



# TAX NOTES

April 2, 2020

## FINANCE PROVIDES DETAILS OF CANADIAN EMERGENCY WAGE SUBSIDY

### Introduction

In a press conference and technical briefing held on April 1, 2020, the Department of Finance provided additional information regarding the proposed Canadian Emergency Wage Subsidy (CEWS). The Department of Finance has not yet released draft legislation or a detailed technical backgrounder, and details are therefore somewhat sparse at this time. What follows is our understanding of how the program will work, if enacted as presently proposed, based on the detail provided in the press conference and technical briefing. A second Tax Note will follow once draft legislation is released.

### CEWS Benefits

If an employer qualifies to receive CEWS benefits, the amount of the benefit received will depend on the employer's payroll. CEWS is computed on a per-employee basis, and is equal to the lesser of 75% of the employee's average weekly wage pre-March 15, 2020, the amount the employee was in fact paid per week during the period in which CEWS benefits are applied for, or \$847 per week (being 75% of the maximum pensionable earnings for CPP purposes of \$58,700). It is possible for an employer to qualify for CEWS benefits in respect of employees hired after March 15, 2020, but the CEWS benefits will be limited to the lesser of 75% of the amount paid to the employee or \$847 per week.

To illustrate using an example provided by the Department of Finance, suppose an employee was paid \$1,000 per week prior to March 15, 2020 and the employer has reduced the employee's hours such that the employee is now only being paid \$600. In that case, the employer would be entitled to a \$600 CEWS payment for that employee, which is the least of the amount the employee was paid, 75% of pre-crisis earnings and \$847 per week. If the employer increased the amount the employee was being paid to \$750 per week, the CEWS payment to which the employer is entitled would increase to \$750 per week since the amount paid to the employee would now be equal to 75% of the employee's pre-crisis weekly earnings.

For these purposes, employees' remuneration will not include stock option benefits, motor vehicle benefits, severance pay, or other non-taxable employment benefits in respect of which an employer would not be expected to withhold source deductions.

We understand that wages paid to non-arm's length employees – for example, by a professional corporation to its controlling shareholder – may qualify for CEWS in a manner similar to wages paid to other employees. However, the non-arm's length employee must have been on the employer's payroll prior to March 15, 2020 in order to qualify.

The Department of Finance expects that CEWS benefits will be available for March, April and May 2020, but the program could be extended into the future if necessary. Payments to employers should be received by cheque or direct deposit within six weeks of the date that an application for CEWS benefits is submitted.

CEWS benefits are assistance received from the federal government in the course of earning income from business or property, and will therefore be included in the income of the employer for the taxation year for which the benefits are received.

### **CEWS Qualification**

In order to qualify for CEWS, an employer must apply through an online portal administered by the CRA. A separate application must be made for each month in respect of which CEWS benefits are sought. When applying, the employer will presumably have to provide a calculation of the CEWS benefits to which it is entitled, and must attest that: (i) it has suffered a revenue drop of at least 30% relative to the same month in 2019 in respect of a business carried on in Canada; and (ii) that it will do everything that it can to pay the 25% of wages not subsidized by CEWS.

The Department of Finance does not expect to legislate how a revenue decrease will be determined, and will instead allow employers to make this determination in a manner that is reasonable. Finance has stipulated that gross revenue will not include non-arm's length revenue, extraordinary items or capital receipts. It will not be necessary for employers to submit the calculation of the revenue decrease to the CRA when applying for CEWS, but the employer will have to maintain records to permit the CRA to verify entitlement after the fact.

Employers are not required to pay employees the difference between their CEWS benefit received for an employee and the employee's pre-crisis wage if the employer cannot afford to do so, but employers are expected to make good faith efforts to maintain pre-crisis remuneration if possible. The CRA will ultimately have to determine whether good faith efforts were made.

CEWS and the previously announced 10% wage subsidy for small business (which has now been enacted) are not entirely mutually exclusive programs. Rather, if an employer is of the limited type that may qualify for the 10% small business wage subsidy, that is a Canadian-controlled private corporation, a non-profit organization or a registered charity, and does qualify for the 10% small business wage subsidy, the amount of the employer's CEWS benefit will be reduced by the amount of the small business wage subsidy received.

There is no restriction on the type of entities that can receive CEWS, although the Department of Finance intends that non-taxable corporations, municipalities, schools, hospitals, universities and similar quasi-government institutions will be excluded. Sole proprietors, partnerships, public corporations and non-resident controlled corporations should all be entitled to CEWS. Where there is an associated or related group of corporations, Finance does not expect that the group will be consolidated for these purposes, but rather that each corporation will determine its entitlement for CEWS and apply for CEWS separately.

### **CEWS Verification and Penalties**

In order to hasten the delivery of CEWS payments, the Department of Finance does not expect the CRA to take any measures to verify that an employer qualifies for CEWS at the time an application is submitted. So long as a complete application is made, the CRA will promptly make the payment to the employer. However, the Department of Finance expects that CRA will audit some portion of CEWS claims after the end of the COVID-19 crisis in order to catch and penalize employers who claimed benefits to which they were not entitled.

The Minister of Finance has indicated that there will be harsh penalties for employers who inappropriately or fraudulently claim CEWS benefits. The Department of Finance has not yet decided what those penalties will be. We expect that, at a minimum, there will be administrative monetary penalties that may be imposed by the CRA and personal liability for corporate directors. We also expect that the CRA will seek to commence criminal prosecutions in circumstances where there is blatant non-entitlement to CEWS benefits claimed.

### **Conclusion**

CEWS, as presently proposed, is imperfect. The expected six week wait time between payments to employees and the receipt of benefits will prove problematic for employers facing cash flow problems, and the previously announced \$40,000 interest-free loan program may not be adequate to bridge the gap between payroll dates and the first CEWS payments six weeks from now. The use of bright-line tests for eligibility for all COVID-19 relief programs also necessarily means that some deserving employers or workers will not qualify for benefits to which they should reasonably be entitled. At the same time, CEWS' \$71 billion estimated cost makes it the single largest federal spending program and the Department of Finance was tasked with creating the program without Parliamentary authorization in under a week; it is difficult to see how Finance and CRA could have responsibly injected this much money into the economy faster than presently proposed.

Like most tax or tax expenditure measures, the precise terms of the legislation implementing CEWS will be critical. We would be happy to discuss the draft legislation and related CRA administrative pronouncements with you or your clients once those have been released.