



[Canada.ca](#) > [Canada Revenue Agency \(CRA\)](#) > [Forms and publications - CRA](#) > [Technical tax information](#) > [Income Tax](#) > [Income tax folio index](#)
> [Series 1 - Individuals](#) > [Folio 3 Family Unit Issues](#)

Income Tax Folio S1-F3-C3, Support Payments

Series 1: Individuals

Folio 3: Family Unit Issues

Chapter 3: Support Payments

Summary

The purpose of this Chapter is to explain the position of the Canada Revenue Agency (CRA) concerning the taxation of support payments made under a court order or a written agreement for the maintenance of a child, spouse or common-law partner or former spouse or common-law partner.

The Chapter also discusses the deductibility of support payments and the specific criteria that must be satisfied in order for such payments to qualify for a deduction. The Chapter explains the different tax rules that apply to court orders or written agreements made before May 1997 and after April 1997.

This Chapter provides the reader with an extensive review of the legislation and related provisions concerning the taxation of support payments and is intended for readers who have a general understanding of the Act. Taxpayers seeking a less technical overview of support payments may prefer to first review [Pamphlet P102, Support Payments](#).

The CRA issues income tax folios to provide a summary of technical interpretations and positions regarding certain provisions contained in income tax law. Due to their technical nature, folios are used primarily by tax specialists and other individuals who have an interest in tax matters. While each paragraph in a chapter of a folio may relate to provisions of the law in force at the time it was written (see the [Application](#) section), the information provided is not a substitute for the law. The reader should, therefore, consider the chapter's information in light of the relevant provisions of the law in force for the particular tax year being considered.

The CRA may have published additional guidance and detailed filing instructions on matters discussed in this Chapter. See the [CRA Forms and publications](#) webpage for this information and other topics that may be of interest.

Table of contents

- [Discussion and interpretation](#)
 - [General overview](#)
 - [Terminology describing the parties and relationship status](#)
 - [The concept of a support amount](#)

- [Orders of a competent tribunal and written agreements](#)
 - [Allowance](#)
 - [Payment of support amounts](#)
 - [Registering a court order or written agreement](#)
 - [Personal tax credits](#)
 - [Legal and accounting fees](#)
 - [Child care expenses](#)
 - [Application](#)
 - [Reference](#)
 - [History](#)
-

Discussion and interpretation

General overview

3.1 There are two types of support payments: spousal support and child support. The taxation of support payments is addressed in subsection 56(1), with related definitions in section 56.1. The deductibility of support payments is determined by a formula in section 60. Central to a discussion of the tax treatment of support is the expression **support amount**, which is defined in subsection 56.1(4) and discussed in ¶3.10.

3.2 Generally speaking, spousal support payments are taxable to the recipient and deductible by the payer. The tax treatment of child support payments is more complicated because the rules changed in 1997. If a child support obligation commenced with a court order or written agreement made after April 1997, the payer is not entitled to a deduction for the maintenance of children of the recipient. If a child support obligation commenced with a court order or written agreement made before May 1997, payments could be deductible provided the amounts paid for the support of children are not modified after April 1997. For a complete discussion of issues dealing with court orders or written agreements dated prior to May 1997 see ¶3.21 to 3.27 and ¶3.69 to 3.70.

3.3 Generally, where both the payer and recipient are residents of Canada, any support amount deductible by a payer under paragraph 60(b) is required by paragraph 56(1)(b) to be included in the income of the recipient. Similarly, if the payer is not entitled to an income deduction for support amounts paid, the recipient is not required to include such amounts in income. With respect to payments to or from non-residents, please see ¶3.66.

Terminology describing the parties and relationship status

3.4 A **child** of a taxpayer includes:

- a person of whom the taxpayer is the legal parent;
- a person who is wholly dependent on the taxpayer for support and of whom the taxpayer has, or immediately before the person attained the age of 19 years had, in law or in fact, the custody and control;
- a child of the taxpayer's spouse or common-law partner; and
- a spouse or common-law partner of a child of the taxpayer.

3.5 A spouse of a taxpayer means a person to whom the taxpayer is legally married. In addition, for the purposes of certain provisions of the Act including support-related paragraphs 56(1)(b) and 60(b) and sections 56.1 and 60.1, subsection 252(3) extends the meaning of the terms **spouse** and **former spouse** of an individual to include another individual who is a party to a voidable or void marriage with the particular individual.

3.6 For tax years after 2000, the term **common-law partner** in respect of a taxpayer is defined in subsection 248(1) and at a particular time includes:

- a person who at that time cohabits in a conjugal relationship with the taxpayer and has done so throughout a continuous period of at least 12 months that ends at that time; and
- a person who at that time cohabits in a conjugal relationship with the taxpayer and is the parent of a child of the taxpayer for one of the following reasons:
 - the person is the legal parent of the child; or
 - the child is wholly dependent on the person for support and the person has, in law or in fact, the custody and control of the child (or did immediately before the child turned 19 years of age).

3.7 Under the definition of common-law partner, once individuals begin to cohabit in a conjugal relationship they are deemed to continue cohabiting in that conjugal relationship until they live separate and apart for a period of 90 consecutive days because of a breakdown of their conjugal relationship. After this 90-day period has passed, the effective day of the change of marital status is the date the individuals started living separate and apart.

Spouses or common-law partners are **separated** when they have lived **separate and apart** because of a breakdown in the relationship for a period of at least 90 days and have not reconciled.

3.8 For tax purposes, a taxpayer still has a spouse or common-law partner if they have been living separate and apart for reasons other than a breakdown in the relationship. A taxpayer whose marital status changes during the year should complete and file [Form RC 65, Marital Status Change](#).

3.9 The determination of whether individuals live **separate and apart** as a result of a breakdown of the conjugal relationship is a question of fact. A breakdown of the conjugal relationship may be easier to demonstrate when the individuals reside in two or more distinct household units or a common household unit with separate entrances and amenities (for example, a residence with a basement apartment with its own kitchen and bathroom).

