Consequences of Commingling Personal and Spousal RSPs

Many people contribute to RSPs established by their spouse or common-law partner (collectively referred to as “spousal RSP”) as a strategy to split income and save on taxes in retirement years. It is, however, not uncommon for people holding both personal and spousal RSPs to later decide to consolidate them into one account, whether to ease management or to save on administration fees. In such situations, the consequences of such consolidation should be kept in mind.

Three-year attribution rule relating to withdrawals from spousal RSPs

Withdrawals from a spousal RSP are subject to the three-year attribution rule. Here’s how it works:

If at the time the plan holder / annuitant withdraws funds from a spousal plan, there has been a contribution by their spouse or common-law partner (“Partner”) to **any** of the annuitant’s spousal plan(s) in the year of withdrawal or the previous two calendar years, it is the contributing Partner, and not the annuitant, who will be taxed on the withdrawal, up to the amount contributed to all spousal plans within that three-year period.

Example:

- *In June 2012, Terry contributes $10,000 to a spousal RSP for his Partner Lesley at Bank A.*
- *In September 2013, Terry contributes $5,000 to a different spousal RSP for Lesley at Bank B.*
- *In December 2015, Lesley withdraws $11,000 (including investment earnings) from her Spousal RSP at Bank A.*

According to the three-year attribution rule, $5,000 will be included in Terry’s income in 2015 since this amount was contributed by Terry between 2013 and 2015 to a spousal plan for Lesley. Lesley will be taxed on the remaining $6,000.

If Lesley waits until 2016 to withdraw amounts from either spousal RSP, and assuming no new amounts were contributed in 2016 by Terry to any of Lesley’s spousal RSPs, there will be no attribution of income to Terry since no contributions were made by Terry from 2014 to 2016.

CRA Form T2205 "*Amounts from a Spousal or Common-Law Partner RRSP or RRIF to Include in Income*" should be used to determine the amount of income to be included in the contributor and the annuitant’s tax returns.

Attribution does not apply if at the time of the withdrawal:

- The Partners are living separate and apart by reason of relationship breakdown, or if the contributing Partner is deceased.
- Either Partner is not a resident of Canada for tax purposes.

Note: Where the withdrawal is made from a spousal RIF and the amount does not exceed the minimum withdrawal amount, attribution also does not apply.

Result of consolidating individual and spousal RSP

It is important to realize that the CRA considers an RSP to be a spousal plan if:

- The Partner has made a contribution to the plan; or
- The plan has received a payment or transfer of property from a spousal plan.

Therefore, where an individual RSP and a spousal RSP are combined, the entire resulting plan is considered to be a spousal plan, and the three-year attribution rule may apply on withdrawals from the combined plan.

This means that if both the annuitant and the Partner have contributed to a spousal RSP, all withdrawals in the year of contribution or the following 2 years will be subject to the attribution rule, under which the total amount to be included in the Partner's income is the lesser of:

- the total amount withdrawn by the annuitant; and
- the total contributions by the Partner during the three-year window.

<u>An annuitant cannot designate a withdrawal as coming from their own contributions versus the Partner's contribution.</u>

Example:

- *In 2013, Terry contributed $1,000 to a spousal RSP for his partner Lesley. In the same year, Lesley herself made a $2,000 contribution to the same plan.*
- *In January 2015, Terry contributed $3,000 to Lesley's spousal RSP.*
- *In December 2015, Lesley withdrew $4,500 from the spousal RSP.*

Applying the attribution rule stated above, $4,000 should be included in Terry's income and $500 should be included in Lesley's income in 2015. The amounts are calculated as follows:

- *Total amount withdrawn by Lesley = $4,500*
- *Total contributions by Terry from 2013 to 2015 = $4,000.*

Therefore, the lesser of the two amounts (i.e., $4,000) is included in Terry's income and the balance of $500 ($4,500 - $4,000) is included in Lesley's income.

Revised 5/2/2015