Canadian tax alert

COVID-19 – Update on the Canada Emergency Wage Subsidy (CEWS), the Canada Summer Jobs (CSJ) and the Canada Emergency Business Account (CEBA)

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Today, the federal government provided an update on the CEWS, the CSJ and the CEBA programs. Our Tax and Legal team is closely monitoring all government announcements and will remain available to support you during this unprecedented and uncertain time.

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Update to the CEWS

According to Deloitte's Future of Canada Centre, today's announcement of another major change to the wage subsidy program represents both the culmination of ongoing negotiations amongst the major political parties in a minority federal Parliament, as well as a recognition that the original program was not quite fit for purpose.

Nearly four weeks ago, when the federal government first unveiled a 10% wage subsidy as a central plank of Canada's emergency economic response to COVID-19, that level was in line with the actions of most major economies. In the ensuing weeks, businesses across the country called on the federal government to change course as the economic situation rapidly deteriorated. As officials in Ottawa absorbed the full scope of the economic shock, and simultaneously learned of the wage subsidy proposals of other major economies, Canada's subsidy level was in some circumstances raised from 10% to the current 75% and broadened its application just over two weeks ago.

Businesses should not expect payments to start flowing before May at the very earliest, particularly as the government prioritizes implementation of the Canada Emergency Response Benefit to support individuals.

Further modifications announced today to the CEWS include:

Accounting method
- When calculating revenue loss, employers will have the option of using an accrual or cash basis but not a combination of both. Employers will select an accounting method when first applying for the CEWS and will be required to use that method for the entire duration of the program.
    - Clarification has been provided that any amounts received from CEWS will not be counted towards revenue totals for the eligibility period (although CEWS will be treated as taxable income).
    - Special rules will also soon be provided to address issues for corporate groups, non-arm's length entities, and joint ventures.

Reference period
- Employers will now have the option to use one of two reference periods when calculating their decline in revenue:
    1. The same month from the previous year (i.e., March 2020 over March 2019); or
    2. The average of January and February 2020.

    Note that employers must use the same benchmark methodology throughout the entire eligibility period.

Revenue decline threshold
- Employers will now only need to attest to a decline in revenues of 15% for their March 2020 period, relative to their chosen reference period. This is a reduction from the original 30% requirement. The 30% requirement remains in place for the April and May reference periods.

Pre-crisis remuneration
- Clarification has been provided surrounding how to calculate the pre-crisis remuneration. This will be calculated as the average weekly remuneration

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paid between January 1 and March 15 inclusively, excluding any seven-day periods in respect of which the employee did not receive remuneration.

Interaction with CERB and other EI programs

- Government has also clarified that only employees receiving remuneration during the eligibility period would qualify for CEWS. In other words, an employee receiving Canada Emergency Relief Benefit (CERB) could not be claimed for CEWS.
- The government is encouraging eligible employers to rehire employees as quickly as possible and apply for the CEWS. To ensure that the CERB applies as intended, the Government is expected to implement an approach to limit duplication. This could include a process to allow individuals rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount.
- For employers and employees that are participating in a Work-Sharing program, EI benefits received by employees through the Work-Sharing program will reduce the benefit that their employer is entitled to receive under the CEWS.

Revenues for charities and NPOs

- Charities and not-for-profit employers will include most forms of revenue, excluding revenues from non-arm's length persons. These organizations will be allowed to choose to include or exclude government sources in their revenue calculation. Once chosen, the same approach would have to apply throughout the program period.

Subsidy for certain payroll contributions

- Furthermore, to encourage eligible employers to re-hire employees immediately, eligible employers will also be reimbursed for all employer portions of EI, CPP, QPP, and QPIP contributions. This refund would cover 100% of employer-paid contributions for eligible employees for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees.
  - For clarity, remuneration paid to employees that continue to work, even if reduced hours, would not be covered by this additional refundable amount.
  - This refund would be an addition to the $847/week cap per employee.
  - Application for this additional refund will be made concurrent with applications for the base CEWS amounts.

Ensuring compliance

- In addition to these program expansions, the following compliance and penalty requirements have been clarified:
  - An individual with financial oversight of the employer will be required to personally attest to the application;
  - If an employer is found to have received the amounts in error, they will be required to fully repay the amounts received;
  - Per published guidance, employers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS will be subject to a penalty equal to 25% of the value of the subsidy claimed, will need to repay the full subsidy that was improperly claimed, and will be potentially subject to other fines and to prison time; and

- Per Minister Morneau's press conference, if an employer is found to have deliberately abused the program, penalties can reach up to 225% of the amounts received as well as up to 5 years in prison.

The following issues related to the CEWS continue to remain outstanding and potentially will result in additional guidance in coming days:

1. Clarification on the rules relating to corporate groups, non-arm's length entities, and joint ventures;
2. Whether or not employers will be required to substantiate that they could not top up the 25% of salaries not covered by CEWS;
3. How the 25% and 225% penalties will interact, as both penalties have not been clearly outlined in currently published documentation;
4. Unavailability of the application form. As such, details around specific information required in order to complete the application remains unknown; and
5. Since the complete language of the proposed legislation is still to be released, some leaders may still need additional clarification before making the best decisions for their organizations.

Temporary expansion of the CSJ program

Changes to the CSJ 2020 program to support the employment of youth between 15 and 30 years of age include:

- Increasing the wage subsidy from 50% to up to 100% of the provincial/territorial minimum hourly wage for private and public sector employers. Not-for-profit employers will remain eligible to receive funding of up to 100% of the minimum hourly wage.
- Extending the employment end-date from August 28, 2020 to February 28, 2021.
- Enabling employers to adapt their projects and job activities to support essential services, such as hiring youth to deliver meals from food banks to the vulnerable population.
- Extending the wage subsidy to employers hiring youth on a part-time basis, rather than only on a full-time basis.

The CEBA

A reminder that the CEBA will become available as of Thursday, April 9, 2020. This program provides eligible applicants with up to $40,000 of non-interest loans, with 25% potentially being converted to a non-repayable grant, if the debt is fully repaid by December 31, 2022. Interested applicants are encouraged to contact their financial institutions for further information.

For more information on COVID-19, see our Canadian COVID-19 information hub and our global COVID-19 information hub

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