

COVID-19 – CANADA EMERGENCY WAGE SUBSIDY (CEWS)

TAXNET PRO

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Ryan Keey, MAcc, CPA, CA, Senior Tax Writer, Thomson Reuters

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Overview

The Canada Emergency Wage Subsidy (the CEWS) was enacted by [Bill C-14: A second Act respecting certain measures in response to COVID-19](#), which was passed by the House of Commons and Senate and received Royal Assent as S.C. 2020, c. 6 on April 11, 2020. Along with the introduction and passage of the Bill, Finance published a related [Backgrounder: The Canada Emergency Wage Subsidy](#) (the Backgrounder). According to the [Backgrounder](#), the “wage subsidy aims to prevent further job losses, encourage employers to re-hire workers previously laid off as a result of COVID-19, and help better position Canadian companies and other employers to more easily resume normal operations following the crisis”.

With the exception of “public institutions” (including municipalities and local governments, Crown corporations, wholly owned municipal corporations, public universities, colleges, schools and hospitals), employers of all sizes and across all sectors of the economy carrying on business in Canada may be eligible for the CEWS, including individuals, public and private corporations, partnerships consisting of eligible entities, NPOs, trusts, registered charities and certain tax-exempts. To qualify for the CEWS, an eligible entity must see a drop of at least 15% in “qualifying revenue” in March 2020 or a 30% decline in qualifying revenue in April 2020 or May 2020, either on a year-over-year basis or compared to an average of revenue earned in January and February 2020 (see under “Qualifying Revenue Decline Test”). The computation of “qualifying revenue” can be complex and the rules have several interpretive issues (see under “Qualifying Revenue”). It is not necessary to demonstrate that the revenue decline relates in any way to the COVID-19 crisis.

Generally, the available CEWS in respect of “eligible remuneration” paid to an existing arm’s length “eligible employee” for a weekly period between March 15 and June 6, 2020 (note that the Government has the option of extending the CEWS program for until September 30, 2020) is the greater of: 1) 75% of the amount of remuneration paid, up to a maximum benefit of \$847, and 2) the amount of remuneration paid, up to a maximum benefit of \$847 per week, or 75% of the employee's pre-crisis weekly remuneration (referred to in ITA 125.7(1) as “baseline remuneration”). A modified CEWS computation applies in respect of new employees and non-arm’s length employees (the maximum benefit remains \$847 per week for such employees). The CEWS cannot be claimed in respect of new non-arm’s length employees.

An “eligible employee” is generally an individual who is employed in Canada, other than an individuals who has been without remuneration for 14 or more consecutive days during a qualifying period (i.e., from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6). The 14-day test is intended to minimize overlapping periods during which an individual is eligible to claim the [Canada Emergency Response Benefit](#) (CERB) and an eligible entity is also able to claim the CEWS in respect of the individual (per the [Backgrounder](#),

“to ensure that the [CERB] applies as intended, [Finance is] considering implementing an approach to limit duplication... [that] could include a process to allow individuals rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount” – see under “Interaction with the Canada Emergency Response Benefit (CERB)”. Eligible remuneration includes salary, wages, and other remuneration such as taxable benefits, but does not include severance pay or stock option benefits (Finance and the CRA have also suggested that eligible remuneration does not include taxable benefits that are not “paid”, such as a taxable benefit in respect of the personal use of a corporate vehicle – see under “Eligible Remuneration”). The CEWS cannot be claimed in respect of a contractor (the CEWS could, however, be claimed in respect of a contractor that is hired as a new employee during a qualifying period).

To be eligible for the CEWS, a laid-off employee does not have to return to active work. Rather, the legislation specifically recognizes that an eligible entity may choose to utilize the CEWS to subsidize a paid leave, either in the case of a re-hired laid-off employee or an existing employee that enters a paid-leave during a qualifying period. In the case of a re-hired employee, the CRA has further confirmed that the CEWS may be claimed in respect of retroactive remuneration, including in cases where the CEWS provides for a 100% wage subsidy (see under “Claiming the CEWS in Respect of Retroactive Pay”).

Prior to claiming the CEWS in respect of an eligible employee, an eligible employer must pay the eligible remuneration and collect and remit the regular employer and employee contributions to payroll programs. In most cases, up to the maximum subsidy level, an employer will incur the 25% portion of the cost of remuneration not covered by the CEWS. There are, however, cases in which the subsidy may fully cover the cost of the remuneration paid (including retroactive pay) to an arm’s length employee who is re-hired at a reduced salary. Although the Government has indicated that it “expects” employers to “make their best effort to top-up employees’ salaries to bring them to pre-crisis levels”, the legislation contains no requirement to satisfy this “expectation”, which could also be described as a “suggestion” or an “encouragement” (see under “Temporary Wage Reductions”).

In addition to the 75% subsidy in respect of eligible remuneration (up to the \$847 cap) paid to an eligible employee, the CEWS also includes a refund of employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund covers 100% of employer-paid contributions for eligible employees for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees.

Ignoring the refund for certain payroll contributions, in respect of each an eligible employee, the maximum CEWS an eligible entity may claim is \$10,164 ($\847×12 weeks – March 15 to June 6, 2020) (note that the example salary of \$58,700 used in the [Backgrounder](#) was computed as follows: $(\$847 \times 52) / 0.75$, rounded). There is no overall limit on the subsidy amount that an eligible employer may claim. The CEWS is, however, taxable for an eligible employer (effectively, the subsidy will offset the deduction otherwise available in respect of the underlying remuneration paid). According to the [Backgrounder](#), the estimated cost of the CEWS program is \$73B (this figure would cover, for example, the maximum CEWS being claimed in respect of approximately 7.2M employees). It is unclear whether the projected \$72B cost takes into account the taxability of the subsidy, the taxability of the remuneration paid to employees, or the reduced CERB and EI payouts in respect of re-hired employees/employees who remain employed because of the CEWS. It was reported by the National Post (Christopher Nardi, “[Ottawa expects one million companies to apply for COVID-19 wage subsidy program starting next week](#)”, April 22, 2020) that the CRA expects to process roughly one million CEWS applications.

On April 15, Statistics Canada released a “flash estimate” of gross domestic product in March, designed to inform early assessments of the impact that business shutdowns and restrictions on physical distancing are having on overall economic activity. According to the release, the decline in real GDP in March was estimated at 9%, the largest monthly decrease observed for the current data series (which tracks movements back to 1961). On April 9, the Agency further reported that:

Employment fell by over one million in March (-1,011,000) with losses among private sector employees accounting for over 80% of the total decline. Overall losses were roughly split between full-time work (-474,000) and part-time work (-537,000)... The national unemployment rate increased by 2.2 percentage points in March to 7.8%. The employment rate, the percentage of the working age population that is employed, fell 3.3 percentage points to 58.5%... The one-month decline in employment experienced in March is unprecedented, and is about two and a half times as large as the cumulative decline in employment experienced during the 2008-2009 recession.

An application for the CEWS must be made before October 2020. The application process is discussed under “CEWS Applications”. As permitted by the CEWS ITA provisions, the CRA has stated that it intends to publish the name of all CEWS applicants (see under “Public Disclosure of Applicants”).

With respect to the potential timing of CEWS payments, according to Global News (see Jordan Press, “[First payments from \\$73-B coronavirus wage subsidy to be sent in early May](#)”, *By The Canadian Press*, April 16, 2020):

The first payments from [the] \$73-billion federal wage subsidy program will flow by the end of the first week of May, acting as a buttress against the economic shock from COVID-19. The Liberals are hoping the 75-per-cent wage subsidy will prompt companies to rehire vast swaths of the six million Canadian workers who have asked for emergency federal aid since the pandemic brought the global economy to a virtual standstill. Online applications will open April 27 and officials expect to have processed 90 per cent of claims by May 4 with payments landing later that week, MPs on the House of Commons finance committee were told Thursday.

In News Release 2020-04-21: [Government of Canada launches Canada Emergency Wage Subsidy Calculator for Employers](#), the CRA confirmed that the first CEWS payments will be made on May 5 (for further details of payout plans, see under “Receipt of CEWS”).

On April 6, 2020, CPA Canada and the Canadian Tax Foundation made a [Joint Submission](#) (“the [Joint Submission](#)”) to the federal government raising various concerns with respect to the design and administration of the CEWS program. Many of the concerns raised were addressed by the enacted legislation, which was reflected in an April 14 update to the [Joint Submission](#). Subsequently, on April 24, a [Joint Submission Short List](#) was released in response to a CRA request for “a short list of key priorities” (i.e. dealing with issues that have not been addressed – see Bruce Ball, “[Update: Canada Emergency Wage Subsidy and other COVID-19 tax issues](#)”, *CPA Canada Taxation Blog*, April 24, 2020). On April 24, the CRA added an FAQ to Canada.ca dealing the CEWS (“[Frequently asked questions - Canada emergency wage subsidy \(CEWS\)](#)”) which is referred to throughout this Newsletter as “the CRA CEWS FAQ”. The CRA CEWS FAQ covers some of the issues identified on the [Joint Submission Short List](#).

Certain penalty provisions and anti-avoidance rules were added by Bill C-14 with the intention of ensuring “that the subsidy is not inappropriately obtained and to help ensure that employees are paid the amounts they are owed”. For example, employers that engage in “artificial transactions” to reduce revenue for the purpose of claiming the CEWS may be subject to a penalty equal to 25% of the value of the subsidy claimed, in addition to the requirement to repay in full the subsidy that was improperly claimed. The CRA also further stated that “if a person (such as an accountant or tax preparer) files or prepares the wage subsidy application on behalf of the employer, they could be subject to a third-party penalty under the Act, if they know, or would reasonably be expected to know, that the application contains false statements, including an omission of information” (see under “Third-Party Civil Penalties”).

CEWS Qualification Requirements

The wage subsidy may be claimed by a “qualifying entity” in which “eligible remuneration” has been paid to an “eligible employee” in respect of a week that falls within a “qualifying period” (see ITA 125.7(2)). ITA 125.7(1) provides for various definitions that apply for the purposes of ITA 125.7 and ITA 163(2.901).

Qualifying Period

The CEWS may only be claimed in respect of remuneration paid during a “qualifying period”. As discussed further below, eligibility for the CEWS is generally determined by the change in an eligible entity’s monthly revenues, year-over-year, for the calendar month in which the period began (employers are also permitted to calculate their change in revenue using an alternative benchmark). A “qualifying period” means:

- 1) *Qualifying Period 1*: the period that begins on March 15, 2020 and ends on April 11, 2020 (para (a));
- 2) *Qualifying Period 2*: the period that begins on April 12, 2020 and ends on May 9, 2020 (para (b));
- 3) *Qualifying Period 3*: the period that begins on May 10, 2020 and ends on June 6, 2020 (para (c)); or
- 4) a prescribed period that ends no later than September 30, 2020 (para (d)).

Thus, there are effectively three 4-week qualifying periods in respect of which the CEWS may be claimed. Furthermore, the Government has left open the option to prescribe an additional qualifying period (i.e. there is potential for the subsidy to be extended beyond June 6, 2020). Notably, ITA 125.7(8) further provides authority for the Government to change the “75%” and “\$847” amounts in ITA 125.7(2)A by Regulation (i.e. if the subsidy period is extended, the maximum amount of the subsidy for the additional qualifying period could be increased or decreased). Furthermore, by virtue of the “specified percentage” definition, in respect of a qualifying period referred to in ITA 125.7(1) “qualifying period” (d), the Government has the ability to prescribe the percentage relevant for purposes of applying the Qualifying Revenue Decline Test (i.e. if there is a fourth qualifying period, the revenue decline benchmark will not necessarily be 30% or 15%).

Qualifying Entity

For a qualifying period, a “qualifying entity” is defined as an “eligible entity” that meets each of the following conditions:

.....

- 1) it files an application with the CRA in respect of the qualifying period in prescribed form and manner before October 2020 (para (a));
- 2) the individual who has “principal responsibility for the financial activities” of the eligible entity attests that the application is “complete and accurate in all material respects” (para (b));
- 3) the qualifying revenue decline test is satisfied (see below under “Qualifying Revenue Decline Test”) (para (c)); and,
- 4) it had, on March 15, 2020, a business number in respect of which it is registered with the CRA to make remittances required under ITA 153 (i.e. payroll source deduction remittances) (note that there are no relieving rules in the legislation dealing with reorganizations, such as amalgamations or wind-ups, that could occur during a qualifying period) (para (d)).

Regarding ITA 125.7(1)“qualifying entity”(a) ((1) above), see the [Backgrounder](#) (see under “How to Apply”) states that “[e]mployers would have to keep records demonstrating their reduction in arm’s-length revenues and remuneration paid to employees”.

The condition in ITA 125.7(1)“qualifying entity”(d) appears intended to preclude an entity that had no employees before March 15, 2020 from hiring employees after the crisis (i.e. after March 15, 2020) in order to claim CEWS (i.e. since an entity that did not have a payroll number before the crisis will not be a “qualifying entity”). It is not required that remittances had been made before March 16; it is only required that the entity had a payroll account number.

Paragraph 125.7(1)“qualifying entity”(d) could prevent a closely-held small business corporation that only compensates its owner(s)-manager(s) in the form of dividends from claiming the CEWS (i.e. if the corporation does not have a payroll account number; “eligible remuneration” does not include dividends).

See also under “CEWS Applications”.

Eligible Entity

Only an “eligible entity” may meet the definition of a “qualifying entity” (i.e. only an “eligible entity” can claim the CEWS). An “eligible entity” is typically referred to by Finance in News Releases and the [Backgrounder](#) as an “eligible employer” (this term is not used in ITA 125.7).

An “eligible entity” is defined as meaning:

- 1) a corporation, other than a corporation that is exempt from tax under Part I or that is a “public institution” (an “eligible entity” may include, for example, a CCPC (ITA 125(7)), a co-operative corporation (other than certain tax exempt co-operatives), a “public corporation” (ITA 89(1)), corporations controlled by public corporations, a Canadian subsidiary of a foreign corporation, or a non-resident corporation with an existing CRA payroll account number that has “eligible employees” employed in Canada) (para (a));
- 2) an individual (i.e. an unincorporated employer can apply for the subsidy) (para (b));
- 3) a registered charity, other than a “public institution” (para (c));

- 4) a person that is exempt from tax under Part I because of ITA 149(1)(e), (j), (k) or (l), other than a “public institution” (para (d));
- 5) a partnership, all of the members of which are described herein or in any of (1) to (4) above (para (e)); or,
- 6) a prescribed organization (para (f)) (at the time of writing, there were no prescribed organizations).

An “eligible entity” is more broadly defined than an “eligible employer” for purposes of 10% Temporary Wage Subsidy program. An “eligible employer” for the purposes of the 10% subsidy is defined in ITA 153(1.03) as follows:

“eligible employer” means a person or partnership that (a) employs one or more eligible employees; (b) has, on March 18, 2020, a business number in respect of which the person or partnership is registered with the Minister to make remittances required under this section; and (c) is any of (i) a Canadian-controlled private corporation for the purposes of section 125 that (A) would have a business limit for its last taxation year that ended before the start of the eligible period greater than nil, if the amount determined for paragraph 125(5.1)(b) were deemed to be nil, or (B) if the corporation does not have a taxation year that ended before the start of the eligible period, would meet the condition in clause (A) if its taxation year ended immediately before the start of the eligible period, (ii) an individual (*other than a trust*), (iii) a partnership, all of the members of which are described in subparagraphs (i) to (iii) or (v), (iv) a person exempt from tax under Part I because of paragraph 149(1)(l), and (v) a registered charity.
[emphasis added]

An eligible entity includes an “individual”. Generally, a trust is considered to be an individual for purposes of the ITA by virtue of ITA 104(2). Therefore, it appears that a commercial trust or a personal trust carrying on a business may qualify as an “eligible entity” (as noted below, this has been confirmed by the CRA).

The following is pointed out to the CRA in the [Joint Submission Short List](#):

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: 1) Partnerships where pension plans or funds are included as one of the partners or corporations exempt under paragraph 149(1)(d.5), 2) Tiered partnerships, 3) Public/private partnerships where private sector partners have typical business risks

An “eligible entity” does not include a corporation, an individual, a partnership, an NPO or a registered charity that is a “public institution”. Effectively, public bodies, including municipalities and local governments, Crown corporations, wholly-owned municipal corporations, public universities, colleges, schools and hospitals, may not claim the CEWS.

More specifically, a “public institution” is defined in ITA 125.7(1) as meaning: 1) an organization described in any of paragraphs 149(1)(a) to (d.6) (generally, employees of a country other than Canada (i.e. foreign governments), members of the family and servants of employees of a country other than Canada, municipal authorities and First Nation bands, corporations owned by the Crown, corporations 90% owned by the Crown,

corporations wholly-owned by Crown corporations, municipalities and local governments and wholly owned municipal corporations) or 2) a school, school board, hospital, health authority, public university or college.

A partnership *any* member of which is a “public institution” would also not be permitted to claim the CEWS.

A person that is exempt from tax under Part I because of ITA 149(1)(e), (j), (k) or (l), other than a “public institution”, may be eligible to claim the CEWS (ITA 125.7(1)“eligible entity”(d)). The latter organizations include:

- 1) an agricultural organization, a board of trade or a chamber of commerce, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof (ITA 149(1)(e));
- 2) certain non-profit SR&ED corporations (ITA 149(1)(j));
- 3) a labour organization or society or a benevolent or fraternal benefit society or order (ITA 149(1)(k)); and,
- 4) non-profit organizations (NPOs) (i.e. a club, society or association that, in the opinion of the CRA, was not a charity and that was organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof unless the proprietor, member or shareholder was a club, society or association the primary purpose and function of which was the promotion of amateur athletics in Canada) (ITA 149(1)(l)).

An “eligible entity” also includes a “registered charity” (ITA 248(1)) other than a “public institution” (para (c)). As discussed below, certain special rules apply for the purposes of computing the “qualifying revenue” of an NPO or registered charity (i.e. for the purposes of satisfying the Qualifying Revenue Decline Test).

On Canada.ca under “[Canada Emergency Wage Subsidy \(CEWS\)](#)”, the CRA states (April 21, 2020):

Who is an eligible employer?

To be eligible to receive the wage subsidy, you must: 1) be an eligible employer, 2) have experienced an eligible reduction in revenue, and 3) have had a CRA payroll account on March 15, 2020

Types of eligible employers

Eligible employers include: 1) individuals (*including trusts*); 2) taxable corporations; 3) persons that are exempt from corporate tax (Part I of the *Income Tax Act*), other than public institutions: non-profit organizations, agricultural organizations, boards of trade, chambers of commerce, non-profit corporations for scientific research and experimental development, labour organizations or societies, benevolent or fraternal benefit societies or orders, registered charities, partnerships consisting of eligible employers. [emphasis added]

Public institutions are **not eligible** for the subsidy. This includes municipalities and local governments, Crown corporations, public universities, colleges, schools and hospitals.

In the [Joint Submission Short List](#), the following query is put forth to the CRA:

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.

Qualifying Revenue

“Qualifying Revenue” Definition

Pursuant to ITA 125.7(1), “qualifying revenue” of an eligible entity for a “prior reference period” (ITA 125.7(1)) or a “current reference period” (ITA 125.7(1)) means:

the inflow of cash, receivables or other consideration arising in the course of the *ordinary activities* of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity — *in Canada* in the particular period, subject to the following... [emphasis added]

(c) it excludes, for greater certainty, extraordinary items [(per the [Backgrounder](#), qualifying revenue also excludes “amounts on account of capital”)];

(d) it excludes amounts derived from persons or partnerships not dealing at arm’s length with the eligible entity; and

(e) it excludes, for greater certainty, deemed overpayments under subsection (2) [i.e. qualifying revenue excluded the CEWS)] and deemed remittances under subsection 153(1.02) [(see the 10% Temporary Wage Subsidy)].

ITA 125.7(4) further provides that qualifying revenue of an eligible entity is to be determined in accordance with the entities “normal accounting practices”, subject to any of the special rules in ITA 125.7(4)(a) to (d). The latter paragraphs deal with the ability to compute revenue on a consolidated or a non-consolidated basis (see under “Consolidated Revenue”), joint ventures (see under “Joint Ventures”), and certain non-arm’s length revenue (see under “Non-Arm’s Length Revenue”). Significantly, as discussed under “Election to Use the Cash Method”, ITA 125.7(4)(e) further permits eligible entities to calculate qualifying revenue under the cash method. An eligible entity must select an accounting method when first applying for the CEWS and is required to use that method for the entire duration of the program.

ITA 125.7(1)“qualifying revenue”(a) and (b) provide for special rules in respect of registered charities and NPOs (see under “Special Rules Applicable to Charities and NPOs”).

“Qualifying revenue” should be computed on a gross basis as the definition does not refer to cash outflows (i.e. expenses/net income are not relevant for purposes of determining CEWS eligibility).

“Normal Accounting Practices”

Pursuant to ITA 125.7(4):

For the purposes of the definition qualifying revenue in subsection (1), the qualifying revenue of an eligible entity is to be determined in accordance with its *normal accounting practices*, except that... an eligible entity may make an election... to determine its revenues based on the cash method [emphasis added]

The term “normal accounting practises” is not defined in the ITA.

The “normal accounting practices” of an eligible entity are not required to conform with GAAP. This term is discussed further below under “Consolidated versus Non-Consolidated Revenue”.

If there is a change in accounting policies in 2019 or 2020, the CRA may not consider the revised practises to reflect the entity’s “normal accounting practises”. In other words, to avoid scrutiny, the accounting practices used in both the prior and the current reference period when applying the Qualifying Revenue Decline Test should be consistent.

Revenue from “Ordinary Activities”

The “qualifying revenue” definition in ITA 125.7(1) states:

“qualifying revenue”, of an eligible entity for a prior reference period or a current reference period, *means* the inflow of cash, receivables or other consideration arising in the course of the *ordinary activities* of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity — in Canada in the particular period... [emphasis added]

Notably, the “qualifying revenue” definition is exhaustive (i.e. as the definition uses the word “means” rather than “includes”).

Significantly, the legislators chose not to utilize the existing definition of “gross revenue” in ITA 248(1) as the starting point for computing “qualifying revenue” (ITA 248(1) defines “gross revenue” of a taxpayer for a taxation year as meaning the total of: i) all amounts received in the year or receivable in the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income) otherwise than as or on account of capital, and ii) all amounts (other than amounts referred to in (i)) included in computing the taxpayer's income from a business or property for the year because of certain specific provisions). Rather, the “qualifying revenue” definition appears to be intended to incorporate accounting standards. In particular, the definition is very similar to the definition of revenue in paragraph 3400.03(a) of Part II (Accounting Standards for Private Enterprises (ASPE)) of the *CPA Canada Handbook – Accounting*, which reads:

(a) Revenue is the inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise, normally from the sale of goods, the rendering of services and the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is net of items such as trade or volume discounts, returns and allowances, claims for damaged goods and certain excise and sales taxes. Excise and sales taxes to be netted against revenue would normally include those imposed at the

time of sale and would normally exclude those imposed prior to the time of sale on either the goods or their constituents.

Similarly, sections 1 to 8 of former International Accounting Standard (IAS) 18: *Revenue*, read:

- 1 This Standard shall be applied in accounting for revenue arising from the following transactions and events: (a) the sale of goods; (b) the rendering of services; and (c) the use by others of entity assets yielding interest, royalties and dividends.
- 2 This Standard supersedes IAS 18 Revenue Recognition approved in 1982.
- 3 Goods includes goods produced by the entity for the purpose of sale and goods purchased for resale, such as merchandise purchased by a retailer or land and other property held for resale.
- 4 The rendering of services typically involves the performance by the entity of a contractually agreed task over an agreed period of time. The services may be rendered within a single period or over more than one period. Some contracts for the rendering of services are directly related to construction contracts, for example, those for the services of project managers and architects. Revenue arising from these contracts is not dealt with in this Standard but is dealt with in accordance with the requirements for construction contracts as specified in IAS 11 Construction Contracts.
- 5 The use by others of entity assets gives rise to revenue in the form of: (a) interest — charges for the use of cash or cash equivalents or amounts due to the entity; (b) royalties — charges for the use of long-term assets of the entity, for example, patents, trademarks, copyrights and computer software; and (c) dividends — distributions of profits to holders of equity investments in proportion to their holdings of a particular class of capital....
- 7 The following terms are used in this Standard with the meanings specified: Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants...
- 8 Revenue includes only the gross inflows of economic benefits received and receivable by the entity on its own account. Amounts collected on behalf of third parties such as sales taxes, goods and services taxes and value added taxes are not economic benefits which flow to the entity and do not result in increases in equity. Therefore, they are excluded from revenue. Similarly, in an agency relationship, the gross inflows of economic benefits include amounts collected on behalf of the principal and which do not result in increases in equity for the entity. The amounts collected on behalf of the principal are not revenue. Instead, revenue is the amount of commission.

ITA 125.7(1)“qualifying revenue” refers to inflows “arising in the course of the ordinary activities of the eligible entity”; the term “ordinary activities” is not defined in the ITA. Sections 4.27 to 4.32 of the “Conceptual Framework for Financial Reporting” in the Introduction to Part I of the 2019 IFRS Standards (which were superseded in 2020) may provide assistance in interpreting the intended meaning of “ordinary activities”:

4.27 Income and expenses may be presented in the income statement in different ways so as to provide information that is relevant for economic decision-making. *For example, it is common practice to distinguish between those items of income and expenses that arise in the course of the ordinary activities of the entity and those that do not. This distinction is made on the basis that the source of an item is relevant in evaluating the ability of the entity to generate cash and cash equivalents in the future; for example, incidental activities such as the disposal of a long-term investment are unlikely to recur on a regular basis. When distinguishing between items in this way consideration needs to be given to the nature of the entity and its operations.* Items that arise from the ordinary activities of one entity may be unusual in respect of another.

4.28 Distinguishing between items of income and expense and combining them in different ways also permits several measures of entity performance to be displayed. These have differing degrees of inclusiveness. For example, the income statement could display gross margin, profit or loss from ordinary activities before taxation, profit or loss from ordinary activities after taxation, and profit or loss.

Income

4.29 *The definition of income encompasses both revenue and gains. Revenue arises in the course of the ordinary activities of an entity and is referred to by a variety of different names including sales, fees, interest, dividends, royalties and rent.*

4.30 *Gains represent other items that meet the definition of income and may, or may not, arise in the course of the ordinary activities of an entity. Gains represent increases in economic benefits and as such are no different in nature from revenue. Hence, they are not regarded as constituting a separate element in this Conceptual Framework.*

4.31 *Gains include, for example, those arising on the disposal of non-current assets. The definition of income also includes unrealised gains; for example, those arising on the revaluation of marketable securities and those resulting from increases in the carrying amount of long-term assets. When gains are recognised in the income statement, they are usually displayed separately because knowledge of them is useful for the purpose of making economic decisions. Gains are often reported net of related expenses.*

4.32 Various kinds of assets may be received or enhanced by income; examples include cash, receivables and goods and services received in exchange for goods and services supplied. Income may also result from the settlement of liabilities. For example, an entity may provide goods and services to a lender in settlement of an obligation to repay an outstanding loan.

[emphasis added]

In the [Backgrounder](#), Finance states that qualifying revenue is intended to exclude “amounts on account of capital”. The legislation does not specifically provide for this exclusion (interestingly, the “gross revenue” definition in ITA 248(1) specifically carves-out amounts “as or on account of capital”). Presumably, Finance considers this exclusion to be captured within the preamble to the “qualifying revenue” definition. As opposed to capital gains for tax purposes (which may or may not be the same as the related gain computed for accounting purposes), it appears that the reference to “amounts on account of capital” in the [Backgrounder](#) is

a reference to gains reported for accounting purposes (for example, gains on disposals of property, plant and equipment or on the disposals of investments).

Other than “amounts on account of capital”, it is not clear what other “inflows of cash, receivables or other consideration” are intended to be excluded from “qualifying revenue” (i.e. by the phrase “in the course of the ordinary activities of the eligible entity”). As suggested by the above accounting standards, this determination will depend in part on the nature of the activities of the entity (i.e. as “items that arise from the ordinary activities of one entity may be unusual in respect of another”).

It seems possible that items excluded from “qualifying revenue” could include, for example: lawsuit settlements; income from discontinued operations; items that are reported in “other comprehensive income” for financial reporting purposes (for example, revaluation surpluses, remeasurements of defined benefit plans, gains and losses arising from translating the financial statements of a foreign operation, and gains and losses from investments in equity instruments measured at fair value); reversals of write-downs of inventories to net realizable value or of property, plant and equipment to recoverable amount; other reversals of accounting provisions; or revaluation gains that do not reflect a cash inflow; and certain hedging gains.

Question 6 of the CRA CEWS FAQ does not provide additional insights on the meaning of “qualifying revenue” (other than in the context of the special elections available; see below). The FAQ states:

Qualifying revenue of an eligible employer means the inflow of cash, receivables, or other consideration arising in the course of its ordinary activities in Canada in a particular period. These inflows are generally from the sale of goods, the rendering of services, and the use—by others—of the eligible employer's resources. In the case of an eligible employer that is a registered charity, qualifying revenue generally includes gifts and other amounts received in the course of its ordinary activities. Where it operates a related business (as defined in subsection 149.1 of the Act), the revenue from that related business is also included in the registered charity's qualifying revenue. In the case of an eligible employer that is a non-profit organization, qualifying revenue generally includes membership fees and other amounts received in the course of its ordinary activities. Qualifying revenue excludes amounts from extraordinary items, amounts on account of capital and amounts from persons or partnerships that the eligible employer was not dealing with at arm's length. Amounts from the Canada Emergency Wage Subsidy and the 10% Temporary Wage Subsidy for Employers are ignored when calculating qualifying revenue. An eligible employer's qualifying revenue is used to determine the required reduction in revenue necessary to qualify for the Canada Emergency Wage Subsidy (see Q5).

The follow questions have been posed to the CRA respecting the computation of “qualifying revenue” in the [Joint Submission Short List](#):

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?

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.

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?

The “qualifying revenue” definition refers to the “inflow of cash... from... the use by others of resources of the eligible entity”, but unlike the ASPE definition of revenue (or the definition of revenue in former IAS 18), the definition does not specifically refer to “interest, royalties and dividends”; the lack of the incorporation of the latter terms seemingly expands the potential scope of the “qualifying revenue” definition.

Extraordinary Items

Pursuant to paragraph (c) of the definition, “qualifying revenue” excludes “extraordinary items”. The term “extraordinary items” is not defined in the ITA. Furthermore, the concept of “extraordinary items” is generally no longer used for GAAP purposes.

The exclusion of extraordinary items from qualifying revenue seems redundant given that qualifying revenue only includes, by definition, amounts arising in the course of the ordinary activities of the eligible entity (the “qualifying revenue” definition states that the exclusion applies “for greater certainty”).

Under current IFRS, there is no special distinction for items of an operational nature that occur irregularly or infrequently. Rather, such items are specifically prohibited from being separately classified/segregated as an “extraordinary item” (IAS 1, para. 87 states: “An entity shall not present any items of income or expense as extraordinary items, in the statement(s) presenting profit or loss and other comprehensive income or in the notes”). The International Accounting Standards Board (IASB) ceased recognizing “extraordinary items” in 2002. Formerly, IAS 8: *Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies* (issued in 1993) required “extraordinary items” to be disclosed in the income statement separately from the profit or loss from ordinary activities. The former standard defined “extraordinary items” as “income or expenses that arise from events or transactions that are clearly distinct from the ordinary activities of the enterprise and therefore are not expected to recur frequently or regularly”.

