

## Canada Emergency Wage Subsidy

The Canada Emergency Wage Subsidy (“CEWS”) provides up to a 75-per-cent wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020. The parameters of the program are outlined below.

### Eligible Employers

Eligible employers include:

- individuals
- taxable corporations
- partnerships consisting of eligible employers,
- non profit organizations and registered charities.

Although not entirely clear, it would appear that trusts may qualify on the basis that trusts are treated as individuals for the purposes of the Income Tax Act (Canada). We are currently confirming this point.

The employer must have a payroll business number as of March 15, 2020.

### Eligible Employees

Individuals, employed in Canada are eligible unless they have been without remuneration for 14 or more consecutive days in a particular eligibility period (i.e., from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6). An employee that has been without remuneration for fourteen days in one eligibility period can qualify for the CEWS for other eligibility periods.

### Calculating Revenues

CEWS is available to eligible employers incurring a drop of at least 15 per cent of their revenue in March 2020 and 30 percent for April or May 2020.

Employers can use one of two benchmarks for the revenue test. They can choose to compare their revenue of March, April, and May 2020 (each is referred to as a reference period) to either:

- The same months in 2019; or
- An average of their revenue in January and February of 2020

Once an employer has selected the benchmark they want to use, they must use it for the program's duration. If an employer qualifies for the revenue drop in one month, the employer does not need to qualify for the revenue drop in the subsequent month to be eligible for the subsidy in the subsequent eligible period. The government provided the following example:

- ABC Inc. is a start-up that started its operations last September. It reported revenues of \$100,000 in January and \$140,000 in February, for a monthly average of \$120,000. In March, its revenues dropped to \$90,000. Because revenues in March are 25 per cent lower than \$120,000, ABC Inc. would be eligible for the CEWS for the first and second claiming period. To be eligible for the third claiming period, ABC Inc. revenues would have to be \$84,000 or less for the month of April (that is, 30 per cent lower than \$120,000).

Generally, an employer's revenue will be its revenue in Canada earned from arm's-length sources, calculated using the employer's normal accounting method. Revenue excludes revenue from extraordinary items and amounts on account of capital. The amount of CEWS received in a given month is ignored for the purpose of measuring year-over-year changes.

Employers can choose to use either the accrual method or the cash method to calculate revenue. If the cash method is chosen, the eligible entity must make an election.

Groups can choose between calculating revenue on a consolidated or non-consolidated basis subject to certain conditions.

Special rules for the computation of revenue would be provided to take into account certain non-arm's length transactions, such as where an employer sells all of its output to a related company that in turn earns arm's length revenue.

### Amount of Subsidy

For a given eligible employee, the subsidy is the greater of the following :

- 75 per cent of the amount of remuneration paid, up to a maximum benefit of \$847 per week; and
- The lesser of the amount of the remuneration paid, \$847 per week and 75 per cent of the employee's pre-crisis weekly remuneration.

Employers can receive a subsidy of up to 100 per cent of the first 75 per cent of pre-crisis wages or salaries of existing employees (up to a maximum of \$847).

The pre-crisis remuneration for a given employee is based on the average weekly remuneration paid between January 1 and March 15 inclusively, excluding any seven-day periods in respect of which the employee did not receive remuneration.

It is not possible to receive a 100 per cent subsidy on the first 75 percent of remuneration paid to replacement employees or to new employees (hired after March 15, 2020).

Eligible remuneration includes salary, wages, and other remuneration. However, it does not include items such as severance pay, stock option benefits, or the personal use of a corporate vehicle.

A special rule will apply to employees that do not deal at arm's length with the employer. The subsidy amount for such employees will be limited to the eligible remuneration paid in any pay period between March 15 and June 6, 2020, up to a maximum benefit of the lesser of \$847 per week and 75 per cent of the employee's pre-crisis weekly remuneration. The subsidy would only be available in respect of non-arm's length employees employed prior to March 15, 2020.

### **Refund for Certain Payroll Contributions**

The Government expanded the CEWS by introducing a new 100 per cent refund for certain employer-paid contributions to Employment Insurance, the Canada Pension Plan and An Act Respecting Parental Insurance. This refund would cover 100 per cent 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.

In general, an employee will be considered to be on leave with pay throughout a week if that employee is remunerated by the employer for that week but does not perform any work for the employer in that week. This refund is not be available for eligible employees that are on leave with pay for only a portion of a week.

This refund is over and above the weekly maximum \$847 that an eligible employer may claim in respect of the CEWS. There is no overall limit on the refund amount that an eligible employer may claim.

### Eligible Periods

The table below outlines each claiming period, the required reduction in revenue and the reference period for eligibility.

Eligible Periods	Claiming Period	Required reduction in revenue	Reference period for eligibility
Period 1	March 15 to April 11	15%	March 2020 over: <ul style="list-style-type: none"> <li>• March 2019 or</li> <li>• Average of January and February 2020</li> </ul>
Period 2	April 12 to May 9	30%	Eligible for Period 1 <b>OR</b> April 2020 over: <ul style="list-style-type: none"> <li>• April 2019 or</li> <li>• Average of January and February 2020</li> </ul>
Period 3	May 10 to June 6	30%	Eligible for Period 2 <b>OR</b> May 2020 over: <ul style="list-style-type: none"> <li>• May 2019 or</li> <li>• Average of January and February 2020</li> </ul>

### How to Apply

Eligible employers would be able to apply for the CEWS through the Canada Revenue Agency's My Business Account portal. Employers would have to keep records demonstrating their reduction in arm's-length revenues and remuneration paid to employees. More details about the application process will be made available shortly.

Minister Morneau has verbally stated that he expects the money under the subsidy program to be available towards the end of April or beginning of May.

### Government Assistance

The wage subsidy received by an employer is considered government assistance and is included in the employer's taxable income.

Assistance received under either wage subsidy would reduce the amount of remuneration expenses eligible for other federal tax credits calculated on the same remuneration.

In the case of scientific research and experimental development credits ("SR&ED"), we have calculated that it will be beneficial for a taxpayer to claim the wage subsidy even if the SR & ED tax credits are ground down due to the government assistance received.

### Ensuring Compliance

Employers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS would be subject to a penalty equal to 25 per cent of the value of the subsidy claimed, in addition to the requirement to repay in full the subsidy that was improperly claimed.

Employers will be required to repay amounts paid under the CEWS if they do not meet the eligibility requirements. Penalties can apply in cases of fraudulent claims.

### **Interaction with 10 per cent Wage Subsidy**

On March 25, 2020, the COVID-19 Emergency Response Act, which included the implementation of a temporary 10 per cent wage subsidy, received Royal Assent. For employers that are eligible for both the CEWS and the 10 per cent wage subsidy for a period, any benefit from the 10 per cent wage subsidy for remuneration paid in a specific period will generally reduce the amount available to be claimed under the CEWS in that same period.

### **Interaction with the Work-Sharing Program**

On March 18, 2020, the Prime Minister announced an extension of the maximum duration of the Work-Sharing program from 38 weeks to 76 weeks for employers affected by COVID-19. This measure will provide income support to employees eligible for Employment Insurance who agree to reduce their normal working hours because of developments beyond the control of their employers.

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.