



Financial Planning Quick Tip

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SUBJECT: Marriage Breakdown Checklist

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There are many implications associated with a marriage breakdown including tax consequences. Independent legal and tax advice should be obtained in the case of a marriage breakdown. The following is a list of issues arising as a result of a divorce or separation (this is not an exhaustive list). Please note for common-law partners, a separation period of 90 days must pass before the rules noted below would apply.

- 1) **Child support payments** – For agreements made after April 30, 1997, the payments are not taxable to the recipient nor deductible to the payor;
- 2) **Spousal support payments** – The payments are taxable to the recipient and deductible to the payor;
- 3) **Lump sum payments** - Since these payments are not periodic, they are not considered child or spousal support payments and therefore are not taxable to the recipient nor deductible to the payor unless they represent arrears of periodic support payments. If the lump sum payment is for support payments that have fallen into arrears, the guidelines for child support and spousal support payments would be applicable;
- 4) **CPP/QPP splitting** – CPP/QPP benefits may be split between former spouses if certain conditions are met;
- 5) **Legal fees deductibility** – Rules with regards to legal fees paid to establish a right for support payments or revise support payments were changed effective October 2002 to allow for these fees to become deductible for tax purposes. Fees incurred prior to this date are not deductible as the new rules are not retroactive. Legal fees incurred to collect late support payments or to establish an amount of support for which a right already exists are also deductible;
- 6) **Transfer of capital property** – Property may be transferred to a former spouse at the adjusted cost base if the transfer is in settlement of marital property rights. The former spouses may elect that the transfer be at Fair Market Value, which would trigger capital gains/losses;
- 7) **Transfer of RSP and RIF** – Funds in a RSP or RIF may be transferred on a tax-deferred rollover basis to a former spouse's RSP/RIF if certain conditions are met. The rollover rules also apply to locked-in RSP assets, however locked-in RSP assets transferred to a former spouse upon marriage breakdown remain locked-in for both spouses;
- 8) **Attribution rules** – The attribution rules on property transferred to a former spouse ceases to apply subsequent to a marriage breakdown (see the Quick Tip titled “Attribution Rules on Relationship Breakdown” for more details);
- 9) **Will updating**- A divorce does not invalidate a Will. However, it is recommended that the Will be updated since some provinces revoke benefits to a former spouse or the appointment of a former spouse as executor.

The rules regarding support payments are summarized in a pamphlet called “Support Payments” (P102) produced by The Canada Revenue Agency (CRA). A link to the pamphlet is as follows <http://www.cra-arc.gc.ca/E/pub/tg/p102/README.html>

If you have any questions or require clarification of any of the issues discussed in this document, do not hesitate to discuss these with your advisor.

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