



Taxes and Separation by Jodi L. Wyman

At this time of year, most Canadians are paying attention to their income taxes. There are some special tax considerations in a number of different areas for individuals going through a marital separation. It is worth ensuring your tax preparer is aware of your personal circumstances and can deal with these consequences properly. Some proper planning during the separation proceedings can also save you a lot of money.

Some examples and situations to be careful of are:

- For child support Orders or agreements made before 1997, support was not taxable to the recipient and not tax deductible to the payor. If the separated parents are still relying on an old order or agreement, they should be aware of the consequences if they update the child support figure or if one switches the way in which they are dealing with the support.
- Spousal support however is considered taxable income to the person receiving it, and it is a tax deduction to the payor. These tax consequences can be significant, and it is important to take them into account when negotiating the monthly support amount. Also, it is generally only periodic payments which

are taxable and deductible, not a lump sum. On the other hand, if the lump sum is for arrears of monthly support, it could be taxable and deductible. The Court Order or agreement should be very clear on these points to save problems later. As well, the Order or agreement must be registered with Canada Customs and Revenue Agency to claim a deduction.

- A payment made to a spouse as their half of the family assets is generally not taxable. There can however be tax consequences depending upon how the payment is made. For example, if an RSP is transferred to the spouse, they will have to pay tax on that money when they cash in the RSP. It is important to negotiate an extra sum to take that into account.
- RSPs can be a valuable way to share the family property. If there is money owing from one spouse to the other, it is possible to do a tax-free rollover of RSPs. If the money is going from the spouse in the higher tax bracket to the spouse in a lower one, this can benefit both spouses.
- For the most part, money drawn out from an employment pension is taxable. Splitting the

pension after separation will mean both parties share the tax consequences. If the spouse keeps their pension, they are allowed to deduct a portion of its value that they will lose to tax.

- Dividing the family assets can also lead to capital gains. Interestingly, the capital gain is attributed to the new owner of the property.
- There is sometimes an extra tax consequence for assets that have been depreciated each year. Separating spouses, especially those with farms or businesses, must speak with an accountant and be aware of potential problems. The Courts are willing to take these costs into account, but the spouse must do their homework in advance.
- Legal fees for pursuing support or defending a claim for support can be tax deductible for the year in which they are paid.

Remember that the tax laws change regularly, and that you should never rely on tax advice from your family law lawyer. Ensure you speak with an accountant or professional tax preparer about any of these sorts of tax issues if they may apply to you.