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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA.

Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

**PRINCIPAL ISSUES:** This document discusses how the exemption from tax pursuant to section 87 of the Indian Act applies to the Canada Emergency Response Benefit (CERB).

XXXXXXXXXX

2020-086479  
Michel Gauthier

November 30, 2020

Dear XXXXXXXXXXXX:

**Re: Indian Act Tax Exemption - Canada Emergency Response Benefit**

This is in reply to your email dated September 22, 2020 requesting our comments on how the exemption from tax pursuant to section 87 of the Indian Act applies to the Canada Emergency Response Benefit (CERB).

**Our Comments:**

This technical interpretation provides general comments about the provisions of the *Income Tax Act* and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in

Information Circular IC 70-6R7, *Advance Income Tax Rulings and Technical Interpretations*.

The Canada Revenue Agency prepared a Question and Answers document in response to questions and requests for clarification received from various Indigenous communities and organizations about the Canada Emergency Response Benefit (CERB). Please see the Questions and Answers attached. Questions 2 to 5 relate to income tax and how the section 87 tax exemption applies to the CERB.

We trust that these questions and answers will be of assistance.

Yours truly,

Roger Filion, CPA, CA  
Manager  
Non-Profit Organizations and Aboriginal Issues  
Business and Employment Division  
Income Tax Rulings Directorate  
Legislative Policy and Regulatory Affairs Branch

**Appendix:**

Canada Emergency Response Benefit (CERB) - Questions and Answers (May 20, 2020)

# QUESTIONS AND ANSWERS

## Canada Emergency Response Benefit (CERB)

This document gathers questions, concerns and requests for clarification received by the CRA from various Indigenous communities and organizations.

### DISCLAIMER

The following FAQs are intended to provide general guidance on the most commonly asked questions about the CERB and are not meant to be exhaustive. They also may be updated or amended periodically to address new questions or new circumstances. To obtain an interpretation of the legislation for a specific situation involving the CERB, a technical interpretation would need to be requested.

**Q1: One of the eligibility criteria for the CERB is income of at least \$5,000. For the CERB, does the required \$5,000 of income in 2019 need to be taxable income? Can this amount include non-taxable income?**

A1: Tax exempt income can be included in the \$5,000. The benefit is available to workers who earned a minimum of \$5,000 (before taxes) in the last 12 months, or in 2019, from one or more of the following sources:

- employment income
- self-employment income
- provincial or federal benefits related to maternity or paternity leave

**Q2: Will the CERB still be taxable if it's received by someone with status living on reserve?**

A2: The CERB you receive will be treated in the same way as your total income that entitled you to the CERB. This total income is your total income for 2019 (period 1) or the 12-month period prior to the date of your application (period 2).

Therefore, if your total income that entitled you to the CERB in either period 1 or period 2 is exempt from income tax under section 87 of the Indian Act, your CERB will also be exempt.

If your total income that entitled you to the CERB is partially exempt from tax in both periods, your CERB will also be partially exempt. The CERB will be treated as exempt in the same proportion as the total income of the period that is more advantageous to you.

If your total income that entitled you to the CERB in one period is partially exempt and the total income in the other period is taxable, your CERB will be treated as exempt in the same proportion as the total income of the period that was partially exempt.

If your total income that entitled you to the CERB is taxable in both periods, your CERB will also be taxable.

**Q3: For the preceding question, there are a number of possible scenarios:**

- i. A person worked on reserve and earned tax-exempt employment income of \$24,000 (\$2,000 per month) in 2019 and still works on reserve and earned tax-exempt employment income of \$3,000 in the first three months in 2020.**
- ii. A person worked on reserve and earned tax-exempt employment income of \$24,000 (\$2,000 per month) in 2019 but is not working on reserve in 2020 and earned taxable employment income of \$6,000 in the first three months in 2020.**
- iii. A person worked off reserve and earned tax-exempt employment income according to guideline 2 of the Indian Act Exemption for Employment Income Guidelines of \$24,000 (\$2,000 per month) in 2019 but in 2020 changed employment and earned taxable employment income off reserve of \$6,000 in the first three months in 2020.**
- iv. A person did not work on reserve and earned taxable employment income of \$24,000 (\$2,000 per month) in 2019, but is working on reserve in 2020 and earned tax-exempt employment income of \$6,000 in the first three months in 2020. The person applied for the CERB on April 6, 2020.**
- v. A person did not work on reserve and earned taxable employment income of \$24,000 in 2019 and is not working on reserve in 2020 and earned taxable income of \$6,000 in the first three months in 2020.**

