



THE NEW \$71 BILLION WAGE SUBSIDY

TAX AND EMPLOYMENT GROUPS

April 2020



WHAT IS THE PROGRAM?

- **On April 1, 2020, Finance Minister Bill Morneau released details regarding the Federal Government's new Canada Emergency Wage Subsidy (“CEWS”).**
- **The CEWS is a \$71 billion subsidy intended to support the well-being of workers, maintain employment relationships and reduce claims on the employment insurance regime.**
 - Policy important: should guide the drafting and interpretation of the rules
- **Is it a “bailout”**
 - Some concern regarding US Covid-19 legislation

WHAT IS THE PROGRAM? (CON'T)

- **Eligible periods**
 - retroactive for “eligible remuneration” paid from March 15, 2020 and extends to pay periods up to June 6, 2020
 - employers will need to apply for each of the following claim periods:

	Claiming Period	Reference Period	Percentage Revenue Drop required
Period 1	March 15 – April 11	March 2020 over March 2019	15%
Period 2	April 12 – May 9	April 2020 over April 2019	30%
Period 3	May 10 – June 6	May 2020 over May 2019	30%

IN ADDITION TO THE 10% WAGE SUBSIDY

- **The CEWS is Different from the previously-announced 10% Wage Subsidy**
 - 10% subsidy is a reduction of payroll remittances - the CEW is a cash inflow
 - For remuneration paid during the period between March 18, 2020 and June 19, 2020
 - up to a maximum subsidy of \$1,375 per employee and \$25,000 per employer
 - eligible employers
 - individuals
 - CCPCs with taxable capital employed in Canada of less than \$15M (and small business limit of greater than nil)
 - non-profit organizations and other tax exempt entities or registered charities
 - partnerships all the members of which are individuals, CCPCs, non-profit organizations/tax exempt entities or registered charities
- **Eligible employers can apply for both the CEWS as well as the 10% subsidy**
 - assistance received under the 10% subsidy to reduce the amount receivable under CEWS

ELIGIBLE EMPLOYERS

- **CEWS is available to any type of employer in Canada, whether an individual, partnership, corporation, non-profit or charity; foreign ownership is irrelevant**
- **Gross revenue reduction of 15% in March and 30% in April and May, 2020**
- **Excludes public sector entities, such as municipalities, crown corporations, public universities, colleges, schools and hospitals**
 - Tax-exempt entities?
 - Entities in receipt of government funding
 - Consider subsidiary entity of a tax-exempt entity
- **Best Efforts to pay remaining salary**
 - top up an employee's salary to the pre-crisis level. This criterion appears to be subject to flexibility: additional detail may be forthcoming.

REVENUE REDUCTION OF AT LEAST 15% IN MARCH; 30% IN APRIL AND MAY

- **Employer will be obliged to attest that it has suffered a reduction in gross revenues of at least 15% in in March and 30% in April or May of 2020, when compared to the same month in 2019 OR in comparison to January/February, 2020 revenues:**
 - Decline need not be COVID-19 related
 - Gross revenues ARE NOT profit and may not take into account the ability to collect
- **Revenue is to be computed as**
 - revenue from a business carried on in Canada
 - should include branch of non-resident corporation
 - earned from arm's length sources
 - using the employer's normal accounting method
 - excluding
 - revenue from extraordinary items and amounts on account of capital
 - assistance received under the 10% wage subsidy regime

REVENUE REDUCTION - DIFFICULTIES

- **Reduction in gross revenues in March, April and May of 2020 versus same period in prior year or January/February 2020**
 - Works well for point of sale businesses
 - the work is done, invoiced immediately, and paid immediately – any retail enterprise
 - no lag from activity to payment
 - Problem for manufacturers and others
 - Time lag between labour activity and invoicing/revenue recognition
 - Problem for pre-paid service contracts
 - Acquisitions/Divestitures over the last year
 - Impact on gross revenues, up or down
 - Unclear if revenue reduction is to be calculated for each business line

REVENUE REDUCTION – DIFFICULTIES (CON'T)

- **Timing Issue affects business decision to re-hire:**
 - At the time that remuneration is paid, may not know if qualify for the CEWS
 - E.g., Wages paid on April 15 would qualify in the April 11 to May 9 period only:
 - If gross revenues from April 2020 < 70% of gross revenues April 2019 or,
 - If gross revenues from April 2020 < January/February 2020
- **New Businesses**
 - Revenue reduction to be based on “benchmark” – what does that mean?
 - Consider start-ups operating on seed capital
- **Charities and NFPs**
 - Rules to be determined, but may exclude or include government revenues
- **Normal Accounting Method**
 - Accounting standard vs accounting method?

