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Support Payments

Includes Form T1158

2005



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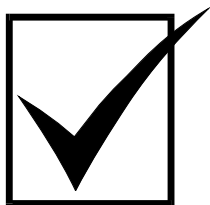
La version française de cette publication est intitulée PENSION ALIMENTAIRE.

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Your opinion counts!



We review this guide each year. If you have any comments or suggestions that would help us improve it, we would like to hear from you.

Please send your comments to:

Client Services Directorate
Canada Revenue Agency
750 Heron Road
Ottawa ON K1A 0L5

Definitions

We define, below, certain common terms associated with support payments.

Allowance payable on a periodic basis

An **allowance** is a specific sum of money established in an order or agreement as the amount the payer has to pay to the recipient. It can include a sum that has to be adjusted according to a formula or index (such as the cost-of-living index or a percentage of the payer's income), even though the exact future amounts payable are not specified in the order or agreement. An allowance **must be** payable on a periodic basis to be considered support payments.

Periodic – The term periodic does not necessarily mean frequent, although there has to be a series of payments. The payments could, for instance, be made monthly, quarterly, semi-annually, or annually. The order or agreement has to set out the timing of the payments, and only a new order or agreement can change the payment schedule.

Common-law partner

This is a person **who is not your spouse**, with whom you are living in a conjugal relationship, and to whom at least one of the following situations applies. He or she:

- has been living with you in a conjugal relationship for at least 12 continuous months;
- is the parent of your child by birth or adoption; or
- has custody and control of your child (or had custody and control immediately before the child turned 19 years of age) and your child is wholly dependent on that person for support.

In addition, an individual immediately becomes your common-law partner if you previously lived together in a conjugal relationship for at least 12 continuous months and you have resumed living together in such a relationship.

Note

Under proposed changes, the last condition will no longer exist. The effect of this proposed change is that a person (other than a person

described in either of the first two bullets) will be your common-law partner only after your **current** relationship with that person has lasted at least 12 continuous months. This proposed change will apply to 2001 and later years once it becomes law.

In this definition, "12 continuous months" includes any period that you were separated for less than 90 days because of a breakdown in the relationship.

Court Order

A **court order** is a decree, order, or judgment made by a court or other competent tribunal, such as a family court.

Lump-sum payments

An amount paid as a single lump sum will generally **not** be considered a support payment because it is not paid on a periodic basis.

However, if periodic payments required by an order or agreement have fallen into arrears, and a single payment is made to bring these requirements up-to-date, that payment would be considered a support payment.

The following are **not** support payments:

- A lump-sum payment made in place of several periodic payments that were imposed under an order or agreement, but were not yet due to be paid (a prepayment). However, if a prepayment was made for the sole purpose of securing funds to the recipient, it may be considered a support payment.
- A lump-sum payment that an order or agreement requires to be made for a period before the date of that order or agreement.
- Instalment payments of a lump sum.
- Payments that release the payer from any obligation to pay arrears, future maintenance, or both.

See Interpretation Bulletin IT-530, SUPPORT PAYMENTS, for more details.

Spouse

This is a person to whom you are legally **married**, whether or not you are living apart.

Written agreement ("agreement")

Under a **written agreement**, a person agrees to make regular payments to maintain his or her current or former spouse or common-law partner, children of the relationship, or both. The agreement should normally be duly signed and dated by both parties.

Is this guide for you?

This guide explains the tax rules that apply for support – for a spouse or common-law partner or a child – that was payable or receivable under a **court order** or **written agreement** that meets the conditions outlined on page 12 [this page].

If you do not have a court order or written agreement, there are no tax consequences – the payments are not included in the income of the recipient and are not deductible by the payer.

If you do not meet the conditions outlined on page 12 [this page], this guide is not for you. For information about the tax rules that apply to your support payments, see Interpretation Bulletin IT-530, SUPPORT PAYMENTS.

Was your order or agreement made after April 1997?

