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CANADA EMERGENCY WAGE SUBSIDY (CEWS) UPDATE – JULY 30, 2020

On July 17, 2020, the government of Canada announced proposed changes to the CEWS program, which were passed into law on July 27. The updated program is intended to allow for more employers to qualify for the program, however the changes are very complex. Accordingly, organizations applying under the new provisions will need to complete significant financial analysis in order to confirm eligibility for the program and the correct amount of the subsidy claim.

Summary of key changes to the New CEWS calculations

Below is a summary of the changes that will have the largest impact for eligible employers:

Period	Dates	Original CEWS Subsidy		New CEWS Subsidy				
		Eligibility	Rate	Eligibility	Base CEWS Rate	Base max rate	Top-up comparison	Top-up max rate
Period 1	Mar 15 - Apr 11	15% decline in March	75%					
Period 2	Apr 12 - May 9	15% decline in March, or 30% decline in April	75%					
Period 3	May 10 - Jun 6	30% decline in April, or 30% decline in May	75%					
Period 4	Jun 7 - Jul 4	30% decline in May, or 30% decline in June	75%					
Period 5	Jul 5 - Aug 1	30% decline in July	75%	June decline, or July decline	1.2x calculated decline	60%	April, May, June	25%
Period 6	Aug 2 - Aug 29	30% decline in August	75%	July decline, or August decline	1.2x calculated decline	60%	May, June, July	25%
Period 7	Aug 30 - Sep 26			August decline, or September decline	1.0x calculated decline	50%	June, July, August	25%
Period 8	Sep 27 - Oct 24			September decline, or October decline	0.8x calculated decline	40%	July, August, September	25%
Period 9	Oct 25 - Nov 21			October decline, or November decline	0.4x calculated decline	20%	August, September, October	25%
Extension?	Nov 22 - Dec 19			TBA	TBA	TBA	TBA	TBA

- The new legislation extends the CEWS program to November 21, 2020 and provides the government with the ability to further extend the subsidy to December 31, 2020, if necessary.
- Under the original CEWS calculations, eligible employers could apply for CEWS if they reached certain "bright line" revenue targets as noted in the chart above.
- For the new CEWS program, starting at period 5, the base CEWS rate will be based upon the eligible entity's revenue decline multiplied by a prescribed factor.
- Under the new program, there is an additional top-up subsidy amount if the eligible employer has suffered a revenue decline in excess of 50%. For periods 5 and 6, this could result in a CEWS percentage for some eligible entities of 85% which is greater than the 75% CEWS percentage under the original program in periods 1 through 4.
- However, for a large majority of employers the CEWS claim will be reduced given the sliding scale of the CEWS rates as noted in the above table.

- Certain businesses that did not meet the revenue decline percentages in periods 1 through 4, may now be eligible under the new program.
- In periods 5 and 6, if an applicant employer would qualify for a higher claim under the original CEWS program, there is a safe harbour rule to allow for claims in these two periods to be prepared under the original rules. After period 6, however, all claims must be prepared in accordance with the provisions of the new program.
- Under the new program, the subsidy for "arm's length employees" will be based solely on actual remuneration paid for the period, without reference to pre-crisis renumeration. For "non-arm's length employees", there is now an expanded reference period from which to determine baseline remuneration.

Revenue Decline

Revenue decline is calculated year-over-year, or against the average of January/February 2020. Whichever reference period is selected, that period must be maintained throughout claim periods 1 through 4. Under the new program, an eligible employer may re-select the reference period for claim period 5 but it must maintain that selection for the remainder of the program. As such, it will be important for eligible employers to analyze monthly revenues going back to March 2019 in order to determine the most optimal reference period.

Revenue for CEWS purposes excludes any revenue from extraordinary items, related parties and CEWS subsidies. By default, the revenue is calculated using an employer's regular accounting practices. There are elections available to calculate revenue on a cash basis, accrual basis, or on a consolidated basis. Once the method of accounting is selected it must remain consistent throughout the program.