The Financial Accounting Standards Board (FASB) removed the concept of “extraordinary items” from US GAAP in 2015 (see [ASU 2015-01](#)). The FASB found that it was extremely rare for companies to report extraordinary items. Before 2015, under US GAAP, extraordinary items were generally defined as transactions that were both unusual and not expected to recur in the foreseeable future (if an event or transaction met both these requirements, a company was required to separate the transaction from ordinary operations in financial statements). Under US GAAP, companies continue to be required to disclose infrequent and unusual events (such items are not, however, classified as “extraordinary items”).

Most private companies in Canada can prepare financial statements in accordance with GAAP using ASPE as opposed to IFRS. In December 2009, the Accounting Standards Board (AcSB) released Part II of the *CPA Canada Handbook – Accounting*, which consists of ASPE. In conjunction with this release, the AcSB approved for publication the contents of a related document setting out its rationale for ASPEs. According to paragraph

175 of that document (*Accounting Standards for Private Enterprises — Background Information and Basis for Conclusions*):

In the course of reviewing the presentation requirements in respect of extraordinary items, the AcSB noted that many financial statement users in the private enterprise sector did not believe there was significant value to the information required by EXTRAORDINARY ITEMS, Section 3480. Stakeholders consulted agreed that extraordinary items are rare in practice. Given the significant time that often passes between the balance sheet date and issuance of the financial statements, users noted that they would expect to be informed of extraordinary items prior to receiving the financial statements. When the disclosure is of value, stakeholders commented that the "fair presentation" requirements in GENERAL STANDARDS OF FINANCIAL STATEMENT PRESENTATION, Section 1400, are sufficient to require entities to disclose extraordinary or unusual events separately. *As a result, Section 3480 was excluded. This decision also achieved harmonization with reporting by publicly accountable enterprises because IFRSs do not include an extraordinary item classification.* [emphasis added]

Generally, former section 3480 of the *CICA Handbook* required the separate presentation of "extraordinary items", which were defined as items that were not expected to occur frequently over several years, that did not typify the normal business activities of the entity, and that did not depend primarily on decisions or determinations by management or owners.

Despite the fact that the concept of "extraordinary items" is no longer relevant for accounting purposes, the GIFI section of Form T2 (corporate tax return) continues to contain a line item for "extraordinary items". According to the CRA Guide RC4088: *General Index of Financial Information (GIFI)*:

Extraordinary items and income taxes

9975 Extraordinary item(s)

This item includes gains/losses resulting from events that: 1) are not expected to occur regularly over a period of years; 2) do not typify normal business activities; 3) do not depend primarily on decisions or determinations by management. Examples include the expropriation of a corporation's or partnership's land and buildings for a highway, the destruction of a large portion of a wheat crop by a tornado, and an explosion in a nuclear reactor resulting in high-level radioactive emission.

Consolidated versus Non-Consolidated Revenue

Many corporate groups operate separate businesses in one or more legal entities. In recognition of this fact, ITA 125.7(4)(a) provides that if a group of eligible entities normally prepares consolidated financial statements, each member of the group may determine its qualifying revenue separately, *provided every member of the group determines its qualifying revenue on that basis.*

Where a corporate group's financial statements are normally prepared on a consolidated basis, qualifying revenues cannot be computed on consolidated basis for some members and a legal entity basis for others. In particular, if the normal accounting practice is to prepare consolidated financial statements, "each member of the group" may nonetheless compute qualifying revenue on a non-consolidated basis, but only if "every member of the group determines its qualifying revenue" on a non-consolidated basis.

An group of eligible entities may prepare consolidated financial statements under more than one form of GAAP (for example, under IFRS and US GAAP). In such a case, it would seem that either accounting practise would reflect a “normal” accounting practise of the entity.

If the “normal accounting practice” of a group of eligible entities *is not* to prepare consolidated financial statements, pursuant to ITA 125.7(4)(b), if an eligible entity and *each member* of an “affiliated group” of eligible entities of which the eligible entity is a member jointly elect, the qualifying revenue of the group may be determined on a consolidated basis in accordance with “relevant accounting principles” provides that each member of the group computes qualifying revenue on a consolidated basis. The CRA CEWS FAQ states (q. 10, 33): “This election must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case... A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request”.

The consolidated versus non-consolidated “qualifying revenue” provisions read as follows:

- (1) “qualifying revenue”, of an eligible entity for a prior reference period or a current reference period, means the inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity — in Canada in the particular period, subject to the following...
 - (4) For the purposes of the definition qualifying revenue in subsection (1), the qualifying revenue of an eligible entity is to be determined in accordance with its normal accounting practices, except that
 - (a) if a group of eligible entities normally prepares consolidated financial statements, each member of the group may determine its qualifying revenue separately, *provided every member of the group determines its qualifying revenue on that basis;*
 - (b) if an eligible entity and each member of an affiliated group of eligible entities of which the eligible entity is a member *jointly elect*, the qualifying revenue *of the group* determined on a consolidated basis in accordance with relevant accounting principles is to be used for each member of the group; [emphasis added]

The consolidated versus non-consolidated “qualifying revenue” rules may be summarized as follows:

- 1) Subject to (2) below, if the normal accounting practise is for a group of eligible entities to prepare consolidated financial statements (i.e. where the members of the “group” are made up of each entity that reports on a consolidated basis for normal accounting purposes), the consolidated qualifying revenue of the group must be used to determine whether each eligible entity that is a member of the group meets the Qualifying Revenue Decline Test;
- 2) If the normal accounting practise is for a group of eligible entities to prepare consolidated financial statements, notwithstanding (1) above, every particular member of the group can determine whether it meets the Qualifying Revenue Decline Test based on the non-consolidated qualifying revenue of each

- particular member (for greater certainty, where (2) applies, no member of the group referred to in (1) above may determine whether it meets the Qualifying Revenue Decline Test based on the consolidated qualifying revenue of the group);
- 3) Subject to (4) below, if the normal accounting practise of an eligible entity is to prepare non-consolidated financial statements, subject to (4) below, the non-consolidated qualifying revenue of the eligible entity must be used to determine whether the eligible entity meets the Qualifying Revenue Decline Test;
 - 4) If the normal accounting practise of an eligible entity is to prepare non-consolidated financial statements, notwithstanding (3) above, if the eligible entity is a member of an affiliated group (as determined under ITA 251.1), each member of the affiliated group can jointly elect to determine whether it meets the Qualifying Revenue Decline Test based on the consolidated qualifying revenue of the affiliated group, determined in accordance with “relevant” accounting principles (for greater certainty, where (4) applies, no member of the affiliated group referred to in (3) above may determine whether it meets the Qualifying Revenue Decline Test based on the non-consolidated qualifying revenue of the eligible entity computed in accordance with normal accounting practices.

Regarding the above rules, it should be considered that:

- Although listed entities will, as a general rule, be required to prepare consolidated financial statements in accordance with GAAP, at the legal entity level, non-consolidated financial statements may or may not be prepared in accordance with GAAP. For tax purposes, legal-entity financial statements generally must be prepared to file tax returns (i.e. for an eligible entity with a T2 filing requirement). In these circumstances, it appears that the CRA would consider the consolidated financial statements to reflect the “normal accounting practices” of an eligible entity that is a member of the consolidated group. However, the financial statements prepared for tax-filing purposes could be used for purposes of applying the Qualifying Revenue Decline test provided each eligible entity uses such statements for this purpose (an election would not be required to be filed in such a case pursuant to ITA 125.7(4)(b) – ITA 125.7(4)(a) provides that in cases where a group of eligible entities normally prepares consolidated financial statements, each member of the group *may* (without filing an election) determine its qualifying revenue separately provided every member of the group determines its qualifying revenue on that basis);
- Whereas ITA 125.7(4)(a) is relevant “if a group of eligible entities normally prepares consolidated financial statements”, ITA 125.7(4)(b) is relevant to “an affiliated group of eligible entities”. ITA 125.7(4)(a) appears to rely on accounting standards with respect to which entities must report on a consolidated basis. On the other hand, per ITA 125.7(4)(b) is relevant where an “affiliated group” of eligible entities wishes to elect to report revenue on a consolidated basis. ITA 251.1 sets out rules for determining when persons are “affiliated” with one another for purposes of the Act. An “affiliated group of persons” is defined, for the purposes of ITA 251.1, as a group of persons each member of which is affiliated with every other member (ITA 251.1(3)). ITA 251.1(1) makes reference to an “affiliated group”. Consequently, in my opinion, the rules in ITA 251.1 apply for the purposes of classifying an “affiliated group of eligible entities” under ITA 125.7(4)(b). It should, however, be noted that on the [Joint Submission Short List](#), clarification has been sought on this matter. In particular, the following question is posed: “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?” [The latter issue will not cause complication in cases whether the group already reports financial statements prepared in accordance with GAAP as in this case, an election will not be required under ITA 125.7(4)(b). As noted above, ITA 125.7(4)(b) is only relevant where the normal accounting practise is not to prepare consolidated financial statements.];

- In the case of a small business, it will often be the case that financial statements are not prepared in accordance with GAAP (regardless of whether the business is carried on by an individual, corporation, partnership, or trust). Legal entity financial statements will, however, normally be prepared by all small businesses for tax-filing purposes. Thus, in the case of an affiliated group of eligible entities carrying on one or more small businesses, consolidated statements will often not be prepared even though such statements would be required to be prepared under GAAP (i.e. if GAAP were followed). The election in ITA 125.7(4)(b) is intended to provide relief in this scenario (i.e. by allowing for “affiliated” eligible entities, as determined under ITA 251.1, to prepare consolidated financial statements under “relevant accounting principles” if such statements will allow for an increased aggregate CEWS claim for the affiliated group). There is, of course, no direct correlation between the affiliation rules in ITA 251.1 and the consolidation rules under accounting principles. However, it should be mentioned that there are some similarities in the concepts, and it may be the case that entities required to report on a consolidated basis under GAAP are also “affiliated” entities for tax purposes (for a high-level summary of IFRS consolidation rules, see the [relevant section](#) of Deloitte’s IAS Plus site – for a comparison of IFRS and ASPE standards, see BDO, “[ASPE-IFRS: A Comparison – Subsidiaries and Consolidations](#)”, *Assurance and Accounting Publications*);
- The consolidation method may allow for an increased overall CEWS claim in cases where certain eligible entities in a group would not meet the Qualifying Revenue Decline Test on a stand-alone basis, but do meet the test on a consolidated basis (for example, because one member of the affiliated group suffers a significant qualifying revenue decline). On the other hand, the non-consolidated approach may be beneficial in the opposite situation. Consequently, eligible entities should assess the amount of the CEWS available under all available qualifying revenue computation methods and select the optimal approach;
- It may not be clear whether the consolidated or non-consolidated approach will ultimately provide for the maximum available CEWS claim for each qualifying period before an application is filed. However, as discussed above, once an application is made, a group of eligible entities generally must continue to use the same method chosen in the first application. To minimize the risk of making a sub-optimal CEWS claim, a group of eligible entities could wait until after June 2020 to file applications (the application must be made before the end of September 2020). Such an approach may not be feasible if subsidy funds are needed as soon as possible;
- The consolidation method in ITA 125.7(4)(a) or (b) will not allow for revenue declines from members of an group carrying on business outside of Canada to assist an eligible entity meet the Qualifying Revenue Decline Test (“qualifying revenue”, whether computed on a consolidated or non-consolidated basis, only includes revenue earning in the ordinary course of activities carried on in Canada – note, however, the limited exception to this rules in the context of applying the non-arm’s length revenue rule in ITA 125.7(4)(d)).

The following comments/examples are provided in the CRA CEWS FAQ regarding the qualifying revenue consolidation rules:

9. Are there special rules for calculating the qualifying revenue of a group of eligible employers?

The qualifying revenue of an eligible employer is generally determined in accordance with its normal accounting practices. **Consequently, when a group of eligible employers generally prepares consolidated financial statements, each member of the group will determine its qualifying revenue in accordance with those statements. However, each member of such a group may determine its qualifying revenue separately and not based on the consolidated statements, so long as every member of the group determines its qualifying revenue on that separate basis.** [emphasis added]

Example 7

Corporation A owns all the shares of Corporation B. Both corporations are eligible employers. Corporation A prepares consolidated financial statement for accounting purposes. Assume that there is no intercompany revenue. Below are the qualifying revenue for each corporation as well as their qualifying revenue on a consolidated basis for March 2019 and March 2020.

Example 7 table

	Qualifying revenue for March 2019	Qualifying revenue for March 2020	Reduction in Qualifying revenue in March 2020 as compared to March 2019
Corporation A	\$1,000,000	\$1,000,000	0%
Corporation B	\$1,000,000	\$800,000	20%
Total on a consolidated basis	\$2,000,000	\$1,800,000	10%

In accordance with normal accounting practice Corporations A and B will not be eligible for the wage subsidy as their qualifying revenue, determined on a consolidated basis, has not experienced the required reduction in revenue of at least 15%. Therefore, Corporation A and Corporation B have decided to determine their qualifying revenue separately. In that case, while Corporation A will not qualify for the wage subsidy, as it has not experienced the required reduction in revenue of at least 15%, Corporation B will qualify for the wage subsidy because its qualifying revenue has dropped by more than 15%. [Note that election is not required to be filed for Corporation B to file the application computing revenue on a non-consolidated basis.]

10. Are there special rules for calculating the qualifying revenue of members of an affiliated group?

If an eligible employer and each member of an affiliated group of eligible employers of which the eligible employer is a member jointly elect, the qualifying revenue of the affiliated group, determined on a consolidated basis in accordance with relevant accounting principles, is to be used for each member of the group. This rule applies even if one or more members of an affiliated group may have no revenue to report in the claim period. [The latter comment presumably is intended to clarify that the Qualifying Revenue Decline Test can be met by an eligible entity with nil revenue in each comparison period if the test is met on a consolidated qualifying revenue basis.]

Example 8

Individual Mr. A, owns all the shares of Corporation A and his spouse Mrs. A, owns all of the shares of Corporation B. Both corporations are eligible employers. Corporation A and Corporation B form an affiliated group and each corporation is a member of that group [(note that the corporations in this example are affiliated in accordance with ITA 251.1(1)(c)). Below are the qualifying revenues for each corporation as well as on a consolidated basis, assuming such a consolidation was done, for March 2019 and March 2020.

Example 8 table			
	Qualifying revenue for March 2019	Qualifying revenue for March 2020	Reduction in Qualifying revenue in March 2020 as compared to March 2019
Corporation A	\$200,000	\$200,000	0%
Corporation B	\$200,000	\$100,000	50%
Total on a consolidated basis	\$400,000	\$300,000	25%

Because Corporation A and Corporation B are members of an affiliated group [as determined under ITA 251.1], they could jointly elect that the qualifying revenue of the affiliated group be determined on a consolidated basis in accordance with relevant accounting principles, and the consolidated amount will be used as the qualifying revenue by each member of the group. Thus, both Corporations A and B will be eligible for the wage subsidy, as their qualifying revenue, determined on a consolidated basis, has dropped by more than 15%. Without this election only Corporation B would qualify for the wage subsidy. [Note that the normal accounting practise of Corporation A and Corporation B is **not** to prepare consolidated financial statements; this is why an election must be made to report qualifying revenue on a consolidated basis].

The following comments were made in the [Joint Submission](#) regarding the Qualifying Revenue Decline Test and use of consolidated versus non-consolidated revenue:

- Integrated business organizations – Many integrated businesses have used separate corporations to conduct business, and this may involve significant intercompany transactions. A classic example would be an organization that manufactures, wholesales and has retail stores. In such a case, the manufacturing corporation may sell all of its production to the wholesale corporation and the retail corporation. Similarly, the wholesale corporation may have significant sales to the retail corporation. In this scenario, it would appear that salaries paid inside the manufacturing corporation could never qualify no matter how badly the organization is affected by the crisis since its revenue for the 30% test will always be zero. There will be many corporate structures where this will be an issue.
- Centralized provision of services within an organization – Some businesses have established separate entities to provide services to other members of business group for a fee, and these other group members earn the third-party revenue. In such a case, it appears that the salaries and wages of the entity providing services could never qualify.
- Paymaster corporations – Similar to the previous point, some organizations have centralized their payroll function in one corporation and allocate the cost to other members of the group. Passing on the payroll cost will not give rise to revenue that can be considered when applying.

Update: Two possible remedies were included in s.125.7(4). First, the legislation allows a group of affiliated 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. Although a decline in revenue will be measured for the group as a whole, it does help to eliminate issues where revenue generation and payroll functions do not coordinate properly.

Second, the legislation provides a special rule where all or substantially all of an eligible entity's qualifying revenue is from other non-arm's length entities. In these situations, the rule generally 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.

On the [Joint Submission Short List](#), the following queries continue to be posed under "Corporate Group Issues":

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.

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.

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.

Affiliated Entities

Generally, pursuant to ITA 251.1(1), for the purposes of the ITA, "affiliated persons", or persons affiliated with each other, are defined as follows:

- Two individuals are considered to be affiliated only if they are spouses or "common-law partners";
- A corporation is considered to be affiliated with a person who controls the corporation, each member of an affiliated group of persons that controls the corporation, and a spouse or common-law partner of a person or member of an affiliated group that controls the corporation;
- Two corporations are also affiliated where each corporation is controlled by a person who is affiliated with the other, one corporation is controlled by a person and the other corporation is controlled by a group of persons, each member of which is affiliated with the controller of the first corporation, and each corporation is controlled by a group of persons, and each member of each group is affiliated with at least one member of the other;

- A corporation and a partnership are affiliated if the corporation is controlled by a particular group of persons, each member of the group that controls the corporation is affiliated with at least one member of a “majority-interest group of partners” of the partnership, and each member of the majority-interest group is affiliated with at least one member of the group that controls the corporation;
- A partnership is considered to be affiliated with a majority-interest partner of the partnership;
- Two partnerships are also considered to be affiliated if the same person is a majority-interest partner in both partnerships, a majority-interest partner of one partnership is affiliated with each member of a majority-interest group of another partnership, and each member of a majority-interest group of both partnerships is affiliated with at least one member of the other group;
- A person and a trust are affiliated if the person is a majority-interest beneficiary of the trust or would, if ITA 251.1(1) were read without reference to ITA 251.1(1)(g), be affiliated with a majority-interest beneficiary of the trust; and,
- Two trusts are considered to be affiliated with each other if a contributor to one of the trusts is affiliated with a contributor to the other trust and a majority-interest beneficiary of one of the trusts is affiliated with a majority-interest beneficiary of the other trust, a majority-interest beneficiary of one of the trusts is affiliated with each member of a majority-interest group of beneficiaries of the other trust, or each member of a majority-interest group of beneficiaries of each of the trusts is affiliated with at least one member of a majority-interest group of beneficiaries of the other trust.

Joint Ventures

If a joint venture employer only has employees and the revenues of the venture participants are earned directly (or through another entity), the eligible entity (i.e. the joint venture employer) may not otherwise be eligible for the CEWS. In such situations, ITA 125.7(1) “qualifying entity” (c) is intended to provide relief by allowing the eligible entity (i.e. the joint venture employer) to use the qualifying revenue of the joint venture to establish that the Qualifying Revenue Decline Test has been met. In particular, ITA 125.7(4)(c) provides that if all of the interests in an eligible entity are owned by participants in a joint venture and “all or substantially all” of the qualifying revenue of the eligible entity for a qualifying period is in respect of the joint venture, then the eligible entity may use the qualifying revenues of the joint venture (determined as if the joint venture were an eligible entity) instead of its qualifying revenues for the purposes of ITA 125.7(1) “qualifying entity” (c). In other words, if all the interests in an eligible entity are owned by participants in a joint venture and all or substantially all of the eligible entity’s qualifying revenues are in respect of the joint venture, the eligible entity may use the joint venture’s qualifying revenues instead of its own for the purposes of meeting the Qualifying Revenue Decline Test.

The phrase “all or substantially all” is not defined in the ITA. The phrase has been interpreted for administrative purposes by the CRA generally to mean 90% or more. However, although this rule of thumb has generally been used in practise, the courts¹ have interpreted the phrase in certain tax related contexts as requiring something less than 90% (as low as 76% has been found to meet an “all or substantially all” test by the courts).

Partnerships

ITA 125.7(7) provides that a partnership is deemed: 1) for the purposes of ITA 125.7(2) and ITA 160.1(1) to be a taxpayer; and 2) for the purposes of ITA 125.7(2) to have a liability under Part I for a taxation year in which a qualifying period ends.

Non-Arm's Length Revenue

Pursuant to paragraph (d) of the definition, "qualifying revenue" excludes amounts "derived from" persons or partnerships not dealing at arm's length with the eligible entity. Thus, as a general rule, non-arm's length revenue is excluded from qualifying revenue. For the meaning of "arm's length", see ITA 251 and Income Tax Folio S1-F5-C1: *Related Persons and Dealing at Arm's Length*.

ITA 125.7(4)(d) provides for a narrow exception from the non-arm's length rule. The provision provides that if:

- 1) "all or substantially all" (the meaning of this phrase is discussed above) of an eligible entity's qualifying revenue — determined without reference to ITA 125.7(1)"qualifying revenue"(d) — for a qualifying period is from one or more particular persons or partnerships with which it does not deal at arm's length, and
- 2) each particular person or partnership jointly elects with the eligible entity, for the purposes of ITA 125.7(1)"qualifying entity"(c),

the eligible entity's qualifying revenue for the "prior reference period" is deemed to be \$100, and the eligible entity's qualifying revenue for the "current reference period" is deemed to be the aggregate amounts determined by the formula $\$100(A/B)(C/D)$ where,

- A is the eligible entity's qualifying revenue (determined without reference to paragraph (d) of the definition qualifying revenue in subsection (1)) for the current reference period attributable to a particular person or partnership,
- B is the total of all amounts, each of which is the eligible entity's qualifying revenue (determined without reference to ITA 125.7(1)"qualifying revenue"(d)) for the current reference period "attributable" (this term is not defined) to a particular person or partnership,
- C is the particular person or partnership's qualifying revenue (determined as if the "qualifying revenue" definition were read without reference to "in Canada" – i.e. as noted in the CRA CEWS FAQ, for the purposes of this variable, the amount used for each of the particular person's or partnership's qualifying revenue is modified to include revenues earned outside of Canada, and the particular person or partnership can be either a resident or a non-resident (see the example below)) for the current reference period, and
- D is the particular person or partnership's qualifying revenue (again, determined as if the "qualifying revenue" definition were read without reference to "in Canada") for the prior reference period.

In simplified terms, ITA 125.7(4)(d) may be relevant where all or substantially all of an eligible entity's qualifying revenue is derived from non-arm's length entities. In such a case, where an election is filed, the

eligible entity can meet the Qualifying Revenue Decline Test if the test is met based on the decline of the arm's length revenue realized by the non-arm's length party. For example, assume SupplierCo sells machinery parts exclusively to a related company, JamesCo. JamesCo sells fully assembled equipment to third-parties. By filing the election under ITA 125.7(4)(c), SupplierCo could determine whether it meets the Qualifying Revenue Decline Test based on the decline in JamesCo's qualifying revenue derived from arm's length sales.

The [Joint Submission Short List](#) comments that: "Issues regarding [ITA] 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". The following comments/example are provided in the CRA CEWS FAQ (q. 8):

Special rules exist for an eligible employer that derives all or substantially all of its revenue from one or more particular persons or partnerships with which it does not deal at arm's length. Essentially, if the eligible employer and each of these particular persons or partnerships with which it does not deal at arm's length jointly elect (see note below), the eligible employer's qualifying revenue for the prior reference period is deemed to be \$100 and a weighted-average approach (see Example 6), is used to determine qualifying revenue for the current reference period. When calculating the qualifying revenue for the current reference period under this rule, the eligible employer's qualifying revenue includes amounts derived from persons or partnerships not dealing at arm's length with it. *The amount used for each of the particular person's or partnership's qualifying revenue is modified to include revenues earned outside of Canada. The particular person or partnership can be either a resident or a non-resident.* For more information about non-arm's length, please see Income Tax Folio [S1-F5-C1, Related Persons and Dealing at Arm's Length](#). *Note:* This election must be made and retained with the eligible employer's other books and records in support of its wage subsidy claim and eligibility (see Q33), and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case. [emphasis added]

Example 5

Corporation A, an eligible employer, provides management services, including payroll services, to Corporation B. All of Corporation A's revenues are from Corporation B with which it does not deal at arm's length. Corporation B's revenues are from arm's-length customers. Under the special rule, in order to determine whether Corporation A can qualify for the wage subsidy, Corporation A's qualifying revenue for the current reference period is determined by reference to the required reduction in qualifying revenue for Corporation B for that reference period.

Example 6

All or substantially all of the revenues of Corporation X, (an eligible employer), are from two corporations (Corporation Y and Corporation Z) with which it does not deal at arm's length. Corporation X's total revenue for March 2020 was \$1,450 of which \$400 was attributable to Corporation Y and \$1,000 was attributable to Corporation Z. \$50 was from an arm's-length taxpayer. Corporation Y's qualifying revenue for March 2020 was \$1,000 and for March 2019 was \$1,500. Corporation Z's qualifying revenue for March 2020 was \$1,300 and for March 2019 was \$2,000. Calculation of Corporation X's qualifying revenue for the current reference period:

Qualifying revenue (QR) calculation in relation to Corporation Y: $\$100 \times \400 (QR attributable to Corporation Y) / $\$1,400$ (Corporation X's total QR from non-arm's-length persons or partnerships) \times $\$1,000$ (Corporation Y QR for current reference period) / $\$1,500$ (Corporation Y QR for prior reference period) = 19

QR calculation in relation to Corporation Z: $\$100 \times \$1,000$ (QR attributable to Corporation Z) / $\$1,400$ (Corporation X's total QR from non-arm's-length persons or partnerships) \times $\$1,300$ (Corporation Z's QR for current reference period) / $\$2,000$ (Corporation Z's QR for prior reference period) = 46

The weighted average qualifying revenue for Corporation X for the current reference period is $\$65$ ($\$19 + \46). Since the prior reference period's qualifying revenue is deemed to be $\$100$, Corporation X has experienced the required reduction in revenue of at least 15% for the claim period. Corporation Y and Corporation Z must jointly elect with Corporation X in order to use this special rule.

See also Keung et al., "[Bill C-14 – The 75% Canada Emergency Wage Subsidy](#)", Moodys COVID-19 Updates and Resources, April 13, 2020.

Election to Use the Cash Method

In response to stakeholder concerns, the enacted rules introduced an option to report revenues on the cash basis for purposes of determining whether the Qualifying Revenue Decline Test has been met (for examples of concerns raised, such the timing of the recognition of bad debts and the timing of the recognition of WIP revenue by professionals, see the [Joint Submission](#)). According to Finance News Release [2020-04-08](#), this option was added "[i]n recognition that the time between when revenue is earned and when it is paid could be highly variable in certain sectors of the economy".

More specifically, pursuant to ITA 125.7(4)(e), an eligible entity may make an election, *which must apply for all qualifying periods*, to determine its revenues based on the cash method within the meaning assigned by ITA 28(1) with any modifications that the circumstances require. Once chosen, the same accounting method must be used by the eligible entity throughout the program period. Per the CRA CEWS FAQ: (q. 12, 33): "This election must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case... A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request".

If an election is not filed to use the cash method, Finance has indicated that "qualifying revenue" is expected to be computed using accrual accounting principles (note, however, that the "normal accounting practices" of an eligible entity may not reflect accrual accounting – the "normal accounting practices" do not have to conform with GAAP). For example, in News Release [2020-04-11B: Government Introduces COVID-19 Emergency Response Act, No. 2 to Help Businesses Keep Canadians in their Jobs](#), Finance stated: "It is... proposed that employers be allowed to measure revenues either on the basis of accrual accounting (as they are earned) or cash accounting (as they are received). Once chosen, the same accounting method would have to be used by the employer throughout the program period". Also, in News Release [2020-04-08: Government provides further flexibility for employers to access the Canada Emergency Wage Subsidy](#), Finance stated: "[i]n recognition that the time between when revenue is earned and when it is paid could be highly variable in certain sectors of the economy, it is proposed that employers be allowed to measure revenues either on the

basis of accrual accounting (as they are earned) or cash accounting (as they are received)". On Canada.ca under "[Canada Emergency Wage Subsidy \(CEWS\)](#)", the CRA similarly states:

Eligible Revenue

Eligible revenue generally includes revenue earned in Canada from: 1) selling goods, 2) rendering services, and 3) others' use of your resources. Use your normal accounting method when calculating revenue. You can use the cash method or the accrual method, but you must use the same approach throughout.

ITA 125.7(4) applies "for the purposes of the definition qualifying revenue in subsection (1)". Consequently, if the election is made, it appears that qualifying revenue for the prior reference period must also be computed using the cash method (presumably, Finance and the CRA would have this expectation). For entities that regularly prepare a Statement of Cash Flows, comparable figures may not be difficult to compute.

Under ITA 28(1), revenue is generally computed without taking into account uncollected sales invoices or income attributable to WIP inventory. Uncollected amounts may be taken into revenue only when collected. Inventories are not reflected in revenue until sold and realized in cash. The relevant portions of ITA 28(1) read as follows:

For the purpose of computing the income of a taxpayer for a taxation year from a... business, the income from the business for that year may, if the taxpayer so elects, be computed in accordance with a method (in this section referred to as the "cash method") whereby the income therefrom for that year shall be deemed to be an amount equal to the total of

(a) all amounts that (i) were received in the year, or are deemed by this Act to have been received in the year, in the course of carrying on the business, and (ii) were in payment of or on account of an amount that would, if the income from the business were not computed in accordance with the cash method, be included in computing income from the business for that or any other year...

(d) the total of all amounts each of which is an amount included in computing the taxpayer's income for the year from the business because of subsection 13(1) [(CCA recapture)], 80(13) or 80.3(3) or (5) [(i.e. under the debt forgiveness rules)]...

Special Rules Applicable to Charities and NPOs

NPOs and registered charities are permitted to choose whether or not to include government assistance in revenues for the purpose of applying the qualifying revenue decline test. According to Finance News Release [2020-04-08](#), this option was added "to recognize that different types of organizations are experiencing different types of funding pressures". Once chosen, the same approach would have to be maintained by the organization throughout the program period.

In particular, pursuant to ITA 125.7(1)"qualifying revenue"(a)(i), in the case of an eligible entity described in paragraph (c) of the definition, qualifying revenue *includes* revenue from a related business (as defined in ITA 149.1(1)), gifts, and other amounts received in the course of its ordinary activities. However, notwithstanding ITA 125.7(1)"qualifying revenue"(a)(i), ITA 125.7(1)"qualifying revenue"(a)(ii) provides that an eligible entity described in paragraph (c) may elect to exclude funding received from government sources ([such as grants](#)) in

the determination of its qualifying revenue *for all* of its prior reference periods and current reference periods. The CRA CEWS FAQ states (q. 7, 33): “[An election under ITA 125.7(1)“qualifying revenue”(a)(ii)] must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case... A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request”.

Similarly, pursuant to ITA 125.7(1)“qualifying revenue”(b)(i), in the case of an eligible entity described in paragraph (d) of the definition, qualifying revenue includes membership fees and other amounts received in the course of its ordinary activities. However, notwithstanding ITA 125.7(1)“qualifying revenue”(b)(i), ITA 125.7(1)“qualifying revenue”(b)(ii) provides that an eligible entity described in paragraph (d) may elect to exclude funding received from government sources ([such as grants](#)) in the determination of its qualifying revenue *for all* of its prior reference periods and current reference periods. As mentioned above, per the CRA CEWS FAQ (q. 7, 33): “[An election under ITA 125.7(1)“qualifying revenue”(b)(ii)] must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case... A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request”.

Qualifying Revenue Decline Test

General Comments

For the purposes of determining whether the qualifying revenue decline test is met, most eligible entities may either:

- 1) compare their qualifying revenue of March, April and May 2020 to that of the same month of 2019, or
- 2) compare their qualifying revenue of March, April and May 2020 to an average of their revenue earned in January and February 2020.

