

# Canada Emergency Rent Subsidy (CERS)

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## Tax News

Bill C-9, assented to on November 19, 2020, introduces the new Canada Emergency Rent Subsidy (CERS). This subsidy provides relief for expenses incurred by eligible businesses, registered charities (RCs) and non-profit organizations (NPOs) in connection with a real property used in the course of their business or other activities. This subsidy will take effect retroactively as of September 27, 2020 and will be offered until June 2021.<sup>1</sup>

**NEW!** The online calculator on the [CERS website](#) can be used to estimate the CERS amount. The first claims can be submitted since November 23, 2020. The CRA will begin processing them as of November 30<sup>th</sup> and expects to make the first direct deposit payments as of December 4<sup>th</sup>. It is expected that claims for the second eligibility period (October 25 to November 21, 2020) will be accepted as of November 30, 2020.

Here is an overview of this program, which is intended to replace the Canada Emergency Commercial Rent Assistance (CECRA) with a program similar to the one offered under the Canada Emergency Wage Subsidy (CEWS),<sup>2</sup> by providing direct assistance to qualifying entities, whether they are renters or owners of commercial property.<sup>3</sup> Additionally, while the CECRA has ended for federal purposes, owners of commercial property located in Quebec who availed themselves of this program are entitled to a top-up from the Quebec government. As such, they must complete the certificate on the CMHC website by **December 18, 2020**.

### CALCULATING THE SUBSIDY

The CERS provides a two-part subsidy, calculated on the eligible expenditures incurred by qualifying renters who have experienced a drop in their revenue for an eligibility period. The base portion covers up to 65% of eligible expenses. Additional assistance of 25% is offered to qualifying renters who had to temporarily cease their activities in a given location, due to public health restrictions. As such, the total

subsidy can be up to 90% for the most affected entities, subject to applicable expense ceilings.

### Base Subsidy

The CERS base rate is determined based on the level of the qualifying renter's drop in revenue for the given period. Qualifying renters can benefit from a base CERS at a maximum rate of 65% if their drop in revenue for the period is 70% and more. This rate is gradually reduced, as illustrated in the following table, when the drop in revenue is less than 70% for the period:

Drop in revenue %	Base CERS rate
▪ 70% and over	65%
▪ 50% to less than 70%	$40\% + [1.25 \times (\% \text{ drop in revenue} - 50\%)]$
▪ Less than 50%	$0.8 \times \text{drop in revenue \%}$

### Example – Calculating the base CERS rate

A qualifying renter who experienced a 60% drop in revenue can benefit from a CERS calculated at a rate of 52.5% (i.e.,  $40\% + [(60\% - 50\%) \times 1.25]$ ). If the renter's drop in revenue is 25%, its CERS will be calculated at a rate of 20% [i.e.,  $25\% \times 0.8$ ].

### Top-Up Subsidy

Qualifying renters who qualify for the base CERS can benefit from a top-up CERS if they are required, by reason of a public health restriction, to:

- completely shut down an eligible location; or
- cease some or all of their activities at an eligible location and it is reasonable to conclude that, during the previous reference period, the discontinued activities accounted for at least approximately 25% of the renter's revenue at that location.

**some elections (for example, election to use consolidated financial statements) may have an impact on the revenue reduction calculation for the two subsidies (CERS and CEWS) for a given period.**

<sup>3</sup> The CERS is paid directly to qualifying property owners and renters, without the latter requiring the participation of landlords. In this *Tax News*, the term "qualifying renter" means renters and owners of a location that qualifies for the CERS.

<sup>1</sup> Only the parameters applicable to the first three periods, i.e., from September 27 to December 19, 2020, are currently known. The *Tax News* will be updated to include the parameters applicable to subsequent periods when they will be known.

<sup>2</sup> Essentially, the CERS eligibility criteria are harmonized with those of the CEWS program. To find out more about the CEWS, consult the most recent version of [Tax News 954 – Wage Subsidies for Employers](#). It is our understanding that

The CERS top-up is calculated at a fixed rate of 25%. If the public health restrictions require qualifying renters to cease activities for only a part of the eligibility period, the top-up calculation is pro rated as follows:

$$25\% \times \frac{\text{Number of days in the period in which the location is subject to public health restrictions}}{\text{Number of days in the period}}$$

### Public health restriction

A public health restriction means a decree or order issued by an authorized government authority<sup>4</sup> requiring the entity to cease, some or all of its activities taking place at the qualifying location as a result of COVID-19, to the extent that:

- the order is limited in scope based on one or more factors such as a geographical location, activity sector or a particular risk associated with a type of business or activity;
- failure to comply with the order constitutes a federal or provincial offence or may result in a penalty (monetary or otherwise) imposed by a federal or provincial body;<sup>5</sup>
- the order covers a period of at least one week.

