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Regulations Amending the Income Tax Regulations (COVID-19 — Deemed Remittance): SOR/2020-106

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Registration

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INCOME TAX ACT

P.C. 2020-330 May 13, 2020

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 221 ^a of the *Income Tax Act* ^b, makes the annexed *Regulations Amending the Income Tax Regulations (COVID-19 — Deemed Remittance)*.

Regulations Amending the Income Tax Regulations (COVID-19 — Deemed Remittance)

Amendments

1 The *Income Tax Regulations* ¹ are amended by adding the following after section 110:

Deemed Remittance

111 For the purpose of subsection 153(1.02) of the Act

(a) \$25,000 is the amount prescribed for the purpose of the description of A in paragraph 153(1.02)(a) of the Act;

(b) 10%, or a lower percentage elected by the *eligible employer*, as defined in subsection 153(1.03), is the percentage prescribed for the purpose of the description of C in paragraph 153(1.02)(b) of the Act; and

(c) \$1,375 is the amount prescribed for the purpose of the description of E in paragraph 153(1.02)(c) of the Act.

Application

2 These Regulations apply in respect of an *eligible period*, as defined in subsection 153(1.03) of the *Income Tax Act*.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the regulations.)

Issues

On March 25, 2020, the *COVID-19 Emergency Response Act*, which included the implementation of a temporary 10 per cent wage subsidy (TWS), received royal assent. This subsidy allows most employers immediate access to funds by reducing the amount of employee payroll deductions that would otherwise be required to be remitted to the Canada Revenue Agency (CRA). In announcing the TWS, the Government stated that the subsidy is equal to 10 per cent of the remuneration an employer pays from March 18, 2020, to June 19, 2020, up to \$1,375 for each eligible employee to a maximum of \$25,000 total per employer. These amounts are required to be prescribed in the *Income Tax Regulations* (the Regulations).

The *COVID-19 Emergency Response Act, No. 2* received royal assent on April 11, 2020. This legislation introduced the Canada Emergency Wage Subsidy (CEWS), a refundable tax credit provided through the *Income Tax Act* (the Act). This measure provides support to those eligible employers that are hardest hit by the COVID-19 pandemic by providing a strong incentive for employers to pay employees who have been sent home for health and safety reasons or due to lack of work. It will enable employers to retain employees who are still on the payroll and to rehire workers previously laid off.

The CEWS provides a 75 per cent wage subsidy to the eligible employers currently listed in the Act for up to 12 weeks, starting March 15, 2020. Eligible entities currently defined in the Act include taxable corporations (excluding public institutions), individuals, certain entities exempt from income tax (excluding public institutions and including, for example, registered charities and non-profit organizations). Additional eligible employers can be prescribed in the Regulations.

Since the enactment of the *COVID-19 Emergency Response Act, No. 2*, the Government has identified some additional employers that should be eligible for the CEWS. It has also received comments from stakeholders in respect of other employers that do not qualify for the CEWS that should be considered eligible for this subsidy as these have also been hit hard by the COVID-19 pandemic and need this subsidy to help pay their employees. This includes registered journalism organizations, registered amateur athletic associations, private schools and colleges (including institutions that offer specialized services, such as driving schools, language schools or flight schools), and certain tax-exempt corporations that are owned by Indigenous governments. These latter corporations (unlike similar government-funded or government-owned entities) carry on business activities that rely heavily on external revenues as opposed to government funding.

For employers that are eligible for both the CEWS and the TWS, any benefit from the TWS for remuneration paid in a qualifying period, as defined in the Act, would reduce the amount available to be claimed by the employer under the CEWS in that same period. Therefore, in addition to giving legal effect to these amounts (the 10 per cent of the remuneration an employer pays from March 18, 2020, to June 19, 2020, up to \$1,375 for each eligible employee to a maximum of \$25,000 total per employer), it is also necessary that these amounts be prescribed in the Regulations so that the CEWS may be properly calculated.

Objective

- To provide support to more employers through the CEWS.
- For the TWS, to give legal effect to the amounts that an employer may receive in respect of this subsidy.

