

Updates to the Canada Emergency Rent Subsidy Program

November 9, 2020

On October 9, 2020, the Federal Government unveiled a new relief measure for eligible organizations that continue to be economically impacted by COVID-19. This new program replaces the Canada Emergency Commercial Rent Assistance program and is known as the Canada Emergency Rent Subsidy (CERS). The CERS program will be available until June 2021 and is designed to provide easy-to-access rent and mortgage support to organizations affected by the pandemic by allowing them to apply directly for assistance, rather than relying on landlords to do so on their behalf.

On November 2, 2020, the CERS program was introduced as part of Bill C-9, *An Act to Amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)* for first reading before the House of Commons. The purpose of Bill C-9 would be to implement new, targeted support to help businesses that have experienced reduced revenues and increased costs as a result of the COVID-19 pandemic. Further updates will be available with respect to Bill C-9 as it makes its way through the legislative process.

The CERS program will provide support to eligible organizations by subsidizing up to a maximum of 65% of eligible expenses (see below for what qualifies as an eligible expense). This subsidy will be based on a sliding scale, whereby the amount of the subsidy that may be received by an eligible organization depends on its revenue loss (e.g., if an eligible organization experiences a revenue drop of 70% or more, then it may be eligible to receive the maximum subsidy of 65%), subject to the additional Lockdown Support explained below.

In addition to the foregoing subsidy, the Federal Government's Lockdown Support will also provide a 25% subsidy under the CERS program for eligible organizations that have been subject to a lockdown or other public health order issued under the laws of Canada, a province or territory (including orders made by a municipality or regional health authority under one of those laws).

Eligible organizations will be able to make claims under the CERS program retroactively for the period commencing on September 27, 2020. To date, the government has provided the proposed details for the first 12 weeks of the CERS program through December 19, 2020 (divided into three qualifying periods, September 27, 2020 – October 24, 2020, October 25, 2020 – November 21, 2020, and November 22, 2020 – December 19, 2020, each a "Qualifying Period").

All CERS applications must be made on or before 180 days after the end of the Qualifying Period in question.

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CERS Eligible Organizations – Eligible organizations under the CERS program include individuals, taxable corporations (including landlords and tenants), taxable trusts, non-profit organizations, registered charities, and non-public colleges and schools. In addition, an eligible organization must meet one of the following criteria: (i) have a payroll account as of March 15, 2020 or have been using a payroll service provider; (ii) have a business number as of September 27, 2020 (and satisfy the Canada Revenue Agency that it has a *bona fide* rent subsidy claim); or (iii) satisfy other conditions that may be prescribed in the future.

CERS Eligible Expenses – Eligible expenses for a location for a Qualifying Period may include commercial rent, property taxes (including school taxes and municipal taxes), property insurance, and interest on commercial mortgages (subject to certain limits) for qualifying property, less any subleasing revenues. However, sales tax components of the foregoing costs, expenses related to residential property used by the taxpayer (such as, a house or cottage), payments made between non-arm's-length parties, and mortgage interest expenses for property primarily used to earn, directly or indirectly, rental income from arms-length entities, in all cases, will *not* be considered eligible expenses under CERS. Eligible expenses will be limited to (I) expenses related to real property located in Canada and (II) those expenses paid under agreements in writing entered into before October 9, 2020 (including, for example, a written lease entered into before that date). Expenses for each Qualifying Period will be capped at \$75,000 per location and be subject to an overall cap of \$300,000 that would be shared among affiliated entities.

CERS Calculation – Since the CERS program is designed to provide targeted support to help business that have experienced reduced revenues, the CERS benefits are calculated based on reduction in revenue. An eligible organization's revenue for purposes of this subsidy is its revenue from ordinary activities in Canada earned from arm's length sources, determined using its normal accounting practices (revenues from extraordinary items and amounts on account of capital will be excluded). Other details can be found on the Government of Canada website for revenue calculation relating to registered charities and non-profit organizations and certain affiliated non-arm's length transactions that ultimately lead to arm's length revenue.

There are two approaches under the CERS programs when applying the revenue test: (a) the general approach, whereby eligibility is determined by the change in an eligible organization's monthly revenues, year-over-year, for the calendar month in question and (b) the alternative approach, whereby an entity can choose to calculate its revenue decline by comparing its current reference month revenues with the average of its January and February 2020 revenues. Importantly, once an entity has chosen to use either the general or alternative approach, they must use that approach for each of the three Qualifying Periods and this approach would apply for both the CERS program and the Canada Emergency Wage Subsidy program.

An eligible organization will use the greater of its percentage revenue drop for the current qualifying period and for the previous qualifying period in order to determine its subsidy rate. For example, in order to determine the relevant reference period for determining the change in revenue, for the first Qualifying Period (September 27, 2020 – October 24, 2020), (A) the general approach would compare October 2020 revenue

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over October 2019 revenue or September 2020 revenue over September 2019 revenue or (B) the alternative approach would compare October 2020 or September 2020 over the average revenue of January and February 2020.

Please contact Cassels with any questions you may have regarding this program. Given the technical nature of this program, property owners and tenants who may look to benefit from CERS should seek legal and advisory counsel as soon as possible. We look forward to guiding you during these uncertain times.

The authors gratefully acknowledge the contributions of articling student Lauren White in the preparation of this article.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.