



Transfer of Property Between Related Persons

When properties are transferred between related persons, the Income Tax Act states that the transaction should occur at fair market value. However, the rules in section 73 state that transfers between spouses occur at cost unless there is an election for the transactions not to occur at cost.

What happens to transactions between spouses who are separated or in a process of being divorced?

If the individuals are still legally married, then transactions between them will generally occur at cost. Having said that, there may be situations where it is beneficial for the transactions to occur at fair market value. For example, if the assets being transferred are shares in a company that qualifies as a qualified small business corporation, then consideration should be given to electing to have the transaction occur at fair market value so that the \$750,000 capital gains exemption can be used. Another situation where it might be beneficial to transfer at fair market value is where the transferor has unused capital losses or non-capital losses. If the election is made to have the transaction occur at fair market value, then the transferor is able to use his/her capital losses so that the transaction is still tax-free. This also gives a benefit to the transferee in that he/she will now have an asset with a higher cost base on any future dispositions.

Where a transfer is being done as part of a settlement of marital property, the transfer again is generally deemed to be at cost base unless the individuals elect otherwise.

If no planning is done, there generally will not be tax on the transfer. However, there may be opportunities for both sides to benefit with proper planning.