REVENUE REDUCTION – DIFFICULTIES (CON'T)

- **Arm's Length Revenues**
 - No tracing of revenues from sales by related entities
 - Manufacturers for multi-national group
 - R&D Performers in multi-national group
 - Central paymasters

AMOUNT OF THE SUBSIDY

- **For each employee dealing at arm's length with the employer, the greater of:**
 - 75% of the amount of eligible remuneration paid, up to a maximum of \$847 per week; and
 - the lesser of
 - (i) the amount of eligible remuneration paid to the employee up to a maximum of \$847 per week, or
 - (ii) 75% of the employee's pre-crisis weekly remuneration
- **Additional detail is anticipated as to the meaning of “pre-crisis weekly remuneration”**
 - Prior year ÷ 12?
 - Prior month cash remuneration?

AMOUNT OF THE SUBSIDY (CON'T)

- **As a result, the CEWS may actually cover 100% of the eligible remuneration paid to an employee, if that remuneration has dropped from the pre-crisis level**
- **The total maximum subsidy per employee is \$10,164**
- **For each employee not dealing at arm's length:**
 - The lesser of:
 - the eligible remuneration up to a maximum benefit of \$847 or
 - 75% of the employee's pre-crisis weekly remuneration
 - No "new" non-arm's length employees
 - remuneration cannot be increased from pre-crisis levels; if business owner was previously compensated by way of dividends, they would have no pre-crisis remuneration, as currently contemplated

AMOUNT OF SUBSIDY – EXAMPLES

EXAMPLE 1	
PORTION PAID	\$50,000 ANNUAL SALARY
Full salary maintained \$962/week	Greater of 1. $\$962 \times 75\% = \underline{\$722}$ 2. Lesser of: a. \$847 b. $\$962 \times 75\% = \722
20% reduction in salary \$769/week	Greater of 1. $\$769 \times 75\% = \577 2. Lesser of: a. \$769 b. <u>\$722</u>

AMOUNT OF SUBSIDY – EXAMPLES

EXAMPLE 2	
PORTION PAID	\$100,000 annual salary
Full salary maintained \$1923/week	Greater of 1. $\$1,923 \times 75\% = \$1,442$, so max is <u>\$847</u> 2. Lesser of: a. \$847 b. $\$1,923 \times 75\% = \$1,442$
20% reduction in salary \$1,538/week	Greater of 1. $1,538 \times 75\% = 1,153$, so max is <u>\$847</u> 2. Lesser of: a. \$847 b. \$1,153

AMOUNT OF SUBSIDY – EXAMPLES

EXAMPLE 3	
PORTION PAID	\$58,700 annual salary
Full salary maintained \$1,129/week	Greater of 1. $\$1,129 \times 75\% = \underline{\$847}$ 2. Lesser of: a. \$847 b. \$847
20% reduction in salary \$903/week	Greater of 1. $\$903 \times 75\% = \677 2. Lesser of: a. \$903 b. <u>\$847</u>

AMOUNT OF SUBSIDY – ELIGIBLE REMUNERATION

- **Salary, wages and other remuneration**
- **Excludes**
 - severance pay
 - the value of stock option benefits
 - the value of non-cash benefits
 - any salary paid to an employee in a week that falls within a 4-week period for which the employee is *eligible* for the Canada Emergency Response Benefit (“CERB”)
 - if an employee has been laid off for fourteen days so that the employee qualifies for the CERB, the employer that calls-back the employee and commences to pay the employee remuneration as of the 15th day, appears that the employer may not be able to claim the CEWS with respect to the same four-week period covered by the CERB
 - unclear whether this is an intended result; expect to see a further announcement on the interaction between these two measures

AMOUNT OF SUBSIDY – ELIGIBLE REMUNERATION

- Periodic bonus and commission?
- No overall cap on the amount of subsidy that an employer may claim
- An employer may claim the subsidy in respect of remuneration paid to new employees.
- Independent Contractors; no wage subsidy for sole proprietorships; rely on CERB

AMOUNT OF SUBSIDY – EXAMPLES

EXAMPLE 4 – Salary plus Commissions

Base annual salary \$40,000 and commissions reported in 2019 of \$60,000 (total income reported in 2019 of \$100,000)

