Canadian tax alert

COVID-19 - Canada Emergency Wage Subsidy (CEWS)
Frequently asked questions

April 27, 2020

The CEWS program is one of the largest economic incentive programs in Canadian history, providing eligible employers with a wage subsidy for up to 12 weeks during three claiming periods (the program may be extended by regulation). The CEWS is expected to have widespread implications for the retention of employees who may have otherwise faced job loss or wage reduction due to COVID-19. The program provides eligible employers who have experienced a requisite level of revenue decline with a 75% wage subsidy that can reach up to $847/week per eligible employee.

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Since its introduction, the CEWS has evolved and expanded. In order to assist companies in understanding the program, Deloitte has issued a number of Canadian tax alerts and has hosted webcasts on the CEWS program, where attendees have been able to ask questions in order to gain a greater understanding, to assess eligibility and to navigate the mechanics of the program.

This alert summarizes answers to some of the most frequently asked questions, reflecting the CEWS legislation and guidance provided by the Canada Revenue Agency (CRA) and the Department of Finance.

Questions and answers

1. Is there a maximum limit on the CEWS program?

There is no maximum monetary limit on the CEWS program. The only current limit is that the amount receivable per eligible employee is capped at $847 per week. There is no overall cap per employer.

2. Would small businesses qualify for the CEWS?

Yes, employers of all sizes across all industry sectors, with the exception of public institutions, may apply for the CEWS. In order to qualify, an eligible entity must be one of the following:

a) A taxable corporation (other than one exempt from tax or a public institution);
b) an individual;
c) a registered charity, a non-profit organization or one of certain other not-for-profit entities (other than a public institution);
d) a partnership, whose members are described above; or
e) a prescribed organization.

Taxable corporations include public, private (Canadian-controlled private or other) and foreign owned or controlled corporations, including foreign corporations that operate in Canada through a branch.

Currently, there are no prescribed organizations. This category affords the government future flexibility.

Public institutions include schools, school boards, hospitals, health authorities, public universities and colleges. As currently worded, private schools and private colleges do not appear to qualify for the program.

In addition to private schools, there are noted exclusions from the definition of eligible entity, particularly as the definition relates to partnerships with members that fall into excluded categories (e.g., First Nations corporations, pension fund corporations, governments). We continue to seek guidance from the CRA and the Ministry of Finance as to whether there may be changes to the definition of eligible entity.

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3. **Would new businesses be eligible for the CEWS?**

   New businesses may be eligible to apply for the CEWS as they are able to elect to use their average revenues in January and February 2020 as a benchmark to determine revenue decline in the months of March, April and May 2020. Companies that have no baseline revenue would not be able to qualify for the program.

4. **If a corporate group has multiple entities, can it elect, for the purposes of testing revenue decline, to calculate revenues on a consolidated basis for specific entities or would the group have to consolidate all entities?**

   The legislation allows for a group of affiliated (as defined) entities to elect to calculate consolidated revenues for the purposes of testing revenue decline. However, an affiliated corporate group cannot choose only specific entities to be consolidated for this purpose. The election applies to each member of the affiliated group.

5. **If an election to consolidate revenues is made, is the consolidation applicable at the global or Canadian level?**

   If an affiliated group elects to consolidate its revenues for purposes of the CEWS, only its revenues from arm's length parties, relating to activities undertaken in Canada, would be considered. In other words, this would not be a globally consolidated revenue test, but rather a Canadian-sourced consolidated revenue test.

6. **If a corporation has both arm's length and non-arm's length revenues, would the corporation qualify for the CEWS?**

   The definition of qualifying revenues for determining eligibility for the CEWS excludes all non-arm's length revenues.

   In instances where all or substantially all (typically interpreted as 90% or greater) of an entity's revenue is from non-arm's length parties, the entity can file an election to effectively look through to the non-arm's length party's own revenues in order to determine eligibility for the CEWS. If the entity does not so elect, it would calculate its revenue decline based only on its arm's length revenue sources.

   In the event that an entity's revenues from non-arm's length parties is below the all or substantially all threshold, its revenue decline would be tested solely on revenues that it generates from arm's length parties. If a consolidation election applies, then the consolidated revenues (again, only from arm's length parties) would be tested for the purpose of the CEWS.

7. **Could revenues include investment income (e.g., rents, royalties, passive income, etc.)?**

   Revenue has been defined as the inflow of cash, receivables or other consideration arising in the course of the ordinary activities, in Canada, of the eligible entity. The legislation does not specify that the revenue must be from an active business and does not exclude investment income.

8. Does eligible remuneration include commissions?

Eligible remuneration may include salary, wages and other remuneration such as taxable benefits. It does not include severance pay, retirement allowances and stock option benefits. Commissions would be considered eligible remuneration.

In certain circumstances, however, the timing of the earnings and the payment of commissions could affect whether the amounts are treated as eligible remuneration.

Pre-crisis - or baseline - remuneration (i.e., remuneration paid between January 1, 2020 and March 15, 2020 inclusive, which is a reference point for determining the amount of the subsidy available) is determined by considering the amount paid to an eligible employee, whereas eligible remuneration (remuneration during the claim period) is based on the income earned by the eligible employee.

If the commissions were earned between January 1, 2020 and March 15, 2020, but not paid to the employee until after March 15, 2020, the commissions would not be included in calculating the pre-crisis baseline earnings, nor would they be included as eligible earnings.

