

CEWS Prioritized Questions & Issues

Canadian Tax Foundation / CPA Canada CEWS Working Group

April 21, 2020

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Introduction

As part of the ongoing communications with the Canada Revenue Agency (CRA), CPA Canada and the Canadian Tax Foundation formed a working group to review the Canada Emergency Wage Subsidy (CEWS) and organize feedback that members and stakeholders are passing on. As part of this work, the CRA asked this working group to send a short list of key priorities that should be dealt ahead of the other issues that have been accumulated so far. We have reproduced the questions that were communicated to the CRA (on April 21, 2020) below.

Update: There have been several developments since we first shared this priority list with the CRA. On Friday May 15, 2020, the Department of Finance Canada released a [backgrounder](#) and [regulations](#) extending the CEWS and also making some technical changes to the CEWS program. On May 11 and 12, the CRA co-hosted with CPA Canada conference calls, answering CEWS questions from participants. Finally, some of the issues have been addressed in the [CRA FAQ](#) or the [application guide](#). As a result, we have provided an update to the priority issues below.

Eligible Employer/Corporate Group Issues

1. Common commercial arrangements include partnerships with non-eligible entities as partners. Although the stated intention is to provide the CEWS to all businesses that suffer revenue declines of 30% or more, there appear to be common partnership arrangements that will not qualify as one or more of the partners are not eligible entities. This could impact a large number of private equity funds and portfolio companies as well as other arrangements. Examples include:
 - Partnerships where pension plans or funds are included as one of the partners, or corporations exempt under paragraph 149(1)(d.5)
 - Tiered partnerships
 - Public/private partnerships where private sector partners have typical business risks

Update: *On May 15, 2020, these entities were prescribed to be eligible entities under Income Tax [Regulation 8901.1](#). In the case of pension funds, public/private partnerships and other partnerships with non-eligible entities as partners, the non-eligible entity will be required to have a minority interest. It should also be noted that the Finance Canada's [Backgrounder](#) announced that certain exempt trusts will no longer be exempt entities. However, a partnership that includes these types of trusts as a minority partner can be an eligible entity if the other conditions are met. The regulations are deemed to have come into force on April 11, 2020.*

2. Application of paragraph 125.7(4)(b) – paragraph 125.7(4)(b) allows an undefined group of affiliated eligible entities to calculate consolidated revenue and then each eligible entity in the group can use the consolidated amounts for the purposes of the revenue test. What is the definition used for this purpose – section 251.1 or another definition? Must all members of the group elect, including multinational groups?

Update: In question 10-1 of the CRA [CEWS FAQ](#), the CRA states: The definitions of “affiliated persons” and “affiliated group of persons” in the Act apply for purposes of the special rule for calculating revenue of members of an affiliated group. In addition, the CRA states in question 10: “If this election [under paragraph 125.7(4)(b)] is made, all members of the affiliated group of eligible employers must use this method for calculating the qualifying revenue. Eligible employers that are affiliated with the group cannot choose to form smaller affiliated groups or choose to not be part of the affiliated group for the purpose of the election and calculating qualifying revenue. This means that it is the broadest affiliated group of eligible employers that must elect and not a subset of that group.”

It should be noted that questions remain on issues such as how the rule works for a multinational group as well as whether revenue which would be recorded on combined financial statements can be used as opposed to consolidated revenue. In particular, in Example 8 of the [FAQ](#), it is our understanding that consolidated financial statements could not be prepared under relevant accounting standards, so it is hoped that combined revenue could be used.

We have provided CRA with some more information and suggested additions to the FAQ.

3. Issues regarding paragraph 125.7(4)(d) – where all or substantially all of an eligible entity’s qualifying revenue is from other non-arm’s length entities, paragraph 125.7(4)(d) allows the entity to determine its decline in revenue based on the decline in arm’s length revenue experienced by non-arm’s entities from which it earned revenue. Some specific questions and issues have been identified, including the calculation details in certain scenarios and the implications of non-resident involvement. Also, guidance more generally with examples would be helpful.

Update: A significant amount of uncertainty remains, and we have provided CRA with more information and suggested FAQ changes.

4. Concerns around cost sharing arrangements – A number of concerns were raised around cost sharing arrangements where one entity manages and incurs payroll costs and is reimbursed by parties to the cost sharing arrangement.

Update: In the May 19th update of the FAQ, the CRA stated in question 3-8:

“Employers who did not have their own business number and payroll program account with the CRA on or before March 15, 2020 would not meet the eligibility criteria, and subsequently, would not be eligible for the wage subsidy. The third party cannot apply for the wage subsidy on behalf of an employer by using their own business number and payroll program account.”

We will follow up with the Finance Canada to see if a change can be made to the legislation.

5. Amalgamations result in 2020 versus 2019 comparison issues. Specifically, as a result of the amalgamation paragraph 87(2)(a) deems the Amalco to be a new corporation, which means that the “eligible entity” did not exist in 2019 and there is no comparator for the “prior reference period”. In certain situations, depending on the date of the amalgamation, the January/February 2020 period is also not available as a comparator.

