

Are you an Employee, Regardless of Incorporation?

The rationale revolves around the Canada Pension Plan and Employment Insurance definitions of "employment", which then is referenced in the Income Tax Act.

In EI and CPP, the definition of an "employee" hinges around the two words "*one employer*". In short, if a person is paid for different types of work or different remuneration arrangements, because it still is one employer, the individual is an "employee" of that employer and incorporation or separate individual contracts cannot shelter EI or CPP contributions differently.

The **Canada Pension Plan** definition is identified first; the **Income Tax Act** next, and the **Employment Insurance Act** last.

Canada Pension Plan

C-8; Division A; Contributions Payable; Pensionable Employment; Regulations respecting employment to be included in pensionable employment;

7. (1)

...

(b) the entire employment under *one employer* of a person who is engaged by the employer partly in pensionable employment and partly in other employment;

(c) any employment if it appears to the Governor in Council that the nature of the work performed is similar to the work performed by persons employed in pensionable employment;

(d) the performance of services for remuneration if it appears to the Governor in Council that the terms or conditions on which the services are performed and the remuneration is paid are analogous to a contract of service, whether or not they constitute a contract of service;

...

Income Tax Act (1985, c. 1 (5th Supp.))

Division C : Computation of Taxable Income

Subdivision a

Income or Loss from an Office or Employment

Basic Rules

Income from office or employment

5. (1) Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Definitions "employer" of an individual includes a former employer of the individual.

Payments for volunteer services

(4) Where...

(b) if the Minister so demands, the employer has certified in writing that

(i) the individual was in the year a person described in paragraph (a), and

(ii) the individual was at no time in the year employed or otherwise engaged by the employer, otherwise than as a volunteer, in connection with the performance of any of the duties referred to in paragraph (a) or of similar duties,

...

"qualifying employee" of an employer means,

(a) where the employer is not exempt because of subsection 149(1) from tax under this Part on all or part of the employer's taxable income,

(i) any employee of the employer, other than any employee whose remuneration is not deductible in computing income from a business or property, and

(ii) any person in respect of whom the employer is deemed under any regulation under the *Unemployment Insurance Act* to be an employer for the purpose of determining an employer's UI premium, and

(b) in any other case, any employee of the employer;

Employment Insurance Act

Insurable Employment of the Employment Insurance Act

Section 5 (4) (b), defines an insurable employment as:

(b) the entire employment of a person who is engaged by one employer partly in insurable employment and partly in other employment;"