The concept of a support amount

3.10 The tax treatment of a support payment depends partly on whether the amount qualifies as a **support amount**. The term is defined in subsection 56.1(4), which provides that an amount is a support amount if:

- it is payable or receivable as an allowance on a periodic basis;
- it is paid for the maintenance of the recipient, the children of the recipient, or both;
- the recipient has discretion as to the use of the amount; **and**
- where the recipient of the amount is the spouse or common-law partner or former spouse or common-law partner of the payer, the parties are living separate and apart because of a breakdown of their relationship and the amount is receivable under an order of a competent tribunal or under a written agreement; **or**
- where the recipient is the parent of a child of whom the payer is a legal parent, the amount is receivable under an order of a competent tribunal in accordance with the laws of a province or territory.

3.11 In this Chapter, the term **recipient** means an individual receiving a support amount from a taxpayer, where that individual is the taxpayer's current or former spouse or common-law partner, or the parent of a child of whom the taxpayer is the legal parent.

3.12 Support payments made pursuant to a court order or written agreement which are solely for the maintenance of a spouse or common-law partner or former spouse or common-law partner are generally referred to as **spousal support** payments.

3.13 The term **child support amount** is defined in subsection 56.1(4). It means any support amount that is not identified in the written agreement or court order under which it is receivable as being solely for the support of a recipient who is:

- the payer's spouse or common-law partner or
- the payer's former spouse or common-law partner or
- a parent of a child of whom the payer is a legal parent.

If an order or agreement provides for a global amount of support to be paid for a spouse and child, the full amount will be considered to be a child support amount.

3.14 If a court order or written agreement provides for the payment of amounts to a third party, such amounts may qualify as support amounts. However, these amounts will be treated as **child support amounts** unless they are clearly identified as being solely for the support of the recipient. Third-party payments are discussed in ¶[3.50](#) to 3.61.

Taxation of support payments

3.15 Prior to May 1997, both spousal and child support payments were generally taxable to the recipient and deductible by the payer. After April 1997, the recipient of a support payment must determine how much to include in income, pursuant to the calculation in paragraph 56(1)(b).

3.16 For amounts received after April 1997, the amount of support payments to be included in the income of the recipient must be determined using the formula in paragraph 56(1)(b):

$$A - (B + C)$$

where:

A is the total of all support amounts **received** by the taxpayer from a particular person after 1996 and before the end of the year, where the taxpayer and the particular person were living separate and apart at the time the support amount was received;

B is the total of all child support amounts **receivable** by the taxpayer from the particular person under an order or agreement on or after its commencement day and before the end of the year, for a period that began on or after its commencement day; and

C is the total of all support amounts **received** by the taxpayer from a particular person after 1996 that were included in computing the taxpayer's income for a preceding year.

Deductibility of support payments

3.17 As noted above, prior to May 1997, support payments were generally deductible by the payer. For amounts paid after 1996, the deductibility of a support payment must be determined using the formula in paragraph 60(b):

A - (B + C)

where:

A is the total of all support amounts **paid** after 1996 and before the end of the year by the payer to the recipient, where the payer and the recipient were living separate and apart at the time the support amount was paid;

B is the total of all child support amounts **payable** by the payer to the recipient under an order or agreement on or after its commencement day and before the end of the year, for a period that began on or after its commencement day; and

C is the total of all support amounts **paid** by the payer to the recipient after 1996 that were deductible in computing the payer's income for a preceding year.

3.18 By virtue of the formula in paragraph 60(b), if a payer and recipient are parties to a court order or written agreement that has a commencement day, support amounts paid by the payer to the recipient in a tax year are considered **first** to be for child support payable on or after the commencement day for periods that began on or after that day. Any **balance** paid in the year is then considered to be for child support payable for earlier periods or for support of the recipient, as the case may be. In other words, child support payable on or after the commencement day of an order or agreement and before the end of the current year, for periods that began on or after the commencement day, has to be fully paid by the end of the current year before the payer may claim a deduction for support amounts paid in the current year for:

- child support payable for earlier periods or
- support of the recipient.

As explained in ¶3.35, the priority of child support does not apply when the child support and spousal support are payable under different court orders or written agreements, and the recipients are different individuals.

Example 1 – Deduction for spousal support limited because of child support arrears

Beginning April 2010, Jacques had to make total monthly support payments of \$1,800. This represented \$800 for the support of his former spouse, and \$1,000 for the support of their children. Jacques paid \$1,800 monthly from April to September for a total of \$10,800. For the months of October to December, Jacques only paid the \$800 per month spousal support amount for a total of \$2,400. At the end of the year, Jacques had paid \$13,200 in total support but was \$3,000 in arrears for child support payments.

When he filed his 2010 income tax and benefit return, although Jacques had paid \$7,200 ($\800×9) in spousal support, he was only entitled to a deduction of \$4,200 because he did not fully pay his child support. For tax purposes, element B of the formula in paragraph 60(b) reduced the \$13,200 total of support amounts paid by the total amounts payable for child support ($\$1,000 \times 9$).

In 2011, Jacques paid \$1,800 monthly for the entire year for a total of \$21,600. When he filed his 2011 income tax and benefit return, he was entitled to a deduction of \$9,600. Although he continued to have an arrears obligation of \$3,000 for 2010, for tax purposes, element B of the formula in paragraph 60(b) reduced the total amount of support payments paid after 1996 ($\$13,200 + \$21,600$) by the total amounts payable for child support due after the commencement day ($\$9,000 + \$12,000$). Element C of the formula reduced the total amounts paid by the total amounts deducted by Jacques in the preceding tax years.

Reimbursement of support payments

3.19 An individual who has deducted support payments under section 60 may receive a reimbursement of all or a portion of such payments under a court order. If so, paragraph 56(1)(c.2) requires the individual to include the amount of the reimbursement in income in the year received. Paragraph 60(c.2) provides the payer of the reimbursement with a corresponding deduction provided the support payments had been included in his or her income. The payer may deduct the reimbursement in the year it is paid or in one of the two immediately following years, to the extent that the reimbursement was not deducted in a preceding tax year.

Paragraphs 56(1)(c.2) and 60(c.2) do not apply to reimbursements made under a written agreement.

Optional deduction of support payments in the year of a change in marital status

3.20 A taxpayer might only be separated from their spouse or common-law partner because of a relationship breakdown for part of a year. In this situation, the taxpayer may claim either any deductible spousal support amounts paid for that year or, if available, the allowable non-refundable tax credit, whichever is more beneficial (see ¶3.77).

If the parties reconcile before the end of the year and choose to claim the spouse or common-law partner amount, the taxpayer may also qualify to claim the non-refundable tax credit amounts transferred from his or her spouse or common-law partner. Additional information is available in [Guide P102, Support Payments](#).