**In each scenario, will the CERB be taxable or not?**

**A3:** The CERB you receive will be treated in the same way as your total income that entitled you to the CERB.

- i. In scenario 1, since your total income that entitled you to the CERB is exempt from income tax, your CERB will also be exempt.**
- ii. In scenario 2, since your total income in 2019 that entitled you to the CERB is exempt from tax, your CERB will also be exempt. The fact that you had taxable income in 2020 will not make your CERB taxable or partially taxable. Your CERB will be treated in the way that is more advantageous to you.**
- iii. In scenario 3, since your total income in 2019 that entitled you to the CERB is exempt from tax, your CERB will also be exempt. The fact that you had taxable income in 2020 will not make your CERB taxable or partially taxable. Your CERB will be treated in the way that is more advantageous to you.**
- iv. In scenario 4, since your total income in the 12-month period prior to the date of your application that entitled you to the CERB is partially (25%) exempt from tax, your CERB will also be partially exempt from tax and will be prorated in the proportion in which your income was exempt. Even though your total income in 2019 was taxable your CERB will be treated in the way that is more advantageous to you.**
- v. In scenario 5, since of your total income that entitled you to the CERB is taxable, your CERB will also be taxable.**

**Q4: Will we have to pay tax on the CERB if we live in a community (considered income earned on reserve / confined to the house) but we work off reserve?**

A4: The CERB you receive will be treated in the same way as your total income that entitled you to the CERB. This total income is your total income for 2019 (period 1) or the 12-month period prior to the date of your application (period 2).

Therefore, if your total income that entitled you to the CERB in either period 1 or period 2 is exempt from income tax under section 87 of the Indian Act, your CERB will also be exempt.

If your total income that entitled you to the CERB is partially exempt from tax in both periods, your CERB will also be partially exempt. The CERB will be treated as exempt in the same proportion as the total income of the period that is more advantageous to you.

If your total income that entitled you to the CERB in one period is partially exempt and the total income in the other period is taxable, your CERB will be treated as exempt in the same proportion as the total income of the period that was partially exempt.

If your total income that entitled you to the CERB is taxable in both periods, your CERB will also be taxable.

**Q5: Will CERB payments received by an entrepreneur be taxable? If yes, at what time?**

A5: The CERB is generally a taxable benefit. A T4A tax slip will be made available for the 2020 tax year in CRA My Account under Tax Information Slips (T4 and more). You will need to report any taxable CERB payments you receive on your 2020 income tax return. If you have a balance owing for 2020, your payment will be due on or before April 30, 2021.

The CERB received by an entrepreneur will be treated in the same way as their total self-employment income that entitled them to the CERB. This total income is the entrepreneur's total self-employment income for 2019 (period 1) or the 12-month period prior to the date of their application (period 2).

Therefore, if the entrepreneur's total self-employment income that entitled him or her to the CERB in either period 1 or period 2 is exempt from income tax under section 87 of the Indian Act, their CERB will also be exempt.

If the entrepreneur's total self-employment income that entitled him or her to the CERB is partially exempt from tax in both periods, their CERB will also be partially exempt. The CERB will be treated as exempt in the same proportion as the total self-employment income of the period that is more advantageous to the entrepreneur.

If the entrepreneur's total self-employment income that entitled him or her to the CERB in one period is partially exempt and the total self-employment income in the other period is taxable, the entrepreneur's CERB will be treated as exempt in the same proportion as the total self-employment income of the period that was partially exempt.