For Qualifying Period 1 (i.e. March 15 to April 11), a decline in qualifying revenue in May 2020 of 15% is required to satisfy the test. For Qualifying Periods 2 (i.e. April 12 to May 9) and 3 (May 10 to June 6), a decline in qualifying revenue, in April 2020 or May 2020 respectively, of 30% is required to satisfy the test. The lower benchmark threshold in March is intended to recognize that many businesses did not begin to be affected by the COVID-19 crisis until partway through the month.

Once an employer is found eligible for a Qualifying Period, the employer will automatically qualify for the next Qualifying Period (thus, an attestation made in an CEWS application can effectively apply to more than one qualifying period). In particular, pursuant to ITA 125.7(9), if, absent the application of ITA 125.7(9), an eligible entity meets the conditions in ITA 125.7(1)“qualifying entity”(c) in respect of a particular qualifying period, the eligible entity is deemed to meet the conditions of paragraph (c) in respect of the immediately following qualifying period. Thus, for example, an employer with a revenue drop of more than 15% in March 2020 would be eligible for the CEWS for Qualifying Periods 1 and 2, covering remuneration paid between March 15 and May 9 (if an application was not filed for Qualifying Period 2, a new application would have to be filed for

Qualifying Period 3 in order to re-qualify for the CEWS). Similarly, an employer with a revenue drop of 30% in April would be eligible for the CEWS for Qualifying Periods 2 and 3, covering remuneration paid between May 10 to June 6.

In the [Backgrounder](#), under “Eligible Periods”, Finance summarizes the rules as follows:

Eligibility would generally be determined by the change in an eligible employer’s monthly revenues, year-over-year, for the calendar month in which the period began. On April 8, 2020, the Government announced that all employers would be allowed to calculate their change in revenue using an alternative benchmark to determine their eligibility [(note that the Alternative Approach *must* be used by an employer that was not carrying on a business or otherwise carrying on its ordinary activities on March 1, 2019)]. This would provide more flexibility to employers for which the general approach may not be appropriate, including high-growth firms, sectors that faced difficulties in 2019, non-profits and charities, as well as employers established after February 2019. Under this alternative approach, employers would be allowed to compare their revenue using an average of their revenue earned in January and February 2020. Employers would select the general year-over-year approach or this alternative approach when first applying for the CEWS and would be required to use the same approach for the entire duration of the program. The Government is also announcing that, in order to provide certainty to employers, once an employer is found eligible for a specific period, the employer would automatically qualify for the next period... Once an approach is chosen, the employer would have to apply it throughout the program period.

The table below outlines each claiming period, the required reduction in revenue and the reference period for eligibility.

	<i>Claiming period</i>	<i>Required reduction in revenue</i>	<i>Reference period for eligibility</i>
<i>Period 1</i>	March 15 to April 11	15%	March 2020 over: <ul style="list-style-type: none"> • March 2019 or • Average of January and February 2020
<i>Period 2</i>	April 12 to May 9	30%	Eligible for Period 1 OR April 2020 over: <ul style="list-style-type: none"> • April 2019 or

			<ul style="list-style-type: none"> Average of January and February 2020
<i>Period 3</i>	May 10 to June 6	30%	Eligible for Period 2 OR May 2020 over: <ul style="list-style-type: none"> May 2019 or Average of January and February 2020

The following example is provided in the [Backgrounder](#):

ABC Inc. is a start-up that started its operations last September. It reported revenues of \$100,000 in January and \$140,000 in February, for a monthly average of \$120,000. In March, its revenues dropped to \$90,000. Because revenues in March are 25 per cent lower than \$120,000, ABC inc. would be eligible for the CEWS for the first and second claiming period. To be eligible for the third claiming period, ABC Inc. revenues would have to be \$84,000 or less for the month of April or May (that is, 30 per cent lower than \$120,000)

As highlighted in the above table, the qualifying periods during which eligible remuneration is paid in respect of which the CEWS may be claimed straddle the months in which qualifying revenue is tested (i.e. March 2020, April 2020, and May 2020). As a result, in some cases, an eligible entity may not know whether it has met the Revenue Decline Test before it has paid eligible remuneration. Such circumstances should be limited by the application of ITA 125.7(9). For example, an eligible entity that meets the revenue test in March 2020 would qualify for the CEWS in respect of eligible remuneration paid from March 15 to May 9. Similarly, if the eligible entity then meets the revenue decline test in April 2020, it could file another application that would cover remuneration paid from April 12 to June 6 (**note that ITA 125.7(9) applies “absent the application of this subsection”; consequently, an attestation can be made in respect of April 2020 revenue even if an eligible entity is deemed to meet the test for the second qualifying period by ITA 125.7(9) – filing such an application could allow the eligible entity to be deemed to meet the test for the third qualifying period in ITA 125.7(9).** The following example is provided in the CRA CEWS FAQ (q.5):

[I]f an eligible employer meets the condition for the reduction in respect of the first claim period - March 15 to April 11, 2020, the employer will be considered to have met the required reduction in revenue in respect of the second reference period - April 12 to May 9, 2020, without necessarily making a determination. But the eligible employer will have to make a determination for the third claim period - May 10 to June 6, 2020 (see Table 2 below). In a situation where the eligible employer, subsequently determines that it actually experienced the required reduction in revenue, without applying the deeming rule, for the second claim period - April 12 to May 9, 2020, the eligible employer will be considered to

have experienced the required reduction in revenue for that third claim period because of the deeming rule that can now be applied to the third period (see Example 1).

An eligible entity can file a CEWS application as late as September 30, 2020 (ITA 125.7(1) “qualifying entity”(a)). Therefore, if the entity does not immediately require funds, it may be beneficial to file a CEWS application after May 2020 (i.e. once the eligible entity has complete information to assess what elections (if any) should be filed to maximize the CEWS claim. Per ITA 125.7(5)(a) (see under “Payment of the CEWS by the Government”), it appears that an eligible entity will not be permitted to amend an application once made (i.e. it is important to make the optimal elections in the first application filed).

Revenue Decline Test

The qualifying revenue decline test is contained in ITA 125.7(1)“qualifying entity”(c). Per that provision, for an eligible entity to meet the definition of a “qualifying entity”, it is required that:

- the qualifying revenues for the “current reference period” of the eligible entity
 - the “current reference period” (ITA 125.7(1)) for a qualifying period means 1) March 2020 for Qualifying Period 1 (i.e. the period that begins on March 15, 2020 and ends on April 11, 2020), 2) April 2020 for Qualifying Period 2 (i.e. the period that begins on April 12, 2020 and ends on May 9, 2020), and 3) May 2020 for Qualifying Period 3 (i.e. the period that begins on May 10, 2020 and ends on June 6, 2020 –
- be equal to or less than the “specified percentage” for the qualifying period
 - the “specified percentage” (ITA 125.7(1)) for a qualifying period means: 1) for Qualifying Period 1, 85%; 2) for Qualifying Period 2 or 3, 70%; and 3) if the Government prescribes an additional qualifying period for the CEWS, a prescribed percentage will be the “specified percentage” for the new qualifying period –

of either:

- 1) the eligible entity’s qualifying revenues for the “prior reference period” under the General Approach (i.e. if ITA 125.7(1)“prior reference period”(a) or (c) applies – para (c) is only relevant if the Government chooses to prescribe an additional qualifying period after May 2020) (if the General Approach applies, the reference period is March 2019 for Qualifying Period 1, April 2019 for Qualifying Period 2, and May 2019 for Qualifying Period 3), or
- 2) if the Alternative Approach applies (i.e. if ITA 125.7(1)“prior reference period”(b) applies), the amount determined by the formula $0.5A(B/C)$, where:
 - A is the eligible entity’s qualifying revenues for January and February 2020,
 - B is the number of days in January and February 2020 (i.e. 60 days), and

- C is the number of days in January and February 2020 during which the eligible entity was carrying on business.

Even if an eligible entity does not meet the Qualifying Revenue Decline Test by a small margin in respect of a qualifying period (for example, if revenue only declines 14.5% in March 2020), the CEWS will not be available for that period (i.e. the test is an all-or-nothing test).

As confirmed in the CRA CEWS FAQ (q. 5), the decline in revenue does not have to relate to the COVID-19 crisis (effectively, if the test is met, it is implicitly assumed that the revenue decline relates to the COVID-19 crisis).

If the Alternative Approach is chosen, by virtue of the formula in (2) above, average January and February 2020 qualifying revenue is effectively reduced if the employer was not carrying on business during any days during those months. It appears that this rule is intended to prevent the comparable revenue figure from being inflated in cases where an entity ceased operations before March. Presumably, variable C should remain “60” for businesses that were not operating, for example, on weekends in accordance with normal procedures. Per the CRA CEWS FAQ (q. 5):

Where a business is carried on throughout January and February 2020, the factor (B/C) will be 1. Hence, there will be no adjustment to the average qualifying revenue. In a situation where an eligible employer was not carrying on business—or otherwise not carrying on its ordinary activities—through out the months of January or February 2020, for example, in the case of a new business that started mid January, the qualifying revenues for the months of January and February 2020 will be grossed up by the factor (B/C), to make the comparison of the qualifying revenue in the prior reference period comparable to the qualifying revenue in the current period (see Example 4 [reproduced in the Appendix]). However, if operations began anytime after February 2020, the employer would not be eligible for the wage subsidy.

The following tables/examples are provided in the CRA CEWS FAQ:

Table 1 below summarizes each relevant period and the required reduction in revenue to qualify to claim the wage subsidy.

Relevant Periods

Table 1

	Claim periods	Required reduction in revenue	Reference periods for comparison under the general approach	Reference periods for comparison under the alternative approach
Period 1	March 15 to April 11, 2020	15%	March 2020 over March 2019	March 2020 over average of January and February 2020

Table 1

	Claim periods	Required reduction in revenue	Reference periods for comparison under the general approach	Reference periods for comparison under the alternative approach
Period 2	April 12 to May 9, 2020	30% Footnote 1	April 2020 over April 2019	April 2020 over average of January and February 2020
Period 3	May 10 to June 6, 2020	30%	May 2020 over May 2019	May 2020 over average of January and February 2020

Note 1: If the eligible employer meets the 15% required reduction in revenue for the first claim period - March 15 to April 11, 2020, it will be deemed to have met the 30% required reduction in revenue for the second claim period - April 12 to May 9, 2020 (see Table 2).

If an eligible employer has not experienced the required reduction in revenue to qualify to claim the wage subsidy for a particular claim period, it may still qualify to claim the wage subsidy for another claim period if it has experienced the required reduction in revenues in that other claim period. Once an eligible employer has determined that it has experienced the required reduction in revenue for a particular claim period, it is automatically considered to have experienced the required reduction in revenue for the immediately following claim period (deeming rule). As a result, the employer does not have to make this determination again for that next claim period (see Table 2 below). However, this deeming rule does not automatically extend to apply to the period after that next claim period. For example, if an eligible employer meets the condition for the reduction in respect of the first claim period - March 15 to April 11, 2020, the employer will be considered to have met the required reduction in revenue in respect of the second reference period - April 12 to May 9, 2020, without necessarily making a determination. But the eligible employer will have to make a determination for the third claim period - May 10 to June 6, 2020 (see Table 2 below). In a situation where the eligible employer, subsequently determines that it actually experienced the required reduction in revenue, without applying the deeming rule, for the second claim period - April 12 to May 9, 2020, the eligible employer will be considered to have experienced the required reduction in revenue for that third claim period because of the deeming rule that can now be applied to the third period (see Example 1).

Table 2

Claim period 1 March 15 to April 11, 2020 Footnote 2	Claim period 2 April 12 to May 9, 2020 Footnote 2	Claim period 3 May 10 to June 6, 2020 Footnote 2
Reduction of revenue of less than 15%	Reduction of revenue of less than 30% Does not qualify under the regular rule	Reduction of revenue of less than 30% Does not qualify under the regular rule

Table 2

Claim period 1 March 15 to April 11, 2020 Footnote 2	Claim period 2 April 12 to May 9, 2020 Footnote 2	Claim period 3 May 10 to June 6, 2020 Footnote 2
Does not qualify under the regular rule		
Reduction of revenue of less than 15%	Reduction of revenue of 30% or more	Reduction of revenue of less than 30%
Does not qualify under the regular rule	Qualifies under the regular rule	Does not qualify under the regular rule but qualifies under the deeming rule (because the employer meets the 30% reduction of revenue in the claim period 2)
Reduction of revenue of 15% or more	Reduction of revenue of less than 30%	Reduction of revenue of less than 30%
Qualifies under the regular rule	Does not qualify under the regular rule but qualifies under the deeming rule (because the employer meets the required 15% reduction of revenue in the claim period 1)	Does not qualify under the regular rule
Reduction of revenue of 15% or more	Reduction of revenue of 30% or more	The deeming rule does not apply because the reduction of revenue during the claim period 2 was not 30% or more.
Qualifies under the regular rule	Qualifies under the regular rule as well as under the deeming rule (because the employer meet the 15% reduction of revenue in the claim period 1)	Reduction of revenue of less than 30%
Reduction of revenue of 15% or more	Reduction of revenue of 30% or more	Not qualifies under the regular rule but qualify under the deeming rule (because the employer meets the 30% reduction of revenue in the claim period 2)
Qualifies under the regular rule	Qualifies under the regular rule as well as under the deeming rules (because the employer meet the 15% reduction of revenue in the claim period 1)	Reduction of revenue of 30% or more
Reduction of revenue of 15% or more		Qualify under the regular rule as well as under the deeming rules (because the employer meets the 30% reduction of revenue in the claim period 2)

Note 2: For the required reduction in revenue to qualify to claim the wage subsidy under the general and alternative approach see Table 1.

Example 1

XYZ Inc. started its operations in July 2019. It reported revenues of \$100,000 in January 2020 and \$140,000 in February 2020, for a monthly average of \$120,000. In March, its revenues dropped to \$90,000. Because revenues in March 2020 are 25% lower than \$120,000, XYZ Inc. would be eligible for the wage subsidy for both the first claim period (March 15 to April 11, 2020), and the second claim period (April 12 to May 9, 2020), because of the deeming rule.

It should be noted that the **automatic determination** for the second period is not relevant for the determination of the required revenue reduction for the third period. XYZ Inc. would need to have experienced the required reduction of 30% in the third period to qualify for that period, or to have experienced the 30% required reduction for the second period (meaning, to have revenue of \$84,000 or less – that is, 30% lower [than] \$120,000 – for that second period. In that circumstance because it has qualified for the second period using the 30% required reduction, XYZ Inc. is automatically considered to have experienced the required reduction in revenue for the third claim period because of the deeming rule).

Example 2

An eligible employer is determining if it has experienced the required reduction in revenue to qualify in order to claim the wage subsidy for the first claim period, from March 15 to April 11, 2020. The eligible employer is using the general year-over-year approach to determine its reduction in revenue. Its qualifying revenues for March 2019 were \$250,000 and its qualifying revenues for March 2020 are \$180,000. Because its qualifying revenue for March 2020 has declined by 28 % when compared to its qualifying revenue for March 2019, the eligible employer has experienced the required reduction in revenue of at least 15% for the first claim period and may qualify to claim the wage subsidy for that period. Because it has qualified for the first claim period, the eligible employer is automatically considered to have experienced the required reduction in revenue for the second claim period (April 12 to May 9) and does not need to make the determination again when claiming the wage subsidy for that next claim period. For clarity, it will be deemed to have met the 30% test for the second period.

Example 3

Assuming an eligible employer did not experience the required reduction in its qualifying revenue in the first claim period (March 15- April 11, 2020), the eligible employer will then determine if it has experienced the required reduction in revenue to qualify in order to claim the wage subsidy for the second claim period, (April 12 to May 9, 2020). The eligible employer has elected to apply the alternative approach to determine its reduction in revenue. The average of qualifying revenues earned in both January and February 2020 were \$1 million and its qualifying revenue for April 2020 is \$900,000. Because its qualifying revenue for April 2020 has declined by only 10% when compared to the average of its qualifying revenues earned in both January and February 2020, the eligible employer has not experienced the required reduction in revenue of at least 30% for the second claim period. It will therefore, not qualify for the wage subsidy for that period. Because it has not qualified for the second claim period, the eligible employer must make the determination for the next claim period if it seeks to make a wage subsidy claim for that period

Example 4

An eligible employer is determining if it has experienced the required reduction in revenue to qualify in order to claim the wage subsidy for the first claim period, from March 15 to April 11, 2020. Since the eligible employer began operations only on January 14, 2020, it must use the alternative approach to determine its reduction in revenue. Its total qualifying revenues earned in January and February 2020 was \$90,000. Its average qualifying revenue for the two months will be \$57,447 $[0.5 \times 90,000 \times (60/47)]$. Its qualifying revenue for March 2020 is \$39,600. Because its qualifying revenue for March 2020 has declined by 31% when compared to the average of its qualifying revenues earned in both January and February 2020, the eligible employer has experienced the required reduction in revenue of at least 15% for the first claim period and will qualify to claim the wage subsidy for that period. Because it has qualified

for the first claim period, the eligible employer is automatically considered to have experienced the required reduction in revenue for the second claim period (April 12 to May 9, 2020).

The Alternative Approach

The “prior reference period” for a qualifying period of an eligible entity means:

- 1) *The General Approach (para (a))*: subject to (2) below: i) for Qualifying Period 1, March 2019, ii) for Qualifying Period 2, April 2019, and iii) for the Qualifying Period 3, May 2019 (para (a)); and,
- 2) *The Alternative Approach (para (b))*: January and February 2020, if either (para (a)):
 - i) on March 1, 2019, the eligible entity was not carrying on business or otherwise carrying on its ordinary activities, or
 - ii) the qualifying period is any of March 2020, April 2020, or May 2020, *and* the eligible entity elects *for all* of those paragraphs (presumably, the application will include a section allowing an eligible entity to make this election).

ITA 125.7(1)“prior reference period”(a) is subject to ITA 125.7(1)“prior reference period”(b). Thus, the Alternative Approach is effectively the default approach if the condition in ITA 125.7(1)“period reference period”(b)(i) is met. More specifically, pursuant to ITA 125.7(1)“period reference period”(b)(i), the Alternative Approach must be used if, on March 1, 2019, the eligible entity “was not carrying on business or otherwise carrying on its ordinary activities”. For any other eligible entity (i.e. if, on March 1, 2019, the eligible entity *was* carrying on business or otherwise carrying on its ordinary activities), the entity has the discretion to use the General Approach or elect to use the Alternative Approach. Where an election is made to use the Alternative Approach, the election applies to each of Qualifying Periods 1, 2 and 3 (i.e. it applies to all currently prescribed qualifying periods). The CRA CEWS FAQ states (q. 2, 33): “[An election under ITA 125.7(1)“prior reference period”(b)(ii)] must be made and retained with the eligible employer’s other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer’s financial activities must attest that this is the case... A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request”.

The Alternative Approach also must be used if on March 1, 2019, the eligible entity “was not... carrying on its ordinary activities”. The term “ordinary activities” is not defined for this purpose.

For most eligible entities, the Alternative Approach was added as a relieving measure. For example, in News Release [2020-04-08](#), the Government stated:

Today, Finance Minister Bill Morneau provided further details on the eligibility criteria for businesses to access the Canada Emergency Wage Subsidy (CEWS). These details will ensure that the proposed CEWS meets the government’s objective to support the employers that are hardest hit by the COVID-19 pandemic and protect the jobs Canadians depend on during these difficult times... In order to address the realities faced by the not-for-profit sector, high growth companies and new businesses, the Government proposes the following additional flexibility... To measure their revenue loss, it is proposed that *all*

employers have the flexibility to compare their revenue of March, April and May 2020 to that of the same month of 2019, or to an average of their revenue earned in January and February 2020. [emphasis added] Also, in News Release [2020-04-11B](#), Finance stated “[f]lexibility in the measurement of revenue for the purpose of applying the revenue decline test [will] ensure more consistent access to the wage subsidy across impacted organizations, including newly created businesses and high-growth companies, as well as non-profit organizations and registered charities”.

CRA Examples

On Canada.ca under “[Canada Emergency Wage Subsidy \(CEWS\)](#)”, the CRA states (April 21, 2020):

What is an eligible revenue reduction?

You must determine if your reduced revenue makes you eligible to apply for the wage subsidy in a particular period. If you determine that you qualify for the CEWS for one claim period, you will automatically qualify for the following claim period. Calculate your reduction by comparing your eligible revenue for the starting month of the claim period with your baseline revenue. Your baseline revenue is either: 1) the revenue you earned in the corresponding month in 2019, or 2) the average of the revenue you earned in January and February, 2020. You must choose one of these baseline revenue options for your method of comparison and will not be able to change it for your subsequent calculations for the other 2 periods...

The CRA goes on to provide 3 example revenue reduction calculations (visit Canada.ca).

Potential Additional Qualifying Periods

As discussed under “Qualifying Period”, the Government has the ability to introduce additional qualifying periods. In such a case, a prescribed period will be the “current reference period” for the new qualifying period (ITA 125.7(1)“current reference period”(d)). A parallel rule applies for purposes of the “prior reference period” definition (ITA 125.7(1)“current reference period”(c)).

Computation of the CEWS

Subsidy Computation Formula

Pursuant to ITA 125.7(2), for a qualifying entity for a qualifying period, an overpayment on account of the qualifying entity’s liability under Part I for the taxation year in which the qualifying period ends is deemed to have arisen during the qualifying period in an amount determined by the formula $A - B - C + D$, where:

A is the aggregate amounts for “eligible employees” (ITA 125.7(1)) in respect of a week in the qualifying period equal to *the greater of*:

(a) *the least of*:

- i) 75% of “eligible remuneration” (ITA 125.7(1)) paid to the eligible employee in respect of that week,
- ii) \$847, and
- iii) if the eligible employee does not deal at arm’s length with the qualifying entity in the qualifying period, nil, and

(b) *the least of:*

- i) the amount of eligible remuneration paid to the eligible employee in respect of that week,
- ii) 75% of “baseline remuneration” in respect of the eligible employee determined for that week, and
- iii) \$847;

- B is the aggregate amounts deemed to have been remitted under ITA 153(1.02) (10% Temporary Wage Subsidy Program) by the qualifying entity in the qualifying period (i.e. if an entity is eligible for both the 75% CEWS and the 10% temporary wage subsidy, the CEWS is reduced by the amount claimed under the temporary wage subsidy program in respect of eligible remuneration paid in the same period – see under “Interaction with the 10% Temporary Wage Subsidy”) (***the CRA is taking the position that for an eligible employer that is eligible for both subsidies for a period, all amounts eligible to be claimed under the 10% Temporary Wage Subsidy for remuneration paid in a specific claim period reduce the amount available to be claimed under the wage subsidy in that same period***);
- C is the total of all amounts received by *the eligible employee* (i.e. an eligible employee in respect of which an amount is included in A above) for each week in the qualifying period as a work-sharing benefit under the *Employment Insurance Act* (i.e. EI benefits received by eligible employees through the work-sharing program reduce the available CEWS in respect of that employee – see under “Interaction with the Work-Sharing Program”); and
- D is the total of all amounts, each of which is for *an* eligible employee in respect of a week in the qualifying period, if the eligible employee is “on leave with pay” for that week and the amount is an amount payable by the qualifying entity: i) as an employer’s premium under the *Employment Insurance Act*, ii) as an employer’s contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, or iii) as an employer’s premium under *the Act respecting parental insurance*, CQLR, c. A-29.011 (Quebec) (i.e. for eligible entities with employees on paid leave and for which the employer is eligible to claim the CEWS, the CEWS is increased by 100% (the \$847 cap does not apply) of employer-paid contributions to EI, CPP, the QPP, and the QPIP for each week throughout – see under “Reimbursement of Payroll Contributions”).

In more general terms, the CEWS amount for a given “eligible employee” (ITA 125.7(1)) in respect of “eligible remuneration” (ITA 125.7(1)) paid for the period between March 15 and June 6, 2020 is the *greater of:*

- 1) 75% of the amount of remuneration paid, up to a maximum benefit of \$847 per week (or nil in the case of a non-arm's length employee); and
- 2) the lesser of either: i) the "eligible remuneration paid, up to a maximum benefit of \$847 per week, or ii) 75% of the employee's weekly "baseline remuneration".

In effect, different CEWS computation rules apply to existing employees, non-arm's length employees, and new employees (each of which are discussed below under a separate heading).

Pursuant to ITA 125.7(1), in respect of an "eligible employee" of an "eligible entity", "baseline remuneration" is defined as "the average weekly eligible remuneration paid to the eligible employee by the eligible entity during the period that begins on January 1, 2020 and ends on March 15, 2020, excluding any period of seven or more consecutive days for which the employee was not remunerated". The "baseline remuneration" definition is relevant for the purposes of ITA 125.7(1)"eligible remuneration"(d) and ITA 125.7(2)A(ii). "Baseline remuneration" is referred to in the [Backgrounder](#) as an employee's pre-crisis weekly remuneration.

ITA 125.7(8) provides that for any period referred to in ITA 125.7(1)"qualifying period"(d) (i.e. if the Government chooses to introduce an additional qualifying period), the following may be prescribed: 1) the percentages in ITA 125.7(2)A(a)(i) and (b)(ii), and 2) the amounts in ITA 125.7(2)A(a)(ii) and (b)(iii) (i.e. if there is an additional qualifying period, the variables of "75%" and "\$847" in the subsidy computation formula may be increased or decreased).

The phrase "in respect of" used in ITA 125.7(2) has a wide scope; see, for example, *Feedlot Health Management Services Ltd.*, [2015] 3 C.T.C. 2100 (TCC).

Eligible Employees

The CEWS can only be claimed in respect of "eligible remuneration" paid to an "eligible employee" (ITA 125.7(2)A). An "eligible employee" of an eligible entity in respect of a week in a qualifying period is defined as an individual employed *in Canada* by the eligible entity in the qualifying period, other than an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the qualifying period (i.e. if an eligible entity has not paid remuneration to an employee in respect of 14 or more consecutive days during any one of the three qualifying periods, the employee is not an "eligible employee" for that qualifying period and the CEWS may not be claimed in respect of any remuneration paid to the employee in that qualifying period).

In the CRA CEWS FAQ, the agency states (q. 13): "Eligible employee status is determined in respect of each week in each claim period, so an employee that is not an eligible employee in a preceding claim period (because, for example, the 14 day remuneration condition has not been met) may become eligible in a following claim period (see example under Q15)".

A non-resident employee can be an eligible employee since eligible employee status is determined based on where the individual is employed and not where the individual resides.

Per the CRA CEWS FAQ, q. 16: "Generally, a non-resident individual employed in Canada during a claim period will qualify as an eligible employee as long as all other conditions to be an eligible employee are met".

Eligible Remuneration

The CEWS can only be claimed in respect of “eligible remuneration” paid to an “eligible employee” (ITA 125.7(2)A). Pursuant to ITA 125.7(1), “eligible remuneration” of an eligible employee of an eligible entity is defined as amounts described in ITA 153(1)(a) or (g), other than:

- 1) *Severance pay*: “for greater certainty”, a “retiring allowance” (ITA 248(1)) (para (a));
- 2) *Stock option benefits*: amounts deemed to have been received by the eligible employee as a benefit under or because of any of ITA 7(1)(a) to (d.1) (para (b));
- 3) *Avoidance rule*: any amount received that can reasonably be expected to be paid or returned, directly or indirectly, in any manner whatever, to:
 - ii) the eligible entity,
 - iii) a person or partnership not dealing at “arm’s length” (for the meaning of “arm's length”, see section 251 and Income Tax Folio S1-F5-C1: *Related Persons and Dealing at Arm's Length*) with the eligible entity, or
 - iv) another person or partnership at the direction of the eligible entity (para (c)); and
- 4) *Avoidance rule*: any amount that is paid in respect of a week in the qualifying period, if, as part of an arrangement involving the eligible employee and the eligible entity:
 - i) the amount is in excess of the eligible employee’s “baseline remuneration” (ITA 125.7(1)),
 - ii) after the qualifying period, the eligible employee is “reasonably expected” to be paid a lower weekly amount than their baseline remuneration, and
 - iii) “one of the main purposes” (this phrase has been given a wide scope by the Courts: see for example *Groupe Honco*, 2013 CarswellNat 1476 (FCA)) for the arrangement is to increase the amount of the CEWS claimed (para (d)).

ITA 153(1) refers to salary, wages or other remuneration, other than amounts described in ITA 212(5.1), and amounts paid at any time by an employer to an employee if, at that time, the employer is a qualifying non-resident employer and the employee is a qualifying non-resident employee.

“Salary or wages” are defined in ITA 248(1) as meaning the income of a taxpayer from an office or employment as computed under subdivision a of Division B of Part I and includes all fees received for services not rendered in the course of the taxpayer's business. “Salary or wages” does not include superannuation or pension benefits or retiring allowances. In more general terms, “salary or wages” includes a taxpayer's income from an office or employment and therefore includes the value of board and lodging and all other fringe benefits of a taxable nature received from the taxpayer's employer (for examples of typical taxable fringe benefits, see Folio S2-F3-C2: *Benefits and Allowances Received from Employment*, and CRA Guide T4130: *Taxable Benefits and Allowances*). These types of payments are required to be included in income by virtue of ITA 5 and 6 and are classed as “remuneration” under the Regulations. Fees received as business income are excluded.

ITA 153(1)(g) refers to “fees, commissions or other amounts for services, other than amounts described in [ITA] 115(2.3) or 212(5.1)”. Thus, where a fee or commission is paid as compensation for “service” (singular), the existence of an office or employment is implied and the amount is classified as “salary or wages”. Where such an amount is paid for “services”, the implication is that it comprises business income and consequently tax deductions are not required if the payee is a resident of Canada.

In the [Backgrounder](#), Finance states that “eligible remuneration may include salary, wages, and other remuneration like taxable benefits. These are amounts for which employers would generally be required to withhold or deduct amounts to remit to the Receiver General on account of the employee’s income tax obligation. [However, eligible remuneration] does not include severance pay [(see para (a) of the definition)], or items such as stock option benefits [(see para (b) of the definition)] or the personal use of a corporate vehicle”. The CRA CEWS FAQ further states that “eligible remuneration of an eligible employee means amounts paid to employee as salary, wages, and other remuneration, certain taxable benefits (*provided such amounts are actually paid*) (q. 17) [emphasis added]. Despite the latter comments, the legislation does not appear to support that “eligible remuneration” only includes taxable benefits that are “actually paid”.

Per *Sherman’s Notes* to ITA 125.7, Finance has indicated that the word “paid” in ITA 125.7(2)A(a)(i) and (b)(i) was intended to exclude automobile benefits. However, ITA 153(1)(a) include non-cash taxable benefits. ITA 125.7(2) specifically refers to “eligible remuneration paid”. The word “paid” is not defined in the ITA. According to the *Canadian Oxford Dictionary* (2nd Ed.) “pay” means “1. Give (a person, etc.) what is due for services done, goods received, debts incurred, etc.”. The definition of “payment” in *Black’s Law Dictionary* (9[th] Ed.) refers to: “performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation”. “Eligible remuneration” means “amounts” described in ITA 153(1)(a) or (g), other than the specifically excepted items. The word “amount” is defined in ITA 248(1) as meaning “money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing...”. Consequently, it seems that the phrase “eligible remuneration paid” in ITA 125.7(2) technically includes both cash and non-cash taxable benefits.

With respect to ITA 125.7(1)“eligible remuneration”(c) and (d), in the [Backgrounder](#), Finance stated that “anti-abuse rules would be put in place... to help ensure that employees are paid the amounts they are owed”. Given the cap on the weekly CEWS, this issue should not be relevant in most cases.

The CRA CEWS FAQ confirms that “eligible remuneration” does not have to be taxable in the hands of the eligible employee, stating:

19. Will an eligible employer qualify for the wage subsidy in respect of eligible remuneration that it pays, if the amount is not taxable to the eligible employee?

