Reporting spousal support and claiming deductions

In this article, I will try to present a few areas in the preparation of personal income tax returns of separated parents that are occasionally overlooked or reported incorrectly.

Claim for spousal support

It is well known that spousal support is generally deductible for the paying spouse and taxable for the receiving spouse whereas child support is not deductible or taxable. When making the claim for spousal support, it is important to include both spousal and child support as a total on line 230 of the income tax return and only the deductible spousal support on line 220. If you only include the spousal support on line 230 and line 220, Canada Revenue Agency (“CRA”) will reduce the claim by the amount of child support that should have been paid. CRA takes the position that the required amount of child support is paid first and any residual is then considered spousal support.

Documentation for support payments

CRA invariably requires a copy of the separation agreement (or court order) in the first year of separation when support payments are being reported. This provides them with proof of the amount of support to be paid. They also will almost assuredly request proof of payment. This is not as easily accomplished these days where cheques are not returned by financial institutions. Copies of the cheques might be accepted by CRA, but they may insist on seeing the endorsement on the back which means obtaining full copies from the financial institution – this usually results in a charge. I have found that obtaining written receipts from the recipient spouse is accepted by CRA. If you believe you may have difficulty obtaining receipts from your former spouse, you may want to stipulate in your separation agreement or court order that receipts for support paid will be provided.

Claiming dependants

A separated parent may be able to claim the amount for an eligible dependant on line 305 of Schedule 1 if at any time in the year you were separated and supporting a dependant in a home that you maintained (see page 34 of the CRA guide for more details). However, an exception that is often overlooked is that you cannot make this claim for a child for whom you were required to make child support payments during that year.

One method that could be considered where there is more than one child and the parents have joint custody, would be paying no child support for one child and more for the other child(ren) to make up the difference. Of course, the terms of the separation agreement would have to reflect this arrangement. As such, the paying spouse could claim the line 305 amount for the child for whom no support is paid and the receiving spouse could claim the line 305 amount for one of the other children.

There is also a claim on line 367 for children under 18 at the end of the year. Either spouse can claim this amount if the child resided with them during the year even if the other spouse claimed an amount for the child on line 305. However, only one spouse
can claim the amount on line 367 for all children under 18 at the end of the year. If the spouses cannot agree on who will make this claim, CRA states that neither can make the claim.

Either or both spouses can claim the children’s fitness amount and the new children’s arts amount. However, the claims cannot be for the same expenditures and the combined claim per child for each program cannot exceed the $500 limitation.

**Child care expenses**

Implied in the foregoing information concerning claiming dependants is the need for communication and cooperation between the separated parents. This is also true in the case of claiming child care expenses. Assuming that both parents are eligible for claiming qualifying child care expenses in a shared custody situation, each parent is eligible to claim child care expenses up to the limit available for that child. To claim the child care expenses, the parent must have made the qualifying payment. If both parents are paying the same child care provider, they should ensure that they get separate receipts for that part of the expense that they have paid. For greater detail on child care expenses, refer to Canada Revenue Agency’s Interpretation Bulletin IT-495R3 which can be viewed or downloaded from their website at www.cra-arc.gc.ca.

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