

2020 Issue No. 34
19 May 2020

Tax Alert – Canada

Eligibility for the Canada Emergency Wage Subsidy extended

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 15 May 2020, the federal government announced the extension of the Canada Emergency Wage Subsidy (CEWS) to 29 August 2020, the retroactive broadening of the eligibility for the CEWS to additional groups, as well as additional proposed changes.

The government further indicated that it will consult key business and labour representatives over the next month on potential adjustments to the program, including the 30% revenue decline threshold. No further details have been provided.

Extension of the CEWS

Currently in place until 6 June 2020, the CEWS will be extended for another 12-week period up to 29 August 2020.

As noted above, it is expected that certain program parameters (such as the 30% revenue test) may be adjusted following the government's consultation with key business and labour representatives over the coming month. We will provide an update on the changes once they are announced.

Eligibility broadening

The eligibility for the CEWS will be retroactively extended, through regulatory changes, to the following five additional groups back to 11 April 2020 (so that the CEWS will apply for these groups back to the first qualifying period that started on 15 March 2020). The related draft regulations, which include these five groups as prescribed organizations under the definition of “eligible entity” in subsection 125.7(1) of the *Income Tax Act*, were also released on 15 May 2020.

- ▶ ***Partnerships that are up to 50% owned by non-eligible members*** - Partnerships with non-eligible members will be recognized as eligible entities as long as the fair market value of interests in the partnership held (directly or indirectly) by non-eligible entities (at all times in the qualifying period) does not exceed 50% of the fair market value of all interests in the partnership.
- ▶ ***Indigenous government-owned corporations that are carrying on a business*** - Indigenous government-owned corporations that are carrying on a business and are tax-exempt under paragraph 149(1)(d.5) of the *Income Tax Act* will be recognized as eligible entities. The same will apply to their wholly owned subsidiaries that are carrying on a business and are tax-exempt under paragraph 149(1)(d.6), as well as partnerships where each partner of the partnership is either an Indigenous government or an eligible employer. Indigenous governments will include First Nation bands, self-governing Indigenous governments, and other comparable Indigenous governing bodies.
- ▶ ***Registered Canadian amateur athletic associations (RCAAs)*** - National-level RCAAs that are exempt under paragraph 149(1)(g) will be recognized as eligible entities.
- ▶ ***Registered journalism organizations*** - Registered journalism organizations that are exempt under paragraph 149(1)(h) will be recognized as eligible entities.
- ▶ ***Non-public educational and training institutions*** - Non-public educational and training institutions, whether for-profit or not, will be recognized as eligible entities. This will include private colleges and private schools, including private institutions that offer specialized services, such as arts schools, driving schools, language schools, culinary schools or flight schools.

Additional proposed changes

To ensure the CEWS meets its intended objectives, the government also announced additional changes that correct certain known issues with the rules. The proposed amendments include:

- ▶ ***Alternative baseline remuneration period*** - To provide flexibility for employers of existing employees who were not regularly employed in early 2020, including for example seasonal employees and individuals who were on parental, disability or unpaid leave during the period 1 January to 15 March 2020, employers will be permitted to calculate baseline remuneration on an alternative basis. Specifically, an employer may choose to calculate an employee’s baseline remuneration as the

average weekly remuneration paid to the employee during the period 1 March to 31 May 2019 (excluding any period of seven or more consecutive days without remuneration). The choice of which period to apply can be made on an employee-by-employee basis. This change applies retroactive to 11 April 2020 (which means it will apply to the first qualifying period that started on 15 March 2020).

- ▶ **Amalgamated corporation's benchmark revenue** - To ensure that the CEWS applies appropriately to corporations formed on the amalgamation of two or more predecessor corporations (or where a corporation is wound up into another), an amalgamated (or combined) corporation will be permitted to calculate benchmark revenue for the decline in revenue test using the combined revenues of the predecessor corporations. This amendment provides a more relevant revenue benchmark for amalgamated (or combined) corporations. This option will not be available to the amalgamated (or combined) corporation if it is reasonable to consider that one of the main purposes for the amalgamation (or the winding up) was to qualify for the CEWS. This change applies retroactive to 11 April 2020 (which means it will apply to the first qualifying period that started on 15 March 2020).
- ▶ **Exclusion of certain trusts** - To better align the eligibility of trusts with that of corporations, the definition of an "eligible entity" will be amended to exclude certain trusts. Specifically, a tax-exempt trust (other than a public institution) will qualify only if the trust is a registered charity or one of the other eligible tax-exempt entities. In addition, if a trust is a public institution, it will qualify for the CEWS only if it is a prescribed organization (see above). This change applies in respect of the third qualifying period (10 May to 6 June 2020) and any subsequent qualifying periods.

Learn more

For more information, please contact your EY or EY Law advisor or one of the following professionals:

Toronto

David Steinberg
+1 416 932 6206 | david.a.steinberg@ca.ey.com

Lawrence Levin
+1 416 943 3364 | lawrence.levin@ca.ey.com

Edward Rajaratnam
+1 416 943 2612 | edward.rajaratnam@ca.ey.com

David Robertson
+1 403 206 5474 | david.d.robertson@ca.ey.com

Roxanne Wong
+1 416 943 2966 | roxanne.wong@ca.ey.com

Montréal

Stéphane Leblanc

+1 514 879 2660 | stephane.leblanc@ca.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2020 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.