Eligible remuneration of an eligible employee means amounts for which the eligible employer would generally be required to make payroll deductions to be remitted to the CRA, irrespective of whether the amounts are taxable to the eligible employee. For example, salaries and wages paid to a status Indian (we use the term “Indian” because it has a legal meaning in the *Indian Act*) whose income is exempt from tax under a specific provision of the Act are considered eligible remuneration and would qualify for the purpose of calculating the wage subsidy.

Existing Arm’s Length Employees

For most eligible employees (i.e. employees that deal at arm's length with the eligible entity and that were employed at the start of 2020), the CEWS an eligible entity may claim (ignoring Variable D discussed below) in respect of a week during a qualifying period is equal to – subject to a maximum cap of \$847 per week – the greater of:

- 1) 75% of eligible remuneration paid to the eligible employee in respect of that week (A(a)(i)); and,
- 2) The least of: i) 100% of the amount of eligible remuneration paid to the eligible employee in respect of that week (A(b)(i)), and ii) 75% of “baseline remuneration” in respect of the eligible employee determined for that week ((A(b)(ii)).

Due to the pandemic, certain eligible entities have reduced the wages they pay to existing arm's length employees. Alternatively, employees may have been laid off, and then re-hired at a reduced wage. In respect of employees in such situations, the “baseline remuneration” factor acts as a relieving measure by allowing for the CEWS to be computed based on 100% of pre-crisis remuneration.

Assume, for example, that James has been a long-time arm's length employee of TravelAgencyCo. TravelAgencyCo has suffered a significant decline in revenue due to the pandemic and was forced to lay-off James on February 28, 2020. TravelAgencyCo is a qualifying entity for purposes of the CEWS. As such, TravelAgencyCo chooses to re-hire James on March 15, 2020, but at a reduced salary. Before February, James earned eligible remuneration of \$1,000 per week. Upon being re-hired, James' reduced eligible remuneration is \$700 per week. For the week of March 16, TravelAgencyCo can claim a CEWS of \$700 (plus employer contributions to CPP and EI if James is on paid leave – see variable D discussed below), computed as the greater of:

- 1) A(a) – the least of: i) \$525 (75% x \$700), and ii) \$847 [(i.e. \$525)], and
- 2) A(b) – the least of: i) \$700, ii) \$750 (75% x \$1,000), and iii) \$847 [(i.e. \$600)].

If instead of being re-hired at a reduced wage, James was recalled from layoff and maintained his former salary, the employer would bear some of the cost of James' remuneration. The CEWS would be \$750 in such a case, computed as the greater of:

- 1) A(a) – the least of: i) \$750 (75% x \$1,000), and ii) \$847 [(i.e. \$750)], and,
- 2) A(b) – the least of: i) \$1,000, ii) \$750 (75% x \$1,000), and iii) \$847 [(i.e. \$750)].

The first scenario, in which TravelAgencyCo bears no cost for re-hiring James at a reduced wage, appears consistent with the spirit of the legislation (i.e. one of the intentions of the legislation is to encourage employers to rehire former employees, whether or not the employee is put on paid-leave). TravelAgencyCo could increase James' salary to the pre-crisis level after the subsidy period.

As highlighted by the above example, generally, an eligible entity that qualifies for the CEWS and that has already terminated employees could re-hire the employees, pay the employees a salary of \$847 per week, and claim a subsidy in respect of the *full* amount of the salary paid in any pay period between March 15 and June 6, 2020 provided that the baseline remuneration paid to the employee was at least \$1,130. If the re-hired employee performs any work for the employer in a week during a qualifying period, the employer will not be

entitled to claim a refund for its portion of contributions to payroll plans (see below under “Reimbursement of Payroll Contributions”). Furthermore, the employer must have funds available to pay the salary as the subsidy can only be claimed after the salary is paid. The CRA CEWS FAQ includes an example in which the CRA highlights that: “As can be seen from the above example [(No. 11)], where the eligible remuneration is equal to or less than 75% of the baseline remuneration for an eligible employee, the employer is eligible for 100% wage subsidy in respect of that employee (in this case, salary paid to Ken during the claim period)”. Furthermore, as discussed under “Claiming the CEWS in Respect of Retroactive Pay”, the CRA clearly does not consider it abusive to claim the CEWS in respect of retroactive eligible remuneration paid to a re-hired employee.

For a week in a qualifying period, the CEWS is computed based on “eligible remuneration paid to the eligible employee in respect of that week”. Thus, if no eligible remuneration is paid to an employee during a qualifying week, the CEWS cannot be claimed in respect of that employee for that week. This rule may have adverse consequences if an employee is remunerated on an uneven basis (for example, through commissions or bonuses).

On canada.ca, under “[Determine your eligible employees](#)”, the CRA states:

Who are eligible employees?

An eligible employee is an individual employed in Canada by you (the eligible employer) during the claim period, **except** if there was a period of 14 or more consecutive days in that period where they did not receive any pay (eligible remuneration) by you. *Employee eligibility is based on whether the person is employed in Canada, not where they live.* [emphasis added]

Retroactively hiring and paying employees

Employees who have been laid off or furloughed can become eligible retroactively, as long as you rehire them and their retroactive pay and status meet the eligibility criteria for the claim period. You must rehire and pay such employees before you include them in your calculation for the subsidy. [emphasis added]

Eligible employees and the Canada Emergency Response Benefit (CERB)

Rehired individuals may have received, or continue to receive, the Canada Emergency Response Benefit (CERB). Depending on the specific situation, these individuals may be required to repay some or all of the amounts they received. More information to come on this shortly. CERB recipients who already know they will need to repay their CERB payment can access the steps needed to return or repay the benefit.

[Repayment instructions have been provided on [Canada.ca](https://canada.ca) under “[Apply for Canada Emergency Response Benefit \(CERB\) with CRA](#)”. See also below under “Interaction with the CERB”.]

What is eligible remuneration

Eligible remuneration includes amounts you paid an employee as salary, wages and other taxable benefits, fees, and commissions. These are amounts employers would be required to make payroll deductions on to be remitted to the CRA. Severance pay and items such as stock option benefits or the personal use of a corporate vehicle are **not** part of eligible remuneration.

Baseline remuneration

When calculating the wage subsidy, you will need to determine an employee's baseline remuneration. Baseline remuneration is considered to be the average weekly eligible remuneration paid to an employee during the period of January 1, 2020, to March 15, 2020. However, you may exclude from your calculation any period of seven or more consecutive days for which the employee was not paid.

In the CRA CEWS FAQ, the agency again confirms it would not be consider abusive for the CEWS to be claimed in respect of retractive eligible remuneration paid to a re-hired eligible employee, stating that “[i]t is possible for an eligible employer to hire back eligible employees and pay them retroactively in respect of a claim period, to be able to qualify for the wage subsidy”.

New Arm’s Length Employees

For new employees, the CEWS is limited to 75% of eligible remuneration paid in a week during a qualifying period (i.e. since for new employees, “baseline remuneration” is nil). As noted in the CRA CEWS FAQ (q. 22):

22. Can I claim the wage subsidy for an eligible employee even if they were hired after March 15, 2020?

Yes, an eligible employer may be able to claim the wage subsidy for eligible remuneration paid to eligible employees hired after March 15, 2020. However, for an eligible employee that does not deal at arm's-length with the eligible employer, it may be able to claim the wage subsidy only if that employee was employed by the eligible employer and has received eligible remuneration during the period from January 1, 2020 to March 15, 2020 (baseline remuneration).

Example 14

ABC Ltd. is an eligible employer and John is the sole shareholder of the corporation having two employees. It laid off its employees at the beginning of March 2020. However, on March 16, ABC Ltd. hires two new employees, Ali and John's wife Sally. Since Sally does not deal at arm's length with ABC Ltd. and she was not an employee of ABC Ltd. prior to March 16, 2020, ABC Ltd. will not be eligible for wage subsidy in respect of eligible remuneration paid to Sally. Provided Ali otherwise qualifies as an eligible employee of ABC Ltd. and receives eligible remuneration, ABC Ltd. may be eligible to claim wage subsidy in respect of the eligible remuneration paid to Ali.

Non-Arm’s Length Employees

Special rules apply to eligible employees who do not deal at arm’s length with a qualifying entity. For the meaning of “arm's length”, see ITA 251 and Income Tax Folio S1-F5-C1: *Related Persons and Dealing at Arm's Length*. Generally, non-arm’s length employees include an employee who controls an employer, an employee who is related to someone who controls an employer, or an employee who acts in concert with a common interest with an employer. Thus, this restriction will typically apply to owner-managers and employees working in a family-owned business.

More specifically, the value computed for ITA 125.7(2)A(a) is nil if the eligible employee does not deal at arm's length with the qualifying entity in the qualifying period. Consequently, for a non-arm's length employee, for each week during a qualifying period, the CEWS amount (ignoring variable D) is equal to the least of:

- 1) the amount of eligible remuneration paid to the eligible employee in respect of the particular week,
- 2) 75% of the baseline remuneration in respect of the eligible employee determined for that week, and
- 3) \$847.

Thus, for non-arm's length employees, the maximum weekly subsidy of \$847 is reduced if either: i) 75% of the baseline remuneration in respect of the non-arm's length employee is less than \$847, or ii) the amount of actual remuneration paid to the non-arm's length employee during the week in the qualifying period is less than \$847 (i.e. the CEWS for non-arm's length employees is limited to the eligible remuneration paid in any pay period between March 15 and June 6, 2020, up to a maximum benefit of the lesser of \$847 per week and 75% of the employee's baseline weekly remuneration).

The CEWS is only available in respect of non-arm's length employees employed prior to March 15, 2020 (see ITA 125.7(2)A(b)(ii)). Presumably, this rule is intended to prevent an eligible entity from hiring a non-arm's length employee during a qualifying period simply to claim the subsidy. Furthermore, the CEWS in respect of a non-arm's length employee cannot be increased by increasing the eligible remuneration paid to the employee after March 15, 2020 (i.e. since the maximum subsidy is limited to a factor based on pre-crisis earnings). Again, this rule is presumably intended to act as an anti-avoidance measure, designed to prevent an eligible entity from increasing amounts paid to non-arm's length employees (for example, family members) only to claim an increased CEWS.

If a non-arm's length employee was only compensated with dividends between January 1 to March 15, 2020, the CEWS cannot be claimed in respect of the employee by virtue of the "baseline remuneration" definition. Furthermore, if remuneration paid to non-arm's length employees was less than the normal amount paid to the employee for any reason for the January 1 to March 15, 2020 period (for example, if the employee is typically paid a large year-end bonus, or if the employee only works for part of the year), the CEWS may be adversely affected. There are no relieving measures dealing with the latter scenarios.

Small businesses that do not qualify for the CEWS (or businesses that require additional support) may want to consider the [Canada Emergency Business Account](#) (CEBA) program (see also News Release 2020-04-16: [Prime Minister announces additional support for small businesses](#)). Very briefly, the CEBA is a COVID-19 response measure that was added to provide interest-free loans of up to \$40K to small businesses and NPOs. The loans are intended to assist in covering operating costs during a period where revenues have been temporarily reduced. To qualify, such organizations need to demonstrate they paid between \$20K to \$1.5M in total payroll in 2019 (according to the CIBC [CEBA FAQ site](#), for this purpose, "payroll" includes all employment income reported on all employee T4s for 2019 (Box 14 and Box 71)). Business owners can apply for support from the CEBA through their banks and credit unions. Significantly, repaying the balance of the loan on or before December 31, 2022 result in loan forgiveness of 25% (i.e. up to \$10,000).

Example

The following example is provided in the CRA FAQ (q. 23):

An eligible employer may be eligible to claim the wage subsidy in respect of an eligible employee who does not deal at arm's length with it, provided the individual was an eligible employee of the eligible employer anytime during the period beginning January 1 and ending March 15, 2020, and received eligible remuneration at that time (baseline remuneration).

Example 15: Consider the example in Q 22 [reproduced below]. In that example, if Sally was an eligible employee of ABC Ltd. anytime during the period beginning January 1 and ending March 15, 2020 and received baseline remuneration, even if she was laid off and rehired after March 15, 2020, ABC Ltd. may be eligible for the wage subsidy for the claim period that she was employed.

Interaction with the 10% Temporary Wage Subsidy (Variable B)

The *COVID-19 Emergency Response Act* included the implementation of a 10% wage subsidy through the enactment of ITA 153(1.02). An eligible entity may be eligible for both the CEWS and the Temporary 10% Wage Subsidy. The 10% Temporary Wage Subsidy is immediately available (i.e. without the need to file an application) through reduced source deduction remittances. The subsidy allows certain “eligible employers” (generally, small CCPCs, NPOs, and registered charities) to reduce income tax remittances by 10% of remuneration paid to employees between March 18 and June 20, 2020 **up to a maximum of \$1,375 per employee and \$25,000 per employer**; an employer cannot reduce its required CPP or EI premiums). For employers that are eligible for both the CEWS and the 10% wage subsidy for a period, pursuant to ITA 125.7(2)B, any deemed remittance under the 10% wage subsidy for remuneration paid in a specific period reduces the amount available to be claimed under the CEWS in that same period (i.e. the maximum combined subsidy per employee is \$10,164).

Employers who are ineligible for the CEWS (for example, because the revenue decline test is not met) may be eligible for the Temporary 10% Wage Subsidy (and vice versa).

As highlighted below, the CRA is taking the position that an eligible employer that is eligible for both subsidies for a period must reduce the CEWS claim by all amounts **eligible** to be claimed under the 10% Temporary Wage Subsidy for remuneration paid in a specific claim period (i.e. even if remittances were insufficient to claim the full 10% subsidy in the period). Presumably, the CRA is administering the rule in this fashion to avoid the potential for an excessive subsidy being claimed (i.e. a subsidy in excess of the maximum CEWS available per employee. The CRA’s position appears to be supported by the legislation since the application of the deeming rule in ITA 153(1.02) is automatic. Nonetheless, as highlighted by the CRA below, an “eligible employer” (ITA 153(1.03) can reduce future payroll remittances to claim the 10% subsidy in cases where the full subsidy has not been claimed in pay-periods that coincide with the CEWS qualifying period.

The following example/comments are provided in the CRA CEWS FAQ:

21. Will I be eligible for both the Canada Emergency Wage Subsidy and the 10% Temporary Wage Subsidy for Employers?

You may be eligible for both the Canada Emergency Wage Subsidy and the [10% Temporary Wage Subsidy for Employers](#). **However, for an eligible employer that is eligible for both subsidies for a period, all amounts eligible to be claimed under the 10% Temporary Wage Subsidy for remuneration paid in a specific claim period would reduce the amount available to be claimed under the wage subsidy in that**

same period [(emphasis added)]. Specifically, with respect to the 10% Temporary Wage Subsidy for Employers, if the income taxes you deduct with respect to the remuneration you paid are not sufficient to offset the value of the subsidy in that period, you can reduce future payroll remittances to benefit from the subsidy. However, the entire amount eligible to be claimed under the 10% Temporary Wage Subsidy will be applied to reduce the Canada Emergency Wage Subsidy for the claim period in which the remuneration is paid.

Example 13

Assume an eligible employer is eligible for both the subsidies. Its 10% Temporary Wage Subsidy is \$2,050 on remuneration paid from April 12, 2020 to May 9, 2020 (which coincides with the second claim period), but it is able to deduct only \$1,050 of federal, provincial, or territorial income tax from its employees for that period. While the eligible employer can still reduce a future payroll remittance by \$1,000 in respect of the balance (even if that remittance is in respect of remuneration paid after May 9, 2020), its Canada Emergency Wage Subsidy claim for the same period (April 12, 2020 to May 9, 2020), will be reduced by the entire amount of \$2,050.

Interaction with the EI Work-Sharing Program (Variable C)

On March 18, 2020, the Government announced an extension of the maximum duration of the [Work-Sharing program](#) from 38 weeks to 76 weeks for employers affected by COVID-19. This measure is intended to provide income support to employees eligible for Employment Insurance who agree to reduce their normal working hours because of developments beyond the control of their employers. By virtue of ITA 125.7(2)C, for employers and employees that are participating in a Work-Sharing program, EI benefits received by employees through the Work-Sharing program reduces the benefit that an eligible entity is entitled to receive under the CEWS.

Reimbursement of Payroll Contributions (Variable D)

Pursuant to ITA 125.7(2)D, the CEWS may be increased by an additional amount to compensate employers for their contributions to the Canada Pension Plan, Employment Insurance, Quebec Pension Plan and Quebec Parental Insurance Plan paid in respect of eligible employees who are “on leave with pay”. In News Release [2020-04-08](#), Finance states that the payroll contribution refund will “apply to the entire amount of employer-paid contributions in respect of remuneration paid to furloughed employees in a period where the employer is eligible for the CEWS. This will make it easy and cost effective for employers to rehire people previously laid off” (i.e. variable D is intended to provide an incentive for employers to re-hire employees for whom they currently do not have work, or to retain such employees). The payroll contribution portion of the CEWS computation (i.e. ITA 125.7(2)D) is not limited to a cap (i.e. the \$847 limit in variable A does not apply to variable D). An employer must, however, first make the required payroll remittances before obtaining a refund by applying for the CEWS.

The term “on leave with pay” is not defined in the ITA. According to the [Backgrounder](#):

On April 8, 2020, the Government proposed to expand the CEWS by introducing a new 100 per cent refund for certain employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund would cover 100 per cent of employer-paid contributions for eligible employees for each week throughout which those employees are

on leave with pay and for which the employer is eligible to claim for the CEWS for those employees. *In general, an employee will be considered to be on leave with pay throughout a week if that employee is remunerated by the employer for that week but does not perform any work for the employer in that week. This refund would not be available for eligible employees that are on leave with pay for only a portion of a week.* This refund would not be subject to the weekly maximum benefit per employee of \$847 that an eligible employer may claim in respect of the CEWS. There would be no overall limit on the refund amount that an eligible employer may claim. *For greater certainty, employers would be required to continue to collect and remit employer and employee contributions to each program as usual. Eligible employers would apply for a refund, as described above, at the same time that they apply for the CEWS...* [emphasis added]

The following example is provided in the [Backgrounder](#):

Maude and Stéphane own a corporation that operates an automobile repair shop in Saint Boniface, Manitoba. They are working full time, each drawing a salary of \$1,300 per week, and have three part-time employees, each earning \$800 per week, for a total weekly payroll of \$5,000. Maude and Stéphane have reduced their opening hours due to decreased demand for their services. They had initially laid off their employees, but they have now decided to re-hire them following the announcement of the Canada Emergency Wage Subsidy. Their employees are not being asked to report to work during this challenging period. Maude and Stéphane are now keeping their employees on the payroll, paying them 75 per cent of their pre-crisis salary (\$600 per week). Maude and Stéphane would be eligible for a weekly wage subsidy of \$3,494 (\$847 for each of themselves and \$600 for each of their employees). Maude and Stéphane would also be eligible for a 100-per-cent refund of their employer-paid contributions to Employment Insurance and the Canada Pension Plan in respect of their employees, providing an additional benefit of up to \$124 per week. At the end of each claiming period, Maude and Stéphane would submit an application through the Canada Revenue Agency portal, attesting that their decline in revenues in each month is sufficient to qualify, when compared to the average of January and February. They would also report the total remuneration paid to themselves and their furloughed employees during the month. As Maude and Stéphane have access to direct deposits with the Canada Revenue Agency, they would receive their subsidy shortly after each application.

Interaction with the Canada Emergency Response Benefit (CERB)

As part of its COVID-19 Economic Response Plan, the Government introduced the CERB, which provides temporary income support to workers who have stopped working because of the COVID-19 crisis. Individuals who are eligible for EI regular or sickness benefits may also be eligible for the CERB. The CERB provides \$500 per week for a maximum of 16 weeks, and is available from March 15, 2020 to October 3, 2020. An individual can apply no later than December 2, 2020 for payments retroactive to within that period. Per the CRA's CERB [FAQ](#):

What are the eligibility criteria for the Canada Emergency Response Benefit?

The Benefit is available to workers: 1) Residing in Canada, who are at least 15 years old; 2) Who have stopped working because of reasons related to COVID-19 or are eligible for Employment Insurance regular or sickness benefits or have exhausted their Employment Insurance regular benefits between December 29, 2019 and October 3, 2020; 3) Who had employment and/or self-employment income of at least

\$5,000 in 2019 or in the 12 months prior to the date of their application; and, 4) Who have not quit their job voluntarily. *When submitting your first claim, you cannot have earned more than \$1,000 in employment and/or self-employment income for 14 or more consecutive days within the four-week benefit period of your claim. When submitting subsequent claims, you cannot have earned more than \$1,000 in employment and/or self-employment income for the entire four-week benefit period of your new claim.* Provided it is allowed in your province or territory, you may also receive provincial or territorial support payments at the same time you receive the Canada Emergency Response Benefit. [emphasis added]

If an individual continues to qualify for the CERB, the individual must re-apply for a payment for multiple 4-week periods, to a maximum of 16 weeks (i.e. 4 periods). The CERB is paid in blocks of four weeks in the amount of \$2,000 (\$500 per week).

Some “duplication” may arise between the CERB and the CEWS if an employee is re-hired by an employer during a period in respect of which the employee is receiving the CERB. As previously discussed, the CEWS can only be claimed in respect of “eligible remuneration” paid to an “eligible employee”. An “eligible employee” of an eligible entity in respect of a week in a qualifying period is defined as an individual employed *in Canada* by the eligible entity in the qualifying period, other than an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the qualifying period. Thus, if an eligible entity has not paid eligible remuneration to an employee in respect of 14 or more consecutive days during a qualifying period (i.e. from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6), the employee is not an “eligible employee” for that qualifying period and the CEWS may not be claimed in respect of any remuneration paid to the employee in that period. This rule is intended to limit instances in which the CEWS is claimed in respect of an eligible employee that has already claimed the CERB (in some cases, however, this rule will also prevent the CEWS from being available in respect of certain newly hired employees in the second-half of a qualifying period).

Originally, the Government had stated that CEWS would not be available for remuneration paid to an employee in a week that fell within a four-week period for which the employee was also eligible for the CERB; the enacted rules may allow for an overall increase in CEWS claims, however, some “duplication” may occur. In cases where duplication arises, the [Backgrounder](#) states:

An eligible employee is an individual who is employed in Canada. Eligibility for the CEWS of an employee’s remuneration will be available to employees other than those who have been without remuneration for 14 or more consecutive days in the eligibility period, i.e., from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6. This rule replaces the previously announced restriction that an employer would not be eligible to claim the CEWS for remuneration paid to an employee in a week that falls within a 4-week period for which the employee is eligible for the Canadian Emergency Response Benefit... To ensure that the [CERB] applies as intended, the Government will consider implementing an approach to limit duplication. This could include a process to allow individuals rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount. [As mentioned above, CERB repayment instructions have since been provided on Canada.ca under “[Apply for Canada Emergency Response Benefit \(CERB\) with CRA](#)”.]

On April 21, the CRA updated the CERB section of Canada.ca to add the following:

[Return or repay CERB](#)

You may want to return or repay the CERB if you: 1) return to work earlier than expected, 2) applied for CERB but later realize you're not eligible. You have the option to return or repay your CERB payment now.

Return or repay your CERB payment

If you still have the original CERB cheque you can return the cheque by mail to the address below. If you don't have the cheque or were paid by direct deposit you can mail your repayment to the CRA. Be sure to: 1) make payment out to "Receiver General for Canada", 2) indicate it is for "Repayment of CERB", 3) include your Social Insurance Number (SIN) or your Temporary Tax Number (TTN).

Mail your payment to: Revenue Processing – Repayment of CERB, Sudbury Tax Centre, 1050 Notre Dame Avenue, Sudbury ON P3A 0C3

Claiming the CEWS in Respect of Retroactive Pay

The CRA/Finance have specifically indicated that it would not be considered abusive to re-hire employees, remunerate such employees retroactively, and claim the CEWS in respect of the retroactive remuneration paid. Notably, in such cases, the net "cost" to the government of the maximum CEWS per-week per eligible employee is effectively, all other factors held equal, \$347 (i.e. \$847 minus \$500 (CERB otherwise payable)). The following comments/example is provided in the CRA CEWS FAQ:

14. Can an eligible employer claim the wage subsidy for an employee that the employer hires back and pays retroactively?

Yes. It is possible for an eligible employer to hire back eligible employees and pay them retroactively in respect of a claim period, to be able to qualify for the wage subsidy. Refer to the example in Q20. Further, if such an employee has received a Canada Emergency Response Benefit (CERB) payment from the CRA for a claim period, and it is later determined that they are no longer eligible for the CERB, whether due to the employment or otherwise, there are ways for the employee to return or repay the CERB amount. For more details on repayment, please refer to [Return or repay](#) on the Apply for CERB web page.

15. Can an eligible employer claim the wage subsidy in respect of an eligible employee who has received payments under the CERB?

Yes, in certain situations, an eligible employer may be eligible to claim the wage subsidy in respect of an eligible employee who has received payments under the CERB program. However, as explained above (see Q13), where an individual has not received any remuneration from the eligible employer for a period of 14 or more consecutive days in a claim period, the individual will not qualify as an eligible employee for that period of employment. Therefore, the eligible employer will not be eligible for the wage subsidy in respect of that employee for that claim period.

The onus is on the eligible employer to ensure that an employee has received eligible remuneration for more than 14 consecutive days in a claim period, to be eligible for the wage subsidy in respect of that employee, for that claim period. However, it is the employee's responsibility to determine their eligibility for the CERB for any period. [emphasis added]

Where an employee has received a CERB payment from the CRA and it is later determined that they are no longer eligible for the CERB, whether due to the employment or otherwise, the employee may want to return or repay the CERB payment. For more details, please refer to [Return or repay](#) on the Apply for CERB web page.

Example 9

Carl, as a sole proprietor, owns a corner store in London, Ontario, where he normally employs Molly on a full-time basis and two other employees on a part time basis. Carl had laid off all his employees on March 15, 2020, due to a decreased demand for his shop's goods and services. However, following the announcement of the wage subsidy, Carl has determined that he is an eligible employer and decided to re-hire Molly—effective April 5, 2020—. He also hires a new employee, Paul, on April 12th. Paul was laid off by his previous employer due to the COVID-19 crisis.

Even though Molly was employed for a week in the first claim period (March 15, 2020, to April 11, 2020), she is not an eligible employee in that period because she was without remuneration from Carl for more than 14 consecutive days (21 days - March 15, 2020, to April 4, 2020). However, she may be an eligible employee in the following claim period (April 12-May 9, 2020), assuming Carl keeps Molly on his payroll and continues to pay her. If Carl had instead chosen to rehire and pay Molly retroactively to March 15, 2020, she would have qualified as an eligible employee for the first claim period. In this scenario, Carl would have been eligible to claim the wage subsidy for the first claim period, in respect of the eligible remuneration paid to Molly.

Paul receives eligible remuneration starting April 12. Assuming Paul receives eligible remuneration for 14 or more consecutive days in the second claim period (April 12, 2020 - May 9, 2020), Paul would qualify as an eligible employee and Carl would be eligible to claim the wage subsidy with respect to the eligible remuneration paid to Paul, for the second claim period.

Now assume that both Paul and Molly received CERB payments during the time they were laid off, and Paul continued to receive CERB payments after he was hired. Carl's eligibility for the wage subsidy will not change because of the CERB payments to Molly and Paul. However, it is Paul and Molly's responsibility to determine their eligibility for the CERB for any period. If they have received a CERB payment and they are no longer eligible, they have the ability to return or repay the CERB payment.

As a general rule, given the requirements for making a CERB claim, a laid-off eligible employee receiving the CERB plus a related provincial benefit would be in a better financial position if the employee were re-hired and paid a weekly salary that, at a minimum, exceeds \$500 plus the amount of the related provincial benefit.

ITA 241(4) authorizes the communication of taxpayer information obtained under the Act to specified persons for specific purposes. Bill C-14 added ITA 241(4)(d)(vii.5) to provide that an “official” (ITA 241(10)) may provide “taxpayer information” (ITA 241(10)) to an official solely for the purposes of the administration and enforcement of the *Canada Emergency Response Benefit Act* or the evaluation or formulation of policy for that Act.

Examples

The following CEWS computation examples are provided in the CRA CEWS FAQ:

Example 10

John and Zac own a corporation, XYZ Ltd. that operates a garage in London, Ontario. They are working full time, but do not draw any salary, and have two full time employees each earning a weekly salary of \$1,200 (their baseline remuneration), for an annual salary of \$64,800, and two part-time employees, each earning \$500 per week (their baseline remuneration), for an annual salary of \$27,000. John and Zac have reduced their opening hours due to decreased demand for their service following the COVID-19 crisis, and laid off all their employees effective March 15, 2020. Following the announcement of the wage subsidy, they decide to re-hire, effective April 12, 2020, two of their laid off employees, Ahmed (full time employee) and Ken (part-time employee). These employees are paid the same weekly salary that they received before being laid-off - \$1,200 and \$500 respectively (eligible remunerations). Assume that XYZ Ltd. is an eligible employer that qualifies for the wage subsidy and it does not receive any other subsidy. Further assume that the rehired employees are employed for the entire claim period April 12 - May 9, 2020. The weekly qualifying remuneration for the claim period is calculated as follows:

Example 10 table

	Ahmed	Ken
75% of eligible remuneration [A]	\$900	\$375
Maximum amount (i.e. \$847) [B]	\$847	\$847
Nil, for non-arm's length employees [C]	N/A	N/A
Lesser of Amounts A to C [D]	\$847	\$375
Eligible remuneration [E]	\$1,200	\$500
75% of baseline remuneration [F]	\$900	\$375
Maximum amount (i.e. \$847) [G]	\$847	\$847
Lesser of Amounts E to G [H]	\$847	\$375
Qualifying weekly remuneration per employee; Greater of Amounts D and H [I]	\$847	\$375
Total number of eligible employees [J]	1	1
Total Qualifying remuneration; Amount I multiplied by Amount J [K]	\$847	\$375
Total for the claim period; Amount K multiplied by 4 (number of weeks in the claim period)	\$3,388	\$1,500

Total Canada Emergency Wage Subsidy that XYZ Ltd. is eligible to claim for the claim period is: \$4,888 (\$3,388 + \$1,500)

Note: As can be seen from the above example, where the eligible remuneration is equal to or less than 75% of the baseline remuneration for an eligible employee, the employer is eligible for 100% wage subsidy in respect of that employee (in this case, salary paid to Ken during the claim period).

