

Question:

SCSB based on normal salary or salary paid under TWSS

Practitioners queried whether the Standard Capital Superannuation Benefit (SCSB) calculation can be based on an employee's normal salary per the employment contract or must the SCSB reflect actual salary paid while the employer claimed the Temporary Wage Subsidy Scheme (TWSS). Revenue is considering this issue and will revert as soon as possible.

Reply:

Although there may be provisions within the Redundancy Payment Act which allow for statutory redundancy payments to be made based on 'normal salary' in certain circumstances, such provisions do not extend to tax relief due under the TCA on foot of ex-gratia payments made.

Our position, as established last September, was that

- 1) The legislative provisions relating to the SCSB and any consequential interaction with TWSS was clear in that:
 - i. an emolument for the purposes of the SCSB includes anything which is assessable to income tax under Schedule E and,
 - ii. payments made to employees under TWSS are assessable to income tax under Schedule E.

Thus, payments made to an employee under TWSS should be included when calculating the average emoluments for the purposes of determining the SCSB; and

- 2) The legislation must be applied to all on a consistent and equal basis, and therefore it is necessary to consider both cases where the individual is and is not in receipt of payments under TWSS prior to being made redundant - to apply separate treatment when calculating the SCSB for each of these scenarios could result in some cases being dealt with in a less favourable manner than others.

There may be many scenarios outside a COVID context where an individual was on reduced pay/hours prior to being made redundant and there are no legislative provisions, or precedents that we are aware of, which enable the tax relief for ex-gratia payments to be calculated based on 'normal salary' in those circumstances. The principle of applying the legislative provisions on a consistent and equitable basis is therefore a key consideration in this scenario.