This guide is for you if you received or made support payments under your order or agreement. However, this guide is **not** for you if both of the following apply:

- your order or agreement was made after April 1997 and before January 1999, and it recognizes payments made before May 1997 as payments made under that order or agreement; and
- the ongoing child support payable remains the same as the last payment made before May 1997 (we do not consider a cost-of-living adjustment to be a change).

Was your order or agreement made before May 1997?

This guide is for you if you received or made support payments under your order or agreement and **any** of the following conditions apply:

- you both (recipient and payer) elected to have child support not be taxable and not be deductible by completing Form T1157, ELECTION FOR CHILD SUPPORT PAYMENTS;

- your order or agreement provides that child support paid after April 1997 is not taxable and not deductible; or
- your order or agreement was changed after April 1997 to increase or decrease the amount of child support (we do not consider a cost-of-living adjustment to be a change).

Note

You may have an order or agreement made before May 1997 that remains valid, and a new order or agreement with the same person made after April 1997, and the effect of this new order or agreement is to change the total amount of child support. In this situation, the tax rules explained in this guide apply for support payable or receivable under **both** orders and agreements as of the commencement day of the new order or agreement, and the years to follow.

What are support payments?

A **support payment** is an amount a payer is required to pay to a recipient for the maintenance of the recipient, children of the

recipient, or both. There are two types of support payments. The tax rules are different depending on the type.

- 1) Support for a spouse or common-law partner means support payments made under an order or agreement that are **only** for the recipient's maintenance.
- 2) Support for a child means any support payment that is **not identified** in the order or agreement as being only for the recipient's maintenance. Therefore, if an order or agreement provides for a global amount of support to be paid for a spouse or common-law partner and a child, the full amount is considered support for a child.

In all cases, the payer and the recipient must live apart because of a breakdown in the relationship when the payments are made. For an amount to be considered a support payment, it must meet certain conditions.

To find out if the amount you pay or receive is a support payment, complete Chart 1 on page 15 [below].

The term **recipient**, used throughout this guide, means:

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

A child cannot be considered the recipient of support payments for tax purposes.

Chart 1

Check the boxes that apply to find out if the amount you pay or receive is a support payment.

	Yes	No
1. Are the amounts payable under an order or agreement?	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>		
2. Do either of the following situations apply?	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>		

Yes

No

- The recipient is the payer's current or former spouse or common-law partner, the payer and recipient are living apart because of a breakdown in the relationship, and the support payment is receivable under an order or agreement.
 - The payer is the legal parent of a child of the recipient, and the support payment is receivable under an order.
-

