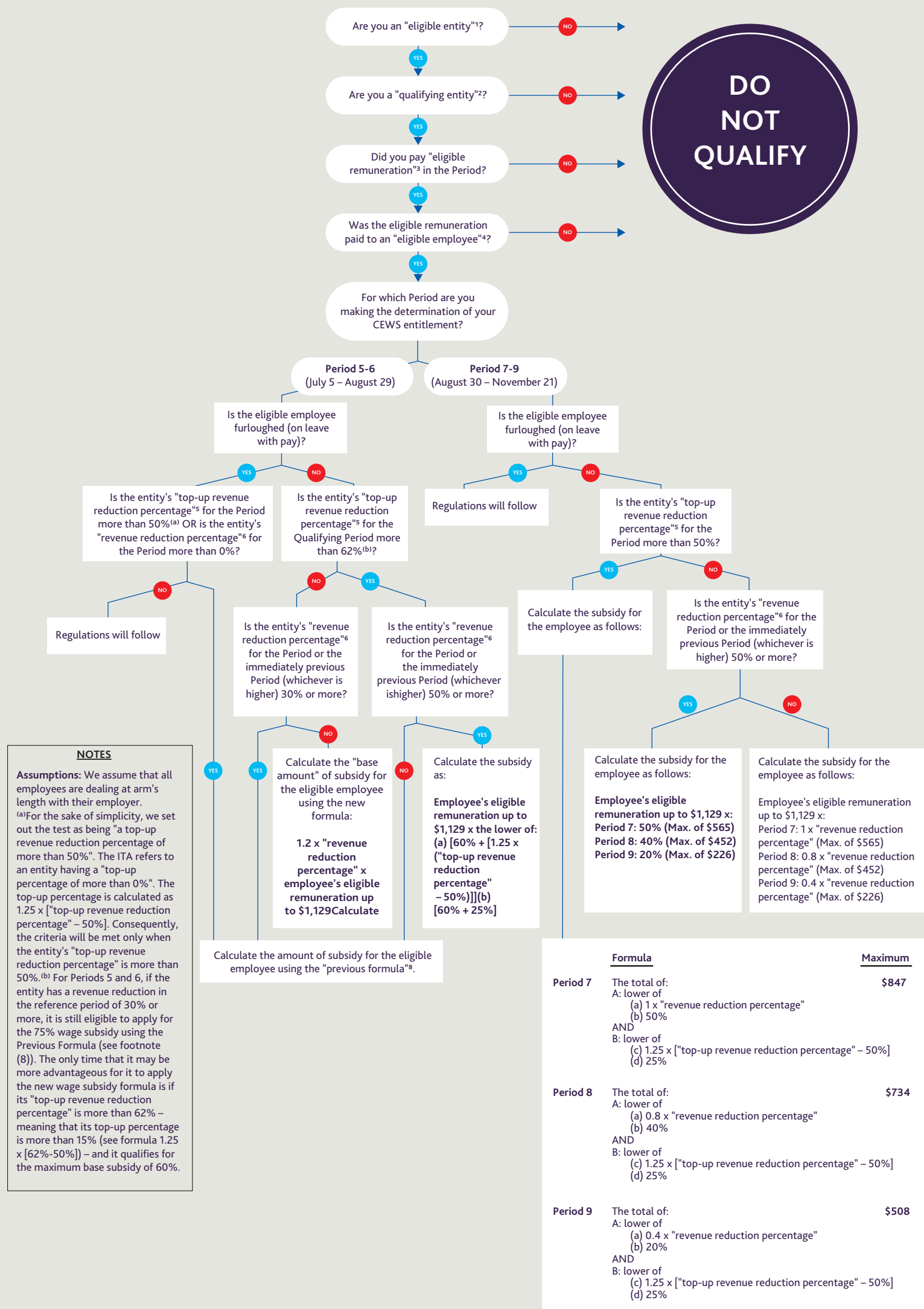


DETERMINING THE AMOUNT OF SUBSIDY PER WEEK THAT MAY BE CLAIMED IN RESPECT OF AN EMPLOYEE IN PERIOD 5 TO PERIOD 9 (JULY 5 – NOVEMBER 21)