Commencement day

3.21 The formulas in paragraphs 56(1)(b) and 60(b) use the term **commencement day** in connection with court orders or written agreements for support. For this reason, the expression is relevant to determining the extent to which support amounts are included in the recipient's income and are deductible by the payer. The commencement day of a court order or written agreement is defined in subsection 56.1(4) and cannot be a day that is before May 1997. For a court order or written agreement made after April 1997, the commencement day is the day the order or agreement is made. A court order is made on the date it is rendered. Where a court order or written agreement pre-dates May 1997, a commencement day may be triggered for the original court order or written agreement when any of the situations discussed in ¶3.24 applies.

3.22 In general, the effects of the formulas in paragraphs 56(1)(b) and 60(b) are:

- if the court order or written agreement does not have a commencement day, support amounts paid under the order or agreement are included in the recipient's income and are deductible by the payer;
- if the court order or written agreement has a commencement day and the payer is required to make support amount payments for the maintenance of the recipient only (the payer is not required, under any court order or written agreement, to make support amount payments for the maintenance of children of the recipient), support amounts paid for the maintenance of the recipient are included in the recipient's income and are deductible by the payer;
- if the court order or written agreement has a commencement day, child support amounts paid on or after the commencement day for a period that began on or after that day are not included in the recipient's income and are not deductible by the payer.

3.23 However, subsections 56.1(3) and 60.1(3) may, in certain circumstances, deem a written agreement or court order to have been made on a previous date. Essentially these deeming provisions permit certain voluntary payments made before the time the court order or written agreement is made, to be considered to have been paid and received under the order or agreement. The effect is to deem the order or agreement to have been made on the day the first such amount was paid and received. These deeming provisions are discussed in more detail in ¶3.36 to 3.37. If the order or agreement is deemed to have been made on a day that is after April 1997, the commencement day is the day the order or agreement is deemed to have been made.

3.24 A court order or written agreement made, or deemed to have been made, before May 1997, does not have a commencement day unless one of the following situations exists:

- a) The payer and the recipient elect, using Form T1157, Election for Child Support Payments (see ¶3.70), to have the child support payable on and after a specified date be not taxable and not deductible. In this situation, the commencement day of the order or agreement is the specified date.
- b) The order or agreement is varied after April 1997 to increase or decrease the child support amounts payable (however, see ¶3.26). In this situation, the commencement day of the order or agreement is the date on which the first payment of the varied amount is required to be made.
- c) The order or agreement remains valid, but after April 1997 the same payer and same recipient become party to a subsequent order or agreement, the result being a change in the total child support amounts payable (see ¶3.27). In this situation, the commencement day of the order or agreement is the commencement day of the first such subsequent order or agreement.
- d) The order or agreement, or any variation thereof, specifies a date as its commencement day for the purposes of the Act, or provides that child support amounts payable on and after a specified date will no longer be taxable or deductible. In this situation, the commencement day of the order or agreement is the specified date.

3.25 Where the order or agreement is deemed to have been made before May 1997, and it changes a child support amount payable to the recipient from the last child support amount paid to the recipient before May 1997, the commencement day of the order or agreement is the date on which the first payment of the changed amount is required to be made (see ¶3.37).

If more than one of the situations in ¶3.24 and 3.25 applies, the commencement day of the order or agreement is the earliest of the possibilities. If an order or written agreement made before May 1997 changes only the amount of spousal support payable, that change in spousal support will not trigger a commencement day under either subparagraph (b)(ii) or (b)(iii) of the definition of commencement day in subsection 56.1(4).

3.26 For the purposes of ¶3.24(b), revisions to increase or decrease child support amounts payable under a court order or written agreement do not include automatic changes in child support amounts that are built into the order or agreement (for example, cost-of-living increases or an adjustment proportionate to a change in the payer's income).

3.27 If a payer and recipient are parties to a court order or written agreement made before May 1997, and they enter into a subsequent order or agreement after April 1997 with the result that the total child support payable by the payer to the recipient is changed, the commencement day of the original order or agreement is the same as the commencement day of the first subsequent order or agreement (see ¶3.24(c)). The result is that child support amounts that become payable on or after the commencement day of May 1997 or later are not deductible. This applies even if the child support payable under the subsequent order or agreement is for a different child or children.

Example 2 – Commencement day and changes in custody

When Ron and Debbie signed their separation agreement on September 15, 1996, Ron had custody of their son and Debbie had custody of their daughter. The agreement required Ron to pay Debbie \$300 a month for the support of their daughter. The support payments were deductible by Ron and included in Debbie's income.

In 2011, Ron accepted employment in a new city and as a result his son moved in with Debbie. Under a separate written agreement made on August 15, 2011, Ron agreed to pay Debbie \$400 a month for the support of their son starting immediately.

The commencement day of the two agreements is August 15, 2011. The child support amounts payable for both the son and the daughter on or after August 15, 2011, are not deductible.

Example 3 – Commencement Day and changes in child support amounts

When André and Louise signed their separation agreement on September 15, 1995, Louise had custody of their three children. The agreement required André to pay Louise \$200 per child each month for the support of each child. The support payments were deductible by André and included in Louise's income.

In 2010, the eldest child Marc, age 19, commenced attending university away from home. Under a new agreement made on October 20, 2010, André was required to pay 2/3 of Marc's education and living expenses while living away from home as well as the original \$200 per child each month for the summer months when Marc returned home to reside with Louise. André was also required to continue paying the previous \$200 per child each month for the support of the other two children.

Because there is a new agreement, the commencement day of both agreements is October 20, 2010. As a result, the child support amounts payable for all three children on or after October 20, 2010, are not deductible.

Orders of a competent tribunal and written agreements

3.28 An **order of a competent tribunal** is a decree, order or judgment made by a court, such as a family law court or other competent tribunal. In this Chapter, the term **order of a competent tribunal** is more commonly referred to as a **court order** and **order**. Nothing less than a concrete pronouncement, decree or direction of a tribunal empowered to make an order will constitute an order as required by the definition of support amount in subsection 56.1(4). The CRA administratively accepts that an agreement deemed by a provincial court to be a court order for purposes of provincial maintenance enforcement legislation may be considered an order made by a competent tribunal for purposes of subsection 56.1(4).

