

# BEAT COVID-19 Payments to Inactive Employees in “Relevant Sectors”

## Background - and recent changes

On 17 March, the Government of Gibraltar announced measures to help businesses affected by restrictions put in place due to the Covid-19 pandemic. The measures include enabling employers in certain business sectors to register “Inactive Employees”.

Eligible businesses will receive from Government a BEAT COVID-19 Contribution (the “Contribution”) of £1,155 per month for each full-time Inactive Employee. A pro-rated Contribution for part-time or zero-hour employees will be receivable, based on hours worked between 2 January 2020 and 15 March 2020. The employer is then required to pay this directly, without any deduction, to the relevant employees. There is a similar provision for self-employed individuals, albeit that they apply for and receive the Contribution directly.

The rules governing the scheme are contained in the [Appropriation \(Business Employee Assistance Terms COVID-19\) Regulations 2020](#). HM Government of Gibraltar has also published [Guidelines](#) for the measures - though at the time of writing these have not been updated the changes on the 7<sup>th</sup> May described below.

### What's just changed?

The Regulations were amended on 7 May to include:

- Employees under the scheme may be “Fully-Inactive” (i.e., as under the scheme originally) or Partially-Inactive”. “Partially Active” employees work 50% of their contracted hours
- A change from the original requirement for an employee, or self-employed individual to have worked for at least 28 days in the six months preceding 15 March 2020. This is now 28 days in the nine months preceding 31 March 2020
- A scheme by which certain employers in may furlough employees. As this only applies to “Excluded Sectors” (see below) this is described in a separate bulletin.

## Businesses covered by the measure

The scheme only applies to businesses in a “Relevant Sector”. A relevant sector is defined as any sector, other than those listed as an “Excluded Sector”. Excluded sectors are as follows:

Utility providers	Food delivery companies
Telecoms operators & internet service providers	Online gaming industry & casinos
Data centre providers	Accountancy and law firms
Care workers	Businesses licensed by the GFSC
Supermarkets, grocers, butchers	Pharmacies, health stores
Market stalls	Bunkering, ship chandlers, sea transport & other shipping
Wholesalers with a tobacco licence	Property management companies
Petrol stations	Any other business deemed to be in substantive operation
Businesses predominantly reliant on Government as their main source of income	

The above list may be updated by notice in the Gazette. Further, the Minister responsible has the power to designate an employer from an Excluded Sector to be from a Relevant Sector on a case by case basis if there are extenuating circumstances that merit such designation.

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## Period covered by the measure

The first payments are for the month of April. The arrangements are to be in place during the "Relevant Period". This commences on 16 April 2020 and will continue until the earlier of:

- ▶ The date by which the pandemic is over, as announced in the Gazette by the relevant Government Minister, or
- ▶ 30 June 2020, or such later date as the Minister may determine by notice in the Gazette.

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## Applications

Applications should be made by employers, by completing an [online form](#).

The application should be made by no later than the end of the month for which the contribution relates. The Regulations provide that where a valid application is made by the 21<sup>st</sup> of a calendar month - or such other date as the Government may announce - Government shall seek to make the contribution by the end of that month.

An application is required to be made each month, even if there are no additional employees from the previous month's application.

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## Partially Inactive employees

An employer may designate an employee as being a Partially Inactive Employee when making the application.

A Partially Inactive Employee is an Inactive Employee who works for 50% of their contracted hours in the month. This may be determined by the employer as being, for example, on a half-day basis, or bi-weekly basis, or other such basis.

The employer pays the employee 50% of the salary provided for in their contract of employment. The Contribution paid by Government to the employer is 50% of the amount for Fully-Inactive employees (i.e., £577.50) per month, or lower pro-rata amount for part-time employees, and this reduced Contribution is paid to the employee.