3. Are the payments for the maintenance of the recipient, children of the recipient, or both?

4. Are the amounts an allowance payable on a periodic basis?

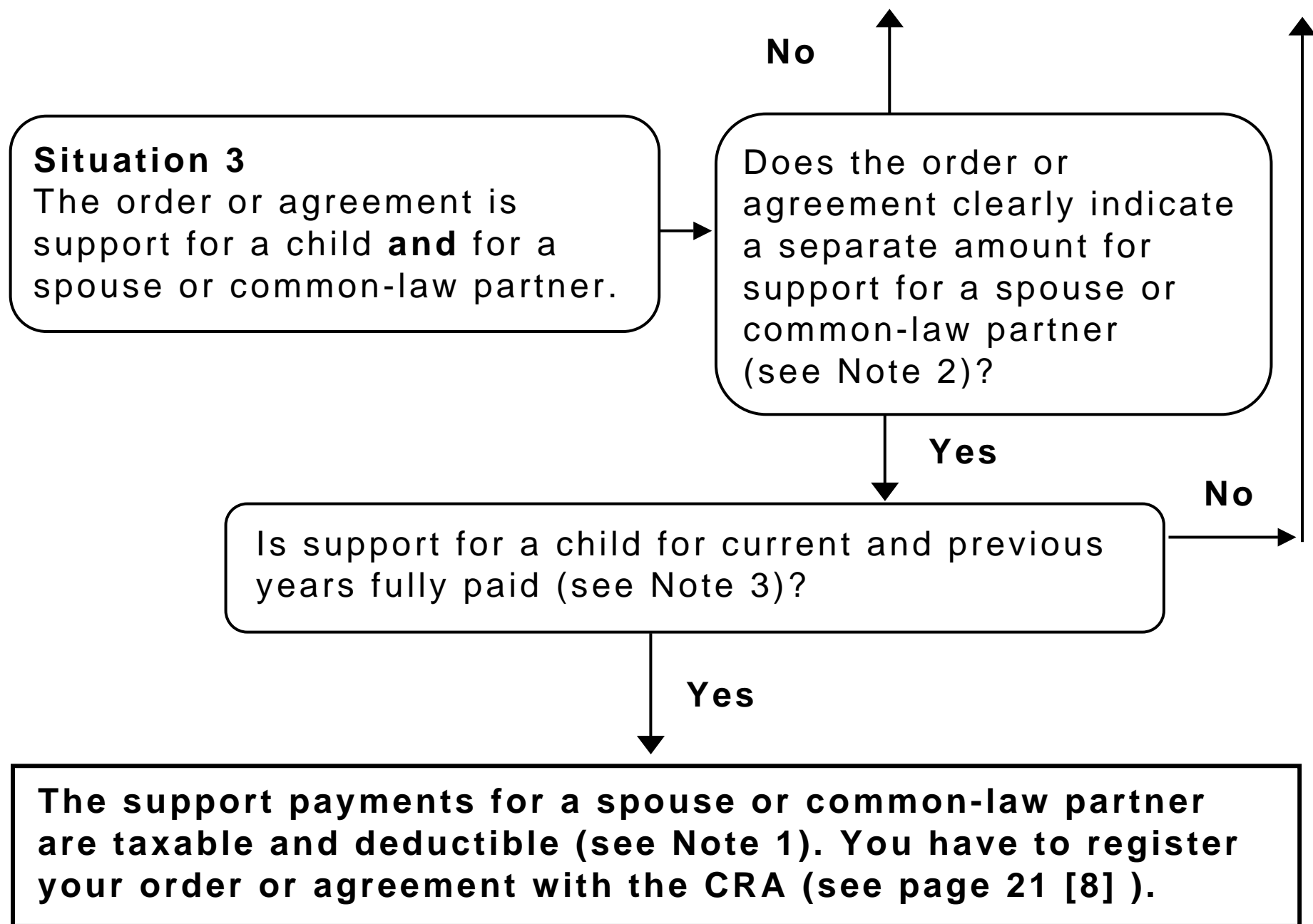
5. Are the payments made to the recipient?
(If they are paid directly to a court or other agency and then forwarded to the recipient, check YES)

	Yes	No
6. Can the recipient use the support payment as he or she sees fit? <hr/>	<input type="checkbox"/>	<input type="checkbox"/>

If you checked YES to all of the boxes above, the payments are support payments. See the section called "What are the tax rules?" on page 18 [7] for details.

If you checked NO to box 1, 2, 3, or 4, the payments are not support payments, and are not taxable or deductible.

If you checked NO to box 5 or 6, the payments may be considered support payments. See "Specific-purpose payments" on page 22 [9] for details.



Note 1: Payments made **before** the order or agreement was made (in that year or in the previous year) are taxable and deductible only if the order or agreement states that these payments were considered to have been made under that order or agreement.

Note 2: If the order or agreement provides for specific-purposes payments that are only for the benefit of the recipient spouse or common-law partner, see the section called "Specific-purpose payments" on page 22 [9] to find out if the support payments for the spouse or common-law partner are taxable for the recipient or deductible for the payer.

Note 3: All support for a child that is payable to a recipient for current and previous years has to be fully paid before support for that recipient is taxable or deductible. Any shortfall is carried forward and added to the next year's support payable. If support for a child is in arrears for a period when it would have been taxable and deductible, see Interpretation Bulletin IT-530, SUPPORT PAYMENTS, for information about the special rules that apply.

Registering your order or agreement

You need to register your order or agreement if it requires payment of support for a spouse or common-law partner. To do so, send us a completed copy of Form T1158, REGISTRATION OF FAMILY SUPPORT PAYMENTS, along with a copy of the order or agreement. You can find a copy of Form T1158 in this guide.

