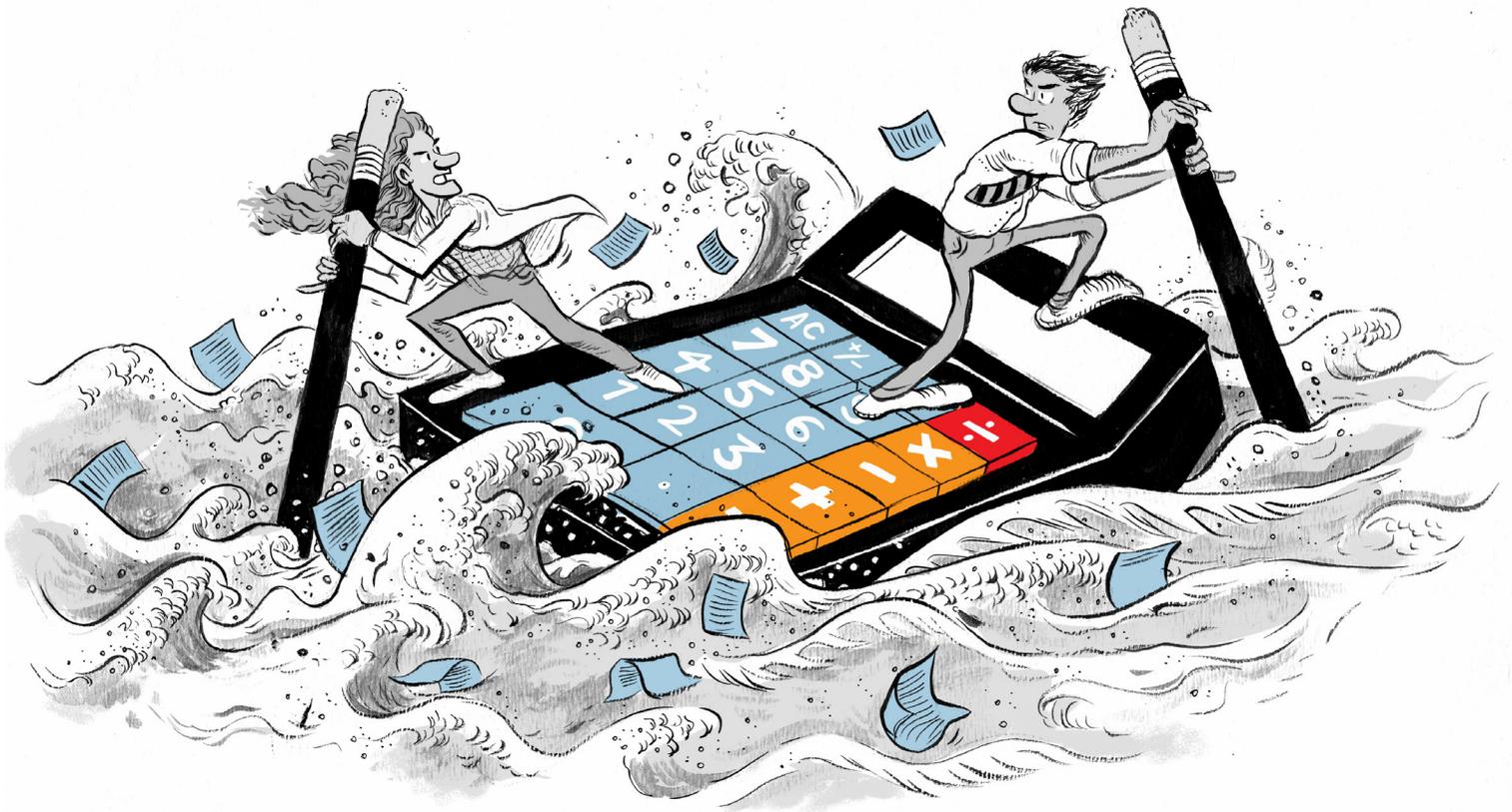


DIVORCE AND TAXES

Filing your taxes when you are separated or divorced is significantly different than when you were married. You can't just break it off with the Canada Revenue Agency, so here's how to make it work.



