 and October 2021. Therefore, the assessments stand.
80. The appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act 1997 as amended ("TCA 1997"). This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone
Appeal Commissioner
14th April 2023