Canada Launches Rent Subsidy Support for Businesses

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Certain organizations affected by COVID-19 may be eligible to receive the new Canada Emergency Rent Subsidy. Under this new relief, businesses, eligible charities and non-profits that experience a revenue drop would be eligible to claim a subsidy on eligible expenses, on a sliding scale up to a maximum of 65% of eligible expenses, including rent and interest on commercial mortgages, from September 27, 2020 until June 2021. The government has now provided details of the first stage of this new relief until December 19, 2020, and advises that elements of this new subsidy generally mirror the Canada Emergency Wage Subsidy (CEWS), including a sliding rate scale and certain eligibility considerations.

In addition to this new subsidy of up to 65%, organizations affected by a public health lockdown may also be eligible for a 25% Lockdown Support Subsidy. Legislation to implement the new Canada Emergency Rent Subsidy and the Lockdown Support Subsidy, among other support measures, received first reading in the House of Commons on November 2, 2020, and is expected to soon pass into law. The application process for these new subsidies is not yet available.

Background

In response to COVID-19, Canada enacted fiscal and tax relief intended to support individuals and businesses. Among other measures, Canada introduced temporary wage subsidies for businesses, such as the Canada Emergency Wage Subsidy (CEWS).

The government announced new aspects of its plan to bolster Canada's economic recovery following the COVID-19 pandemic on October 9, 2020, including a new Canada
Emergency Rent Subsidy to be provided directly to qualifying tenants and property owners affected by COVID-19. This subsidy, which would be available until June 2021, subsidizes a percentage of expenses incurred by businesses, eligible charities and non-profits that have suffered a specified revenue drop. Further, the government is also instituting a Lockdown Support Subsidy of 25% for organizations temporarily shut down due to a mandatory public health order issued by a qualifying public health authority.

In addition, the government announced that it would maintain the current Canada Emergency Wage Subsidy (CEWS) rate of up to a maximum of 65% of eligible wages until December 19, 2020 (previously, this rate was scheduled to go down to a maximum of 45% effective October 25, 2020), and confirmed that the subsidy would remain in place until June 2021. For further details on the evolution of the CEWS, see TaxNewsFlash-Canada 2020-62, "Canada Further Extends and Expands Wage Subsidy", TaxNewsFlash-Canada 2020-47, "Canada Extends 75% Wage Subsidy and Refines Eligibility", TaxNewsFlash-Canada 2020-39, "Employers — Canada's 75% Wage Subsidy Now Enacted", and TaxNewsFlash-Canada 2020-76, "Canada Bolsters Wage Subsidy and Announces New Support".

Eligible entities

Similar to the Canada Emergency Wage Subsidy program, individuals, taxable corporations and trusts, non-profit organizations and registered charities are generally eligible for the new rent subsidy (but not public institutions). Eligible organizations also include:

- Partnerships that are up to 50% owned by non-eligible members
- Indigenous government-owned corporations that are carrying on a business, as well as partnerships where the partners are Indigenous governments and eligible organizations
- Registered Canadian Amateur Athletic Associations
- Registered Journalism Organizations, and
- Non-public colleges and schools, including institutions that offer specialized services, such as arts schools, driving schools, language schools or flight schools.

To qualify for the subsidy, an eligible organization must either:

- Have a payroll account as of March 15, 2020 (or have been using a payroll service provider at that date)
- Have a business number as of September 27, 2020 (and make a *bona fide* rent subsidy claim), or
Eligible expenses

An eligible organization that has experienced a revenue drop can claim the subsidy on eligible expenses paid in respect of a qualifying period, including:

- Commercial rent (including gross rent, rent paid on a percentage of sales, profits or similar criterion, and amounts paid under a net lease)
- Property taxes (including school taxes and municipal taxes)
- Property insurance
- Interest on commercial mortgages (subject to limits) for a qualifying property.

Note that subleasing revenues would reduce eligible expenses, and any sales tax (e.g., GST/HST) component of these costs would not be considered an eligible expense.

