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Are You Eligible to the Canada Emergency Wage Subsidy?



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In the most recent newsletter from our tax group of April 1st, we presented an overview of the *Canada Emergency Wage Subsidy* (the “**CEWS**”) that was announced by the federal government in response to the COVID-19 crisis. Since then, the CEWS has been subject to modifications and precisions. It should be noted that, on April 16th, the federal government announced that the forms will be available as of April 27th and that payments should be received by the end of the week beginning May 4th.

On April 11th the legislative framework for the CEWS, the *COVID-19 Emergency Response Act, N° 2* came into effect. This newsletter is an overview of the key features and eligibility criteria of the CEWS.

General Reminder - What Is the CEWS?

The CEWS is a form of governmental assistance for certain employers who can receive a temporary wage subsidy of 75% of the remuneration paid to eligible employees. This subsidy is available for up to twelve (12) weeks of pay and is retroactive to March 15, 2020.

Who Can Apply?

The CEWS is available for any employer that is not a public institution¹. This includes individuals,

corporations, some non-taxable entities, registered charities and partnerships².

Qualifying Periods

The CEWS can be claimed for three different qualifying periods: 1) March 15, 2020 to April 11, 2020, 2) April 12, 2020 to May 9, 2020 and 3) May 10, 2020 to June 6, 2020.

Subject to certain exceptional rules explained below, the employer must incur a decrease of its monthly revenues. This is calculated by comparing its current monthly revenues with the revenues from the same month in the previous year.

For example, for the first period of March 15, 2020 to April 11, 2020, the employer must incur a decrease in its revenues of at least 15% by comparing its revenues of March 2020 to March 2019.

For the following two periods, April 12, 2020 to May 9, 2020 and May 10, 2020 to June 6, 2020, the decrease in its revenues must be of at least 30% by comparing the months of April and May 2020 to April and May 2019, respectively.

First, there is a special rule providing that when an employer is eligible for a qualifying period, that

employer is deemed to be automatically eligible to the CEWS for the following period.

In other words, if the employer has experienced a decrease in its revenues of at 15% for the first period (i.e. March 15, 2020 to April 11, 2020), the employer will automatically be eligible for the second period (i.e. April 12, 2020 to May 9, 2020).

The second exceptional rule applies to corporations that were not in operation as of March 1, 2019. For these employers, the reference period will automatically be the average of its revenues for the months of January and February 2020 for all of the three qualifying periods³.

Another special rule for all employers is the ability to choose as a comparison period the average revenues for the months of January and February 2020. To use this method as a reference, the employer must elect a choice and use it for all of the three qualifying periods.

The following table is a summary of the rules explained above:

Qualifying Period	Decrease of Revenues	Reference Period for Eligibility
March 15 – April 11, 2020	15%	<ul style="list-style-type: none"> March 2020 over March 2019; or The average of its qualifying revenues for January and February 2020.
April 12 – May 9, 2020	30%	<ul style="list-style-type: none"> Was admissible for the previous period due to loss revenues in that period⁴; or April 2020 over April 2019; or The average of its qualifying revenues for January and February 2020.
May 10 – June 6, 2020	30%	<ul style="list-style-type: none"> Was admissible for the previous period due to loss revenues in that period⁵; or May 2020 over May 2019; or The average of its qualifying revenues for January and February 2020.

Calculation of the Decrease in Revenues

Definition of “Qualifying Revenue”

To calculate the decrease in revenues of the employer, its “qualifying revenue” for both the qualifying period and the reference period must be determined.

The “qualifying revenue” is revenue incurred in the normal course of the business of the employer⁶ but excludes the following amounts:

- Amounts received for extraordinary items;
- Amounts received from persons or partnerships not dealing at arm’s length with the eligible entity; and
- The CEWS amount⁷.

For a registered charity, this revenue will include gifts and other amounts received in the course of its ordinary activities⁸. The registered charity will also have the choice to elect that funding received from government sources will be excluded in the determination of its “qualifying revenue”⁹.

Calculation Method of the “Qualifying Revenue”

In general, the employer’s “qualifying revenue” is determined in accordance with its normal accounting practices, but the employer can choose to determine its revenues based on the cash method. In this case, this method will have to be used for all of the qualifying periods¹⁰.

There are special rules for affiliated group of companies allowing them to choose to calculate their “qualifying revenue” either on a consolidated basis or separately. Each member of the group must choose the same method of calculation¹¹.

There are also specific and complex rules that apply to employers in which all or substantially all of their “qualifying revenue” is received from related persons or partnerships that could make them eligible to the CEWS¹².

Eligible employee

The CEWS will be calculated separately for each employee. For the remuneration to be eligible for the CEWS, this employee must:

- Be employed in Canada for at least a week during a qualifying period; and
- Not be without pay from the employer for 14 or more consecutive days within the qualifying period¹³.

Subsidy Amount

“Eligible Remuneration”

“Eligible remuneration” is defined as salaries, wages, commissions and other amounts for which the employer must withhold amounts¹⁴. However, it excludes (i) retiring allowances, (ii) employee benefits from stock options, (iii) loans from the employer and (iv) temporary pay increases in comparison to the salary received before the crisis¹⁵.