Update: *The Department of Finance Canada stated the following in the May 15, 2020 [Backgrounder](#):*

“The government proposes to amend the CEWS to allow corporations formed on an amalgamation of two or more predecessor corporations (or where a corporation is wound up into another), to calculate benchmark revenue for the CEWS revenue-decline test using their combined revenues, unless it is reasonable to consider that one of the main purposes for the amalgamation (or the winding up) was to qualify for the CEWS.”

This change will be retroactive to April 11, 2020.

6. Acquisitions can also be problematic. Any business that starts after March 1, 2019 is required to use the January/February 2020 comparator. Depending on the cycle of the business, the January/February comparator might be lower than the March 2020 number, but then the revenues could drop in April and May and such businesses would not be able to access the wage subsidy (depending on the revenue drop), so perhaps consideration needs to be given to a different methodology for new businesses.

Update: *Although amalgamations and wind ups were addressed in the [Backgrounder](#), this issue remains unresolved. We have provided more information and recommendations to the CRA.*

7. Private schools and other private institutions – Many private schools are registered charities. It is not clear, though, whether a private school is included in the definition of “public institution”, because that definition includes “a school” without any “public” qualifier (whereas a private university or college appears not to be included as a public institution). Clarification should be provided, as excluding private schools would appear to be unintentional. Similar concerns were raised for private hospitals.

Update: [Paragraph 8901.1\(f\)](#) of the Income Tax Regulations now states that “a person or partnership that operates a private school or private college” is a prescribed eligible entity. The [Backgrounder](#) states that “[t]his would include for-profit and not-for-profit institutions such as arts schools, language schools, driving schools, flight schools and culinary schools.” This change is retroactive to April 11, 2020.

No change was made for private hospitals.

Revenue Computation

8. In many industries, such as the oil and gas industry, companies engage in significant hedging. Income in any given month may include both realized and unrealized hedge gains and losses. The cash they would receive on the unrealized gains may not be received for many years. It also means that two companies in an identical economic situation could be treated very differently from a CEWS point of view based on their hedging activities. Again, it would appear that a basic revenue test will not determine the loss of business from the crisis accurately. Can the CRA comment?

Update: *During the conference call with the CRA, the Agency stressed that the CEWS revenue computation should be based on the entity's "normal accounting practices" and not on how the revenue is actually taxed. So, if the entity normally includes unrealized hedging gains in revenue for accounting purposes, they should include it in revenue for the CEWS.*

A written answer should be provided as a FAQ, and we will follow up with the CRA.

9. Will the subsidy be available to an eligible entity, including a NPO or charity, that earns portfolio income? The legislation does not appear to address portfolio investment income generally, whether having such income is an issue or how it should or should not be considered for the revenue test.

Update: *In question 6-1 of the FAQ, the CRA states:*

"The qualifying revenue of an eligible employer is generally determined in accordance with its normal accounting practices. To the extent that investment revenue, such as interest or dividends from investments in securities, arises in the course of an eligible employer's ordinary activities in Canada in the particular period, is not an extraordinary item or on account of capital, and is included in revenue under its normal accounting practices, it would generally be included in qualifying revenue."

10. Where a partnership and a partner are both eligible entities, the process to apply the revenue test is unclear for the corporate partners. In particular, do the partners consider partnership revenue when applying the revenue test at the partner level?

Update: *This question remains unresolved.*

Program Administration

11. How is the individual who has the principal responsibility for the eligible entity's financial activities to be determined for the purposes of the attestation? How will the attestation be communicated to the CRA? Will a process be established for this purpose where a representative is acting on behalf of a client (such as a requirement that the representative keep a copy of the attestation on hand)?

Update: *In the [application guide](#), the CRA states that the individual responsible "may be the business owner or an employee of the business. This could be a Chief Financial Officer, a Vice-President, an accountant, or another senior employee who manages the employer's finances. This individual will be the person who completes the attestation required by the CEWS program rules."*

In terms of the other questions, it depends on whether the eligible entity is making its own application, or a representative is making it on their behalf. If a representative is making the claim, the application guide states that representatives need to do two things regarding attestation and form completion.

First, they need to make sure that they have obtained Form RC 661, Attestation for owner/managers and/or senior employees.

This form must be completed and signed by the individual who has principal responsibility of the financial activities of the eligible entity (the employer). An electronic signature is permitted. The CRA can request to see the signed copy of this attestation at any time.

Then, while completing the online application on behalf of their client, the representative must complete the confirmation section at the end of the application. This includes a confirmation that the attestation will be provided upon request and without delay in prescribed form and manner, and that failure to do so could result in the application of penalties or the reassessment of the claim to deny benefits.

If the eligible entity is applying on behalf of its own business, the attestation form is available within the online application itself.

12. What is the intended purpose of the disclosure provisions in section 241 and in what circumstances would the CRA anticipate releasing this information?

Update: *The CRA has not provided additional details on how the information will be disclosed.*

13. Can the CRA comment on its general approach to the administration of this program and the standard expected of taxpayers?

Update: *The CRA has not discussed this in the FAQ or the application guide.*