

OVERVIEW OF THE CANADA EMERGENCY WAGE SUBSIDY (“CEWS”)

*By Terrance S. Carter, Barry W. Kwasniewski and Luis R. Chacin**

A. INTRODUCTION

The Canada Emergency Wage Subsidy program (“CEWS”) was first introduced on April 11, 2020, in Bill C-14, *COVID-19 Emergency Response Act, No. 2* (“Bill C-14”)¹ as a 75% wage subsidy up to a maximum of \$847 per week for three 4-week periods starting on March 15, 2020 and ending on June 6, 2020, subject to additional periods ending no later than September 30, 2020 as prescribed. On May 15, 2020, the CEWS was amended by way of regulations to include new eligible entities and to extend the program for another three 4-week periods ending on August 29, 2020.² On July 27, 2020, with the Royal Assent of Bill C-20, *An Act respecting further COVID-19 measures* (“Bill C-20”),³ the government introduced substantial changes to the scope and eligibility criteria of the CEWS, retroactive to July 5, 2020, and extended the program for another three 4-week periods ending November 21, 2020, with the possibility of an additional 4-week period ending no later than December 31, 2020.⁴

* Terrance S. Carter, B.A., LL.B., TEP, Trademark Agent, is the managing partner of Carters Professional Corporation and counsel to Fasken on charitable matters. Barry W. Kwasniewski, B.B.A., LL.B., a partner, practices employment and risk management law with Carters’ Ottawa office. Luis R. Chacin, LL.B., M.B.A., LL.M., is an associate at Carters’ Orangeville office.

¹ Bill C-14, *A second Act respecting certain measures in response to COVID-19*, 1st Sess, 43rd Parl, 2019-2020, ch 6 (assented to 11 April 2020), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10716060>.

² See Government of Canada, Department of Finance, “Extending eligibility for the Canada Emergency Wage Subsidy” (15 May 2020), Backgrounder, online: <https://www.canada.ca/en/department-finance/news/2020/05/extending-eligibility-for-the-canada-emergency-wage-subsidy.html>.

³ *Bill C-20, An Act respecting further COVID-19 measures*, 1st Sess, 43rd Parl, 2020 (assented to 27 July 2020), online: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10833096>.

⁴ The Government of Canada has also made available a number of online resources, including an online calculator, online: <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy/cews-calculate-subsidy-amount.html>, an Application Guide, online: <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy/cews-apply-guide.html>, as well as an FAQs Technical Guide, online: <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy/cews-frequently-asked-questions.html>.

This *Bulletin* provides an up-to-date overview of the CEWS to assist charities and not-for-profits.⁵

B. BASIC DEFINITIONS

Bill C-14 and Bill C-20 amended the *Income Tax Act* (Canada) (“ITA”).⁶ Subsection 125.7(1) provides a number of definitions for purposes of the CEWS, including 1) eligible entity; 2) eligible remuneration; 3) relevant periods (*i.e.* qualifying period, current reference period and prior reference period); and 4) qualifying revenue.⁷

1. Eligible Entities

For purposes of the CEWS, an “eligible entity” means:

- a) a corporation or a trust, other than a corporation or a trust that is exempt from tax under this Part or is a public institution;
- b) an individual other than a trust;
- c) a registered charity, other than a public institution;
- d) a person that is exempt from tax under this Part because of paragraph 149(1)(e), (j), (k) or (l), other than a public institution;
- e) a partnership, all of the members of which are described in this paragraph or any of paragraphs (a) to (d); or
- f) a prescribed organization.

A “prescribed organization” includes entities listed in section 8901.1 of the *Income Tax Regulations*,⁸ such as a registered Canadian amateur athletic association, a registered journalism organization, and a person or partnership that operates a private school or private college.⁹

⁵ For background information on the Canada Emergency Wage Subsidy (“CEWS”) program, see Terrance S. Carter and Barry W. Kwasniewski, “Canada Emergency Wage Subsidy (‘CEWS’): An Overview for Charities & NFPs” (17 April 2020), Carters’ *COVID-19 Resource for Charities & NFPs*, Carters Professional Corporation, online:

<http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Bulletin-COVID19.pdf>. For information on the regulatory changes, see Terrance S. Carter, Barry W. Kwasniewski and Luis R. Chacin, “New Changes to the Canada Emergency Wage Subsidy (“CEWS”)” (19 May 2020), Carters’ *COVID-19 Resource for Charities & NFPs*, Carters Professional Corporation, online:

<http://www.carters.ca/pub/bulletin/charity/2020/covid/CEWS-Update-Bulletin-COVID19.pdf>; for additional information see Terrance S. Carter, Barry W. Kwasniewski and Luis R. Chacin, “Significant Amendments Proposed to the Canada Emergency Wage Subsidy (“CEWS”)” (24 July 2020), Carters’ *COVID-19 Resource for Charities & NFPs*, Carters Professional Corporation, online:

<http://www.carters.ca/pub/bulletin/charity/2020/covid/COVID19-Resource-CEWS-Update-Bulletin-2020-07-24.pdf>.

