

The Navigator



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Attribution rules on relationship breakdown

This article is for information only and is not legal or tax advice. Please consult your lawyer or accountant before acting on any of the information presented in this article.

If your relationship breaks down, the attribution rules may not apply to certain situations you may be involved in.

Background

The attribution rules are a set of provisions designed to prevent unsanctioned income splitting between non-arm's length persons, including spouses. For tax purposes, a spouse includes a common-law partner. Common-law partners are defined in the Income Tax Act as two persons of the same or opposite sex who have cohabited together in a conjugal relationship for a continuous period of at least 12 months or who are parents.

Pursuant to the attribution rules, income (interest and dividends) and capital gains/losses earned from property transferred (including gifts or sale) or loaned (except for a genuine loan) to a spouse or a trust of which the spouse is a beneficiary attribute back to the transferor spouse and is considered to be income of the transferor, not the transferee. An exception exists where the transferee spouse pays fair market value for the property using his or her own funds or pays interest at a rate at least equal to the Canada Revenue Agency's prescribed interest rate each year.

The attribution rules will also apply to income from a property transferred to a person who becomes the spouse of the transferor starting from the date of marriage or after 12 months of living together or from the beginning of their conjugal relationship if a child has been born from this relationship.

In the case of a spousal RRSP, any withdrawals from the spousal RRSP in the year in which a spousal RRSP contribution is made or in the two years following the contribution must generally be included in the income of the contributing spouse for up to the amount of the contribution.

Effect on attribution rules

Attribution rules will cease to apply following the death of the transferor spouse, throughout the period in which the transferor spouse is not a resident Canadian or following a divorce judgment or separation agreement.

For common law partners experiencing a breakdown of their conjugal relationship and for married couples following a marital

breakdown but prior to a divorce, attribution rules will generally not apply to income from transferred or loaned property or to withdrawals from a spousal RSP during the period the spouses are **living separate and apart as a result of their relationship breakdown.**

Attribution will not apply to capital gains arising from the disposition of transferred or loaned property between spouses where the disposition occurs while the spouses are living separate and apart because

of a relationship breakdown and both spouses jointly elect not to have the attribution rule relating to capital gains apply. This election can be made at any time following the relationship breakdown and will apply for the year the joint election is filed and thereafter. The election should be filed with the transferor spouse's income tax return.

The attribution rules discussed above would apply again if the spouses were to reconcile and resume their marital/conjugal relationship.

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



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