Example 11

In the above Example 10, now consider a situation where the owners, John and Zac draw a weekly salary of \$1,500 (annual salary of \$81,000), and continue to do so during the claim period indicated in the above example. **In addition, the two employees are now rehired for a reduced weekly salaries of \$900 for Ahmed and \$300 for Ken (their respective eligible remunerations) [emphasis added].** The weekly qualifying remuneration for the claim period is calculated as follows:

Example 11 table

	Ahmed	Ken	Owner (John and Zac)
75% of eligible remuneration [A]	\$675	\$225	\$1,125
Maximum amount (i.e. \$847) [B]	\$847	\$847	\$847
Nil, for non-arm's length employees [C]	N/A	N/A	\$0
Lesser of Amounts A to C [D]	\$675	\$225	\$0
Eligible remuneration [E]	\$900	\$300	\$1,500
75% of baseline remuneration [F]	\$900	\$375	\$1,125
Maximum amount (i.e. \$847) [G]	\$847	\$847	\$847
Lesser of Amounts E to G [H]	\$847	\$300	\$847
Qualifying weekly remuneration per employee; Greater of Amounts D and H [I]	\$847	\$300	\$847
Total number of eligible employees [J]	1	1	2
Total Qualifying remuneration; Amount I multiplied by Amount J [K]	\$847	\$300	\$1,694
Total for the claim period; Amount K multiplied by 4 (number of weeks in the claim period)	\$3,388	\$1,200	\$6,776

Total Canada Emergency Wage Subsidy that XYZ Ltd. is eligible to claim for the claim period is: \$11,364 (\$3,388 + \$1,200 + \$6,776)

Example 12

Eliza and Abdi own a corporation, Alpha Ltd., that operates a take-out restaurant in Sudbury, Ontario. They are working full time, each drawing a salary of \$1,000 per week (baseline remuneration), and have four part-time employees, each earning \$500 per week (baseline remuneration), for a total weekly payroll of \$4,000. Eliza and Abdi have reduced their opening hours due to decreased demand for their service following the COVID-19 crisis, and laid off two of their employees effective March 15, 2020. Following the announcement of the wage subsidy, they decide to re-hire them effective March 28, 2020. Eliza and Abdi also decided to pay their two rehired employees retroactively for the entirety of the time they had been laid off. However, these two rehired employees are not being asked to report to work during this challenging period and will be paid only \$300 per week while the retained employees will be paid a weekly salary of \$600, (both eligible remunerations). Alpha Ltd. did not receive any other subsidy or work-sharing benefits during the claim period, beginning March 15, 2020 and ending April 11, 2020. Assuming that Alpha Ltd. is an eligible employer that qualifies for the wage subsidy, the qualifying weekly remuneration for the claim period is calculated as follows:

Example 12 table

	Retained employee	Rehired employee	Owner (Eliza and Abdi)
75% of eligible remuneration [A]	\$450	\$225	\$750
Maximum amount (i.e. \$847) [B]	\$847	\$847	\$847
Nil, for non-arm's length employees [C]	N/A	N/A	\$0
Lesser of Amounts A to C [D]	\$450	\$225	\$0
Eligible remuneration [E]	\$600	\$300	\$1,000
75% of baseline remuneration [F]	\$375	\$375	\$750
Maximum amount (i.e. \$847) [G]	\$847	\$847	\$847
Lesser of Amounts E to G [H]	\$375	\$300	\$750

Example 12 table

	Retained employee	Rehired employee	Owner (Eliza and Abdi)
Qualifying weekly remuneration per employee; Greater of Amounts D and H [I]	\$450	\$300	\$750
CPP withholdings eligible for refund; 5.25% of Amount I [J]	\$0	\$15.75	\$0
EI withholdings eligible for refund; 2.212% of Amount I [K]	\$0	\$6.60	\$0
Total of Amounts H to K [L]	\$450	\$322.35	\$750
Total number of eligible employees [M]	2	2	2
Total Qualifying remuneration; Amount L multiplied by Amount M [N]	\$900	\$644.70	\$1,500
Total for the claim period; Amount N multiplied by 4 (weeks) [O]	\$3,600	\$2,579	\$6,000
10% Temporary subsidy received for the claim period [P]	\$0	\$0	\$0
Work-sharing benefit received for the claim period [Q]	\$0	\$0	\$0
Amounts that reduce the wage subsidy; Amount P plus Amount Q [R]	\$0	\$0	\$0
Canada Emergency Wage Subsidy that Alpha Ltd. is eligible to claim for the claim period; Amount O minus Amount R	\$3,600	\$2,579	\$6,000
Total Canada Emergency Wage Subsidy that Alpha Ltd. is eligible to claim for the claim period is: \$12,179 (\$3,600 + \$2,579 + \$6,000)			

Contractors

The CEWS is not available in respect of contractors; the subsidy is only available where “eligible remuneration” has been paid to an “eligible employee”.

Since the CEWS is available to new employees, it appears as though an eligible entity could choose to hire a contractor as an employee (i.e. after first terminating the existing contract) and then claim the CEWS in respect of eligible remuneration paid to the “new” employee after March 15, 2020 (the entity would be required to have had a payroll account number with the CRA before March 16, and the contractor would have to deal at arm’s length with the eligible entity in order for the CEWS to be available). None of the avoidance rules added by Bill C-14 appear to thwart such planning. The potential application of the GAAR would, however, have to be considered.

Employees with Multiple Employers

Pursuant to ITA 125.7(5)(b), for the purposes of ITA 125.7, if an eligible employee is employed in a week by two or more qualifying entities that do not deal with each other at arm’s length, the total amount of the deemed overpayment under ITA 125.7(2) (i.e. the total amount of the CEWS) in respect of the eligible employee for that week may not exceed the amount that would arise if the eligible employee’s eligible remuneration for that week were paid by one qualifying entity. In other words, if the same employee is

employed in a week by two or more non-arm's length employers, the total CEWS claimed cannot exceed the amount of the subsidy that would be payable if only one employer had paid all of the eligible employee's remuneration for that week.

The following comments with respect to ITA 125.7(5)(b) are made in the CRA CEWS FAQ:

24. Is there a special rule for the amount of wage subsidy that can be claimed if an eligible employee is employed by two or more eligible employers?

Generally, there is no limit on the wage subsidy amount that an eligible employer may claim or the total number of eligible employees it could employ during the claim period. However, there is a special rule where an eligible employee is employed in a week by two or more eligible employers that do not deal with each other at arm's length. In this situation, the total amount of wage subsidy in respect of the eligible employee for that week cannot exceed the amount that would arise if the eligible employee's eligible remuneration for that week were paid by only one eligible employer that qualifies for the wage subsidy.

Avoidance Rules

As previously discussed, the "eligible remuneration" definition includes avoidance rules which generally provide that eligible remuneration for purposes of claiming the subsidy does not include an amount that can reasonably be expected to be repaid or returned directly or indirectly to an eligible entity or an amount of remuneration paid in excess of an employee's baseline remuneration where one of the main purposes for the increase in remuneration is to increase the available CEWS.

Temporary Wage Reductions

In Finance News Release [2020-04-11A](#): *COVID-19 Emergency Response Act, No. 2 receives Royal Assent to help businesses keep Canadians in their jobs*, the Government states that the CEWS is intended to "provide a strong incentive for employers to pay employees who have been sent home for health and safety reasons or due to lack of work", and that the CEWS will "enable employers to retain employees who are still on the payroll and to rehire workers previously laid off". Similarly, in the [Backgrounder](#), Finance states that the purpose of the CEWS is to "help employers keep and return workers to their payroll through the challenges posed by the COVID-19 pandemic... This wage subsidy aims to prevent further job losses, encourage employers to re-hire workers previously laid off as a result of COVID-19, and help better position Canadian companies and other employers to more easily resume normal operations following the crisis". Finance further comments that "[w]hile the Government has designed the [CEWS] to provide generous and timely financial support to employers, it has done so with the expectation that employers will do their part by using the subsidy in a manner that supports the health and well-being of their employees... [Employers] would be expected where possible to maintain existing employees' pre-crisis employment earnings". Finally, in News Release [2020-04-11B](#), Finance states that "[a]ll employers would be expected to at least make best efforts to bring employees' wages to their pre-crisis levels". The term "best efforts" is highly subjective (at the time of writing, the Government had not provided any specific guidance on what it meant by the phrase "best

efforts”, and also had not outlined any particular consequences that would apply in respect of a failure to meet the stated “expectations”).

Despite the above comments, Parliament chose not to make CEWS eligibility contingent on maintaining employee remuneration at pre-crisis levels. Furthermore, if an employer does not meet the Government’s “expectations” for any reason, no penalties may be imposed under the CEWS legislation. Effectively, the Government is encouraging employers to pay pre-crisis remuneration levels where possible (presumably, most employers will maintain pre-crisis remuneration levels if they have the financial means to do so – every situation will be unique).

Notably, the CRA CEWS FAQ includes an example where an employee is re-hired at a lower salary, and the CEWS covers the entire amount of the reduced remuneration paid (including retroactive pay). See under “Claiming the CEWS in Respect of Retroactive Pay”.

CRA Calculator

Per CRA News Release 2020-04-21: [Government of Canada launches Canada Emergency Wage Subsidy Calculator for Employers](#):

To help employers keep and re-hire workers amidst the challenges posed by the COVID-19 pandemic, the Government is implementing the Canada Emergency Wage Subsidy (CEWS). This important economic measure provides a 75% wage subsidy of up to \$847 per employee per week, to eligible employers, for up to 12 weeks, preventing further job losses and encouraging employers to re-hire workers previously laid off as a result of COVID-19, retroactive to March 15, 2020.

Today, the Honourable Diane LeBouthillier, Minister of National Revenue, launched the [Canada Emergency Wage Subsidy calculator](#) to support employers as they prepare to apply for the CEWS.

The CEWS calculator can be found on CRA’s [Canada Emergency Wage Subsidy Web page](#). This Web page incorporates feedback received during user testing with stakeholders, including the Canadian Federation of Independent Business and the Chartered Professional Accountants of Canada. It includes detailed information and instructions about who can apply for the subsidy, how eligibility is assessed, and how the subsidy is calculated. The calculator also includes a printable statement feature that employers can use to view their claim at a glance and, as of April 27, enter required information into the CEWS application form quickly and easily. By providing employers with additional details about their subsidy claim, the CEWS calculator can equip employers with important information they can use now to make more informed decisions about retaining and re-hiring workers. A series of information sessions will be held in the coming days to provide a forum for eligible employers. The CRA also encourages employers to sign up for *My Business Account* or *Represent a Client*, as employers will be able to apply through these portals. The CRA will open the application process on April 27, 2020. CEWS claims will be subject to verification by the CRA. Funds for approved applications will begin to be released on May 5.

Quotes

“The Canada Revenue Agency has a proven track record of delivering benefits to millions of Canadians every year. Following on the successful delivery of Canada Emergency Response Benefit payments to

millions of Canadians, I am confident in the CRA's ability to administer this critical fiscal measure that will provide urgently-needed support for Canadian employers and workers. Launching the CEWS calculator is an important first step to ensuring employers are equipped to apply for the subsidy."

The Honourable Diane LeBouthillier, Minister of National Revenue

"The Canada Emergency Wage Subsidy will help many small business owners keep their employees during the COVID-19 pandemic. This will remove the stress of losing a job for workers and allow employers to bring their teams back together quickly as soon as the emergency phase is over. CFIB appreciates the work of the Canada Revenue Agency in operationalizing this key benefit. We were pleased to provide feedback to the CRA on its calculator designed to make it easier for firms to access the wage subsidy."

Dan Kelly, President, Canadian Federation of Independent Business

"In this time of unprecedented uncertainty, Chartered Professional Accountants of Canada is working with organizations such as the Canadian Tax Foundation in providing constant input to the Canada Revenue Agency on important issues relating to the Canada Emergency Wage Subsidy program. It is encouraging to see the CRA putting a new tool in place aimed at helping employers determine required calculations well in advance of the application process being initiated."

Bruce Ball, Vice-President, Tax, Chartered Professional Accountants of Canada

"The APFF wishes to highlight the importance of the Canada Emergency Wage Subsidy for the survival of a large number of Canadian businesses. Thanks to this subsidy, many businesses will avoid layoffs and will be able to rely on a quality workforce when they resume normal activities."

Maurice Mongrain, President, Association of Fiscal and Financial Planning

Quick facts

- The Canada Emergency Wage Subsidy is one of the measures the Government of Canada announced as part of their economic response to support Canadians through the COVID-19 pandemic.
- In addition, employer-paid contributions to Employment Insurance (EI), the Québec Parental Insurance Plan (QPIP), the Canada Pension Plan (CPP) and the Québec Pension Plan (QPP) will be refunded when paid in respect of employees that are on leave with pay.

On the [web page](#) that contains the calculator, the CRA further states:

Calculate your subsidy amount

When you apply for the Canada Employment Wage Subsidy (CEWS), you will be asked to enter amounts such as the number of eligible employees and gross payroll. To get ready, you can determine these amounts and preview your subsidy claim now, based on information you enter. The calculator is a tool to

help you estimate the amount of your wage subsidy. Before you calculate your subsidy, make sure you are eligible to apply. After you apply for the wage subsidy, your claim will be subject to verification.

How the subsidy is calculated

The CEWS amount is based on: 1) the number and type of [eligible employees](#) you have, and 2) the amount and [type of pay they received](#) before and during the crisis. [See the math behind the subsidy calculation](#). There is no limit on the total subsidy amount that an eligible employer may claim.

Input your information

You can use the calculator below to determine the subsidy you can expect for your organization. This calculator will help you to determine some specific line amounts (lines A – G) that you will need to enter into the CEWS application form once it becomes available on April 27. *Note:* You must do a separate calculation and application for each payroll program (RP) account you have with the CRA.

How to use the calculator

- 1) Calculate the basic CEWS using the provided spreadsheet
- 2) Input the amounts from the spreadsheet on this page as indicated
- 3) Enter the refund of employer contributions for any employees on leave with pay
- 4) Enter any amounts for employees receiving a Work-Sharing benefit through Employment Insurance
- 5) Enter the amount you are eligible for under the 10% temporary wage subsidy program for this claim period
- 6) Print and save the information to enter in your future CEWS application

Note: You may be required to provide a full list of your employees and their Social Insurance Numbers (SIN) for verification after you apply. The CRA is not collecting or retaining any of the information you enter on this page or in the spreadsheet. These amounts are only used to help you determine the amount of CEWS you may be eligible to claim...

Gross payroll for eligible employees

Understand how situations are calculated

Employees who earn \$1,129.33 a week or more: The maximum subsidy is \$847 per week. For employees earning \$1,129.33 (or more) for each week in the claim period, the maximum weekly subsidy is ($\$1,129.33 \times 75\% = \847). The exception is for employees who are non-arm's length. The maximum weekly subsidy for these employees is the lesser of: 1) 100% of their weekly gross pay during the claim period, 2) 75% of their average weekly pay from the period January 1 to March 15, 2020; or 3) The maximum subsidy of \$847 ($\$1,129.33 \times 75\% = \847)...

Employees who earn \$1,129.32 or less, and have not experienced a reduction in pay since before the crisis: The subsidy for employees who have not experienced a reduction in pay is 75% of their weekly gross pay during the claim period. The exception is for employees who are non-arm's length...

Employees who earn \$1,129.32 or less, and have experienced a reduction in pay since before the crisis: The subsidy for employees who have experienced a reduction in pay and earn \$1,129.32 or less, is the lesser of: 1) 100% of their weekly gross pay during the claim period; 2) 75% of their average weekly pay from the period January 1 to March 15, 2020; or 3) The maximum subsidy of \$847 ($\$1,129.33 \times 75\% = \847)...

Calculate the values using the [spreadsheet](#) [which may be downloaded from [canada.ca](#).] If you don't have Excel, you can open it in free spreadsheet solutions like Google Sheets, Numbers or OpenOffice.

Note: If you have an employee that also works for one or more related eligible employers, the combined total CEWS amount that can be claimed for that employee between yourself and any related eligible employers for each week is \$847. The calculations in the spreadsheet may need to be manually adjusted if you have such employees. A related eligible employer is any eligible employer that you do not deal with on an arm's length basis.

Example of an adjustment for an employee working for related entities

Westside Restaurant Ltd (WRL) and Eastside Bar Ltd (EBL) are both owned by the same person. Mary works full time at WRL but also works weekends at EBL. Mary earns \$1000 per week at WRL and another \$300 per week at EBL. Using the spreadsheet calculator, WRL determines the CEWS amount related to Mary for the week is \$750 (75% of \$1000). When EBL uses the spreadsheet calculator it shows a CEWS amount of \$225 (75% of \$300) for Mary. However, the total of those two amounts ($\$750 + \225) is \$975 – which exceeds the maximum of \$847 by \$128. The claim amount of WRL or EBL will need to be manually reduced by a total of \$128 so that the total CEWS amount related to Mary does not exceed the \$847 maximum for that week.

Input the values from the spreadsheet

Once the spreadsheet is complete, refer to the instructions and results sheet for the final values...

Premiums and contributions

As part of the CEWS, employers can claim a 100% refund for the employer-paid part of contributions made on behalf of eligible employees who are furloughed (on leave with full or partial pay) for any full week in the claim period, and for which the employer is eligible to claim the CEWS for those employees. These employer-paid contributions include: 1) Employment Insurance (EI), 2) the Canada Pension Plan (CPP), 3) the Quebec Pension Plan (QPP), and 4) the Quebec Parental Insurance Plan (QPIP)

Indicate the total amount of premiums or contributions during the selected period. Enter \$0 if not applicable...

Deductions

Amount that you are eligible to claim under the 10% Temporary Wage Subsidy for Employers (for the claim period)...

Total amount that your eligible employees have received under ESDC's Work-Sharing benefit program (for the claim period)...

Get results

After completing the four steps above, you can now calculate the results.

Arm's length and non-arm's length

Arm's length: Generally, an arm's-length employee includes any employee who does not own the business (or in the case of a corporation, control the corporation) and is not a member of that person's immediate family.

Non-arm's length (not at arm's length): A non-arm's-length employee is someone who owns the business (or in the case of a corporation, controls the corporation) or is part of that person's immediate family.

CPA Canada has raised a number of issues/made suggestions related to the CRA's CEWS calculator; the following comments were posted on the institutes *Taxation Blog* (see Bruce Ball, "[Update: Canada Emergency Wage Subsidy and other COVID-19 tax issues](#)", *Taxation Blog*, CPA Canada, April 24, 2020):

Multiple payroll program accounts: The commentary suggests that employers must separately calculate and apply for each of their CRA payroll program accounts. This caused confusion for eligible entities with more than one payroll program account as the legislation in Bill C-14 requires the CEWS to be computed by the eligible entity as a whole. We discussed this with CRA, and we understand that eligible remuneration must be computed on a payroll program account basis...

More worksheets suggested: The calculator provides worksheet templates for employers who pay employees weekly or bi-weekly. Many employers follow a semi-monthly pay cycle, with payments on the 15th and last day of each month, so we suggested that the CRA develop templates for this and other pay cycles.

Taxable benefits: We asked the CRA for more specific guidance on what taxable benefits are included in eligible remuneration, particularly automobile benefits. The backgrounders from the Department of Finance Canada say such amounts should be excluded, but the legislation does not seem to require this.

See also KPMG, "[Employers — Prepare to Apply for 75% Wage Subsidy](#)", *TaxNewsFlash-Canada* No. 2020-41, April 21, 2020.

CEWS Applications

Eligible entities will be able to apply for the CEWS through the CRA's *My Business Account* portal (if an eligible entity has not yet enrolled for access to [My Business Account](#), the entity should generally do so as soon as possible). On Canada.ca under "[Canada Emergency Wage Subsidy \(CEWS\)](#)", under "[How to Apply](#)", the CRA states:

Beginning April 27, applications will be open for the Canada Emergency Wage Subsidy.

- Most businesses may apply using *My Business Account*

- If you represent a business, you may apply using *Represent a Client*
- Alternatively, you may apply using a separate online application form (available April 27)

The CEWS will be processed at the payroll program (RP) account level, so you will have to file a separate application for each RP account.

Get ready to apply

- 1) Register now for CRA's *My Business Account* if you are not already signed up. This will ensure that you can apply as soon as applications open.
- 2) If you are unable to register for *My Business Account*, make sure you have an online web access code so you are prepared to use the alternative application.
- 3) Make sure your business details and direct deposit information for your payroll accounts (RP) are up to date. This will ensure that any payments to you will be processed quickly and easily.
- 4) Before you apply, you will also need to calculate the estimated subsidy for your business.
- 5) If you are expecting a payment of \$25 million or more, you will have to get your payment through the large value transfer system (LVTS). To do this, you have to be enrolled in direct deposit on your payroll account and be registered for the LVTS. If you are not already set up for LVTS, begin the registration process.

The CRA CEWS FAQ provides additional application information:

27. How do I claim the wage subsidy?

Eligible employers will be able to apply for the wage subsidy through the CRA's *My Business Account* portal or the Web Forms application.

Note: The online applications are currently being developed.

Representatives (authorized at a level 2 or 3) will be able to apply for the wage subsidy on behalf of their clients through the Represent a Client service, as well as through the Web Forms application.

To log in to or register for the CRA's online services, go to canada.ca/taxes-business-online.

To use the Web Forms application, or if you have misplaced or do not have a web access code, go to canada.ca/taxes-iref.

When completing the application, you will need:

- your payroll program account number (123456789RP0001, for example);
- to know which claim period you are applying for;
- all of the information necessary to complete the applicable fields in the application.

The processing of the wage subsidy will be performed at the payroll program account level, so you will have to file a separate application for each payroll program account. For example, if you have two payroll

program accounts (123456789RP0001 and 123456789RP0002, for example) and are claiming wage subsidy for eligible employees under each account, you must file 2 separate applications.

When you apply for the wage subsidy, you will be asked to enter amounts such as the number of eligible employees and total eligible remuneration paid to those employees during the claim period. To get ready, we have created a web page where you can determine these amounts and preview your subsidy now, based on information you enter. For more information, go to [Calculate your subsidy amount](#).

Upon completion of your application, you will be required to keep records supporting your wage subsidy claim (see Q33).

Review of CEWS Applications

According to an article published by the National Post (Christopher Nardi, "[Ottawa expects one million companies to apply for COVID-19 wage subsidy program starting next week](#)", April 22, 2020):

Many of the cheques Ottawa will send out under CEWS will be worth millions of dollars. So CRA said all applications will go through an automatic audit to check for any possible discrepancies or errors. Applications that either raise red flags or are requesting an amount over a certain threshold (which the government wouldn't reveal) will go through a manual audit that could take a few extra days. CRA says it has 3,000 auditors who will be working on CEWS applications as soon as the program launches next week. We feel pretty confident in having the data to detect anomalies. "We will have controls as to if a business even exists. Then, we'll have payroll records and historic data on those businesses we can use, and then we'll have future data. So we feel pretty confident in having the data to detect anomalies, either in the revenue flows or the employment patterns before we make a payment," a senior official told reporters. "The objective of the program is to help businesses meet their normal payroll. On the other hand, businesses who attempt to double-dip or engage in aggressive tax planning to exploit loopholes can expect the CRA to apply a full range of compliance measures," another official added during the briefing.

On Canada.ca under "[Canada Emergency Wage Subsidy \(CEWS\)](#)", the CRA states:

Incorrect or fraudulent claims

If you do not meet the Canada Emergency Wage Subsidy eligibility requirements for a period, you will be required to repay any amounts you received for that period. Penalties may apply in cases of fraudulent claims including fines or even imprisonment.

If you artificially reduce your revenue for the purpose of claiming the wage subsidy you will be required to repay any subsidy amounts you received plus a penalty equal to 25% of the total value.

Keep your records

You must keep records demonstrating your reduction in revenues and remuneration paid to employees...

After you apply for the wage subsidy, your claim will be subject to verification... You may be required to provide a full list of your employees and their Social Insurance Numbers (SIN) for verification after you apply.

With respect to planned CEWS audit activity, CPA Canada has reported the following based on discussions with the CRA (Bruce Ball, "[Update: Canada Emergency Wage Subsidy and other COVID-19 tax issues](#)", *Taxation Blog*, CPA Canada, April 24, 2020):

Pre- and post-payment verification

After the application system opens on April 27, the CRA expects to begin to release funds for approved applications starting on May 5, 2020. Their goal is to process most applications within 10 business days of receipt. All applications will undergo an initial validation process, with CRA's main objective to ensure the subsidy's integrity while quickly releasing funds. Post-payment verification work will start as early as June or July 2020. The CRA recognizes the importance of providing certainty to businesses on their subsidy claims as soon as possible. As part of this pre- or post-payment verification work, the CRA may contact applicants by telephone to verify information on applications, so clients should be advised that they may get such a call. The CRA is aware that taxpayers will want to verify that they are really speaking to a CRA employee and will take steps to minimize this problem. We will update you as we learn more.

The CRA CEWS FAQ further states:

32. How will the CRA Ensure Compliance?

The CRA will use a combination of automated queries and validation within its data, follow-up phone calls to verify certain elements of the claim when necessary, and more comprehensive post-payment reviews or audits. The CRA will monitor the initial intake of claims and adjust its queries as necessary. The extent of future post-payment reviews will depend on the conclusions the CRA reaches as it reviews the intake of claims. As with the CERB, the CRA is actively monitoring the situation to ensure that compliance with the tax laws is assured. In order to maintain the integrity of the program and to ensure that it helps Canadians keep their jobs, the employer would be required to repay amounts paid under the wage subsidy if they do not meet the eligibility requirements.

33. What books and records do I need to support my claim?

The CRA expects that you will maintain adequate books and records to ensure that your claim is accurate and complete, and clearly supports your eligibility for the wage subsidy for a claim period. Books and records includes ledgers, journals, financial statements, contracts, [elections](#), calculations or other working papers, payroll records, sales invoices and any other relevant document. For additional information about adequate records and recordkeeping, please see [What are records and who has to keep them?](#)

To support the claim in your wage subsidy application that your revenue for a current reference period has declined sufficiently from the relevant prior reference period, adequate calculations should generally be prepared and maintained through working papers. In situations where a small employer does not maintain detailed monthly records, the CRA will be reasonable; however, any assumptions made in any calculation should be included in the documentation and available for review if requested.

In addition to showing the calculation of the wage subsidy claimed for each eligible employee, the documentation maintained must also include an analysis of the nature of the remuneration. Dividends and other ineligible remuneration should be recognized and then clearly indicated as having been removed from the calculation. Supporting documentation should be retained.

A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request.

The attestation requirement mentioned above is required by ITA 125.7(1)“qualifying entity”(b). The [Joint Submission Short List](#) including the following query, which in part is addressed above: “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)?”]

When assessing whether to audit an eligible entity’s CEWS claim in regards to the Qualifying Revenue Decline Test, items the CRA could easily review include publicly disclosed financial statements, financial statements filed with 2020 tax returns, and revenues reported in GST returns. Also, CEWS claims may be more closely reviewed based on the nature of a taxpayer’s business (i.e. the anticipated impact of the crisis on the revenues of businesses operating in various industries will presumably vary widely).

See also under “Other Penalty and Avoidance Rules”.

Receipt of CEWS

There is no deadline within which the CRA must pay the CEWS to an eligible entity that makes a valid application. Bill C-14 contains a provision stating that for the purpose of ITA 164(1.6), the CRA may make payments to a person or partnership out of the Consolidated Revenue Fund at the times and in the manner that the CRA considers appropriate. ITA 164(1.6) was added by Bill C-14 to provide that, notwithstanding ITA 164(2.01), at any time after the beginning of a taxation year of a taxpayer in which an overpayment is deemed to have arisen under ITA 125.7(2), the CRA may refund to the taxpayer all or any part of the overpayment. ITA 164(1.61) provides that for the purposes of ITA 164(1.6), references to a taxpayer include a partnership and the reference to a taxation year includes a fiscal period.

As mentioned in above, the CEWS application portal will open on April 27th and that the first CEWS payments are expected to be made in the first week of May. Per the CRA CEWS FAQ:

28. How soon can I expect to receive my wage subsidy after applying?

For most complete applications that pass our system validations, a payment will be issued automatically, though some applications may be selected for a pre-claim review. While delays may occur if additional review is required or the CRA needs to contact you, you can generally expect to receive your payment within 10 business days if you are registered for direct deposit on your payroll account. If you are not registered for direct deposit, please allow additional time for your cheque to be delivered by mail to the address on your payroll account. Direct deposit is a fast, convenient, reliable, and secure way to get your

CRA payments directly into your account at a financial institution in Canada. To enrol for direct deposit or to update your banking information, go to [Direct deposit](#).

Note: If you are expecting an amount of \$25 million or more, you need to be registered for both [direct deposit](#) and the [Large Value Transfer System](#).

29. Are there any special T4 reporting requirements for the wage subsidy?

Employers will be expected to report the amount of the wage subsidy that was used to pay each of their employees' salaries by using a special code in the "Other information" area at the bottom of the employees' T4 slips. More information on the T4 reporting requirements will be released before the end of the year.

30. Will the wage subsidy be automatically applied against outstanding debt?

No, wage subsidy payments will not be automatically applied against any outstanding debt you have with the CRA. However, the legislation gives the CRA the ability to administer the wage subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws. The CRA does have the discretion to reduce the amount of the wage subsidy payment if an applicant owes or are about to owe a debt and the CRA determines there is a risk of not collecting all or part of your tax debt.

31. Will the CRA withhold my wage subsidy because of outstanding returns?

No, wage subsidy payments will not be automatically withheld because of outstanding returns under the *Income Tax Act* or the *Excise Tax Act* (as well as certain other tax related laws). However, the legislation gives the CRA the ability to administer the wage subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws. The CRA does have the discretion to withhold the amount of the wage subsidy payment in cases where there is a significant history of not complying with a duty or obligation under our tax laws.

If there is an administrative delay in paying the CEWS to an eligible entity, interest does not accrue on an unpaid CEWS. Bill C-14 amended ITA 164(3) to provide that the normal refund interest rules do not apply to an amount, or a portion of an amount, that can reasonably be considered to arise from the operation of ITA 125.7.

Pursuant to ITA 125.7(5)(a), for the purposes of ITA 125.7, the amount of any deemed overpayment by an eligible entity under ITA 125.7(2) in respect of a qualifying period cannot exceed the amount claimed by the qualifying entity (in the application referred to in ITA 125.7(1) "qualifying entity"(a)) in respect of that qualifying period. Thus, for example, if the CRA audits a CEWS application and determines that an eligible entity could have claimed an increased subsidy, an additional amount will not be paid to the eligible entity. This provision also may imply that an eligible entity will not be permitted to file an amended application.

For an eligible entity, the CEWS must be included in computing income for tax purposes. Pursuant to ITA 127.5(3), for the purposes of the ITA (other than ITA 127.5), and "for greater certainty", the amount that a

qualifying entity is deemed under ITA 127.5(2) to have overpaid is assistance received by it from a government immediately before the end of the qualifying period to which it relates. In the [Backgrounder](#), Finance states:

The usual treatment of tax credits and other benefits provided by the government would apply [(see ITA 9 and 12(1)(x)]. As a consequence, the wage subsidy received by an employer would be considered government assistance and be included in the employer's taxable income [(effectively, the subsidy will offset the otherwise deductible remuneration paid to an eligible employee)]. Assistance received under either wage subsidy would reduce the amount of remuneration expenses eligible for other federal tax credits calculated on the same remuneration [(see ITA 127(18)-(21))].

The CRA CEWS FAQ also comments that:

25. Is the wage subsidy considered taxable income?

Yes. The wage subsidy received by an eligible employer is considered assistance received from a government immediately before the end of the claim period to which it relates. The amount is taxable and is to be included in the computing the income of the eligible employer. The eligible remuneration paid to the employee will be a deductible expense for the employer. However, the wage subsidy received by the eligible employer will not be included in the calculation of its qualifying revenue.

Public Disclosure of Applicants

Pursuant to ITA 241(3.5), the CRA *may* communicate or otherwise make available to the public, in any manner that the CRA considers appropriate, the name of any person or partnership that makes an application under ITA 125.7. The CRA has indicated it intends to exercise this authority. In particular, per in the CRA CEWS FAQ under "Ensuring Compliance":

35. Will the CRA publish a list of employers that have applied for the CEWS?

Yes. The Act authorizes the CRA to publish the name of any eligible employer that makes an application for the wage subsidy. The CRA will provide updates regarding the timely publication of a list or registry of wage subsidy applicants. The process for making this information available is still under consideration. [Interestingly, as mentioned in the Overview, the CRA expects to receive one million CEWS applications (i.e. the list will be long, and the value of the list will largely depend upon searchability functions).]

Presumably, only the name of the eligible employer will be published (it is unclear whether the CRA also has the authority to also publish the name of the individual who attests to the CEWS in the application).