If the entrepreneur's total self-employment income that entitled him or her to the CERB is taxable in both periods, their CERB will also be taxable.

**Q6: Will employees of a Band Council be eligible for the CERB? Employees of a business owned by a Band Council? Employees of a private Indigenous businesses on reserve?**

A6: Yes, if they meet the eligibility criteria. There is no restriction in the eligibility criteria on the type of employer for which the employee worked.

For the eligibility criteria, refer to <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra/who-apply.html>.

**Q7: If a person worked for a private daycare center in an indigenous environment until April 1, could they be eligible for the CERB?**

A7: Yes, if they meet the eligibility criteria. There is no restriction in the eligibility criteria on the type of employer for which the employee worked.

For the eligibility criteria, refer to <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra/who-apply.html>.

The first eligibility period for the CERB is from March 15, 2020 to April 11, 2020.

Therefore, the person may not be eligible for the CERB for the initial period because she will not have been without employment income for at least 14 consecutive (April 1 to 11 = 11 consecutive days). However if for at least 14 days in a row during that 4-week payment period, they did not receive more than \$1,000 (before taxes) from employment and self-employment income, they would still be eligible for the CERB for that period.

Moreover, if they expect to continue to have no employment or self-employment income after April 11, or do not expect their situation to change and do not expect to receive more than \$1,000 (before taxes) from employment and self-employment income in a period, they would be eligible for those subsequent periods.

They would then apply for each period when they meet the criteria.

**Q8: A student who works part-time while studying and is also receiving full-time student allowances until June has lost his job due to COVID. Are students eligible for the CERB? Do they have to declare the allowance?**

A8: Students are eligible for the CERB providing they meet the eligibility criteria. Income from student living allowances/student grants are not considered in the eligibility criteria.

For the eligibility criteria, refer to <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra/who-apply.html>.

**Q8a: Can students be simultaneously eligible for the CERB and the Canada Emergency Student Benefits (CESB)?**

A8a: Students cannot receive both benefits simultaneously.

Students who have already applied, or are receiving support from the Canada Emergency Response Benefit (CERB) or Employment Insurance (EI), are not eligible to apply for the CESB.

**Q9: How can a person apply if they have never filed a tax return?**

A9: An individual who has never filed an income tax return can still apply for CERB if they meet the eligibility requirements.

- They can call 1-800-959-8281 to apply.

They will need to update their identification information with the CRA before they can apply.

**Q10: Will applicants need to file taxes for 2019 and/or 2020 after receiving CERB?**

A10: The following link provides information as to when an individual must file a tax return:

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/you-have-file-a-return.html>.

Applying for the CERB does not mean that an individual must file a tax return; however, the individual must attest that they meet the eligibility requirements of the CERB.

The CRA also needs to ensure that the CERB is paid to and kept only by those individuals who are eligible.

In delivering the CERB, the CRA will be verifying that individuals are eligible to receive the benefit. In cases where claimants are found to be ineligible, they will be contacted to make arrangements to repay any applicable amounts.

As part of the Canada Emergency Wage Subsidy, the CRA will be comparing employers' payroll records with information provided by CERB claimants to ensure that individuals who have returned to work and who have therefore become ineligible for the CERB repay those amounts.

**Q11: To have access to the CERB, do employers have to terminate employment or not?**

A11: No. Workers who remain attached to their company can receive the Canada Emergency Response Benefit if they meet the eligibility requirements.

**Q12: How is the CRA going to make sure employees are off work?**

A12: You will need to provide your personal contact information, your Social Insurance Number and certify that you meet the eligibility requirements.

Individuals may be required to submit documentation to support their claim at the time of application or a later date. If the individual is determined to be ineligible for the CERB, they will be required to repay the benefit.

**Q13: Do self-employed workers have to provide proof of income?**

A13: You will need to provide your personal contact information, your Social Insurance Number and certify that you meet the eligibility requirements.

You may be asked to provide additional documentation to verify your eligibility at a future date.