# DETERMINING THE AMOUNT OF SUBSIDY PER WEEK THAT MAY BE CLAIMED IN RESPECT OF AN EMPLOYEE IN PERIOD 5 TO PERIOD 9 (JULY 5 – NOVEMBER 21)

## DEFINITIONS

All definitions that have changed for Period 5 to Period 9 as compared to the definitions in force for Period 1 to Period 4 are identified below by an asterisk\*.

All references to a "Period" are a reference to a "qualifying period" which are listed in Chart 1 and Chart 2.

1. **"Eligible Entity"**\* means:

- (a) a corporation or a trust (other than a corporation or a trust that is tax-exempt or that is a "public institution") [but see **NOTE** below],
- (b) an individual, other than a trust,
- (c) a registered charity (other than a public institution),
- (d) a person that is exempt from tax because of paragraphs 149(1)(e) (agricultural organization, board of trade or chamber of commerce), 149(1)(j) non-profit corporation for SR&ED), 149(1)(k) (labour organization) or 149(1)(l) (non-profit organization) (other than a public institution) of the Income Tax Act ("ITA"),
- (e) a partnership, provided that the fair market value of interests in the partnership held by members that are not eligible entities at all times in the Period does not exceed 50% of the fair market value of all interests in the partnership, or
- (f) a prescribed organization.

A **public institution** will not qualify for the CEWS. For these purposes, a "public institution" is defined to mean:

- (a) an organization described in any of paragraphs 149(1)(a) to (d.6) of the ITA (e.g. municipalities, First Nations bands, local governments, crown corporations, municipal corporations), or
- (b) a school, school board, hospital, health authority, public university or college.

**NOTE:** Notwithstanding the general ineligibility of tax-exempt corporations and public institutions for the CEWS, on May 15, 2020, the Federal Government announced that the following entities would be "eligible entities" for purposes of the CEWS, retroactive to April 11, 2020:

- (a) Indigenous government-owned corporations that carry on a business and are tax-exempt under paragraphs 149(1)(d.5) or (d.6) of the ITA, as well as partnerships where each partner of the partnership is either an Indigenous government or an eligible employer;
- (b) national level Registered Canadian Amateur Athletic Associations (RCAAs) that are tax-exempt under paragraph 149(1)(g) of the ITA (provincial, regional and local members of an RCAA were already considered eligible as non-profit organizations);
- (c) registered journalism organizations that are tax-exempt under paragraph 149(1)(h) of the ITA; and
- (d) non-public educational and training institutions, including for-profit and not-for-profit institutions such as private colleges and private schools, as well as arts schools, language schools, driving schools, flight schools and culinary schools.

2. **"Qualifying Entity"**\* means:

an "eligible entity" that meets the following conditions with respect to a Period (see Chart 1 or Chart 2 for the list):

- (a) it files an application for the Period on or before January 31, 2021;
- (b) an individual with principal responsibility for the employer's financial activities must attest that the application is correct and complete in all material respects; and
- (c) as of March 15, 2020 (i) it was registered for a Canada Revenue Agency ("CRA") payroll account or (ii) it employed one or more individuals in Canada and the payroll was administered by a payroll service provider that had a CRA payroll account through which remittances were made for the employer.

**NOTE:** for Periods 1 to 4 (i.e., from March 15 to July 4), the entity must also have suffered a reduction in "qualifying revenue" of at least 30% as compared to qualifying revenue for the prior reference period. This requirement no longer applies in Periods 5 through 9.

3. **"Eligible Remuneration"** means:

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salary, wages, fees, commissions and other remuneration such as taxable benefits but will exclude a retiring allowance and stock option benefits. Employer-controlled tips and tips required by Quebec law to be declared to the employer are eligible but tips paid directly to the employee are not. Sick pay, vacation pay and statutory holiday pay is also generally eligible, provided that it is paid in respect of a week in a claim period.