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## Excluded employees

As well as the excluded business sectors listed above, employers may not apply for a contribution in respect of an employee who:

- ▶ was not registered as employed by the employer with the Department of Employment or the Income Tax Office on 15 March 2020
- ▶ has not been employed in Gibraltar for at least 28 days in the nine months preceding 31 March 2020
- ▶ is working from home or remotely from another location that is not the employee's ordinary workplace\*
- ▶ continues to provide any services to their employer\*,
- ▶ has returned to work\*
- ▶ has refused to return to work or to provide services to their employer during the Relevant period, after having been an Inactive Employee

- ▶ is on sick leave or deemed to be by operation of self-isolation and in respect of whom their employment rights shall apply
- ▶ has made an application for a Contribution as a self-employed individual, and the employer has reasonable knowledge of that
- ▶ has another employer, and the employer has reasonable knowledge that the other employer has made or will make an application for a Contribution for that employee
- ▶ is a director or shareholder of a company which is non-compliant with all PAYE and SI obligations as at 15 March 2020 or other such date as determined by Government, unless prior consent of the Director of Employment and the Financial Secretary is obtained.
- ▶ is registered in Gibraltar as a detached worker
- ▶ is deemed to be in receipt of other non-employment recurring annual income of more than £15,000
- ▶ has failed to repay any BEAT COVID-19 Payment to which he/she was not entitled, or
- ▶ has failed to make any notification to the Director of Employment required under the Regulations.

*\* although not stated in the Regulations, we assume that this does not apply in the case of Partially Inactive Employees - see above.*

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## Employers' obligations

Once an employer receives the Contribution for their Inactive Employees, they must pay each employee their corresponding share no later than three working days from the date of receipt of the Contribution.

Any Contributions received by the employer which have not yet been paid to the Inactive Employees are treated as sums received on trust for those employees.

Any employer must notify the Director of Employment immediately if they receive an erroneous Contribution.

If an employer is unable to make a payment (i.e., for logistical reasons) to an employee, then they must:

- ▶ Communicate to the employee the reasons why they are unable to make the payment
- ▶ Attempt to make the payment where circumstances permit, and
- ▶ If still unable to make the payment, reimburse the corresponding amount to Government

*"Any director or shareholder of a corporate employer that receives a BEAT COVID-19 Contribution or any other support from the BEAT COVID-19 Response Fund shall not declare or pay a bonus or dividend to any shareholder of that company during the Relevant period" [Regulation 4(6)]*

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## Employees' rights

Inactive Employees retain all their employment rights and obligations during the time they hold this status, except for the right to be paid their salary and the accrual of any holiday and leave entitlement.

The Regulations as published do not appear to provide for the accrual of any holiday and leave entitlement for Partially Inactive Employees. This is subject to clarification.

### **Termination of employment**

The employment of an employee may not be terminated during the Relevant Period without the consent of the Director of Employment.

Further, any notice of termination received or processed by the Department of Employment or any purported termination of employment, between 15th March 2020 and the end of the Relevant Period is deemed void unless the employer obtains the consent of the Director of Employment.

The Director of Employment shall not grant consent to any termination of employment during this time unless she is provided with reasonable cause for the termination, and this is not linked directly or indirectly to any diminution or cessation in the requirements of the employer's business due to the pandemic.

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## Employees' obligations

An employee who receives an erroneous Payment, or more than one Payment for the calendar month is required to repay any overpayment as directed by the Director of Employment.

An employee is required to notify the Director of Employment immediately if:

- ▶ they return to work or are requested to do so
- ▶ they receive an erroneous Payment, or more than one Payment for the calendar month
- ▶ they are in receipt of any other non-employment recurring annual income in excess of £15,000
- ▶ They have more than one employer and are either in receipt of a full salary from an employer, or they have reasonable knowledge that more than one employer will make an application for a Contribution for them.

*“Government shall in exceptional circumstances where the need arises have the right to requisition the services of any Inactive Employee or Inactive Self-Employed Person to provide such services to Government during the Relevant Period as Government may require” [Regulation 18(2)]*

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## Returning to work

Should any Inactive Employee in respect of whom an application has been made under the scheme return to work, or be requested to do so, both the employer and employee are required to notify the Director of Employment of this immediately.

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## Additional payments by employers

An employer may continue to pay part of the employee's salary in addition to their BEAT COVID-19 Payment, provided the total amount the employee receives from the employer does not exceed the amount of their full salary.



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## Self-employed individuals

An “Inactive Self-Employed Person” is a self-employed individual whose business is primarily or exclusively within a Relevant Sector (this being any business sector except those listed above as an “Excluded Sector”).

