



LEGISLATIVE SUMMARY

BILL C-9: AN ACT TO AMEND THE INCOME TAX ACT (CANADA EMERGENCY RENT SUBSIDY AND CANADA EMERGENCY WAGE SUBSIDY)

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Legislative Summary of Bill C-9
(Legislative Summary)

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CONTENTS

1	BACKGROUND	1
1.1	Canada Emergency Wage Subsidy	1
1.2	Canada Emergency Commercial Rent Assistance.....	2
2	DESCRIPTION AND ANALYSIS.....	2
2.1	Canada Emergency Wage Subsidy (Clauses 2(1) to 2(4))	2
2.1.1	Qualifying Period Extension (Clause 2(8))	2
2.1.2	Employees Outside Canada (Clause 2(1))	3
2.1.3	Baseline Remuneration of Employees Returning from Leave (Clause 2(2))	3
2.1.4	Baseline Emergency Wage Subsidy (Clauses 2(3) and 2(4))	3
2.1.5	Emergency Wage Subsidy Top-Up (Clauses 2(1) and 2(10))	4
2.1.6	Application Deadline (Clause 2(7))	4
2.1.7	Joint Ventures (Clauses 2(14) and 2(15))	4
2.1.8	Asset Acquisition Rules (Clauses 2(16) and 2(17))	5
2.1.9	Elections (Clause 2(22))	5
2.2	Canada Emergency Rent Subsidy and Lockdown Support (Clauses 2(19), 2(24) and 3 to 6)	6
3	COMMENTARY	8

LEGISLATIVE SUMMARY OF BILL C-9: AN ACT TO AMEND THE INCOME TAX ACT (CANADA EMERGENCY RENT SUBSIDY AND CANADA EMERGENCY WAGE SUBSIDY)

1 BACKGROUND

Bill C-9, An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy) was introduced in the House of Commons on 2 November 2020 by the Deputy Prime Minister and Minister of Finance, and given first reading the same day.¹ It passed second reading and was referred for study to the House of Commons Committee of the Whole on 5 November 2020. The bill passed third reading on 6 November 2020. The Standing Senate Committee on National Finance began its pre-study of Bill C-9 on 9 November 2020 and tabled its report on 17 November 2020,² the same day the bill received first and second reading in the Senate. On 19 November 2020, Bill C-9 passed third reading in the Senate without amendment and received Royal Assent.

Bill C-9 amends the *Income Tax Act* (ITA)³ to:

- extend the Canada Emergency Wage Subsidy (CEWS) to June 2021 and amend its rates, change the definition of eligible employees and baseline remuneration, extend the application and election deadlines, and broaden the application of the CEWS in certain cases involving the acquisition of assets; and
- introduce the Canada Emergency Rent Subsidy (CERS) and top-up subsidy (lockdown support) which provide emergency assistance to businesses for rent and other property-related expenses in response to the COVID-19 pandemic. The CERS replaces the Canada Emergency Commercial Rent Assistance (CECRA).

1.1 CANADA EMERGENCY WAGE SUBSIDY

Details of the CEWS were first outlined on 1 April 2020; its stated goal is to “support Canadians and businesses facing hardship as a result of the global COVID-19 outbreak”⁴ by covering a portion of eligible employees’ wages for employers that have certain revenue losses. It was enacted by Bill C-14 on 11 April 2020.⁵

As of 13 December 2020, the CEWS has supported the jobs of more than four million Canadians by providing over \$54 billion in wage subsidies to their employers.⁶

1.2 CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE

The *COVID-19 Emergency Response Act*,⁷ which received Royal Assent on 25 March 2020, is a piece of legislation introduced by the federal government in response to the COVID-19 pandemic; Part 3 of this Act enacts the *Public Health Events of National Concern Payments Act* (PHENCPA),⁸ in force until 30 September 2020. The CECRA was created pursuant to the PHENCPA and delivered through the Canada Mortgage and Housing Corporation. It was available from 25 May 2020 to 30 September 2020.