9. Would remuneration paid to a non-arm's length employee qualify for the CEWS?

Remuneration paid to employees who do not deal at arm's length with the employer can equally qualify for the CEWS. However, the subsidy would only be available in respect of non-arm's length employees employed prior to March 15, 2020. In other words, an employer cannot begin paying a non-arm's length employee during the claiming periods solely for the purpose of accessing the CEWS program for that remuneration.

10. Do dividends qualify as eligible remuneration for the CEWS?

No. If shareholder employees received dividends between January 1, 2020 and March 15, 2020, these amounts would not be considered pre-crisis baseline earnings. In addition, dividends paid during the claiming periods would not be considered eligible remuneration.

11. Could an employer wait to pay its employees until after it receives the CEWS payment?

No. The basis for eligible remuneration is that the employees are actually paid their salaries during the claiming period. In other words, this program is a reimbursement of amounts paid to employees. Employers would not be able to include compensation that has been earned by but not paid to individuals.

12. Is the employer obligated to top up (i.e., by 25%) the eligible employees' salaries to qualify for the CEWS?

There is no legislative requirement to top up the employees' salaries beyond the subsidy amount to bring them to pre-crisis wage level.

However, the government has encouraged employers to make best efforts to top up employees where possible. Remuneration decisions will vary on a case-by-case basis.

It should be noted that the circumstances under which employees' compensation is being reduced due to the pandemic may give rise to employment law matters, and the advice of legal counsel may be warranted.

13. Is the employer required to apply for the CEWS for each month (i.e., March, April and May)?

Yes, the employer is required to apply for the CEWS each month.

An eligible employer that satisfies the revenue reduction criteria for its first month of applying for the CEWS, will be deemed to satisfy the test for the subsequent month. For instance, an employer that meets the 15% test in March will automatically qualify for April, even if it does not meet the 30% test for April. If that employer does not qualify for April, it would then be required to retest its revenues for May, and to satisfy the revenue reduction criteria for that month.

14. Is the CEWS included in the employer's taxable income?

The wage subsidy received by the employer is considered government assistance and must be included in the employer's taxable income. Note that for purposes of calculating qualifying revenues, any amounts deemed to have been received under CEWS would not be counted in the relevant revenue calculations.

15. What is the application process and when will the payment be made?

The application must be submitted through the CRA's *My Business Account* and authorized representatives will be able to submit the applications on behalf of their clients as well. There will also be an alternate web-based portal available for employers that cannot access their *My Business Account*. The application portal is expected to become available as of April 27, 2020, and it is anticipated that the claims will be processed (90% processing target) within five business days, with refunds being issued within three to five business days from processing.

All applications must contain a personal attestation by an individual with principal responsibility for the financial activities of the eligible entity, asserting that the application is complete and accurate in all material respects. In the event of abuse or misuse of the program, that individual may be subject to imprisonment for up to five years, in addition to penalties levied on the entity, reaching up to 225% of the amounts received.

16. In the event that an employer was eligible for the subsidy and received the payment, would penalties be applicable if the employer then chooses to reduce work hours or lay off the employees?

The eligibility criteria set in the legislation do not require employers to rehire the employees that were laid off or to not further lay off employees. There should be no penalty charges to the extent that the application for the CEWS was complete and accurate in all material aspects. However, the purpose of CEWS is to provide employers with financial support that would enable them to retain their employees and/or to rehire employees previously laid off as a result of the COVID-19 pandemic.

17. Must an employer show a correlation between its revenue reduction and COVID-19?

The eligibility for the CEWS is not based on the link between revenue reduction and COVID-19. Eligible employers must be able to demonstrate that their revenues have declined by more than the prescribed percentages during the months in question.

Month	Required revenue percentage reduction	Reference period
March 2020	15%	Same month 2019 or Average of January and February 2020
April 2020	30%	
May 2020	30%	

Note that, as stated above, if an entity qualifies for one month, it will be deemed to automatically qualify for the subsequent month, irrespective of its revenue decline in that second month.

18. How do the 10% Temporary Wage Subsidy (TWS) and Work-Sharing program interact with the CEWS?

Eligible employers may also qualify for the previously announced 10% TWS. For employers that are eligible for both programs, any benefits received from the TWS will reduce the amount received under the CEWS.

Similarly, employers with Work-Sharing programs can apply for the CEWS and can be eligible for the wage subsidy to extent the revenue test has been met. The wage subsidy will be reduced by any Employment Insurance benefits received by employees through the Work-Sharing program.

19. If an employer is eligible for the CEWS and rehires employees that are currently receiving the Canada Emergency Relief Benefit (CERB), what happens?

Prior to the CERB program’s eligibility criteria being broadened to allow for individuals earning up to $1,000 per period to qualify, there was no means for an employer to receive the CEWS for an employee that had received the CERB. Employees that have not earned remuneration for 14 or more consecutive days in a given claiming period would not qualify for the CEWS.

In instances where an individual had received the CERB, and was rehired with retroactive pay, the employee's CERB claim would become invalidated (typically because he or she no longer meets the 14-day test) and the employee would be required to repay the CERB claim for that period.

However, following the $1,000 maximum threshold being introduced, additional guidance will be required to confirm the integration mechanics between both programs, as, for example, an individual could remain employed, be paid $250/week (covered by the CEWS), and potentially still qualify for CERB.

For more information on COVID-19, see our [Canadian COVID-19 information hub](#) and our [global COVID-19 information hub](#)

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