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Management

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INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC WEALTH MANAGEMENT SERVICES



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Income splitting and the attribution rules

Understand the rules that may prevent you from income splitting

If you are a high income earner and support family members with little or no income, you may be able to reduce the overall amount of income tax paid by your family by income splitting. Income splitting between family members is recognized as acceptable tax planning but the income attribution rules restrict the use of certain income splitting strategies. To determine whether you can benefit from family income splitting, it is important to understand how attribution works. This article discusses the various attribution rules as well as income splitting strategies that may help leave your family with more available funds to meet other financial planning goals.

Any reference to spouse in this article also includes a common-law partner.

Income splitting

In Canada, each person reports the income that they earn personally. Each person then pays taxes based on a progressive tax system where, as their taxable income increases, their marginal tax rate increases. As such, there may be cases where a family consisting of high income earners and low income earners will pay more tax than a family with members who have equal incomes, even if the total household income is the same in both cases.

Income splitting is a strategy that takes advantage of the progressive tax system so that the family can retain more after-tax income. It involves moving income from a family member in a higher tax bracket to one in a lower tax bracket. However, in order to achieve income splitting, it is important to understand the attribution rules that are designed to prevent family income splitting in certain circumstances.

Income attribution rules

In some cases, if you gift or loan property to a family member, any investment income or loss as well as any capital gain or loss earned on that property (or substituted property) may be attributed back to you to be reported in your income tax return, rather than your family member's return. Note that these general income attribution rules do not apply to business income or losses.

Whether income attribution applies depends on the type of income being earned as well as the relationship between the transferor and the recipient of the property. For example, if you gift or loan (at low- or no-interest) property to your spouse, any income or loss as well as any capital gain or loss earned on that property may be attributed back to you. Whereas, if you gift or loan (at low- or no-interest) property to your minor child, only the income or loss earned on that property may be attributed back to you. Any capital gain or loss earned on that property can be taxed or claimed in the hands of your minor child. For purposes of the attribution rules, a minor child includes a child, grandchild, niece or nephew under the age of 18.

If instead you gift assets to an adult child or another non-arm's length person (such as a sibling or a parent), there is no attribution on any type of income. However, if you loan (at low- or no-interest) property to an adult family member or another non-arm's length person and one of the main reasons for the loan is to reduce your taxable income, then any income or loss earned on that property may be attributed back to you. Any capital gain or loss earned on that property will not attribute back to you.

If you gift or transfer property to any other family member, with the exception of your spouse, you will generally realize a disposition at fair market value (FMV) resulting in a capital gain or capital loss on the date of the transfer. You will need to report this gain or loss on your tax return.

A loan is considered a low-interest loan where the interest charged on the loan is less than the Canada Revenue Agency's (CRA's) prescribed rate.

Dispositions on gifting or loaning property

Generally, you can gift or transfer property to your spouse at cost. However, if you transfer property that has appreciated in value to your spouse, you will have to report the capital gain when they eventually sell that property because of the income attribution rules. If you transfer property in a loss position to your spouse, you may not be able to use the loss to reduce your capital gains because of the superficial loss rules. An RBC advisor can provide you with an article that discusses the superficial loss rules.

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Summary of income attribution rules

	Relationship to Transferor (The transferor is the individual who is gifting or lending the property.)		
	Spouse	Non-arm's length minor ¹	Adult child or other adult non-arm's length individuals ²
Property is gifted for no consideration ³	Income/loss (excluding business income) and capital gains/losses are attributable	Income/loss (excluding business income) is attributable; Capital gains/ losses are not	No attribution of any type of income
Property is loaned at low- or no-interest rate	Same as above	Same as above	Income/loss is attributable; Capital gains/losses are not

1) A non-arm's length minor includes a child, grandchild, or a niece or nephew of the transferor who is under the age of 18 throughout the taxation year.

2) This includes an individual connected by blood relationship, marriage or common-law partnership or adoption such as a child, parent, brother, sister, brother-in-law, sister-in-law etc.

3) Gifts of property must be made with no restrictions as to its use or requirement of future repayment.

