

Marriage Breakdown Checklist

There are a number of legal, financial and tax consequences associated with marriage breakdown. 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 that 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.

1) Spousal support payments

Spousal support payments are taxable to the recipient and deductible to the payor 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.

2) Child support payments

Generally, child support payments are not taxable to the recipient nor deductible to the payor. 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).



3) Lump sum payments

Lump sum child support or spousal support payments are not taxable to the recipient nor deductible to the payor. If the lump sum payment is for periodic spousal support payments or periodic child support payments made pursuant to a court order or agreement before May 1, 1997 that have fallen into arrears, the payment may be taxable to the recipient and deductible to the payor.

4) CPP/QPP splitting

CPP/QPP benefits may be split between former spouses if certain conditions are met.

5) 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 nontaxable are deductible. From the payor'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.

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 RRSP and RRIF

Funds in a RRSP or RRIF may be transferred on a tax-deferred rollover basis to a former spouse's RRSP/RRIF if certain conditions are met. The rollover rules also apply to locked-in RRSP assets; however locked-in RRSP 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 cease to apply subsequent to a marriage breakdown (see the article titled "Attribution Rules on Relationship Breakdown" for more details).

9) 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.

10) Tuition and Education Credit

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

11) Children's Fitness Amount

Where spouses are separated or divorced, only the amount paid can be claimed provided the other spouse has not claimed it and the total claimed is not more than the maximum amount that could be claimed by one person.

12) 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. Where there is more than one dependant, each spouse can claim one dependant as an eligible dependant.

13) Will updating

A divorce does not invalidate a Will. In some provinces, divorce will invalidate any bequests or appointment to your spouse and the Will will be read as if the spouse predeceased the testator, unless the Will provides otherwise. It is recommended that a person's Will be updated after divorce.

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: www.cra-arc.gc.ca/E/pub/tg/p102/README.html

If you have questions on any of the issues in this article, please speak with your advisor.



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