

Intelligence MEMOS



From: Amin Mawani
To: Canadians Concerned about CERB Repayments
Date: January 8, 2021
Re: CERB REPAYMENTS AND TAXPAYER RECOURSE

Almost 441,000 Canada Emergency Response Benefit (CERB) recipients (or 5 percent of the 8.9 million unique recipients) have received “education letters” saying they may need to repay some or all of their benefits.

Hypothetically, if each repayment were to average half the maximum benefits (about \$8,000), the amount could total \$3.5 billion.

CERB rules required applicants to have earned at least \$5,000 in the 12 months prior to applying and no more than \$1,000 in each four-week benefit period. Canadians earning in excess of \$1,000 every four-week period during the pandemic were ineligible for CERB.

For the self-employed, earnings net of allowable expenses is used to determine eligibility since the economic equivalent of salary and wages is net income from self-employment. Basing self-employed individual’s eligibility on their gross income would have been inequitable when compared to employees earning wages who do not have to incur any expenses to earn those wages.

It has been [widely reported](#) that early CRA communications on CERB rules for self-employment income were unclear, and could have led some taxpayers to believe that eligibility was based on gross (instead of net) self-employment income. As a result, some ineligible applicants – those whose net incomes did not exceed the \$5,000 threshold even though their gross incomes may have exceeded it – are now being asked to repay their CERB benefits.

Fixing this error is complex since forgiving such repayments would be inequitable to those who understood and abided by the CERB rules as written. Repayment of benefits based on ability to pay could take a long time, especial if claimants have spent the benefits and have low incomes. Potential taxpayer recourse does exist. This would not be the first time that incorrect advice was dispensed by the CRA. The fall 2017 Auditor General’s report found that 30 percent of information provided by CRA’s call centres was inaccurate.

Relief for incorrect advice from officials or extreme taxpayer hardship can be offered by remission orders under section 23(2) of the *Financial Administration Act*. Such orders can forgive taxes owed as well as penalties and interest. They could be applicable if CERB repayments are considered unreasonable or unjust, or otherwise not in the public interest. Remission orders have been used before for child tax benefits paid in excess of the amounts entitled, where repayment would cause hardship. Group remission orders are also possible for certain taxpayers. Administered by CRA, these remissions could be granted on partial basis depending on hardship demonstrated using tax return information.

Repayments may not be difficult for CERB recipients who have not spent all of their benefits – after all, household savings did go up during the pandemic. CERB recipients were clearly informed to set aside some amounts for income taxes on their benefits when filing their tax returns by April 30.

Taxpayers could also be offered relief from interest and penalties (but not from taxes owed) under subsection 230(3.1) of the *Act*, and a 2007 [circular](#) outlines how penalties and interest can be waived if errors are found in publicly-available CRA materials.

In general, the government is unlikely to start asking for repayments before the end of the pandemic, since a negative stimulus could be hazardous both economically and politically. Given the large number of beneficiaries who may be asked to repay their CERB benefits, the government is most likely to offer blanket relief of interest and penalties proactively to minimize administrative burden.

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