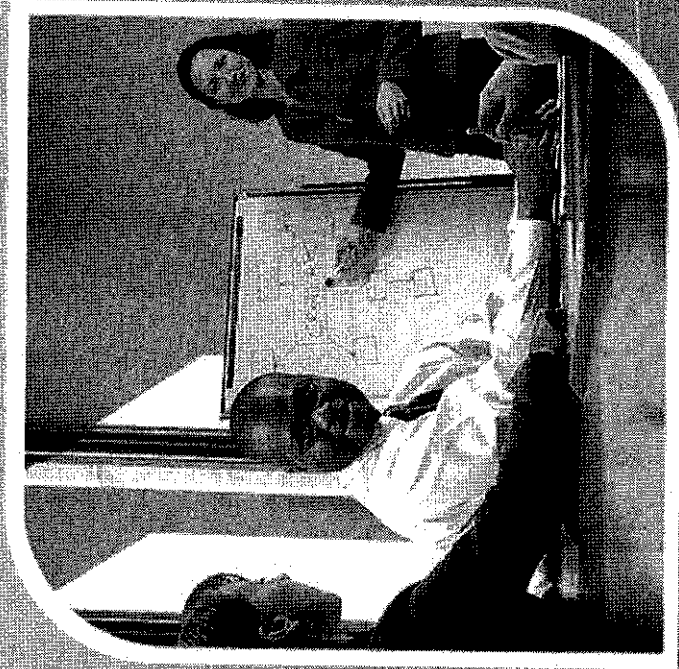
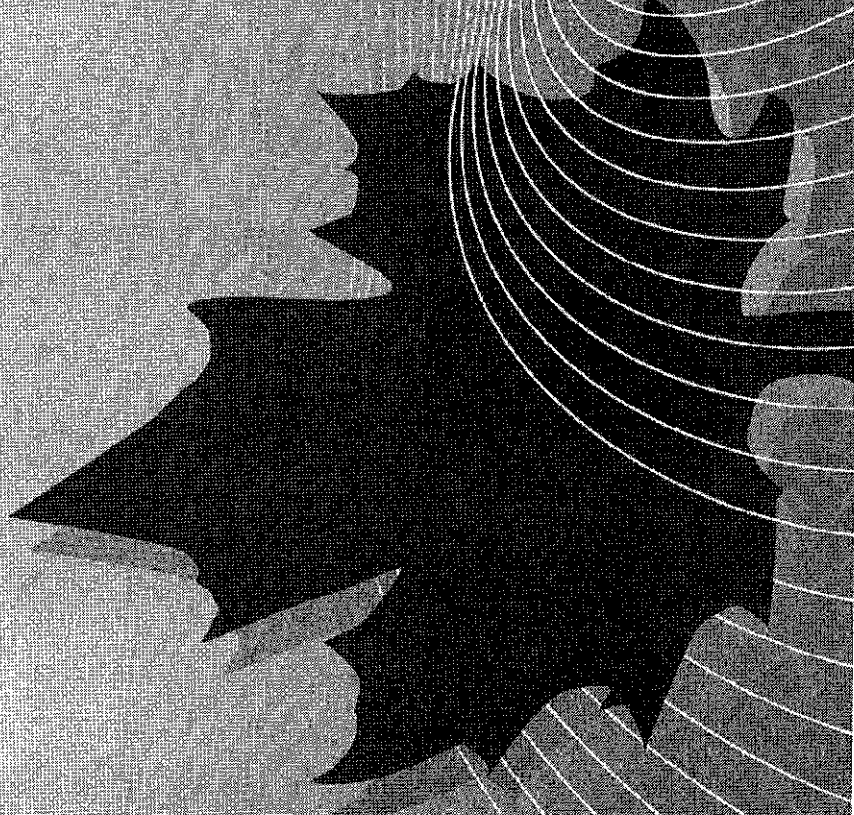




Post-Doctoral Fellowships

(Conference of the Canadian Association of Postdoctoral Administrators – October 27, 2014)

