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TAX MATTERS TOOLKIT: SEPARATION AND DIVORCE (information to provide to your clients)

CBA National Family Law Section

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The information in the Toolkit covers federal tax rules under the Income Tax Act and other federal legislation. The information in the Toolkit needs to be considered in context with provincial tax rules, as well.

Tax Matters Toolkit: Separation and Divorce (information to provide to your clients)

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Working with the tax system

Thinking about the tax consequences

The Tax Matters Toolkit will help people who are separating or divorcing understand how tax rules might affect their options and future finances. This Toolkit cannot, however, answer specific questions for every person's situation.

Action for taxpayers

- Look for handy links to Canada Revenue Agency (CRA) and Department of Justice Canada web sites where there is more detailed information, forms, calculators, and other resources.
- Consult professionals such as family law lawyers, income tax specialists, and accountants to understand how tax rules apply in a specific situation.

Asking questions

Everyone has questions about tax rules and how they apply in a particular situation.

Step one is to appreciate that separation and divorce decisions, particularly when there are children, property, or pensions involved, have tax implications. Step two is to become informed so that there are no tax surprises later. This Toolkit will help.

Action for taxpayers

Make use of CRA and Department of Justice Canada web sites, written materials, and call centres.

- [CRA main menu](http://www.cra.gc.ca/) (<http://www.cra.gc.ca/>)
- TIPS (Tax Information Phone Service) – recorded messages on key topics – 1-800-267-6999
- [Email to connect to a CRA agent](https://apps.cra-arc.gc.ca/ebci/iesl/clicktotalk/ntr.action) (<https://apps.cra-arc.gc.ca/ebci/iesl/clicktotalk/ntr.action>)
- Telephone – 1-800-959-8281 for general inquiries; 1-800-387-1193 for Canada Child Tax Benefit; 1-800-959-1953 for GST/HST credit
- [Child support guidelines](http://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/) information, 1-888-373-2222 (<http://www.justice.gc.ca/eng/rp-pr/fl-lf/child-enfant/guide/>)

Keeping receipts and important information

People usually don't treat their marriage or common-law relationship as a business. It's a personal affair where incomes may be blended, expenses shared, and who gave what to whom usually gets confused over time. There may not be much of a paper trail.

Unfortunately, after separation, it's necessary to become more business-like. Keeping records and receipts is important. Storing cancelled cheques to prove payment matters. Keeping basic information, such as past T1 Income Tax and Benefit Returns, saves time when completing new forms.

Action for taxpayers

Keep paperwork: the signed separation agreement, court orders and bills for household items such as electricity, receipts for a child's day camp or music lessons. Keeping all the paperwork organized in one place, even if it is in a shoebox, is important when completing CRA forms and responding to a request for proof of separation, expenses, etc.

Filing tax forms

Under Canada's self-assessment tax system, taxpayers generally file a T1 Return every year to report their income. They must also provide CRA with other forms and receipts when requested. Even when someone has no income to report, filing a T1 Return is important to determine eligibility for the Goods and Services Tax/Harmonized Sales Tax (GST/HST) credit and the Canada Child Tax Benefit (CCTB).

By submitting completed forms promptly, taxpayers make sure that CRA has necessary information. For example, filing the [Marital Status Change](http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html) (<http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html>) form may reduce difficulties proving the timing of separation to CRA later and may result in beneficial changes to the Canadian Child Tax Benefit or GST/HST credit payments for the taxpayer.

Action for taxpayers

Notify CRA

- after being separated for 90 days in a row
- immediately after a court-granted divorce by:
 - sending the [Marital Status Change](http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html) form (http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html)
 - calling 1-800-387-1193, or
 - going to [My Account](http://www.cra.gc.ca/myaccount), your on-line CRA Account (http://www.cra.gc.ca/myaccount)
- Set up an on-line account with CRA. You'll be able to track what's happening in your CRA file and send forms to CRA electronically. With the right paperwork in place, you may authorize your lawyer, income tax specialist, or accountant to look at your CRA file to help you. Find out what [you can do on-line through](http://www.cra-arc.gc.ca/esrvc-srvce/tx/ndvdl/mycct/hlp-eng.html#mao.a1-6) (http://www.cra-arc.gc.ca/esrvc-srvce/tx/ndvdl/mycct/hlp-eng.html#mao.a1-6) CRA's MyAccount.

[Click here](#) for a list of CRA forms that may be useful for a separating, or separated or divorced person.

