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Tax Alert – Canada

Bill C-9 introduced to implement new rent subsidy and amend current wage subsidy

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 2 November 2020, Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*, received first reading in the House of Commons. Bill C-9 includes the new Canada Emergency Rent Subsidy (CERS) announced on 9 October 2020, as well as new and previously announced amendments to the Canada Emergency Wage Subsidy (CEWS).

Bill C-9 was adopted by the House of Commons without amendments on 6 November 2020, but will not receive Royal Assent until the Senate resumes its activities. The Senate is currently adjourned until 17 November 2020.

The following is a summary of the measures included in Bill C-9. These measures are considered to be substantively enacted for financial reporting purposes on 6 November 2020.

Canada Emergency Rent Subsidy

Bill C-9 introduces the new CERS, which was first announced on 9 October 2020. The CERS will operate in a manner similar to the CEWS and has been incorporated into the CEWS legislation within the *Income Tax Act* with the appropriate modifications. In general, the CERS will provide eligible entities (i.e., the same entities eligible for the CEWS) that have suffered a revenue drop and satisfy certain other conditions with a subsidy to assist with the cost of renting or owning a qualifying commercial property (generally, real or immovable property in Canada that is used by the eligible entity in the course of its ordinary activities).

Similar to the CEWS, the CERS will apply through to the end of June 2021; however, key parameters (such as the base subsidy rate) have only been provided for qualifying periods that occur between 27 September and 19 December 2020 (i.e., the periods that align with Periods 8 to 10 of the CEWS). Key parameters for any qualifying periods ending in 2021 will be set at a later date by regulation.

Key elements of the CERS include:

- ▶ **Base subsidy** - A maximum base subsidy of up to 65% of qualifying rent expense paid in a qualifying period will apply until 19 December 2020. Similar to the CEWS, the subsidy will be calculated on a sliding scale that gives more support to those entities with higher rates of revenue decline (see summary chart below). The qualifying rent expense is limited to \$75,000 for each qualifying property of an eligible entity and to \$300,000 for all qualifying properties of an eligible entity or a group of affiliated eligible entities. Qualifying rent expense generally includes arm’s length rent (before sales taxes) or, if the property is owned and not used (directly or indirectly) by the eligible entity to earn arm’s length rental income, mortgage interest, as well as amounts paid for insurance and property taxes (including school and municipal taxes) on the qualifying property.

Revenue reduction percentage	Base subsidy rate*
70% or greater	65%
50% or greater, but less than 70%	40% + [(Revenue reduction percentage - 50%) x 1.25]
Less than 50%	Revenue reduction percentage x 0.8

*Applicable until 19 December 2020.

- ▶ **Top-up subsidy** - A 25% top-up subsidy is also provided for eligible entities with a revenue drop that are subject to a public health restriction made in response to the COVID-19 pandemic (e.g., temporarily shut down or had its activities significantly limited by a mandatory public health order for at least one week). The top-up subsidy is prorated for the number of days in the qualifying period throughout which the qualifying property is subject to the public health restriction.
- ▶ **Revenue reduction percentage** - The revenue reduction percentage that is relevant to the calculation of the subsidy is calculated under the same rules applicable to the CEWS.
- ▶ **Application deadline** - An application for the CERS must be filed no later than 180 days after the end of the qualifying period.
- ▶ **Other** - Various other rules that are relevant to the CEWS, such as the deemed government assistance rule, anti-avoidance rules, penalty provision, and notice of determination rules, also apply for purposes of the CERS.

CERS claims will be able to be made retroactively for the period from 27 September to 24 October 2020. Similar to the CEWS, the new CERS program will be administered by the Canada Revenue Agency (CRA).

More details will be provided in a follow-up Tax Alert.

Canada Emergency Wage Subsidy

Bill C-9 also includes the following amendments to the CEWS:

