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## **CANADA EMERGENCY WAGE SUBSIDY (CEWS) UPDATE – APRIL 15, 2020**

The following memo provides further details in respect to the Canada Emergency Wage Subsidy (CEWS), which was passed into law on Saturday April 11, 2020.

Should you have questions or require any further information, please do not hesitate to contact a PAND partner or staff member to discuss. We have also developed some excel-based tools to assist in calculating the amounts available under the CEWS program. Please feel free to contact us if you are interested in accessing these tools.

### 1. Qualifying Periods

- a. The legislation currently provides for three qualifying periods for which CEWS benefits may be paid as follows: 1) March 15 to April 11, 2020; 2) April 12 to May 9, 2020; and 3) May 10 to June 6, 2020.
- b. The Minister of National Revenue is permitted to create additional qualifying periods for which CEWS benefits may be paid, provided that those periods end no later than September 30, 2020.

### 2. Eligible Employers

- a. Eligible employers must be both an “eligible entity” and a “qualifying entity”
- b. “Eligible entity” includes taxable corporations, individuals, registered charities, partnerships where all of the members are eligible entities and non-profit corporations and labour organizations provided that they are not public institutions.
- c. “Qualifying entity” is an eligible entity that had a payroll account on March 15, 2020 and meets the revenue decrease criteria noted below.

### 3. Revenue Decrease Criteria

- a. Revenue decrease for each of March, April and May 2020 may be determined by either comparing to the corresponding month in 2019 or to the average revenue earned in January and February 2020.
- b. An entity must use the same method to calculate the revenue decrease for each of March, April and May (i.e. either the comparative prior year month or the average of January and February 2020).
- c. For March 2020, revenues must have decreased by 15% from the comparison period (i.e. either March 2019 or the average of January/February 2020).
- d. For April 2020, revenues must have decreased by 30% from the comparison period (i.e. either April 2019 or the average of January/February 2020). However, if an entity previously qualified based on the revenue decrease in March, it will automatically qualify for April regardless of the actual revenue decrease in April.
- e. For May 2020, revenues must have decreased by 30% from the comparison period (i.e. either May 2019 or the average of January/February 2020). However, if an entity previously qualified based on its revenue decrease in April, it will automatically qualify for May regardless of the actual revenue decrease in May.

4. Revenue Calculation
  - a. The revenue decrease test is based on “qualifying revenues”, which are revenues that are earned in the normal course of the employer’s business in Canada and derived from arm’s length parties.
  - b. Qualifying revenues specifically exclude extraordinary items (e.g. non-recurring gain on disposition of fixed assets).
  - c. Employers may calculate their revenue for purposes of the CEWS program using either the accrual method or the cash method.
  - d. If an entity elects to use the cash method to calculate revenues, it must use this method to calculate revenues for all qualifying (and comparison) periods.
5. Affiliated Groups
  - a. All members of an affiliated group (i.e. under common ownership) may jointly elect to use the same consolidated qualifying revenue calculation for the revenue decrease test.
  - b. Alternatively, a group that normally prepares consolidated financial statements may choose to determine qualifying revenues separately for each member.
  - c. Where an employer entity receives substantially all (90% or more) of its revenue from a non-arm’s length party, a joint election may be made to calculate the employer’s revenue decrease based on the revenue decrease suffered by the non-arm’s length party.
6. Registered Charities and Non-Profit Organizations
  - a. Charities and non-profit organizations may elect to calculate revenue by excluding amounts received from government organizations
7. Eligible Remuneration and Eligible Employees
  - a. Subsidy is available in respect to “eligible remuneration” paid to an “eligible employee”. “Eligible remuneration” includes all salary, wages, commissions, fees or other remuneration for services but excludes severance pay, retiring allowances and non-cash taxable benefits (e.g. stock options).
  - b. Also excluded from “eligible remuneration” are any advances, loans or other amounts paid to an employee that may reasonably be expected to be repaid by the employee.
  - c. An “eligible employee” is an individual who is employed in Canada and has not been without remuneration from the employer for 14 or more consecutive days in the qualifying period.
8. Subsidy Amount for Arm’s Length Employees
  - a. For purposes of calculating the subsidy, January 1 to March 15, 2020 is referred to as the “Baseline Period”.
  - b. Maximum weekly subsidy amount for an arm’s length employee is equal to the greater of the following two amounts:
    - i. *Amount A*: lesser of: 1) 75% x the gross weekly remuneration paid during the relevant qualifying/claim period; and 2) \$847 per week; and
    - ii. *Amount B*: least of: 1) Gross weekly remuneration paid during the relevant qualifying period; 2) 75% x the average weekly remuneration paid during the Baseline Period; and 3) \$847 per week
9. Subsidy Amount for Non-Arm’s Length Employees
  - a. Non-arm’s length employees generally include a person who owns a controlling interest in the business or is an immediate family member of such a person.
  - b. Subsidy will only be available for non-arm’s length employees if they were employed by the business prior to March 15, 2020 and they received employment remuneration during the Baseline Period.

- c. In order to substantiate that a non-arm's length employee received employment remuneration during the Baseline Period, payroll tax remittances should have been paid in respect to that person for the Baseline Period.
- d. Maximum weekly subsidy amount for a non-arm's length employee is the least of: 1) Gross weekly remuneration paid during the relevant qualifying period; 2) 75% x the average weekly remuneration paid during the Baseline Period; and 3) \$847 per week
- e. The subsidy is not available in respect to non-arm's length employees who are remunerated by dividends rather than a salary.

#### 10. CPP/EI Refund for Employees on Paid Leave

- a. In addition to the subsidy calculations noted above, the program has been expanded to include a new 100% refund for employer-paid contributions to EI and CPP that are made in respect to eligible employees that are on leave with pay during a particular CEWS claim period.
- b. An employee is considered to be on paid leave if they are being paid by the employer but do not perform any work for the employer during the particular CEWS claim period.
- c. There is no weekly maximum benefit per employee for this refund.
- d. The employer is required to make all payroll withholding remittances first and then apply to get back the employer portion of CPP and EI.

#### 11. Applying for CEWS

- a. Eligible employers can apply for the CEWS program through the CRA's My Business Account portal or through a separate web-based system currently being developed.
- b. Employers who have yet to set up their My Business Account on the CRA website should do so as soon as possible.
- c. The application portals are expected to be available in the next 2-4 weeks.
- d. The individual primarily responsible for the entity's finances will be required to attest to the decline in revenue.
- e. All applications for CEWS must be made on or before October 1, 2020.
- f. Those organizations applying for CEWS may be publicly identified by the Government of Canada.

#### 12. Enforcement and Record Keeping

- a. CEWS claims may be subject to audit by the CRA. Applying organizations need to keep records demonstrating their decline in revenues and the amount of remuneration paid to employees.
- b. Applying employers that are found to be ineligible for the CEWS program will be required to repay any amounts received. Fraudulent claims may result in penalties, including fines and imprisonment.
- c. Employers engaging in "artificial transactions" to reduce revenues during the claim periods will be subject to a penalty equal to 25% of the subsidy claimed, plus full repayment of the subsidy received.
- d. The CEWS receivable for any qualifying period is reduced by the amount of any claim made by the employer under the 10% wage subsidy program previously announced by the government.
- e. The CEWS receivable for any qualifying period is reduced by any amounts received by employees in respect to EI work-sharing benefits.

#### 13. Tax Treatment of Subsidy

- a. The amounts received under the CEWS program will be included in the taxable income of the employer in 2020.