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If you've been through a separation, you know how difficult the process could be: filling out tons of paperwork, gathering financial information, and navigating the sometimes confusing rules around the division of assets, not to mention dealing with how to co-parent, if you have children.

Unfortunately, even after the separation agreement or divorce papers are signed, the paperwork is still not done. "Newly separated couples are not just having to co-ordinate parenting and who gets the dog, but they also have a new tax situation that requires some co-ordination as well." says Annie Boivin, Tax and Estate Planner at TD Wealth in Montreal.

Here are six things you should consider when you file those taxes after your marriage is over.

1. Are You Separated in the Eyes of The Canada Revenue Agency (CRA)?

Why does it matter if the CRA considers you separated or not? Because the CRA wants to ensure that you are accurately taking advantage of any deductions based on your marital status. If you and your spouse have an argument and one of you storms out and sleeps on a brother's couch, are you separated in the eyes of the CRA? Probably not; the CRA considers you separated when you live separate and apart from your spouse or common-law partner for a period of 90 days or more due to a breakdown in your relationship. A separation of less than 90 days is not considered a separation for the purpose of child and family benefits. Once you have been separated for that time, the effective day of your separated status is the day you started living separate and apart. For the child benefit, the CRA may only to recognize you as being separated, if you live in separate households. If you continue to share parenting and financial responsibilities in the same household, the CRA may not recognize your separation for the sake of child and family benefits and the GST/HST credit, or if you live in Quebec, Child Assistance Payments or the Solidarity Tax Credit.

2. Let the CRA Know It's Over

If you meet the criteria for being separated for tax purposes in a given tax year, you'll file your tax return for that year as "separated". This will mean that the CRA will assess your taxes based on your new marital status. If you finalize a divorce in a given tax year, you can file your tax return for that year as "divorced", although for the sake of your tax return, not much will change if you are separated versus divorced. Regardless, the CRA expects you to notify them when your marital status changes. You can call, do it online, or fill out and mail a marital status change form. If you're recently divorced, the CRA expects you to notify them by the end of the month following the month that your divorce was finalized.

3. Write-Off Legal Fees Where You Can

It may be a pleasant surprise after paying those big legal bills that you may be able to write-off a portion of those fees. The CRA will allow you to deduct legal fees that were paid to obtain or collect child or spousal support. Fees paid to your lawyer for preparing the separation agreement or negotiating the division of family assets, however, are generally not tax-deductible.

4. Claim the Eligible Dependent Tax Credit

If you have children, you may be able to claim them as eligible dependents. If you have primary custody of those children, the credit may go to you. If you have shared custody, then you will have to decide which parent will claim the credit. It can be claimed for one qualifying child annually and if you have more than one child, you may choose which one to claim for this credit. You may also choose to claim one child one year and the other the following year. Note, any income the child earns will be deducted from this credit dollar-for-dollar.

5. Support Payments and Taxes

Child support is not taxable in the hands of the person who receives the support, and the person who pays it can't claim the support as a deduction.

Spousal support, however, is fully taxable as income. Additionally, if you are paying spousal support to your ex, you can claim it as a deduction on your return.

6. Who Receives the Child Benefits?

If you have joint custody of your children, you may have to share child benefits with your ex. You may see a rise in the benefit amount, as your household income has decreased, but the CRA may split the benefit 50/50 between you and your ex.

There are also certain spousal tax credits you will now be no longer eligible for. The pension income amount, the disability amount, and the tuition, education and textbook amounts, can no longer be shared when you split. But, your lower household income may mean an increase in the amount of child benefit you are entitled to, and if your income is below a certain threshold, you may be eligible for an additional education grant for an RESP.

“Changes in your marital status can have a big implication on your taxes and on your financial situation,” says Boivin. “This might be a good time to sit down with your financial professional and review your overall situation.”

— **Denise O’Connell, MoneyTalk Life**

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