In the [Joint Submission Short List](#), the CRA has been asked: "What is the intended purpose of the disclosure provisions in section 241 and in what circumstances would the CRA anticipate releasing this information?". Based on the CRA CEWS FAQ, it appears that the naming of applicants is intended dissuade fraudulent claims (it should be mentioned that several tax commentators have suggested that the publishing of the names of applicants may be intended to "shame" employers who claim the subsidy but nonetheless reduce employee remuneration to below pre-crisis levels).

In the case of public corporations, even if the CRA did not publish the names of applicants, in respect of a material subsidy claim, required disclosures (i.e. per GAAP and/or securities laws) would likely indicate whether the subsidy has been received. Also, certain large Canadian public companies, such as [Air Canada](#), [WestJet](#) and [Air Transat](#), have already disclosed their intention to apply for the subsidy.

Other Penalty and Avoidance Rules

Potential Repayment of CEWS

According to the [Backgrounder](#), “[e]ligible employers [that apply for the CEWS must] keep records demonstrating their reduction in arm’s-length revenues and remuneration paid to employees”. Furthermore, “[i]n order to maintain the integrity of the program and to ensure that it helps Canadians keep their jobs, the employer would be required to repay amounts paid under the CEWS if they do not meet the eligibility requirements”. ITA 152(1) lists certain refunds and deemed payments of tax that are to be determined in the course of assessing a taxpayer's tax. Bill C-14 amended ITA 152(1)(b) to provide that the CRA shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine the amount of tax, if any, deemed by ITA 125.7(2) to be paid on account of the taxpayer's tax payable under Part I for the year. Thus, a subsidy repayment requirement could be assessed under the normal administrative provisions in Division I of the ITA.

Anti-Avoidance Rule

Per the [Backgrounder](#), “[e]mployers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS would be subject to a penalty equal to 25 per cent of the value of the subsidy claimed, in addition to the requirement to repay in full the subsidy that was improperly claimed”. To enact this rule, ITA 125.7(6) was added to provide that the qualifying revenue of an eligible entity *for a current reference period* for a qualifying period is deemed to be equal to the qualifying revenue of the eligible entity for the relevant prior reference period if the following conditions are met:

- 1) the eligible entity, or a person or partnership not dealing at arm’s length with the eligible entity, enters into a transaction or participates in an event (or a series of transactions or events) or takes an action (or fails to take an action) — other than, “for greater certainty”, a decision under ITA 125.7(1) “qualifying revenue” (a)(ii) or (b)(ii) or the decision to use one of the methods of computing qualifying revenues under ITA 125.7(4) — that has the effect of reducing the qualifying revenues (determined without reference to ITA 125.7(6)) of the eligible entity for the current reference period; and
- 2) it is reasonable to conclude that “one of the main purposes” of the transaction, event, series or action in (1) above is to cause an eligible entity to qualify for the CEWS in respect of that qualifying period.

The *Groupe Honco*, 2013 CarswellNat 1476 (FCA) highlights the wide net that is cast when an avoidance provision refers to “one of the main purposes” of a transaction since such language makes it clear that a series of transactions may have several “main” purposes. The case also highlights the far-reaching interpretation of a “series” of transactions stemming from *Copthorne Holdings*, [2012] 2 C.T.C. 29 (SCC).

Pursuant to ITA 163(2.901), every eligible entity that is deemed by ITA 125.7(6) to have an amount of qualifying revenue for a current reference period for a qualifying period is liable to a penalty equal to 25% of the amount that would be deemed by ITA 125.7(2) to have been an overpayment (i.e. the CEWS) by the eligible entity during that qualifying period if that amount were calculated by reference to the information provided in the CEWS application that was filed. The CRA CEWS FAQ states the following regarding this penalty:

The CRA CEWS FAQ states the following with respect to penalties that may be imposed in relation to CEWS claims:

34. Are there penalties for non-compliance?

Yes. Due to a specific anti-avoidance rule, an employer will not be eligible to claim the wage subsidy for a current reference period if the employer (or a person or partnership that does not deal at arm's-length with that employer) participates in a plan that has one of the main purposes of effectively reducing the employer's qualifying revenues for the current reference period, in order to qualify for the subsidy. Where this anti-avoidance rule applies, the employer will be liable to a penalty equal to 25% of the amount of wage subsidy that is claimed in its application, and will have to pay back any wage subsidy that it received. If an employer knowingly, or under circumstances amounting to gross negligence, generally makes, or is involved in the making of a false statement or omission in its wage subsidy application for a claim period, the employer is liable to a penalty (commonly referred to as the "gross negligence penalty") of up to 50% of the difference between the amount of wage subsidy that it claimed in its application and the amount of wage subsidy to which it is actually entitled.

Penalties may apply in cases of fraudulent claims. The penalties may include fines or even imprisonment.

Finally, if a person (such as an accountant or tax preparer) files or prepares the wage subsidy application on behalf of the employer, they could be subject to a third-party penalty under the Act, if they know, or would reasonably be expected to know, that the application contains false statements, including an omission of information. Third-party penalties are explained in detail in the CRA's [Information Circular IC01-1, Third-Party Civil Penalties](#). [See below under "Third-Party Civil Penalties".]

The term "gross negligence" is not defined in the ITA. For a discussion of the meaning of the phrase, see paragraphs 11 to 13 of *LaPlante v R*, 2008 CarswellNat 2699 (TCC). "Gross negligence" involves greater neglect than simply a failure to use reasonable care. In *Venne*, 1984 CarswellNat 210 (FCTD), the Court noted that:

"Gross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.

The GAAR (i.e. ITA 245) could also apply to a misuse or abuse of ITA 125.7 (the GAAR specifically may apply to transactions that increase a refund or other amounts under the ITA).

False Statements or Omissions

ITA 163(2) imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement for the purposes of the ITA. The penalty is determined with reference to the understatement of tax or the overstatement of amounts deemed to be paid on account of tax. Bill C-14 amended ITA 163(2) by adding paragraph (i). ITA 163(2)(i) imposes a penalty where the false statement relates to the CEWS. More specifically, pursuant to ITA 163(2)(i), every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in respect of a CEWS application is liable to a penalty of the greater of \$100 and 50% of the total of the amount, if any, by which: i) the amount that would be deemed by ITA 125.7(2) to have been an overpayment by the person or partnership if that amount were calculated by reference to the information provided in the application filed pursuant to ITA 125.7 exceeds ii) the amount that is deemed by that provision to be an overpayment by the person or partnership. ITA 163(2.9) allows a penalty imposed under ITA 163(2)(i) to be assessed against a partnership.

In the case of an excessive CEWS claim that results from a reasonable filing position that the CRA subsequently challenges, a penalty should not be imposed (though all or a portion of the CEWS may have to be repaid with interest).

Fines or Imprisonment

In News Release [2020-04-11B](#), Finance states that “under existing provisions of the *Income Tax Act*, persons making, or participating in making, a false or deceptive statement could be prosecuted with a summary or indictable offence. Anyone found guilty could be sentenced to prison for up to 5 years” (see also q. 34 of the CRA CEWS FAQ, which states: “Penalties may apply in cases of fraudulent claims. The penalties may include fines or even imprisonment”).

Pursuant to ITA 239(1.1), every “person” (as broadly defined in ITA 248(1)) who obtains or claims a refund or credit under the ITA to which the person or any other person is not entitled or obtains or claims a refund or credit under the ITA in an amount that is greater than the amount to which the person or other person is entitled: i) by making, or participating in, assenting to or acquiescing in the making of, a false or deceptive statement in a return, certificate, statement or answer filed or made under the ITA or an ITR, ii) by destroying, altering, mutilating, hiding or otherwise disposing of a record or book of account of the person or other person, iii) by making, or assenting to or acquiescing in the making of, a false or deceptive entry in a record or book of account of the person or other person, iv) by omitting, or assenting to or acquiescing in an omission to enter a material particular in a record or book of account of the person or other person, v) wilfully in any manner, or vi) by conspiring with any person to commit any offence under ITA 239(1.1), is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to:

- 1) a fine of not less than 50% and not more than 200% of the amount by which the amount of the refund or credit obtained or claimed exceeds the amount, if any, of the refund or credit to which the person or other person, as the case may be, is entitled, or
- 2) both the fine described in (1) above and imprisonment for a term not exceeding 2 years.

Pursuant to ITA 241, “[w]here a corporation commits an offence under [the ITA], any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for

the offence [(including under ITA 239(1.1))] whether or not the corporation has been prosecuted or convicted". Thus, an officer, director or agent of a corporation could potentially be liable to a penalty imposed under ITA 239(1.1) in respect of a fraudulent CEWS claim.

Third-Party Civil Penalties

ITA 163.2 empowers the CRA to impose civil penalties on third parties who knowingly, or in circumstances amounting to culpable conduct, make false statements or omissions in respect of another person's tax matters. Effectively, two different penalties may be imposed under this provision; a "planner penalty" (ITA 163.2(2)), and a "preparer penalty" (ITA 163.2(4)). The "preparer penalty" is almost identical to the penalty for false statements in tax planning arrangements in ITA 163.2(2), except that it only applies to statements that are "to, or by or on behalf of another person". Specifically, ITA 163.2(4) reads:

Every person who makes, or participates in, assents to or acquiesces in the making of, a statement to, or by or on behalf of, another person (in this subsection and subsections (5) and (6), paragraph 12(c) and subsection (15) referred to as the "other person") that the person knows, or would reasonably be expected to know but for circumstances amounting to culpable conduct, is a false statement that could be used by or on behalf of the other person for a purpose of this Act is liable to a penalty in respect of the false statement.

The tax preparer penalty is the greater of: 1) \$1,000, and 2) the lesser of: i) the penalty that would apply under ITA 163(2) if the other person made the statement in a return filed for the purposes of the Act and knew that the statement was false (generally 50% of the taxes saved by the taxpayer by making the false statement), and ii) \$100,000 and the person's gross compensation (the amount to which the tax preparer, or any person dealing at non-arm's length with the tax preparer, is entitled, at any time, whether absolutely or contingently, to receive in respect of a false statement that could be used by or on behalf of another person) at the time the notice of assessment of the penalty is sent to the person. The preparer penalty can be applied regardless of whether the statement is used, and regardless of whether the tax preparer has received any compensation for his or her services.

Third-party penalties could be imposed under ITA 163.2 in relation to a CEWS application. The CRA makes the following comments in question 34 of the CEWS FAQ:

Finally, if a person (such as an accountant or tax preparer) files or prepares the wage subsidy application on behalf of the employer, they could be subject to a third-party penalty under the Act, if they know, or would reasonably be expected to know, that the application contains false statements, including an omission of information. Third-party penalties are explained in detail in the CRA's [Information Circular IC01-1, Third-Party Civil Penalties](#).

The meaning of a "false statement" and related terms are discussed in paragraphs 22-33 of the Circular:

A false statement is an incorrect statement, including a statement that is misleading because of an omission from the statement, regardless of whether the person making, participating in, or assenting to the making of, the statement has any intention to deceive. However, not every false statement would be subject to the third-party civil penalty. Example 3 at the end of the circular describes a situation in which a false statement resulted from an honest error and a penalty was not considered. In order for the third-party civil penalties to be considered, a person must know, or be reasonably expected to know, but for circumstances amounting to culpable conduct (explained in paragraph 24), that the statement is a false statement that could be used for a purpose of the ITA/ETA...

“Statement” includes an oral or documentary representation including those in electronic format. Examples include information provided on tax returns, tax credit forms, election forms, correspondence, invoices, donation receipts, statements, valuation reports, certifications, professional opinions, financial statements and their notes, contracts, prospectuses, selling documents, and other publications.

“Culpable conduct” must be present in the absence of actual knowledge of a false statement, in order for the third-party civil penalties to be considered. Culpable conduct refers to conduct that is not simply an honest error of judgement or failure to exercise reasonable care (i.e., ordinary negligence). As stated in the Revised Explanatory Notes Relating to Income Tax, issued in December 1999 by the Department of Finance, the concept “culpable conduct” is defined with reference to the types of conduct to which the courts have considered applying a civil penalty under the tax law (i.e., criteria considered for subsection 163(2) gross negligence penalty in the case of *Venne v. R.* (1984), 84 D.T.C. 6247 (Fed. T.D.)). “Culpable conduct” refers to conduct (an act or a failure to act) that is tantamount to intentional conduct, shows an indifference as to whether the ITA/ETA is complied with, or shows a wilful, a reckless or a wanton disregard of the law.

The expression “tantamount to intentional conduct” in the definition of culpable conduct means conduct that is equal, in effect, to intentional conduct, i.e., a person's conduct (an act or failure to act) shows that the person must have intended to make (or participate in or assent to the making of) a false statement.

The expression “tantamount to intentional conduct” in the definition of culpable conduct means conduct that is equal, in effect, to intentional conduct, i.e., a person's conduct (an act or failure to act) shows that the person must have intended to make (or participate in or assent to the making of) a false statement.

The expression “shows an indifference as to whether this Act is complied with” in the definition of culpable conduct describes the passive aspect of culpable conduct. The expression means that the person's actions or failure to act indicate that the person was wilfully blind regarding the facts or the application of the tax legislation. The person suspects that the situation demands that certain questions be asked. However, inquiries are not made because the person would then possess the knowledge of the false statement. This behaviour was addressed in *Sirois c. R.*, 1995 CarswellNat 555, [1995] 2 C.T.C. 2648 (T.C.C.) which relates to subsection 163(2) of the ITA, gross negligence on the part of the taxpayer. The court described the taxpayer's behaviour as “He buried his head in the sand.”

The “indifference standard” is considered to be much greater than that of ordinary negligence. It is more or less equivalent to the standard used to measure the purposeful act of wilful, reckless or wanton disregard of the law. As stated in *Malleck v. R.* (1997), 98 D.T.C. 1019 (T.C.C.) on page 1021, “There is, however, little, if any, difference between approaching “the willful, the reckless, the wanton,” and indifference as to whether the law is complied with or not.”

The expression “shows a wilful, reckless or wanton disregard of the law” in the definition of culpable conduct points to the situation where a reasonable, prudent person would know that it is highly likely that a false statement could be made but purposefully continues with the chosen course of action. For example, a tax return preparer decides to follow the instructions of his Canadian resident client and not report the client's foreign investment income on the tax return. The preparer is reasonably expected to know that the worldwide income of a Canadian resident is taxable in Canada. The preparer would be

demonstrating wilful or wanton disregard of the law if he or she participates in a filing position that is clearly contrary to the legislation.

The definition of “participate” includes causing a subordinate to act or to omit information, and to know of, and to not make a reasonable attempt to prevent, the participation by a subordinate in an act or omission of information.

The definition of “subordinate” relating to a particular person includes not only employees, but also other persons over whose activities the particular person has direction, supervision or control. For example, if a particular person provides directions to, supervises or controls the activities of another person who is not an employee of the particular person or of anyone else (as in the case of a self-employed person), the other person would be considered to be a subordinate of the particular person for the purpose of determining whether the particular person participated in making a false statement. This provision may apply in a situation where a promoter, advisor or tax return preparer carves out certain activities relating to the making of a false statement and subcontracts these activities to an apparently unrelated person (in order to maintain that he or she did not participate in the making of the false statement).

An exception lies within the definition of “subordinate.” Specifically, if a particular person is a member of a partnership, a person reporting to (i.e., activities of the person being directed, supervised or controlled by) the particular person is not a subordinate of another partner solely because the other partner is a member of the partnership. In other words, a person who reports to a particular partner is a subordinate of that particular partner and not of any other partner unless that person also reports to that other partner.

Subsection (9) provides that a person is not considered to have made or furnished, or participated in, assented to or acquiesced in the making of, a false statement solely because the person provided clerical services (other than bookkeeping services) or secretarial services relating to the statement.

For the purposes of the third-party civil penalties, clerical and secretarial duties do not include any involvement in the preparation of financial accounts. Clerical and secretarial duties are considered to be of an administrative nature, such as typing or formatting, without having any regard to content other than the accurate reproduction of originals that are prepared by others. Bookkeeping services would include recording business accounts and transactions and could lead to penalties.

CPA Canada has posed the following query to the CRA (see Bruce Ball, “[Update: Canada Emergency Wage Subsidy and other COVID-19 tax issues](#)”, *Taxation Blog*, CPA Canada, April 24, 2020):

Applications through Represent a Client: We have asked CRA for guidance on applications submitted through *Represent a Client* that clearly defines the expectations and responsibilities of taxpayers and advisors, in particular, around the attestation of the application. Bill C-14 seems to make it clear that the attestation should be done by a member of the applicant organization and not by an external advisor. The CRA say they are taking these concerns into account as they develop further guidance. We also asked the CRA to confirm what authorization access level representatives will need to have to apply for the CEWS on their client’s behalf in RAC. We were told they must have level 2 or level 3 access and that more information will be provided in the upcoming guidance. [In the CRA CEWS FAQ, it is confirmed that Representatives authorized at a level 2 or 3 can file the application on behalf of clients.]

Regardless of the person who attests to an application, a third-party advisor could be subject to penalties under ITA 163.2 based on the scope of the provision.

ITA 163.2(6) provides that an advisor will not be considered to have acted in circumstances amounting to culpable conduct, and thus the tax preparer and tax planner penalties will not apply, if the advisor relied in good faith on information provided by or on behalf of the person for whom the advisor acted. This exception also applies where the advisor failed to verify, investigate, or correct the information because of such reliance. "Good faith" is not defined in ITA 163.2. Per IC 01-1, "good faith is described as honesty of intention, and freedom from knowledge of circumstances which ought to put the holder on inquiry", and the "good faith reliance exception is available when the information used by the advisor or tax return preparer is not on its face, clearly false, or obviously unreasonable to a prudent person or does not raise obvious questions in the mind of the advisor or tax return preparer". There are a number of factors that could affect an advisor's ability to utilize the good faith defence in any specific situation, including the length of time the advisor has known the client, the knowledge the advisor had of the client's particular circumstances, the amounts involved (the larger the amount, the more questions that should be asked), and the expertise of the advisor (the more expertise, the easier it would be for the CRA to establish culpable conduct). In IC 01-1, the CRA provides a number of examples of the good faith defence.

Consistent with comments made above in relation to other potential penalties that could be imposed in relation to a CEWS application, third-party civil penalties should not be imposed in respect of an excessive CEWS claim that results from a reasonable filing position that is subsequently challenged by the CRA (i.e. presumably, the CRA will only apply penalties under ITA 163.2 in respect of clearly fraudulent applications). As noted in paragraph 16 of IC01-1, third-party penalties are not intended to apply to "differences of interpretations or opinion where there is *bona fide* uncertainty". Paragraph 17 further states that "whether penalties will be assessed in a given situation where a false statement was made knowingly or in circumstances amounting to culpable conduct will depend upon the facts of the situation, [including]: whether the position taken is obviously wrong, unreasonable, and/or contrary to well-established case law; considering the advisor's experience with the relevant subject matter and knowledge of the taxpayer's specific circumstances, the extent of knowing or deliberate participation in false statements; the degree to which the culpable conduct represents the most aggressive and blatantly abusive behaviour; the extent to which there is a pattern of repeated abuse; and whether the reduction of taxes is significant". The penalties would also generally not be applied to arrangements that are subject to the application of the GAAR. When assessing whether a position taken in a CEWS application is "obviously wrong [or] unreasonable", it would have to be taken into consideration that several of the critical rules/definitions in ITA 125.7 are subject wide interpretation and only high-level guidance has been provided by Finance/the CRA (the "qualifying revenue" definition, for example, could be interpreted in a particular situation to equate to materially different figures that are both reasonable – by design, the definition casts a wide net).

The third-party civil penalty provisions came into force on June 29, 2000. Since that time, the imposition of penalties under the provision has been limited. In a February 27, 2013 OBA Webinar presentation ("Tax Controversy, Dispute Resolution, and Case Law Update"), the CRA reported that as of August 31, 2012, a total of 185 third-party penalty cases had been reviewed in respect of which \$70M of penalties had been assessed in 71 cases. In 2018 liaison meeting with the TEI (on Taxnet Pro, see Submission 2018-12-04: *Income Tax Questions Submitted to Canada Revenue Agency [With CRA Responses]*) under the heading "Key results from 2017-2018: International, large business and offshore compliance activities" (i.e. activities related to aggressive offshore tax planning, such as audits stemming from the so-called Panama Papers and Paradise

Papers, where actions taken by the CRA included conducting criminal investigations into tax evasion and tax fraud), the CRA stated that in the 2017-2018 period, it assessed approximately \$21M of third-party penalties.

In the case of employees (which, by definition, includes an officer of a corporation) of an eligible entity, ITA 163.2(15) attributes the conduct of employees to their employer if their employer is the person who could use the false statements referred to in ITA 163.2(2) and (4), and exempts the employees from penalties. This exemption only applies to an employee other than a “specified employee” (i.e. a “specified employee” is generally a person who does not deal at arm's length with the employer, or a shareholder who owns 10% or more of the issued shares of any class of the employer). Also, technically, this exemption does not apply to employees of one corporation who perform tax planning or tax preparation services for other corporations in a related corporate group (e.g. they prepare the tax returns for a subsidiary), however, the CRA has stated (in IC 01-1) that in these situations, it would assess the preparer penalty against the employer and not the employee (unless the employee was placed in the consolidated role to avoid the third-party civil penalties or as part of a tax avoidance arrangement).

Appendix

CEWS [Legislation](#)

The *Income Tax Act* is amended by adding the following after section 125.6:

Definitions

125.7(1) The following definitions apply in this section and in subsection 163(2.901).

“baseline remuneration”, in respect of an eligible employee of an eligible entity, means the average weekly eligible remuneration paid to the eligible employee by the eligible entity during the period that begins on January 1, 2020 and ends on March 15, 2020, excluding any period of seven or more consecutive days for which the employee was not remunerated.

“current reference period”, for a qualifying period, means

- (a) for the qualifying period referred to in paragraph (a) of the definition qualifying period, March 2020;
- (b) for the qualifying period referred to in paragraph (b) of the definition qualifying period, April 2020;
- (c) for the qualifying period referred to in paragraph (c) of the definition qualifying period, May 2020; and
- (d) for the qualifying period referred to in paragraph (d) of the definition qualifying period, a prescribed period.

“eligible employee”, of an eligible entity in respect of a week in a qualifying period, means an individual employed in Canada by the eligible entity in the qualifying period, other than an individual who is without remuneration by the eligible entity in respect of 14 or more consecutive days in the qualifying period.

“eligible entity” means

- (a) a corporation, other than a corporation that is exempt from tax under [Part I] or is a public institution; (b) an individual;
- (b) a registered charity, other than a public institution;
- (c) a person that is exempt from tax under [Part I] because of paragraph 149(1)(e), (j), (k) or (l), other than a public institution;
- (d) a partnership, all of the members of which are described in this paragraph or any of paragraphs (a) to (d); or
- (e) a prescribed organization.

“eligible remuneration”, of an eligible employee of an eligible entity, means amounts described in paragraph 153(1)(a) or (g), other than

- (a) for greater certainty, a retiring allowance;
- (b) amounts deemed to have been received by the eligible employee as a benefit under or because of any of paragraphs 7(1)(a) to (d.1);
- (c) 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, (ii) a person or partnership not dealing at arm’s length with the eligible entity, or (iii) another person or partnership at the direction of the eligible entity; and
- (d) any amount that is paid in respect of a week in the qualifying period, if, as part of an arrangement involving the eligible employee and the eligible entity, (i) the amount is in excess of the eligible employee’s baseline remuneration, (ii) after the qualifying period, the eligible employee is reasonably expected to be paid a lower weekly amount than their baseline remuneration, and (iii) one of the main purposes for the arrangement is to increase the amount of the deemed overpayment under subsection (2).

“prior reference period”, for a qualifying period of an eligible entity, means

- (a) subject to paragraph (b), (i) for the qualifying period referred to in paragraph (a) of the definition qualifying period, March 2019, (ii) for the qualifying period referred to in paragraph (b) of the definition qualifying period, April 2019, and (iii) for the qualifying period referred to in paragraph (c) of the definition qualifying period, May 2019;
- (b) January and February 2020, if (i) on March 1, 2019, the eligible entity was not carrying on business or otherwise carrying on its ordinary activities, or (ii) the qualifying period is referred to in any of paragraphs (a) to (c) of the definition qualifying period and the eligible entity elects for all of those paragraphs; and
- (c) for the qualifying period referred to in paragraph (d) of the definition qualifying period, a prescribed period.

“public institution” means

- (a) an organization described in any of paragraphs 149(1)(a) to (d.6); or
- (b) a school, school board, hospital, health authority, public university or college.

“qualifying entity”, for a qualifying period, means an eligible entity that meets the following conditions:

- (a) it files an application with the Minister in respect of the qualifying period in prescribed form and manner, before October 2020;
- (b) the individual who has principal responsibility for the financial activities of the eligible entity attests that the application is complete and accurate in all material respects;
- (c) its qualifying revenues for the current reference period are equal to or less than the specified percentage, for the qualifying period, of (i) if paragraph (a) or (c) of the definition prior reference period applies, its qualifying revenues for the prior reference period, and (ii) if paragraph (b) of the definition prior reference period applies, the amount determined by the formula $0.5A(B/C)$ where A is its qualifying revenues for the prior reference period, B is the number of days in the prior reference period, and C is the number of days in the prior reference period during which the eligible entity was carrying on business; and
- (d) it had, on March 15, 2020, a business number in respect of which it is registered with the Minister to make remittances required under section 153.

“qualifying period” means

- (a) the period that begins on March 15, 2020 and ends on April 11, 2020;
- (b) the period that begins on April 12, 2020 and ends on May 9, 2020;
- (c) the period that begins on May 10, 2020 and ends on June 6, 2020; or
- (d) a prescribed period that ends no later than September 30, 2020.

“qualifying revenue”, of an eligible entity for a prior reference period or a current reference period, means the inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the eligible entity — generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity — in Canada in the particular period, subject to the following:

- (a) in the case of an eligible entity described in paragraph (c) of the definition eligible entity, (i) it includes revenue from a related business (as defined in subsection 149.1(1)), gifts and other amounts received in the course of its ordinary activities, and (ii) notwithstanding subparagraph (i), the eligible entity may elect to exclude funding received from government sources in the determination of its qualifying revenue for all of its prior reference periods and current reference periods;
- (b) in the case of an eligible entity described in paragraph (d) of the definition eligible entity, (i) it includes membership fees and other amounts received in the course of its ordinary activities, and (ii) notwithstanding subparagraph (i), the eligible entity may elect to exclude funding received from government sources in the determination of its qualifying revenue for all of its prior reference periods and current reference periods;
- (c) it excludes, for greater certainty, extraordinary items;
- (d) it excludes amounts derived from persons or partnerships not dealing at arm's length with the eligible entity; and
- (e) it excludes, for greater certainty, deemed overpayments under subsection (2) and deemed remittances under subsection 153(1.02).

specified percentage, for a qualifying period, means

- (a) for the qualifying period referred to in paragraph (a) of the definition qualifying period, 85%;
- (b) for the qualifying period referred to in paragraph (b) or (c) of the definition qualifying period, 70%; and
- (c) for the qualifying period referred to in paragraph (d) of the definition qualifying period, the prescribed percentage.

Wage subsidy (2) For a qualifying entity for a qualifying period, an overpayment on account of the qualifying entity's liability under this Part for the taxation year in which the qualifying period ends is deemed to have arisen during the qualifying period in an amount determined by the formula $A - B - C + D$ where

- A is the total of all amounts, each of which is for an eligible employee in respect of a week in the qualifying period, equal to the greater of (a) the least of (i) 75% of eligible remuneration paid to the eligible employee in respect of that week, (ii) \$847, and (iii) if the eligible employee does not deal at arm's length with the qualifying entity in the qualifying period, nil, and (b) the least of (i) the amount of eligible remuneration paid to the eligible employee in respect of that week, (ii) 75% of baseline remuneration in respect of the eligible employee determined for that week, and (iii) \$847;

- B is the total of all amounts each of which is an amount deemed to have been remitted under subsection 153(1.02) by the qualifying entity in the qualifying period;
- C is the total of all amounts received by the eligible employee for each week in the qualifying period as a work-sharing benefit under the Employment Insurance Act; and
- D is the total of all amounts, each of which is for an eligible employee in respect of a week in the qualifying period, if the eligible employee is on leave with pay for that week and the amount is (a) an amount payable by the qualifying entity (i) as an employer's premium under the *Employment Insurance Act*, or (ii) as an employer's contribution under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, or (b) an amount payable by the qualifying entity as an employer's premium under the Act respecting parental insurance, CQLR, c. A-29.011.

When assistance received (3) For the purposes of this Act other than this section, and for greater certainty, the amount that a qualifying entity is deemed under subsection (2) to have overpaid is assistance received by it from a government immediately before the end of the qualifying period to which it relates.

Computation of revenue (4) For the purposes of the definition qualifying revenue in subsection (1), the qualifying revenue of an eligible entity is to be determined in accordance with its normal accounting practices, except that

- (a) if a group of eligible entities normally prepares consolidated financial statements, each member of the group may determine its qualifying revenue separately, provided every member of the group determines its qualifying revenue on that basis;
- (b) if an eligible entity and each member of an affiliated group of eligible entities of which the eligible entity is a member jointly elect, the qualifying revenue of the group determined on a consolidated basis in accordance with relevant accounting principles is to be used for each member of the group;
- (c) if a group of eligible entities normally prepares consolidated financial statements, each member of the group may determine its qualifying revenue separately, provided every member of the group determines its qualifying revenue on that basis;
- (d) if an eligible entity and each member of an affiliated group of eligible entities of which the eligible entity is a member jointly elect, the qualifying revenue of the group determined on a consolidated basis in accordance with relevant accounting principles is to be used for each member of the group;
- (e) if all of the interests in an eligible entity are owned by participants in a joint venture and all or substantially all of the qualifying revenue of the eligible entity for a qualifying period is in respect of the joint venture, then the eligible entity may use the qualifying revenues of the joint venture (determined as if the joint venture were an eligible entity) instead of its qualifying revenues for the purposes of paragraph (c) of the definition qualifying entity in subsection (1);

(f) if all or substantially all of an eligible entity's qualifying revenue — determined without reference to paragraph (d) of the definition qualifying revenue in subsection (1) — for a qualifying period is from one or more particular persons or partnerships with which it does not deal at arm's length and each particular person or partnership jointly elects with the eligible entity, for the purposes of paragraph (c) of the definition qualifying entity in subsection (1) (i) the eligible entity's qualifying revenue for the prior reference period is deemed to be \$100, and (ii) the eligible entity's qualifying revenue for the current reference period is deemed to be the total of all amounts, each of which is determined by the formula $\$100(A/B)(C/D)$ where

A is the eligible entity's qualifying revenue (determined without reference to paragraph (d) of the definition qualifying revenue in subsection (1)) for the current reference period attributable to a particular person or partnership,

B is the total of all amounts, each of which is the

eligible entity's qualifying revenue (determined without reference to paragraph (d) of the definition qualifying revenue in subsection (1)) for the current reference period attributable to a particular person or partnership,

C is the particular person or partnership's qualifying revenue (determined as if the definition

qualifying revenue in subsection (1) were read without reference to "in Canada") for the current reference period, and

D is the particular person or partnership's qualifying revenue (determined as if the definition

qualifying revenue in subsection (1) were read without reference to "in Canada") for the prior reference period; and

(e) an eligible entity may make an election, which must apply for all qualifying periods, to determine its revenues based on the cash method, within the meaning assigned by subsection 28(1) with any modifications that the circumstances require.

Deemed overpayment (5) For the purposes of this section,

- (a) the amount of any deemed overpayment by an eligible entity under subsection (2) in respect of a qualifying period cannot exceed the amount claimed by the qualifying entity — in the application referred to in paragraph (a) of the definition qualifying entity in subsection (1) — in respect of that qualifying period; and
- (a) if an eligible employee is employed in a week by two or more qualifying entities that do not deal with each other at arm's length, the total amount of the deemed overpayment under subsection (2) in respect of the eligible employee for that week shall not exceed the amount that would arise if the eligible employee's eligible remuneration for that week were paid by one qualifying entity.

