



Canadian Tax & Legal Alert

COVID-19 – Canada Emergency Wage Subsidy (CEWS) and Canada Emergency Rent Subsidy (CERS) amendments

February 3, 2021

Overview

The CEWS program was initially enacted on April 11, 2020 and focused on providing financial assistance to Canadian businesses that had experienced a decline in revenues.

Since the enactment of the CEWS program, the government of Canada has continuously revised and amended the related legislation. To learn more about the initial CEWS program and subsequent amendments, please refer to our previous tax alerts dated [April 13, 2020](#), [July 29, 2020](#), [October 29, 2020](#), and [November 20, 2020](#).

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Alongside the CEWS, the federal government created the CERS¹ to replace the Canada Emergency Commercial Rent Assistance (CECRA) program. The purpose of the CERS is to help tenants and property owners cover expenses such as rent, mortgage, insurance, and property tax expenses. The rules governing the CERS are essentially harmonized with those of the CEWS, subject to specific rules applicable to the CERS. As a result, as of September 27, 2020, eligible entities that qualify under the CEWS program may also qualify for the CERS, where all of the CERS eligibility criteria is met, for the same qualifying periods as those provided under the CEWS program.

For more details regarding the CERS program, please refer to our previous tax alert dated [November 20, 2020](#).

As mentioned in our last tax alert, the CEWS and CERS programs have been extended until June 2021.² However, the existing legislation only covered periods beginning on March 15, 2020 and ending on December 19, 2020. On January 6, 2021, the government published the *Regulations Amending the Income Tax Regulations (COVID-19 – Wage and Rent Subsidies)* (Regulations) to provide program parameters for the CEWS and CERS for the periods beginning on December 20, 2020 and ending on March 13, 2021. The key changes to the CEWS and CERS programs are outlined below.

Key updates to the CEWS and CERS programs

The most significant updates to the CEWS program outlined in the Regulations are as follows:

- Eligible entities may now claim the wage subsidy for **qualifying periods 11 to 13**.
- The **current reference period for qualifying period 11 continues to be December 2020**,³ i.e., the same as for qualifying period 10.
- The base percentage rules that applied for qualifying periods 8 to 10 are extended to qualifying periods 11 to 13. That is, the **maximum base rate percentage continues to be 40%** for eligible entities with a revenue drop of at least 50%.
- The top-up revenue reduction percentage mechanics for periods 11 to 13 are amended to eliminate the need to calculate the average revenue decline of the three months preceding the applicable period. The **top-up revenue reduction percentage** is now **equal to the entity's revenue drop** for each particular period.
- **For periods 11 to 13, the maximum top-up subsidy rate is 35%**, an increase from 25%, if an eligible entity's revenue drop is 70% or higher. Therefore, **the overall maximum subsidy rate** is increased to **75%**.
- Beginning in period 11, a **furloughed employee's wage subsidy is capped at \$595**, an increase from the \$573 cap for periods 9 and 10.

¹ The CERS program rules have been legislated under Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)* (Bill C-9), which received Royal Assent on November 19, 2020. The CERS program is available retroactively from September 27, 2020.

² The extension of the CEWS and CERS programs to June 2021 has been legislated under Bill C-9.

³ The prior reference period for both qualifying periods 10 and 11 is therefore either, (i) December 2019 or (ii) the average of January and February 2020.

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The most significant updates to the CERS program outlined in the Regulations are as follows:

- Eligible entities may now claim the rent subsidy for **qualifying periods 4 to 6 (i.e. CEWS periods 11 to 13)**.
- The **rent subsidy rates are extended to periods 4 to 6 (i.e. CEWS periods 11 to 13) with no changes**. In other words, the top-up subsidy rate increase outlined for the CEWS does not apply to the CERS.

Summary of amendments – CEWS

Additional claim periods defined

The legislation currently provides for qualifying periods 1 through 10, which cover a four-week time frame for each respective period.⁴ The Regulations introduce three additional qualifying periods, 11 to 13. The period covered and the respective deadline for qualifying periods 11 to 13 is summarized below:

Claim period	Period covered	Filing deadline
Period 11	December 20, 2020 to January 16, 2021	July 15, 2021
Period 12	January 17, 2021 to February 13, 2021	August 12, 2021
Period 13	February 14, 2021 to March 13, 2021	September 9, 2021

Refer to Appendix A for a list of all CEWS claim periods and respective filing deadlines.

