

Canada Emergency Wage Subsidy (CEWS)

Prioritized Questions and Issues

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by CPA Canada & the Canadian Tax Foundation

CEWS Working Group

We have received many emails from members and others in the business and tax community regarding the Canada Emergency Wage Subsidy (CEWS). Some are asking questions while others raising concerns. For some of the issues, the concern or question was raised many times. Some queries also included detailed fact patterns.

We understand that the first list of FAQs about the CEWS program will be released shortly. We have worked to identify high priority issues from the more than 100 questions submitted to us. Below is the first grouping of such questions, which were forwarded to CRA on April 21 (note that additional detail and examples were also provided). We will update the issues log on our website as responses are received.

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

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?

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.
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.
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.
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.
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.

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?
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.
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?

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)?
12. What is the intended purpose of the disclosure provisions in section 241 and in what circumstances would the CRA anticipate releasing this information?
13. Can the CRA comment on its general approach to the administration of this program and the standard expected of taxpayers?

CRA has invited us to continue to identify the highest priority items that would benefit from clarification on a weekly basis.