Separation Agreements - Income Tax Effect

When two people are working out the terms of the Separation Agreement, the tax impact of the payment of child support, spousal support, and the division of assets need to be addressed.

A person who is a spouse by marriage or having lived together in a relationship resembling matrimony for at least two years, any periodic payments of spousal support will be taxable in the hands of the recipient and be a corresponding tax deduction to the payer.

Child support is paid with after tax dollars and the recipient does not have to include the amounts in his or her income.

It is possible, where no child support is being paid and there is a joint parenting arrangement which would include equal time sharing, the two parents could share the Child Tax Benefits with each parent sharing the said benefit for six months each during the year. In addition, where there are two or more children, each of the parents would be able to claim the Dependent Eligibility Credit which is currently approximately $9,800.00 and is subject to indexing based on inflation.

There is also a Non-Refundable Tax Credit of $2,000.00 for each child under the age of 18 which involves taking the parent who is making the claim and applying their gross marginal tax rate to the said credit.

Division of property has to be properly analyzed to ensure that the attribution rules under the Income Tax Act are taken into account and that joint elections to deal with the attribution rules may be necessary.