Amount of the Subsidy

The amount for the CEWS will be equal to the greater of (a) or (b):

- (a) the least of:
 - (i) 75% of the remuneration paid to the employee for that week;
 - (ii) \$847; and
 - (iii) if the employee does not deal at arm’s length with employer, nil;
- (b) the least of:
 - (i) the “eligible remuneration” paid to the employee for that week;
 - (ii) 75% of the weekly remuneration received by the employee before the crisis¹⁶; and
 - (iii) \$847.

In light of this formula, the CEWS for a new employee will be equal to 75% of the weekly “eligible remuneration” paid by the employer, up to a maximum of \$847.

Non-Arm’s Length Situations

If the employee does not deal at arm’s length with the employer, the CEWS will only apply if he was an employee during the period beginning on January 1, 2020 and ending on March 15, 2020. Moreover, the subsidy will be limited to 75% of the baseline remuneration, which is the pre-crisis average salary, up to a weekly maximum of \$847.

Moreover, if an employee works for more than one employer who do not deal at arm’s length, the subsidy amount to be received will be calculated as if the employee was working for only one employer¹⁷.

Additional Subsidy for Premiums

If the employer pays a salary to an employee who is **not working for that week**, the employer will be eligible for an additional subsidy that will cover the following amounts:

- The employer’s premium under the *Employment Insurance Act*,
- The employer’s contribution under the *Canada Pension Plan* or under a *provincial pension plan* (the *Québec Pension Plan* for example); and
- The employer’s premium under the *Québec Parental Insurance Plan*¹⁸.

It should be noted that employers must withhold and remit these premiums for each of the aforementioned programs. It is only when they receive their CEWS that these amounts will be reimbursed.

Amounts to be Deducted from the CEWS

If the employer is also eligible for the previously announced subsidy of 10%, any amount received from this must be deducted from the CEWS amount to be received by the employer.

The same rule applies for all amounts received from the work-sharing benefit under the *Employment Insurance Act*¹⁹.

The CEWS: Taxable for the Employer

The amount received by the employer is considered as being government assistance, which is taxable.

If the subsidy amount is received in July 2020 for the qualifying period beginning on March 15th and ending on April 11, 2020, the amount will be deemed to have been received on April 11, 2020 and will be included in the income of the employer as of that date²⁰.

Additional Conditions

To be eligible for the CEWS, the employer must meet the following conditions:

- Having, on March 15, 2020, a business number under which it is registered with the Minister to make remittances²¹;
- Filing an application in the prescribed form and manner before October 2020²²; and
- The individual who has principal responsibility for the financial activities of the eligible entity attesting that the application is complete and accurate in all material respects²³.

Anti-Avoidance Rules and Penalties

The CEWS will be refused to any employer who participates in transactions that have the effect of reducing its “qualifying revenues” or qualifying the employee for the CEWS, if it is reasonable to conclude

that the main purpose of such transactions is to qualify for the CEWS²⁴. In that case, the employer must reimburse the subsidy received and will be subject to a penalty of 25% of the amount claimed²⁵.

Moreover, a penalty for false statements or omissions can also be applied and will be equal to 50% of the difference between the amount of CEWS claimed and the amount that the employer was eligible for, with a minimum penalty of \$100²⁶.

Conclusion

Employers wishing to apply must ensure their eligibility to the CEWS. We invite you to contact any member of our tax group to help you navigate through the details of this new legislative framework.

1. 125.7(1) “eligible entity” ITA.
2. Only if all the partners would otherwise be considered an eligible entity.
3. 125.7(1) (b) (i) “prior reference period” ITA.
4. 125.7(9) ITA.
5. 125.7(9) ITA.
6. 125.7(1) “qualifying revenue” ITA.
7. 125.7(1) (c) to (e) “qualifying revenue” ITA.
8. 125.7(1) (a) “qualifying revenue” ITA.
9. 125.7(1) (a) and (b) “qualifying revenue” ITA.
10. 125.7(4) (e) ITA. The cash method is the one provided by section 28(1) ITA.
11. 125.7(4) (b) ITA.
12. 125.7(4) (d) ITA.
13. 125.7(1) “eligible employee” ITA.
14. Those provided by subsections 153(1) (a) to (g) ITA in accordance with section 125.7(1) “eligible remuneration” ITA.
15. 125.7(1) (a) to (d) “eligible remuneration” ITA.
16. It is the average weekly “eligible remuneration” received during the period that begins on January 1, 2020 and ends on March 15, 2020, excluding any period of seven or more consecutive days for which the employee was not remunerated in accordance with the definition of “baseline remuneration” at 125.7(1) ITA.
17. 125.7(5) (b) ITA.
18. 125.7(2) D ITA.
19. 125.7(2) B and C ITA.
20. 125.7(3) ITA.
21. 125.7(1) (d) “qualifying entity” ITA.
22. 125.7(1) (a) “qualifying entity” ITA.
23. 125.7(1) (b) “qualifying entity” ITA.
24. 125.7(6) ITA.
25. 163(2.901) ITA.
26. 163(2) (h) ITA.

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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