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**Spouse and Common-Law Partner****Who is a "spouse"?**

You might think this would be a simple question with a simple answer, and for many years this was true. Your spouse was the person to whom you were legally married at a particular point in time, regardless of whether you were living together or whether either of you were living with someone else. For tax purposes, this rule began to erode in 1988 when the concept of "spouse" was expanded for some (but not all) purposes of the *Income Tax Act* (the "Act") to include a person of the opposite sex with whom you were cohabiting in a conjugal relationship and:

- that relationship had continued for a period of at least one year; or
- that person was the parent of your child.

In 1993, this expanded definition became applicable for all income tax purposes, including spousal RRSP plan contributions. Effective for 2001 and later years, the concept of "spouse" was replaced with "spouse or common-law partner" for all income tax purposes. The opposite sex requirement was deleted from the definition of common-law partner, so that same-sex as well as opposite-sex couples living in a conjugal relationship (whatever that may be) are in effect treated as spouses for all tax purposes.

**Conjugal relationships**

Once you have a conjugal relationship, it's not so clear when it starts or ends. The definition of spouse is intended to be mandatory for income tax purposes. That is, relationships which meet the conjugal relationship test are supposed to become spousal relationships, whether the parties wish it or not.

The CRA addressed the issue of common-law partners in a February 2000 press release by saying, in part,

[w]e have a self-assessment system in which clients are expected to tell the truth and in which persons who make false declarations can be penalized. Whether or not two persons (opposite-sex or same-sex) are living in a conjugal relationship is a question of fact, and this can include whether or not the couple presents itself publicly as a conjugal couple, has claimed the status of a couple for purposes of a pension or health plan, etc. Besides, clients who fail to identify themselves as common-law partners in order to avoid losing some benefits may well find that they are also depriving themselves of important fiscal advantages and pension rights as well.

This position is as important for what it includes as well as for what it doesn't. First, there is no requirement that a relationship be an intimate relationship. The notion that taxpayers hold themselves out as a couple is about all that is required.

Second, the last sentence in the above CRA release excerpt implies that it is perhaps more concerned with instances where a couple fails to report a common-law relationship than with instances where it does report the relationship. A failure to report a common-law relationship could entitle an individual to enhanced child tax benefits, eligible dependant personal amounts, and multiple permanent residence exemptions to which he or she may not be entitled as a partner in a relationship.

For example, consider the case of two women who share an apartment. They both contribute to upkeep and household chores, but otherwise act entirely independently. Clearly they are not common-law partners and have no interest in being treated as such. After a period of time, however, they come to rely on each other and decide to remain together

more or less indefinitely. They want to buy a house in common and make each other the beneficiary of pension plans, RRSPs, and the like. The two women do not represent each other as a sexual partner, but do in many cases act as a couple, take vacations together, and so on. A joint declaration of common-law partnership by reporting each other as partners on the T1 return will generally be accepted as a declaration that they are a common-law couple for tax purposes and intend to partake of the associated tax advantages.

A self-declaration of common-law status for tax purposes seems to imply a relationship of some substance, regardless of the exact nature of the relationship. One thing that is certainly being made clear, however, is that you cannot pick and choose among tax benefits; once you claim common-law status, the declaration will be considered as evidence of the relationship for all tax purposes.

The CRA is understood to take the view that the rules are revenue neutral overall, with the tax benefits roughly offsetting the tax costs. This may be true from a government fiscal point of view, and may even be true in general terms over the lifetime of a couple. In the earlier years of the relationship, however, there may be instances where tax costs to the couple will be greater than if they had filed as individuals. That is likely to be offset by tax savings later on in their "tax life", as they become eligible for pension income splitting and the wider rollover provisions afforded under the Act.

Where a couple shares a residence and self-declares a common-law relationship, it will be relatively rare for the CRA to go behind the declaration and investigate the particulars of the relationship.

### Multiple Spouses/Partners

Under the common-law partner rules, you may have a spouse and/or several common-law partners at once. For example, a taxpayer who leaves a legal spouse and then lives for 12 months with a new common-law partner, seems clearly entitled to treat both the legal spouse and the new spouse as spouses for tax purposes. This situation would continue until there is either a legal divorce from the legal spouse or a breakdown of the common-law relationship. Where partners are content to let relationships trail away and be replaced without systematically agreeing on a divorce or "breakdown", one could visualize a substantial trail of spouses/partners being built up over time.

### Tax benefits of claiming a spouse or common-law partner

Listed below are some (but by no means all) of the more common tax benefits that flow from claiming a spouse or common-law partner. For common-law relationships to qualify, the couple must have been living together for at least 12 months before it is recognized as such for tax purposes.

**Spouse, common-law partner eligible dependant amount**— An amount equal to the basic exemption can be claimed by an individual supporting a spouse who has no personal income. The basic exemption amount is reduced by \$1 for each \$1 of earned income of the qualifying spouse. The amount is increased by the family caregiver amount if the dependant spouse is dependent upon the partner by reason of physical or mental infirmity. As well any unused portion of the "age amount" (which comes into play for certain taxpayers over the age of 65), the spousal amount can be transferred from one partner to the other.

**Pension income splitting**— Income qualifying for the pension tax credit is eligible for pension splitting between spouses or common-law partners. A taxpayer can transfer up to 50% of eligible pension income provided both spouses sign the requisite form, and both are living together and resident in Canada at the end of the taxation year. In situations where the transferee spouse is over 65 years of age (or under age 65 for payments from an annuity paid out of a superannuation or pension fund), that spouse could also claim the \$2,000 pension income deduction on the transferred pension income (provided that the transferee spouse had not used it to reduce his or her own pension income). This measure can provide significant tax savings depending upon the income levels of the partners involved in the relationship.

**Rollover of RRSP and RRIF monies on death**— A taxpayer can elect to transfer monies held in an RRSP or RRIF to a spouse on death. This produces a tax-free transfer of such monies to the surviving spouse or partner and will become taxable income of the partner when withdrawn. To the extent that RRSPs or RRIFs are not transferred to a surviving spouse or partner, the value of the RRSP or RRIF is included in the deceased partner's hands and the value thereof is included in his or her income in the year of death.

**The newly created "Family Tax Cut"**— As announced on October 30, 2014, the government will allow a limited form of income splitting of up to \$50,000 for couples with children under the age of 18 beginning with the 2014 taxation year. Unlike the pension income splitting rules, the income is not shifted from one partner to the other; instead, the difference in the federal tax payable is calculated and the combined federal tax payable of the partners and the combined tax that would be payable (had there been a split) qualifies as a credit of up to a maximum of \$2,000.

**Transfer of medical expenses and donation amounts**— If you have a spouse or common-law partner, you may claim medical expenses and donations incurred by your partner. Even if you cannot claim a personal amount for such partner, as a result of income earned by that partner, it may be beneficial to deduct all such expenses on one tax return (as opposed to each claiming what was in their name only). Generally it is more advantageous to deduct medical expenses on the tax return for the lower income partner. In addition, it is generally more advantageous to deduct donation expenses on only one return as opposed to two so as to limit the low tax credit afforded the first \$200 of donations per taxpayer.