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Important Updates Regarding the Extension of the Canada Emergency Wage Subsidy (CEWS)

Date: October 16, 2020

On October 14, 2020, the Department of Finance Canada released its latest backgrounder regarding the CEWS. The *Extending the Canada Emergency Wage Subsidy* backgrounder (Backgrounder) summarizes a number of new and recently announced changes to the CEWS, including the extension of the CEWS to June 2021.

These announcements arrive following the six-month anniversary of the implementation of the CEWS and while the first set of audits related to the CEWS have reportedly been launched by the Canada Revenue Agency. The new details summarized below are expected to bring CEWS expenditures up to $68.5 billion by December 19, 2020. The federal government has not introduced legislation to support the recently announced changes, but confirmed its intention to do so.

Extension of the CEWS to June 2021

During the Speech from the Throne in late September, Prime Minister Justin Trudeau announced that the CEWS would continue into 2021. The Backgrounder confirms that CEWS will be extended until June 2021. Additional details regarding how the subsidies under the CEWS will be determined during the new extended period following December 19, 2020 have not yet been released but the Backgrounder indicates that the government will be issuing a technical backgrounder regarding the extended subsidy.

Active Employee Subsidy Rate Fixed for CEWS Claim Periods 8, 9, and 10

The Backgrounder confirms the announcement made by the Finance Minister on October 9, 2020 that the determination of the wage subsidy for active employees currently in effect will remain unchanged until “mid-December.” This marks a change from the current CEWS legislation, which was slated to provide a smaller wage subsidy for each successive claim period before the program ended at the end of November (as noted above, the CEWS will be extended).

The Backgrounder confirms that the current subsidy rate for Period 8, which provides a maximum base subsidy rate of 40%, and maximum top-up subsidy rate of 25% (for a maximum combined rate of 65% applicable to eligible employers who have qualifying revenue declines of greater than 70%) will apply for claim Period 9 (October 25, 2020 to November 21, 2020) and Period 10 (November 22, 2020 to December 19, 2020).

Legislative changes to support this announcement are necessary. Please refer to our prior firm communication outlining the CEWS calculations for each existing CEWS period (note that this prior publication does not reflect the most recent announcements regarding the CEWS as described in the Backgrounder).

Top-Up Subsidy Determination – Change to Qualifying Revenue Decline Test

The Backgrounder also describes a significant new change regarding the calculation of qualifying revenue declines for the purpose of determining the top-up subsidy for active employees starting in the current Period 8 (as of September 27, 2020). The top-up subsidy is available to eligible employers experiencing declines in qualifying revenue of 50% or more.

Currently, the top-up subsidy is determined by comparing the decline in qualifying revenue over three months instead of one month. Specifically, the current methodology prescribed by the CEWS legislation measures the qualifying revenue decline in the claim period by either comparing total revenue during the prior three months in 2020 to the same three month period in 2019 (general approach) or average monthly revenue over a three month period in 2020 compared to average monthly revenue in January and February 2020 (alternative approach).

The Backgrounder indicates that the current three-month revenue decline test will be eliminated to make the qualifying revenue decline test more responsive to changes in revenue during each CEWS qualifying period. To achieve this result, the same revenue-decline test will be used to determine the base and top-up subsidy amounts. Specifically, the test for both portions of the subsidy will be determined by comparing either: (i) the change in an eligible employer's monthly revenues, year-over-year, for either the current or previous calendar month (general approach); or (ii) the change in an eligible employer's monthly revenues relative to the average of its January 2020 and February 2020 revenues (alternative approach).

Given this significant proposed change to the determination of the top-up wage subsidy, the government has indicated it will include a "safe harbour" rule for Periods 8, 9, and 10. The safe harbour will ensure that the top-up subsidy rate for eligible employers is no less than it would have been using the existing three-month revenue decline test.

Furloughed Employees (On Leave with Pay) – Determination of Subsidy To Be Aligned with EI Benefits

On September 25, 2020, the government announced that the existing treatment under the CEWS in respect of employees on a paid leave (or "furloughed" employees) would be extended through the current CEWS Period 8 (September 27, 2020 to October 24, 2020). Please refer to our prior firm communication describing this update.

As a result of this extension, for the remainder of the current Period 8, employers who qualify for the CEWS will be able to continue claiming up to a maximum of $847 per week in respect to their inactive employees, depending on the inactive employee's pre-crisis or "baseline" remuneration. The regulatory changes to support the extension of the current treatment through Period 8 are still pending.

The Backgrounder confirms that no further extensions of this treatment are anticipated, and that, as previously indicated, the wage subsidy available in respect of inactive employees will be aligned with the availability of other federal benefits available to unemployed workers. It states that, as of the start of Period 9 (October 25, 2020), the wage subsidy for inactive employees on leave with pay will be aligned with the benefits provided through Employment Insurance (EI) in order to ensure equitable support across the employee populations who are not currently working due to the COVID-19 pandemic.

To align with recent changes to the EI regime, which we reported on separately in *FTR Now* The End of CERB – The New Recovery Benefits and Temporary EI Changes, the subsidy under the CEWS in respect of an arm's length employee will be dependent on whether the employee is paid more or less than $500 of eligible remuneration per week. In respect of eligible inactive employees who are paid less than $500 per week, the wage subsidy will equal the eligible remuneration paid (i.e., employers will be eligible for a dollar for dollar recovery of the amount paid). In respect of eligible inactive employees who are paid $500 or more per week, the wage subsidy will be equal to the greater of: (i) $500; and (ii) 55% of the pre-crisis remuneration for the employee, up to a maximum subsidy of $573, which is the maximum weekly EI benefit available to claimants in 2020. Under the new proposed rules, employers may still be eligible for dollar-for-dollar recovery of amounts paid up to $573 per week, depending on the employee's pre-crisis earnings. Under the current CEWS rules, pre-crisis remuneration remains relevant only in respect of employees on paid leave and dollar-for-dollar recovery of amounts paid to active arm's length employees is not available.

As noted above, the Backgrounder has been released as a number of news reports have indicated that the Canada Revenue Agency has started issuing audit requests in relation to the CEWS. We expect that further legislative changes will follow the release of the Backgrounder. We continue to monitor all developments with respect to the programs available to assist employers during the COVID-19 pandemic and will provide further updates as they arise.

Should you require further information regarding the impact of these changes on your organization, please contact any member of our Pension, Benefits and Executive Compensation Group.