3.29 A written agreement may take the form of a written document under which a person agrees to make regular payments to maintain their current or former spouse or common-law partner, children of their current or former spouse or common-law partner, or both. The agreement should normally be duly signed and dated by both parties.

3.30 An exchange of written correspondence between the parties or their respective solicitors may be considered to be a written agreement if:

- there was the intention to create a binding and enforceable contractual relation;
- the exchange of written correspondence outlines all of the essential terms and conditions of the agreement in a clear and unambiguous manner; and
- there is a clear and unequivocal acceptance in writing by both parties of all those terms and conditions.

3.31 In many cases, an exchange of correspondence may include an exchange of electronic communications (for example, email or text message) to negotiate an agreement. Because an email address does not definitively confirm the identity of the sender, an electronic exchange of correspondence on its own may not be sufficient to establish that the parties have entered into a written agreement through an exchange of correspondence as detailed in ¶3.30. Where parties use electronic communications to negotiate the terms of an agreement, it is a question of fact as to whether the requirements described in ¶3.30 are met.

Priority of court order over a written agreement

3.32 When a support amount is required to be paid pursuant to a court order and circumstances such as the residence of a child have changed, the payer and recipient may want to change or rescind the court-ordered support obligations through a written agreement. However, as reiterated in Foreman v The Queen, 2012 TCC 36, 2012 DTC 1079, a court order is legally binding until it is varied by a court of competent jurisdiction.

Provisions of the Income Tax Act prevail

3.33 Although court orders and written agreements may contain statements regarding the taxation of support amounts paid pursuant to the court order or written agreement, the tax treatment of support amounts will be based solely on the requirements set out in the Act.

More than one court order or written agreement with a particular recipient

3.34 If a payer has entered into more than one court order or written agreement with a particular recipient, the formula in paragraph 60(b) applies to the combined totals under all such orders and agreements.

Court orders or written agreements with more than one recipient

3.35 If by virtue of one or more court orders or written agreements, a payer is required to make support amount payments to different recipients, the amount the payer may deduct under paragraph 60(b) is determined separately for each recipient.

Example 4 – Payments to more than one recipient

Under a court order dated June 15, 2010, Vincent must pay child support to his first wife, Lydia. Under a written separation agreement with his second wife, Judith, he must pay spousal support.

At the end of 2011, he is in arrears in child support payments to Lydia, but has fully paid his spousal support to Judith.

Despite the arrears of child support payable to Lydia, the spousal support payments to Judith may be fully deducted by Vincent because the formula in paragraph 60(b) is applied separately to each recipient.

Payments made prior to the date of a court order or agreement

3.36 Although payments made prior to the date of a court order or written agreement cannot be considered to be paid under the court order or written agreement, they may nevertheless qualify as support amounts to be used in determining the amount the payer may deduct under paragraph 60(b). Subsection 60.1(3) provides that such payments made in the year of the order or agreement or in the preceding year are deemed to be paid under the order or agreement if the document provides that they are to be so considered.

3.37 Subsection 60.1(3) also deems the order or agreement to be made, generally, on the day on which the first such payment was made. Knowing this date is necessary for purposes of determining whether there is a commencement day of the order or agreement. This will, in turn, determine the deductibility of the support amounts under paragraph 60(b).

A court order or written agreement actually made after April 1997 but deemed by subsection 60.1(3) to have been made before May 1997 may change a child support amount payable to the recipient from the last child support amount paid to the recipient before May 1997. In this situation, provided an earlier commencement day does not apply, subsection 60.1(3) considers the order or agreement to have a commencement day that is the day on which the first payment of the changed amount is required to be made.

Example 5 – Payments made prior to the date of a court order or agreement

Nathalie and Sylvain separated in January 2009. Commencing in February 2009, on the first day of each month, Nathalie paid Sylvain \$500 in spousal support. On March 8, 2011, a written agreement was established confirming that Nathalie would continue to pay Sylvain \$500 monthly in spousal support.

The written agreement explicitly provided that all amounts paid before March 8, 2011 are considered to have been paid and received under the agreement.

Under subsection 60.1(3), the agreement is deemed to have been made on January 1, 2010 and all payments made from January 1, 2010 to March 1, 2011 inclusive are deemed to be made under the agreement. Nathalie may deduct the payments for 2010 and 2011 in the year the amounts were paid. Similarly, subsection 56.1(3) requires Sylvain to include the amounts in income in the year received. Any amounts paid prior to January 1, 2010 are not considered support payments because the Act only addresses prior payments to the extent that they were paid in the year or the preceding tax year.

Allowance

3.38 As noted in ¶3.10, to qualify as a support amount for the purposes of the definition in subsection 56.1(4), the amount must be payable as an allowance. An **allowance** is a specified sum of money which has been established in advance of payment by the court or the parties as being the required payment to be made by the payer to the recipient for the maintenance of the recipient, children of the recipient or both.

Allowances based on formula

3.39 A specified sum of money that is subject to adjustment in accordance with some reasonable formula or index may qualify as an allowance even though the exact future amounts payable are not specified in the order or agreement. An example of such an adjustment might be one to be made with reference to a percentage of the payer's income, federal or provincial child support guidelines, or the cost of living index.

3.40 Where a separation agreement or court order provides for spousal support payments which are tied to bonus and incentive payments, the payment could meet the definition of a support amount even though the exact future amounts are not specified in the order or agreement. Providing all other requirements of the definition of support amount are met, a payment which is calculated by reference to bonuses or incentive payments that are calculated at regular intervals (for example, annually, quarterly or monthly), would meet the requirement of being periodic. If the payment is calculated by reference to bonuses or incentive payments that do not occur regularly, then the payment would not meet the requirement of being periodic.

Offset against amounts due from recipient

3.41 An individual may be required by a court order or written agreement to pay an allowance for the maintenance of the recipient and their children. There may also be a requirement to sell the family residence to the recipient with payment for the residence to be effected by a partial or full offset of the allowance payable for an applicable period of time. In such cases, the amount of the allowance which would qualify as a support amount is the gross amount of the allowance with no adjustment for the amount of offset.

3.42 Similarly, a recipient might owe the payer an equalization amount, the payment of which is to be effected by a partial or full offset of the allowance payable for an applicable period of time. In this situation, the amount of the allowance which would qualify as a support amount is the gross amount of the allowance with no adjustment for the amount of offset because the equalization amount is not a support payment.