INCOME TAX IMPLICATIONS FOR CANADIAN RESIDENTS



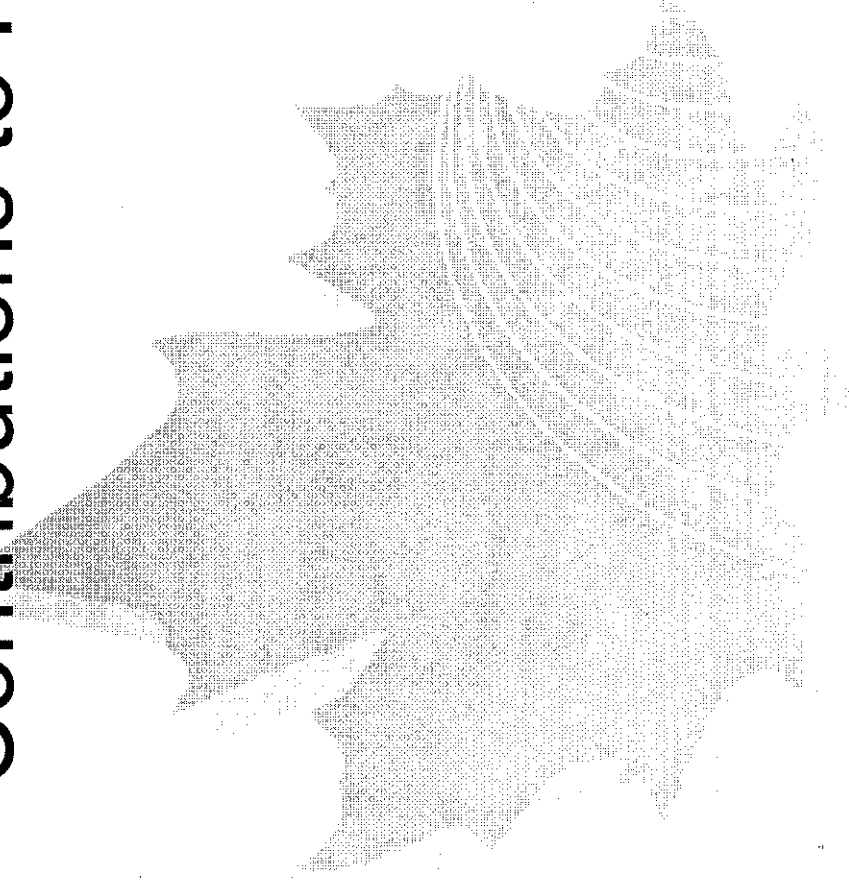
Canada Revenue
Agency

Agence du revenu
du Canada

Canada

Overview

- Determine Type of Income
- Contributions to RRSP



Determine Type of Income

- The nature and characterization of an amount received by a post-doctoral fellow (PDF) should be determined on a case-by case basis, taking into account all of the relevant facts and circumstances.
- An amount received by a PDF is generally characterized for income tax purposes as either employment income, research grant or fellowship income.

Employment Income

- If an employee/employer relationship exists between the payer and the PDF the amount received is considered to be employment income under subsection 5(1) of the *Income Tax Act* (the “ITA”).
- The entire amount should be reported on a T4 slip by the payer and included in the PDF’s income tax return as employment income.
- PDF’s are primarily considered to receive employment income.

No Employee/Employer Relationship

- No employee/employer relationship
- Is the amount received taxable?
 - Yes.
 - The amounts are taxed as either a research grant or fellowship income.

Research Grant

- When the amount received enables the PDF to carry on research or any similar work the amount may be considered to be a research grant under paragraph 56(1)(o) of the ITA.
- The full amount paid should be reported on a T4A Slip by the payer.

Research Grant

- Allowable research expenses can be claimed against the grant.
- The grants are included in income on the PDF's income tax return to the extent that the grant exceeds allowable expenses.
- See paragraphs 3.58 to 3.65 and 3.73 to 3.78 of Income Tax Folio, S1-F2-C3, *Scholarships, Research Grants and Other Education Assistance* for information on research grants and allowable research expenses.

Fellowship Income

- If the primary purpose of the amount given to the PDF is to advance his or her education, the amount received is included in income as a fellowship under paragraph 56(1)(n) of the ITA to the extent that it is in excess of a \$500 scholarship exemption.
- The full amount paid should be reported on a T4A slip by the payer.
- The full amount of the fellowship less the \$500 exemption is included in income on the PDF's income tax return.

