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What you need to know if you're an Indigenous-owned business impacted by COVID-19

The recent outbreak of COVID-19 has severely disrupted Indigenous-owned businesses across the country. Businesses are being forced to scale back operations, lay off employees or shut down entirely, with Indigenous businesses in remote communities at risk of falling deeper into economic isolation.

This blog discusses some measures that can be taken to help relieve your business from the impacts of COVID-19, with a focus on the federal government's [Economic Response Plan](#) aimed at small and mid-size business relief.

In writing this blog, I recognize that remote Indigenous businesses may not be able to fully take advantage of these measures. The federal government's response, thus far, has not adequately addressed the unique economic needs of operating in remote regions across Canada. We hope to see a shift away from the "one-size fits all" approach to assisting these businesses.

This blog will continue to be updated as the Economic Response Plan and corresponding relief measures develop further.

Providing Essential Services vs. Forcing to Shut Down

Most provinces across Canada are allowing certain businesses to stay open while others are forced to shut their doors. The Ontario government has created a [list of businesses](#) that identifies the businesses that can stay open because they provide "essential services." Non-essential businesses are being asked to shut down. Some examples of businesses that can stay open because they provide essential services include:

- Law firms;
- Grocery stores; and
- Gas stations.

You will want to review the list of businesses providing essential services relevant to the province(s) in which you operate your business.

Struggling to Pay Rent and Meet other Contractual Obligations

With the disruption of business operations, many businesses and individuals are concerned about being able to pay their rent and/or meet other contractual obligations (e.g., paying a supplier).

Your lease or contract may have provisions relating to “unforeseen circumstances” that could provide you some flexibility in meeting your obligations. For example, many contracts often have what are called “force majeure” clauses – these clauses will apply in situations where a contracting party cannot meet their obligations because of some unforeseen circumstance (typically, circumstances that are beyond their control).

Whether COVID-19 is a “force majeure” can depend on many factors, such as the specific wording of the contract and whether or not there is an impact on a contracting party’s ability to fulfill their obligations. Where a force majeure provision applies, it can excuse a contracting party from fulfilling his or her obligations, although there will still be an obligation on that party to take steps to mitigate the impacts. Some “force majeure” clauses specifically identify the unforeseen circumstances that will be covered, while other agreements are silent and leave it to the parties to determine what is covered if and when an event arises.

If there is any language in your contract that specifically covers communal diseases or pandemics, this would likely weigh in favour of finding that COVID-19 falls within the definition of “force majeure.”

A second relevant legal principle is referred to as “frustration of contract.” This is a principle at law that covers situations in which a contracting party cannot perform a contract because it’s become impossible, and as a result, it would be unjust to require someone to still be bound by the contract and fulfill his or her obligations under the contract.

If there are no applicable clauses in your contract, then you can approach the landlord or other contracting party directly and see whether they are willing to negotiate some type of arrangement.

It is also possible that your insurance will have some type of business interruption insurance payments, but a careful review of your insurance policy should be made.

Keeping Employees on Payroll

For businesses that have slowed and to prevent lay-offs, the federal government recently announced that up to 75% wage subsidy on the first \$58,700 of an employee’s earnings (or \$847 a week) would be provided to qualifying businesses for up to three months, retroactive to March 15, 2020. Please refer to my colleague Judith Rae’s [blog](#) if you want to learn more about this policy.

Meeting Tax Filing Deadlines

The Canada Revenue Agency (“CRA”) has indicated that it will delay Part I income tax filings as follows:

- For individuals who run sole proprietorships – June 15, 2020
- For trusts (with December 31 taxation years) – May 1, 2020
- For trusts (with filing due dates in April or May) – June 1, 2020
- For corporations (with filing due dates between March 19 and May 31) – June 1
- For partnerships – May 1

There are no extensions for filing GST/HST returns. However, the CRA will not impose penalties if you file your return late so long as you file it by June 30, 2020.

