

2020 Issue No. 28

1 April 2020

Tax Alert – Canada

Canada Emergency Wage Subsidy – Update

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.

In order to prevent layoffs and as part of its COVID-19 Economic Response Plan, the federal government introduced on 18 March 2020 a wage subsidy program for eligible small employers. This program provided a 10% wage subsidy in the form of a reduction in income tax remittances paid to the Canada Revenue Agency (CRA) (subject to a cap). Further details of this 10% wage subsidy were released as part of Bill C-13, *COVID-19 Emergency Response Act*, which was enacted on 25 March 2020 (see [EY Tax Alert 2020 No. 24](#)).

On 1 April 2020, Finance Minister Bill Morneau provided significant updates to the wage subsidy program, introducing a new program called the Canada Emergency Wage Subsidy (the Wage Subsidy), which will co-exist with the original 10% wage subsidy. Coming with an estimated cost of \$71 billion, this Wage Subsidy program would apply to employers who have suffered a drop in gross revenues of at least 30% in March, April or May, when compared to the same months in 2019. This program not only significantly increases the size of available subsidies, but also expands the categories of eligible employers.

This Alert summarizes highlights of the Wage Subsidy.

At the time of writing, no draft legislation has been released yet. It is therefore expected that the concepts described below will be refined over the coming days. In addition, these measures will most likely require approval of Parliament – both the Prime Minister and the Leader of the Official Opposition actually raised that point.

Categories of eligible employers expanded

There is significant expansion in the category of employers that appear to qualify for the Wage Subsidy. While the original 10% subsidy was essentially targeted at small employers, the category of eligible employers for purposes of the Wage Subsidy includes employers of all sizes and across all sectors of the economy, with the exception of public sector entities (e.g., municipalities, Crown corporations, public universities).

In particular, it appears that large employers including public companies could be eligible employers for the purposes of the Wage Subsidy. Similar to the original 10% subsidy, eligible employers under the Wage Subsidy will also include individuals, non-profit organizations, registered charities, and partnerships consisting of eligible employers.

Based upon the [news release](#) and [backgrounder](#) released by Finance, whether the employer in question is owned by Canadians or non-residents of Canada does not appear relevant for the purposes of eligibility for the Wage Subsidy. For corporations, the sole criterion seems to be that the corporation is a taxable corporation.

30% reduction in gross revenues

Only employers who suffer a drop of revenues of at least 30% in March, April or May, from arm's length sources, when compared to the same months in 2019, are eligible for the Wage Subsidy.

The month to month comparison is to be made by using the calendar month in which the claiming period began. For example, if the claiming period where the remuneration was paid is for 15 March to 11 April, the monthly comparison of revenue should be March 2020 over March 2019.

As part of the application process, employers will be required to attest to the requisite reduction in revenue when applying.

The news release and backgrounder released by Finance did not contain details as to whether employers within an associated group are required to be consolidated for the purposes of determining whether there has been a 30% reduction in revenues. Since entities within an associated group are generally considered to be separate employers for tax purposes, in the absence of guidance, it may be reasonable to view employers on a stand-alone basis for the purposes of determining whether there has been a 30% reduction in gross revenues.

The government also indicated that it is continuing to work with non-profit organizations and registered charities to ensure the definition of revenue is appropriate for that sector. Similarly, the Minister of Finance also expressed openness to finding appropriate ways to accommodate particular situations such as start-up companies that have been in operation for less than 12 months.

Amount of the subsidy

The Wage Subsidy applies at a rate of 75% of the first \$58,700 of eligible remuneration earned by an employee. Eligible remuneration includes salary, wages and other remuneration

for which the employer would generally be required to withhold income tax. Eligible remuneration does not include retiring allowances, stock option benefits or benefits relating to the personal use of an employer-owned vehicle.

This represents a maximum benefit of \$847 per week per employee. The program will be in place for a 12-week period, from 15 March to 6 June 2020.

A special rule will apply to employees that do not deal at arm's length with the employer. The subsidy amount for such employees will be limited to the eligible remuneration paid in any pay period between 15 March and 6 June 2020, up to a maximum benefit of \$847 per week or 75% of the employee's pre-crisis weekly remuneration.

Employers do not appear to be subject to a maximum subsidy. The lack of dollar maximums per employer is consistent with the government's stated intention to make the Wage Subsidy available to employers large and small.

Payments to employees

While the Wage Subsidy will be paid directly to employers, it is expected that the entire amount of the Wage Subsidy is to be delivered to employees. Employers who fail to do so could face harsh penalties.

The government has stated that employers accessing the Wage Subsidy are expected to use best efforts to top up salaries to 100% of the maximum wages covered (i.e., pay 100% of salary up to \$58,700). It is unclear, however, to what lengths employers are required to go to discharge this "best efforts" requirement.

Delivery of cash to employers

Eligible employers will be able to apply for the Wage Subsidy through the CRA's My Business Account portal as well as a web-based application. Employers would have to keep records demonstrating their reduction in revenues and remuneration paid to employees. More details about the application process will be available shortly.

Unlike the original 10% subsidy program where the eligible employers withheld tax in accordance with the normal tax withholding rules but would reduce the amount of the tax remittances to the CRA, the Wage Subsidy program provides for the transfer of cash from the government to the employer. One of the reasons for this is logistical – with the highest marginal tax rate in Canada being approximately 54%, employees would never be subject to income tax withholdings at a rate of 75%.

Currently, the expectation is that it will take between three and six weeks for funds to start being delivered to employers.

Interaction with 10% wage subsidy

The new Wage Subsidy and the original 10% wage subsidy announced last week will co-exist.

For example, if an employer is considered as a qualifying employer under the 10% wage subsidy program, such employer would still be able to access benefits under that program even if the employer did not experience a 30% reduction in revenues.

However, where an employer is eligible under both programs for a given period, any benefit from the 10% wage subsidy for remuneration paid in the period would generally reduce the amount claimable under the Wage Subsidy for the same period.

Tax treatment of Wage Subsidy

The Wage Subsidy is required to be included in income of the employer.

Safeguards

Due to the magnitude of this government expenditure (the government has estimated the cost at \$71b), it is expected that there will be audit activity. Employers who abuse the Wage Subsidy program are expected to face not only monetary penalties and potentially jail time, but also severe reputational harm. The government has stated that individuals, employers and business administrators who provide false or misleading information will be subject to penalties. It is likely that corporate directors may also face penalties where an employer provides false and misleading information or otherwise abuses the Wage Subsidy program.

We therefore recommend that employers not only discharge their duties under the Wage Subsidy program, but also maintain robust documentation evidencing compliance. For example, employers should:

- ▶ Prepare clear documentation to substantiate the 30% reduction in gross revenues;
- ▶ Clearly document that the entire amount of the Wage Subsidy is transferred to eligible employees; and
- ▶ Document efforts required to pay the remaining 25%. In the event that the employer takes the position that they are unable to pay all or part of the remaining 25%, they should clearly document the reasons why this is not possible.

Learn more

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