## ELIGIBILITY CONDITIONS

### Eligible entities

Entities that qualify for the CERS are the same as those qualifying for the CEWS program, that is, essentially the following entities, other than an excluded public institution:<sup>6</sup>

- Taxable corporations and trusts;
- An individual;
- A partnership where at least 50% of the interest is owned directly or indirectly by eligible entities;
- An RC or NPO;<sup>7</sup>
- Certain Indigenous government-owned corporations and entities that are carrying on a business;
- Private colleges and schools, including institutions that offer specialized services, such as arts schools, driving schools, language schools or flight schools.

### Active account with the CRA

To be eligible for the CERS, the eligible entity must meet one of the following criteria:

- Have a Payroll Deductions (RP) account with the Canada Revenue Agency (CRA) as of March 15, 2020, or have used the services of a payroll service provider as of that date;
- Have a Business Number (BN) as of September 27, 2020.

Other eligibility conditions could be added by regulation.

## ELIGIBLE EXPENSES AND CEILING

The CERS is calculated on eligible expenses paid for a given qualifying period in respect of an eligible location, up to the applicable ceilings.

Eligible expenses must meet the following conditions:

- Be related to a property located in Canada;
- Be paid to a person dealing at arm's length;
- Be incurred pursuant to a written agreement entered into before October 9, 2020;<sup>8</sup>
- Not be incurred in relation to a residential building<sup>9</sup> or a building that is used primarily to earn rental income from a person dealing at arm's length.

**NEW!** Eligible expenses for a given period are those payable with respect to this period; the amount does not have to be actually paid during the given period or have been paid when the claim is submitted. Amounts due (payable) for a given period are eligible for the CERS if the claimant confirms its intention to pay them within 60 days of receiving the CERS payment for the period in question and if they are actually paid within that period.

### Eligible expense ceiling

A \$75,000 eligible expense ceiling applies for each qualifying period, in respect of each eligible location.

Furthermore, for each qualifying period, an overall ceiling of \$300,000, to be shared among affiliated entities,<sup>10</sup> applies for the purposes of the base CERS.<sup>11</sup> The top-up CERS is not covered by this overall \$300,000 ceiling.

The following table indicates the maximum amount that can be claimed, for a given period, under the base and top-up CERS, according to the applicable eligible expense ceiling.

<sup>4</sup> That is, a 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.

<sup>5</sup> The closure order must not, however, result from the violation of an otherwise valid health order.

<sup>6</sup> To find out more about eligible entities, consult the most recent version of [Tax News 954—Wage Subsidies for Employers](#).

<sup>7</sup> Including, among others, labour organizations, registered Canadian amateur athletic associations and registered journalistic organizations.

<sup>8</sup> Payments may also result from the renewal (on substantially similar terms) or assignment of a written agreement entered into before October 9, 2020.

<sup>9</sup> Expenses relating to an individual's main or secondary residence (e.g., a cottage) are not eligible for the CERS.

<sup>10</sup> The concept of affiliated persons is more restrictive than that of related or associated persons. Briefly, an individual is affiliated with him/herself and his/her spouse. A corporation is affiliated with the person that controls it and with that person's spouse and any corporation controlled by one of these individuals or a group of affiliated persons. A corporation may also be affiliated with a partnership if it is controlled by the latter. To this end, if two entities are affiliated with the same third entity, they are deemed affiliated amongst themselves.

<sup>11</sup> This overall ceiling applies to both an affiliated group and an eligible renter with several eligible locations. Such a renter could therefore claim a base CERS on maximum expenses of \$75,000 per location up to a total amount of \$300,000 in eligible expenses for a given period. If the renter is part of an affiliated group, the \$300,000 ceiling must be allocated among the group entities.

Maximum amount per period	Expense ceiling	Maximum CERS	
		Base	Top-up
Per location	\$75,000	\$48,750	\$18,750
Per entity (including affiliated entities)	\$300,000	\$195,000	No ceiling

### Example – Eligible expense ceiling<sup>12</sup>

MovieCastle Group is a chain of six cinemas. MovieCastle Group fully owns each cinema, which are all incorporated separately. In September, revenues were down 70%, and in October, revenues were down over 80%. MovieCastle Group and its companies incurred rent costs of \$600,000 in respect of the period.

Under the CERS, MovieCastle Group will be eligible for a base subsidy rate of 65% on a maximum of \$300,000 of rent expenses per period. At each location, only the first \$75,000 of rent expenses is eligible for the subsidy. If the six members decide to divide the maximum \$300,000 for the group equally amongst the group; each therefore can claim \$50,000 in eligible expenses. The total group benefit will be \$195,000 (i.e. 65% of \$300,000).