There are rules to prevent the artificial inflation of remuneration paid during a claim period, such as (i) amounts that can reasonably be expected to be paid or returned to the eligible employer or a person not dealing at arm's length with the employer (such as loans or advances for the "extra" 25% of normal salary that is not covered by the subsidy), and (ii) temporary increases in salary above the employee's baseline remuneration as part of an arrangement one of the main purposes of which was to increase the employer's subsidy claim. Arguably, these anti-avoidance rules should not apply to prevent the employer from claiming the subsidy in circumstances where the wage increase is due to industry-wide pay increases in the form of hazard pay.

4. **"Eligible Employee"\* means:**

an individual employed in Canada during the Period.

**NOTE:** For Periods 1 to 4 (i.e., from March 15 to July 4), an employee who was without remuneration from the employer in respect of 14 or more consecutive days during the qualifying period was excluded.

5. **"Top-up Revenue Reduction Percentage":**

$$\left\{ 1 - \frac{\text{average monthly "qualifying revenue" for the last three months that end prior to the "current reference period"}}{\text{average monthly "qualifying revenue" for the "prior reference period" as elected}} \right\}$$

For the applicable "current reference period" and "prior reference period" and elections for Period 5 and Period 6 see Chart 1.

6. **"Revenue Reduction Percentage" :**

$$\left\{ 1 - \frac{\text{"qualifying revenue"(7) for the "current reference period"}}{\text{qualifying revenue for the "prior reference period"}} \right\}$$

For the applicable "current reference period" and "prior reference period" and elections for Period 5 and Period 6 see Chart 2.

7. **"Qualifying Revenue" means:**

the inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the eligible employer, subject to certain additional rules:

- (a) A registered charity is required to include revenue from businesses unrelated to the purposes of the charity if substantially all persons employed by the charity in the carrying on of that business are not remunerated for that employment, but may elect to exclude funding received from government sources. Once a registered charity has elected to include or exclude funding received from government sources, the chosen method must be applied consistently throughout the duration of the CEWS program;
- (b) Eligible employers exempt from tax under paragraphs 149(1)(e), (j), (k) or (l) ITA are required to include membership fees and other amounts received in the course of their ordinary activities, but may elect to exclude funding received from government sources. Once such an employer has elected to include or exclude funding received from government sources, the chosen method must be applied consistently throughout the duration of the CEWS program;
- (c) In all cases, extraordinary items, amounts derived from non-arm's length persons or partnerships, amounts eligible for refund under the CEWS, and amounts deemed to have been remitted by the employer under the 10% Wage Subsidy are to be excluded;
- (d) Employers that use the accrual method can elect to use the cash method, and vice versa, provided that the election must apply for all qualifying periods.

"Extraordinary items" are defined by the CRA as items having the following characteristics:

- (a) not be expected to occur regularly or frequently within several years (excludes grants or other government assistance that an entity is eligible to receive on a regular or reoccurring basis);
- (b) not typical of the normal activities or risks inherent in the normal operations of the entity (compare to usual services or products offered); and
- (c) primarily out of the control of owners or management.

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Special rules are available for corporate groups in an effort to allow them to meet the reduction in revenue condition as follows:

