Docket: 2023-2517(IT)I

BETWEEN:

PAUL RATTI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on January 14, 2026, at Calgary, Alberta

Before: The Honourable Justice Lara G. Friedlander

Appearances:

Agent for the Appellant:	Emily Hoult
Counsel for the Respondent:	Yetunde Elizabeth Akinyinka

JUDGMENT

UPON hearing from the parties:

The appeal from a Notice of Determination dated October 13, 2022, made under the *Income Tax Act* in respect of the Appellant's qualifying periods from March 15, 2020 to April 11, 2020, April 12, 2020 to May 9, 2020, May 10, 2020 to June 6, 2020, June 7, 2020 to July 4, 2020 and July 5, 2020 to August 1, 2020, is allowed.

Should the Appellant wish to make submissions regarding costs, the Appellant may serve and file such submissions, not exceeding five pages in length, on or before March 20, 2026. The Respondent shall have until April 10, 2026 to serve and file any response.

If no submissions are received, no costs shall be awarded.

Signed this 23rd day of February 2026.

"Lara Friedlander"

Friedlander J.

Citation: 2026 TCC 37
Date: 20260223
Docket: 2023-2517(IT)I

BETWEEN:

PAUL RATTI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Friedlander J.

[1] The Appellant appeals a Notice of Determination denying the Canada Emergency Wage Subsidy (the "CEWS") for the qualifying periods from March 15, 2020 to April 11, 2020, April 12, 2020 to May 9, 2020, May 10, 2020 to June 6, 2020, June 7, 2020 to July 4, 2020 and July 5, 2020 to August 1, 2020 (the "Periods", and, individually, Periods 1 to 5 respectively).

Factual Background

[2] The parties provided a Partial Agreed Statement of Facts, which I shall summarize as follows. I note that no witnesses testified at trial.

[3] The Appellant and his wife are both licensed physicians. During the Periods, each owned 50% of the common shares of Jillian Ratti Professional Corporation (the "Corporation"), a corporation governed by the laws of Alberta. The Appellant was also employed by the Corporation beginning January 1, 2020. For his 2019 taxation year, the Appellant reported employment income from Alberta Health Services, taxable dividends from the Corporation and a small amount of income from his RRSP. For his 2020 taxation year, the Appellant reported employment income from the Corporation, taxable dividends from the Corporation and other income of $13,352; $13,352 is equal to the amount of CEWS benefits received by the Appellant in 2020 and the parties agree that this amount of "other income" is the CEWS benefits received by the Appellant for the Periods.

[4] During the Periods, the Appellant employed Marianny Henriquez as a domestic worker who performed childcare and cleaning services. The Appellant had a payroll account with the Canada Revenue Agency which he used to remit source deductions in respect of salary and wages paid to Ms. Henriquez. The Appellant issued a T4 to Ms. Henriquez for the 2020 taxation year. Although not in the Partial Agreed Statement of Facts, the parties agreed that the Appellant did not deduct Ms. Henriquez's salary and wages in computing his income for the 2020 taxation year.

[5] In respect of the CEWS, the Appellant made two elections. First, the Appellant made a joint election with the Corporation under paragraph 125.7(4)(d) of the *Income Tax Act* (the "Act"). Second, the Appellant (and the Corporation) made an election under clause (b)(ii)(A) of the definition of "prior reference period" in subsection 125.7(1) of the Act to use January, 2020 and February, 2020 as the prior reference period.

General CEWS Framework and Basis for Denial of the CEWS by the CRA

[6] The CEWS is one of a number of measures introduced in response to the COVID-19 pandemic. It was announced by press release on April 1, 2020, with further details contained in a press release and a backgrounder (the "April 8 Backgrounder") both issued on April 8, 2020. The legislation received Royal Assent on April 11, 2020, and was also accompanied by a press release and a backgrounder (the "April 11 Backgrounder", together with the April 8 Backgrounder being the "Backgrounders"). No explanatory notes *per se* accompanied the initial legislation, although the Department of Finance did provide explanatory notes when subsequent amendments to the legislation were introduced.