Reference periods

An eligible entity must determine their revenue decline for each qualifying period by comparing the qualifying revenue of the current reference period to the qualifying revenue of the prior reference period. The reference periods applicable for qualifying periods 11 to 13 are provided in the Regulations, and shown in the table below:

Qualifying period	Current reference period	Prior reference period
Period 11	December 2020	December 2019 or average of January and February 2020
Period 12	January 2021	January 2020 or average of January and February 2020
Period 13	February 2021	February 2020 or average of January and February 2020

⁴ The definition of the term “qualifying period” under subsection 125.7(1) of the *Income Tax Act* sets out the beginning and end of each qualifying period.

In accordance with a deeming rule, for each qualifying period, an eligible entity's revenue decline is the greater of its decline in revenues for the particular qualifying period and the immediately preceding qualifying period. For example, in period 11, an entity's revenue decline is the higher of:

- (i) December 2020 compared to December 2019, or the average of January and February 2020; and
- (ii) November 2020 compared to November 2019, or the average of January and February 2020.

We note that the current and prior reference periods for qualifying periods 11 and 10 are the same. Therefore, the revenue reduction percentage – i.e., the higher revenue decline of the current or the prior period – should be the same for qualifying periods 10 and 11. In other words, an entity that experiences a revenue decline in November 2020, but does not experience a revenue decline in December, can be deemed to still qualify for periods 10 and 11, effectively qualifying for three periods based on the decline experienced in November.

The approach chosen by the eligible entity for qualifying periods 5 to 10 (i.e., the year-over-year approach or the alternative approach) must continue to apply for qualifying periods 11 to 13.

Extension of the base revenue percentage

The Regulations extend the base percentage rules that applied for qualifying periods 8, 9 and 10 to qualifying periods 11, 12, and 13. That is, if the eligible entity's "revenue reduction percentage"⁵ is greater than or equal to 50% for a qualifying period (8 through 13), the base percentage is capped at 40%. If the eligible entity's revenue reduction percentage is less than 50%, a factor of 0.8 is multiplied by the revenue reduction percentage to determine its base rate percentage. For example:

- If an eligible entity's revenue reduction percentage is 40% in period 11 (higher of period 11 and period 10), its base percentage would be 32% (being 40% x 0.8), resulting in a maximum base subsidy of \$361/week/employee (\$1,129 x 32%).
- If an eligible entity's revenue reduction percentage is 60% in period 11 (higher of period 11 and period 10), its base percentage would be maximized at 40%, resulting in a maximum base subsidy of \$452/week/employee (\$1,129 x 40%). Furthermore, since the revenue decline exceeded 50%, the eligible entity should also qualify for the top-up in period 11, as discussed below.

The example above applies equally to periods 12 and 13.

For periods after period 13 (i.e., beginning on March 14, 2021), further amendments to the *Income Tax Regulations* are anticipated.

⁵ Revenue reduction percentage can be determined by comparing the current period revenues to the same month of the prior year (the "year over year approach"), or to the average revenues of January and February 2020 (the "alternative approach").

Changes to the top-up revenue reduction percentage

The top-up rate continues to apply to eligible entities whose revenue has dropped by more than 50% in a particular period. However, the mechanics of the top-up rate calculation have changed starting in period 11. For periods 11 to 13, an eligible entity can no longer use the methods applied in period 10 or prior periods.⁶ Rather, the top-up revenue reduction percentage is now equal to the revenue reduction percentage used to calculate the base rate. The change is consistent with the government's objective to harmonize the revenue reduction test for both the base rate and the top-up rate, which we have seen through the mechanics for periods 8 to 10 introduced in Bill C-9.

For periods 11 to 13, the top-up rate is calculated as follows: $1.75 \times (\text{top-up revenue reduction percentage} - 50\%)$.

The maximum top-up rate of 35% (an increase from 25% for periods 5 to 10) is obtained when an entity's revenue reduction is 70% or higher.