- (a) where a group of eligible employers normally prepares consolidated financial statements, each member of the group may choose to each determine its qualifying revenue separately, provided that each member of the group uses the same basis;
- (b) if an affiliated group of eligible employers jointly elect, the consolidated qualifying revenue of the group determined in accordance with relevant accounting principles is to be used for each member of the group;
- (c) an eligible employer that is wholly owned by the joint venture participants and receives 90% or more of its qualifying revenue is in respect of the joint venture may use the qualifying revenues of the joint venture instead of its own qualifying revenues;
- (d) if 90% or more of the eligible employer's revenue for a qualifying period is from one or more non-arm's length entities, and a joint election is made, then the eligible employer's qualifying revenue for the current reference period is calculated by reference to the reduction in the non-arm's length entities' worldwide qualifying revenues from arm's length sources;
- (e) corporations formed on the amalgamation of two or more predecessor corporations (or where one corporation is wound up into another) might not qualify for the CEWS since they would not have benchmark revenues to demonstrate a revenue decline or their benchmark revenues may not provide an accurate picture of the pre-crisis revenues. A new corporation formed on an amalgamation will generally be permitted to calculate benchmark revenue using the combined revenues of the predecessors.
- (f) an acquisition of business assets by an employer could hamper the employer's ability to demonstrate a decline in revenue. The rules now provide that an employer that acquired assets from a seller, the fair market value of which constituted all or substantially all the fair market value of the assets of the seller used in carrying on a business in Canada, can generally elect (jointly with the seller if the seller remains in existence) to include in its revenue computation for the relevant reference period the seller's revenue from the acquired assets for the relevant period.

## 8. "Previous Formula" means:

The greater of:

1. the least of
    1. 75% of eligible remuneration paid to the eligible employee in the week,
    2. \$847, and
    3. If the eligible employee does not deal at arm's length with the employer, nil, and
  2. the least of
    1. the eligible remuneration paid to the eligible employee in the week,
    2. 75% of baseline remuneration in respect of the eligible employee for the week, and
    3. \$847,
- Less
3. the amounts deemed to have been remitted by the employer under the 10% Wage Subsidy (whether or not the employer has reduced its actual payroll remittances accordingly),
- less
4. amounts received by the eligible employee for the week as a work-sharing benefit under the Employment Insurance Act,
- plus
5. if the employee was on leave with pay for the week, the amount payable by the eligible employer as employer premiums or contributions under the Canada Pension Plan, a provincial pension plan, the Employment Insurance Act or Quebec's Act respecting parental insurance, in respect of the eligible employee.

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Chart 1 – Applicable Reference Periods and Elections for Calculating Revenue Reduction Percentage

For each Qualifying Period, the revenue reduction is calculated based on the decline in revenue in the following reference periods:

Period	Qualifying Period	Reference Period For Eligibility (general)	Alternative Reference Period
Period 5	July 5 – August 1, 2020	July 2020 over July 2019; <u>or</u> June 2020 over June 2019	July <u>or</u> June 2020 over average of January and February 2020
Period 6	August 2 – August 29, 2020	August 2020 over August 2019; <u>or</u> July 2020 over July 2019	August <u>or</u> July 2020 over average of January and February 2020
Period 7	August 30 – September 26, 2020	September 2020 over September 2019; <u>or</u> August 2020 over August 2019	September <u>or</u> August 2020 over average of January and February 2020
Period 8	September 27 – October 24, 2020	October 2020 over October 2019; <u>or</u> September 2020 over September 2019	October <u>or</u> September 2020 over average of January and February 2020
Period 9	October 25 – November 21, 2020	November 2020 over November 2019; <u>or</u> October 2020 over October 2019	November <u>or</u> October 2020 over average of January and February 2020

Chart 2 – Applicable Reference Periods and Elections for Calculating Top-Up Revenue Reduction Percentage

The government proposes to determine the eligibility for the top-up subsidy by calculating a three-month revenue decline, as follows:

Period	Qualifying Period	Reference Period For Eligibility (general)	Alternative Reference Period
Period 5	July 5 – August 1, 2020	Average of April to June 2020 over average of April to June 2019	Average of April to June 2020 over average of January and February 2020
Period 6	August 2 – August 29, 2020	Average of May to July 2020 over average of May to July 2019	Average of May to July 2020 over average of January and February 2020
Period 7	August 30 – September 26, 2020	Average of June to August 2020 over average of June to August 2019	Average of June to August 2020 over average of January and February 2020
Period 8	September 27 – October 24, 2020	Average of July to September 2020 over average of July to September 2019	Average of July to September 2020 over average of January and February 2020
Period 9	October 25 – November 21, 2020	Average of August to October 2020 over average of August to October 2019	Average of August to October 2020 over average of January and February 2020