Such an individual may apply directly to Government using the [online form](#) provided. Once accepted, they will receive their Contribution directly.

### **Excluded self-employed individuals**

As well as the excluded business sectors listed above, self-employed individuals may not apply for a contribution if they:

- ▶ were not registered as self-employed with the Department of Employment or the Income Tax Office on 15 March 2020
- ▶ have not been registered as self-employed in Gibraltar for at least 28 days in the nine months prior to 31 March 2020
- ▶ are able to carry on their business from home or remotely from another location that is not their ordinary workplace
- ▶ are also an employee and their employer has made an application for a BEAT COVID-19 Contribution for them
- ▶ are in receipt of a full salary from other employment
- ▶ are deemed to be in receipt of other non-employment recurring annual income of more than £15,000
- ▶ have failed to repay any Contribution to which he/she was not entitled, or
- ▶ have failed to make any notification to the Director of Employment required under the Regulations.

Further, Government reserves the right to withhold any Self-Employed payments under the scheme to any person who is non-compliant with all Gibraltar income tax and SI obligations as at 15 March 2020.

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## Self-Employed individual's obligations

Self-employed individuals are required to repay any payment made to them under the scheme to which they are not entitled.

Such individuals are required to notify the Director of Employment immediately:

- ▶ upon or prior to carrying on their business within the Relevant Period
- ▶ if they receive any payment to which they are not entitled
- ▶ if they are in receipt of any other recurring income in excess of £15,000 per annum, or a full salary from any other source of employment
- ▶ if they are also an employee and have reasonable knowledge that their employer will make an application for them under the scheme.

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## Calculation

### *Full-time employees*

A full-time Inactive Employee is an inactive employee who was registered with the Income Tax Office or Department of Employment on a full-time basis as at 15 March 2020, and who was required to work a minimum of 37.5 hours a week under their contract of employment.

For such employees, the amount of the Contribution receivable by the employer, and the payment due by the employer to the employee is £1,155 per month.

Where an employee is deemed to receive annual employment income of less than £15,000, they are defined as a Part-time employee.

### *Part-time and "zero-hour contract" employees*

A part-time Inactive Employee is an inactive employee who was registered on a part-time basis, or on an "as and when" basis with the Income Tax Office or Department of Employment as at 15 March 2020, and who was required to work less than 37.5 hours a week under their contract of employment.

The Contribution and Payment in respect of such employees for each month is calculated as:

- ▶ Average Hours Per Day x 22 days x £7.00.
- ▶ Average hours per day is calculated as the normal working hours worked during the period from 2 January 2020 to 15 March 2020 divided by 390 and multiplied by 7.5.
- ▶ This is subject to a proviso that the normal working hours in this period used in the calculation may not exceed 390 hours.

For example:

- ▶ Fred worked 260 hours between 2 January and 15 March 2020.
- ▶ His average hours per day:  $(260 \text{ hrs}/390) \times 7.5 = 5 \text{ hrs}$
- ▶ His payment:  $5 \text{ hrs} \times 22 \text{ days} \times £7.00 = £770.00$  per month.

## *Partially Inactive Employees*

The amount of the Contribution receivable by the employer, and the payment due by the employer to the employee is reduced by 50%, i.e., £577.50 in the case of a full-time employee. A lower amount calculated on a pro-rata basis would apply in the case of part-time employees.

## *Self-Employed individuals*

The amount payable to Self-Employed Inactive persons is £1,155 per month, or such lesser sum as Government may determine based on information submitted with the application and any historical information available.

## *Employees who are also shareholders or directors*

In the case of an Inactive Employee who is a director or shareholder of a company, Government has the discretion to amend the hours claimed by the employee on the basis of information submitted with the application and any historical information available.

## *Changes to the above*

The Regulations provide for the possibility of Government changing the amounts payable by notice in the Gazette.

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## Appeals

An Appeals Board is to be formed, in order to consider and rule on any appeals by an employer, employee or self-employed individual.