Reversionary trust rules (super attribution)

The reversionary trust rules are attribution rules that we refer to as the “super attribution” rules. These rules may apply if a Canadian resident trust holds property on condition that:

- the property may revert back to the person who contributed it; or
- the person who contributed the property has the power to determine who receives it after the trust is created; or
- the trust property cannot be disposed of without the contributor’s consent.

For example, the first condition may be met where the settlor is also a capital beneficiary of the trust or if the trust is a revocable trust. The second and third conditions may be met where the settlor is the sole trustee of the trust.

When the super attribution rules apply, income or losses as well as capital gains or losses earned on the property transferred to the trust (or substituted property) are attributed back to the contributor of the property. In addition, the trust capital cannot be rolled out to beneficiaries at cost during the contributor’s lifetime. However, if the contributor of the property or their spouse is a capital beneficiary of the trust and the terms of the trust allow it, the trust property can be rolled out at cost to either of these two individuals.

Generally, the super attribution rules do not apply to any income earned on property that is loaned to the trust as long as the loan is outside the terms of the trust.

When setting up a trust, the best defense against the super attribution rules applying is to give careful consideration to the settlement of the trust and the types of transactions that take place within the trust. As such, it is strongly recommended that you seek the assistance of a professional tax or legal advisor in setting up the trust.

Strategies for income splitting with your spouse

Although the income attribution rules may restrict the income splitting opportunities that are available to you, there are still several ways in which you can split income with family members. The following income splitting strategies may help you achieve tax-efficiency by equalizing your and your spouse’s income:

Invest your lower-income spouse’s earnings

If your spouse works or has other sources of income and pays tax at a lower marginal tax rate than you do, consider paying for all of the family’s the living expenses and tax obligations. This will allow your spouse to build an

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investment portfolio in their own name. The income and capital gains earned in the account will not be attributed back to you and will be taxable to your spouse at their lower marginal tax rate since the investments are funded with their own money.

Gift to your spouse’s TFSA

You can gift money to your spouse to contribute to their own TFSA. Any income earned or capital gains generated within the TFSA will not attribute back to you while the funds remain in the TFSA. This strategy can help your spouse earn tax-free investment income and save for retirement or other goals.

Earn income on income

If you gift or loan (at low- or no-interest) property to your lower income spouse, any income earned or capital gains realized on that property is attributed back to you. However, if this income is reinvested by your spouse, the income earned on that reinvested amount (i.e., the income on income) is not attributed back you and can be taxed in your spouse’s hands at their lower marginal tax rate. You should track the annual income carefully or maintain separate accounts for the original funds and the investment income earned. Over a number of years, this strategy can result in your lower income spouse accumulating substantial capital for investment where the income will be taxed in their hands.

For example, Mrs. Smith gifts \$100,000 to Mr. Smith, her lower income spouse, who invests the funds and earns 5% of interest income. Each year \$5,000 of income is taxed in Mrs. Smith’s hands but the earnings become Mr. Smith’s capital which he can then reinvest. The future income earned on the \$5,000 would be taxable to Mr. Smith going forward.

Use a prescribed rate loan

This strategy involves you loaning funds to your spouse at the CRA’s prescribed interest rate that is in effect at the time the loan is made. Your spouse will then invest the loaned funds for the purpose of generating investment income which may include interest, dividends, and capital gains. This investment income will be taxable to your spouse at their lower marginal tax rate, which effectively reduces your family’s overall tax bill. Your spouse must pay you annual interest on the loan by January 30th of the

following year (and by January 30th of every subsequent year that the loan is in place). If the interest payment is late by even one day, the attribution rules will apply for that particular year and all subsequent years. You must include the interest your spouse pays you on the loan as part of your income when you file your income tax return. This strategy can result in tax savings when the interest your spouse pays you is less than the income they earn by investing the borrowed funds.