⁶ RSC 1985, c 1 (5th Supp).

⁷ *Ibid*, s 125.7(1), online: <https://laws-lois.justice.gc.ca/eng/acts/I-3.3/page-132.html?txthl=125.7#s-125.7>.

⁸ CRC, c 945.

⁹ *Ibid*.

In order to qualify for the CEWS, an eligible entity must meet the conditions established in subsection 125.7(1) under the definition of a “qualifying entity”, including the requirement to file an application in prescribed form and manner before February 2021.

2. Eligible Remuneration

With regard to an eligible employee of an eligible entity, “eligible remuneration” means amounts for which an eligible entity would generally be required to make payroll deductions to be remitted to the Canada Revenue Agency as described in paragraphs 153(1)(a) and (g) of the ITA, meaning amounts paid as salary, wages, and other remuneration (including certain taxable benefits, provided such amounts are actually paid), as well as fees, commissions or other amounts paid for services. However, eligible remuneration does not include:

- a) a retiring allowance;
- b) an amount deemed to have been received by the eligible employee as an employment benefit in respect of a stock option agreement;
- c) any amount received that can reasonably be expected to be paid or returned, directly or indirectly, to the eligible entity or to a person (or a partnership) at the direction of the eligible entity or with whom the eligible entity does not deal at arm’s length; or
- d) any amount that is paid in respect of a week in the claim period, if, as part of an arrangement involving the eligible employee and the eligible entity:
 - i) the amount is in excess of the eligible employee’s baseline remuneration,
 - ii) after the claim period, the eligible employee is reasonably expected to be paid a lower weekly amount than their baseline remuneration, and
 - iii) one of the main purposes for the arrangement is to increase the amount of the wage subsidy.

3. Relevant Periods

There are three relevant periods for purposes of the CEWS, namely, the qualifying or claim period, the current reference period, and the prior reference period. The qualifying or claim period is the period for which an eligible entity can claim the CEWS for remuneration paid to eligible employees. The current reference period is the period in respect of which an eligible entity’s qualifying revenue would be compared to its qualifying revenue in the applicable prior reference period to determine its revenue reduction.

There are currently nine claim periods that are relevant for calculating the wage subsidy. An eligible entity may be able to claim the wage subsidy for one or more qualifying periods.

Period	Qualifying Period/Claim Period	Current Reference Period	Prior Reference Period (general or alternative)
1	March 15, 2020 - April 11, 2020	March 2020	March 2019 or January/February 2020
2	April 12, 2020 - May 9, 2020	April 2020	April 2019 or January/February 2020
3	May 10, 2020 - June 6, 2020	May 2020	May 2019 or January/February 2020
4	June 7, 2020 - July 4, 2020	June 2020	June 2019 or January/February 2020
5	July 5, 2020 - August 1, 2020	July 2020	July 2019 or January/February 2020
6	August 2, 2020 - August 29, 2020	August 2020	August 2019 or January/February 2020
7	August 30, 2020 - September 26, 2020	September 2020	September 2019 or January/February 2020
8	September 27, 2020 - October 24, 2020	October 2020	October 2019 or January/February 2020
9	October 25, 2020 - November 21, 2020	November 2020	November 2019 or January/February 2020
10	to be prescribed no later than December 31, 2020	not prescribed yet	not prescribed yet

Under the alternative approach, an eligible entity may compare its qualifying revenue in the current reference period with that of its average revenue earned in the months of January and February of 2020. However, specific rules apply to the use of the alternative approach for periods 1-4 and 5-9.¹⁰

4. Qualifying Revenue

An eligible entity's qualifying revenue is used to determine the required reduction in revenue necessary to qualify for the CEWS.

Qualifying revenue of an eligible entity means the inflow of cash, receivables, or other consideration arising in the course of its ordinary activities in Canada in a particular period. For an eligible entity

¹⁰ See paragraphs (b) and (c) of the definition of "prior reference period" in s 125.7(1) ITA.

that is a registered charity, qualifying revenue generally includes gifts and other amounts received in the course of its ordinary activities, and if the registered charity operates a related business (as defined in subsection 149.1(1) of the ITA), the revenue from that related business is also included in the registered charity's qualifying revenue. For an eligible entity that is a person exempt from tax pursuant to paragraphs 149(1)(e), (j), (k) or (l) of the ITA, qualifying revenue generally includes membership fees and other amounts received in the course of its ordinary activities.

Qualifying revenue excludes amounts from extraordinary items and amounts derived from persons or partnerships that the eligible entity was not dealing with at arm's length. As well, amounts from the CEWS and the 10% Temporary Wage Subsidy for Employers are ignored when calculating qualifying revenue.¹¹

The qualifying revenue of an eligible entity is to be determined in accordance with its normal accounting practices, with certain exceptions.¹²

C. COMPUTATION OF THE CEWS

Once an eligible entity has determined its qualifying revenue for each relevant reference period in a particular qualifying period, the eligible entity has to determine whether it has experienced the required reduction in revenue to qualify for the wage subsidy for that claim period.