- ▶ **CEWS extension** - As mentioned in the 23 September 2020 Throne Speech and on 9 October 2020, the CEWS will be extended until 30 June 2021. Bill C-9 confirms the addition of Period 10 (i.e., 22 November to 19 December 2020) and provides that key parameters of the CEWS will be set by regulation for any qualifying periods ending in 2021 (including, for example, the ability to modify the top-up percentage).
- ▶ **Freeze in base subsidy rate** - As announced on 14 October 2020, the maximum base subsidy rate of 40% for Period 8 (i.e., 27 September to 24 October 2020) will continue to apply until 19 December 2020, and the maximum top-up subsidy rate will remain at 25%. As a result, the maximum subsidy rate of 65% for Period 8 will continue to apply until the end of Period 10. Similarly, the sliding scale factor of 0.8 applicable in Period 8 to the percentage of revenue drop, when such drop is lower than 50%, will remain the same until the end of Period 10. Under the current legislation, the maximum subsidy rate was scheduled to be reduced to 45% in Period 9 (i.e., 25 October to 21 November 2020).
- ▶ **Harmonization of revenue-decline test for both base and top-up subsidies** - As announced on 14 October 2020, the three-month revenue-decline test for the purposes of the top-up subsidy will be replaced with a year-over-year revenue-decline test to harmonize it with the test for revenue decline under the base subsidy. As a result, under both the base and top-up subsidies, revenue decline will be determined by the change in an eligible employer's qualifying revenue for the relevant month when compared to the corresponding 2019 calendar month or, if the employer has elected to use the alternative revenue-decline test, to the average revenue for January and February 2020. To ensure this change does not result in a lower wage subsidy for eligible employers, a safe harbour rule will apply from 27 September to 19 December 2020 (i.e., from Periods 8 to 10), under which an eligible employer will be entitled to a top-up subsidy rate that is no less than the rate that would have applied under the three-month revenue-decline test.
- ▶ **Eligible employees** - As mentioned in the 30 October 2020 notice of ways and means motion (NWMM) to amend the *Income Tax Act*, the definition of "eligible employee" is amended to include an individual who is employed by the eligible entity primarily in Canada throughout the qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible entity). Previously, the requirement was for an individual to be employed in Canada by the eligible entity in the qualifying period. The amendment will apply in respect of applications made on or after Royal Assent of Bill C-9.
- ▶ **Baseline remuneration** - Retroactive addition of a new alternative baseline remuneration period for individuals on leave that qualify for certain special benefits under the *Employment Insurance Act* or the *Quebec Act respecting parental insurance* (e.g., compassionate care leave, caregiving leave, maternity and parental leave, sickness leave). This addition is applicable in respect of Periods 5 to 10 (i.e., from 5 July to 19 December 2020).

- ▶ **Asset sales** - Retroactive amendment is made to broaden the special rules for calculating the qualifying revenue where an eligible entity acquires assets from a third party, to situations where the fair market value of the acquired assets constituted all or substantially all of the property of an arm's length seller that can reasonably be regarded as being necessary for the eligible entity to be capable of carrying on a business of the seller, or part of a business of the seller, as a business. This amendment may thus broaden the rules to the acquisition of a division of a seller, provided all conditions are applicable.

A retroactive amendment is also made to deem the date the eligible entity is considered to have commenced carrying on the business in which the acquired assets are used, for purposes of applying the alternative prior reference period rule (i.e., the average of the qualifying revenue for January and February 2020). The deemed commencement date for the business is the earlier of the date on which the eligible entity commenced carrying on that business and the date on which the seller commenced carrying on the business in which the acquired assets were used.

- ▶ **Qualifying revenue elections (regarding joint ventures or non-arm's length entities)** - Retroactive amendments are made to remove the references to paragraph (c) of the definition "qualifying entity" from paragraphs 125.7(4)(c) and (d), so that the elections under these two paragraphs would no longer be limited to Periods 1 to 4, due to what seems to have been an unintended legislative oversight (the problem had been acknowledged by the CRA at the APFF annual conference on 8 October 2020 as well as on 26 October 2020 during a CPA Canada webcast (and reported in [EY Tax Alert 2020 Issue No. 50](#))). These elections, which will apply for all qualifying periods, provide special rules for calculating the qualifying revenue of an eligible entity that derives all or substantially all of its revenue from one or more non-arm's length persons or partnerships, or of an eligible entity that is owned by participants in a joint venture and all or substantially all of its revenue is in respect of the joint venture.
- ▶ **Amending/revoking elections and CEWS application due date** - A rule is introduced to provide when an eligible entity may amend or revoke an election made under the CEWS or the CERS, effective 27 September 2020. Under this rule, an amendment or a revocation may be made on or before the CEWS or CERS application is due for the first qualifying period in respect of which the election is made.

This new rule supersedes the position described on the CPA Canada webcast on 26 October (and reported in [EY Tax Alert Issue No. 50](#)) that elections could not be revoked or otherwise be amended by filing an amended application (although the CRA had cautioned at the time that this position was subject to change and was currently under review).

The purpose of this amendment (to allow the revocation or amendment of previously made elections) may have been in part to address a situation in which employers who could afford to delay filing their applications were potentially at an advantage as they could model the effect of certain elections over multiple qualifying periods for which complete financial information was available. The ability to amend or revoke elections presents an opportunity for employers who have already filed applications to revisit their

applications to determine whether amending a claim to make or revoke an election can result in a larger subsidy.

The CEWS application due date is, as retroactively amended by Bill C-9, the later of 31 January 2021 and 180 days after the end of the qualifying period. Under the current legislation, the due date is 31 January 2021. Amendments would also be required to be made no later than this time.

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