Transfer capital losses from your spouse to you

If your spouse has unrealized capital losses that they are unable to use personally and you have taxable capital gains that would be subject to tax, your spouse may be able to transfer their unrealized capital losses to you. Even if your spouse can use the losses themselves, they may want to transfer the capital losses to you if you are in a higher marginal tax bracket and have taxable capital gains that would otherwise be subject to tax at a higher marginal rate.

If your spouse simply transfers their securities to you, the income attribution rules will prevent the loss from being realized in your hands. Instead, the strategy involves your spouse selling the loss securities to you for FMV. It is important that you pay FMV consideration for the securities. You then trigger the superficial loss rules by holding the securities for at least 30 days before selling them on the market. Triggering the superficial loss rules denies your spouse from claiming the capital loss but allows the capital loss to be added to the adjusted cost base (ACB) of the securities which now belong to you. You can then sell the securities at a loss and claim the capital loss to offset capital gains.

Transfer future growth of a security to your spouse

If you own a security that you anticipate may appreciate in value, consider transferring it to your spouse so that any future capital gain will be taxed at your spouse's lower marginal tax rate. You can transfer the future growth either by:

- Transferring the security in-kind to your spouse and having your spouse pay you FMV consideration using their own funds, or
- Selling the security on the open market and having your spouse purchase the same security with their own funds.

If your spouse purchases the security for FMV with their own funds, it will not trigger the attribution rules, and any future capital gain will be taxable in your spouse's hands.

Buy a non-income producing asset from your spouse

If your lower income spouse has a non-income producing

The main advantage of a spousal RRSP is that it enables you and your spouse to income split by having RRSP income taxed in the lower-income spouse's hands when the funds are withdrawn.

asset such as a family car, a piece of artwork, or jewelry, consider buying it from them for FMV. Your spouse can then invest the sale proceeds and the income earned on the sale proceeds will be taxable in their hands at their lower marginal tax rate. Keep in mind that your spouse may realize a capital gain on the sale of the asset to you.

Contribute to a spousal RRSP

The main advantage of a spousal RRSP is that it enables you and your spouse to income split by having RRSP income taxed in the lower-income spouse's hands when the funds are withdrawn. However, since RRIF income can be split between spouses under the pension income splitting provisions, there has been some discussion as to whether contributing to a spousal RRSP still makes sense. The following are some of the key reasons why, even with pension income splitting available, using a spousal RRSP may still be a useful strategy for you and your spouse, subject to the spousal RRSP/ RRIF attribution rules:

- You and your spouse retire prior to age 65 and need to make withdrawals from your RRSP or RRIF to supplement your retirement income. In this case it may be beneficial to be able to draw on a spousal RRSP or RRIF owned by the lower income spouse to fund the shortfall. Since RRIF income cannot be split prior to age 65, withdrawals from the spousal RRSP or RRIF can be taxed at the lower income spouse's rate.
- The lower income spouse retires after age 65 but before the higher income spouse, who previously made contributions to the spousal RRSP. In this case the lower income spouse may be able to withdraw funds from their spousal RRSP or RRIF in retirement and be taxed at their lower marginal tax rate.
- You and your spouse have retirement income taxed at different marginal tax rates and you want to split more than 50% of your income. A typical scenario is where one spouse has significant investment income while the other spouse does not. If the spouse with the investment income has unused RRSP contribution room, they could make a spousal RRSP contribution so that the spouse who is not earning investment income can receive RRSP or RRIF income in retirement to equalize their incomes.

- The older spouse is still working after age 71 and wants to benefit from an RRSP deduction. If the older spouse has unused RRSP contribution room, they can make a spousal RRSP contribution as long as the younger spouse is age 71 or younger. This will allow the working spouse to claim an RRSP deduction to reduce their taxable income and have the future RRSP withdrawals taxed in their spouse's hands.

The withdrawals from a spousal RRSP or RRIF will not attribute back to the higher income spouse who made the RRSP contributions unless a spousal contribution was made in the year of withdrawal or the previous two calendar years. Also, note that minimum RRIF withdrawals from a spousal RRIF are not subject to the attribution rules. For more information on this topic, please ask an RBC advisor for our article on spousal RRSPs.