**Q14: What amount (%) should we consider setting aside for taxation?**

A14: How much to set aside for tax depends on your personal situation, the taxable income expected in 2020 and the federal and provincial/territorial tax rates.

These rates are available here: [Canadian income tax rates for individuals](#).

On \$50,000 taxable income, the average federal tax rate is 15.26 percent—that's the total tax you pay divided by your total income.

The Financial Consumer Agency of Canada has more information on [tax brackets and rates](#).

**Q15: How will CERB payments be recovered if a person applied for the CERB and was not eligible?**

A15: You may want to return, or be required to repay, the CERB to the department (CRA or Service Canada) that issued you the CERB payment if you:

- return to work earlier than expected, including being paid retroactively
- applied for CERB but later realize you are not eligible

Return or repay the CERB to the CRA if you:

- applied and received the CERB from CRA and Service Canada for the same eligibility period

Information Slip Issuance

Since the CERB is taxable, you can expect to receive an information slip indicating the total amounts of CERB payments you received in 2019.

However, if you repay all or a portion of the CERB payments you received, regardless of the reason, your account will be adjusted accordingly. You will not receive an information slip for the payment(s) that have been returned prior to December 31, 2020. We encourage you to repay your CERB before December 31, 2020.



**Q16: What documents could be requested for verification for the CERB?**

A16: The CRA needs to ensure that the CERB is paid to and kept only by those individuals who are eligible.

In delivering the CERB, the CRA will be verifying that individuals are eligible to receive the benefit. In cases where claimants are found to be ineligible, they will be contacted to make arrangements to repay any applicable amounts.

As part of the Canada Emergency Wage Subsidy, the CRA will be comparing employers' payroll records, including month-to-month data, with information provided by CERB claimants to ensure that individuals who have returned to work and who have therefore become ineligible for the CERB repay those amounts.

**Q17: Will the government match the increase to the Canada Child Benefit, with an increase to the Children's Special Allowance (CSA)?**

A17: As announced on March 18, the maximum Canada Child Benefit (CCB) amounts will be increased by up to a maximum of \$300 per child for the 2019-20 benefit year. This increased CCB will be delivered to eligible families with children as part of their May CCB payment.

This increase to the CCB will also apply to the Children's Special Allowance (CSA) – that is, the CSA will be increased by \$300 per child for the 2019-20 benefit year. This will ensure that equivalent additional support will be provided in respect of a child who is in the care of, and maintained by, a federal, provincial/territorial or First Nations agency/institution that cares for children.

**Q18: Will current Income assistance (IA) recipients be affected if they receive the CERB?**

A18: The CERB may impact your social assistance benefits.

If you receive provincial or territorial Social (Income or Disability) Assistance, you may want to consult your Provincial or Territorial Social Assistance Office before applying for the CERB.

First Nations living on-reserve should contact the Band Administration Office.

**Q19: Are Self-Employed Fishers eligible for the CERB?**

A19: Self-employed fishers are encouraged to apply for Employment Insurance fishing benefits.

If a self-employed fisher does not meet the criteria to establish a new EI fishing benefits claim, or if they have exhausted their EI fishing benefits between December 29, 2019 and October 3, 2020 and are unable to work due to COVID-19, they may be eligible for the Canada Emergency Response Benefit, provided they meet the eligibility criteria.

You cannot be in receipt of Employment Insurance benefits (including fishing benefits) and the Canada Emergency Response Benefit for the same period.

**Q20: I am a fisher who received Employment Insurance fishing benefits over the off-season and I have just exhausted my benefit entitlement, but I am unable to find work due to COVID-19—am I eligible for the Canada Emergency Response Benefit?**

A20: If a self-employed fisher does not meet the criteria to establish a new EI fishing benefits claim, or if they have exhausted their EI fishing benefits between December 29, 2019 and October 3, 2020 and are unable to work due to COVID-19, they may be eligible for the Canada Emergency Response Benefit, provided they meet the eligibility criteria.

You may not receive Employment Insurance benefits (including fishing benefits) and the Canada Emergency Response Benefit for the same period.