

Canadian Tax Planners Newsletter

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The rules governing separation and divorce are a combination of income tax and provincial family law legislation. In this edition of the Canadian Tax Planners Newsletter, we shall review tax tips and traps related to divorce and separation for both married and common law couples. Many individuals that live together for a brief period of time may be unaware of the family law implications of such an arrangement. Each province has family law legislation that provides rules or guidelines in the following issues:

- the basis for splitting assets upon marriage breakdown
- guidelines for child support and custody to ensure the best interests of the children are considered throughout the separation and divorce process
- spousal support
- guidelines for couples to complete an agreement, often known as a marriage contract or a prenuptial agreement, to alter, or opt out of many of the family law rules. They may split assets and determine spousal support obligations in a manner agreed to by the parties. However, certain items, such as child support, are beyond the scope of marriage contracts

Despite differences in provincial legislation, the theory behind the family law rules is quite straightforward:

Child Support – Guidelines have been developed that determine the amount of child support obligations and these are based upon income level and number of children. In most cases, the amounts are pre-determined and non-negotiable, although judges have a certain level of discretion in certain situations

Splitting of Assets – Although there are numerous exceptions, the basic rule is that each spouse will share 50% of the increase in his or her net worth while married with the other spouse. Special rules are applicable to the family home

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Spousal Support – The legislation does not provide guidance on the appropriate level of spousal support due to the unique circumstances of each couple. In January of 2005, the government produced voluntary guidelines to assist judges in quantifying support obligations

In this edition of the Canadian Tax Planners Newsletter, we shall review the following tax issues related to separation and divorce:

- definition of a spouse and a child
- child and spousal support payments
- payments to third parties
- transfer of assets between spouses in order to fulfill their equalization obligations

Defining Spouses and Children

Once upon a time, people got married had children and there were a small number divorces. However, the nature of relationships has changed and the rules governing separation have changed as well. The current rules apply to marriages and common-law relationships, which includes individuals of the same sex. Many of these non-traditional relationships involve children who may not be biologically connected to either parents or each other. For income tax purposes, the following definitions are important:

Spouse - An Individual that is party to a legal marriage

Common law partner - An individual has a common law partner if they are in a conjugal relationship with a person of the same or opposite sex and meet either of the following conditions:

- have lived together throughout the previous twelve month period
- if they are a natural or adoptive parent of the individual's child

Separated Spouse - For married individuals, they are considered to be separated when they are no longer living together. However, it is possible to have unique circumstances when individuals are separated but living under the same roof.

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