Fellowship Income

- Post-doctoral fellows are generally not considered to be students and are not allowed to claim the education tax credit and are therefore precluded from receiving a full scholarship exemption.

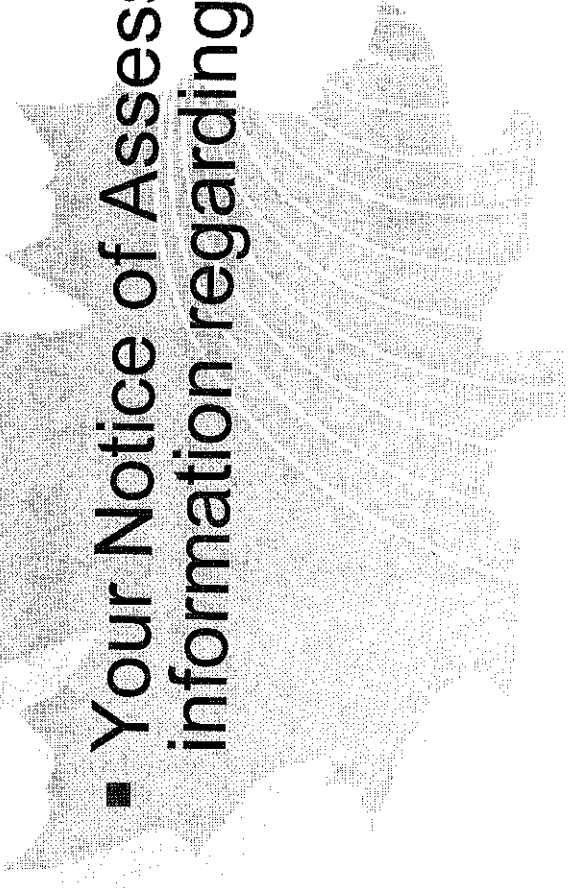


Court Cases

- There have been a number of court cases on amounts received by post-doctoral fellows.
- The court cases can be confusing.
- The important point to remember is if there is an employer/employee relationship the amount received is employment income.
- If there is no employer/employee relationship the amount received is generally either a research grant or fellowship income.

Registered Retirement Savings Plans (RRSPs)

- Earned income is used to calculate the amount of contributions that may be made to an RRSP.
- Earned income includes income from employment and a research grant (net of allowable expenses), but does not include fellowship income.
- Your Notice of Assessment will give you information regarding your RRSP amount.



References

- Income Tax Folio, S1-F2-C3, *Scholarships, Research Grants and Other Education Assistance* for additional information on post-doctoral fellowships.
- See Guide - *RRSPs and Other Registered Plans for Retirement*, T4040 for additional information on RRSPs.

Thank you



Treatment of income for Postdoctoral Fellowships

Conference of the Canadian Association of
Postdoctoral Administrators - October 27, 2014



Outline

- CRA Definition
- Key Question– Employee or Not Employee
- Employment Status Rulings
- Tax Court Cases – Applicable Legal Test
- Definition of Employment Contract - Contract of Service (COS)
- Indicators of a COS
- Indicators of no COS
- Result of an Employment Status Ruling

Academic Postdoctoral Fellow (PDF)

- The term is used (as in post-doctoral fellow or PDF) to indicate an individual who has recently obtained his or her Ph.D. (usually within the past five years or possibly longer) who is engaged in advanced research activities at a university or at a facility or laboratory connected with a university. The aim of the individual is often to obtain sufficient experience and published research as a PDF to be considered for a position as a professor at a university

(Income Tax Folio S1-F2-C3: Scholarships, Research Grants and Other Education Assistance)

Key Question: Is the amount received employment income or not?

- If an employer-employee relationship exists between the fellow and the payer, the income received should be treated as employment income.
- If no employer-employee relationship exists, the nature of the income would still need to be determined for tax purposes.

Post Doctoral Fellowship Income

Amount

Employer-employee
relationship = employment
income

no employer-employee
relationship = nature of income
to be determined

How does CRA determine whether or not a employer-employee relationship exists?

- When an individual or employer is unsure whether or not the individual is an employee, either party can request a CPP/EI Ruling from the CRA.
- The ruling will also indicate whether or not CPP contributions and EI premiums are required to be paid.
- A ruling request must be made no later than June 30th in the year following the year in question.