[7] The Backgrounders introduce the CEWS as a measure "[t]o help employers keep and return workers to their payroll through the challenges posed by the COVID-19 pandemic" and further describe the purpose of the CEWS as follows:

> 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.[1]

[8] In very general terms, the CEWS regime provided a benefit to employers who experienced a sufficient decline in "qualifying revenue" during the pandemic. The benefit took the form of a deemed overpayment of tax under Part I of the Act, resulting in a reduction of tax or a refund. It was available to a "qualifying entity" for a "qualifying period", and very generally was equal to a certain percentage of "eligible remuneration" paid to "eligible employees", up to a cap.

[9] The Respondent denied the CEWS benefit to the Appellant on two bases. First, the Respondent took the view that neither employment income nor dividend income were "qualifying revenue", that accordingly the Appellant was not able to make the joint election in subsection 125.7(4) of the Act, that accordingly the Appellant did not earn qualifying revenue in the "current reference periods" that relate to the Periods, or in January and February of 2020, and that, as a result, the Appellant did not suffer any decline in qualifying revenue in respect of the Periods. This position will be described in further detail below.

[10] Second, the Respondent took the position that the salary and wages paid to Ms. Henriquez were personal expenses of the Appellant, and that the CEWS was not available for personal expenses. The Respondent concedes that if the dividend and/or employment income earned by the Appellant in January and February of 2020 and in the Periods were found to be "qualifying revenue", and if the Court were to find that the fact that the salary and wages paid to Ms. Henriquez were personal expenses is not relevant to the Appellant's entitlement to the CEWS, then the Appellant will have satisfied all the other CEWS requirements and therefore the Appellant's claim for the CEWS in the Periods should prevail.

Decline of Qualifying Revenue

[11] As set out above, one of the requirements for receiving the CEWS is that the taxpayer in question must have suffered a sufficient decline of qualifying revenue. For Periods 1 to 4, this requirement is found in paragraph (c) of the definition of "qualifying entity", which provides (as applicable to the Appellant) that the entity's qualifying revenue for the "current reference period" [meaning, in this case,

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[1] See, similarly, the introduction to the backgrounder issued by the Department of Finance on November 5, 2020.

March 2020, April 2020, May 2020 and June 2020 for Periods 1 to 4 respectively][2] "are equal to or less than" the "specified percentage"[3] of the entity's qualifying revenue for the prior reference period [meaning the average of qualifying revenue in January and February of 2020, in this case[4]]. For Period 5, the revenue decline requirement is found in the formula for calculating the CEWS benefit. Specifically, subclause 125.7(2)(b(i)(A)(I) of the Act provides for a nil benefit if the "revenue reduction percentage" (as defined in subsection 125.7(1) of the Act for the qualifying period) is less than 30%. "Revenue reduction percentage" is defined in subsection 125.7(1) of the Act as the result (expressed as a percentage) of the formula 1-A/B, where A is the entity's qualifying revenue for the current reference period for the qualifying period [meaning July 2020 for Period 5 here], and B is the entity's qualifying revenue for the prior reference period [meaning the average of qualifying revenue in January and February of 2020, in this case]. Notwithstanding the difference in legislative format, for purposes of this decision the mechanics for Periods 1 to 4 and Period 5 are substantially identical. In other words, in general the entity's qualifying revenue for the current reference period must be equal to or less than 70% (or, in Period 1, 85%) of qualifying revenue in the pre-pandemic reference period. I will refer to both of these iterations as the "Revenue Decline Test".

[12] Accordingly, the Revenue Decline Test requires a comparison of "qualifying revenue" in respect of the relevant qualifying period as against a prior reference period. "Qualifying revenue" is defined in subsection 125.7(1) (in respect of an "eligible entity", which is a term that will be discussed below) as follows:

> "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

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[2] In other words, each "qualifying period" (or, in this decision, "Period") has an associated "current reference period", which is when "qualifying revenue" that relates to the Period is measured.

