



Deductibility of legal fees during separation or divorce

The tax treatment of legal fees paid during a separation and divorce is a complex subject. Although most of the legal fees incurred are not deductible since they are considered a personal or living expense, legal fees incurred with respect to support payments may be deductible. Their deductibility will depend on whether you're the payer or the recipient of the support payments.

From the payer's standpoint, legal costs incurred in negotiating or contesting an application for support payments are not deductible, nor are any of the costs incurred to terminate or reduce the amount of such payments. Legal expenses relating to custody or visitation rights are also non-deductible.

From the recipient's view, some or all of the legal fees may be deductible—depending on the circumstances outlined below.

Legal expenses incurred to obtain a lump-sum payment

Legal expenses incurred to obtain a lump-sum settlement are generally not deductible unless the lump-sum payment specifically relates to a number of periodic child support payments that were in arrears.

Legal expenses incurred to obtain periodic support payments

The CRA's position is that the following legal costs are deductible:

- costs incurred to obtain periodic child support payments or to enforce pre-existing rights (regardless of the fact that the amount received for child support may not have to be reported as income)
- costs incurred to enforce pre-existing spousal support
- costs incurred to obtain spousal support
- costs incurred to obtain an increase in support or to make child support non-taxable

Tax tip: If you've incurred legal fees as part of a separation or divorce, you should contact your tax adviser to determine whether any of the amounts may be deductible. You may also be able to apply for a refund with respect to amounts paid in prior years.