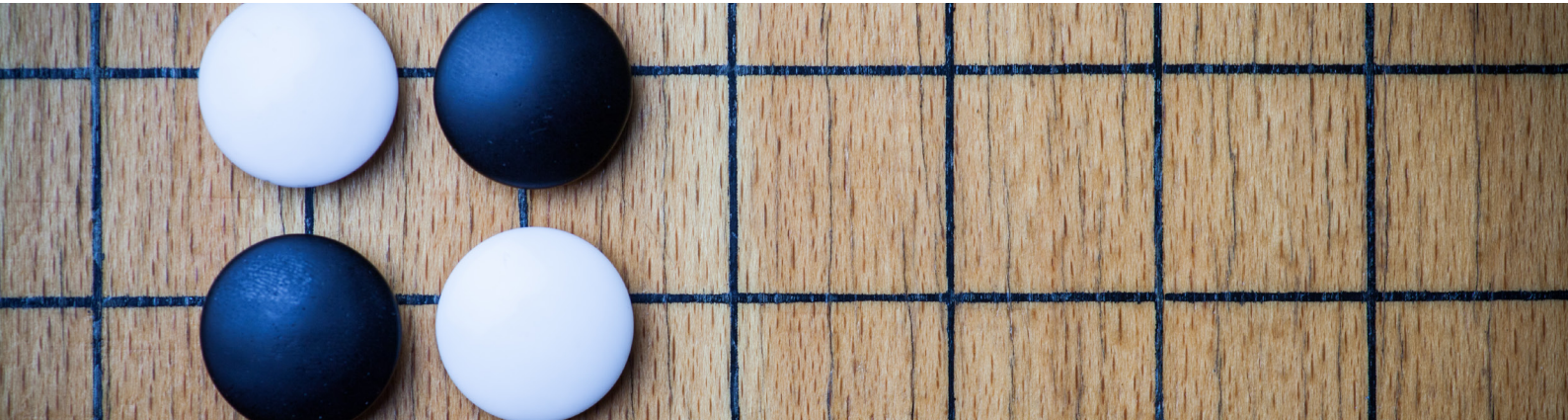


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May 2020

## Employment Update: First tranche of the Employment Support Scheme (ESS) set to Open for Applications

The Government has recently provided more clarity on the Employment Support Scheme (“**ESS**”) and expanded its scope.

- 1) The application for the first tranche of the ESS is scheduled to open on 25 May 2020 until 14 June 2020. The application details for the second tranche of the ESS is yet to be announced.
- 2) All employers (subject to exceptions such as Government organizations) who on or before 31 March 2020 have set up Mandatory Provident Fund (“**MPF**”) accounts or have become members of relevant schemes under the Occupational Retirement Schemes Ordinance (“**ORSO**”) are eligible to apply for the first tranche of the ESS. Backdating for the purposes of eligibility is not permitted.
- 3) An eligible employer may apply for the ESS subsidy in relation to government-funded staff who work for private projects so long as their salaries are not fully funded by the Government. However, the employer must have made MPF contributions for the relevant employees or ORSO schemes must have been set up for them.
- 4) Employers can apply for wage subsidies in respect of regular employees (18 to 65 years of age) and employees aged 65 or above under Master Trust Schemes and Industry Schemes. However, employers cannot make applications with respect to casual employees (employees between 18 to 65 years of age and employed on a day-to-day basis in the catering or construction industries or employed for a fixed period of less than 60 days).
- 5) In order to streamline administrative procedures, the employers are required to authorise the Government appointed ESS processing agent (“**Agent**”) and the MPF trustees. Being so authorized, the MPF trustee would forward the MPF record certificates to the Agent directly.

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- 6) Employers who apply for the first tranche of the ESS are to choose any one month between December 2019 to March 2020 as the “specified month” for all employees. The number of employees and their respective wages in the “specified month” will be the basis of calculation. This would include employees who were employed but are currently on no-pay leave or half-pay leave. The wage subsidy would be 50% of the actual wages of the employee (capped at \$18,000), i.e. a maximum of HK\$9,000 per employee per month. In relation to employees aged 65 or above if the employer has not provided information on the basic salary of the individual employees when making MPF contributions for them, the wage subsidy will be calculated by multiplying the amount of the employer’s voluntary contribution for the relevant employee in the “specified month” by 10 times, subject to a cap of HK\$9,000 per month per employee. However, there is no upper limit on the total amount of subsidy that each employer can receive.
- 7) It should be noted that no changes to the relevant MPF contribution data will be allowed for the purposes of the ESS.
- 8) Employers applying for the ESS will be required to provide the following undertakings at the time of making the online application:
  - a) not to implement redundancy during the subsidy period; and
  - b) to spend all the wage subsidies on paying wages to their employees.
- 9) The subsidy must be used towards wage payment only and cannot be applied towards other expenses or charitable donations. If an employer receives the first tranche of the ESS payment and fails to use all the wage subsidies received for the particular month during the three month subsidy period (June to August 2020) to pay the wages of the employees in the same month, the Government will claw back the unspent balance of the subsidy. Further, if the employees on the payroll in any one month of the subsidy period is less than the number of paid or unpaid staff in March 2020, the employer will be penalised by the Government. Applicants will also be held legally liable for making false statements.
- 10) Monitoring and assessment mechanisms are expected to be established under the ESS to screen and follow up on cases involving abuse and violations. Some of the measures to generate transparency include publication of the list of employers who have received the subsidies, total number of employees benefited and the amount of subsidies. Violations are liable to be reported to relevant authorities by members of public and the employees.
- 11) Though the Government expects that wages should not be reduced during the subsidy period, such reduction is not prohibited under the ESS.
- 12) Self-employed persons who have set up an MPF account on or before 31 March 2020 and which have not been terminated by that date, are eligible to apply for a one-off lump sum subsidy of HK\$7,500.

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## Comments

The ESS is likely to encourage job retention for employees who could otherwise be made redundant. An employer who receives the subsidy would be under public scrutiny in the interests of accountability. This may be a deterrent for employers to apply for the ESS subsidy. In the coming week, the Government is expected to announce details of the application process for the first tranche and the penalties. For further updates on the ESS, please watch this space.

To view our previous practice notes on the ESS please click [here](#) and [here](#).

For further information in relation to the ESS and other employment law related matters, please do not hesitate to contact Andrea Randall ([andrearandall@gallhk.com](mailto:andrearandall@gallhk.com) / +852 3405 7688).

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