Payment of support amounts

Payments on a periodic basis

3.43 To qualify as a support amount under subsection 56.1(4), one condition is that the amount be payable as an allowance on a **periodic basis** for the maintenance of the recipient, children of the recipient or both. The Federal Court of Appeal decision in *The Queen v McKimmon*, [1990] 1 FC 600, 90 DTC 6088, listed criteria that should be considered in making the distinction between periodic payments made as an allowance for maintenance and payments made as instalments of a lump or capital sum. Some of the more important criteria are:

a) **Length of periods at which payments are to be made** – Amounts payable weekly or monthly are easily characterized as allowances for maintenance. Where the amounts are payable at longer intervals the issue becomes less clear. If the amounts are to be paid at intervals of greater than one year it is unlikely that they will qualify as an allowance for maintenance.

b) **Whether payments are for an indefinite period or fixed term** – An allowance for maintenance will more commonly provide for its continuance either for an indefinite period or until the occurrence of an event which will cause a material change in the needs of the recipient (such as the coming of age of a child). Sums payable over a fixed term, on the other hand, may be more readily seen as being of a capital nature.

c) **Amount of payments relative to the income and living standards of both the payer and recipient** – Where amounts payable are in excess of an amount sufficient to maintain the recipient, children of the recipient or both, in the style to which they were accustomed prior to the breakdown of the marriage or common-law partnership, they will not likely be viewed as an allowance for maintenance. The chance of such amounts qualifying as an allowance for maintenance is even less likely where the payments are to be made over a short period of time. Where the amount is no greater than required to maintain the recipient's standard of living it is more likely to qualify as an allowance for maintenance.

d) **Whether the payments purport to release the payer from any future obligations to pay maintenance** – If there is such a release the payments will normally not be considered an allowance for maintenance.

Lump-sum payments

3.44 An amount paid as a single lump sum will generally not qualify as being payable on a periodic basis. However, there may be circumstances where a lump-sum amount paid in a tax year will be regarded as qualifying as a periodic payment where it can be identified that:

- the lump-sum payment represents amounts payable periodically that were due after the date of the order or written agreement that had fallen into arrears, or
- the lump-sum amount is paid pursuant to a court order and in conjunction with an existing obligation for periodic maintenance, whereby the payment represents the acceleration, or advance, of future support payable on a periodic basis, for the sole purpose of securing the funds to the recipient, or
- the lump-sum amount is paid pursuant to a court order that establishes a clear obligation to pay retroactive periodic maintenance for a specified period prior to the date of the court order.

In any of the above situations, the lump-sum payment will not, in and of itself, change the nature of the underlying legal obligation of periodic maintenance payments.

However, a lump-sum amount paid pursuant to a written agreement in respect of a period prior to the date of the written agreement would not be considered a qualifying support amount for purposes of subsection 56.1(4).

3.45 Where all the requirements of a support amount are otherwise met, the amount is deductible by the payer and included in the recipient's income. Where the amounts paid are attributable to amounts owing in prior years, the amount may be a qualifying retroactive lump-sum payment and a special tax calculation may be available. For more information and to request the special tax calculation for years in which an arrears amount was received, taxpayers should refer to Form T1198, Statement of Qualifying Retroactive Lump-Sum Payment.

3.46 On the other hand, a lump-sum payment to obtain a release from a liability imposed by an order or written agreement, as mentioned in ¶3.43(d), will not qualify as periodic payments because it was not made in accordance with the order or written agreement. This is the case whether such liability is in respect of arrears of maintenance payments, future payments or both.

Example 6 – Lump-sum payment

Jim and Susan were married for 6 years and separated in August 2009. Jim had offered to pay Susan \$400 per month spousal support for three years. Susan did not accept his offer and requested \$600 per month for 6 years. The parties continued to negotiate without success and Susan commenced legal action in February 2010. No payments were made by Jim to Susan and no interim support orders were issued by the court.

In December 2010, Jim and Susan reached a settlement and entered into a written agreement which required Jim to pay Susan \$30,000 in settlement of all past and future support claims. Under the terms of the agreement, Jim paid Susan \$30,000 upon signing the agreement. The agreement also included a clause that the \$30,000 would be deductible for income tax purposes by Jim and included in income by Susan in the 2010 tax year.

The \$30,000 lump-sum payment is considered to be a release of future obligations and therefore is not considered a support amount. Notwithstanding the fact that the agreement included terms dealing with the taxation of the payment, the payment is neither deductible by Jim nor required to be included in Susan's income.

3.47 An amount payable under a court order or written agreement which requires an individual to pay a periodic allowance for only part of the year may still qualify as periodic. For example, a monthly allowance for the maintenance of a child of the marriage is not disqualified because it is not required to be paid for two months of the year when the child is residing with the payer.

Discretion as to the use of the amount

3.48 By virtue of the definition of support amount in subsection 56.1(4), amounts payable to a recipient where the recipient has no discretion as to the use of the amounts do not qualify as support amounts and thus cannot be used in determining the amount a payer may deduct under paragraph 60(b). However, where a court order or written agreement provides for the payment of an amount which otherwise meets the requirement of a support amount to another party for the benefit of the recipient, the children of the recipient or both, discretion may exist where:

- the recipient has the ability to redirect the payment to some other purpose at any time (see ¶3.50 to 3.55),
- the payer and recipient agree that the amount will be taxable to the recipient and deductible by the payer (see ¶3.56 to 3.57), or
- the payment is made to a provincial authority (see ¶3.62 to 3.63.)

Special or extraordinary expenses

3.49 Federal or provincial child support guidelines may require the separated parties to share in special or extraordinary expenses. Payments for these types of expenses may be made directly to the support recipient or to third parties. In general, payments made in respect of specific expenses would not qualify as support amounts under the definition in subsection 56.1(4). For example, in many cases, the payments will not be an allowance on a periodic basis (e.g., extracurricular sports activities).

In cases where the wording of the court order or written agreement is such that the payment meets the definition of a support amount, the provisions of the Act dealing with the priority of child support (see ¶3.18) and restrictions pertaining to claims for personal tax credits apply (see ¶3.74). Where special expenses include child care costs, taxpayers should refer to ¶3.85.