Split eligible pension income

If you receive eligible pension income and pay tax at a marginal rate that is higher than your spouse, you may consider splitting up to 50% of that income with your spouse and have it taxed at their lower tax rate. Eligible pension income includes:

- RRIF or LIF income received by the plan annuitant if they are age 65 or older. Note that the age of the spouse is not relevant.
- Pension income from an employer plan received at any age by a plan member. Note that a plan member who is resident in Quebec must be 65 or older to split pension income for provincial income tax purposes.

Splitting eligible pension income can potentially equalize your and your spouse's income and also enable both of you to receive the \$2,000 federal pension income tax credit. You may also be entitled to a provincial pension income tax credit. In addition, because pension income splitting provides an opportunity to reallocate income from one spouse to another and reduce the taxable income of the higher income spouse, it can reduce or eliminate OAS clawback or other government tested benefits. For a more detailed discussion, please ask an RBC advisor for the articles on pension income splitting and the pension income tax credit.

Share CPP/QPP

If you receive a higher CPP/QPP retirement pension than your spouse, consider sharing your pension. To qualify for CPP/QPP sharing, certain conditions must be met, including that both you and your spouse must be 60 years of age or older. You can apply to Service Canada or Retraite Quebec to share CPP or QPP respectively.

If you are a business owner and have a spouse who is employed in the business, you can pay your spouse a salary, whether or not your business is incorporated. The amount of salary you pay your spouse must be reasonable based on the duties they perform. This strategy allows you to take advantage of your lower income spouse's tax rate.

By electing to share your pension, a portion of your retirement income may be shared with your lower income spouse and taxed in their hands. The pension sharing process combines both you and your spouse's pension entitlements that have accumulated during the time you have lived together and reallocates 50% of the combined entitlements to each spouse.

Gift or loan funds to your spouse to finance a business

If you gift or loan funds to your spouse and they use the funds to earn business income, this income will not attribute back to you. It will be taxed in your spouse's hands. If you have funds earning investment income and you are in a high tax bracket, this strategy may be an effective way to reduce your highly taxed investment income and provide capital to your spouse who is setting up a business.

Pay your spouse a salary

If you are a business owner and have a spouse who is employed in the business, you can pay your spouse a salary, whether or not your business is incorporated. The amount of salary you pay your spouse must be reasonable based on the duties they perform. This strategy allows you to take advantage of your lower income spouse's tax rate. It will also enable your spouse to make contributions to CPP/QPP and earn RRSP contribution room to help increase their retirement savings.

Pay your spouse dividends

If your business is incorporated, you may be able to pay dividends to your spouse if they are a shareholder of the corporation subject to the tax on split income ("TOSI") rules which limit splitting certain types of income with family members. Taking into account these rules, you may want to consider the following:

- If you have lower income spouse that is actively involved in the business, you may consider paying them dividends if they are shareholders of the corporation either directly or indirectly (say, through a family trust). This would take advantage of their lower marginal tax rate.

- If your business is not a professional corporation or one that primarily provides services, you may be able to pay dividends to a lower income spouse who is 25 years of age or older. Your spouse would need to own more than 10% of the votes and value of your corporation directly in order for you to effectively split income with them.

For more information, please ask an RBC advisor for our article on income splitting using a private corporation.

Strategies for income splitting with your child

You may want to consider these strategies if you would like to provide support for your child and reduce your family's overall tax burden:

Gift to an adult child

Since the attribution rules do not apply to outright gifts of property to an adult child, consider gifting them funds which they can invest. Any income earned or capital gains realized on the investments will be taxed in your child's hands at their lower marginal tax rate. If you gift an asset in-kind, you will realize a disposition at FMV resulting in a capital gain or capital loss on the date of the transfer. You will need to report this gain or loss on your tax return.

Your adult child can also use the gifted funds to contribute to their own TFSA. Any income earned or capital gains generated within the TFSA will not attribute back to you. In addition to splitting income, this strategy can help your child earn tax-free investment income and save for other financial planning goals.