[3] Defined in subsection 125.7(1) as being 85% for Period 1 and 70% for Periods 2 to 4.

[4] Where the taxpayer has made an election to treat January and February of 2020 as the prior reference period, as is the case here, the average of qualifying revenue for the two months is used. See paragraph (b) of the definition of "prior reference period" in subsection 125.7(1) of the Act. Also, for the determination of the CEWS for Periods 1 to 4, see subparagraph (c)(ii) of the definition of "qualifying entity", and for the determination of the CEWS for Period 5, see element B of the definition of "revenue reduction percentage", all as defined in subsection 125.7(1) of the Act.

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;

(b.1) in the case of an eligible entity prescribed in paragraph (f) of the definition "eligible entity" that would be described in paragraph (c) or (d) of that definition if it were not a public institution, subparagraphs (a)(i) and (ii) apply to an eligible entity that would be described in paragraph (c) of that definition and subparagraphs (b)(i) and (ii) apply to an eligible entity that would be described in paragraph (d) of that definition;

(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).

[13] Subsection 125.7(4) of the Act is also relevant to the Revenue Decline Test. First, the opening words of subsection 125.7(4) provide that "qualifying revenue" of an eligible entity is to be determined in accordance with its normal accounting practices.

[14] Second, the Appellant made a joint election with the Corporation under paragraph 125.7(4)(d) of the Act. In general terms, this election would apply to attribute a portion of the Corporation's qualifying revenue to the Appellant. However, the election is not available unless "all or substantially all of an eligible entity's [here, the Appellant's] qualifying revenue — determined without reference to paragraph (d) of the definition of "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".[5] In this case ignoring the joint election (and its carve-out of income from a non-arm's length person or partnership) for the moment, the dividend and employment income received by the Appellant from the Corporation would not be qualifying revenue to the Appellant because they were received from a non-arm's length party,[6] and therefore excluded from "qualifying revenue" under paragraph (d) of the definition of that term. The Respondent concedes that the Corporation earned "qualifying revenue", but takes the view that the joint election was invalid on the basis that the Appellant did not earn "qualifying revenue", and therefore the precondition of the joint election was not met. Although no evidence was provided in respect of particular amounts of dividend income and of employment income in the prior reference period (meaning the average of January and February of 2020) or in the current reference periods in respect of the Periods, the parties have taken the view that if the Court concludes that if either or both of the Appellant's dividend income and employment income constitute "qualifying revenue", then the Revenue Decline Test has been satisfied.

[15] As stated above, the Respondent argues that neither employment income nor dividend income is "qualifying revenue". The Respondent argues that "qualifying revenue" must be revenue from a business on the basis of a review of the text, context and purpose of the legislation, as contemplated by *The Queen v Canada Trustco Mortgage Co.*, 2005 SCC 54 at paragraph 10 *et seq.*, *The Queen v Alta Energy Luxembourg S.A.R.L.*, 2021 SCC 49 at paragraph 29 and *Dow Chemical Canada ULC v The King*, 2024 SCC 23 at paragraph 101, as well as many others.

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5 For the complete text of paragraph 125.7(4) of the Act, see the Appendix to these Reasons.

6 Under paragraph 251(1)(a) of the Act, related persons are deemed not to deal with each other at arm's length. Under subparagraph 251(2)(b)(ii) of the Act, a corporation and a person who is a member of a related group that controls the corporation are related. Subsection 251(4) of the Act provides that a "related group" means a group of persons each member of which is related to every other member. The Appellant and his wife are related as a resulted of paragraph 251(2)(a) of the Act as they are married, and therefore form a related group. As that related group controls the Corporation, the Appellant and the Corporation are related and therefore are deemed not to deal with each other at arm's length.

[16] The Respondent begins by arguing that the phrase "generally, the sale of goods, the rendering of services and the use by others of resources of the eligible entity" supports the view that qualifying revenue must be business income. I do not agree.

