

BUDGET 2021: EXTENSION OF WAGE & RENT SUBSIDIES

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On April 19, 2021, the Federal Budget was tabled by Finance Minister Chrystia Freeland. Budget 2021 proposes the extension of both the Canada Emergency Wage Subsidy (“**CEWS**”) and the Canada Emergency Rent Subsidy (“**CERS**”).

Prior to the release of Budget 2021, both CERS and CEWS were set to expire in June 2021. Given the current state of the COVID-19 pandemic, it was widely anticipated that these support programs would be extended; however, the exact form of the program extensions, or the future rates of the subsidies, were unknown.

Budget 2021 announced that both CEWS and CERS will remain in effect at their current rates through the period ending July 3, 2021. However, subsequent to July 3, 2021, the subsidies available under the two programs will gradually decline until they are concluded. Nevertheless, Budget 2021 notes that, should the course of the pandemic change, the scheduled decline in subsidy rates, and the scheduled end of the programs, may need to be revisited. In this regard, Budget 2021 proposes to authorize the government to extend CEWS and CERS until November 20, 2021 if warranted by the circumstances.

Budget 2021 also introduces the Canada Recovery Hiring Program (“**CRHP**”), which is intended to encourage employers to increase their workforces, or the number of hours provided to current employees, as pandemic restrictions ease. Businesses will generally be entitled to claim subsidies equal to the greater of those offered under CRHP and CEWS.

Qualifying Periods

Entitlements under CEWS, CERS and CRHP (collectively the “**Subsidy Programs**”) are all calculated based on specific four-week intervals (each, a “**Qualifying Period**”). Qualifying Periods under the Subsidy Programs are set out in Table 1 below. (Two additional Qualifying Periods for CRHP have been confirmed, being Period 21 (September 26, 2021 to October 23, 2021) and Period 22 (October 24, 2021 to November 20, 2021).)

Table 1: Remaining Qualifying Periods

Period	Dates Covered
15	April 11, 2021 to May 8, 2021

16	May 9, 2021 to June 5, 2021
17	June 6, 2021 to July 3, 2021
18	July 4, 2021 to July 31, 2021
19	August 1, 2021 to August 28, 2021
20	August 29, 2021 to September 25, 2021

Budget 2021 also announced the “reference periods” to be used to calculate revenue reductions upon which entitlements to future subsidies for Qualifying Periods will be computed. The “reference periods” announced in Budget 2021 are set out in Table 2 below. Eligible entities must continue to use the same approach with respect to reference periods that they have used in respect of previous Qualifying Periods.

Table 2: Reference Periods

	Period 17	Period 18	Period 19	Period 20
General Approach	June 2021 over June 2019 or May 2021 over May 2019	July 2021 over July 2019 or June 2021 over June 2019	August 2021 over August 2019 or July 2021 over July 2019	September 2021 over September 2019 or August 2021 over August 2019
Alternative Approach	June 2021 or May 2021 over average of January and February 2020	July 2021 or June 2021 over average of January and February 2020	August 2021 or July 2021 over average of January and February 2020	September 2021 or August 2021 over average of January and February 2020

CEWS Extended

As noted above, Budget 2021 announced that CEWS will be extended until September 25, 2021 – the end of the 20th Qualifying Period.

CEWS consists of a “base subsidy” and a “top-up subsidy”. For the 18th – 20th Qualifying Periods, eligible entities will not be permitted to claim base subsidies unless they experience an applicable decline in revenues of more than 10%. The amount of the subsidy is generally computed by taking the eligible entity’s “base percentage” and “top-up percentage” and multiplying it by the eligible remuneration of an “eligible employee”, which can currently be up to a maximum of \$1,129 per week per Qualifying Period.

Both the “base percentage” and “top-up percentage” are calculated based on the qualifying entity’s “revenue reduction percentage”. Table 3 below illustrates the computation of the base percentage for Qualifying Periods

11 to 20. Table 4 below illustrates the computation of the “top-up percentage” for the same Qualifying Periods. Table 5 below sets out the maximum value of the subsidy where the “revenue reduction percentage” is greater than or equal to 50%.

