

WHICH SPOUSE SHOULD CLAIM THE TAX CREDIT?

As most planners are aware, in almost every situation, it is better for one spouse to claim the family donations even if both are income earners. The Canada Revenue Agency (CRA) administratively accepts the free "transfer" of charitable donations between spouses. Thus, it may be that more people actually donate money to charity than are identified by the data contained on the tax return.

This phenomenon arises because of the "tollgate" which tax reform imposed when the charitable deduction system was changed to a credit system. The first \$200 in annual donations is eligible for a federal tax credit at 15 percent while the balance is creditable at 29 percent. A credit is also allowed against provincial or territorial taxes, the amount of which varies by province and territory and is subject to change from year to year.

The provincial or territorial credit, like the federal credit, is at one level for the first \$200 of gifts and at a higher level for gifts in excess of \$200. (After factoring in provincial tax savings, donations in excess of \$200 will save you anywhere from 40.5% to 50%, depending on your income level and province/territory of residence).

Given the fact that the credit system means that the amount of tax relief is identical no matter which spouse claims the credit, it generally is beneficial for only one to do so, and usually it makes no particular difference whether it is the higher or lower earner. The savings are not immense but they can be significant. If each spouse makes \$200 in contributions in the year, the federal tax credit for each is \$30 for a combined federal tax reduction of \$60. If only one spouse claims the credit, the federal tax credit rises to \$88 because the second \$200 gets a credit at 29 percent rather than at 15 percent.

But there may be situations where it makes sense for either the higher or the lower income spouse to make the claim. Since the credit reduces both federal and provincial tax, it may be that in some cases it is more appropriate for the higher income spouse to make the claim. To the extent that the credits reduce tax upon which surtaxes are based (e.g., Ontario levies a surtax based on provincial tax payable), the value of the credit may actually be more to a person subject to surtax than to one who is not.

On the other hand, allowing the lower income spouse to make the claim is a way to transfer funds to that spouse without income attribution. Suppose that the lower income spouse has had \$5,000 in tax withheld at the source of the taxable income. The higher income spouse "transfers" \$5,000 of charitable donations to the lower income taxpayer.

This would result in a \$2,500 refund, which of course draws no attribution. Had the higher earner claimed the credits and then given the \$2,500 savings to his or her spouse, attribution rules would apply.

One situation where a couple may decide that it makes sense for both parties to make a claim is where the charitable donations are in excess of the capacity of just one to make the claim. For example, where a major donation has been made to a charity in the form of a gift in kind (other than a gift certified as cultural property), the value of the gift may be in excess of the 75-percent-of-annual-income limitation. While the excess can, of course, be carried forward, it may be more attractive under the credit system to have both spouses make a claim in the same year.

While charitable gifts can be transferred between spouses for tax purposes, many people find it convenient to have receipts issued in both names when possible, in order to facilitate such transfers without questions. (More problems arise from trying to transfer donations shown on one spouse's T-4 to the other than you can possibly imagine!)

One other point should be mentioned as a matter of prudence. Donors must make certain that they retain copies of all charitable receipts. While matters have improved in recent years, claims may be denied by CRA when receipts are lost. Having copies on hand until an acceptable Notice of Assessment is received is a matter of self-preservation.