Payments to third parties

3.50 In some circumstances, the payer may pay an amount directly to a third party such as a landlord or medical practitioner rather than to the support recipient. Even where the recipient verbally consents or directs the payer to make a payment of this nature to a third party, it will not qualify as a support amount unless it is required under the terms of a court order or written agreement.

3.51 Where the terms of a court order or written agreement require a payment to a third party for the benefit of the recipient, children in the recipient's custody or both, **and** the payment meets the requirements of either subsection 60.1(1) or 60.1(2) as explained in ¶3.52 to ¶3.61, it will qualify for a deduction under paragraph 60(b) as a support amount. Similarly, subsection 56.1(1) or 56.1(2) would apply for the purposes of including the amount in the recipient's income.

3.52 Under subsection 60.1(1), an amount payable under a court order or written agreement (or any variation thereof) to a person or for the benefit of the person, children in the person's custody or both the person and those children:

- when payable, is deemed to be payable to and receivable by that person; and
- when paid, is deemed to have been paid to and received by that person.

3.53 This deeming provision allows the payer to obtain a deduction under paragraph 60(b) for these payments, provided they otherwise qualify as a support amount. In the context of third-party payments, for the recipient to have discretion as to the use of an amount paid to a third party, the recipient must have the ability to redirect the payment to some other purpose at any time. Third-party amounts may be used in determining the amount deductible under paragraph 60(b) **only** if they are deducted from the support amounts otherwise payable with the express or implied concurrence (discretion) of the recipient.

3.54 Subsection 60.1(1) ensures that third-party amounts payable for child support are taken into consideration in determining the amount the payer may deduct under paragraph 60(b).

3.55 Third-party amounts payable under a court order or written agreement for specific living expenses of the recipient (or the children in the recipient's custody) such as medical, rent or mortgage expenses cannot be used in determining the amount the payer may deduct if they are not support amounts.

Example 7 – Payments to third party in excess of amount specified in the agreement

Under a written separation agreement, John has to pay \$600 per month to his former spouse Karen as an allowance for her support. Under the agreement, John also has to pay \$500 per month directly to Karen's landlord for the rent of her apartment.

John cannot deduct the monthly amount of \$500 paid directly to the landlord because Karen does not have any discretion as to the use of the amount, and the amount is in addition to the support amount specified in the agreement.

Example 8 – Payments to third party from amounts specified in the agreement

Under a written separation agreement, Melissa has to pay \$1,100 per month to her former common-law partner Sandra as an allowance for her support. Under the agreement, Melissa will pay \$500 directly to Sandra and \$600 directly to Sandra's landlord for the rent of her apartment. The agreement also provides that Sandra may, at any time, change the arrangement and require that the entire \$1,100 be paid directly to her.

Under paragraph 60(b), Melissa may deduct the \$500 amount paid directly to Sandra, as well as the monthly amount of \$600 paid directly to the landlord because the rent is payable with the express concurrence of Sandra. Sandra is considered to have discretion as to the use of the rental portion because she can change the arrangement as she sees fit.

3.56 Subsection 60.1(2) deals with amounts payable under a court order or written agreement for specific-purpose payments incurred for the maintenance of the recipient, children in the recipient's custody, or both. These specific-purpose payments may be made:

- directly to the recipient, or
- to a third party.

3.57 In addition to deeming the specific-purpose payments to be payable to and receivable by the recipient, subsection 60.1(2) deems the specific-purpose payments to be an amount payable by the payer to the recipient and receivable by the recipient as an **allowance** payable on a **periodic basis** and deems the recipient to have **discretion** as to the use of the amounts. Subsection 60.1(2) also ensures that third-party amounts payable for child support are taken into consideration in determining the amount the payer may deduct under paragraph 60(b).

3.58 Generally, the court order or written agreement must explicitly state that subsections 60.1(2) and 56.1(2) are to apply to the specific-purpose payments. However, the inclusion of a clear and unambiguous clause in the court order or written agreement stating the parties' understanding that the third-party payments will be taxable to the recipient and deductible by the payer is sufficient to meet this requirement. This reference to the tax treatment of the third-party payments, however, does not exempt the parties from otherwise meeting the conditions as set out in subsection 60.1(2).

3.59 The subsection 60.1(2) deeming provision allows a payer to obtain a deduction under paragraph 60(b) for third-party specific-purpose payments provided they otherwise qualify. However, an exception to the rules in subsection 60.1(2) provides that the following amounts are specifically excluded from its application:

- expenditures on a self-contained domestic establishment (that is, a dwelling) as defined in subsection 248(1), in which the payer resides; and
- expenditures for the purchase of tangible property, or for civil law corporeal property, unless the expenditure is on account of the following deductible expenses:
 - a medical or educational expense or an expense incurred for the maintenance of the dwelling in which the recipient resides (including property taxes, utility payments, etc.), or
 - expenditures for the purchase or improvement of the dwelling in which the recipient resides. In this regard, the maximum deduction is 20% of the original principal amount of the loan or indebtedness incurred to finance the purchase or improvement.

3.60 The difference between subsection 60.1(1) and subsection 60.1(2) is that under subsection 60.1(1) the third-party amount is only deemed to have been paid (or payable) to and received (or receivable) by the recipient. The amount must then satisfy the requirements to qualify as a support amount. On the other hand, if all the requirements in subsection 60.1(2) have been satisfied as noted in ¶3.56 to 3.59, the amount is deemed to be an amount payable by the payer to the recipient and receivable by the recipient as an allowance payable on a periodic basis and the recipient is deemed to have discretion as to the use of the amount. Therefore, subsection 60.1(2) provides greater certainty as to the deductibility of the payment of third-party amounts.

3.61 Subsections 60.1(1) and (2) refer to **children in the person's custody** (that is, children in the custody of the recipient). It is a question of fact whether a child is in the custody of such a person. For example, in joint custody situations, where custody of the child is shared by means of alternating periods of residence with each parent, the child is considered to be in the custody of whichever parent has physical care and control of the child at a particular time. It is generally considered that custody of a child ceases when the child reaches the age of majority (for example, the age of 18 in the province of Ontario). If an amount payable or paid to a third party is deemed by subsection 60.1(1) or 60.1(2) to be payable or paid to the payer's current or former spouse or common-law partner, subsection 118(5) may prevent the payer from claiming a personal tax credit for the year for his or her spouse or common-law partner or a child. For more information, see ¶3.74.