Table 3: Base Percentage

Qualifying Period	Revenue Reduction Percentage >50%	Revenue Reduction Percentage <50%
11 - 17	40%	0.8 x “revenue reduction percentage”
18	35%	0.875 x (“revenue reduction percentage” – 10%)
19	25%	0.625 x (“revenue reduction percentage” – 10%)
20	10%	0.25 x (“revenue reduction percentage” – 10%)

Table 4: Top-Up Percentage

Qualifying Period	Lesser of the Following Two Amounts:	
11 - 17	35%	1.75 x (“top-up revenue reduction percentage” – 50%)
18	25%	1.25 x (“top-up revenue reduction percentage” – 50%)
19	15%	0.75 x (“top-up revenue reduction percentage” – 50%)
20	10%	0.5 x (“top-up revenue reduction percentage” – 50%)

Table 5: Maximum CEWS Subsidy Rate

Qualifying Period	Maximum CEWS Subsidy Rate
11 - 17	75%
18	60%
19	40%
20	20%

Furloughed Employees

Budget 2021 continues the support available for furloughed employees under CEWS. The rates of the subsidy are designed to ensure equitable treatment between furloughed employees and individuals receiving benefits through Employment Insurance. For the 11th to 19th Qualifying Periods, the amount of the subsidy will be the greater of \$500 and the lesser of (i) 55% of baseline remuneration, and (ii) \$595. For the 20th and any subsequent Qualifying Periods, the amount of the subsidy for any furloughed employee will be reduced to nil.

Executive Compensation

In response to concerns that eligible entities receiving support under CEWS are using such support to fund executive compensation, Budget 2021 introduces a mechanism to reduce the subsidies paid under CEWS should payments be made by eligible entities to certain specified executives in 2021 that exceed the corresponding compensation paid in 2019.

Budget 2021 explains the rationale for this change as follows: “the program is meant to serve workers and that, during recovery, businesses boosting top executive pay have clearly demonstrated that they have the resources to support workers”.

This proposed clawback mechanism applies in respect of the 17th Qualifying Period and any subsequent Qualifying Periods. The proposed clawback only applies to entities that are listed on a stock exchange or other public market or are controlled by a corporation that is listed on a stock exchange or other public market.

Budget 2021 proposes to define “executive remuneration” as the total amount of compensation that the eligible entity reports on its “Statement of Executive Compensation for Named Executive Officers” as required by National Instrument 51-102 Continuous Disclosure Obligations (“**NI 51-102**”). If the eligible entity is not required to report the relevant compensation under NI 51-102, but is required to make a similar disclosure to shareholders under the laws of a foreign jurisdiction, such amount will be used as the “executive remuneration” amount. If the eligible entity is not required to report its executive compensation under NI 51-102 or similar laws in a foreign jurisdiction, “executive remuneration” of the eligible entity will be equal to the amount that would be required to be reported by the eligible entity if it were preparing a Statement of Executive Compensation for Named Executive Officers.

Generally, an eligible entity will be required to repay CEWS subsidies to the extent the entity has an “executive compensation repayment amount”. In order to determine the applicable “executive compensation repayment amount”, the eligible entity must determine the amount by which “executive remuneration” in 2021 exceeds “executive remuneration” in 2019. The amount that will need to be repaid to the government by the entity in

respect of CEWS will generally be the lesser of the “executive compensation repayment amount” and the total amount of all wage subsidy amounts received in respect of active employees for Qualifying Periods beginning after June 5, 2021.

Budget 2021 proposes to allow an election to be made to allocate an “executive compensation repayment amount” between a public parent corporation and each entity that is controlled by the public parent corporation, subject to certain defined limits. The total of all allocated “executive compensation repayment amounts” must be equal to 100%. Where the election is made, the amount that will need to be repaid will be the lesser of the entity’s share of the “executive compensation repayment amount” and the total amount of all wage subsidy amounts received in respect of active employees for Qualifying Periods beginning after June 5, 2021.

Canada Recovery Hiring Program

Budget 2021 also introduced CRHP. CRHP is aimed at motivating employers to increase their workforces. CRHP will be available to “eligible employers” beginning in the 17th Qualifying Period. An employer will generally be eligible to receive subsidies under CRHP or CEWS in respect of a Qualifying Period, but not both.