CPP/EI Rulings

- Once a ruling has been requested an officer in the CRA will contact both the worker and employer and gather information necessary to complete the ruling.
- Once the information is analyzed, the Ruling Officer will inform both parties of the decision. The ruling contains appeal rights should either party disagree with it.
- The courts have, over time, laid down a series of indicators to be looked at when determining whether or not an employer-employee relationship exists.
- More information on these indicators can be found in the CRA publication entitled *Employee or Self-Employed?* that is available on the CRA website.

CPP/EI Rulings and Fellowships

- In addition to the indicators, the Courts have rendered a number of decisions on the subject of fellowships.
- The CRA follows the courts' approach in these cases when making a CPP/EI Ruling. These cases are:
 - *Bekhor v. Canada* 2005 TCC 443
 - *Naghash v. Canada* 2005 TCC 694
 - *Chabaud v. The Queen* 2011 TCC 438
 - *Caropreso v. The Queen* 2012 TCC 212
 - *Rizak v. Canada* 2013 TCC 273

Bekhor (2005)

- *Bekhor* basically laid out the approach to be followed in fellowship cases. *Bekhor* involved a postdoctoral fellow at the University of Alberta. At paragraph 26 of the decision, the judge in *Bekhor* indicated (emphasis added)

"The question at issue is not whether the agreement between the parties is a contract of employment or a contract for services (employee versus independent contractor status), but whether it is a contract of employment or an agreement of financial assistance regarding continuing studies (employee versus student or postgraduate student status)."

- In this case, the judge determined that the postdoctoral fellow was not an employee and the amount being paid was not employment income.

Naghash (2005)

- *Naghash* also involved a postdoctoral fellow at the University of Alberta.
- The judge in *Naghash* arrived at the same conclusion as in *Bekhor*.
- The amount paid to the fellow was not employment income.

Chabaud (2011)

- In *Chabaud*, the court followed the approach taken in *Bekhor and Naghash*.
- At paragraph 68 of *Chabaud*, the judge indicated (emphasis added):

“However, close review of paragraph 56(1) (n) indicates that amounts are not to be included under this paragraph if they are amounts received from employment. As a result, it must first be determined whether the amounts Mr. Chabaud received constitute income from employment.”
- However, in this case the judge rendered a decision where the fellow was considered to be an employee:

“In the case at bar, Mr. Chabaud received remuneration for the services he rendered and the amounts he received were not assistance or a subsidy to enable him to acquire new knowledge, nor were they recognition of the excellence of his academic results.”

Caropreso (2012)

- In Caropreso, the judge uses the same approach as Bekhor. Paragraph 20 of the decision indicated (emphasis added):

*“The root of the difficulty is that payments to postdoctoral research fellows often have dual elements. The payments further the education of research fellows and they also provide compensation for work performed. If the payments are received by virtue of employment, this takes precedence. **However, in making this determination, it is relevant to consider the dominant characteristic of the payments, whether it is compensation for work or student assistance.**”*

- The judge concluded that she was an employee:

In this case, I would conclude that the primary aspect is compensation for work performed. Although the relationship with OHRI had an element of furthering Dr. Caropreso's education, I find that this element was subsidiary.

Rizak (2013)

- In *Rizak*, the judge again confirmed the approach. Paragraph 26 of the decision indicated:

"I agree with Justice Woods' conclusions. In my view, the test that she uses is equally applicable to doctoral students and I adopt it for the purposes of this Appeal."

- Mr Rizak was a doctoral student working as a graduate research assistant at the University of British Columbia and the court determined that he was an employee.

Jurisprudence

- While nature of the income varied in the preceding cases, the approach taken was consistent; i.e. was the income from employment.
- A key element in these cases is control.
- In cases where the fellows were determined to be employees and earning employment income, they may have had some freedom but the payer had control over the type of research done and how it was done.

Employment status

- Contract of employment is not defined in the *Canada Pension Plan*, *Employment Insurance Act* or the *Income Tax Act*
- contract of employment/contract of service
 - contract by which a person, the employee, undertakes for a limited period to do work for remuneration, according to the instructions and under the direction or control of another person, the employer

Employment status – what is looked at?