Payments made to, assigned, or transferred to a provincial authority

3.62 It may be that a court considers it necessary, under the particular circumstances of a breakdown of a marriage or common-law partnership, to order that amounts be paid directly to the court or to the provincial authority for forwarding to the ultimate recipient spouse or common-law partner. These are normally considered general maintenance allowances and under subsection 60.1(1) are deemed to be payable or paid, as the case may be, to the recipient spouse or common-law partner.

3.63 An individual who is required to pay support amounts to a recipient may be required to make such payments to a provincial authority because the intended recipient's right to such amounts has been formally assigned by the recipient, or transferred by reason of provincial legislation, to the provincial authority in order for the recipient to receive social assistance. In this case, the payer of the support amount would make payments directly to the provincial authority rather than to the recipient. In accordance with the decision in *Chris Pepper v Her Majesty the Queen*, [1997] 1 C.T.C. 2716, 97 DTC 3254, an assignment or transfer of support amount payments to a provincial authority in such circumstances does not change the nature of the payments or the nature of the indebtedness. Therefore, support amounts paid to a provincial authority by reason of such assignment or transfer are to be used in determining the amount a payer may deduct under paragraph 60(b).

Payments of income taxes

3.64 Where a court order or written agreement requires the payer to pay a spousal support amount to the recipient plus an additional amount in respect of income taxes that are attributable to the support amount, that additional amount could satisfy the definition of a support amount. Payments of income taxes must be considered on a case-by-case basis and require a review of the wording in a specific agreement or court order.

Payments of arrears interest

3.65 Where a court order or written agreement requires the payer to pay arrears (whether in full or in part), including interest in respect of the arrears, the interest is not deductible by the payer. However, the recipient is required to include the interest in income.

Payments to or from a non-resident

3.66 If the payer is a resident of Canada who makes support payments to a non-resident, payments are deductible if all the conditions of a support amount are met. Tax need not be withheld on the payments. Similarly, if the recipient is a resident of Canada who receives support payments from a non-resident payer, the support payments will be included in the income of the recipient provided all the conditions of a support amount are met. However, where either the payer or recipient is a non-resident of Canada, the taxation of the support payments may be affected by a tax treaty between Canada and the other country. For general information on non-residents and tax treaties, see Guide T4058, Non-Residents and Income Tax.

Payments made after the death of recipient or payer

3.67 If spousal support payments continue to be made after the death of the recipient, they are not deductible by the payer whether they are made to the estate or succession, the children, or anyone else because the payer cannot be the current or former spouse or common-law partner of the new payee. Similarly, payments made by the estate of the payer to a surviving recipient are not deductible because the recipient cannot be the current or former spouse or common-law partner of the estate or succession. Such payments do not meet the definition of a support amount. For situations dealing with the entitlement of the payer to a personal tax credit in respect of a child after the death of the recipient, please see the discussion on Personal Tax Credits starting at ¶3.73 and Income Tax Folio S1-F4-C1, Basic Personal and Dependant Tax Credits (for 2016 and prior tax years) or Income Tax Folio S1-F4-C2, Basic Personal and Dependant Tax Credits (for 2017 and subsequent tax years). Also, if custody of the child reverts to the payer on the death of the payee, there may be entitlement to a deduction for child care expenses in accordance with the provisions of section 63. For a further discussion of child care expenses, see Income Tax Folio S1-F3-C1, Child Care Expense Deduction.

Payments from pension plans

3.68 Where the breakdown in the relationship involves a division of pension assets, payments directly from the pension to the recipient are not support payments and may not be deducted by the payer. For further information see paragraph 11 of Interpretation Bulletin IT-499R, Superannuation or Pension Benefits.

Tax rules for court orders or written agreements made before May 1997

3.69 By virtue of the coming-into-force provisions for subsection 56.1(4), amounts paid for the support of children under a decree, order, judgment or written agreement made prior to May 1997 that were not required to be included in the recipient's income, are excluded from being support amounts. In other words, they continue to be tax exempt provided the amounts are not modified after April 1997. For example, for marriage breakdowns that occurred before 1993, in order for a recipient to be taxed on support payments received, the payer and the recipient had to be separated pursuant to their divorce, judicial separation or written separation agreement. The coming-into-force provisions ensure that the post-April 1997 regime does not tax amounts that were exempt prior to the change in legislation because this particular requirement was not met.

3.70 Individuals who have an order or agreement made, or deemed to have been made, before May 1997 (see ¶3.24) may choose to file Form T1157, Election for Child Support Payments. This form allows the payer and the recipient to jointly elect to have the child support payable on and after a certain date (but not earlier than May 1, 1997) be not taxable and not deductible, without having to revise the order or agreement. Once the new tax rules apply to child support payments, the parties cannot return to the previous tax rules for child support payments that become payable after the effective date of the change. However, where an election was already filed, the parties can elect for an earlier, but not later effective date (not earlier than May 1, 1997) by filing another Form T1157. For more information, see Guide P102, Support Payments.

Registering a court order or written agreement

3.71 A court order or written agreement under which support amounts are required to be made should be registered with the CRA in the following situations:

- The court order or written agreement is made after April 1997 and it requires the payment of support for the recipient only or separate amounts for the recipient and children of the recipient.
- The court order or written agreement is made, or deemed to be made, before May 1997, it requires the payment of support for the recipient or the recipient and children of the recipient, and:
 - the order or agreement states that child support amounts payable on and after a specified date (not earlier than May 1, 1997) will no longer be taxable or deductible;
 - the order or agreement is revised after April 1997 to increase or decrease the child support amounts payable; or
 - the order or agreement remains valid, but the same payer and same recipient become party to a subsequent court order or written agreement made after April 1997, with the result that the total child support amounts payable is changed.

3.72 To register a court order or written agreement, the payer or the recipient under the order or agreement completes Form T1158, Registration of Family Support Payments, and submits a copy of it along with a copy of the court order or written agreement to the CRA. For more information, see Guide P102, Support Payments.

Personal tax credits

3.73 Specific conditions must be met for claiming each personal tax credit. For a full discussion of personal tax credits, see Income Tax Folio S1-F4-C1, Basic Personal and Dependant Tax Credits (for 2016 and prior tax years) or Income Tax Folio S1-F4-C2, Basic Personal and Dependant Tax Credits (for 2017 and subsequent tax years). The following paragraphs discuss issues which may affect personal tax credits as a result of obligations to pay a support amount.