The purpose of the CECRA was to provide forgivable loans to qualifying commercial property owners who, in turn, lower the rent owed by small business tenants. The CECRA was available for property located in Canada that generates rental revenue from small business tenants. Eligible tenants were those that paid less than \$50,000 per month in gross rent, had annual consolidated revenues of less than \$20 million and experienced at least a 70% reduction in pre-COVID-19 revenues. Under the CECRA, the tenant and the property owner each covered 25% of the rent, while the federal government and provinces/territories shared the remaining 50%.

Despite delivering over \$2 billion in rent support to more than 138,000 small businesses,⁹ the CECRA was considered inaccessible to many of them.¹⁰ The main criticisms of the CECRA were as follows:

- the requirement of a 70% reduction in revenues prevented many small businesses from qualifying for the CECRA; and
- small businesses had to rely on their landlords to apply for the CECRA in order to be eligible for rent relief.

On 2 October 2020, the federal government announced the creation of the CERS to replace the CECRA.¹¹

2 DESCRIPTION AND ANALYSIS

Bill C-9 contains six clauses. Key amendments are discussed below.

2.1 CANADA EMERGENCY WAGE SUBSIDY
(CLAUSES 2(1) TO 2(4))

2.1.1 Qualifying Period Extension
(Clause 2(8))

The CEWS was enacted by Bill C-14 on 11 April 2020; it originally contained three “qualifying periods” for which the CEWS could be claimed; the last of these periods ends on 6 June 2020. Bill C-20¹² extends the CEWS until 21 November 2020,

adding qualifying periods 4 to 9. Clause 2(8) of Bill C-9 adds qualifying periods 10 to 17, the last of which ends in June 2021. This measure is deemed to have come into force on 11 April 2020.

2.1.2 Employees Outside Canada
(Clause 2(1))

Clause 2(1) narrows the definition of “eligible employee” in section 125.7(1) of the ITA by providing that the employee must be employed “primarily in Canada throughout the qualifying period (or the portion of the qualifying period throughout which the individual was employed by the eligible entity).” Therefore, remuneration paid to employees employed primarily or wholly outside Canada does not qualify in the calculation of the CEWS. This measure is deemed to have come into force upon receiving Royal Assent.

2.1.3 Baseline Remuneration of Employees Returning from Leave
(Clause 2(2))

Clause 2(2) revises the definition of “baseline remuneration” in section 125.7(1) of the ITA to accommodate workers returning from maternity leave, parental leave, caregiver leave or long-term sick leave. The baseline remuneration for an eligible employee who was on one of these types of leave during the period beginning 1 July 2019 and ending 15 March 2020 may be calculated – when the employer makes that election – based on the 90-day period ending immediately before the beginning of the employee’s leave period. This election is available for periods 5 to 10, and this measure is deemed to have come into force on 11 April 2020.

2.1.4 Baseline Emergency Wage Subsidy
(Clauses 2(3) and 2(4))

The CEWS comprises a base wage subsidy and an additional top-up subsidy. The base rate is capped at \$1,129 per week, per employee, and is available where the employer’s reduction in revenue for the relevant period is at least 50%. If this reduction is less than 50%, the base rate is reduced by an amount proportional to the revenue reduction percentage. The maximum base rate is 60% (of \$1,129) for qualifying periods 5 and 6, and it gradually decreases thereafter. Clauses 2(3) and 2(4) amends section 125.7(1) of the ITA to make the maximum base rate 40% for qualifying periods 8 to 10, and the maximum base rate for qualifying periods 11 to 17 are to be set by regulation. This measure is deemed to have come into force on 11 April 2020.

