

Marmer Penner Newsletter

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CHILD SUPPORT AND THE TRAVELLING EMPLOYEE

Determining income for child support purposes can be difficult where a spouse is self-employed and where there are allegations of unreported income and expenses which include personal expenditures. At the opposite end of the spectrum is the employee who is at arm's length from his employer. That employee's T4 slip should provide most of the information needed, or so you may think.

As Canadian companies such as Bombardier establish themselves as world leaders in their particular segments of the market, they have found that it is advantageous to send Canadians possessing particular areas of expertise on foreign assignments. These assignments can last anywhere from a few months to several years.

In order to ensure that an employee is comfortable with accepting a job transfer to, say, Manhattan, the employee must be assured that he will be no worse off from an economic point of view. In addition to regular salary, there are a number of perks these employees receive, such as foreign assignment premiums and cost of living or housing allowances intended to compensate the employee for the additional cost of going on the assignment. The employee may also have foreign income tax filing requirements. In these cases, foreign taxes are often paid by the employer and the grossed-up amount is reported as additional employment income.

Consequently, the employee who was previously T4'd for an annual salary of \$100,000 may have a T4 slip indicating employment income of \$150,000 because of all these additional payments. From a tax point of view, most companies have developed a method to "equalize" their employees. In addition to an actual tax return, a hypothetical "stay-at-home" return is often prepared which calculates the taxes the employee would incur had they not gone on the assignment. This ensures that the employee has the same after-tax disposable income despite the moving costs, higher

living expenses and additional income taxes.

Clearly we can see how this could cause a problem for the employee who must now include an additional \$50,000 of employment income in their child support calculation even though they have not really benefited by this amount.

However, there are a couple of steps the employee might take.

1. In anticipation of this problem, the employee should consider communicating this issue to the employer prior to accepting the assignment. In many cases, the company would be willing to pay any additional child support arising out of these allowances. From the employer's point of view, the payment would be considered part of the compensation package and would therefore be deductible.
2. Some companies may not be as flexible in adjusting their income tax equalization package. In this case, the employee should speak to the ex-spouse and come up with an agreement that waives any additional child support as a result of these extra payments.

If the employee gets no relief from the avenues described above, then it may be a matter for the courts to resolve. The *Federal Child Support Guidelines* describe situations where the court has some latitude in assessing income for the purpose of calculating child support. While the *Guidelines* focus on cases where the court can arbitrarily increase the support payment where it believes that applying the *Guidelines* would not provide the fairest determination of income, this leaves open the possibility that the courts could reduce support payments under the same principle.

This newsletter is intended to highlight areas where professional assistance may be required. It is not intended to substitute for proper professional planning. The professionals at Marmer Penner will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.