Original CEWS Calculation

Under the original program, once the revenue decline threshold was met, an eligible employer qualified for the 75% subsidy. The subsidy was limited to wages of $1,129 per week per employee ($847 subsidy). If there was a reduction in pay compared to pre-pandemic wages, the subsidy was based on 75% of the pre-pandemic earnings, limited to the actual amount paid. This allowed for the possibility of a 100% subsidy if the employee had a 25% pay reduction. Employees who were without pay for 14 or more consecutive days in the subsidy period were not eligible employees under the original subsidy program.

New Base CEWS Calculation

Under the new program, the subsidy rate will change based on the revenue decline for the month or the previous month, multiplied by a factor which decreases over the term of the program. Any employer with a revenue decline will qualify and will reach the maximum base CEWS rate with a 50% revenue decline. The base CEWS rate is then applied to the wages paid (up to $1,129 per week per employee). Employees who are without pay for 14 or more consecutive days in a claim period are no longer excluded from the new CEWS program.

Example: Period 5: 20% decline in July = 20% x 1.2 = 24% Base CEWS rate.

New Top-up CEWS Calculation

Under the new program, there is an additional top-up subsidy amount if the eligible employer has suffered a revenue decline in excess of 50%. For purposes of the top-up, the revenue decline is based on the average revenue decline in the prior 3 months relative to the selected reference period. The top-up amount is equal to 1.25x the percentage revenue decline over 50%, to a maximum top-up of 25%.

Example: Period 5: 20% decline in July = 20% x 1.2 = 24% Base CEWS rate. If average revenue decline in prior 3 months (April, May, June) was 60%, then top-up rate = 10% x 1.25 = 12.5%. Therefore, total CEWS rate for Period 5 = 24% Base + 12.5% Top-up = 36.5%).

Prior Period Deeming Rules

Under the original CEWS program, if an eligible entity qualified in one period (i.e. period 1), it would be deemed to qualify for the immediate subsequent period (i.e. period 2) despite the fact it may not have reached the revenue decline threshold in that subsequent period.

Under the new CEWS program, the prior period deeming rule has been eliminated. However, the new provisions will allow an eligible employer to choose the revenue decline in either the current month or the prior month to calculate the subsidy claim.

Other legislative changes

Baseline remuneration

The original CEWS program had defined baseline remuneration to be the average weekly remuneration paid to an eligible employee during the period of January 1 to March 15, 2020. As a result of changes to the CEWS legislation, an employer may now elect, on an employee by employee basis, to use an alternative baseline period of March 1 to May 31, 2019 for periods 1 through 4. These rules were amended to accommodate seasonal employees or employees returning from long term absences. Starting in period 5, the amount of renumeration paid to "arm's length employees" will be based solely on actual remuneration paid for the period without reference to pre-crisis renumeration.

The baseline remuneration for "non-arm's length employees" (i.e. owners and their related family members) has been amended to allow an employer to elect to use the period of March 1, 2019 to May 31, 2019 for the first 4 CEWS periods instead of January 1 to March 15, 2020. For period 4, the employer may use either of the two baseline periods or the period of March 1, 2019 to June 30, 2019. For period 5 and onward, the employer will either use January 1 to March 15, 2020 for baseline remuneration or elect to use the period from July 1, 2019 to December 31, 2019. The key point here is that owner renumeration should be reviewed relative to the expanded baseline remuneration criteria as there may be enhanced opportunities to make a subsidy claim under the new program for non-arm's length employees.

Amalgamations

The new legislation provides clarification on revenue calculation for prior periods' revenue in situations where a corporate amalgamation occurred, and the amalgamated entity is applying for CEWS. In particular, the amalgamated corporation may calculate reference period revenue for the revenue decline test using the combined revenues of the predecessor corporations.

Asset purchases

The new legislation provides an election to allow the eligible entity that acquired a business through an asset purchase to include the seller's qualifying revenue for the relevant prior periods to determine the revenue percentage decline.

Notices of determination

The Minister of National Revenue may issue a notice of determination that will confirm or vary the wage subsidy amount claimed. This process will allow an eligible employer to object to a varied CEWS determination prior to a year-end notice of assessment.

Application deadline

Under the updated legislation, the deadline to make applications under the CEWS program has been extended to January 31, 2021.