In order to receive CHRP, the employer must be a “qualifying recovery entity”. Budget 2021 contemplates that such an entity will:

1. meet the definition of “qualifying entity” under the *Income Tax Act* (Canada) (the “**Tax Act**”); and
2. for claims made in respect of the 18th and subsequent Qualifying Periods, have a “revenue reduction percentage” greater than 10%.

If the entity is a corporation, it must be a “Canadian-controlled private corporation” or a cooperative corporation that is eligible for the small business deduction under the Tax Act.

If the entity is a partnership, Budget 2021 proposes that those that hold a majority of the interests in the partnership must otherwise meet the conditions to be a “qualifying recovery entity”. In this regard, the total fair market value of all partnership interests held directly or indirectly through one or more partnerships by persons or partnerships that are not “eligible entities” or corporations that do not meet the requirements of a “qualifying recovery entity” must be less than 50% of the total fair market value of all partnership interests.

To determine the amount of an available subsidy under CRHP, it will be necessary to determine the “total base period remuneration” and “total current period remuneration” of the relevant entity. “Total base period remuneration” of an eligible entity is the total for all “eligible employees” equal to the least of the following four amounts:

1. \$1,129;
2. The eligible remuneration paid to the “eligible employee” in respect of a week;
3. If the “eligible employee” does not deal at arm's length with the eligible entity in the Qualifying Period, the baseline remuneration in respect of the “eligible employee” determined for that week; and
4. If the “eligible employee” is on leave with pay in a given week, nil.

“Total current period remuneration” is the total of the lesser of the four foregoing amounts for all “eligible employees” in respect of the 14th Qualifying Period (i.e., the baseline period).

To be eligible to claim a subsidy under CRHP in respect of the 18th – 22nd Qualifying Periods, an eligible entity must have experienced a decline in revenue of at least 10%. Declines in revenue will be computed in a manner comparable to the computations performed for the purposes of CEWS.

To compute the amount of a CRHP subsidy, the difference between the “qualifying recovery entity's” “total current period remuneration” for the Qualifying Period and the “qualifying recovery entity's” “total base period remuneration” must be multiplied by the “recovery wage subsidy rates”. See Table 6 below for a summary of the “recovery wage subsidy rate”. CRHP subsidies are ultimately based on increases in remuneration paid by an eligible entity and will therefore be helpful to employers who are ramping up their workforces.

Table 6: Recovery Wage Subsidy Rate

Qualifying Period	Subsidy Rate
17 - 19	50%
20	40%
21	30%
22	20%

Budget 2021 provides that the greater of the subsidies available under CEWS and CRHP will be the deemed overpayment (and, therefore, subsidy entitlement) in respect of a Qualifying Period of an eligible entity.

Budget 2021 proposes to supplement existing anti-avoidance rules to disallow subsidies where the eligible entity, or a person not dealing at arm's length with the eligible entity, engages in conduct where the main purpose of the action was to increase the value of the subsidy.

Applications for subsidies under CRHP must be made no later than 180 days after the end of a Qualifying Period. The Minister of National Revenue is entitled to publish the names of any person or partnership that applies for a subsidy under CRHP.

CERS Extended

Budget 2021 also proposes to extend CERS until September 25, 2021.

CERS consists of a rent subsidy component and a lockdown subsidy component. The rent subsidy under CERS is generally determined by multiplying a qualifying renter's "qualifying rent expense" by the "rent subsidy percentage". Commencing in respect of the 18th Qualifying Period, the rate of the rent subsidy under CERS will begin to decrease. By contrast, the lockdown support will remain unchanged at the rate of 25% until September 25, 2021 when the program is set to expire.

For the 18th to the 20th Qualifying Period, the rent subsidy percentage is determined by adding the "base percentage" and "top-up percentage" (see Tables 2 and 3 above). Consistent with the extension of CEWS, subsidies under CERS will only be available in respect of the 18th and subsequent Qualifying Periods if the eligible entity experiences a decline in revenues of at least 10%.

Budget 2021 also proposes to expand the relieving measures in respect of businesses that have been transferred in an asset sale to cover the computations relevant to determining eligibility for subsidies under CERS.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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