Anti-avoidance — qualifying revenues (6) The qualifying revenue of an eligible entity for a current reference period for a qualifying period is deemed to be equal to the qualifying revenue of the eligible entity for the relevant prior reference period, if

- (a) the eligible entity, or a person or partnership not dealing at arm's length with the eligible entity, enters into a transaction or participates in an event (or a series of transactions or events) or takes an action (or fails to take an action) — other than, for greater certainty, a decision under subparagraph (a)(ii) or (b)(ii) of the definition qualifying revenue in subsection (1) or the decision to use one of the methods of computing qualifying revenues under subsection (4) — that has the effect of reducing the qualifying revenues (determined without reference to this subsection) of the eligible entity for the current reference period; and
- (b) it is reasonable to conclude that one of the main purposes of the transaction, event, series or action in paragraph (a) is to cause an eligible entity to qualify for the deemed overpayment under subsection (2) in respect of that qualifying period.

Partnerships (7) A partnership is deemed

- (a) for the purposes of subsection (2) and subsection 160.1(1), to be a taxpayer; and
- (b) for the purposes of subsection (2), to have a liability under this Part for a taxation year in which a qualifying period ends.

Prescribed amounts (8) For any period referred to in paragraph (d) of the definition qualifying period in subsection (1), the following may be prescribed:

.....

- (a) the percentages in subparagraphs (a)(i) and (b)(ii) of the description of A in subsection (2); and
- (b) the amounts in subparagraphs (a)(ii) and (b)(iii) of the description of A in subsection (2).

Deeming rule — current reference period (9) If, absent the application of this subsection, an eligible entity meets the conditions in paragraph (c) of the definition qualifying entity in subsection (1) in respect of a particular qualifying period, then the eligible entity is deemed to meet the conditions of that paragraph in respect of the immediately following qualifying period.

Paragraph 152(1)(b) of the Act is replaced by the following:

(b) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3) or (3.001), 122.51(2), 122.7(2) or (3), 122.8(4), 122.9(2), 122.91(1), 125.4(3), 125.5(3), 125.6(2), 125.7(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

Subsection 163(2) of the Act is amended by striking out “and” at the end of paragraph (g), by adding “and” at the end of paragraph (h) and by adding the following after paragraph (h):

(i) the amount, if any, by which (i) the amount that would be deemed by subsection 125.7(2) to have been an overpayment by the person or partnership if that amount were calculated by reference to the information provided in the application filed pursuant to section 125.7 exceeds (ii) the amount that is deemed by that subsection to be an overpayment by the person or partnership.

Subsection 163(2.9) of the Act is replaced by the following:

Partnership liable to penalty (2.9) If a partnership is liable to a penalty under paragraph (2)(i), subsection (2.4) or (2.901) or section 163.2, 237.1 or 237.3, sections 152, 158 to 160.1, 161 and 164 to 167 and Division J apply, with any changes that the circumstances require, in respect of the penalty as if the partnership were a corporation.

Penalty — COVID-19 (2.901) Every eligible entity that is deemed by subsection 125.7(6) to have an amount of qualifying revenue — for a current reference period for a qualifying period — is liable to a penalty equal to 25% of the amount that would be deemed by subsection 125.7(2) to have been an overpayment by the eligible entity during that qualifying period if that amount were calculated by reference to the information provided in the application filed pursuant to paragraph (a) of the definition qualifying entity in subsection 125.7(1).

Section 164 of the Act is amended by adding the following after subsection (1.53):

COVID-19 refunds (1.6) Notwithstanding subsection (2.01), at any time after the beginning of a taxation year of a taxpayer in which an overpayment is deemed to have arisen under subsection 125.7(2), the Minister may refund to the taxpayer all or any part of the overpayment.

COVID-19 refunds — partnerships (1.61) For the purposes of subsection (1.6), references to a taxpayer include a partnership and the reference to a taxation year includes a fiscal period.

The portion of subsection 164(3) of the Act before paragraph (a) is replaced by the following:

Interest on refunds and repayments (3) If, under this section, an amount in respect of a taxation year (other than an amount, or a portion of the amount, that can reasonably be considered to arise from the operation of section 122.5, 122.61 or 125.7) is refunded or repaid to a taxpayer or applied to another liability of the taxpayer, the Minister shall pay or apply interest on it at the prescribed rate for the period that begins on the day that is the latest of the days referred to in the following paragraphs and that ends on the day on which the amount is refunded, repaid or applied:

Section 241 of the Act is amended by adding the following after subsection (3.4):

Information may be communicated (3.5) The Minister may communicate or otherwise make available to the public, in any manner that the Minister considers appropriate, the name of any person or partnership that makes an application under section 125.7.

Paragraph 241(4)(d) of the Act is amended by adding the following after subparagraph (vii.5):

(vii.6) to an official solely for the purposes of the administration and enforcement of the *Canada*

Emergency Response Benefit Act or the evaluation or formulation of policy for that Act,

Payments out of Consolidated Revenue Fund

Consolidated Revenue Fund

For the purpose of subsection 164(1.6) of the *Income Tax Act*, the Minister of National Revenue may make payments to a person or partnership out of the Consolidated Revenue Fund, at the times and in the manner that the Minister considers appropriate.

CRA News Release 2020-04-21: Government of Canada launches Canada Emergency Wage Subsidy Calculator for Employers

To help employers keep and re-hire workers amidst the challenges posed by the COVID-19 pandemic, the Government is implementing the Canada Emergency Wage Subsidy (CEWS). This important economic measure provides a 75% wage subsidy of up to \$847 per employee per week, to eligible employers, for up to 12 weeks, preventing further job losses and encouraging employers to re-hire workers previously laid off as a result of COVID-19, retroactive to March 15, 2020.

Today, the Honourable Diane LeBouthillier, Minister of National Revenue, launched the Canada Emergency Wage Subsidy calculator to support employers as they prepare to apply for the CEWS.

The CEWS calculator can be found on CRA's Canada Emergency Wage Subsidy Web page. This Web page incorporates feedback received during user testing with stakeholders, including the Canadian Federation of Independent Business and the Chartered Professional Accountants of Canada. It includes detailed information and instructions about who can apply for the subsidy, how eligibility is assessed, and how the subsidy is calculated. The calculator also includes a printable statement feature that employers can use to view their claim at a glance and, as of April 27, enter required information into the CEWS application form quickly and easily.

By providing employers with additional details about their subsidy claim, the CEWS calculator can equip employers with important information they can use now to make more informed decisions about retaining and re-hiring workers. A series of information sessions will be held in the coming days to provide a forum for eligible employers.

The CRA also encourages employers to sign up for My Business Account or Represent a Client, as employers will be able to apply through these portals. The CRA will open the application process on April 27, 2020. CEWS claims will be subject to verification by the CRA. Funds for approved applications will begin to be released on May 5.

Quotes

“The Canada Revenue Agency has a proven track record of delivering benefits to millions of Canadians every year. Following on the successful delivery of Canada Emergency Response Benefit payments to millions of Canadians, I am confident in the CRA’s ability to administer this critical fiscal measure that will provide urgently-needed support for Canadian employers and workers. Launching the CEWS calculator is an important first step to ensuring employers are equipped to apply for the subsidy.”

The Honourable Diane LeBouthillier, Minister of National Revenue

“The Canada Emergency Wage Subsidy will help many small business owners keep their employees during the COVID-19 pandemic. This will remove the stress of losing a job for workers and allow employers to bring their teams back together quickly as soon as the emergency phase is over. CFIB appreciates the work of the Canada Revenue Agency in operationalizing this key benefit. We were pleased to provide feedback to the CRA on its calculator designed to make it easier for firms to access the wage subsidy.”

Dan Kelly, President, Canadian Federation of Independent Business

“In this time of unprecedented uncertainty, Chartered Professional Accountants of Canada is working with organizations such as the Canadian Tax Foundation in providing constant input to the Canada Revenue Agency on important issues relating to the Canada Emergency Wage Subsidy program. It is encouraging to see the CRA putting a new tool in place aimed at helping employers determine required calculations well in advance of the application process being initiated.”

Bruce Ball, Vice-President, Tax, Chartered Professional Accountants of Canada

“The APFF wishes to highlight the importance of the Canada Emergency Wage Subsidy for the survival of a large number of Canadian businesses. Thanks to this subsidy, many businesses will avoid layoffs and will be able to rely on a quality workforce when they resume normal activities.”

Maurice Mongrain, President, Association of Fiscal and Financial Planning

Quick facts

- The Canada Emergency Wage Subsidy is one of the measures the Government of Canada announced as part of their economic response to support Canadians through the COVID-19 pandemic.
- In addition, employer-paid contributions to Employment Insurance (EI), the Québec Parental Insurance Plan (QPIP), the Canada Pension Plan (CPP) and the Québec Pension Plan (QPP) will be refunded when paid in respect of employees that are on leave with pay.

Canada.ca – CEWS Page

Canada Emergency Wage Subsidy (CEWS)

The Canada Emergency Wage Subsidy (CEWS) supports employers that are hardest hit by the pandemic, and protect the jobs Canadians depend on.

The subsidy generally covers 75% of an employee's wages – up to \$847 per week - for employers of all sizes and across all sectors who have suffered a drop in gross revenues of at least 15% in March, and 30% in April and May. The program will be in place for a 12-week period, from March 15 to June 6, 2020.

Employers who are eligible for the CEWS are entitled to receive a 100% refund for certain employer contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan paid in respect of employees who are on leave with pay.

For employers that are eligible for both the CEWS and the 10% Temporary Wage Subsidy for a period, any benefit from the [Temporary 10% Wage Subsidy](#) for remuneration paid in a specific period will generally reduce the amount available to be claimed under the CEWS in that same period.

Applications for the CEWS will be open on April 27.

[Be ready to apply for the CEWS](#)

Sections of site:

[Overview](#)

[Who is an eligible employer](#)

[Determine your eligible employees](#)

[Calculate your subsidy amount](#)

[How to apply](#)

[Contact the CRA](#)

[Note that content from the above links has been directly integrated into the CEWS Newsletter]

[Finance News Release 2020-04-11A: COVID-19 Emergency Response Act, No. 2 receives Royal Assent to help businesses keep Canadians in their jobs](#)

The Government of Canada is taking immediate, significant and decisive action to support Canadians and businesses facing hardship as a result of the COVID-19 global pandemic. The Canada Emergency Wage Subsidy is a key measure in the Government of [Canada's COVID-19 Economic Response Plan](#). It will provide a strong incentive for employers to pay employees who have been sent home for health and safety reasons or due to lack of work. It will enable employers to retain employees who are still on the payroll and to rehire workers previously laid off. With the CEWS program, families across Canada will be able to count on a steady income. Today, Bill C-14, the *COVID-19 Emergency Response Act, No. 2*, received Royal Assent, bringing this measure into law. This legislation includes [additional flexibilities](#) announced on April 8, 2020, and refined as part of the legislative process. With these improvements, the Canada Emergency Wage Subsidy will provide effective support to those eligible employers that are hardest hit by the COVID-19 pandemic and will help protect the jobs Canadians depend on during these difficult times. The government continues to monitor all developments relating to the COVID-19 pandemic and will take further action as necessary to protect Canadians and the economy.

Quotes

"I want to thank my colleagues in the House of Commons, as well as Honourable Senators, for working quickly and cooperatively together to pass this vital legislation that will support Canadians during this critical time. The Canada Emergency Wage Subsidy will provide the needed support to help workers and businesses through this crisis and to position them to recover more quickly when it is over. The government will continue to do whatever it takes to support Canadians and the economy during this unprecedented global pandemic."
Bill Morneau, Minister of Finance

"Today, all parties came together to pass the wage subsidy bill to support our country's workers and employers. Canadians are better served when we work together."
Pablo Rodriguez, Leader of the Government in the House of Commons

[Finance News Release 2020-04-11B: Government Introduces COVID-19 Emergency Response Act, No. 2 to Help Businesses Keep Canadians in their Jobs](#)

The Government of Canada is taking immediate, significant and decisive action to support Canadians and businesses facing hardship as a result of the global COVID-19 outbreak. Today, Finance Minister Bill Morneau introduced in Parliament Bill C-14, the *COVID-19 Emergency Response Act, No. 2*, which, upon receiving Royal Assent, would bring this measure into law. The legislation introduced today includes [additional flexibilities](#) that would provide effective support to those eligible employers that are hardest hit by the COVID-19 pandemic and would help protect the jobs Canadians depend on during these difficult times. Taking action to protect a strong economy includes taking action to protect jobs. The proposed CEWS is a key measure in the Government of Canada's [COVID-19 Economic Response Plan](#). It would provide a strong incentive for employers to pay employees who have been sent home for health and safety reasons or due to lack of work. It would enable employers to retain employees who are still on the payroll and to rehire workers previously laid off. With the CEWS program, families across Canada would be able to count on a steady income. The proposed CEWS would apply at a rate of 75% of the first \$58,700 earned by employees – representing a benefit of up to \$847 per week, per employee. The program would be in place for a 12-week period, from March 15 to June 6, 2020. Employers of all sizes and across all sectors of the economy would be eligible, with certain exceptions

including public sector entities. Flexibility in the measurement of revenue for the purpose of applying the revenue decline test would also ensure more consistent access to the wage subsidy across impacted organizations, including newly created businesses and high-growth companies, as well as non-profit organizations and registered charities. An eligible employer's entitlement to this wage subsidy would be based on the salary or wages actually paid to employees. All employers would be expected to at least make best efforts to bring employees' wages to their pre-crisis levels.

Bill C-14 introduced today includes proposed improvements to the Canada Emergency Wage Subsidy that were announced in detail on April 8, 2020 and subsequently refined as part of the legislative process. These improvements include the following:

- To measure their revenue loss, it is proposed that employers compare their revenue of March, April and May 2020 to that of the same month of 2019 or, in order to provide added flexibility, to an average of their revenue earned in January and February 2020.
- For March, the government proposes to make the CEWS more accessible than originally announced by reducing this 30% benchmark to 15%, in recognition of the fact that many businesses did not begin to be affected by the crisis until partway through the month.
- To provide certainty for employers, the government is also proposing that once an employer is found eligible for a specific period, they would automatically qualify for the next period of the program. For example, an employer with a revenue drop of more than 15% in March would qualify for the first and second periods of the program, covering remuneration paid between March 15 and May 9. Similarly, an employer with a revenue drop of 30% in April would qualify for the second and third periods of the program, covering remuneration paid between May 10 to June 6.
- To recognize the challenges in measuring revenues of non-profit organizations and registered charities, it is proposed that they be allowed to choose whether or not to include government assistance in revenues for the purpose of applying the revenue decline test. Once chosen, the same approach would have to be maintained by the organization throughout the program period.
- It is also proposed that employers be allowed to measure revenues either on the basis of accrual accounting (as they are earned) or cash accounting (as they are received). Once chosen, the same accounting method would have to be used by the employer throughout the program period.
- It is also proposed that the CEWS provide an additional amount to compensate employers for their contributions to the Canada Pension Plan, Employment Insurance, Quebec Pension Plan and Quebec Parental Insurance Plan paid in respect of eligible employees who are on leave with pay due to COVID-19.

In order to maintain the integrity of the program and to ensure that it helps Canadians keep their jobs, the employer would be required to repay amounts paid under the CEWS if they do not meet the eligibility requirements. The government is also proposing a penalty of 25% of the CEWS received by an employer if the employer has engaged in transactions that artificially reduce the employer's revenue in order to qualify for the subsidy. As well, under existing provisions of the *Income Tax Act*, persons making, or participating in making, a false or deceptive statement could be prosecuted with a summary or indictable offence. Anyone found guilty could be sentenced to prison for up to 5 years. The government will continue to carefully monitor all developments relating to the COVID-19 outbreak and will continue to take further action to protect Canadians and the economy.

Quotes

“With the Canada Emergency Wage Subsidy, we are making sure to support Canadian businesses and Canadian workers through this crisis, ensuring they are well-positioned to recover quickly when the COVID-19 pandemic is over. We will continue to do whatever it takes to ensure Canadians are supported through the outbreak, and that our economy remains resilient during these difficult times.” *Bill Morneau, Minister of Finance*

[CRA CEWS FAQ 2020-04-24: Frequently asked questions - Canada Emergency Wage Subsidy \(CEWS\)](#)

The following FAQs are intended to provide more in-depth technical information on the most commonly anticipated technical questions from businesses and tax professionals. These will be updated periodically as new questions arise. User friendly information, including a calculator has also been developed by the Canada Revenue Agency (CRA) and is now available under the [Canada Emergency Wage Subsidy \(CEWS\)](#).

Overview

1. What is the Canada Emergency Wage Subsidy?

The Canada Emergency Wage Subsidy (wage subsidy) is a subsidy available for a period of twelve weeks from March 15, 2020 to June 6, 2020, that will provide a subsidy of 75% of eligible remuneration, paid by an eligible entity ([eligible employer](#)) that qualifies, to each [eligible employee](#)—up to a maximum of \$847 per week.

Eligible employers, such as business owners, that see a drop of at least 15% of their [qualifying revenue](#) in March 2020 and 30% for the following months of April and May, when compared to their qualifying revenue for the same period in 2019 ([or the average of January and February 2020, in some circumstances](#)), will qualify for the wage subsidy. Special rules apply for [certain other employers](#).

Generally, the eligible employer's wage subsidy amount for an eligible employee (does not include an employee who is without remuneration in respect of 14 or more consecutive days), on [eligible remuneration](#) paid in a [claim period](#), is the greater of:

- 75% of the eligible remuneration paid per week, up to an amount of \$847; and
- the least of - the eligible remuneration paid per week, an amount of \$847 and 75% of the employee's average weekly [eligible remuneration paid between January 1 to March 15, 2020](#), whichever is less.

More information on the meaning of eligible employer, eligible employee and qualifying revenue is provided below.

2. What are the relevant periods for calculating the wage subsidy?

There are three periods that are relevant for calculating the wage subsidy.

Qualifying period (Claim period)

The claim period, is the period for which an eligible employer can claim the wage subsidy for remuneration paid to eligible employees. An eligible employer may be able to claim the wage subsidy for one or more of the following claim periods:

- the period that begins on March 15, 2020 and ends on April 11, 2020;
- the period that begins on April 12, 2020 and ends on May 9, 2020; and
- the period that begins on May 10, 2020 and ends on June 6, 2020.

Current reference period

The current reference period with respect to a claim period, is the period in respect of which an eligible employer's [qualifying revenue](#) would be compared to its qualifying revenue in the applicable prior reference period, to determine its revenue reduction. The applicable current reference period, for a claim period is:

- March 2020 – for the claim period that begins on March 15, 2020 and ends on April 11, 2020;
- April 2020 – for the claim period that begins on April 12, 2020 and ends on May 9, 2020; and
- May 2020 – for the claim period that begins on May 10, 2020 and ends on June 6, 2020.

Prior reference period

The prior reference period, with respect to a claim period, is the period in respect of which an eligible employer's qualifying revenue, would be compared to its qualifying revenue in the applicable current reference period, to determine its revenue reduction. The applicable prior reference period in respect of a claim period will depend on the approach the eligible employer chooses to compare its revenue.

Under the general year-over-year approach, the eligible employer compares its qualifying revenue in the current reference period to that of the same month for 2019. Under this approach, the prior reference period for a claim period is:

- March 2019 – for the claim period that begins on March 15, 2020 and ends on April 11, 2020;
- April 2019 – for the claim period that begins on April 12, 2020 and ends on May 9, 2020; and
- May 2019 – for the claim period that begins on May 10, 2020 and ends on June 6, 2020.

Under the alternative approach, an eligible employer may compare its qualifying revenue in the current reference period, with that of its average revenue earned in the months of January and February of 2020. Hence, under the alternative approach, the prior reference period for a claim period is January and February 2020.

An eligible employer can use the alternative approach if:

- on March 1, 2019, the eligible employer was not carrying on a business or otherwise carrying on its ordinary activities, or
- the eligible employer elects (see note below) to use January and February 2020 as the prior reference period for all the claim periods described above.

Once an approach is chosen, the eligible employer would be required to use the same approach for the entire duration of the program.

Note: This election must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case.

Eligibility

3. Which employers are eligible for the wage subsidy?

For the purposes of the wage subsidy, an eligible employer means:

- a corporation (other than a public institution) that is not exempt from tax under Part I of the Income Tax Act (the Act);
- an individual (including a trust);
- a registered charity (other than a public institution);
- a person that is exempt from tax under Part I of the Act (other than a public institution), that is:
 - an agricultural organization;
 - a board of trade or a chamber of commerce;
 - a non-profit corporation for scientific research and experimental development;
 - a labour organization or society;
 - a benevolent or fraternal benefit society or order; and
 - a non-profit organization;
- a partnership, each member of which is a person or partnership described in this list.

A public institution is a school, school board, hospital, health authority, public university or college. It also includes an organization described in any of paragraphs 149(1)(a) to (d.6) of the Act, for example, municipalities and local governments and tax-exempt Crown corporations.

4. How does an eligible employer qualify for the wage subsidy?

In order to qualify for the wage subsidy in respect of a claim period, an eligible employer must meet the following conditions:

- it had an open payroll program account with the CRA on March 15, 2020;
- it experienced the required reduction in revenue for one or more claim period (see Q5);
- it makes a wage subsidy application for the claim period, in a prescribed form and manner, before October 2020; and
- the individual who has principal responsibility for the eligible employer's financial activities attests that the application mentioned above is complete and accurate in all material respects.

5. How is the reduction in revenue determined?

Once an eligible employer has calculated its qualifying revenue for each relevant reference period in a particular claim period, it would determine if it has experienced the required reduction in revenue to qualify for the wage subsidy for that claim period. However, the employer is under no obligation to prove that the decline in revenue is related to the COVID-19 crisis. [See Table 1, Table 2, and Examples 1-4 reproduced above.]

Alternative approach

For an eligible employer that was not carrying on business—or otherwise not carrying on its ordinary activities—on March 1, 2019, or that has elected to use this alternative approach (see note below) for all claim periods, the reduction in revenue determination is made by comparing the:

- the qualifying revenue for the calendar month in which the claim period began; and
- the average of the qualifying revenues earned in both January and February 2020.

If the qualifying revenue for the calendar month in which the claim period began has declined, when compared to the average of the qualifying revenues earned in both January and February 2020, by a

percentage equal to or greater than the required reduction in revenue for the claim period (see Table above), then the eligible employer has experienced the required reduction in revenue for the claim period and may qualify to claim the wage subsidy for that claim period, assuming the other qualifying conditions are met (see Q4).

When the alternative approach is chosen, the average qualifying revenue will be calculated as follows:

Average qualifying revenue = $0.5 \times A \times (B/C)$ where

A= qualifying revenues for the months of January and February of 2020

B= number of days in January and February 2020

C= number of days in January and February of 2020 during which the eligible employer was carrying on business—or otherwise carrying on its ordinary activities.

Where a business is carried on throughout January and February 2020, the factor (B/C) will be 1. Hence, there will be no adjustment to the average qualifying revenue.

In a situation where an eligible employer was not carrying on business—or otherwise not carrying on its ordinary activities—through out the months of January or February 2020, for example, in the case of a new business that started mid January, the qualifying revenues for the months of January and February 2020 will be grossed up by the factor (B/C), to make the comparison of the qualifying revenue in the prior reference period comparable to the qualifying revenue in the current period (see Example 4).

However, if operations began anytime after February 2020, the employer would not be eligible for the wage subsidy.

If the qualifying revenue for that current reference period has declined by a percentage less than the required reduction in revenue when compared to that prior reference period (January and February 2020), then the eligible employer has not experienced the required reduction in revenue for the claim period and does not qualify to claim the wage subsidy for that claim period.

Note: This election must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case.

Calculating Revenues

6. What is qualifying revenue?

Qualifying revenue of an eligible employer means the inflow of cash, receivables, or other consideration arising in the course of its ordinary activities in Canada in a particular period. These inflows are generally from the sale of goods, the rendering of services, and the use—by others—of the eligible employer's resources.

In the case of an eligible employer that is a registered charity, qualifying revenue generally includes gifts and other amounts received in the course of its ordinary activities. Where it operates a related business (as defined in subsection 149.1 of the Act), the revenue from that related business is also included in the registered charity's qualifying revenue.

In the case of an eligible employer that is a non-profit organization, qualifying revenue generally includes membership fees and other amounts received in the course of its ordinary activities.

Qualifying revenue excludes amounts from extraordinary items, amounts on account of capital and amounts from persons or partnerships that the eligible employer was not dealing with at arm's length. Amounts from

the Canada Emergency Wage Subsidy and the 10% Temporary Wage Subsidy for Employers are ignored when calculating qualifying revenue.

An eligible employer's qualifying revenue is used to determine the required reduction in revenue necessary to qualify for the Canada Emergency Wage Subsidy (see Q5).

7. Are there special rules for calculating the qualifying revenue of a registered charity or non-profit organization?

Yes. In addition to the qualifying revenue inclusions specific to registered charities and non-profit organizations (see Q6), these eligible employers may elect (see note below) to exclude funding received from government sources when determining their qualifying revenue.

This election applies to the determination of qualifying revenue for all of an eligible employer's prior reference periods and current reference periods.

Note: This election must be made and retained with the eligible employer's other books and records in support of its wage subsidy claim and eligibility (see Q33), and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case.

8. Are there special rules for calculating the qualifying revenue of an eligible employer that derives its revenue from one or more non-arm's length persons or partnerships?

Special rules exist for an eligible employer that derives all or substantially all of its revenue from one or more particular persons or partnerships with which it does not deal at arm's length.

Essentially, if the eligible employer and each of these particular persons or partnerships with which it does not deal at arm's length jointly elect (see note below), the eligible employer's qualifying revenue for the prior reference period is deemed to be \$100 and a weighted-average approach (see Example 6), is used to determine qualifying revenue for the current reference period.

When calculating the qualifying revenue for the current reference period under this rule, the eligible employer's qualifying revenue includes amounts derived from persons or partnerships not dealing at arm's length with it.

The amount used for each of the particular person's or partnership's qualifying revenue is modified to include revenues earned outside of Canada. The particular person or partnership can be either a resident or a non-resident.

For more information about non-arm's length, please see Income Tax Folio [S1-F5-C1, Related Persons and Dealing at Arm's Length](#).

Note: This election must be made and retained with the eligible employer's other books and records in support of its wage subsidy claim and eligibility (see Q33), and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case. [Examples 5 and 6 are reproduced above.]

9. Are there special rules for calculating the qualifying revenue of a group of eligible employers?

The qualifying revenue of an eligible employer is generally determined in accordance with its normal accounting practices. Consequently, when a group of eligible employers generally prepares consolidated financial statements, each member of the group will determine its qualifying revenue in accordance with those statements.

However, each member of such a group may determine its qualifying revenue separately and not based on the consolidated statements, so long as every member of the group determines its qualifying revenue on that separate basis. [Example 7 is reproduced above.]

10. Are there special rules for calculating the qualifying revenue of members of an affiliated group?

If an eligible employer and each member of an affiliated group of eligible employers of which the eligible employer is a member jointly elect (see note), the qualifying revenue of the affiliated group, determined on a consolidated basis in accordance with relevant accounting principles, is to be used for each member of the group. This rule applies even if one or more members of an affiliated group may have no revenue to report in the claim period. [Example 8 is reproduced above.]

Note: This election must be made and retained with the eligible entity's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible entity's financial activities must attest that this is the case.

11. Are there special rules when an eligible employer is owned by participants in a joint venture?

If all of the interests in an eligible employer are owned by participants in a joint venture and all or substantially all of the qualifying revenue of the eligible employer is in respect of the joint venture, then the eligible employer may use the qualifying revenues of the joint venture (determined as if the joint venture were an eligible employer), instead of its qualifying revenues, to determine if it experienced the required reduction in revenue in order to qualify for the wage subsidy.

12. Can I use the cash method of accounting when determining my qualifying revenue?

Qualifying revenue of an eligible employer is to be determined in accordance with its normal accounting practices. An eligible employer would be allowed to calculate its revenue under the accrual method or the cash method, but not a combination of both. Further, the eligible employer has to make an election, which will apply for all claim periods, to determine its qualifying revenues based on the cash method.

This election must be made and retained with the eligible employer's other books and records (see Q33) in support of its wage subsidy claim and eligibility, and the individual who has principal responsibility for the eligible employer's financial activities must attest that this is the case.

Eligible Employees

13. Who is an eligible employee?

An eligible employee, in respect of a week in a claim period, means an individual employed in Canada by the eligible employer in the claim period, as long as the employee has not been without remuneration from the eligible employer for a period of 14 or more consecutive days in the claim period.

Eligible employee status is determined in respect of each week in each claim period, so an employee that is not an eligible employee in a preceding claim period (because, for example, the 14 day remuneration condition has not been met) may become eligible in a following claim period (see example under Q15).

14. Can an eligible employer claim the wage subsidy for an employee that the employer hires back and pays retroactively?

Yes. It is possible for an eligible employer to hire back eligible employees and pay them retroactively in respect of a claim period, to be able to qualify for the wage subsidy. Refer to the example in Q20.

Further, if such an employee has received a Canada Emergency Response Benefit (CERB) payment from the CRA for a claim period, and it is later determined that they are no longer eligible for the CERB, whether due to the employment or otherwise, there are ways for the employee to return or repay the CERB amount. For more details on repayment, please refer to [Return or repay](#) on the Apply for CERB web page.

15. Can an eligible employer claim the wage subsidy in respect of an eligible employee who has received payments under the CERB?

Yes, in certain situations, an eligible employer may be eligible to claim the wage subsidy in respect of an eligible employee who has received payments under the CERB program. However, as explained above (see Q13), where an individual has not received any remuneration from the eligible employer for a period of 14 or more consecutive days in a claim period, the individual will not qualify as an eligible employee for that period of employment. Therefore, the eligible employer will not be eligible for the wage subsidy in respect of that employee for that claim period.

The onus is on the eligible employer to ensure that an employee has received eligible remuneration for more than 14 consecutive days in a claim period, to be eligible for the wage subsidy in respect of that employee, for that claim period. However, it is the employee's responsibility to determine their eligibility for the CERB for any period.

Where an employee has received a CERB payment from the CRA and it is later determined that they are no longer eligible for the CERB, whether due to the employment or otherwise, the employee may want to return or repay the CERB payment. For more details, please refer to [Return or repay](#) on the Apply for CERB web page. [Example 9 is reproduced above.]

16. Can a non-resident employee be an eligible employee?

Yes. Since eligible employee status is determined based on where the individual is employed and not where the individual resides. Generally, a non-resident individual employed in Canada during a claim period will qualify as an eligible employee as long as all other conditions to be an eligible employee are met.

Eligible Remuneration

17. What is eligible remuneration?

Eligible remuneration of an eligible employee means amounts paid to employee as salary, wages, and other remuneration, certain taxable benefits (provided such amounts are actually paid), and fees, commissions or other amounts paid for services. These are amounts for which an eligible employer would generally be required to make payroll deductions to be remitted to the CRA. The following amounts are not considered eligible remuneration:

- a retiring allowance;
- an amount deemed to have been received by the eligible employee as an employment benefit in respect of a stock option agreement;
- any amount received that can reasonably be expected to be paid or returned, directly or indirectly, to the eligible employer or to a person (or a partnership) at the direction of the eligible employer or with whom the eligible employer does not deal at arm's length;
- any amount that is paid in respect of a week in the claim period, if, as part of an arrangement involving the eligible employee and the eligible employer:
 - the amount is in excess of the eligible employee's baseline remuneration,

- after the claim period, the eligible employee is reasonably expected to be paid a lower weekly amount than their baseline remuneration, and
- one of the main purposes for the arrangement is to increase the amount of the wage subsidy.