### Eligible expenses of a renter

Eligible expenses include rent expenses for using or for the right to use the eligible commercial location, including:<sup>13</sup>

- gross rent;
- rent based on a percentage of sales, profit or similar criteria;
- amounts payable under a net rent lease as minimum rent, regular payments of operating and ancillary fees,<sup>14</sup> property taxes, school and municipal taxes and other similar taxes.

Eligible expenses must be reduced by any amount reimbursed or refundable to the renter, directly or indirectly by a person dealing at arm's length, including, but not limited to, amounts received by the renter in respect of the sublease of the particular location.

The following expenses **do not qualify** as a commercial rent expense:

- Sales taxes;
- Amounts paid as damages, guarantees and amounts resulting from a default under an agreement;
- Interests and penalties on unpaid amounts;
- Fees payable on discrete items or special services;
- Reconciliation adjustment payments.

<sup>12</sup> Example taken from the [CERS information document published by Finance Canada](#) on November 5, 2020. For an example of how to take into account the base CERS and top-up CERS, see the document [Lockdown Support for Businesses Facing Significant Public Health Restrictions](#) published on November 5, 2020.

<sup>13</sup> Certain amounts received by the owner under the CE CRA program in respect of the given eligibility period may be considered an eligible expense if they would otherwise have to be reimbursed to the renter.

<sup>14</sup> Including insurance, utilities, and common area maintenance fees customarily charged to the renter under a net lease, as well as regular instalments of other amounts payable to the lessor for services ancillary to the rental of real property that are customarily supplied or rendered in connection with the rental of such property.

### Eligible expenses of a property owner

Expenses paid in respect of a location owned by a qualifying renter may qualify for the CERS to the extent that the building is not used primarily (50% or more) to earn rental income from a person dealing at arm's length.<sup>15</sup>

If an owner leases commercial premises to an entity with which it does not deal at arm's length and that entity uses the premises to earn business income, the owner of the building will be allowed to claim the CERS on its eligible expenses, to the extent that its drop in revenue allows it to qualify as such.<sup>16</sup> The renting entity will not be allowed to claim the CERS for its commercial rent expenses; as these expenses are paid to an entity with which it does not deal at arm's length, they do not qualify as eligible expenses for the purposes of the CERS.

Eligible expenses for the CERS as the owner of a location include:

- mortgage interest, as long as this expense does not exceed the interest that would be calculated on the lesser of the following amounts:
  - the lowest total principal amount secured by a mortgage on the property at any time after it was acquired;<sup>17</sup>
  - the cost amount of the property;<sup>18</sup>
- amounts paid for insurance on the property;
- property, school and municipal taxes and other similar taxes paid on the property.

### ELIGIBILITY PERIODS AND DROP IN REVENUE

Like the CEWS, the CERS is payable on a monthly basis (eligibility period) and the rate for each period is based on the drop in revenue for a reference month, according to the following table:

Eligibility period <sup>19</sup>	Reference month
■ September 27 to October 24, 2020	October 2020
■ October 25 to November 21, 2020	November 2020
■ November 22 to December 19, 2020	December 2020

Determining the drop in revenue for the purposes of the CERS is calculated based on the rules applicable to the CEWS. As such, the drop in revenue for a period is determined by comparing revenue of a reference month in 2020 with that of the same month in 2019 or with the average revenue of January and February 2020. The approach must be the same as the one selected for CEWS purposes and must be maintained for all CERS periods. Finally, for each period, the drop

<sup>15</sup> If the property is used primarily to earn rental income directly or indirectly from a person with whom the owner does not deal at arm's length, that person (renter) must use the property primarily to earn income other than rental income.

<sup>16</sup> **ELECTIONS TO CONSIDER!** If the property is held in a company that is separate from the operating company, the companies in the group may consider to establish their drop in revenue on a consolidated basis or to apply the rules allowing income from a non-arm's length entity to be considered, by making the elections available for that purpose. For more details about these elections, consult the most recent version of [Tax News 954 – Wage Subsidies for Employers](#).

<sup>17</sup> Excluding any temporary period between the release of an existing mortgage and the registration of a new mortgage at the time of a refinancing operation.

<sup>18</sup> The cost amount of land is its adjusted cost base and the cost amount of a building is essentially its undepreciated capital cost (UCC).

<sup>19</sup> These periods correspond to periods 8 to 10 of the CEWS program.

in revenue will be equal to that calculated for the previous month, if it is greater.

The table in Appendix 1 illustrates the reference periods that can be used to determine the drop in revenue for CERS purposes.