[17] The key requirement for an amount to constitute qualifying revenue of an entity is that it is an "inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the entity". I will consider the meaning of this phrase below, but I interpret the phrase that follows it — namely, "generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity" — not to require that qualifying revenue be from the sale of goods, the rendering of services or the use by others of resources of the eligible entity, but rather to indicate that those activities will be the source of the qualifying revenue in most cases. Further, I do not interpret the phrase "generally from the sale of goods, the rendering of services and the use by others of resources of the eligible entity" to necessarily lead to the conclusion that qualifying revenue must originate from a business. For example, the loaning of cash by an eligible entity could be considered to constitute the use by the borrower of a resource of the lender, and yet interest on the loan may be income from property rather than income from a business. And, of course, if Parliament had intended the definition of qualifying revenue to take the form of business income only, it easily could have drafted the legislation to state that specifically. I note that the Backgrounders describe qualifying revenue as follows: "An employer's revenue for this purpose would be its revenue in Canada earned from arm's length sources." Similarly, there is no explicit limitation in the Act limiting the CEWS to entities that carry on a business. For example, one of the requirements for an entity to be a "qualifying entity" is that the entity must be an "eligible entity"; the definition of "eligible entity" in subsection 125.7(1) of the Act references certain corporations and trusts, individuals, certain registered charities, certain tax-exempt persons, certain partnerships and prescribed organizations. It does not use the word "business".

[18] The Respondent also makes some more specific textual arguments relating to employment income and dividends. Regarding employment income, the Respondent initially argues that the activities undertaken by an employee pursuant to an employment contract did not constitute "the use by others of the resources" of the employee. However, the specific reference in the definition of "qualifying revenue" to consideration arising from the rendering of services would seem to include the rendering of services pursuant to a contract of employment, and in any case it is difficult to see how the reference to the "use by others of resources of the

entity" would not also encompass the provision of services by the entity under an employment contract.

[19] Regarding dividend income, the Respondent argues that dividends are amounts received inconsistently on account of capital that do not relate to the resources of the eligible entity receiving the dividends. I note that no evidence was tendered relating to the consistency of dividends received by the Appellant from the Corporation. The Backgrounders do state that qualifying revenue would exclude amounts on account of capital. The definition of qualifying revenue does not exclude amounts on account of capital *per se*; however, the reference to the "inflow of cash, receivables or other consideration arising in the course of the ordinary activities of the eligible entity" and the explicit exclusion of "extraordinary items" in paragraph (c) of the definition may have the result of excluding many items on capital account. It is not evident to me that dividends, by their nature, could not arise "in the course of the ordinary activities of the eligible entity", nor that they are necessarily "extraordinary items". In the Appellant's case it is possible that dividends may have been a form by which the Corporation could distribute to the Appellant revenue earned by the Corporation as a result of the Appellant's ordinary activities, but there is no evidence before me as to whether and to what extent the Appellant's dividend income arose from sources other than the Appellant's provision of services, and indeed the Appellant earned dividend income from the Corporation in 2019 even though the Appellant was not employed by the Corporation in 2019. Nevertheless the Appellant did hold shares in the Corporation in both 2019 and 2020, and the Corporation did appear to be part of the structure by which income earned as a result of medical services provided by the Appellant and/or his spouse to the Corporation were distributed to the Appellant and/or his spouse. Accordingly, based on the evidence presented to me, I find that the dividends received by the Appellant were received in the course of the Appellant's ordinary activities and were not extraordinary items. However, it is also not evident to me that dividends constitute "consideration"; this point will be discussed further below.