The deadline to remit GST/HST, however, has been extended to June 30, 2020 for:

- monthly filers, the February, March and April 2020 reporting periods;
- quarterly filers, the quarterly periods ending between January 1, 2020 and March 31, 2020; and
- annual filers, the GST/HST remittances and instalments due in March, April or May 2020.

Anyone trying to contact the CRA will experience long wait times as there are fewer agents and they have limited the times they are open. See schedules [here](#).

Collections on Tax Debts and Audit Delays

The CRA will be temporarily suspending collection activities on new debts and are offering flexible payment arrangements for existing tax debts as of March 19, 2020.

The CRA is suspending all garnishment notices for the time being.

The CRA has also indicated that there may be relief for taxpayers who cannot make a payment because of circumstances beyond their control. You can request to waive or cancel penalties and interest owing on outstanding tax liabilities. Further, if you owe the CRA money, payment arrangements are available on a case-by-case basis. To seek any type of relief, we recommend discussing this with a lawyer to determine whether you qualify and how to best approach the CRA.

The CRA says it will temporarily suspend most audits with taxpayers and representatives for the vast majority of businesses. In particular, the CRA will not contact any small or medium-size businesses to initiate any post assessment GST/HST or Income Tax audits for four weeks.

Accessing Credit

Business Credit Availability Program

The federal government has established a Business Credit Availability Program (“**BCAP**”) which will make an additional \$65 billion of credit available to businesses struggling to deal with the effects of COVID-19 and otherwise have a viable business model.

The BCAP targets small and medium-sized businesses and will operate through the Business Development Bank of Canada (“**BDC**”) and Export Development Canada (“**EDC**”). There are two types of relief under this program:

- **Loan guarantee.** EDC is offering guarantees on loans of up to \$5 million with major financial institutions (e.g., CIBC and RBC) to ensure that companies can access more cash immediately.
- **Co-lending.** BDC is working with financial institutions to issue new credit for loans of up to \$6.25 million.

To access the BCAP, the federal government suggests first contacting your bank who will in turn reach out to BDC and EDC to access either program as needed.

Canada Emergency Business Account

This is a new loan program that will provide not-for-profit organizations and small businesses interest-free loans of up to \$40,000 to cover operating costs when revenues are reduced. Up to \$10,000 of that amount will be eligible for complete forgiveness if \$30,000 is fully repaid on or before December 31, 2022. Details will be issued by each major bank.

To qualify, these organizations will need to demonstrate they paid between \$50,000 to \$1 million in total payroll in 2019. The loan becomes available beginning the week of April 6.

This program may be of interest to the many Indigenous governments that administer band governance through not-for-profit corporations.

Bank of Canada Lowers Interest Rates

The Bank of Canada has lowered interest rates, which will have the overall effect of enabling businesses to access credit at lower interest rates.

Support for Remote Indigenous Communities

When it became clear that COVID-19 was a global pandemic, there was grave concern regarding the potential effects on remote Indigenous communities, and on their ability to cope. The reality is that the costs of doing business in the north are high – supply chain’s are vulnerable to disruption, access to capital is limited, infrastructure such as Internet is lacking, and resources

are scarce. The solution of having employees work remotely to keep businesses operating (and government's functioning) is not a practical or even possible solution.

In addition to the above, the economic opportunities are few. Businesses in the north are often operating in some of the most vulnerable industries – e.g., accommodations, foods, mining, and retail.

Government policies targeting small to mid-size businesses need to focus on addressing supply chain disruptions in remote communities and access to affordable capital without the restrictive qualifications that we see in some of the federal government's current access to credit programs. Without such initiatives, remote Indigenous economies face the risk of closing, which will have unprecedented negative effects to life in the north.

This is a general snapshot of how Indigenous businesses can potentially seek relief from the impacts caused by COVID-19. For more specific information on any of these measures, for example, if you are trying to secure financing, feel free to contact OKT Law directly.