

2020 Issue No. 50
30 October 2020

Tax Alert – Canada

CRA update on CEWS and employee benefits

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.

During a CPA Canada webinar¹ held on 26 October 2020, the Canada Revenue Agency (CRA) provided updates on certain aspects of the Canada Emergency Wage Subsidy (CEWS) and introduced several administrative positions relating to employment benefits.

CEWS updates

During the webinar, the CRA provided a number of updates on the CEWS, particularly with respect to CEWS audits.

CEWS audits

The CRA has a dedicated an audit program for the CEWS and is in the process of auditing qualifying periods 1 to 6. As part of these audits, the CRA will review all payroll accounts associated with the chosen business number. Specifically, the CRA will consider the eligibility of the employer, calculation of the revenue decline, eligibility of employees and that eligible remuneration and baseline remuneration were calculated correctly.

¹ The first of two. The second is scheduled for 4 November.

Generally, the employers chosen for audit have been identified through risk algorithms and/or pre-payment reviews or were chosen at random. Those chosen for audit are meant to represent a cross-section of employers, ranging from small to large multinational employers from all geographic areas.

The CRA acknowledged that there is a template audit request list circulating and that the request list is very detailed. The CRA noted that rather than sending the entire template, auditors should customize the audit request list to the circumstances so that it asks for only information necessary to support the audit. If the information requested is too burdensome, the employer should contact the auditor or team leader to discuss.

The CRA stated that CEWS audits will unfold in a similar way to a traditional income tax audit, namely that following a review of the information, where there are findings, the auditor will issue a proposal letter and the taxpayer will be given a limited period of time to respond. Where the taxpayer is unable to address the auditor's concerns in a manner satisfactory to the auditor, the CRA will issue a notice of assessment. The taxpayer will then have an opportunity to file a notice of objection, objecting to the assessment.

Overall, the CRA's intention with the first wave of audits is primarily to understand the risk profile around the CEWS program (i.e., where are the areas of greater risk of non-compliance). Presumably in future the CRA will deploy more audit resources to target employers where the risk of non-compliance is higher.

Other CEWS updates

The CRA commented on additional CEWS-related matters:

- ▶ **Rulings** - The CRA will not be providing advanced rulings on eligibility for the CEWS.
- ▶ **Amendments** - Where an application was filed and it did not include an election that should have been made by the employer, the application can be amended to include that election. However, where an application was filed and an election was made on that application, the election cannot be revoked or amended by filing an amended application.
- ▶ **Disclosure database** - The CRA is finalizing a database called the "CEWS Employer Search". This database will allow the public to search for employers who applied for the CEWS. The database will simply list the names of employers. The database will not contain information such as the total amount claimed and number of eligible employees.

- ▶ **Elections under 125.7(4)(c) and (d) of the *Income Tax Act*²** - The CRA believes that under current legislation, these elections are only available for periods 1 to 4, not periods 5 to 9. This matter has been referred to Finance Canada.
- ▶ **Floating month end** - Employers using a floating month end rather than a calendar month end cannot use the floating month end to calculate qualifying revenue. Adjustments will need to be made to the floating month end to determine qualifying revenue on a calendar month basis.

Employment benefits

Given that the pandemic has impacted the way that we work, the CRA is adopting new administrative positions with respect to certain employer reimbursements and allowances. It is expected that the administrative positions described below will be published on the CRA's website.

Commuting costs

During the pandemic, the CRA will not consider a reimbursement or reasonable allowance for travel expenses related to commuting from an employee's home to a regular place of employment to be a taxable benefit. The rationale for the CRA's position may be based on a recognition that travel by motor vehicle is safer for an employee than travelling by other means, such as public transportation. This administrative position represents an exception to the CRA's long-standing position that travel between an employee's home and regular place of work is considered personal travel.

The CRA has also commented that this position can be extended to the use of employer-provided motor vehicles, meaning that travel from the employee's home to place of work using a motor vehicle provided by the employer will be considered business mileage. The CRA expects that employers and employees maintain proper books and records.

Parking

If an employee's regular place of employment is closed during the pandemic, the CRA will not consider employer-provided parking at that location to be a taxable benefit to the employee.

² These elections are for the calculation of the qualifying revenue of (c) joint ventures and (d) entities with non-arm's length qualifying revenue in circumstances where the eligible entity derives all or substantially all of its revenue from one or more non-arm's length parties, respectively.

Home office expenses

Early on in the pandemic, the CRA released document 2020-0845431C6 (F), which provided that employees would not be in receipt of a taxable benefit where their employer reimbursed the cost of computer equipment of up to \$500 required to perform the immediate job. Questions remained around the tax treatment of other items required by employees to perform their duties, such as office chairs and desks.

The CRA has indicated that they will now expand their administrative position to include items such as chairs and desks provided that the equipment is needed for the employee to carry out their duties of employment from home. This expansion provides much-needed clarity for and closely aligns with Revenu Québec's position. The CRA confirmed its position during the Canadian Tax Foundation CRA Roundtable on 27 October.

With respect to home internet reimbursed by the employer, the CRA reiterated their position from T4130 *Employers' Guide - Taxable Benefits and Allowances* that the personal-use component of the internet costs paid by the employer should be considered a taxable benefit to the employee. The CRA did not, however, address how a taxpayer should apportion internet use between business and personal use. It is interesting to note that the CRA has previously published positions stating that employees likely cannot claim a deduction for home internet since it is not possible to apportion internet use (presumably measured in bandwidth) between business and personal use. Presumably the same problem of bifurcating internet use between business and personal use will also be present in situations where the employer reimburses employees for all or a portion of the cost of home internet.

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

Tom Di Emanuele

+1 416 932 5889 | tom.diemanuele@ca.ey.com

Lawrence Levin

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

Viktoria Maguire

+1 416 941 1891 | viktoria.maguire@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

Montréal

Stéphane Leblanc

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

About EY

EY is a global leader in assurance, tax, strategy, transaction and consulting 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.