[20] In respect of the context of the legislation, the Respondent argues that, unlike the specific inclusions in paragraphs (a) and (b) of the definition of "qualifying revenue", employment income and dividend income are not specifically included. Further, the Respondent argues that the requirement in subsection 125.7(4) of the Act that qualifying revenue be calculated in accordance with an entity's normal accounting practice shows that qualifying revenue must be business income. Further still, the Respondent argues that subsection 125.7(3) of the Act, which deems CEWS benefits to be "assistance received from a government", directly links CEWS

benefits to business income on the basis that government assistance such as the CEWS should be included in income under paragraph 12(1)(x) of the Act, and that paragraph 12(1)(x) of the Act deems such amounts to be income from a business if they arise from a business.[7] Finally, the Respondent cites subsections 125.7(14) and (14.1) of the Act, which provide for certain carve-backs where executive remuneration has been paid, and subsection 125.7(2.01) of the Act, which denies CEWS benefits to publicly-traded corporations that have paid dividends to their shareholders, as evidence that Parliament intended the CEWS to apply in the business context only.

[21] I do not agree with these arguments either. The usage of the phrase "other consideration", as well as the word "generally", indicate that the definition of "qualifying revenue" should be read broadly, and that there could be a number of different types of amounts that should be included in qualifying revenue. The use of the phrase "subject to the following" prior to the specific inclusions in paragraphs (a) and (b) of the definition of "qualifying revenue" indicates, in my view, that those amounts might not otherwise constitute "consideration", and therefore explicit language is required to include those amounts in qualifying revenue. Regarding the reference to accounting practice, the Backgrounders suggest that this relates to the method of calculation rather than being a comment on the substantive nature of qualifying revenue; in particular, the Backgrounders state 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." With respect to paragraph 12(1)(x), the Backgrounders do contemplate that the CEWS "would be considered government assistance and be included in the employer's taxable income". Whether an income inclusion would always arise under paragraph 12(1)(x) may be debated, but regardless, paragraph 12(1)(x) does not set out the particular character of the amount to be included in income, and also potentially applies to amounts received in the course of earning income from property; accordingly, there is nothing in paragraph 12(1)(x) that requires a business to exist. And generally, the argument that paragraph 12(1)(x) should delineate the scope of section 125.7 is a rather large interpretive leap to make without more clear indications in the legislation and/or the surrounding legislative

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[7] I am also puzzled as to why the Minister did not remove the CEWS benefits from the Appellant's income if the Minister were of the view that paragraph 12(1)(x) is the exclusive means by which the CEWS is included in income but that paragraph 12(1)(x) did not apply to the CEWS benefits received by the Appellant on the basis that they were not earned in the course of carrying on a business. This Court does not address the question of whether an inclusion in income of the CEWS benefits received by the Appellant was appropriate.

record. Finally, the references to executive remuneration and dividends paid by publicly-traded corporations limit the CEWS in particular circumstances; they do not suggest that the CEWS should only be available to entities earning business income.

[22] Regarding a purposive analysis of the CEWS, the Respondent argues that the purpose of the CEWS is to support businesses, and that therefore "qualifying revenue" must be business income. To that end, the Respondent cites Hansard,[8] the press releases issued on April 11, 2020 and a "frequently asked questions" posting on the CRA website, all of which use language along the lines of "helping businesses".[9] However, these references are not made in the form of legislation or technical guidance, but rather are made in more "lay" contexts, and therefore should not be used to override unambiguous legislative language.

[23] Rather, the question is whether employment income and dividend income are "cash, receivables or other consideration arising in the course of the ordinary activities" of the Appellant. There are two prongs to this definition. The first is that the amount must be "consideration" (with cash and receivables being two forms in which consideration could be received).[10] I find that "consideration" in this context should be interpreted to take its meaning from contract law. As indicated by the Supreme Court of Canada in *Will-Kare Paving & Contracting Ltd. v The Queen*, [2000] 3 C.T.C. 463 at paragraphs 30 and 31, "[a]bsent express direction that an interpretation other than that ascribed by settled commercial law be applied, it would be inappropriate to do so…Previous jurisprudence of this Court has assumed that reference must be given to the broader commercial law to give meaning to words that, outside of the Act, are well-defined." In that case, the Court stated that "[t]he word sale has an established and accepted legal meaning", and therefore that meaning should be used rather than a broader, plain meaning. Here, "consideration"

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[8] See, for example, *House of Commons Debates (Hansard)*, Volume 149, No. 33, Page 2134 (April 11, 2020).

