

TEI Canadian Income Tax and Commodity Tax Committees

Canada Emergency Wage Subsidy Legislation

**Questions for the Department of Finance and Canada
Revenue Agency**

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Public Disclosure & Best Efforts

The Canada Emergency Wage Subsidy (CEWS) legislation allows public disclosure of CEWS applicants (Section 6(1) of the legislation). Is it the government's intention to routinely publish names of all entities who apply for the CEWS subsidy?

If not, what criteria would be used to determine what information is released (if any)?

Can Canada Revenue Agency (CRA) and Department of Finance Canada (Finance) provide an update on the government's request that companies claiming the wage subsidy use "best efforts" to continue to pay their employees at baseline levels and the interaction (if any) with public disclosure?

Application Form and Audit

Taxpayers are concerned about the amount and level of detail the CEWS application will require and the documentation that will be needed to support an audit. Can CRA address:

- When the applications will be available, and
- When CRA will issue guidance regarding required documentation for submission and audit, including the level of detail for wages.

Refunds

New subsection 164(1.6) of the Income Tax Act (ITA) provides that the Minister "may" refund all or any part of an overpayment deemed to have arisen under new subsection 125.7(2). This is consistent with the permissive, rather than mandatory, language that is used in the other refund provisions of section 164.

Can CRA provide guidance as to how CRA will approach and resource assessment of subsection 164(1.6) refund requests, the timing of the refunds, and how refund requests under subsection 164(1.6) will be considered in conjunction with refund requests made under other provisions?

For example, consider the following scenario:

A taxpayer made corporate income tax installment payments in January, February and March 2020 with respect to its anticipated Part I tax payable for its December 31, 2020 tax year. However, as a result of the Covid-19 pandemic and the resulting economic downturn, the taxpayer is now forecasting it will incur a significant non-capital loss with respect to its December 31, 2020 tax year. Subsection 164(1.51) and 164(1.52) provide a mechanism for the Minister to refund installment payments to a taxpayer where the Minister is satisfied that the payment of the installments has caused or will cause undue hardship to the taxpayer.

Given the current economic environment that exists as a result of the Covid-19 crisis, would CRA consider the undue hardship criteria satisfied in the current scenario and therefore approve requests made by the taxpayer for a refund of previously-remitted corporate tax installment payments? What, if any, supporting documentation would CRA require to approve such a request? In situations where refund requests are made under subsections 164(1.51) and (1.6) by the same taxpayer, will these requests be considered together?

Revenue Calculations

Revenue – Gross vs Net Sales

For GAAP purposes, many companies are required to report “net” sales, where gross sales revenue is reduced for allowances for doubtful accounts, freight, and sales commissions.

Can Finance or CRA provide insight whether net sales is an acceptable alternative in determining the revenue reduction for purposes of subsection 125.7(4)?

Qualifying Revenue - Investment Income

The CEWS legislation references revenue in terms of the inflow of cash, receivables, or other consideration arising in the course of the ordinary activities, but then mentions these are “generally from the sale of goods, rendering of services and the use by others of resources.”

Does qualifying revenue include investment income, such as interest, dividends, gains/losses on mark-to-market property, and other similar items?

Does this answer change for financial institutions vs non-financial institutions?

Consolidated Financial Statements – Revenue

Can Finance or CRA provide insight on the following interaction of subsections 125.7(4), 4(a), and 4(b) of the ITA?

If an affiliated group of eligible entities has two or more groups that prepare separate consolidated financial statements, as well as other entities that are excluded from consolidated reporting, are the eligible entities free to determine qualifying revenue under:

- Paragraph 125.7(4)(a), covering the entities that are part of particular consolidated financial statements,
- Paragraph 125.7(4)(b), covering all affiliated eligible entities if elected,
- Subsection 125.7(4), the default (legal entity) method, or
- A combination of paragraph 125.7(4)(a) and subsection 125.7(4), where one consolidated group uses consolidated revenue and the remaining entities use legal entity revenue?

Consistency of Revenue Approach

Paragraph 125.7(4)(e) of the ITA allows an entity to elect to determine its revenues based on the cash method and requires this election to apply for all qualifying periods. The revenue calculation alternatives in paragraphs 125.7(4)(a) to (d) do not specifically require those methods to be applied for all periods.

Can taxpayers using the approaches in paragraphs 125.7(4)(a) to (d) to determine revenues change their approach from period to period or are they bound by the method used for the initial claim?

Revenue Calculations and Foreign Currency

Foreign exchange fluctuations can materially impact the relative revenue decrease when comparing 2020 to the same month in 2019 if measured in \$CAD vs \$USD.

Can CRA or Finance provide insight on how the revenue calculations would function where the consolidated financial statements are issued in another currency (such as USD) and most sales are made in non-Canadian dollars?

Would the answer change if the underlying legal entity has a valid functional currency election for income tax purposes?

Related Party Revenues – Foreign Entity

Can CRA or Finance provide insight on the operation of paragraph 125.7(4)(b) and (d) where all or substantially all of the sales of the Canadian entities are made to a foreign related party who then sells to the final customer?