2.1.5 Emergency Wage Subsidy Top-Up (Clauses 2(1) and 2(10))

The CEWS top-up is currently applied in addition to the base rate for employers that have experienced a three-month average revenue reduction of more than 50% (as determined using the revenue decline test), calculated relative to either the same time period 12 months earlier or the average monthly revenue in January and February 2020. Clause 2(1) amends section 125.7(1) of the ITA to replace the three-month average revenue decline test – effective from 27 September 2020 onward – with a year-over-year test that compares revenues on a monthly basis to revenues from 12 months prior or to that of the average revenue earned in the months of January and February of 2020. This makes the revenue decline test for the CEWS top-up the same as for the base rate. A safe harbour rule in clause 2(1) ensures that the wage subsidy top-up under this new calculation is not lower than the subsidy to which an employer would be entitled under the three-month revenue decline test during transitional qualifying periods 8 to 10 (27 September 2020 to 19 December 2020).

The top-up is currently equal to a percentage of the base rate of \$1,129 per week, per employee, based on the following calculation: 1.25 multiplied by the average revenue decline that exceeds 50%, up to a maximum rate of 25% which is attained if an employer experienced a 70% revenue reduction. Clause 2(10) amends section 125.7(1) of the ITA to allow the top-up percentage (currently 25%) to be set by regulation.

These measures are deemed to have come into force on 11 April 2020.

2.1.6 Application Deadline (Clause 2(7))

Clause 2(7) extends the CEWS application deadline in section 125.7(1) of the ITA from 31 January 2021 to the later of 31 January 2021 and 180 days after the end of the particular qualifying period. This measure is deemed to have come into force on 11 April 2020.

2.1.7 Joint Ventures (Clauses 2(14) and 2(15))

In some circumstances where an employer is involved in a joint venture or partnership, the employer may elect to use the qualifying revenues of the joint venture or partnership instead of its own qualifying revenues to determine whether it has experienced the required revenue decline needed to qualify for the wage subsidy. Clauses 2(14) and 2(15) amend sections 125.7(4)(c) and 125.7(4)(d) of the ITA so that this election is available for all qualifying periods. This measure is deemed to have come into force on 11 April 2020.

2.1.8 Asset Acquisition Rules (Clauses 2(16) and 2(17))

Under the initial design of the CEWS, where a business purchases all or substantially all of the fair market value of assets of another business and these assets generate revenue for the purchaser, the increased revenues that result from the purchased assets may render the business ineligible for the CEWS. The enactment of Bill C-20 allows a purchaser of such assets to account for a revenue decline attributable to the newly acquired assets relative to the purchaser's pre-pandemic revenues, and therefore, potentially qualify for the CEWS. Clause 2(16) expands the application of this rule in section 125.7(4.1)(b) of the ITA to provide that, in addition to when a business has purchased all or substantially all of the fair market value of assets of another business, the revenue derived from the assets may be accounted for relative to their pre-pandemic revenues, if the property purchased "can reasonably be regarded as being necessary for the eligible entity [purchaser] to be capable of carrying on a business of the seller, or part of a business of the seller, as a business." This change allows for this rule to apply to circumstances in which assets are purchased from a seller that carried on multiple businesses through a single legal entity, and those assets represent substantially all of the operations of only one such business. This provision only applies to arm's-length transactions.

Clause 2(17) amends section 125.7(4.2) of the ITA for the purpose of the alternative prior reference period (the average of qualifying revenue for January and February 2020) of the acquiring eligible entity, in order to deem that it commenced carrying on the business in which the acquired assets are used at the earlier of:

- (i) the date on which the eligible entity commenced carrying on that business, and
- (ii) the date on which the seller commenced carrying on the business in which the acquired assets were used.

These measures are deemed to have come into force on 11 April 2020.

2.1.9 Elections (Clause 2(22))

Clause 2(22) adds section 125.7(10) to the ITA to give eligible entities the opportunity to amend or revoke an election made under section 125.7 of the ITA (with respect to the CEWS or the CERS) on or before the date the application is due for the first qualifying period in which the election is made. This measure is deemed to have come into force on 27 September 2020.

2.2 CANADA EMERGENCY RENT SUBSIDY AND LOCKDOWN SUPPORT (CLAUSES 2(19), 2(24) AND 3 TO 6)

Bill C-9 amends section 125.7 of the ITA to introduce the CERS. An additional amount for lockdown support is provided through the CERS for businesses closed because of a public health lockdown. Unlike the CECRA, the CERS is based on the CEWS framework set out in section 125.7 of the ITA.