Eligible revenue for the purposes of applying the drop in revenue test criterion is the same as that used to calculate the CEWS. Essentially, it is income derived from the entity's normal activities in Canada from independent sources, determined using its normal method of accounting, taking into account the various elections made by the entity for this purpose (election to compute income on a cash or accrual basis, election to use consolidated financial statements within an affiliated group of companies, etc.).<sup>20</sup>

## CERS CLAIMS

Eligible renters can submit a claim online using the CRA's [My Business Account](#) portal or [Represent a Client](#) service. Entities that have not signed up for [My Business Account](#) are invited to do so.<sup>21</sup>

Claims for a given eligibility period may be submitted after the end of the period in question and must be submitted in the 180 days after the end of that period.

The individual who has principal responsibility for the claimant's financial activities must attest that the application is complete and accurate in all material respects. That individual must also certify that the entity intends to pay the expenses in the claim within 60 days of receiving the CERS for that period.<sup>22</sup>

## TAXABLE GOVERNMENT ASSISTANCE

The CERS is considered to be government assistance and must be included in the beneficiary's taxable income. For this purpose, the CERS is deemed to be received immediately before the end of the period to which it relates. It is therefore taxable in the taxation year that includes the last day of the claim period rather than when it is actually received.

## CECRA TOP-UP IN QUEBEC

The CECRA was established in April 2020 by the Government of Canada to provide a rent reduction for small businesses affected by COVID-19. In connection with this program administered by CMHC, building owners could grant a rent reduction of at least 75% for the months of April to September to small businesses renting a commercial space. If the conditions were met, the CECRA paid the owners up to 50% of the subject rent. Lessees were supposed to pay up to 25% of the rent, and the owners were supposed to waive the remaining 25%.

Following the implementation of the CECRA program, the Quebec government announced that it would offer compensation to owners of commercial properties located in Quebec who had agreed to absorb a 25% loss by registering with the CECRA. These eligible owners will thus receive an amount equal to 12.5% of the total cost of rent, which will reduce their losses by half.

**IMPORTANT!** Owners who received CECRA funds for property located in Quebec are automatically eligible for this compensation. They do not have to produce new claim documents (certificates, rent reduction agreements), but they do have to log on to the CECRA portal using their username and password and accept the terms and conditions of the forgivable loan from the Province of Quebec in the portal.

This process must be carried out **by December 18, 2020**, to be eligible. No exceptions or extensions will be granted.<sup>23</sup>

Do not hesitate to contact your Raymond Chabot Grant Thornton advisor who can help you determine which measures apply to your situation and assist you with the steps needed to benefit from these measures. Do not hesitate to contact us.

For more information, visit us at [rcgt.com](http://rcgt.com). [rcgt.com](http://rcgt.com)

<sup>20</sup> To find out more about calculating the eligible income for the CEWS and the various options offered in this regard, consult the most recent version of [Tax News 954 – Wage Subsidies for Employers](#).

<sup>21</sup> For additional information, go to the [CERS portal](#).

<sup>22</sup> See the [legislative proposals](#) and [news release](#) published on November 19, 2020 regarding this requirement.

<sup>23</sup> For additional details, see the [CMHC's website](#).

APPENDIX 1 — CERS REFERENCE PERIODS<sup>24</sup>

Period	Eligibility period	General approach	Alternative approach
Period 1 (CEWS P8)	September 27 to October 24, 2020	<ul style="list-style-type: none"> <li>▪ October 2020 over October 2019 <b>or</b></li> <li>▪ September 2020 over September 2019</li> </ul>	<ul style="list-style-type: none"> <li>▪ October 2020 <b>or</b> September 2020 over average of January and February 2020</li> </ul>
Period 2 (CEWS P9)	October 25 to November 21, 2020	<ul style="list-style-type: none"> <li>▪ November 2020 over November 2019 <b>or</b></li> <li>▪ October 2020 over October 2019</li> </ul>	<ul style="list-style-type: none"> <li>▪ November 2020 <b>or</b> October 2020 over average of January and February 2020</li> </ul>
Period 3 (CEWS P10)	November 22 to December 19, 2020	<ul style="list-style-type: none"> <li>▪ December 2020 over December 2019 <b>or</b></li> <li>▪ November 2020 over November 2019</li> </ul>	<ul style="list-style-type: none"> <li>▪ December 2020 <b>or</b> November 2020 over average of January and February 2020</li> </ul>

<sup>24</sup> **IMPORTANT!** The same approach must be used for all CERS periods and must correspond to the one adopted for CEWS purposes. Entities eligible for both programs that have already claimed the CEWS for periods 5 and following must therefore keep the method used for this purpose (the same method must be kept for periods 5 and following for purposes of the CEWS). In these circumstances, an entity that wishes to change its election may file amended CEWS claims for the relevant periods within 180 days of the end of each concerned period.