

Marmer Penner Inc. Newsletter

Written by Steve Z. Ranot, CPA, CA, CBV
Edited by Anna M. Barrett, BSc, CPA, CA, CBV, CFF

Pandemic May Lead to Flurry of Home Office Claims

In the midst of the COVID pandemic, it is clear that many employees have been required to work at home for at least some portion of their work. Under Canadian tax law, an employee who is required to work from home may be entitled to claim expenses. In a prior newsletter (Volume 8, number 6 in November 2005), we have expressed our view that home office expenses warrant special consideration because they may not represent any incremental costs. If a taxpayer qualifies to claim home office expenses by using, say, one of ten rooms in a house, in certain circumstances, Canada Revenue Agency allows such expenses to include a prorated portion of what may be viewed as personal expenses such as mortgage interest, property taxes, home insurance and utilities that would have been incurred regardless whether business use was made of a portion of the home. That is why, when preparing income reports, we have generally added the home office expenses to income. We have also seen that this treatment of home office expenses is followed by a number of valuers preparing income reports for matrimonial purposes. Some valuers have added an income tax gross-up to these expenses when adding them back to income. We do not do so if the spouse was entitled to claim the home office expenses as no income tax rules were breached. Conversely, if the spouse did not use the home office as the primary place of business or to regularly meet with clients, we would add an income tax gross-up on the basis that the deduction was an improper one, no different than if the spouse deducted the personal use portion of automobile expenses.

A recent decision in *Politis* (2020 ONSC 1306) views home office expenses differently. The husband was a professional engineer operating through a corporation which claimed home office expenses for his condominium unit. The

valuator added back all but \$1,000/month of these home office expenses with an income tax gross-up thereon on the basis that that would be the cost of renting a small office elsewhere. The wife argued that the husband did not meet clients in his home and held any meetings at job sites or his clients' premises. The wife did not argue that the valuator's home office expenses were not appropriate for income tax purposes as *The Income Tax Act* ("the Act") does permit them if the work space in the home is the taxpayer's primary place of business. The court decided to allow the valuator's \$1,000/month of notional rent expense on the basis that:

- a) The home office was "the primary site of the operation of his business";
- b) "If he did not work from home, he would have the expense of rent and other costs of leasing a commercial space"; and
- c) The amount chosen by the valuator was reasonable.

We believe that there have been many other cases where the court has accepted an expert's income opinion where home office expenses have been added back to income in full, leaving this now as a greater potential for differences of opinion.

The *Politis* decision also touched on another relatively controversial and somewhat common business expense claimed by professionals, a type of private health services plan. The Act does not tax medical benefits so some private businesses have established premium medical benefit plans for the shareholder such that medical expenditures not normally reimbursed by third party insurers are covered. The medical benefit plan in *Politis* is not such a plan but similar in its nature as a discretionary business expense. The husband caused his corporation to pay premiums to an insurance company, Benecaid, which amounts, if not used to pay for current medical expenses could be carried forward to pay for future medical expenses. The valuator did not add it to the husband's income but highlighted it as a possible add-back for *Guidelines* income. The court decided these discretionary premiums were personal expenses and should be added to income with a related income tax gross-up.

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