[9] For example, the April 8, 2020 press release states that "[t]oday, Finance Minister Bill Morneau provided further details on the eligibility criteria for businesses to access the Canada Emergency Wage Subsidiary (CEWS)".

[10] See, similarly, the French version of the opening words of the definition of "qualifying revenue" (namely, "revenu admissible"): "des rentrées de sommes d'argent et autres contreparties reçues ou à recevoir dans le cours des activités normales de l'entité au Canada généralement au titre de la vente de biens, de la prestation de services et de l'utilisation par d'autres des ressources de l'entité dans la période donnée".

is a well-established concept in contract law, and indeed does not have a particularly well-established plain meaning that would make sense in this context.

[24] The meaning of "consideration" in contract law is described in *Fridman's The Law of Contract in Canada*[11] as follows:

> Such statements reveal the essential ingredients of consideration as it has developed since the early days of contractual liability in the common law. The act or promise of one party is, as it were, "bought" or "bargained for" by the act or promise of the other; each party exchanges something of value. To create an enforceable contract there must be…"reciprocal undertakings". So if one party is neither giving anything, nor is promising to do or give anything, there is no consideration for the other party's act or promise…Consideration means something which is of some value in the eyes of the law. It must be real. [citations omitted]

[25] Similarly *Chitty on Contracts*[12] states:

> The traditional definition of consideration concentrates on the requirement that "something of value" must be given and accordingly states that consideration is either some detriment to the promisee (in that they may give value) or some benefit to the promisor (in that they may receive value). Usually, this detriment and benefit are merely the same thing looked at from different points of view. Thus payment by a buyer is consideration for the seller's promise to deliver and can be described either as a detriment to the buyer or as a benefit to the seller; and conversely delivery by a seller is consideration for the buyer's promise to pay and can be described either as a detriment to the seller or as a benefit to the buyer. [citations omitted]

[26] Using the contract law concept of consideration, then, salary and wages are consideration provided to an employee under an employment contract for the services to be provided by that employee. And indeed at trial counsel for the Respondent conceded at one point that employment income could be characterized as consideration for services rendered, and conceded that the Appellant was providing services to the Corporation. Accordingly, I find that the employment income earned by the Appellant from the Corporation constitutes "consideration" that is "qualifying revenue" provided it is received in the course of the Appellant's ordinary activities.

[27] However, I do not find that the dividends received by the Appellant are "consideration" that potentially could constitute qualifying revenue. When the

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11 7th ed., ed. Jason W. Neyers (Toronto: Carswell, 2024) at 136-138.

12 35th ed., vol. 1 (London: Thomson Reuters, 2023) at 543.

Appellant acquired his shares in the Corporation for either a purchase price or upon subscription, it was shares that he acquired – not dividends.[13]

[28] I considered whether this conclusion could undermine the application of the joint election in subsection 125.7(4)(d) where it is made by non-arm's length corporations, as intercorporate revenue is often in the form of dividends. However, I take some comfort from the fact that the example given by the April 11, 2020 Backgrounder of the application of this rule is the situation "where an employer sells all of its output to a related company that in turn earns arm's length revenue".

[29] The second prong is that the consideration must arise in the course of the entity's "ordinary activities". Paragraph (c) of the definition of "qualifying revenue" already excludes, for greater certainty, extraordinary items. Accordingly, "qualifying revenue" looks to ordinary activities and ordinary items arising out of those activities. I have already found, above, that the dividends received by the Appellant from the Corporation were received in the course of the Appellant's ordinary activities and were not extraordinary items. Regarding the Appellant's employment income from the Corporation, the Appellant was a physician by trade; providing medical services for compensation was part of his ordinary activity and did not result in extraordinary items.