Appeals may be made by:

- ▶ an employer whose application has been refused, such appeal to be made within 28 days of notification of the refusal
- ▶ an Inactive Employee whose employer has not made an application, such appeal to be made within 28 days of the end of the month in which the application could have been made
- ▶ an Inactive Employee whose employer has received a Contribution under the scheme, but failed to pay this to the employee, such appeal to be made within 28 days of the day that the employer received the Contribution
- ▶ an employer, employee or self-employed person who is dissatisfied with the calculation of any Contribution or Payment under the scheme. Such an appeal is to be made within 28 days of notification of the refusal or partial approval of the application.





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## Penalties

The Regulations make it an offence to:

- ▶ intentionally or recklessly fail to comply with the Regulations, or
- ▶ intentionally or recklessly include any false, inaccurate or misleading information in an application for a BEAT COVID-19 Contribution.

Penalties for committing such an offence are:

- ▶ On summary conviction, imprisonment for up to six months, or a fine up to the statutory maximum, or both
- ▶ On conviction on indictment, imprisonment for up to seven years or a fine, or both.

Further, a person who is determined by the Commissioner of Income Tax to have intentionally or recklessly failed to comply with the Regulations or intentionally or recklessly included any false, inaccurate or misleading information in their application is liable to pay three times the amount of Contributions received or applied for in the Relevant Period. In such a case, the person would also be required to repay all Contributions received in the Relevant Period. If such a person completed an application on behalf of a company, any such payment not made shall be a debt due jointly and severally from any directors of the company.

The Regulations also allow the Director of Employment to arrange for publication in the Gibraltar Gazette names of those who do not comply with the Regulations. The Director of Employment must issue a letter to any such person at least 30 days before publication.

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## Tax Considerations

### **Fully Inactive employees/self employed**

Tax is not payable on any BEAT COVID-19 Payment received by the employee or self-employed individual.

Any allowances claimed by the individual will be reduced by one-twelfth for each month in which the individual receives a payment in the relevant tax year.

Inactive Employees' and self-employed individuals' Social Insurance contributions for the period covered by such payments will be waived. The Social Insurance contributions will be deemed to have been made by the individuals.

### **Partially Inactive employees**

Tax is not payable on any BEAT COVID-19 Payment received by the employee.

However, PAYE is to be deducted from remuneration paid for the hours worked in the month.

Allowances are reduced by 1/24 for each month in which they receive a payment as a Partially Inactive employee in the relevant tax year.

Social Insurance contributions are waived for the period during which the employee is Partially Inactive. The contributions are deemed to have been paid.

### **Employers - for Fully Inactive employees**

BEAT COVID-19 payments to employees should not be included in the Employer's Annual Statement, Declaration and Certificate (P8 Form). PAYE is not payable in respect of such payments.

If the employer makes additional payments to the employee, PAYE is payable on such payments.

Employer's Social Insurance contributions for the period covered by such payments will be waived.

### **Employers - for Partially Inactive employees**

PAYE is not payable in respect of BEAT COVID-19 payments to employees.

However, PAYE is to be deducted from remuneration paid for the hours worked in the month - but this is not required to be paid over by the employer to the Income Tax Office.

Social Insurance contributions are waived for the period during which the employee is Partially Inactive.

### **Waiver of PAYE and Social Insurance**

PAYE/SI payments due in April 2020 (i.e., for March salaries) were waived for businesses in Relevant Sectors (see next paragraph). This waiver also applies to PAYE/SI payments due in May 2020 (i.e., April salaries). This is being reviewed on a monthly basis.

This measure does not apply to the Excluded Sectors listed on page one, and additionally, it does not apply to security or cleaning related businesses, courier and freight businesses, estate agents, bureau de change, or health stores.

### **Deferment of PAYE and social insurance**

[Guidelines](#) issued by HM Government of Gibraltar include the following measure for all businesses in Gibraltar:

"A deferral of the payment of PAYE/SI obligations to HMGoG for 12 weeks after month-end in which payment would typically be due commencing in relation to those due in May 2020 (i.e. April payroll)"

This measure applies to PAYE/SI on salaries in April, May and June 2020 (i.e., payments due in May, June and July 2020). It extends to all businesses in Gibraltar, not only those in Relevant Sectors.

Announcements made prior to the Guidelines being issued indicated that the deferral was intended to be for 12 weeks after the end of the month in which the salary is paid, rather than 12 weeks after the end of the month in which the PAYE/SI was due. We await further clarification

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