



Income Tax and Family Law by Scott Abel

As if going through a separation and a divorce were not bad enough, there are income tax issues that also creep in, making the divorce that much more complicated. Unfortunately, the saying “the only sure things are death and taxes” is also true in a divorce.

Spousal support payable pursuant to a court order, or separation agreement, on a monthly basis, is deductible as an expense by the spouse paying support, and taxable as income by the recipient spouse. Child support payable pursuant to an order made after 1997 is tax neutral.

If the spousal support is payable pursuant to a separation agreement, often times there can be difficulties with the payor spouse being able to claim the deduction, without being able to prove the payments were actually made. This is true, despite the recipient spouse having claimed the support as income in their tax return.

A payor spouse should make sure they keep copies of the

cheques, and ensure the memo line of the cheque indicates “spousal support”. If the payments are made by an account transfer or direct payment, some form of receipt ought to be obtained from the recipient spouse.

Lump sum spousal support is not taxable, nor deductible. So while a spouse may wish to either pay or receive a lump sum of support, just to be done with it, there are tax consequences as result of such a decision. If a lump sum as opposed to a periodic amount is to be paid, the tax consequences ought to be factored in to the amount of the lump sum.

Certain legal fees incurred relating to support orders are also deductible. A recipient spouse can deduct those legal fees incurred from the obtaining of an order of support. But the legal fees incurred for obtaining a divorce are not deductible.

Parents in a shared parenting situation, are able to each claim one-half of the child tax benefit. Up until recently, the parents would have obtained the child

tax benefit each for six months during the calendar year.

Canada Revenue Agency has recently changed its policy on the receipt of the child tax benefit in a shared parenting situation. Now, each parent will receive, on a monthly basis, one half of the child tax benefit, as if each parent were the only one receiving the benefit. This will obviously have a greater impact on a parent with a significant income.

If one spouse is purchasing the jointly owned house from the other spouse, the issue of the use of the principal residence exemption will have to be addressed, so as to avoid any potential capital gains.

All of these issues, over and above the issues relating solely to the separation or the divorce itself, need to be discussed or addressed in some manner. If not, despite what your agreement or court order may say, Canada Revenue Agency may have a different view.