Since the maximum top-up rate has increased to 35%, the maximum overall subsidy rate for active employees is effectively increased to 75% (the overall maximum subsidy rate prior for periods 8 to 10 is 65%).

For example, further to the scenario provided above, if an eligible entity's revenue reduction percentage is 60% in period 11 (higher of period 11 and period 10), its top-up rate should be calculated as 17.5% [$1.75 \times (60\% - 50\%)$]. Considering the base rate is maximized at 40%, the total overall CEWS rate for this entity would be 57.5% [$40\% + 17.5\%$], resulting in a maximum wage subsidy of \$649/week/employee ($\$1,129 \times 57.5\%$).

Change to the maximum subsidy amount for employees on leave with pay

Beginning with period 11 (i.e., from December 20, 2020), the available wage subsidy for furloughed employees is modified, such that the wage subsidy per week in respect of an arm's length furloughed employee (or a non-arm's length employee who was on payroll and received remuneration pre-crisis) is the amount of eligible remuneration paid in respect of the week or, if the employee receives more than \$500 per week, the greater of:

- i) \$500, and
- ii) the lesser of
 - a) 55% of baseline remuneration in respect of the eligible employee determined for that week, and
 - b) \$595.

The above change attempts to align the subsidy with what an individual would otherwise receive under employment insurance (EI) benefits, to retain the

⁶ For periods 5 to 7, the top-up subsidy rate is calculated based on the average revenue decline of the three months preceding the applicable period, compared to the eligible entity's chosen prior reference period.

For periods 8 to 10, the top-up subsidy rate is calculated based on the greater of: (i) the average revenue decline of the three months preceding the applicable period; and (ii) the revenue reduction percentage, being the revenue decline of the current period.

employer-employee relationship (especially during lockdown(s)) so as to facilitate rehiring of employees, and alleviate pressure on the EI system in the coming months.⁷

CERS

Background

For qualifying property, the CERS program offers rent and mortgage support for an entity that has suffered a decline in revenue from September 27, 2020 onward. An entity would be eligible to receive a subsidy to cover part of its commercial rent or property expenses paid by the entity in the course of its ordinary activities. Owners of qualifying property may also qualify under CERS even if the property is rented to a related party (subject to certain restrictions).

An eligible entity may claim eligible expenses of up to a maximum subsidy rate of 65% for each period. The subsidy percentage will vary and will be based on the revenue decline of the qualifying entity. For those who were required to cease activities at a given location due to a public health order for a week or more, the CERS program offers an additional 25% rent subsidy if certain conditions are satisfied (bringing the maximum subsidy percentage which such entity may receive to 90%). The maximum expenditure that can be claimed by location is \$75,000 per period. Furthermore, every affiliated group must share an overall expenditure limit of \$300,000 per period.

This limit would need to be mutually agreed to be shared amongst all qualifying entities with an affiliated group of companies whether they calculate their revenues on a consolidated basis or not. Finally, lockdown support is not subject to the \$300,000 limit, meaning that even a member of a group with \$0 of allocated expenditure limit may still qualify for up to 25% lockdown support against up to \$75,000 of expenditures by location.

Summary of amendments

Additional claim periods defined

As the Regulations have defined CEWS qualifying periods 11 to 13, the following table summarizes the periods for which the CERS may be applied for:

CERS claim period	Period covered	Filing deadline
Period 1 (CEWS Period 8)	September 27, 2020 to October 24, 2020	April 22, 2021
Period 2 (CEWS Period 9)	October 25, 2020 to November 21, 2020	May 20, 2021
Period 3 (CEWS Period 10)	November 22, 2020 to December 19, 2020	June 17, 2021
Period 4 (CEWS Period 11)	December 20, 2020 to January 16, 2021	July 15, 2021
Period 5 (CEWS Period 12)	January 17, 2021 to February 13, 2021	August 12, 2021
Period 6 (CEWS Period 13)	February 14, 2021 to on March 13, 2021	September 9, 2021

⁷ Government of Canada. *Regulations Amending the Income Tax Regulations (COVID-19 – Wage and Rent Subsidies)*, SOR/2020-284, Regulatory Impact Analysis Statement, Canada Gazette Publications, Part II, Vol. 155 (2021), January 6, 2021.