In addition, the following expenses would not be considered an eligible expense:

- Expenses related to residential property used by the taxpayer (e.g., their house or cottage)
- Payments made between non-arm's-length entities
- Mortgage interest, property taxes and property insurance expenses for a property that are primarily used to earn, directly or indirectly, rental income from arms-length entities
- Amounts paid under a guarantee, security or similar indemnity or covenant
- Payments arising due to default under the agreement by the eligible entity
- Interest and penalties on unpaid amounts.

To be eligible, an expense must be paid under a written agreement entered into before October 9, 2020 (or a continuation of that agreement), and must be related to real property located in Canada and used by the eligible entity in the course of its ordinary activities. Expenses for each qualifying period would be capped at $75,000 per location and be subject to an overall expense cap of $300,000 that would be shared among affiliated entities.

KPMG observations

The new rent subsidy could present timing or matching issues for certain organizations. Specifically, because an amount must be paid in respect of a qualifying period to qualify
as an eligible expense for a particular qualifying period, payment periods could differ from the qualifying periods.

The government has not yet decided how it will address the issue that taxpayers are required to pay rent before they are eligible to receive the subsidy. Although the government introduced a motion during the legislative process to generally allow a qualifying renter to attest that they will pay the amount due under the agreement within 60 days for the amount to qualify as an eligible expense, it appears this change may only be considered and possibly adopted at a later stage in the legislative process. Under this change, a qualifying renter would be deemed to have paid the rent following the attestation, as long as the rent is paid within the 60-day timeframe.

It also remains unclear whether certain expenses may be eligible for the subsidy. The legislation also excludes “fees payable for discrete items or special services” from expenses eligible for the subsidy, but it's not currently clear what types of fees this would include in the context of amounts required to be paid under a net lease. Further, it appears that mortgage interest only qualifies as an eligible expense on the amount of the debt obligation that is the least of the “cost amount of the property” (which generally is defined as the undepreciated capital cost (UCC)), and the lowest total principal amount secured by one of more mortgages on the qualifying property at any time after it was acquired by the eligible entity (excluding certain temporary refinancing).

According to the legislation, eligible rent expenses include amounts received by the lessor under the Canada Emergency Commercial Rent Assistance Program (CECRA) that were applied against rent payable for a qualifying period, if those amounts would otherwise be required to be refunded to the eligible entity.

For purposes of including the rent subsidy in income, the subsidy is deemed to be government assistance received by the eligible entity immediately before the end of the relevant qualifying period the claim relates to, regardless of when the eligible entity applies for or receives the subsidy, and is included in income for tax purposes at that time.

The legislation also includes anti-avoidance rules to address transactions that increase the qualifying rent expenses of an eligible entity, where one of the main purposes of the transaction is to increase the amount of the subsidy. As well, the government is allowed to make the name of any person or partnership that applies for the rent subsidy publicly available, similar to the legislation for the Canada Emergency Wage Subsidy.

**Subsidy rates**

Under this new assistance, eligible organizations that experience a revenue drop would be eligible to claim the Canada Emergency Rent Subsidy on up to 65% of eligible expenses as follows:
• Revenue decline of 70% and over — 65%
• Revenue decline of 50% to 69% — 40% + (revenue drop - 50%) x 1.25 (e.g., 40% + (60% revenue drop – 50%) x 1.25 = 52.5% subsidy rate)
• Revenue decline of 1% to 49% — Revenue drop x 0.8 (e.g., 25% revenue drop x 0.8 = 20% subsidy rate)

Claiming the subsidy

To claim the Canada Emergency Rent Subsidy, eligible organizations will be required to calculate their revenue, and compare this amount to a reference period to determine their revenue drop, in the same manner as under the Canada Emergency Wage Subsidy program.

To determine its revenue under the subsidy, eligible organizations must calculate their revenue from their ordinary activities in Canada earned from arm's-length sources, determined using their normal accounting practices. However, organizations should not include revenues from extraordinary items or amounts on account of capital. In addition, the subsidy includes special rules to account for certain non-arm's-length transactions, as well as an election to allow certain affiliated groups to compute revenue on a consolidated basis. The legislation to compute revenue for the Canada Emergency Rent Subsidy is the same as under the Canada Emergency Wage Subsidy.

