

## **Income Attribution Rules**

### **An overview**

There area set of rules in the Income Tax Act ("ITA") that are designed to block your attempts to shift income from you to another person (usually your spouse or children) – these are the attribution rules. Following is an outline of when these rules will apply.

### **Attribution between Spouses**

If you transfer or loan property either directly or indirectly (by means of a trust or any other means), for the benefit of your ‘spouse’, any income or loss from the property and any capital gains or loss on the disposition of the property will be attributed back to you. This means that even though your spouse is receiving the income, the income must be reported on your tax return and will be taxed at your marginal tax rate. Effectively this leaves you and your spouse no better off from a tax perspective.

It should be noted that ‘spouse’ includes a common law partner, same sex couples who have been living together for at least one year and a person who subsequently becomes your spouse.

### **Attribution and Minor Children**

Income on property transferred or loaned, directly or indirectly (by means of a trust or any other means), to a related minor child will be attributed back to you. This rule only applies if the child is under 18 at the end of the year. Unlike the rules for your spouse, it doesn't apply to capital gains or losses on disposition of the property by the child. Transactions exposed to attribution are those in which a taxpayer and child are not dealing ‘at arm’s length.’ Children, grandchildren, great-grandchildren, your spouse’s children and your child’s spouse are considered to be ‘non- arms length’. As are your brother, sister, brother-in-law, sister-in-law, and your niece or nephew.

### **Loans to other Family Members**

Attribution will also apply to loans, but not transfers, to other family members (e.g.: children over 18) if one of the main reasons for the loan was to achieve income splitting and reduce taxes. You should note, however, that loans for non-investment purposes, such as to pay tuition fees, would fall outside these rules because no income is earned on these funds.

There are also some specific situations included in the income tax act to ensure that the above rules cannot be circumvented.

## **Back-to-Back Loans and Transfers**

If you loan or transfer property to a third person, who then loans or transfers it to your spouse or a related minor child, the transaction will be treated as if you loaned or transferred the property directly.

## **Loan Guarantees and Repayments**

If you guarantee a loan for your spouse or related child and the loan is granted based on the strength of your guarantee, then the loan would be treated as if you loaned the money directly and attribution will apply.

If you repay a loan on which attribution applied with proceeds of a new loan then attribution would apply to the new loan.

## **Transfers to a Trust**

Indirect transfers to a trust for the benefit of your spouse or related child will result in the attribution rules being applied in the same way as if you gave the money directly to them.

## **Income-Splitting Tax – "Kiddie Tax"**

An "income-splitting tax" at the top marginal rate (29%) rather than at the graduated rates (16, 22 and 26%) will be imposed on certain types of income for children under 18 years of age. For example, taxable dividends on shares of a private (unlisted) company, whether received directly or through a trust or partnership, will be subject to this tax. In addition any income subject to this tax will not be eligible for any deductions. (E.g.: RRSP) or credits, other than the dividend tax credit and foreign tax credit.

## **Is there any Good News?**

Even though the above information makes it seem that there are no income splitting opportunities – there are! Sensible tax planning can indeed make it possible to divert income to spouses and children. Our next article will discuss how this is possible.

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