Using many of the same definitions as those in the CEWS, the CERS allows qualifying “eligible entities” to apply for subsidies from the federal government for monthly “qualifying periods,” where the amount of the subsidy depends on the percentage of “qualifying revenue” the business has lost. As noted above, clause 2(8) of the bill expands the definition of “qualifying period” in section 125.7(1) of the ITA to include qualifying periods that end no later than 30 June 2021. Consequently, the CERS applies for qualifying periods between 27 September 2020 and 19 December 2020, and any other prescribed period that ends no later than 30 June 2021.

Clause 2(11) introduces several definitions related to the CERS.

An eligible entity must also be a “qualifying renter” in order to be able to apply for the CERS. A qualifying renter is defined as an eligible entity that:

- files an application with the Canada Revenue Agency (CRA) no later than 180 days after the end of the qualifying period;
- has an individual who has principal responsibility for the financial activities of an eligible entity; and
- on 15 March 2020, had a business number or employed one or more individuals in Canada and used a payroll service provider, or had a business number on 27 September 2020 and provides records and other information to the CRA in support of its application.

The CERS is only available for “qualifying property,” which is defined as real property located in Canada that is used by an eligible entity in the course of its ordinary activities and that is not a residence.

Like the CEWS, the amount of the CERS rent subsidy is proportional to the percentage of the qualifying revenue reduction incurred by the business. The definition for “rent subsidy percentage” provides that:

- if a business has a revenue reduction percentage greater than or equal to 70%, the rent subsidy is equal to 65% of qualifying rent expenses;
- if a business that has a revenue reduction percentage greater than or equal to 50% but less than 70%, the rent subsidy percentage is calculated using the formula

- 40% + (A – 50%) x 1.25, where A is the revenue reduction percentage of the business; and
- if a business has a revenue reduction percentage that is less than 50%, the rent subsidy percentage is equal to 0.8 x B, where B is the revenue reduction percentage of the business.

The types of property-related expenses that can be claimed under the CERS are set out in the definition of “qualifying rent expense” which is an amount paid by an eligible entity for a qualifying period, on a qualifying property, pursuant to an agreement entered into before 9 October 2020. The amount includes rent expenses, interest payments made in relation to a mortgage on a qualifying property, property taxes and property insurance. A property owner can claim expenses related to interest, taxes and insurance only if the property is not used primarily to earn rental income; consequently, commercial landlords generally do not qualify for the CERS. Qualifying rent expenses are limited to a maximum of \$75,000 per qualifying period, per property; however, clause 2(12) sets out a maximum qualifying rent expense of \$300,000 per qualifying period for all “affiliated” eligible entities that are claiming the CERS.¹³

Clause 2(11) also introduces definitions used to determine lockdown support amounts; this support provides an additional 25% rent subsidy to cover the qualifying rent expenses of businesses that are closed because of a public health order. It is also available from 27 September 2020 to 30 June 2021.

A “public health restriction” is defined as an order or decision:

- made under the laws of Canada or a province;
- made in response to the COVID-19 pandemic;
- based on geographical boundaries, type of business or activity, or risks associated with a particular location;
- where non-compliance can result in a monetary penalty or other sanction;
- where some or all of the activity of the business at a qualifying property is restricted as a result of the order;
- where it is reasonable to conclude that at least approximately 25% of the qualifying revenues of the business for the prior reference period were earned from restricted activities on the qualifying property; and
- the restricted activities are required to cease for a period of at least one week.

The definition of “rent top-up percentage” provides that the amount of lockdown support a business can claim depends on the number of days in a qualifying period the business is subject to a public health restriction.