Getting advice

Some people's personal situations are more complicated than others such as, blended families, pension income from several sources and those having more than one ex-spouse or common-law partner. Even when a person's situation seems straightforward there may be some tax-related twists and turns.

Advice is available from family law lawyers, income tax specialists, and accountants.

Here are some questions to ask to decide whether or not it is worthwhile to get the next level of professional assistance. A "yes" answer to any of these questions suggests that more help may be a good idea.

- Is there a significant amount of money involved?
- Will the answer to a tax question have a long-term effect?
- Is the uncertainty over the tax issue causing conflict between the separating / divorcing spouse or common-law partners?
- Would the answer to the tax question(s) justify the cost in finding it out?

Tax issues can be daunting. Sometimes it may be hard to understand how to apply general information to your personal situation. Some people are not comfortable asking for information from CRA.

It may be easier and less time-consuming for you to have someone else speak to CRA agents on your behalf about your tax questions. Because tax matters are personal and confidential, CRA will only speak to you or to your authorized representative. You must file Form T1013 with CRA to authorize someone to represent you. You may have more than one representative (for example, your accountant and your lawyer) but you must file a separate T1013 for each one.

Action for taxpayers

Use Form [T1013, Authorizing or Cancelling a Representative](http://www.cra-arc.gc.ca/E/pbg/tf/t1013/), so that your family law lawyer can speak with CRA agents on your behalf. (<http://www.cra-arc.gc.ca/E/pbg/tf/t1013/>)

Definitions

Here is how CRA explains words used in tax returns and forms.

Child

A child includes:

- a person, born within or outside marriage, of whom you are the natural parent;
- a person who is wholly dependent on you for support and of whom you have, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;
- a child of your spouse or common-law partner; and
- a child you adopted.

Common law partner

This applies to a person who is **not your spouse**, with whom you are living in a conjugal relationship, and to whom at least **one** of the following situations applies. He or she:

- a) has been living with you in a conjugal relationship for at least 12 continuous months;
- b) is the parent of your child by birth or adoption; or
- c) has custody and control of your child (or had custody and control immediately before the child turned 19 years of age) and your child is wholly dependent on that person for support.

Reference to "12 continuous months" in this definition includes any period that you were separated for less than 90 days because of a breakdown in the relationship.

Court order

A court order is a decree, order, or judgment made by a court or other competent tribunal, such as a family court.

Payer

A payer is a person who makes support payments to the recipient under a court order or written agreement. A payer includes:

- the recipient's current or former spouse or common-law partner; or
- the parent of a child of whom the recipient is a legal parent.

Principal residence

A property qualifies as your principal residence for any year if it meets **all** of the following **four** conditions:

- it is a housing unit, a leasehold interest in a housing unit, or a share of the capital stock of a co-operative housing corporation you acquire only to get the right to inhabit a housing unit owned by that corporation
- you own the property alone or jointly with another person
- you, your current or former spouse or common-law partner, or any of your children lived in it at some time during the year
- you designate the property as your principal residence.

The land on which your home is located can be part of your principal residence. Usually, the amount of land that you can consider as part of your principal residence is limited to 1/2 hectare (5,000 square meters), which converts to about 1.24 acres (54,000 square feet).

However, if you can show that you need more land to use and enjoy your home, you can consider more than this amount as part of your principal residence. For example, this may happen if the minimum lot size imposed by a municipality at the time you bought the property is larger than 1/2 hectare.

Separated

You are separated when you start living separate and apart from your spouse or common-law partner because of a breakdown in the relationship for a period **of at least 90 days** and you have not reconciled.

Once you have been separated for 90 days (because of a breakdown in the relationship), the effective day of your separated status is the date you started living separate and apart.

Shared custody

Applies to a child who alternates, on a more or less equal basis, living with two parents who have separate residences.

For example:

- the child lives with one parent four days a week and the other parent three days a week;
- the child lives with one parent one week and the other parent the following week;
or
- any other regular cycle of alternation.

In these cases, both parents may be considered primarily responsible for the child's care and upbringing when the child lives with them.

Spouse

This applies only to a person to whom you are legally married.

Written agreement

Under a written agreement, a person agrees to make regular payments to maintain his or her current or former spouse or common-law partner, children of the relationship, or both. The written agreement should normally be signed and dated by both parties.

Important CRA forms related to separation and divorce

About a change in marital status

Form: [RC65 Marital Status Change](http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html) (<http://www.cra-arc.gc.ca/E/pbg/tf/rc65/README.html>)

Action:

Makes CRA aware of a divorce or separation which may affect CCTB and GST/HST credits. Also helps to establish that a separation or divorce has taken place which may be useful when claiming credits and deductions on a return.