- The usual elements used to determine employment status such as control, ownership of tools, financial risk and opportunity for profit are discussed in guide *RC4110 Employee or Self-employed?*
- In the case of fellows, the following indicators are helpful for establishing an employer–employee relationship:
 - payer/supervisor assigns specific tasks
 - payer/supervisor determines what research the fellow will do (fellow can choose from a limited number of options) and has the last word on how the research will be done
 - payer/supervisor determines the work schedule
 - payer/supervisor must approve leave
 - leave/work schedule is monitored
 - payer/supervisor can terminate the engagement without notice for cause
- It is important to note that the above indicators are met if the payer/supervisor has the right to determine the above even if they do not exercise this right

Employment status – what is looked at?

- Other indicators of an employer-employee relationship are:
 - medical/dental benefits offered by payer
 - life insurance offered by payer
 - participation in payer's pension plan
 - fellow accomplishes same or similar tasks as payer's employees
 - paid vacation leave and other work-related paid leave provided



If an employer-employee relationship exists

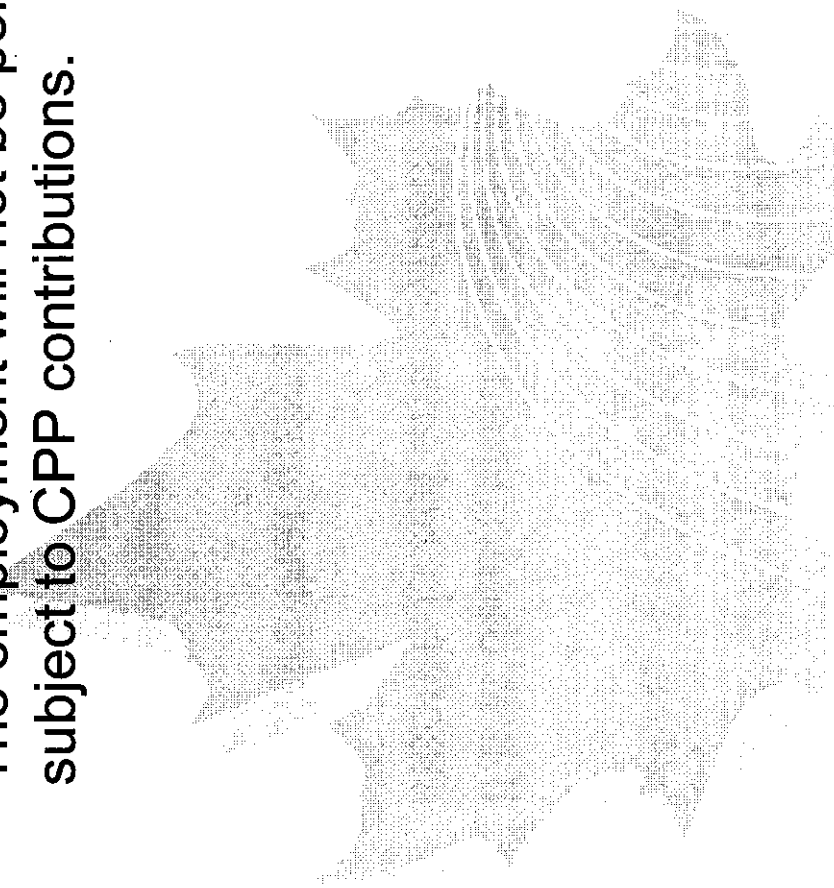
- The employment will be insurable under paragraph 5(1)(a) EIA and the income will be subject to EI premiums.
- The employment will be pensionable under paragraph 6(1)(a) CPP and the income will be subject to CPP contributions.
- The income is taxable as employment income under section 5 of the ITA.
- The income, EI premiums and CPP contributions will be reported on a T4 slip.

If an employer-employee relationship does not exist

- If it is determined that no employer-employee relationship exists, the income is not employment income.
- Factors that indicate that there is no employer-employee relationship are:
 - fellow plans and develops project; may develop self-imposed milestones that may be measured
 - fellow determines how the research will be done
 - payer does not determine fellow's work schedule
 - leave or vacation does not have to be approved and is not monitored
 - payer does not provide paid leave or paid vacation

If an employer-employee relationship does not exist

- The employment will not be insurable and the income will not be subject to EI premiums.
- The employment will not be pensionable and the income will not be subject to CPP contributions.



Thank You!

Questions?



