New Canada Emergency Rent Subsidy (CERS) Program

November 23, 2020

(Note: This is an update to our original brief published on November 4, 2020. The information contained herein is current to November 23, 2020. This brief will continue to be updated as additional details are released.)

Introduction

On October 9, 2020, the Federal Government announced new rent relief measures for businesses facing financial hardship due to COVID-19. The new Canada Emergency Rent Subsidy (CERS) replaces the Canada Emergency Commercial Rent Assistance (CECRA) program, and will provide financial assistance in the form of non-repayable subsidies for rent and mortgage interest to Canadian businesses, charities and non-profits suffering revenue decreases due to the pandemic.

CERS was introduced on November 2, 2020 as part of Bill C-9 *An Act to amend the Income Tax Act* (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy) (Bill C-9) Bill C-9 received Royal Assent on November 19, 2020.

CERS went live on November 23, 2020. A link to the program can be found here.

What you need to know

- CERS will provide financial support to qualifying tenants and property owners retroactively from September 27, 2020, until June 2021.
- CERS will subsidize a portion of eligible applicants' expenses, up to a maximum of 65 per cent.
- For businesses forced to temporarily shut down by a mandatory public health order, an additional 25 per cent top up is available.
- The application opened on November 23, 2020 for the period of September 27 to October 24, 2020. Applications for October 25 to November 21, 2020 will begin on November 30, 2020, and applications for November 22 to December 19, 2020 will begin on December 23, 2020.

What is the CERS?

Intended to pick up where the CECRA program left off, CERS is designed to "provide direct and easy-to-access rent and mortgage interest support"[1] for businesses, charities and non-profits impacted by the COVID-19 pandemic.

CERS is composed of two components:

1. A rent subsidy; and
2. An additional top-up payment, referred to as the "Lockdown Support", for qualifying organizations who are subject to a lockdown forcing them to temporarily close their doors or limit activities.

Combined, this could result in rent or mortgage interest supports of up to 90 per cent for hard-hit businesses.

CERS is not a loan, and amounts received pursuant to CERS will only be subject to repayment in limited circumstances, for example, fraud or ineligibility.

Who is eligible?

Unlike the CECRA, which was only accessible to property owners, CERS benefits will be available to qualifying entities, including both qualifying landlords and tenants who have suffered revenue drops.

Qualifying entities include corporations, charities and non-profits meeting certain eligibility requirements.[2] To be an eligible entity, they must meet one of the following requirements:

- Have a payroll account as of March 15, 2020 or have been using a payroll service provider; or
- Have a business number as of September 27, 2020 and satisfy the CRA that it is a *bona fide* rent subsidy claim.

It is also possible to qualify if one purchased the business assets of another who had a payroll account on March 15, 2020 and have made an election under the special asset acquisition rules.

Other requirements may be prescribed in the future.

A "qualifying rent expense" generally means, rent or mortgage interest expenses in respect of a qualifying property (generally, real estate in Canada used by the entity in the course of its ordinary activities), net of any amounts received or receivable by the qualifying entity from non-arm's length parties.

For tenants, qualifying rent expenses for a particular qualifying property would include amounts up to $75,000 for each qualifying period paid under a written agreement (or renewal or assignment of a written agreement), *e.g.* a lease agreement, entered into before October 9, 2020, including:

- Gross rent;
- Percentage rent;

- Amounts paid under a net lease; and
- Certain amounts received by the landlord under the CECRA program that were applied during the “qualifying period” (as defined below), if those amounts would otherwise be required to be refunded to the tenant.

Excluded are:

- Sales taxes;
- Amounts paid *in lieu* of or in satisfaction of damages;
- Amounts paid under a guarantee, security, or similar indemnity or covenant;
- Payments arising due to default;
- Interest and penalties on unpaid amounts;
- Fees payable for discrete items or special services; and
- Reconciliation adjustment payments.

For commercial property owners who do not use the property to earn rental income, “eligible rent expenses" includes mortgage interest, insurance costs paid in respect of the qualifying property and property and similar taxes, including municipal and school taxes in respect of the qualifying property, up to $75,000.

The Federal Government has announced a new proposal which, if adopted, will provide relief to otherwise qualified applicants who, due to cash flow problems, cannot pay their rent expenses as they come due. According to the proposal, certain amounts that were due under the lease or mortgage agreement, but not yet paid by the applicant, could still qualify as eligible rent expenses for a particular claim period, provided that the applicant certifies that these expenses will be paid within 60 days of receipt of the subsidy payment. This proposal has not yet been passed into law. More details are expected in the weeks to come.

