



Wealth
Management

the Navigator

INVESTMENT, TAX AND LIFESTYLE PERSPECTIVES FROM RBC WEALTH MANAGEMENT SERVICES



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Marriage breakdown tax and estate planning considerations

Marriage breakdown can affect both your income and your assets and has a number of legal, tax and estate planning implications. The following is an overview of typical issues arising as a result of a divorce or separation. Please note that for tax purposes, both married and common-law spouses are considered to be separated if they have been living separate and apart for at least 90 days as a result of a breakdown in the relationship and have not reconciled during this time. Independent legal and tax advice should be obtained in the case of a marriage breakdown.

Support payments

Spousal support payments –

Spousal support payments are taxable to the recipient and deductible to the payer provided they meet certain conditions, including that the payments are periodic (as opposed to lump-sum) and are made pursuant to a court order or agreement.

Child support payments – Generally, child support payments are neither taxable to the recipient nor deductible to the payer. An exception applies for orders or agreements made prior to May 1, 1997, (where the tax treatment is generally the same as spousal

support payments, unless the former spouses jointly elect to be subject to the current child support rules).

Lump-sum payments – Lump-sum child support or spousal support payments are neither taxable to the recipient nor deductible to the payer. If the lump-sum payment is for periodic child support payments made pursuant to a court order or agreement before May 1, 1997 or periodic spousal support payments that have fallen into arrears, the payment may be taxable to the recipient and deductible to the payer.

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>

Splitting assets

CPP/QPP splitting – CPP/QPP benefits may be split between former spouses if certain conditions are met. In general, only the benefits accumulated during the time you were married or lived together can be divided.

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 or losses.

Transfer of RRSP and RRIF – Funds in a RRSP or RRIF may be transferred on a tax-deferred, rollover basis to a former spouse’s RRSP or RRIF if certain conditions are met. In general, the transfer of funds to the former spouse’s RRSP or RRIF must be done pursuant to a court order or written separation agreement relating to a division of property in settlement of rights arising out of the breakdown of the annuitant’s marriage or common-law partnership. The rollover rules also apply to locked-in RRSP assets.

Attribution rules – The attribution rules on income earned on property transferred to a former spouse cease to apply subsequent to a marriage breakdown. Attribution will not apply to capital gains arising from the disposition of transferred property to a former spouse if both former spouses jointly elect to not have the attribution rule apply. Please refer to the article titled “Attribution Rules on Relationship Breakdown” for more details.

Tax credits and deductions

Child care expenses – Separated or divorced spouses who have shared custody of a child may only claim a deduction for childcare expenses incurred while that child resided with them.

It is a good idea to review your Will upon marriage breakdown to ensure it reflects your intentions and estate planning objectives. It is also important to review your beneficiary designations on registered plans and insurance policies as well as your Powers of Attorney.

Tuition credit – Where spouses are separated or divorced, a child can only transfer the unused portion of his or her tuition credit to one parent, provided the other rules are met. The former spouses and the child will have to agree as to how the credit will be transferred.

Eligible dependant credit – Only one spouse can claim an eligible dependant credit for a particular dependant, even if both spouses are eligible to claim this amount.

Legal fees deductibility – Legal fees incurred to establish the right to support payments, to obtain an increase in support, to collect late support payments or to make child support non-taxable are deductible. From the payer’s standpoint, legal fees incurred in negotiating or contesting an application for support payments or for the purposes of terminating or reducing the amount of support payments are not deductible. Legal expenses relating to custody of or visitation rights to children are also not deductible.

Estate planning

Review and update your estate plan – A divorce does not invalidate a Will. In some provinces, divorce will invalidate any bequests or executorship appointments to your former spouse and the Will will be read as if the former spouse predeceased the testator, unless the Will provides otherwise.

It is a good idea to review your Will upon marriage breakdown to ensure it reflects your intentions and estate planning objectives. It is also important to review your beneficiary designations on registered plans and insurance policies as well as your Powers of Attorney.

If you have any questions or require clarification of any of the issues discussed in this document, contact a qualified tax and legal advisor.

This article outlines information, not all of which will apply to your particular financial circumstances. The information in this article 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.



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