

COVID-19 FEDERAL SUPPORTS UPDATED INFORMATION FOR BUSINESSES & INDIVIDUALS

CHANGES TO CANADA'S COVID-19 ECONOMIC RESPONSE PLAN

We seem to be living in a world where tax legislation is being developed and announced by way of press release

"We will use all tools available to us to help Canadians get through this....Not all businesses are alike and not all jobs are alike."

— The Honorable Bill Morneau, Minister of
Finance

and news conference – without giving tax practitioners the benefit of having definitive draft legislation to review and interpret for our clients. The support programs that have been previously announced by the Department of Finance are evolving quickly, much in the same way that the virus itself continues to evolve. Over the past few days, we have been made aware of changes to the Canada Emergency Response Benefit (CERB) and the Canada Emergency Wage Subsidy

(CEWS) that impact the eligibility criteria for Canadian businesses and individuals who are seeking assistance from these programs. We are committed to making sure you have the most recent and updated information on these programs to assist you, your business and your family navigate the complexities of the programs and receive the support you need to weather the storm of COVID-19 in Canada.

Please remember...we have not yet seen any draft legislation on the CEWS program and have not seen the draft legislation that would amend the CERB for the changes announced on Tuesday. **This means that everything that we say today is subject to change – what shows up in draft legislation could look very different from what has been said in press releases and news conferences.** Having said that, here is what we know....so far.

CHANGES TO THE CERB *Broadening Entitlement to the Program*

On Tuesday, April 6th, we became aware of comments that the Prime Minister had made during his morning news conference regarding the eligibility of certain individuals for the CERB. His comments were in direct response to questions posed to him around the eligibility of those individuals who had not reported employment or self-employment income above the \$5,000 threshold in 2019 or in the past 12 months, but who had reported income from dividends that they had received from a Canadian-controlled private corporation.

In response to this perceived “gap” in eligibility, the Department of Finance added the following eligibility criteria to the “questions and answers” section of the “Canada Emergency Response Benefit” web page¹, the Department of Finance has added the following eligibility criteria:

- An individual who is in receipt of dividends is able to count this income towards the \$5,000 income requirement to be eligible for the CERB;
- In order for dividends received by an individual to count toward the \$5,000 income requirement, they must be ***non-eligible dividends (generally, those paid out of corporate after-tax earnings subject to the small business tax rate)***.

This change will accommodate those owner-managers/shareholders of businesses who have not received a salary in the past. This will impact the eligibility criteria for meeting the \$5,000 income requirement – however, the other eligibility criteria (the fact that the owner-manager/shareholder has ceased working due to COVID-19) remains unchanged. It will be important for owner-managers/shareholders to be able to substantiate the loss of work criteria to be considered eligible for the CERB. Considering the steep penalties proposed for perceived abuse of the “system”, we strongly recommend that you discuss whether or not you qualify for this program with your tax advisor.

CHANGES TO THE CEWS

Updating the Revenue Calculation and Other Tweaks

As my colleagues in the tax community have said throughout the crisis, “... these guys seem to be making this s&t%* up as they go along”. Well, today brought another day of policy-on-the-fly. At a press conference earlier today, Finance Minister Bill Morneau announced the following changes to the CEWS, the proposed wage subsidy which would seek to provide qualifying businesses with a wage subsidy equal to 75% of a notional annual salary of \$58,700 or \$847 per week:

Calculation of the Decline in Gross Revenue Test – when initially announced a week ago, the Department of Finance indicated that in order to be eligible for the CEWS, a business must demonstrate that it had suffered a 30% year-over-year decline in gross revenue (calculated at the ordinary and accepted accounting method applied for the business) for the affected period in question. In other words, if the business wanted to qualify for the subsidy for the month of March, it must compare its gross revenues earned during March 2019 and compare them to the gross revenue earned in March of 2020. The same calculation would then need to be performed for April and May and so on. Today, the Minister stated that the government has recognized that the calculation method simply does not work for certain business types and, in particular, start-ups who do not have the historical financial data to make the necessary comparison.