AMOUNT PAID	\$40,000 BASE ANNUAL SALARY 2020 (the \$60,000 commissions paid in 2019 are NOT recognized)	\$40,000 BASE ANNUAL SALARY 2020 (the \$60,000 commissions paid in 2019 ARE recognized)
\$769/week	Greater of 1. <u>\$577</u> 2. Lesser of: a. \$769 b. \$577	Greater of 1. \$577 2. Lesser of: a. <u>\$769</u> b. \$1442

APPLYING FOR THE CEWS

- **CRA *My Business Account* portal will be modified to accept applications**
 - anticipated to be online within three to 6 weeks, with payments to follow
 - could there have been a hybrid interim measure?
- **The CEWS is Taxable to Employers**
 - will be considered government assistance and be included in the employer's income
 - will reduce the employer's remuneration expense eligible for tax credits, such as SR&ED credits
 - but employer entitled to a deduction for the amount of remuneration paid to employees

APPLYING FOR THE CEWS (CON'T)

- **Compliance and Penalties**
 - An employer will be required to repay amounts if the employer does not meet the eligibility requirements and has not paid its employees the amounts on which the subsidy claim was based
 - Penalties may apply in cases of fraudulent claims
 - anti-abuse rules will be proposed
 - new offence provisions are being considered for those who provide false or misleading information to obtain access to the CEWS, including fines or imprisonment
 - query whether appropriate to stress penalty aspect when little detail provided

NEXT STEPS FOR EMPLOYERS

- Ensure are registered with the CRA for direct deposit
- Assemble records to demonstrate the 15% (March) or 30% (April/May) reduction in gross revenues
- Assemble documents to demonstrate pre-crisis remuneration
- Seek advice and stay tuned

INTERACTION WITH OTHER MEASURES AIMED AT EMPLOYEES

- Employment Insurance
- Supplementary Unemployment Insurance benefits
- Canada Emergency Wage Subsidy (CERB) program
- Work-sharing Programs

EMPLOYMENT INSURANCE (EI)

- If employee on EI already, current claim continues;
- If employee not laid off due to lack of work, but other types of EI (pregnancy/parental, compassionate care), regular EI applies
- If employee laid off or terminated before March 15, 2020, regular EI benefits only
- If employee laid off or terminated as of March 15, 2020, eligible for CERB first

CERB (COVID 19 EMERGENCY RELIEF BENEFIT)

- Individuals who have had no income in 14/28 cycle
- Trudeau announced further amendments on April 6, 2020 to permit up to 10 hours of work/week
- \$500/week
- Employees will collect CERB even when EI benefits might be higher
- Does not erode EI benefits
- Currently, employer not able to “top up” (unlike EI)
- Taxable
- No identification of clawback (unlike EI)

WORKSHARING

- Employer and employee agree that reduced work will be shared amongst unit/group
- Minimum size of group: 2 employees
- EI will pay for hours not worked by employees
- Approval process takes 10 days (reduced from 30 days)
- No longer requires proof of downturn
- No longer requires written recovery plan
- Does require approval (within 10 days)
- Workshare approval form simplified: <https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html#h4.04>

WORKSHARING

- There is obsolete information on government websites. Be careful!
- Work with the form available here: Workshare approval form simplified:
<https://www.canada.ca/en/employment-social-development/corporate/notices/coronavirus.html#h4.04>
- Like all EI payments, subject to clawback if employee earns \$67,750 or more from all employment sources
- Can be a useful way to get a bit more money for low and middle-income earners

SUPPLEMENTARY UNEMPLOYMENT BENEFITS

- Employers “tops up” EI payments
- Currently, inapplicable to top up of CERB payments
- Usually used for parental/pregnancy and illness/disability, without requirement of approval
- Requires approval where SUB is being paid for EI benefits triggered by lack of work, i.e. COVID 19 economic issues
- Deemed approved as of date of application, subject to review and audit
- Must create a trust arrangement and apply for recognition: <https://www.canada.ca/en/revenue-agency/services/tax/registered-plans-administrators/supplementary-unemployment-benefit-plans/register-apply.html>
- More information expected shortly

EMPLOYMENT LAW ISSUES

- Employee can still argue “breach of contract” and/or “constructive dismissal”
- Unclear how courts will react to the overwhelming consequences of COVID-19 pandemic
- Most employees will accept a “little bit of pain” if convinced it is shared and fair
- Unclear how aggressive worker-side/employee-side lawyers are going to be
- If unionized, must confer with union rep before changing conditions of work

QUESTIONS?



GOWLING WLG