However, it is important to note that, after the changes introduced by Bill C-20, the rules for the CEWS program for the first sixteen weeks from March 15, 2020 to July 4, 2020 (*i.e.*, periods 1-4), are substantially different than for the period starting on July 5, 2020 and subsequent periods (*i.e.*, periods 5-9) with a transitional "safe harbour rule" for periods 5 and 6.

As such, for periods between March 15, 2020 and July 4, 2020, eligible entities that see a drop of at least 15% of their qualifying revenue in March 2020 and 30% for the following months of April, May and June, when compared to their qualifying revenue for the prior reference period (*i.e.* either the same period in 2019, or the average of January and February 2020, as applicable), qualify for the wage subsidy of 75% of eligible remuneration. For periods between July 5, 2020 and November 21, 2020, the CEWS has been

¹¹ See the definition of "qualifying revenue" in s 125.7(1) ITA.

¹² See s 125.7(4) ITA.

modified to be available for all eligible entities that experience any decline in revenue for a claim period, based on a sliding scale, with the CEWS consisting of two parts: i) a “Base Subsidy” which will be available to all eligible entities that are experiencing a decline in revenues; and ii) a “Top-up Subsidy” of up to an additional 25% for those employers that have been most adversely affected by the COVID-19 crisis.

In this regard, employers with a revenue decline of less than 30%, or whose revenues are still recovering and no longer meet the 30% revenue decline threshold for periods 5-9, are now allowed to qualify for the CEWS program with a gradual decrease in the CEWS rate.

The following chart, contained in the Backgrounder for the amendments in Bill C-20, outlines the rate structure of the base CEWS:¹³

TIMING	Period 5*: July 5 – August 1	Period 6*: August 2 – August 29	Period 7: August 30 – September 26	Period 8: September 27 – October 24	Period 9: October 25 – November 21
Maximum weekly benefit per employee	Up to \$677	Up to \$677	Up to \$565	Up to \$452	Up to \$226
REVENUE DROP 50% and over	60% base CEWS rate	60% base CEWS rate	50% base CEWS rate	40% base CEWS rate	20% base CEWS rate
REVENUE DROP 0% to 49%	1.2x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)	1.2x revenue drop (e.g., 1.2 x 20% revenue drop = 24% base CEWS rate)	1.0x revenue drop (e.g., 1.0 x 20% revenue drop = 20% base CEWS rate)	0.8x revenue drop (e.g., 0.8 x 20% revenue drop = 16% base CEWS rate)	0.4x revenue drop (e.g., 0.4 x 20% revenue drop = 8% base CEWS rate)
*In Periods 5 and 6, employers who would have been better off in the CEWS design in Periods 1 to 4 would be eligible for a 75% wage subsidy if they have a revenue decline of 30% or more. (<i>Safe harbour rule for Periods 5 and 6</i>). ¹⁴					

The Top-up Subsidy would provide up to an additional 25% over the Base Subsidy for employers that have been most adversely affected by the pandemic (*i.e.* employers who suffered a decline in revenue of more than 50%).

¹³ Department of Finance Canada, “Adapting the Canada Emergency Wage Subsidy to Protect Jobs and Promote Growth” (17 July 2020), Backgrounder, online: <https://www.canada.ca/en/department-finance/news/2020/07/adapting-the-canada-emergency-wage-subsidy-to-protect-jobs-and-promote-growth.html>.

¹⁴ *Ibid.*

The following chart, contained in the Backgrounder for the amendments in Bill C-20, outlines the Top-up Subsidy rates for selected levels of average revenue drop over the preceding three months:¹⁵

3-month average revenue drop	Top-up CEWS rate	Top-up calculation = 1.25 x (3 month revenue drop - 50%)
70% and over	25%	1.25 x (70%-50%) = 25%
65%	18.75%	1.25 x (65%-50%) = 18.75%
60%	12.5%	1.25 x (60%-50%) = 12.5%
55%	6.25%	1.25 x (55%-50%) = 6.25%
50% and under	0.0%	1.25 x (50%-50%) = 0.0%

It is also possible to calculate the amount of eligible remuneration for eligible employees as well as the basic CEWS using one of the online calculators provided by the government.¹⁶

D. CONCLUSION

There have been a number of changes to the CEWS since its first iteration, including a number of very technical changes which are outside the scope of the overview provided in this *Bulletin*. Charities and not-for-profits will need to carefully review the eligibility and qualifying criteria for the CEWS before applying and, where appropriate, seek professional accounting and legal advice.

¹⁵ “Adapting the Canada Emergency Wage Subsidy to Protect Jobs and Promote Growth”, *supra* note 13.

¹⁶ Government of Canada, “Canada Emergency Wage Subsidy (CES): Calculate your subsidy amount” (last modified 19 August 2020), online: <https://www.canada.ca/en/revenue-agency/services/subsidy/emergency-wage-subsidy/cews-calculate-subsidy-amount.html>