

Intelligence MEMOS



From: Tommy Gagné-Dubé, Luc Godbout and Suzie St-Cerny
To: Carla Qualtrough, Minister of Employment and Chrystia Freeland, Minister of Finance
Date: February 12, 2021
Re: **CERB'S NEVER ENDING STORY**

Eligibility criteria for the Canada Emergency Relief Benefit were relatively simple: Earn more than \$5,000 in employment income in the previous year (or in the 12 months prior to application), earn no more than \$1,000 per month currently, and be forced to stop to work because of COVID-19.

Nevertheless, in the face of some (self-inflicted) confusion, the federal government announced this week that self-employed individuals who applied for the CERB whose net income did not meet the threshold, but would have qualified based on their gross income, will not have to repay the benefit, provided they also met all other eligibility requirements.

For the self-employed, the issue of income, gross or net, was immediately raised when the program launched. This simple question should have been clarified promptly. Unfortunately, this was not the case. In mid-April, at a Quebec financial planning webinar, CRA officials were still unable to confirm whether the \$5,000 test applied on the basis of gross or net income. A week later, the Employment and Social Development Canada (ESDC) confirmed net income was to be used. It must be noted that this information took time to circulate, even to CRA call centres [answering taxpayer questions](#). However, it was a question of the logic of income tax, while ensuring consistency with the criterion applicable to employees.

Once this finding was confirmed and the fact that incorrect information had been provided was acknowledged, government should have ensured that the correct details were distributed to self-employed taxpayers.

With the program complete, there were two options available to the government.

First, the best option to ensure equal treatment between the self-employed was to maintain the criteria in place. This approach still requires that there must be some form of government accountability about the criteria in place and the quality of information transmitted by its officers. Demanding repayment from people whose error was the result of incorrect information from the CRA can be morally difficult. Professor Amin Mawani, in a recent [Intelligence Memo](#) explained the complexity of the situation and explored certain legal avenues for offering relief when incorrect information is transmitted by the tax authorities. For example, extended interest-free repayment schedules could have been proposed.

A more expensive second option would have been to retroactively change the income test to establish it based on gross income, which would address the initial ambiguity while continuing to treat all self-employed people on an equal footing.

Instead, the government has embarked on a third, more tortured path. It may seem commendable to solve a recovery problem for people with potentially limited means. But the fact remains that the government's choice to forgive self-employed workers who erroneously based their CERB claim on gross income amounts to a change solely for them. They don't have to repay, and even those who have already repaid can recover their repayment.

But Ottawa's approach to this issue means that self-employed workers who did not apply for CERB because their net income was less than \$5,000, even if their gross income was higher, get nothing. We end up, therefore "rewarding" those who made an application that didn't meet the criteria and leaving behind those who didn't apply.

Now that a self-employed person with a net income of less than \$5,000 can keep their CERB, how does their situation differ from a self-employed person who is not entitled to the CERB on the basis of a net income of less than \$5,000? Also, with such an approach, what will an advisor say to any future client knowing that criteria can change after the fact?

To the extent that the government decides to make a change equivalent to changing the income test to establish it on the basis of gross income, from the point of view of fairness, it seems preferable to us that it pursue its logic to the end. This means offering the opportunity to apply for the CERB to self-employed workers who didn't initially apply for it on the basis of net income, but who would have been entitled to it on the basis of the new approach to gross income.

Finally, the government will need to better justify its approach and clarify why it is permitting a double standard.

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