

# The Navigator



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## Separating a joint account between you and your spouse

What happens when you have assets in a joint account with your spouse and together you decide to separate the assets into one or more individual accounts? This article discusses the tax consequences of separating the assets in a joint account under two different circumstances. It assumes that you and your spouse initially contributed equally to the joint account. Please note that any reference to a spouse in this article also refers to a common-law partner.

The content of this article does not apply to the new joint – gift of beneficial right of survivorship (JGBRS) account (not available in Quebec).

*This article outlines strategies, not all of which will apply to your particular financial circumstances. The information is not intended to provide legal or tax 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 legal and tax advisor before acting on any of the information in this article.*

### Separating the joint account

Assume you and your spouse own a joint account that holds assets with a fair market value (FMV) of \$100,000 and an adjusted cost base (ACB) of \$30,000. When the account was created, you and your spouse equally contributed to the joint account. You and your spouse now decide you want to divide up the assets. Let's discuss the tax implications that would result in each of the following two scenarios:

1. You transfer 100% of the assets

to a sole account owned by your spouse.

2. You transfer 50% of the assets to your sole account and 50% to a sole account owned by your spouse.

### You transfer 100% of the assets to a sole account owned by your spouse

Generally, capital property, such as a passive investment portfolio, transfer automatically between spouses at cost. As such, if all the assets in

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your joint account are transferred to your spouse in kind, it will be a tax-free transaction. Assuming your contribution to the joint account was \$15,000, you will be deemed to have disposed of your half of the securities for \$15,000, resulting in no immediate tax consequences. The assets in your spouse's new account will have an ACB of \$30,000 (\$15,000 original investment + \$15,000 investments transferred from you).

The tax consequences arise when your spouse earns income on the investments or when your spouse eventually disposes of the assets. Any income earned or capital gains generated on the transferred assets will be attributed back to you. When your spouse subsequently sells the transferred assets, the resulting gain or loss relating to those assets will also be attributed back to you.

To avoid this attribution, your spouse must pay you \$50,000 (i.e., 50% of the FMV of the account) with their own money. You must also file an election with your tax return to have the transfer take place at FMV. You will have to report a capital gain of \$35,000 (\$50,000 proceeds – \$15,000 ACB) on your tax return. Your spouse will then have a total ACB of \$65,000 (\$15,000 original investment + \$50,000 investments purchased from you). If your spouse eventually sells the purchased assets, any gain or loss will be taxed in their hands.

The above example describes a situation where you sell securities in a gain position to your spouse. If instead, you sell a security in a loss position to your spouse at FMV, and your spouse holds that security on the 30th day after the settlement date of the disposition, your loss will be denied under the superficial loss rules. If you would like to claim the capital loss on your tax return, consider selling the security on the open market and ensuring that neither you nor your spouse

repurchases and holds the security on the 30th day after the settlement date of the disposition.

If you would like your spouse to benefit from the capital loss, you may want to consider a planning strategy which uses these superficial loss rules to transfer the capital loss to your spouse. This strategy involves first selling the securities in a loss position to your spouse at FMV. Your spouse will need to pay for the securities with their own money. Your spouse then holds the securities for at least 30 days. By doing so, your loss is denied under the superficial loss rules. The superficial loss rules also require your spouse to add your denied capital loss to the ACB of their security. This effectively allows your spouse to get the benefit of the capital loss when they eventually sell the security. Next, your spouse sells all the securities on the market and realizes a capital gain or loss. Your spouse will benefit from a smaller capital gain or larger capital loss because of their higher ACB. Lastly, you will need to file an election with your tax return to have the initial transfer to your spouse take place at FMV, rather than at cost.

Transferring capital losses to your spouse using this strategy can make sense in situations where your spouse has capital gains in the current year that would be subject to tax (or in the three previous taxation years that have already been subject to tax). It can also make sense where you have unrealized capital losses that you are unable to use because you have no capital gains to offset these losses.

### **You transfer 50% of the assets to your sole account and 50% to a sole account owned by your spouse**

In this scenario, both your interest and your spouse's interest in the securities are transferred from the joint account to your own individual accounts. There is no disposition



The tax consequences of separating the assets in a joint account will vary depending on your intentions and your circumstances.

for tax purposes. The resulting two individual accounts will each have securities with a FMV of \$50,000 and an ACB of \$15,000. In this case, the attribution rules should not apply on the income earned in the accounts or if either you or your spouse subsequently dispose of the assets in your respective accounts.

### **Unequal contributions**

If you and your spouse initially made unequal contributions to the joint account, the resulting tax implications will differ from what has been described in the previous

scenarios. Attribution may apply and the amount subject to attribution will depend on the amount of funds you initially contributed to the joint account and the amount you ultimately transferred to your spouse.

### **Consider your circumstances**

The tax consequences of separating the assets in a joint account will vary depending on your intentions and your circumstances. Always consult with a professional tax advisor before acting on any information in this article.

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