18. What is baseline remuneration?

Baseline remuneration means the average weekly eligible remuneration paid to an eligible employee by an eligible employer during the period that begins on January 1, 2020 and ends on March 15, 2020. However, any period of seven or more consecutive days for which the employee was not remunerated is excluded from the calculation.

19. Will an eligible employer qualify for the wage subsidy in respect of eligible remuneration that it pays, if the amount is not taxable to the eligible employee?

Eligible remuneration of an eligible employee means amounts for which the eligible employer would generally be required to make payroll deductions to be remitted to the CRA, irrespective of whether the amounts are taxable to the eligible employee. For example, salaries and wages paid to a status Indian [Footnote 3](#) whose income is exempt from tax under a specific provision of the Act are considered eligible remuneration and would qualify for the purpose of calculating the wage subsidy.

Calculating the wage subsidy

20. How is the wage subsidy calculated?

For an eligible employer that qualifies for the wage subsidy, the amount of the wage subsidy for a claim period is the total of the following amounts in respect of the claim period (there is no overall limit on the wage subsidy amount that an eligible employer may claim):

- I. Total of all amounts, each of which is for an eligible employee in respect of a week in the claim period, equal to the greater of
 - a. the least of
 - i. 75% of eligible remuneration paid to the eligible employee in respect of that week,
 - ii. \$847, and
 - iii. if the eligible employee does not deal at arm's length with the eligible employer in the claim period, \$0, and
 - b. the least of
 - i. the amount of eligible remuneration paid to the eligible employee in respect of that week,
 - ii. 75% of baseline remuneration in respect of the eligible employee determined for that week, and
 - iii. \$847;
- II. Total of the employer contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan for an eligible employee for each week in the claim period throughout which week that employee is on leave with pay and for which claim period the employer is eligible for the wage subsidy for the employee (Note).
Less:
- III. Total of all amounts eligible to be claimed under the [10% Temporary Wage Subsidy for Employers](#), by the eligible employer that qualifies for the Canada Emergency Wage Subsidy for the claim period; and

- IV. Total of all amounts received by the eligible employee for each week in the claim period as a work-sharing benefit under the Employment Insurance Act.

Note: In general, for the amount in (II), an eligible employee will be considered to be on leave with pay throughout a week if that employee is remunerated by the eligible employer for that week but does not perform any work for the employer in that week. This amount in (II), would not be available for eligible employees that are on leave with pay for only a portion of a week.

[Examples 10 to 12 are reproduced above.]

21. Will I be eligible for both the Canada Emergency Wage Subsidy and the 10% Temporary Wage Subsidy for Employers?

You may be eligible for both the Canada Emergency Wage Subsidy and the 10% Temporary Wage Subsidy for Employers. However, for an eligible employer that is eligible for both subsidies for a period, all amounts eligible to be claimed under the 10% Temporary Wage Subsidy for remuneration paid in a specific claim period would reduce the amount available to be claimed under the wage subsidy in that same period. Specifically, with respect to the 10% Temporary Wage Subsidy for Employers, if the income taxes you deduct with respect to the remuneration you paid are not sufficient to offset the value of the subsidy in that period, you can reduce future payroll remittances to benefit from the subsidy. However, the entire amount eligible to be claimed under the 10% Temporary Wage Subsidy will be applied to reduce the Canada Emergency Wage Subsidy for the claim period in which the remuneration is paid. [Example 13 is reproduced above]

22. Can I claim the wage subsidy for an eligible employee even if they were hired after March 15, 2020?

Yes, an eligible employer may be able to claim the wage subsidy for eligible remuneration paid to eligible employees hired after March 15, 2020.

However, for an eligible employee that does not deal at arm's-length with the eligible employer, it may be able to claim the wage subsidy only if that employee was employed by the eligible employer and has received eligible remuneration during the period from January 1, 2020 to March 15, 2020 (baseline remuneration).

[Example 14 is reproduced above.]

23. Can an eligible employer claim the wage subsidy for an eligible employee even if they do not deal at arm's length with each other?

An eligible employer may be eligible to claim the wage subsidy in respect of an eligible employee who does not deal at arm's length with it, provided the individual was an eligible employee of the eligible employer anytime during the period beginning January 1 and ending March 15, 2020, and received eligible remuneration at that time (baseline remuneration). [Example 15 is reproduced above.]

24. Is there a special rule for the amount of wage subsidy that can be claimed if an eligible employee is employed by two or more eligible employers?

Generally, there is no limit on the wage subsidy amount that an eligible employer may claim or the total number of eligible employees it could employ during the claim period. However, there is a special rule where an eligible employee is employed in a week by two or more eligible employers that do not deal with each other at arm's length. In this situation, the total amount of wage subsidy in respect of the eligible employee for that week cannot exceed the amount that would arise if the eligible employee's eligible remuneration for that week were paid by only one eligible employer that qualifies for the wage subsidy.

25. Is the wage subsidy considered taxable income?

Yes. The wage subsidy received by an eligible employer is considered assistance received from a government immediately before the end of the claim period to which it relates. The amount is taxable and is to be included in the computing the income of the eligible employer. The eligible remuneration paid to the employee will be a deductible expense for the employer.

However, the wage subsidy received by the eligible employer will not be included in the calculation of its qualifying revenue.

Claiming the wage subsidy

26. When can I claim the wage subsidy?

Eligible employers that qualify to claim the wage subsidy will be able to apply to the CRA starting on April 27, 2020.

Applications in respect of a claim period can be made only after the end of the claim period, provided the eligible employer has paid the eligible remuneration that it is claiming for that period.

Additionally, wage subsidy applications must be made before October 2020.

27. How do I claim the wage subsidy?

Eligible employers will be able to apply for the wage subsidy through the CRA's **My Business Account** portal or the Web Forms application.

Note: The online applications are currently being developed.

Representatives (authorized at a level 2 or 3) will be able to apply for the wage subsidy on behalf of their clients through the Represent a Client service, as well as through the Web Forms application.

To log in to or register for the CRA's online services, go to canada.ca/taxes-business-online.

To use the Web Forms application, or if you have misplaced or do not have a web access code, go to canada.ca/taxes-iref.

When completing the application, you will need:

- your payroll program account number (123456789RP0001, for example);
- to know which claim period you are applying for;
- all of the information necessary to complete the applicable fields in the application.

The processing of the wage subsidy will be performed at the payroll program account level, so you will have to file a separate application for each payroll program account. For example, if you have two payroll program accounts (123456789RP0001 and 123456789RP0002, for example) and are claiming wage subsidy for eligible employees under each account, you must file 2 separate applications.

When you apply for the wage subsidy, you will be asked to enter amounts such as the number of eligible employees and total eligible remuneration paid to those employees during the claim period. To get ready, we have created a web page where you can determine these amounts and preview your subsidy now, based on information you enter. For more information, go to [Calculate your subsidy amount](#).

Upon completion of your application, you will be required to keep records supporting your wage subsidy claim (see Q33).

28. How soon can I expect to receive my wage subsidy after applying?

For most complete applications that pass our system validations, a payment will be issued automatically, though some applications may be selected for a pre-claim review.

While delays may occur if additional review is required or the CRA needs to contact you, you can generally expect to receive your payment within 10 business days if you are registered for direct deposit on your payroll account.

If you are not registered for direct deposit, please allow additional time for your cheque to be delivered by mail to the address on your payroll account.

Direct deposit is a fast, convenient, reliable, and secure way to get your CRA payments directly into your account at a financial institution in Canada. To enrol for direct deposit or to update your banking information, go to [Direct deposit](#).

Note: If you are expecting an amount of \$25 million or more, you need to be registered for both [direct deposit](#) and the [Large Value Transfer System](#).

29. Are there any special T4 reporting requirements for the wage subsidy?

Employers will be expected to report the amount of the wage subsidy that was used to pay each of their employees' salaries by using a special code in the "Other information" area at the bottom of the employees' T4 slips. More information on the T4 reporting requirements will be released before the end of the year.

30. Will the wage subsidy be automatically applied against outstanding debt?

No, wage subsidy payments will not be automatically applied against any outstanding debt you have with the CRA.

However, the legislation gives the CRA the ability to administer the wage subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws.

The CRA does have the discretion to reduce the amount of the wage subsidy payment if an applicant owes or are about to owe a debt and the CRA determines there is a risk of not collecting all or part of your tax debt.

31. Will the CRA withhold my wage subsidy because of outstanding returns?

No, wage subsidy payments will not be automatically withheld because of outstanding returns under the Income Tax Act or the Excise Tax Act (as well as certain other tax related laws).

However, the legislation gives the CRA the ability to administer the wage subsidy program fairly and reasonably and allows for a common-sense approach to dealing with situations that prevent compliance with our tax laws.

The CRA does have the discretion to withhold the amount of the wage subsidy payment in cases where there is a significant history of not complying with a duty or obligation under our tax laws.

Ensuring Compliance

32. How will the CRA Ensure Compliance?

The CRA will use a combination of automated queries and validation within its data, follow-up phone calls to verify certain elements of the claim when necessary, and more comprehensive post-payment reviews or audits.

The CRA will monitor the initial intake of claims and adjust its queries as necessary. The extent of future post-payment reviews will depend on the conclusions the CRA reaches as it reviews the intake of claims.

As with the CERB, the CRA is actively monitoring the situation to ensure that compliance with the tax laws is assured.

In order to maintain the integrity of the program and to ensure that it helps Canadians keep their jobs, the employer would be required to repay amounts paid under the wage subsidy if they do not meet the eligibility requirements.

33. What books and records do I need to support my claim?

The CRA expects that you will maintain adequate books and records to ensure that your claim is accurate and complete, and clearly supports your eligibility for the wage subsidy for a claim period.

Books and records includes ledgers, journals, financial statements, contracts, elections, calculations or other working papers, payroll records, sales invoices and any other relevant document. For additional information about adequate records and recordkeeping, please see [What are records and who has to keep them?](#)

To support the claim in your wage subsidy application that your revenue for a current reference period has declined sufficiently from the relevant prior reference period, adequate calculations should generally be prepared and maintained through working papers. In situations where a small employer does not maintain detailed monthly records, the CRA will be reasonable; however, any assumptions made in any calculation should be included in the documentation and available for review if requested.

In addition to showing the calculation of the wage subsidy claimed for each eligible employee, the documentation maintained must also include an analysis of the nature of the remuneration. Dividends and other ineligible remuneration should be recognized and then clearly indicated as having been removed from the calculation. Supporting documentation should be retained.

A signed attestation, and record of any elections made for the purposes of determining your qualifying revenue, must also be maintained and made available to the CRA upon request.

34. Are there penalties for non-compliance?

Yes. Due to a specific anti-avoidance rule, an employer will not be eligible to claim the wage subsidy for a current reference period if the employer (or a person or partnership that does not deal at arm's-length with that employer) participates in a plan that has one of the main purposes of effectively reducing the employer's qualifying revenues for the current reference period, in order to qualify for the subsidy. Where this anti-avoidance rule applies, the employer will be liable to a penalty equal to 25% of the amount of wage subsidy that is claimed in its application, and will have to pay back any wage subsidy that it received. If an employer knowingly, or under circumstances amounting to gross negligence, generally makes, or is involved in the making of a false statement or omission in its wage subsidy application for a claim period, the employer is liable to a penalty (commonly referred to as the "gross negligence penalty") of up to 50% of the difference between the amount of wage subsidy that it claimed in its application and the amount of wage subsidy to which it is actually entitled.

Penalties may apply in cases of fraudulent claims. The penalties may include fines or even imprisonment.

Finally, if a person (such as an accountant or tax preparer) files or prepares the wage subsidy application on behalf of the employer, they could be subject to a third-party penalty under the Act, if they know, or would reasonably be expected to know, that the application contains false statements, including an omission of

information. Third-party penalties are explained in detail in the CRA's [Information Circular IC01-1, Third-Party Civil Penalties](#).

35. Will the CRA publish a list of employers that have applied for the CEWS?

Yes. The Act authorizes the CRA to publish the name of any eligible employer that makes an application for the wage subsidy. The CRA will provide updates regarding the timely publication of a list or registry of wage subsidy applicants. The process for making this information available is still under consideration.

Footnotes

Footnote 1

If the eligible employer meets the 15% required reduction in revenue for the first claim period - March 15 to April 11, 2020, it will be deemed to have met the 30% required reduction in revenue for the second claim period - April 12 to May 9, 2020 (see Table 2).

Footnote 2

For the required reduction in revenue to qualify to claim the wage subsidy under the general and alternative approach see Table 1

Footnote 3

We use the term "Indian" because it has a legal meaning in the Indian Act.

[Department of Finance Canada Backgrounder](#) (Revised April 11, 2020)

What It Means for Canadian Employers

To help employers keep and return workers to their payroll through the challenges posed by the COVID-19 pandemic, the Prime Minister, Justin Trudeau, announced the new Canada Emergency Wage Subsidy on March 27, 2020. This would provide a 75-per-cent wage subsidy to eligible employers for up to 12 weeks, retroactive to March 15, 2020. This wage subsidy aims to prevent further job losses, encourage employers to re-hire workers previously laid off as a result of COVID-19, and help better position Canadian companies and other employers to more easily resume normal operations following the crisis. While the Government has designed the proposed wage subsidy to provide generous and timely financial support to employers, it has done so with the expectation that employers will do their part by using the subsidy in a manner that supports the health and well-being of their employees.

Eligible Employers

Eligible employers would include individuals, taxable corporations, partnerships consisting of eligible employers, non-profit organizations and registered charities. Public bodies would not be eligible for this subsidy. Public bodies would generally include municipalities and local governments, Crown corporations, wholly owned municipal corporations, public universities, colleges, schools and hospitals. This subsidy would be available to eligible employers that see a drop of at least 15 per cent of their revenue in March 2020 and 30 per cent for the following months (see Eligible Periods). In applying for the subsidy, employers would be required to attest to the decline in revenue [(ITA 125.7 "qualifying entity"(b)]. We encourage all eligible employers to rehire employees as quickly as possible and to apply for the Canada Emergency Wage Subsidy if they are eligible. To ensure that the Canada Emergency Response Benefit (CERB) applies as intended, the

Government will consider implementing an approach to limit duplication. This could include a process to allow individuals rehired by their employer during the same eligibility period to cancel their CERB claim and repay that amount.

Calculating Revenues

An employer's revenue for this purpose would be its revenue in Canada earned from arm's-length sources. Revenue would be calculated using the employer's normal accounting method, and would exclude revenues from extraordinary items and amounts on account of capital. On April 8, 2020, the government clarified that employers would be allowed to calculate their revenues under the accrual method or the cash method, but not a combination of both. Employers would select an accounting method when first applying for the CEWS and would be required to use that method for the entire duration of the program. For registered charities and non-profit organizations, the calculation will include most forms of revenue, excluding revenues from non-arm's length persons. These organizations would be allowed to choose whether or not to include revenue from government sources as part of the calculation. Once chosen, the same approach would have to apply throughout the program period.

Special rules for the computation of revenue would be provided to take into account certain non-arm's length transactions, such as where an employer sells all of its output to a related company that in turn earns arm's length revenue. As well, affiliated groups would be able to compute revenue on a consolidated basis.

Amount of Subsidy

The subsidy amount for a given employee on eligible remuneration paid for the period between March 15 and June 6, 2020 would be the greater of: 1) 75 per cent of the amount of remuneration paid, up to a maximum benefit of \$847 per week; and 2) the amount of remuneration paid, up to a maximum benefit of \$847 per week or 75 per cent of the employee's pre-crisis weekly remuneration, whichever is less. In effect, employers may be eligible for a subsidy of up to 100 per cent of the first 75 per cent of pre-crisis wages or salaries of existing employees. These employers would be expected where possible to maintain existing employees' pre-crisis employment earnings. The pre-crisis remuneration for a given employee would be based on the average weekly remuneration paid between January 1 and March 15 inclusively, excluding any seven-day periods in respect of which the employee did not receive remuneration. Employers will also be eligible for a subsidy of up to 75 per cent of salaries and wages paid to new employees.

Eligible remuneration may include salary, wages, and other remuneration like taxable benefits. These are amounts for which employers would generally be required to withhold or deduct amounts to remit to the Receiver General on account of the employee's income tax obligation. However, it does not include severance pay, or items such as stock option benefits or the personal use of a corporate vehicle.

A special rule will apply to employees that do not deal at arm's length with the employer. The subsidy amount for such employees will be limited to the eligible remuneration paid in any pay period between March 15 and June 6, 2020, up to a maximum benefit of the lesser of \$847 per week and 75 per cent of the employee's pre-crisis weekly remuneration. The subsidy would only be available in respect of non-arm's length employees employed prior to March 15, 2020.

There would be no overall limit on the subsidy amount that an eligible employer may claim.

Employers are expected to make their best effort to top-up employees' salaries to bring them to pre-crisis levels.

Refund for Certain Payroll Contributions

On April 8, 2020, the Government proposed to expand the CEWS by introducing a new 100 per cent refund for certain employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund would cover 100 per cent of employer-paid contributions for eligible employees for each week throughout which those employees are on leave with pay and for which the employer is eligible to claim for the CEWS for those employees. In general, an employee will be considered to be on leave with pay throughout a week if that employee is remunerated by the employer for that week but does not perform any work for the employer in that week. This refund would not be available for eligible employees that are on leave with pay for only a portion of a week. This refund would not be subject to the weekly maximum benefit per employee of \$847 that an eligible employer may claim in respect of the CEWS. There would be no overall limit on the refund amount that an eligible employer may claim. For greater certainty, employers would be required to continue to collect and remit employer and employee contributions to each program as usual. Eligible employers would apply for a refund, as described above, at the same time that they apply for the CEWS.

Eligible Periods

Eligibility would generally be determined by the change in an eligible employer's monthly revenues, year-over-year, for the calendar month in which the period began. On April 8, 2020, the Government announced that all employers would be allowed to calculate their change in revenue using an alternative benchmark to determine their eligibility. This would provide more flexibility to employers for which the general approach may not be appropriate, including high-growth firms, sectors that faced difficulties in 2019, non-profits and charities, as well as employers established after February 2019. Under this alternative approach, employers would be allowed to compare their revenue using an average of their revenue earned in January and February 2020. Employers would select the general year-over-year approach or this alternative approach when first applying for the CEWS and would be required to use the same approach for the entire duration of the program. The Government is also announcing that, in order to provide certainty to employers, once an employer is found eligible for a specific period, the employer would automatically qualify for the next period.

- ABC Inc. is a start-up that started its operations last September. It reported revenues of \$100,000 in January and \$140,000 in February, for a monthly average of \$120,000. In March, its revenues dropped to \$90,000. Because revenues in March are 25 per cent lower than \$120,000, ABC inc. would be eligible for the CEWS for the first and second claiming period. To be eligible for the third claiming period, ABC Inc. revenues would have to be \$84,000 or less for the month of April or May (that is, 30 per cent lower than \$120,000).

The amount of wage subsidy (provided under the [COVID-19 Economic Response Plan](#)) received by the employer in a given month would be ignored for the purpose of measuring year-over-year changes in monthly revenues.

- For example, if revenues in March 2020 were down 20 per cent compared to March 2019, the employer would be allowed to claim the CEWS (as calculated above) on remuneration paid between March 15 and April 11, 2020, as well as between April 12 to May 9.
- Alternatively, this employer could use its average revenue from the months of January and February 2020, instead of March 2019, to determine if it is eligible for the CEWS.

Once an approach is chosen, the employer would have to apply it throughout the program period.

The table below outlines each claiming period, the required reduction in revenue and the reference period for eligibility.

	<i>Claiming period</i>	<i>Required reduction in revenue</i>	<i>Reference period for eligibility</i>
<i>Period 1</i>	March 15 to April 11	15%	March 2020 over: <ul style="list-style-type: none"> • March 2019 or • Average of January and February 2020
<i>Period 2</i>	April 12 to May 9	30%	Eligible for Period 1 OR April 2020 over: <ul style="list-style-type: none"> • April 2019 or • Average of January and February 2020
<i>Period 3</i>	May 10 to June 6	30%	Eligible for Period 2 OR May 2020 over: <ul style="list-style-type: none"> • May 2019 or • Average of January and February 2020

Eligible employees

An eligible employee is an individual who is employed in Canada. Eligibility for the CEWS of an employee's remuneration will be available to employees other than those who have been without remuneration for 14 or more consecutive days in the eligibility period, i.e., from March 15 to April 11, from April 12 to May 9, or from May 10 to June 6 [formerly read: "will be limited to employees that have been without remuneration..."]. This rule replaces the previously announced restriction that an employer would not be eligible to claim the CEWS for remuneration paid to an employee in a week that falls within a 4-week period for which the employee is eligible for the Canadian Emergency Response Benefit.

How to Apply

Eligible employers would be able to apply for the CEWS through the Canada Revenue Agency's *My Business Account* portal as well as a web-based application. Employers would have to keep records demonstrating their reduction in arm's-length revenues and remuneration paid to employees. More details about the application process will be made available shortly.

Ensuring Compliance

In order to maintain the integrity of the program and to ensure that it helps Canadians keep their jobs, the employer would be required to repay amounts paid under the CEWS if they do not meet the eligibility requirements. Penalties may apply in cases of fraudulent claims. The penalties may include fines or even imprisonment. In addition, anti-abuse rules would be put in place to ensure that the subsidy is not inappropriately obtained and to help ensure that employees are paid the amounts they are owed. Employers that engage in artificial transactions to reduce revenue for the purpose of claiming the CEWS would be subject to a penalty equal to 25 per cent of the value of the subsidy claimed, in addition to the requirement to repay in full the subsidy that was improperly claimed.

Interaction with 10 per cent Wage Subsidy

On March 25, 2020, the *COVID-19 Emergency Response Act*, which included the implementation of a temporary 10 per cent wage subsidy, received Royal Assent. For employers that are eligible for both the CEWS and the 10 per cent wage subsidy for a period, any benefit from the 10 per cent wage subsidy for remuneration paid in a specific period would generally reduce the amount available to be claimed under the CEWS in that same period.

Interaction with the Work-Sharing Program

On March 18, 2020, the Prime Minister announced an extension of the maximum duration of the [Work-Sharing program](#) from 38 weeks to 76 weeks for employers affected by COVID-19. This measure will provide income support to employees eligible for Employment Insurance who agree to reduce their normal working hours because of developments beyond the control of their employers. For employers and employees that are participating in a Work-Sharing program, EI benefits received by employees through the Work-Sharing program will reduce the benefit that their employer is entitled to receive under the CEWS.

Government Assistance

The usual treatment of tax credits and other benefits provided by the government would apply. As a consequence, the wage subsidy received by an employer would be considered government assistance and be included in the employer's taxable income. Assistance received under either wage subsidy would reduce the amount of remuneration expenses eligible for other federal tax credits calculated on the same remuneration.

How employers will benefit from the CEWS

Maude and Stéphane own a corporation that operates an automobile repair shop in Saint Boniface, Manitoba. They are working full time, each drawing a salary of \$1,300 per week, and have three part-time employees, each earning \$800 per week, for a total weekly payroll of \$5,000. Maude and Stéphane have reduced their opening hours due to decreased demand for their services. They had initially laid off their employees, but they have now decided to re-hire them following the announcement of the Canada Emergency Wage Subsidy. Their employees are not being asked to report to work during this challenging period.

Maude and Stéphane are now keeping their employees on the payroll, paying them 75 per cent of their pre-crisis salary (\$600 per week). Maude and Stéphane would be eligible for a weekly wage subsidy of \$3,494 (\$847 for each of themselves and \$600 for each of their employees). Maude and Stéphane would also be eligible for a 100-per-cent refund of their employer-paid contributions to Employment Insurance and the Canada Pension Plan in respect of their employees, providing an additional benefit of up to \$124 per week.

At the end of each claiming period, Maude and Stéphane would submit an application through the Canada Revenue Agency portal, attesting that their decline in revenues in each month is sufficient to qualify, when compared to the average of January and February. They would also report the total remuneration paid to themselves and their furloughed employees during the month. As Maude and Stéphane have access to direct deposits with the Canada Revenue Agency, they would receive their subsidy shortly after each application.

Canada's COVID-19 Economic Response Plan— Cost and Implementation

These measures are part of the Government of Canada's COVID-19 Economic Response Plan - a comprehensive plan to help ensure that Canadians can pay for essentials like mortgages, rent and groceries, and to help employers continue to pay their employees and their bills during this time of uncertainty.

Protecting Health and Safety

	2020-2021 Impact
COVID-19 Response Fund (including \$500 million in support for Provinces and Territories (2019-2020))	\$1.1 billion
Funding for Personal Protective Equipment and Supplies (of which, \$200 million in 2019-20)	\$2 billion
Total – Protecting Health and Safety	\$3 billion
Direct Support Measures	
Canada Emergency Response Benefit	\$24 billion
Enhanced GST Credit	\$5.5 billion

Protecting Health and Safety

	2020-2021 Impact
Enhanced Canada Child Benefit	\$1.9 billion
Temporary Business Wage Subsidy	\$975 million
Canada Emergency Wage Subsidy	\$73 billion
Canada Student Loan Payments	\$190 million
Support for Indigenous Communities	\$305 million
Support for the homeless (through Reaching Home)	\$157.5 million
Support for women's shelters and sexual assault centres, including for facilities in Indigenous communities	\$50 million
Support for Seniors (of which, \$9M in 2019-20), Children and Youth	\$16.5 million
Support for Food Banks and Local Food Organizations (of which, \$25M in 2019-20)	\$100 million
Lower RRIF Minimum Withdrawal	\$495 million
Support for the Air Transportation Sector	\$331.4 million
Total – Direct Support Measures	\$107 billion
Liquidity Support	
CRA/CBSA liquidity support to businesses and individuals	
Income Tax Payment Deferral until September	\$55 billion
Sales Tax Remittance and Customs Duty Payments Deferral	\$30 billion
Total – CRA/CBSA liquidity support	\$85 billion
Business Credit Availability Program (BCAP) (through BDC and EDC)	
Small and Medium-sized Enterprise Loan and Guarantee program	\$40 billion
Canada Emergency Business Account	\$25 billion
Credit and liquidity support for the Agricultural Sector	\$5.2 billion
Credit and liquidity support through the Bank of Canada, OSFI, CMHC and commercial lenders	\$500 billion +
Total – BCAP, other credit and liquidity support	\$570 billion +

[Finance News Release 2020-04-08: Government provides further flexibility for employers to access the Canada Emergency Wage Subsidy](#)

The Government of Canada is taking immediate, significant and decisive action to support Canadians and employers facing hardship as a result of the global COVID-19 outbreak. Today, Finance Minister Bill Morneau provided further details on the eligibility criteria for businesses to access the Canada Emergency Wage Subsidy (CEWS). These details will ensure that the proposed CEWS meets the government's objective to support the employers that are hardest hit by the COVID-19 pandemic and protect the jobs Canadians depend on during these difficult times. The proposed CEWS would provide a strong incentive for employers to pay employees who have been sent home for health and safety reasons or due to lack of work. It would also enable

employers to retain employees who are still on the payroll and rehire workers who have been previously laid off.

The proposed CEWS would apply at a rate of 75 per cent of the first \$58,700 normally earned by employees – representing a benefit of up to \$847 per week, per employee. The program would be in place for a 12-week period, from March 15 to June 6, 2020. Employers of all sizes and across all sectors of the economy would be eligible, with certain exceptions including public sector entities. An eligible employer's entitlement to this wage subsidy will be based entirely on the salary or wages actually paid to employees. All employers would be expected to make best efforts to bring employees' wages to their pre-crisis levels.

As well, the Government is proposing that employers eligible for the CEWS be entitled to receive a 100-per-cent refund for certain employer-paid contributions to Employment Insurance, the Canada Pension Plan, the Quebec Pension Plan, and the Quebec Parental Insurance Plan. This refund would apply to the entire amount of employer-paid contributions in respect of remuneration paid to furloughed employees in a period where the employer is eligible for the CEWS. This will make it easy and cost effective for employers to rehire people previously laid off.

In order to address the realities faced by the not-for-profit sector, high growth companies and new businesses, the Government proposes the following additional flexibility:

- To measure their revenue loss, it is proposed that all employers have the flexibility to compare their revenue of March, April and May 2020 to that of the same month of 2019, or to an average of their revenue earned in January and February 2020.
- For March, the Government proposes to make the CEWS more accessible than originally announced by reducing the 30-per-cent benchmark to 15 per cent, in recognition of the fact that many businesses did not begin to be affected by the crisis until partway through the month.
- In recognition that the time between when revenue is earned and when it is paid could be highly variable in certain sectors of the economy, it is proposed that employers be allowed to measure revenues either on the basis of accrual accounting (as they are earned) or cash accounting (as they are received). Special rules would also be provided to address issues for corporate groups, non-arm's length entities and joint ventures [ITA 125.7(4)].
- Registered charities and non-profit organizations would also be able to benefit from the additional flexibilities being provided to employers with respect to the revenue loss calculation. In addition, to recognize that different types of organizations are experiencing different types of funding pressures, it is proposed that charities and non-profit organizations be allowed to choose to include or exclude government funding in their revenues for the purpose of applying the revenue reduction test [125.7(1) "qualifying revenue"].

The government will continue to carefully monitor all developments relating to the COVID-19 outbreak and will continue to take further action to protect Canadians and the economy.

Quotes

"The government will continue to do whatever it takes to support Canadians and the economy during this very difficult time. The Canada Emergency Wage Subsidy is one of the tools we have proposed to help businesses

and workers. We are listening to the feedback that Canadians and the business community have provided and will make sure this subsidy serves the needs of Canadians.”

Bill Morneau, Minister of Finance

“We’ve heard the voices of small business owners and employers from across the country. These enhancements to the Canada Emergency Wage Subsidy will mean more flexibility and support for start-ups, high-growth companies, and non-profit organisations. We continue to listen, and we’ll be there for Canadian businesses every step of the way through this unprecedented challenge.”

Mary Ng, Minister of Small Business, Export Promotion and International Trade

“Our government is working as quickly as possible to help support our Canadian businesses and workers. This increased flexibility for employers to access the Canada Emergency Wage Subsidy will help Canadians keep their jobs, so they can continue to pay their bills and feed their families. We know these are trying times. We will continue to listen and take action to make sure we make it through, together.

Additional Sources

- CPA Canada/CTF, “[Canada Emergency Wage Subsidy Feedback](#)” (updated April 14) (this summary has been shared with the CRA and Finance – CPA Canada has also posted a CEWS Webinar (April 16));
- McCarthy Tétrault, “[COVID-19 Update - What Employers Need to Know About the Canada Emergency Wage Subsidy \(CEWS\)](#)”, April 12, 2020;
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- KPMG, “[Employers — Canada’s 75% Wage Subsidy Now Enacted](#)”, *TaxNewsFlash-Canada*, No. 2020-39, April 13, 2020;
- Ball, “[New Details on the Canada Emergency Wage Subsidy](#)”, CPA Canada, April 13, 2020;
- PWC, “[Canada Emergency Wage Subsidy provides relief to businesses and other organizations](#)”, *Tax Insights* Issue 2020-23, April 14, 2020;
- Keung et al., “[Bill C-14 – The 75% Canada Emergency Wage Subsidy](#)”, Moodys COVID-19 Updates and Resources, April 13, 2020;
- BDO, “[COVID-19–Wage Subsidy Programs](#)”, April 16, 2020;
- Fasken, “Early Details on the Canada Emergency Wage Subsidy”, *Tax Bulletin*, April 2, 2020 (available on Taxnet Pro);
- KPMG, “Employers — Canada Eases Access to 75% Wage Subsidy”, *TaxNewsFlash-Canada*, [No. 2020-38](#), April 8, 2020;
- [CFIB statement on Canada Emergency Wage Subsidy details](#)

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