General restriction

3.74 By virtue of subsection 118(5), an individual cannot claim a personal tax credit under subsection 118(1) for a particular person for a tax year if the individual is required to pay a support amount for that person to his or her current or former spouse or common-law partner. This rule applies only if the individual lives separate and apart from the current or former spouse or common-law partner throughout the year because of the breakdown of their marriage or common-law partnership, or if the individual claims a deduction for the year under section 60 for support amounts paid to the current or former spouse or common-law partner. For example, where an individual is not required to pay a support amount in respect of a particular child and that child otherwise meets all the conditions required for a deduction

under paragraph 118(1)(b) at any point in the year, the fact that the individual claims a deduction for the year under section 60 for support amounts paid to a current or former spouse or common-law partner does not restrict the individual from claiming the eligible dependant amount for that particular child.

A requirement to pay a support amount includes amounts payable or paid to a third party which are deemed under subsection 60.1(1) or 60.1(2) to be payable or paid to the payer's current or former spouse or common-law partner.

Exception: Eligible dependant and child tax credits

3.75 Sometimes more than one individual is required to make support payments for the same child in a tax year. This may occur where there is shared custody or where there is a change in custody during the year. Effective for the 2007 and subsequent tax years, subsection 118(5.1) ensures that one individual can still claim the eligible dependant tax credit and the Canada caregiver tax credit for an infirm child (formerly the child tax credit) under paragraphs (b) and (b.1) of the description of B in subsection 118(1), respectively. However, both individuals must agree on who is entitled to claim these personal tax credits in respect of a particular person. If the parties cannot agree, neither individual can make the claim.

3.76 To qualify for the exception in subsection 118(5.1), the court order or written agreement must require both individuals to make child support payments. In Verones v The Queen, 2013 FCA 69, the Federal Court of Appeal confirmed that although the Federal Child Support Guidelines give consideration to the incomes of both the payer and the recipient to determine the quantum of child support, only the payer is considered to have, for purposes of the eligible dependant tax credit, a legal obligation to pay a support amount. Unless the court order or written agreement clearly establishes that both parents are required to pay child support, only one parent is considered to be making child support payments. In this case, the payer cannot claim the amount for an eligible dependant, and the recipient may be able to claim the amount, provided they are otherwise eligible to claim the amount.

Exception: spouse or common-law partner tax credit

3.77 Where an individual is required to pay spousal support and the individual has lived separate and apart from their current or former spouse or common-law partner for only part of the year (for example, the year of marriage breakdown), the individual may claim the applicable personal tax credit for the individual's spouse or common-law partner or child. This will be the case as long as the individual does not claim a deduction for the year under paragraph 60(b) for a support amount paid to the current or former spouse or common-law partner. The other requirements to claim the personal tax credit must be met. This rule allows, for example, an individual who is entitled to a deduction for support amounts paid in the year in which the marriage breakdown occurs to claim the deduction or the personal tax credit, whichever is more beneficial.

Legal and accounting fees

Non-deductible legal and accounting fees

3.78 Neither the payer nor the recipient may deduct legal and accounting fees incurred to:

- get a separation or divorce;
- establish custody or visitation rights to a child; or
- equalize family assets.

3.79 A recipient cannot deduct legal and accounting fees incurred to collect:

- a lump-sum payment which cannot be identified as being a payment in respect of a number of periodic payments of support amounts that were in arrears;
- an amount which does not qualify as a support amount; or
- an amount from the estate or succession of a deceased person.

See ¶3.44 to 3.46 for a discussion of lump-sum payments and ¶3.67 for a discussion of payments from an estate.

3.80 A payer cannot deduct legal and accounting fees incurred to establish, negotiate, contest, reduce or terminate the amount of support payments.

Deductible legal and accounting fees**3.81 A recipient** can deduct legal and accounting fees incurred to:

- establish the amount of support payments from their current or former spouse or common-law partner;
- establish the amount of support payments from the legal parent of their child (who is not their current or former spouse or common-law partner) where the support is payable under the terms of a court order;
- seek an increase in support payments;
- defend against a reduction in support payments;
- collect late support payments; or
- request that child support payments be non-taxable.

3.82 Generally, pursuant to paragraph 18(1)(c), expenses incurred to earn exempt income are not deductible. However, the legal and accounting fees described in ¶3.81 are deductible even when the **child support amount** to which the fees relate is not included in the recipient's income because a support amount is excluded from the definition of exempt income in subsection 248(1). Therefore, the deduction of costs incurred in respect of support amounts is not denied by paragraph 18(1)(c) as being in respect of exempt income.

3.83 Legal and accounting fees are deductible by the recipient even where the claim for support was unsuccessful as long as the claim was bona fide and not frivolous, with a reasonable chance of success.

3.84 Qualifying legal and accounting fees may be deducted on an accrual basis. Where the recipient is awarded costs which include legal and accounting fees, only the net amount of legal fees may be deducted by the recipient. If the recipient had deducted the legal and accounting fees in a prior tax year, the award is included in income in the year of receipt.

Child care expenses

3.85 For a full discussion of child care expenses, see [Income Tax Folio S1-F3-C1](#). ¶1.33 to 1.36 of that Chapter discuss specific issues concerning the deduction of child care expenses as a result of a relationship breakdown.

Application

This updated Chapter, which may be referenced as S1-F3-C3, is effective May 16, 2019.

When it was first published on August 19, 2014, this Chapter replaced and cancelled Interpretation Bulletin IT-530R, Support Payments as well as Income Tax Technical News No. 24.

The history of updates to this Chapter as well as any technical updates from the cancelled interpretation bulletin can be viewed in the [Chapter History](#) page.

Except as otherwise noted, all statutory references herein are references to the provisions of the Income Tax Act, R.S.C., 1985, c.1 (5th Supp.), as amended and all references to a Regulation are to the Income Tax Regulations, C.R.C., c. 945, as amended.

Links to jurisprudence are provided through CanLII.

Income tax folios are available in electronic format only.

Reference

Paragraph 60(b) (also sections 56.1 and 60.1; subsection 118(5); and paragraphs 56(1)(b), 56(1)(c.2) and 60(c.2)).

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