Description

The Regulations are amended to allow additional employers to become eligible for the CEWS. These additional employers include registered journalism organizations, registered amateur athletic associations, private schools and colleges (including institutions that offer specialized services, such as driving schools, language schools or flight schools), and tax-exempt corporations that are owned by Indigenous governments that carry on business activities. The amendments also allow additional partnership structures to qualify for the CEWS if those partnerships have Indigenous governments as members or other ineligible entities as members, and the interest of those ineligible members in the partnership does not exceed 50 per cent.

This is because, even though many of these types of entities typically receive government funding, these particular entities often do not. For example, schools receive government funding; however, private schools rely heavily on revenues from private individuals. Since schools are currently closed, revenues have drastically dropped for these entities and they require funding to help to continue to pay employees. Many Indigenous-government-owned corporations carry on businesses that are funded by business activities and are not funded by the Indigenous governments, so they too require additional funding to help pay employee wages for restaurants, hotels, etc., that are currently closed to the public. Additionally, many partnership structures rely heavily on business revenues, even where governments and other ineligible entities are members of those partnerships.

The addition of these entities as being eligible for the CEWS allows more employers to continue paying employees who are still receiving wages or to rehire employees that these businesses were forced to lay off due to drastic drops in business revenues.

The Regulations have been adopted to provide that the percentage of the remuneration that an employer is deemed to have paid is equal to 10 per cent of remuneration paid to employees during the eligible period (or a lower percentage if so chosen by the employer). The eligible period from March 18, 2020, to June 19, 2020, is already contained in the legislation. The

Regulations are also adopted to cap this amount at \$1,375 for each eligible employee to a maximum of \$25,000 total per employer. The regulations allow an employer to keep these amounts in order to have access to money in a timely manner.

Regulatory development

Consultation

The Government has received feedback from stakeholders, since the enactment of the *COVID-19 Emergency Response Act, No. 2* with respect to the CEWS. Comments were received from accounting and law firms representing Canadian employers and businesses, as well as business associations and groups. These comments focused primarily on certain tax-exempt entities that did not qualify for the CEWS, including private schools, certain Indigenous-government-owned corporations and some partnership structures involving ineligible entities.

The amendments incorporate many of those stakeholder views.

Regulatory analysis

Costs and benefits

The cost to Government of the CEWS measure has been estimated to be approximately \$73 billion. It is expected that the expanded list of eligible employers will not exceed the original anticipated cost of \$73 billion. Any additional cost is equal to the benefits employers will derive from the wage subsidy. Newly prescribed eligible entities which apply for the CEWS will encounter minor administrative costs. However, these costs should not outweigh amounts received as a benefit under the CEWS.

The expected costs of the TWS are not expected to increase with this technical amendment since the prescribed amounts are the same amounts announced as part of the introduction of the TWS measure.

Small business lens

Small businesses are not required to apply for the CEWS benefit. Any small businesses that become newly prescribed eligible entities and apply for the CEWS may encounter minor administrative costs. Nevertheless, these costs should not outweigh amounts received by small businesses as a benefit under the CEWS.

One-for-one rule

The one-for-one rule applies because any entity that becomes a newly prescribed eligible entity and applies for the CEWS will encounter minor administrative costs. The amendments address an emergency circumstance and are exempt from the requirement to offset administrative burden under the one-for-one rule.

Regulatory cooperation and alignment

Due to the urgency and specificity of these measures, there were no requirements, and therefore no steps that were taken to coordinate or to align with other regulatory jurisdictions.

Implementation, compliance and enforcement, and service standards

Implementation

The CEWS and the TWS are administered by the CRA. The CRA will apply the amendments in respect of a qualifying period, as defined in the Act, for 12 weeks starting on March 15, 2020, with respect to the entities that are prescribed eligible entities for purpose of the CEWS. It is possible that other entities could be prescribed at a later date. The prescribed amounts and percentage for purposes of the TWS will apply in respect of an eligible period, as defined in the Act, i.e. from March 18, 2020, to June 19, 2020.

The amendments to the Regulations are subject to the existing reporting and compliance mechanisms available to the Minister of National Revenue under the Act. These mechanisms allow the Minister of National Revenue to assess and reassess tax payable, conduct audits and seize relevant records and documents.

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Footnotes

^a S.C. 2018, c. 12, s. 32

^b R.S., c. 1 (5th Supp.)

¹ C.R.C., c. 945
