

Marmer Penner Inc. Newsletter

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Change to RRSP Rollover Policy?

Many readers are familiar with paragraph 146(16)(b) of *The Income Tax Act* without recalling exactly its provisions. According to this paragraph, a taxpayer may transfer all or a portion of his/her RRSP to an RRSP or RRIF held by a spouse, common-law partner, former spouse or former common-law partner on a tax-deferred basis as long as:

- a) The parties are living separate and apart;
- b) The transfer is made pursuant to a written separation agreement or order; and
- c) The transfer relates to a “division of property” between the transferor and the transferee “in settlement of rights arising out of, or on the breakdown of their marriage or common-law partnership”.

Years ago, the belief was that this RRSP rollover provision could be utilized to satisfy only equalization obligations since these were the sole rights relating to a division of property. In fact, according to CRA’s 2002 document entitled “Views 2002-0144225”, the phrase

“settlement of rights arising out of” includes support rights as well as property rights.

Later, CRA issued documents in 2006 and 2008 (entitled Views 2006-0199271E5 and 2008-0304451E5 for those who want to delve more deeply into this debate’s evolution) stating that the provisions of 146(16)(b) cannot be used to pay arrears of spousal or child support as the transfer must be in satisfaction of “property rights”. That the documents specified support arrears as being denied this favourable treatment left many of us believing that 146(16)(b) could still be used to settle future support rights, the kind that are settled with a non-taxable lump sum. Accordingly, it seemed logical that a tax-deferred transfer would be available.

In his book *Financial Principles of Family Law*, Andrew wrote that CRA issued an advance tax ruling permitting a taxpayer to use 146(16) to settle future spousal support rights because the “RRSP transfer was considered to be in settlement of a right arising out of the marriage which included a right to receive support.” The response did not appear to be concerned about the “division of property” portion of the legislation.

However, in the latter part of 2015, CRA’s Financial Industries and Trusts Division issued External Technical Interpretation document number 2015-0564351E5. In it, the CRA was asked whether an individual can transfer an amount from his/her RRSP to a former spouse’s RRSP pursuant to 146(16) where the amount transferred is pursuant to an order or written agreement to settle a child support claim. No specifics were provided whether it was arrears or future child support. The CRA concluded that a payment of such an amount would not comply with the provisions “because such a payment does not relate to the division of property between the payor and the recipient in the settlement of rights arising from a marriage breakdown.”

We are left comfortably advising that tax-deferred RRSP transfers are available to settle equalization obligations and rather uncomfortable recommending its use for settling future support rights. Furthermore, we recommend that it not be used to settle arrears support.

Readers can take solace in the knowledge that CRA does not really stand behind its Views documents stating that “this technical interpretation provides general comments about the provisions of the Act and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation”. Thanks for the clarity, CRA.

This newsletter is not intended to substitute for proper professional planning. It is intended to highlight areas where professional assistance may be required or enough to discuss at the next hoedown. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.