Eligible organizations can then determine their revenue drop by comparing their monthly revenues, year-over-year, for a certain calendar month, or by comparing their current reference month revenues with the average of their January and February 2020 revenues. An eligible organization can use the greater of its percentage revenue decline for the current qualifying period and that for the previous qualifying period in order to determine its subsidy rate, as follows:

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<tr>
<th>Reference Periods</th>
<th>General approach</th>
<th>Alternative approach</th>
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<tr>
<td>September 27 to October 24, 2020 (Period 8)</td>
<td>October 2020 over October 2019, or September 2020 over September 2019</td>
<td>October 2020 or September 2020, over average of January and February 2020</td>
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<tr>
<td>October 25 to November 21, 2020 (Period 9)</td>
<td>November 2020 over November 2019, or October 2020 over October 2019</td>
<td>November 2020 or October 2020, over average of January and February 2020</td>
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Organizations must make all applications for the subsidy on or before 180 days after the end of the qualifying period. Note that once an organization has chosen to use either the general or alternative approach, they must use that approach for each of the three claim periods (i.e., Periods 8, 9 and 10), for both the base Canada Emergency Wage Subsidy and the Canada Emergency Rent Subsidy.

**Registered charities and non-profit organizations**

Special rules apply for registered charities and non-profit organizations. When calculating their revenue drop, these organizations must include most forms of revenue, except for those from non-arm's length persons. These organizations can also choose whether to include revenue from government sources as part of the calculation. Once chosen, these organizations would have to use the same approach throughout the program period.

**Lockdown Support Subsidy**

Organizations with locations that are temporarily forced to close, or temporarily have their business activities significantly restricted due to COVID-19 may also be eligible to receive a 25% Lockdown Support Subsidy on eligible expenses, which the government also refers to as a 25% “top-up” rent subsidy. To qualify for this additional subsidy, an organization must already qualify for the base Canada Emergency Rent Subsidy, and must either completely shut down a location, or cease some or all of the activities that account for at least 25% of the organization’s pre-pandemic revenues at that location for at least a week, under a specified public health order issued as a result COVID-19 outbreak. Organizations may be eligible for the subsidy for public health restrictions that include for example:

- Restrictions that disallow indoor dining
- Closure of retail stores, bars, theaters or fitness centres
- Restrictions on the types of personal services that can be provided
- Closure in relation to a COVID-19 outbreak on the premises.

However, the Lockdown Support Subsidy would not be available for organizations that reduced business hours or were affected by travel restrictions or physical distancing requirements, among others.

Where organizations are subject to a public health restriction that cease activities for only part of a qualifying period, the Lockdown Support Subsidy would be pro-rated for the number of days in the period during which the relevant location was affected.
According to the government, expenses for the Lockdown Support Subsidy for each qualifying period would be capped at $75,000 per location, but would not be subject to the overall expense cap of $300,000 shared among affiliated entities that applies to the Canada Emergency Rent Subsidy.

**An action plan for your business — We can help**

It is important for businesses to understand the complexities of the Canada Emergency Rent Subsidy.

As your trusted advisors, we’re here to help. Because every business is unique, our experienced professionals may be able to assist you with establishing that the methodology you use to determine eligibility is consistent with similar organizations in your sector and across Canada. We have developed specific service offerings to help:

- Develop a template to assist in calculating an eligible entity’s qualifying rent expense for each qualifying property
- Calculate the eligible entity’s rent subsidy percentage and rent top-up percentage for each qualifying period
- Prepare the calculation of the Canada Emergency Rent Subsidy claim for each qualifying period for an eligible entity
- Provide a summary report outlining the eligibility criteria with an information package supporting the Canada Emergency Rent Subsidy claim for each qualifying period for an eligible entity.

We can provide various levels of assistance to help you determine that you’ve assembled the appropriate documentation to support your claims, ranging from accounting advice and assistance, a specific procedures report or an audit report on financial information.

Together, we can help your organization navigate these unprecedented times.

**Stay connected on the latest COVID-19 developments**

We continue to watch tax and legal issues related to the evolving COVID-19 situation and will provide further information as it becomes available. For the latest developments, see our dedicated COVID-19 site, [The Business Implications of Coronavirus](https://www.kpmg.ca/multimedia-library/publications/2020/the-business-implications-of-coronavirus).