

### NEW CHANGES TO THE CANADA EMERGENCY WAGE SUBSIDY (“CEWS”)

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#### A. OVERVIEW

On May 15, 2020, Finance Minister Morneau announced that the Canada Emergency Wage Subsidy (“CEWS”), which was introduced on April 11, 2020 in Bill C-14, *COVID-19 Emergency Response Act, No. 2*<sup>1</sup> (“Bill C-14”) for a 12-week period ending on June 6, 2020, will be extended by an additional 12 weeks to August 29, 2020.<sup>2</sup> Minister Morneau also announced the approval of regulations to extend the eligibility for the CEWS to include groups such as Registered Canadian Amateur Athletic Associations (“RCAAs”), Registered Journalism Organizations (“RJOs”), private colleges, and private schools.<sup>3</sup> As well, the government will consult with key business and labour representatives over the next month on potential adjustments to the CEWS, including the 30 per cent revenue decline threshold, and propose new

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<sup>1</sup> 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).

<sup>2</sup> Government of Canada, Department of Finance, “Government extends the Canada Emergency Wage Subsidy” (15 May 2020), News Release, online: <<https://www.canada.ca/en/department-finance/news/2020/05/government-extends-the-canada-emergency-wage-subsidy.html>>; see also 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>>.

<sup>3</sup> Government of Canada, Department of Finance, *Regulations Amending the Income Tax Regulations (COVID-19 Wage Subsidy Initiatives)* (May 2020), online: <<https://fin.canada.ca/drleg-apl/2020/itree-rired-0520-eng.html>>. These include the *Regulations to amend the Income Tax Regulations (Eligible entities)*, online: <<https://fin.canada.ca/drleg-apl/2020/itree-rired-0520-l-eng.html>> [“Eligible Entities Regulations”] and the *Regulations to amend the Income Tax Regulations (deemed remittance)* <<https://fin.canada.ca/drleg-apl/2020/itrd-rired-0520-l-eng.html>> [“Deemed Remittance Regulations”].

legislation to clarify how the CEWS will be available with regard to seasonal employees, amalgamated corporations and trusts.<sup>4</sup>

This *COVID-19 Resource for Charities & NFPs* provides an overview of these new changes to the CEWS as an update to the Carters' *COVID-19 Resource* dated April 17, 2020,<sup>5</sup> which should be referenced for details of the CEWS as originally announced on April 11, 2020.

## B. REGULATORY CHANGES

The new regulations regarding eligible entities amend the *Income Tax Regulations* (the "Regulations")<sup>6</sup> under the *Income Tax Act* ("ITA"),<sup>7</sup> and now extend the eligibility for the CEWS, subject to all other eligibility criteria, to the following organizations:

### 1. Partnerships with One or More Non-Eligible Members

Partnerships whose members are not themselves *all* eligible entities for purposes of the CEWS may now apply for the CEWS, provided the non-eligible members of the partnership, taken together, do not hold, directly or indirectly, through one or more partnerships, 50% or more of the total market value of all interests in the partnership throughout the relevant qualifying period.<sup>8</sup>

### 2. Indigenous Government-Owned Businesses

The government is extending eligibility for the CEWS to include Indigenous government-owned corporations that are carrying on a business and are tax-exempt under paragraph 149(1)(d.5) of the ITA, as well as their wholly-owned subsidiaries that are carrying on a business and are tax-exempt under paragraph 149(1)(d.6) of the ITA. This eligibility criteria also applies with respect to partnerships in which each member is either an eligible entity or an Indigenous government. In accordance with the Backgrounder released by the government,<sup>9</sup> Indigenous governments include

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> 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>.

<sup>6</sup> CRC, c 945, new s 8901.1 (Part LXXXIX.1), as per Eligible Entities Regulations, *supra* note 3.

<sup>7</sup> RSC 1985, c 1 (5th Supp).

<sup>8</sup> *Ibid*, new s 8901.1 (d).

<sup>9</sup> *Supra* note 2.

First Nation bands, self-governing Indigenous governments and other comparable Indigenous governing bodies.<sup>10</sup>

3. Registered Canadian Amateur Athletic Associations (“RCAAs”)

The Regulations now explicitly include national-level RCAAs which are tax-exempt under paragraph 149(1)(g) of the ITA as eligible entities for the CEWS.<sup>11</sup> Although RCAAs are “qualified donees”, as defined under subsection 149.1(1) of the ITA, for income tax purposes similar to registered charities, they had not been included in Bill C-14. The Regulation now rectifies that omission.

4. Registered Journalism Organizations (“RJOs”)

The Regulations now explicitly include RJOs, which are tax-exempt under paragraph 149(1)(h) of the ITA.<sup>12</sup> A similar problem had been encountered with RJOs as with RCAAs, in that RJOs are qualified donees under the ITA for income tax purposes but had not been included in Bill C-14 on April 11, 2020.