[30] As a result of the findings above, I conclude that the Appellant's employment income earned in the 2020 taxation year was "qualifying revenue". Accordingly, the prerequisite for the joint election in paragraph 125.7(4)(d) — namely that the Appellant earned qualifying revenue in the Periods — has been satisfied. As the Respondent does not dispute any other aspect of the joint election, this finding leads to the conclusion that the joint election was validly made Furthermore, the conclusion that the Appellant's employment income earned in 2020 was "qualifying revenue" establishes that the Appellant earned qualifying revenue in January and February of 2020. As the Respondent concedes that a finding that the Appellant's employment income constitutes qualifying revenue would ultimately lead to the

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[13] I considered whether dividends received by the Appellant could be viewed as consideration for the purchase price or subscription proceeds paid by the Appellant on the basis that a share is merely "a bundle of rights". *10737 Newfoundland Ltd. v The Queen*, 2011 TCC 346, provides a helpful discussion of this possibility in the context of exchangeable shares, and ultimately rejects that approach, emphasizing that looking through to specific rights in the "bundle of rights" would be tantamount to a recharacterization of the legal relationship between the corporation and the shareholder.

conclusion that the Revenue Decline Test was satisfied for the Periods, I so find here.

[31] In respect of the Appellant's dividend income, I find that it was not qualifying revenue on the basis that dividend income was not consideration for the amount paid by the Appellant for the shares of the Corporation. However, as I have already found that the Appellant's employment income was qualifying revenue, my finding relating to dividend income has no impact on the outcome of this case[14].

[32] I also note that, if I had found that neither the Appellant's employment income nor the Appellant's dividend income were qualifying revenue, it might have been possible to interpret the Revenue Decline Test as having been satisfied on the basis that nil qualifying income in the current reference period is equal to nil qualifying income in the prior reference period (at least for Periods 1-4; how such facts would operate for Period 5 is less clear). Given that no arguments were presented at trial on this point and I have already concluded that the Appellant's employment income in 2020 was qualifying revenue, I decline to consider the point further.

Personal Nature of the Expenses

[33] As set out above, the Respondent argues in the Reply that even if the Revenue Decline Test were satisfied, the Appellant was still not entitled to CEWS benefits in Periods 1 to 5 on the basis that the amounts paid to Ms. Henriquez were personal expenses. The Respondent's main argument was that the CEWS was not intended to be used to subsidize personal expenses. The Respondent appears to have suggested that, as the CEWS was intended only for businesses, it would be reasonable to exclude personal expenses from the scope of the CEWS.

[34] I am unable to ground the Respondent's position in the legislation. The only requirement regarding expenses to be incurred by an eligible entity relates to the "eligible remuneration" paid to "eligible employees", as contemplated by the formula in subsection 125.7(2) of the Act setting out the quantum of the CEWS benefit. Neither of those two definitions suggests, even indirectly, that an employee who is providing personal services to an employer should be excluded. I have already found that the CEWS is not limited to "businesses". Furthermore, as noted above, the legislation is intended to protect employees by providing benefits to employers; there is no suggestion in the Backgrounders that employees providing

[14] I note that if the Appellant's dividend were not qualifying revenue, dividend income is simply removed from the amounts compared by the Revenue Decline Test.

personal services to employers should be treated differently than other types of employees. Accordingly, I find that the personal nature of the salary and wages paid to Ms. Henriquez should not bar the Appellant from receiving the CEWS.

[35] For the foregoing reasons, I allow the appeal.

[36] I wish to thank the parties for their thoughtful arguments. Should the Appellant wish to make submissions regarding costs, the Appellant may serve and file such submissions, not exceeding five pages in length, on or before March 20, 2026. The Respondent shall have until April 10, 2026 to serve and file any response. If no submissions are received, no costs shall be awarded.

Signed this 23rd day of February 2026.

"Lara Friedlander"

Friedlander J.

Appendix

125.7(4) 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 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) as its qualifying revenues for the qualifying period for the purposes of this section;

(d) 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 this section

(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 qualifying revenues based on

(i) the cash method, within the meaning assigned by subsection 28(1) with any modifications that the circumstances require, or

(ii) the accrual method, in accordance with generally accepted accounting principles.

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