File as soon as possible as and not later than the month following the month in which your marital status changed by court order. In cases of separation, file 90 days after the date of separation.

About support payments

Form: [T1157 Election for Child Support Payments](http://www.cra-arc.gc.ca/E/pbg/tf/t1157/) (http://www.cra-arc.gc.ca/E/pbg/tf/t1157/)

Action:

Applies to child support payments under a court order or written agreement made *before* May 1, 1997.

Allows parents with court orders or written agreements made before May 1, 1997 to choose to have child support payments payable after a set date not taxable for the recipient or deductible for the payer. Child support payments are not taxable for the recipient or deductible for the payer when the written agreement or court order was made after April 1997.

Both the payer and the recipient have to sign the form.

Use for older written agreements and court orders when this approach to tax treatment is beneficial to the ex-spouses.

Form: [T1158 Registration of Family Support Payments](http://www.cra-arc.gc.ca/E/pbg/tf/t1158/README.html)
(http://www.cra-arc.gc.ca/E/pbg/tf/t1158/README.html)

Action:

Advises CRA of a court order or written agreement made *after* April 30, 1997 which specifies support payments for a spouse or common-law partner.

Or, advises CRA of a court order or written agreement made before May 1997 which sets out support payments for a spouse or clearly distinguishes between child and spousal support payments and:

- Form T1157 has been filed, **or**
 - the child support amount was changed by a court order or written agreement after April 1997.
- Form requires social insurance numbers for both the payer and recipient.

Use to register a court order or written agreement that requires support payments for a spouse or common-law partner **or** to inform CRA of changes to a pre-May 1997 order that requires support payments for a spouse or for a spouse and child (children).

Forms:

- [RC66 Canada Child Benefits Application](http://www.cra-arc.gc.ca/E/pbg/tf/rc66/README.html)
(<http://www.cra-arc.gc.ca/E/pbg/tf/rc66/README.html>)
- [Information Booklet T4114](http://www.cra-arc.gc.ca/E/pub/tg/t4114/t4114-13e.pdf) (<http://www.cra-arc.gc.ca/E/pub/tg/t4114/t4114-13e.pdf>)
- [Information on GST/HST credit](http://www.cra-arc.gc.ca/E/pub/tg/rc4210/rc4210-e.html)
(<http://www.cra-arc.gc.ca/E/pub/tg/rc4210/rc4210-e.html>)

Action:

Asks CRA to recognize a change in parenting arrangements for a child (children) for whom benefits are being or could be paid. For example, to divide the CCTB 50/50 when there is now a shared parenting arrangement. This will also affect the Universal Child Care Benefit and GST/HST credit.

Form asks for former spouse's social insurance number.

Use [CCTB calculator](http://www.cra-arc.gc.ca/bnfts/clcltr/cctb_clcltr-eng.html) (http://www.cra-arc.gc.ca/bnfts/clcltr/cctb_clcltr-eng.html) to determine amount that might be paid.

Use [GST/HST credit calculator](http://www.cra-arc.gc.ca/bnfts/clcltr/gstc_clcltr-eng.html) (http://www.cra-arc.gc.ca/bnfts/clcltr/gstc_clcltr-eng.html) to determine the GST/HST credit available.

Form: [T2091 Designation of a Property as a Principal Residence by an Individual \(other than a Personal Trust\)](http://www.cra-arc.gc.ca/E/pbg/tf/t2091_ind/) (http://www.cra-arc.gc.ca/E/pbg/tf/t2091_ind/)

Action:

Advises CRA of the dates a home was designated as a principal residence. When it was not the principal residence, the form identifies the capital gain.

Form to be completed when a capital gain has to be reported related to the sale or disposition of a home which was not a principal residence for all the time it was owned.

Recognize the tax implications when spouses / common-law partners are going through marriage breakdown and have two homes. The tax rules say that spouses / common-law partners may have only one principal residence for a particular year until they have been living apart throughout a complete calendar year and have a written agreement or court order.

About RRSPs, RRIFs, and SPPs

Form: [T2220 Transfer from an RRSP or RRIF to Another RRSP or RRIF on Breakdown of Marriage or Common-law Partnership](http://www.cra-arc.gc.ca/E/pbg/tf/t2220/t2220-12e.pdf) (<http://www.cra-arc.gc.ca/E/pbg/tf/t2220/t2220-12e.pdf>)

Action:

Advises CRA of the transfer of holdings directly from one former spouse's or common-law partner's RRSP, RRIF, or Specified Pension Plan (SPP) to the other former spouse's or common-law partner's RRSP, RRIF, or SPP, according to a court order or written agreement.

