

Canada Emergency Wage Subsidy (“CEWS”)

Summary of the Program

On March 27th, Prime Minister Justin Trudeau announced the creation of a 75% wage subsidy called the Canada Emergency Wage Subsidy (“CEWS”). The draft legislation was issued on April 11th through Bill C-14. In addition to the draft legislation, the Canada Revenue Agency (“CRA”) has been issuing explanations, questions and answers and has provided a template for calculating the subsidy.

In general, the CEWS will provide a 75% wage subsidy to eligible employers for up to 12 weeks retroactive to March 15, 2020. The CEWS will generally provide a subsidy to employers equal to 75% of the employees’ remuneration to a maximum of \$847 per week per employee. The subsidy is only available to employers that have had a decline in revenue of either 15% in March 2020 or 30% in April or May 2020 due to Covid 19. It will apply to wages paid from March 15, 2020 to June 6, 2020.

Risk to Accountants

Prior to and since the application for the subsidy was opened on April 27th, 2020, many accountants have been inundated with questions from their clients. Some of these questions include:

- How do I calculate my revenue decline?
- What wages qualify for the subsidy?
- What if I did not take a wage last year?
- Can I claim the subsidy for family members?
- Etc, etc.

There are many details of the program that are left to interpretation. The Canadian Tax Foundation and CPA Canada sent a list of 140 questions to the CRA and to date only 35 of them have been answered. As a result, there are many issues regarding the qualification for and calculation of the subsidy that are being left to interpretation.

We have identified three primary risks to accountants under this program.

1. The long list of questions from clients, combined with the lack of detailed answers from the CRA has left accountants in position of having to both interpret the legislation and provide advice to their clients. This is causing accountants to assume significant risk because they are advising clients on how to apply for the subsidy based on interpretations that are not necessarily correct or that are being changed by the CRA.
2. Accountants are being asked to complete the application form for their clients and attest to the revenue decline and wage calculations on the client’s behalf.

3. Occasionally accountants are also being asked by their clients to modify or amend records to allow their clients to qualify for the program, when they do not qualify.

What are the Penalties?

The CRA have identified the following penalties that may apply to the program:

1. A 25% penalty for employers that manipulate their revenues to qualify for the program.
2. A 50% penalty for excessive claims caused by a false statement of gross negligence.
3. A 200% fine and 5 years imprisonment for fraud or tax evasion.
4. A possible third party penalty for an accountant or tax preparer that files a claim on behalf of the employer if they know or would reasonably be expected to know the application is false.

How to Mitigate Risk

As with most advice an accountant provides, if the advice turns out to be wrong, or if the employer files an incorrect claim based on the advice provided, the accountant is often regarded as the source of the problem and it often results in a claim against the accountant.

There are a number of steps the accountant can take to minimize the risk of a claim being brought against him/her. Below are a few points to consider when being asked for advice concerning the CEWS or any of the other programs established as a result of Covid 19.

- 1) If preparing the calculations and filing the claim on behalf of the client, have an engagement letter setting out the accountants role and managements responsibility for the claim.
- 2) Have the client review the calculation and signoff that they are in agreement with the calculations.
- 3) If providing advice, confirm this in writing and have a disclaimer in the correspondence that the rules are subject to interpretation and are still in the process of being developed.
- 4) Ideally, have the client file the claim rather than the accountant. In order to file the claim, the filer is attesting to the accuracy of the information. It would be preferable that the client attest to this rather than the accountant. If the accountant is filing the claim on behalf of the client, the accountant must get the client to sign form RC661 to attest to the information being filed.
- 5) The accountant should not amend or recreate revenue or payroll records to allow the client to qualify for the program. This could be considered fraud and may result in the larger fines listed above and expose the accountant to third party penalties.
- 6) If the accountant is not familiar with the rules, either become familiar with the rules, or obtain advice from another professional who is up to date on the subsidy rules and its unique interpretations. As with any advice, the accountant should stay within their areas of expertise and knowledge.

Although this is not a comprehensive list of ways to mitigate risk, it does provide guidance that will help to mitigate your risk.

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