Note that qualifying entities may currently apply for CERS claim periods 1 through 3. Eligible entities may apply for period 4, period 5, and period 6, beginning on January 17, 2021, February 14, 2021 and March 14, 2021 respectively.

Rent subsidy rates

The rent subsidy rates were extended to CERS claim periods 4 through 6 (i.e., CEWS periods 11 to 13) with no changes. In summary, qualifying eligible entities will continue to be entitled to a rent subsidy of up to a maximum of 65% of eligible expenses for each qualifying period. The subsidy percentage for each period will vary and will be based on the revenue decline of the qualifying entity, as calculated for CEWS purposes.

Where the revenue decline is equal to or greater than 70%, the rent subsidy percentage will be capped at 65%. This base rent subsidy percentage applies to a maximum of \$75,000 in eligible expenses per location and limited to \$300,000 for all affiliated entities. The table below illustrates the rate structure.

Revenue decline percentage	Rent subsidy percentage*
70%	65%
65%	58.75%
60%	52.50%
55%	46.25%
50%	40%
45%	36%
40%	32%
35%	28%
30%	24%
25%	20%
20%	16%
15%	12%
10%	8%
5%	4%

Source: Deloitte

* These rent subsidy percentages apply from September 27, 2020 with respect to the same qualifying periods as the CEWS.

In addition, qualifying eligible entities that are affected by a public health order will continue to be entitled to receive up to an additional 25% of rent subsidy (i.e., the “top-up lockdown support rate”), bringing the maximum rent subsidy percentage to 90%. Similar to the base rent subsidy percentage, the top-up lockdown support rate also applies to a maximum of \$75,000 in eligible expenses per location. However, the \$300,000 limit does not apply to the lockdown support.

For more details regarding the CERS program, please refer to our previous tax alert dated [November 20, 2020](#).

Timing of CEWS and CERS income inclusion

The subsidy amounts applied for under CEWS or CERS must be included in taxable income immediately before the end of the qualifying period to which they relate. Typically, government grants and subsidies are included in taxable income under paragraph 12(1)(x) in the year in which the particular grant/subsidy is "received". However, Finance has confirmed that this is not the case for CEWS and CERS. Subsection 125.7(3) deems the amount of the CEWS and CERS to have been "received" immediately before the end of the qualifying period to which they relate. In other words, this may result in accelerated income inclusions (i.e., included in income prior to the amounts having been received).

Extra care should be taken where the CEWS or CERS subsidy amounts are not already included in accounting revenue in the period to which they relate. If this is the case, the taxpayer would be required to make an adjustment for tax purposes to include the amount of the CEWS or CERS in its taxable income of the year to which it relates.

How can Deloitte help?

If you have questions, please contact your Deloitte representative or any of the individuals noted in this alert.

APPENDIX A

Claim period	Period covered	Revenue reference month*	Filing deadline
Period 1	March 15 to April 11, 2020	March	January 31, 2021
Period 2	April 12 to May 9, 2020	March or April	January 31, 2021
Period 3	May 10 to June 6, 2020	April or May	January 31, 2021
Period 4	June 7 to July 4, 2020	May or June	January 31, 2021
Period 5	July 5 to August 1, 2020	June or July	January 31, 2021
Period 6	August 2 to August 29, 2020	July or August	February 25, 2021
Period 7	August 30 to September 26, 2020	August or September	March 25, 2021

Period 8	September 27 to October 24, 2020	September or October	April 22, 2021
Period 9	October 25 to November 21, 2020	October or November	May 20, 2021
Period 10	November 22 to December 19, 2020	November or December	June 17, 2021
Period 11	December 20, 2020 to January 16, 2021	November or December	July 15, 2021
Period 12	January 17, 2021 to February 13, 2021	December or January	August 12, 2021
Period 13	February 14, 2021 to March 13, 2021	January or February	September 9, 2021
Periods 14 to 16	To be determined	To be determined	180 days after the end of the qualifying period

**Current year calendar month revenues to be compared against entity's elected prior reference period (either the same calendar month prior year or average of January and February 2020).*

For more information on COVID-19, see our [Canadian COVID-19 information hub](#) and our [global COVID-19 information hub](#)

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