In addition, you can gift (or loan) funds to an adult child to purchase a principal residence. When your adult child eventually sells the home, they may be able to use their principal residence exemption to eliminate the taxes on any capital gain. Beware that this strategy may expose the value of the home to your child's marital or creditor claims.

Use a family trust

Since minors generally do not have the capacity to contract, they may not be able to open an account and invest funds on their own. If this is the case, you may want to use a family trust for income splitting, where the trustee can invest the funds on your minor child's behalf. You may also want to use a family trust to maintain control over the property that you intend to benefit your child. Please note that in order to be able to income split with the minor, the trust should be properly structured to avoid the super attribution rules.

If the beneficiary of the trust is a minor child, and you gift or loan (at low- or no-interest) funds to the trust, there will be attribution of any interest and dividends back to you. The capital gains realized, however, can be taxed in your minor

child's hands at their lower marginal tax rate. As such, you may want to invest the gifted or loaned funds in growth-oriented securities. As always, the investment merits of the securities should be considered before the tax benefits.

If the beneficiary of the trust is a minor child, and you loan funds to the trust at the CRA's prescribed interest rate, the income attribution rules should not apply. To ensure the income attribution rules do not apply, the trustee must pay you annual interest on the loan by January 30th of the following year (and by January 30th of every subsequent year that the loan is in place). To the extent that the investment income can be allocated to your minor child by the trustee, that income will be taxable to your child at their lower marginal tax rate, which effectively reduces your family's overall tax bill.

If the beneficiary of the trust is an adult child, you can gift funds to the trust or loan funds at the CRA's prescribed interest rate. In either case, the income earned in the trust can then be taxed in your adult child's hands to the extent that income is allocated to them.

Contribute to a Registered Education Savings Plan (RESP)

You can contribute to an RESP to save for your child's post-secondary education. The maximum contribution you can make to an RESP is \$50,000 for each beneficiary. The federal government will also contribute to the plan by providing grants and bonds, in certain circumstances. Not only is all of the income earned in the plan tax-deferred but all of the income as well as the government incentives can be taxable to your child at their lower marginal tax rate when they withdraw the funds for their education.

Contribute to a Registered Disability Savings Plan (RDSP)

You can contribute to an RDSP for a disabled family member. The maximum contribution you can make to an RDSP is \$200,000. The federal government will also contribute to the plan by providing grants and bonds, in certain circumstances. Not only is all of the income earned in the plan tax-deferred but all of the income as well as the government incentives can be taxable to your disabled family member at their lower marginal tax rate when they withdraw the funds.

Income splitting for business owners and professionals

There are different methods that a business owner or professional can use to income split with their family members. For example, an incorporated business can pay a family member dividends, if they are a shareholder, to take advantage of their lower marginal tax rates. That said, it is important to note that there are "tax on split

income” (TOSI) rules as well as corporate attribution rules which limit splitting certain types of income from a corporation with family members.

TOSI rules

The TOSI rules are not attribution rules, however, they do affect income splitting. They are designed to discourage business owners and professionals from income splitting with family members who do not meaningfully contribute to the business or practice.

The TOSI rules were commonly known as the “kiddie tax” rules, because they limited splitting certain types of income received from a private corporation with minor children. However as of January 1, 2018, the TOSI rules have been expanded to apply to any Canadian resident age 18 or over as well.

The TOSI rules apply to many types of income received from a private corporation, including interest, dividends, as well as certain capital gains but they do not apply to salaries or bonuses. Where TOSI applies, the income is subject to tax at the highest marginal rate, regardless of the individual’s actual marginal tax rate. In addition, the individual who receives split income loses the ability to claim personal tax credits on the split income, such as the basic personal tax credit.

There are some exclusions to TOSI, which differ depending on the age of the individual receiving the income. The age categories include minors under age 18, adults age 18 to 24, and adults age 25 and over. There is also an exclusion available to the spouse of a business owner who is age 65 or older. The exclusions mainly rely on whether the family member is significantly involved in the business or owns a certain portion of the votes and value of the corporation’s shares. The exclusions are generally more restrictive for minors and for professional corporations. For more information on the TOSI rules, please ask an RBC advisor for our article discussing income splitting through private corporations.