Conceptually, this situation would qualify for relief if the selling entity was a Canadian resident.

Contract R&D or Manufacturing

Can CRA or Finance provide insight on the application of the CEWS legislation when the Canadian entity is engaged in contract R&D or other contract services for the worldwide group?

These entities would not seem to be covered by paragraph 125.7(4)(d) and may not qualify for CEWS even though the worldwide group could be facing significant revenue shortfalls.

“Lumpy” Cashflow/Sales

Can CRA or Finance provide insight on how the revenue test would apply to companies with irregular timed sales? For example, real estate developers for residential units often have sales contracts signed over a lengthy period, with the completion and revenue recognition all taking place in one or two months.

Amalgamated or Wound-Up Companies

Can CRA or Finance provide insight on calculating revenue where one or more subsidiaries have been amalgamated or wound-up pursuant to subsections 87(1) or 88(1) in the comparative period?

Overall CEWS Eligibility Issues

Centralized Payroll Company, Secondment Arrangements, and Reimbursement

For employee secondments within a group, it is common that the “home” entity continues to pay the employee, with all of their costs (including salary) being reimbursed by the company benefitting from that employee. The same approach applies where a corporate group has a centralized payroll company, and the operating companies reimburse the payroll company for “their” staff and costs.

Would such reimbursements of salary by another entity in the group be captured by the exclusion from the definition of Eligible Remuneration contained in paragraph (c) of subsection 125.7(1) as being “any **amount received** that can reasonably be expected to be paid or returned, directly or indirectly, in any manner whatever, to (i) the eligible entity....”?

The French version of the legislations uses the term “toute somme.... Restituée,” indicating that the intent of paragraph (c) of the definition of Eligible Remuneration refers to situations where the employee is repaying their salary (directly or indirectly), rather than when the employer is reimbursed by another legal entity.

Secondment From a Non-Resident Company

Does the answer above change where the employee is seconded from a foreign entity and the Canadian company bears all of the costs as a reimbursement?

Wage and Subsidy Calculations

Timing of Subsidy - Wage Payment vs Wage Accrual

Can Finance or CRA confirm that the wage subsidy calculation is based on when the wage was earned, rather than when paid?

Can CRA provide insight on acceptable alternatives to minimize the compliance burden, given different approaches across companies and differences in payment protocols, including in arrears, weekly, bimonthly?

Retroactive Payments

The government indicated that retroactive payments would be eligible for the subsidy. What is the mechanism and what proof will be needed to support the claim that certain wages are retroactive to a period when an employee was furloughed or placed on unpaid leave?

Eligible Remuneration – Increases in Pay from Baseline Remuneration

How would CRA or Finance view the following two examples in terms of paragraph (d) of “Eligible Remuneration,” as they fit in (d)(i) and (d)(ii) but are paid for commercial purposes rather than for purposes of increasing the CEWS refund?

1. Payments for additional hours performed based on existing (pre-Covid 19) corporate policy for working additional hours, and

2. Payment of Covid-19 shift premiums for employees who work during the qualifying period. These shift premiums are new and are only paid for hours worked during qualifying period.

Joint Venture Issues

Given the complexity of joint ventures, TEI has received a number of specific joint venture examples and situations from our members. Would CRA consider issuing guidance on joint venture examples TEI could provide? We outline two general areas of questions below:

Joint Venture Revenue

Can Finance and CRA provide insight on the joint venture provisions and bridging the difference between accounting and tax. Specifically, do the joint venture provisions override the normal GAAP rules, as GAAP may require the revenue to be included in the legal entity's accounts already?

Also, how would transactions between the joint venture and the eligible entities be treated? These transactions will often not be considered "revenue" for financial account purposes. For example, a production joint venture may distribute a percentage of minerals produced to each joint venture member, with each joint venture member bearing that percentage of expenses (including payroll). The joint venture itself has no revenues.

Do the answers depend on the legal structure of the joint venture – contractual (unincorporated), incorporated, or via a partnership?

Separation of Legal Employer vs Revenue Generator

Can Finance or CRA provide insight on how the legislation would where the revenues are in a joint venture entity but the employees belong to an entity outside the joint venture. For example, a 50/50 joint venture via a limited partnership, where the revenues and operations are in the joint venture entity, and the employees are all paid by a separate joint venture entity with the costs allocated to the partners.

Can Finance or CRA provide any insight on the appropriate handling of these situations?

Attestation Requirements – Appropriate Individual

Can CRA or Finance clarify the legislation's intent in terms of determining the person "principally" responsible for the financial activity?

We are looking for examples given that many companies have accounting and finance functions widely distributed, and often on a business unit/division basis, rather than legal entity basis. The presence of a shared service group (handling routine accounts payable, accounts receivable, accounting entries, payroll, IT service desks) increases this challenge, as many shared service groups do not report into the finance group except at the very senior levels – global CFO or (possibly) even the CEO.