Form to be completed by both spouses and the administrators of the transferring and receiving RRSP, RRIF, or SPP.

Use so the funds are properly rolled over from one account to the other and are not taxable.

Form: [T2151 Direct Transfer of a Single Amount Under Subsection 147\(19\) or Section 147.3](http://www.cra-arc.gc.ca/E/pbg/tf/t2151/t2151-12e.pdf) (<http://www.cra-arc.gc.ca/E/pbg/tf/t2151/t2151-12e.pdf>)

Action:

Advises CRA of the transfer of a one-time amount directly from one former spouse's RRSP, RRIF, Registered Pension Plan (RPP), Specified Pension Plan (SPP), or Deferred Profit Sharing Plan (DPSP) to the other former spouse's RRSP, RRIF, RPP, SPP, or DPSP, according to a written agreement or court order.

Form to be completed by the plan member or beneficiary asking the administrator to transfer the funds.

Use so the CRA is notified of the transfer and taxes are not deducted or owing on the amount transferred.

Form: [T1198 Statement of Qualifying Retroactive Lump-Sum Payment](http://www.cra-arc.gc.ca/E/pbg/tf/t1198/README.html) (<http://www.cra-arc.gc.ca/E/pbg/tf/t1198/README.html>)

Action:

Advises CRA of a lump-sum payment that qualifies for special tax treatment. Lump-sum payments for overdue spousal / common-law partner support or taxable child support owing under a written agreement or court order are qualifying retroactive lump-sum payments (QRLSP).

Form to be completed by the payer and given to the recipient of the QRLSP.

Completed form to be submitted by the recipient with the tax return for the year in which the lump sum payment was received.

Use to report the whole QRLSP in the year it is received. When the amount covers arrears of at least \$3,000 (not including interest) from previous years, the recipient may ask CRA to tax the portions that were owed in the previous years as if they were received in those years. CRA will make the adjustments when it is to the recipient's tax advantage. The recipient must have been resident in Canada throughout those years.

Form: [T1213 Request to Reduce Tax Deductions at Source for Year\(s\)](http://www.cra-arc.gc.ca/E/pbg/tf/t1213/README.html)
(<http://www.cra-arc.gc.ca/E/pbg/tf/t1213/README.html>)

Action:

Asks CRA for permission to ask an employer to reduce taxes deducted at source from a salary or lump-sum payment. Reductions may be made to tax deductions and non-refundable tax credits that are not part of the TD1, *Personal Tax Credits Return*. The taxpayer must be up-to-date on filing T1 Returns and have no amounts owing to CRA.

Form to be submitted to CRA by taxpayer, usually on an annual basis.

Use to keep funds with taxpayer through the year instead of getting a refund after filing a return.

Form: [TD1 \(Federal; Provincial & Territorial\) \[Annual\] Personal Tax Credits Return](http://www.cra-arc.gc.ca/E/pbg/tf/td1/td1-14e.pdf)
(<http://www.cra-arc.gc.ca/E/pbg/tf/td1/td1-14e.pdf>)

Action:

Gives an employer information to ensure deductions at source from a salary, commission, pension, etc. will more realistically reflect the taxpayer's non-refundable tax credits and certain other tax deductions. A taxpayer can use this form to increase the amount of tax deducted at source.

Form to be completed by taxpayer and submitted to employer.

Use, for example, to increase the amount of taxes deducted at source to avoid a large tax bill when filing a return when receiving spousal support payments or taxable child support payments.

Form: [T1013 Authorizing or Cancelling a Representative](http://www.cra-arc.gc.ca/E/pbg/tf/t1013/)
(<http://www.cra-arc.gc.ca/E/pbg/tf/t1013/>)

Gives CRA permission to disclose income tax information regarding a taxpayer to the person named on the form, or for that person to request changes to the taxpayer's return.

Form to be signed by the taxpayer giving or withdrawing permission.

Use to authorize a lawyer, accountant, bookkeeper or someone else to access a taxpayer's account and discuss it with CRA **or** to cancel the permission.

The information in the Toolkit covers federal tax rules under the *Income Tax Act* and other federal legislation. The information in the Toolkit needs to be considered in context with provincial tax rules, as well.