Clause 2(12) adds a new section, 125.7(2.1), to the ITA that is similar to section 125.7(2). Under the new section:

- the maximum qualifying rent expense is \$300,000 per qualifying period for all affiliated eligible entities;
- the CERS and lockdown support are treated as an overpayment of tax, therefore the rent subsidies a business receives through the CERS are treated as a tax refund for the purposes of the ITA; and
- the lockdown support amount is not subject to the \$300,000 cap established for qualifying rent expenses.

Clause 2(19) amends the CEWS anti-avoidance rule set out in section 125.7(6) so that businesses that have artificially inflated qualifying rent expenses are not eligible for the CERS. Furthermore, clause 4 amends section 163 of the ITA to provide that those businesses are also subject to a penalty of 25% of the amount claimed under the CERS.

Clause 2(24) states that the provisions of the bill in relation to the CERS are deemed to have come into force on 27 September 2020.

Lastly, clauses 3 (on income tax assessments) and 5 (on refunds) amend sections 152 and 164(1.6) of the ITA respectively, to include a reference to the CERS. Clause 6 adds new section 241(4)(d)(vii.10) to the ITA which stipulates that an official may provide taxpayer information to an official of a department or agency of a provincial government solely for the purpose of a program that provides financial assistance in respect of rent or interest payments in the context of the COVID-19 pandemic.

3 COMMENTARY

During the Standing Senate Committee on National Finance's pre-study of Bill C-9, witnesses expressed concerns about the CERS requiring businesses to pay rent before receiving the subsidy. In response to these concerns, the federal government introduced an amendment to the CERS in Bill C-14, An Act to implement certain provisions of the economic statement tabled in Parliament on November 30, 2020 and other measures.¹⁴ Clause 4 of Bill C-14 amends the definition of "qualifying rent expense" in section 125.7(1) of the ITA so that rent payable by a business is a qualifying rent expense for the purposes of the CERS.

NOTES

1. [Bill C-9, An Act to amend the Income Tax Act \(Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy\)](#), 43rd Parliament, 2nd Session (S.C. 2020, c. 13).
2. Senate, Standing Committee on National Finance, [Report on the Subject matter of Bill C-9, An Act to amend the Income Tax Act \(Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy\)](#), First report, November 2020.
3. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
4. Department of Finance Canada, [Government Announces Details of the Canada Emergency Wage Subsidy to Help Businesses Keep Canadians in their Jobs](#), News release, 1 April 2020.
5. [Bill C-14, A second Act respecting certain measures in response to COVID-19](#), 43rd Parliament, 1st Session (S.C. 2020, c. 6).
6. Department of Finance Canada, [Government announces wage subsidy rate increase to 75 per cent](#), News release, 18 December 2020.
7. [COVID-19 Emergency Response Act](#), S.C. 2020, c. 5.
8. [Public Health Events of National Concern Payments Act](#), S.C. 2020, c. 12, s. 10.
9. Department of Finance Canada, [Government introduces legislation for new, targeted support to help businesses through pandemic](#), News release, 2 November 2020.
10. Canadian Federation of Independent Business, [Flawed rent relief program overdue for a fix, even as it is set to come to an end](#), News release, 28 August 2020.
11. Department of Finance Canada, [Government announces new, targeted support to help businesses through pandemic](#), News release, 9 October 2020.
12. [Bill C-20, An Act respecting further COVID-19 measures](#), 43rd Parliament, 1st Session (S.C. 2020, c. 11).
13. According to the Canada Revenue Agency, the definitions of “affiliated persons” and “affiliated group of persons” found in section 251.1 of the *Income Tax Act* apply for the purposes of the [Canada Emergency Wage Subsidy \(CEWS\)](#) and [Canada Emergency Rent Subsidy \(CERS\)](#). See Government of Canada, “10-1. What is the meaning of the term ‘affiliated’ and ‘affiliated group’ in the special rules referred to in question 10?,” *Frequently asked questions – Canada emergency wage subsidy (CEWS)*; and [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.), s. 251.1.
14. [Bill C-14, An Act to implement certain provisions of the economic statement tabled in Parliament on November 30, 2020 and other measures](#), 43rd Parliament, 2nd Session.