The Canada Emergency Wage Subsidy: The Canada Revenue Agency takes action

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In response to the pandemic, the Canadian government launched in the spring of 2020 the Canada Emergency Wage Subsidy (the "**CEWS**"), a program that provides employers with a subsidy based on the remuneration paid to their employees and income they lost during the pandemic.

Section 125.7 of the *Income Tax Act* (the "**ITA**") sets out how the subsidy is to be calculated, and likely caused problems for those who had to interpret this ambiguous provision without supporting doctrine or jurisprudence. For instance, calculating the "qualifying revenue," which is central to the CEWS calculation, involves many nuances. As an example, it requires that an entity's revenue during qualifying periods be estimated and that certain items be excluded, such as "extraordinary items," a term new to the ITA. The calculation of "eligible remuneration," another important component of the CEWS calculation, also has a number of peculiarities, such as the inclusion of remuneration for related and managerial employees.

The Canada Revenue Agency ("**CRA**") now has taxpayer's CEWS calculation in its sights. The CRA began auditing CEWS claims and issuing notices of assessment to taxpayers in an effort to reduce the amount of CEWS originally granted. With reductions in pre-pandemic period qualifying income or the inclusion of items that taxpayers had initially excluded in their qualifying period income, such assessments are likely to have a significant impact on the CEWS amounts to which taxpayers were entitled, especially for companies with a large number of employees. In specific cases, the CRA may also impose penalties which can be as high as 50% of the excess subsidy claimed.

Although the time limit for amending CEWS claims has expired, submitting a fairness request to amend a previously filed claim may be possible in some circumstances. Moreover, when notices of assessment are issued, a notice of objection may be filed to contest the adjustments made by the CRA. It is important to keep all documentation related to the calculation of the "qualifying revenue," your employees' remuneration and any other accounting documents to support the CEWS amounts claimed. A proactive approach and early intervention in a CEWS audit will not only result in a more favourable outcome in a given case, but will also prevent many back-and-forths with the CRA. Lavery's tax law team is familiar with the CEWS program and its intricacies, and can assist you

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should you be audited or should you receive a notice of assessment from the CRA.

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