The subsidy is subject to an overall cap of $300,000 for affiliated entities for each qualifying period. There does not appear to be, as of yet, an overall entity revenue ceiling for eligibility. This could mean that property owners and tenants of any size could apply, to the maximum of $75,000 per location and the overall cap of $300,000 for each qualifying period.

How is the subsidy calculated?

Base subsidy

CERS benefits are intended to be flexible, and will be calculated in part as a function of the revenue drop experienced by the applicant in relation to a prior reference period, expressed as a percentage (the revenue reduction percentage). Entities can calculate their revenue reduction percentage by the change in year-over-year monthly revenues for the calendar month for which they are applying. The entity can also choose to compare its current month revenues with an average of its January and February 2020 revenues. Once an election is made, the same calculation must be used for all periods.

Applicants’ rent subsidy percentage is determined with reference to the revenue reduction percentage, with the maximum rent subsidy of 65 per cent of eligible

expenses available to applicants who have experienced a revenue reduction of 70 per cent or more.

The subsidy will be calculated retroactively for each “qualifying period”, with the first three qualifying periods being:

- September 27, 2020 to October 24, 2020;
- October 25, 2020 to November 21, 2020; and
- November 22, 2020 to December 19, 2020.

What remains unclear is whether a business that opened after February 2020 can qualify for CERS, as there would be no reference period to which they can compare.

Important to note is that the $75,000 per location, and $300,000 overall, cap described in the previous section is only for the qualifying rent expenses for each qualifying period, not the subsidy amount that an entity can receive. The largest amount of the subsidy an entity can receive for each qualifying period (before the lockdown support described below) is 65 per cent of $75,000 (equal to $48,750) per location and 65 per cent of $300,000 (equal to $195,000) overall.

Lockdown Support

In the event of a lockdown or other mandatory public health order by a Federal or Provincial authority forcing a qualifying organization to temporarily shut down or suspend or limit operations at (or in relation to) the particular property in respect of which the subsidy is claimed, for a minimum of one week due to COVID-19, an additional amount (the rent top-up percentage) of 25 per cent of eligible expenses is available. Lockdown Support payments will only apply in respect of the actual duration of the shut down, and not the entire qualifying period.

How to apply

To apply, you will need the following information:

- The amounts one owes or has paid for all eligible expenses;
- The address for the property for which you are applying; and
- The name and contact information for your mortgage holder, if you have a mortgage on the property, and/or your landlord, if you rent the property.

The CRA advises that the application will only accept information for up to three properties. If one has more than three properties, they should enter the information for the three properties with the highest eligible expenses.

For affiliated entities, one will need to determine how they will split the limit for eligible expenses through an agreement. To apply, the following is needed:

- The number of affiliated entities in the agreement;
- The percentage assigned to the entity applying for CERS under the agreement with the affiliated entities;
- The business number of each affiliated entity; and

- The percentage assigned to each affiliated entity under the agreement.

Up to 10 affiliated entities can apply for CERS. For those businesses with more than 10 affiliated entities, the CRA advises that one should enter information with the 10 entities with the highest assigned percentages.

To apply, you must sign up for a My Business Account or register to represent a client. Upon signing into the My Business Account, you will have to create a CERS number, which is an option in the portal. You then must fill out the application form and select the period covered by the claim via a drop-down menu, which only displays the available periods. Then, populate all the required fields. To calculate the revenue drop, use the CRA calculator, found here.

An attestation by the individual with principal responsibility for the financial activities of the organization making the claim is required to make a CERS claim. Representatives must first obtain the attestation from this individual and then complete the confirmation section at the end of the application. The signed attestation must be provided upon request.

If you have direct deposit payments set up, the payments will take between three and eight days to appear. Any CERS amount received is taxable.

The CRA requires that one keep the information for all properties in records in case the CRA requires it at a later date. This includes the complete list of all affiliated entities and a printed summary of the calculation of subsidy amounts.

Fraudulent applications run the risk of fines or imprisonment. If someone knows or is involved in the making of a false statement or omission in a CERS application, they or their organization may be liable to a penalty of up to 50 per cent of the difference between the amount claimed in their application and the amount to which they are actually entitled.

Conclusion

We encourage those businesses and individuals who are eligible to apply for CERS to begin to immediately collect the required information and begin the application process.

BLG is happy to advise on CERS or to answer any questions that you may have regarding your property or your lease agreements. For any such questions, please contact our key contacts below.

[1] Department of Finance Canada News Release, “Government introduces legislation for new, targeted support to help businesses through pandemic”, November 2, 2020.

[2] *E.g.* having a payroll account and/or having employees in Canada.

By

Serge Lakatos, Shannon James, Peter Byrne, Lucas Kilravey

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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