It is worth noting that if TOSI applies to the income received by a family member, the income attribution rules will not apply to that income.

Corporate attribution rules

If you own a corporation and would like to direct income earned in the corporation to a family member, you should be aware of the corporate attribution rules. Corporate attribution generally applies when an individual transfers or lends property to a corporation and one of the main purposes of the transfer or loan is to benefit a spouse or a related minor child (which includes a grandchild, niece or nephew) who owns 10% or more of any class of shares

If you own a corporation and would like to direct income earned in the corporation to a family member, you should be aware of the corporate attribution rules.

of the corporation. If corporate attribution applies, the individual who transferred or loaned the property to the corporation is deemed to have received interest income in the year equal to the CRA’s prescribed rate of interest for the period on the outstanding amount of the transferred property or loan. This annual deemed interest benefit is reduced by the following:

- Any actual interest received in the year by the individual in respect of the transfer or loan;
- Grossed-up taxable dividends received by the individual in the year on shares that were received from the corporation as consideration for the transfer; and
- Income subject to TOSI.

Corporate attribution does not apply to a Canadian-controlled private corporation if all or substantially all (which generally means 90% or more) of the FMV of its assets are used in an active business carried on primarily in Canada. Therefore, corporate attribution is only a concern if your corporation holds passive investment assets exceeding 10% of the FMV of its total assets.

There are more sophisticated ways of structuring a corporation that avoid the application of the corporate attribution rules with respect to a spouse or minor children. However, these structures are beyond the scope of this article. In any case, as this area of taxation is quite complex, it is strongly recommended that you discuss these issues with a qualified tax advisor prior to implementing any strategies involving a corporation.

Strategies for income splitting for business owners and professionals

Pay salaries

If you are a business owner and have family members who are employed in the business, you can pay your family members a salary, whether or not your business is incorporated. The amount of salary you pay your family members must be reasonable based on the duties they perform. This strategy allows you to take advantage of your family’s lower marginal tax rate. In addition, if your family member is age 18 or older, paying them a salary will enable them to make contributions to CPP/QPP and earn RRSP contribution room to help increase their retirement savings.

Pay dividends

If your business is incorporated, you may be able to pay dividends to family members who are shareholders of the corporation, but you have to keep the TOSI rules in mind. Taking into account the TOSI rules, you may want to consider the following:

- If you have lower income adult family members that are actively involved in the business or practice, you may consider paying them dividends if they are shareholders of the corporation either directly or indirectly (e.g. through a family trust). This would take advantage of their lower marginal tax rates.
- If your business is not a professional corporation or one that primarily provides services, you may be able to pay dividends to lower income family members who are 25 years of age or older. Your family members would need to own more than 10% of the votes and value of the corporation directly in order for you to effectively split income with them.

Multiply the Lifetime Capital Gain Exemption (LCGE)

You can implement an estate freeze of your business in order to restructure the ownership of your corporation and transfer any future growth to other family members. An estate freeze not only limits the value of your assets and defers your tax liability but it also transfers the tax liability of the future growth onto your next generation. If you eventually sell the business and the shares qualify as small business corporation shares, you may be able

to claim the Lifetime Capital Gains Exemption (LCGE) and save a significant amount of tax. In addition, you may also be able to multiply the LCGE among family member shareholders if the shares of your corporation are sold. However, it is important to note that there may be negative tax implications if the shareholders are minors (under the age of 18) and the shares of the corporation are sold to a non-arm's length party.

Conclusion

Income splitting can be a great way for you to reduce your family's overall tax burden, but in order to split income successfully, it's important to understand and avoid the attribution rules. You should consult with a professional tax advisor before implementing any income splitting strategy to ensure that you understand how the attribution rules may affect you. A discussion with a professional tax advisor will also help ensure that your personal circumstances have been properly considered in order to maximize the effectiveness of the tax planning strategies you choose.

This article may contain several strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal, tax, or insurance advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax, legal, and/or insurance advisor before acting on any of the information in this article.



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