As a result, companies may now select between two methods to calculate the decline in gross revenues for the purposes of the CEWS:

1. An eligible corporation may now calculate an ***average*** of their January and February 2020 gross revenues to establish a **“benchmark”** against which they can measure the decline in gross revenues for the months of March, April and May. If there is a demonstrated reduction in gross revenues by ***15%*** when compared to this benchmark

¹ <https://www.canada.ca/en/services/benefits/ei/cerb-application/questions.html>

for the month of March, the corporation will meet the gross revenue criteria to receive the CEWS. For months after March 2020, a decline of 30% or more when compared against the benchmark will be required.

2. An eligible corporation may continue to compare the gross revenue reported by the corporation for the same month in the previous year to determine its eligibility. If there is a demonstrated reduction in gross revenues by **15%** when compared to the month of March for the previous year, the corporation will meet the gross revenue criteria to receive the CEWS. For months after March 2020, a decline of 30% or more when compared against the relevant month for the previous year will be required.

Businesses will now be allowed to calculate the decline in gross revenue using the “accrual” method (which is the generally accepted method of determining income for an incorporated business) or by using the “cash” method. It is unclear whether or not you must continue to use a chosen method for all periods or if you can choose a different method for different periods. Again.... stay tuned for the draft legislation.

Government Assistance – Charities & NPO’s – The Finance Minister has recognized the dramatic decline in donations that charities and NPO’s are receiving during this time of crisis and has indicated that, with respect to the revenue test for these entities, they may elect to either include or exclude government assistance that it receives when calculating the gross revenue test.

Refund of CPP and EI Premiums Paid - During his news conference, the Minister indicated that it was the government’s desire to make it “easier” for businesses to re-hire workers previously laid-off by businesses during the pandemic. In order to make this process easier, he has indicated that the government would refund employer-paid premiums under the EI and CPP programs as well as certain employer-funded programs in Quebec. He did not indicate if this would apply only for “re-hired” employees or would apply for existing employees receiving the CEWS. In addition, no information is yet available as to whether this refund of CPP/EI premiums would extend for the entire proposed term of the program.

Designated Financial Representative – As part of the administrative measures surrounding the program, the Minister announced today that every corporation who applies for the CEWS must designate someone who is “in control” or responsible for the finances of the corporation. He contends that this is to ensure that the financial reporting and application for the program are appropriate. From my perspective, this will also provide the Canada Revenue Agency (**CRA**) a point of first contact for audit proceedings.

Penalties for Abuse – The general framework for penalties for abuse of the CEWS program were also laid out during his address. Firstly, any corporation that receives the CEWS benefit and is later determined to be ineligible must fully repay the amount of the CEWS benefit received. In addition, he indicated that anyone found to be “abusing the system” would be subject to penalties of up to 225% of the benefit received and imprisonment for a term of up to 5 years. He described this as a “high trust” program – one that they will not tolerate abuse of.

Providing Support to Students Seeking Summer Employment

The **Canada Summer Jobs Program** has also received temporary changes to assist students who are seeking summer employment during the COVID-19 pandemic. The government has announced the following changes for the purposes of supporting student-employees:

- Employers who hire summer students can apply for a subsidy of up to 100% of the provincial or territorial hourly minimum wage;
- The time period for the job placements is being extended until the end of February, recognizing that some jobs will commence later than usual under current circumstances.

It is expected that the changes to this program will help create up to 70,000 jobs for Canadians between the ages of 15 & 30 and will help give them income and work experience notwithstanding the current economic and health crisis.

As mentioned previously, all of these changes have occurred by way of press release, administrative amendment or news conference. No draft legislation exists to confirm that the announcements will be administered in a manner consistent with these announcements. We will continue to update you with changes to these programs as they become known to us.

Stay safe!

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In these trying and challenging times we can help you navigate the programs and benefits available to keep you moving forward. Do not hesitate to contact us for assistance.