5. Non-public Educational and Training Institutions

The Regulations also extend eligibility for the CEWS to include private colleges and private schools. As per the Backgrounder released by the government,<sup>13</sup> this would include for-profit and not-for-profit institutions, such as arts schools, language schools, driving schools, flight schools and culinary schools.<sup>14</sup> This is a very important development for private schools across Canada, whether they be organized as for-profit business, not-for-profit organizations, or registered charities, as they had not previously been explicitly included in the CEWS.

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<sup>10</sup> *Supra* note 6, new s 8901.1 (a)-(c).

<sup>11</sup> *Ibid*, new s 8901.1 (e).

<sup>12</sup> *Ibid*.

<sup>13</sup> *Supra* note 2.

<sup>14</sup> *Supra* note 6, new s 8901.1 (f).

In accordance with the Regulations and the Backgrounder, all the above changes are retroactive to April 11, 2020 and, as such, apply to all qualifying periods including the first qualifying period starting March 15, 2020.

The new regulations regarding deemed remittances also amend the Regulations to introduce changes to the CEWS regarding the prescribed amounts and percentages for purposes of the deemed remittance under subsection 153(1.02) of the ITA.<sup>15</sup> Subsection 153(1.02) of the ITA was introduced in Bill C-13, *An Act respecting certain measures in response to COVID-19*,<sup>16</sup> to reduce the remittances of income tax withheld by employers on employees' eligible remuneration within an eligible period.

## C. PROPOSED LEGISLATIVE CHANGES

Although no such bill has been tabled in Parliament at the time of writing, the government announced that it also intends to propose legislative amendments to:

### 1. Support Seasonal Employees and Employees Returning from Extended Leave

To address any unintended outcomes in some situations, such as when employees were on parental, disability, or unpaid leave from January 1 to March 15 of 2020, or when individuals – whether dealing at arm's length or non-arm's length with their employer – are employed on a seasonal basis, the government proposes to amend the CEWS to allow employers to calculate baseline remuneration for an employee as the average weekly remuneration paid to the employee from January 1 to March 15 of 2020 or, alternatively, as the average weekly remuneration paid to the employee from March 1 to May 31 of 2019, in both cases excluding any period of 7 or more consecutive days without remuneration. Also, employers would be able to choose which period to use on an employee-by-employee basis.

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<sup>15</sup> *Ibid*, new s 111, as per Deemed Remittance Regulations, *supra* note 3, which provide that: (a) \$25,000 is the amount prescribed for the purpose of the description of A in paragraph 153(1.02)(a) of the ITA; (b) 10%, or a lower percentage elected by the eligible employer, as defined in subsection 153(1.03), is the percentage prescribed for the purpose of the description of C in paragraph 153(1.02)(b) of the ITA; and (c) \$1,375 is the amount prescribed for the purpose of the description of E in paragraph 153(1.02)(c) of the ITA.

<sup>16</sup> Bill C-13, *An Act respecting certain measures in response to COVID-19*, 1st Sess, 43rd Parl, 2019-2020, ch 5 (assented to 25 March 2020).

This change would be retroactive to April 11, 2020, meaning it would be applicable to the first qualifying period starting March 15, 2020 and subsequent qualifying periods.

## 2. Amalgamations

For corporations which would have otherwise not been able to qualify for the CEWS as a result of their benchmark revenues being affected by an amalgamation, the government proposes to amend the CEWS to allow corporations formed on an amalgamation of two or more predecessor corporations (or where a corporation is wound up into another) to calculate benchmark revenue for purposes of the CEWS using the predecessor corporations' combined revenues, unless one of the main purposes for the amalgamation (or the winding up) was to qualify for the CEWS.

This change would also be retroactive to April 11, 2020 and apply to all qualifying periods back to March 15, 2020.

## 3. Tax-Exempt Trusts

The government proposes to amend the CEWS to better align the tax treatment of trusts and corporations for purposes of the CEWS. As a result, trusts with employees would continue to be eligible for the CEWS, subject to the following new exceptions:

- In cases where the trust is a tax-exempt entity (other than a public institution), it would qualify only if it is a registered charity or one of the other types of eligible tax-exempt entities.
- In cases where the trust is a public institution, it would qualify only if it is a prescribed organization, the details of which are not yet available.

This change would apply in respect of the third qualifying period from May 10 to June 6, and any subsequent qualifying period.

## D. CONCLUSION

As part of Canada's COVID-19 Economic Response Plan, the CEWS was an emergency measure introduced to support employees and employers affected by the COVID-19 crisis. The regulatory changes will now make the CEWS available to organizations which were excluded from the first iteration of the CEWS. Similarly, proposed legislative changes will clarify how the CEWS will be available with regard to seasonal employees, amalgamated corporations and trusts. Charities and not-for-profits will need to carefully review the eligibility criteria and stay tuned for any further details released by the federal government.



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