You do not have to register your order or agreement if it requires child support payments **only**.

Notify us if the support payable to a spouse or common-law partner changes from the amount originally registered.

Deductions from your pay

Payer

If you are employed and you make deductible support payments, you can ask us to authorize the **reduction** of the amount of income tax that your employer is deducting from your salary. Send a completed Form T1213, REQUEST TO REDUCE TAX DEDUCTIONS AT SOURCE FOR

YEAR(S) _____, to your tax services office. If you qualify, you can take our letter of authority to your employer to adjust the tax deducted from your pay.

However, if your employer directly withholds deductible support payments from your pay, he or she may reduce the amount of tax that is being deducted without a letter of authority.

Recipient

If you are employed and you receive taxable support payments, you may want to **increase** the amount of tax that is deducted from your pay.

For an increase in tax, see your employer about completing Form TD1, 200_____ PERSONAL TAX CREDITS RETURN.

Specific-purpose payments

The rules outlined in this section apply to third-party and specific-purpose payments that are clearly identified in the order or agreement as being only for the benefit of the **recipient** (defined on

page 15 [6]). If the payments are not for the benefit of the recipient, they are not taxable or deductible.

Third-party payments are support payments made under an order or agreement to someone other than the recipient (a third party). Third-party payments that the recipient can use as he or she sees fit are considered support payments only if the payments otherwise qualify (if you answer YES to questions 1, 2, 3, 4, and 6 on Chart 1 on page 15 [6]). They are taxable for the recipient and deductible for the payer.

Specific-purpose payments are amounts payable under an order or agreement for specific expenses for the maintenance of the recipient. These amounts may be paid directly to the recipient or to a third party.

Specific-purpose payments include:

- rent, property taxes, insurance premiums;
- educational or medical expenses (such as prescription drugs or glasses);

- maintenance costs for the home in which the recipient lives; and
- up to 20% of the original principal amount of any debt from buying or improving the home in which the recipient lives.

If the recipient **can** use the specific-purpose payments as he or she sees fit, they **are** considered support payments if they otherwise qualify (if you answer YES to questions 1, 2, 3, 4, and 6 on Chart 1 on page 15 [6]).

However, if the recipient **cannot** use the specific-purpose payments as he or she sees fit, they are **not** considered support payments (the payment is not taxable for the recipient or deductible for the payer) **unless** the conditions outlined in Chart 3 apply.

Chart 3

Use this chart to find out if the specific-purpose payments you make or receive are support payments.

	Yes	No
1. Are the payments for the benefit of the recipient?	<input type="checkbox"/>	<input type="checkbox"/>
2. Did you answer YES to questions 1 to 3 on Chart 1 on page 15 [6]	<input type="checkbox"/>	<input type="checkbox"/>
3. Does the order or agreement state that the recipient will include the payments in income, and that the payer can deduct them?	<input type="checkbox"/>	<input type="checkbox"/>

If you checked YES to all the boxes above, the payments are support payments. See the section called "What are the tax rules?" on page 18 [7].

Payments to and from non-residents

Payer

If you are a resident of Canada who makes support payments to a non-resident, you do not have to withhold tax on the payments. You can deduct the payments if the conditions outlined in the charts on pages 15 [6] and 18 [7] are met.

Recipient

If you are a resident of Canada who receives support payments from a resident of another country, you have to include the payments in income if the conditions outlined in the charts on pages 15 [6] and 18 [7] are met.

However, if the support payments you reported as income are tax-free in Canada because of a tax agreement (treaty) between Canada and the other country, you can claim a deduction for them (see line 256 in your income tax guide).

If the other country withheld tax from the support payments you reported as income, you may be able to claim a foreign tax credit, but only if you are required to pay tax on those payments on your return.

Reporting requirements

Payer

Enter on line 230 of your return the **total amount** of support payments you paid under all orders and agreements, including any non-deductible child support payments you made. Do not include amounts you paid that are more than the amounts specified in the order or agreement, such as pocket money or gifts that you sent directly to your children.

Enter on line 220 the **deductible part** of the support payments that you paid.

When you file your return, do not include your receipts or cancelled cheques, or your order or agreement. Keep them in case we ask to see them.

Note

If your order or agreement acknowledges support paid for your spouse or common-law partner in a year for which you have already filed a return, you can request an adjustment. See the section called "How do you change a return?" in your income tax guide.

Retroactive lump-sum payments

If, after 1977, your support payments fell into arrears, and you made one **lump-sum** payment (of at least \$3,000) to bring your requirements up to date, give the recipient of the support payments a completed Form T1198, STATEMENT OF QUALIFYING RETROACTIVE LUMP-SUM PAYMENT.

Did you receive a reimbursement of support payments?

A reimbursement of support payments received under an order must be included in income on lines 156 and 128 of your return for the year it is received. This applies if you deduct the amount on that return, or if you deducted it in a previous year.

Legal fees

As a payer of support payments, you **cannot** claim legal costs (at line 220 or 232) you incurred to:

- get a separation or divorce;
- establish, negotiate, or contest the amount of support payments; or
- establish custody or visitation arrangements of a child.

For more details, see Interpretation Bulletin IT-99, LEGAL AND ACCOUNTING FEES.

Year of change in marital status

If you were required to make support payments to your current or former spouse or common-law partner **and** you were separated for only **part of that year** because of a breakdown in your relationship, you have a choice. You may claim, for your spouse or common-law partner, either the deductible support amounts paid for that year **or**, if you qualify, the non-refundable tax credit "Spouse or common-law partner amount," whichever is more to your advantage for tax purposes.

If you reconciled before the end of that year and you choose to claim the "Spouse or common-law partner amount," you also can claim the non-refundable tax credit "Amounts transferred from your spouse or common-law partner."

If you were required to make support payments for a child **and** you were separated from your spouse or common-law partner for only **part of that year** because of a breakdown in your relationship, you have a choice. You may claim, for that child, either **any** support amounts paid for that year (if they are deductible) **or**, if you qualify, the allowable non-refundable tax credits, whichever is more to your advantage for tax purposes.

See lines 303, 305, 306, 315, and 318 in the GENERAL INCOME TAX AND BENEFIT GUIDE for details.

If you are claiming non-refundable tax credit amounts instead of the support payments, be sure to enter the total support paid on line 230, and zero on line 220. Otherwise, we will have no record of your payments.

Note

If you have more than one recipient to whom you are making support payments, your tax situation may vary. See Interpretation Bulletin IT-530, SUPPORT PAYMENTS for more details.

Recipient

Enter on line 156 of your return the **total amount** of support payments you received under an order or agreement. This includes any support payments you receive under a social assistance arrangement. Do not include amounts you received that are more than the amounts specified in the order or agreement, such as pocket money or gifts that your children received directly from the payer.

Enter on line 128 the **taxable part** of support payments you received.

Note

If you received a payment before the end of the year, you have to include it in income for that year, as long as it meets the requirements mentioned earlier in this guide. You cannot delay including a payment in income by not cashing the cheque.

Retroactive lump-sum payments

If you received a **lump-sum** support payment, parts of which were for previous years after 1977, you have to report the whole payment in the year the lump-sum payment is received. However, if you ask us, we can tax the parts for the previous years as if they were received in those years.

We will do this for the parts that apply to years throughout which you were resident in Canada, if the total of those parts is \$3,000 or more (not including interest), and it is more to your advantage for tax purposes. The payer of the support payments will give you a completed Form T1198, STATEMENT OF QUALIFYING RETROACTIVE LUMP-SUM PAYMENT. Include this form with your return. We will tell you the results on your NOTICE OF ASSESSMENT or NOTICE OF REASSESSMENT.

Did you repay support payments?

If you repaid support payments because of an order, you may be able to claim a deduction on line 220 of your return for that year (or in either of the following two years). You can claim this deduction if you

reported the original support payments you received as income on that same return or on a previous year's return, and you have not already claimed a deduction for the repayment.

Legal fees

As a recipient of support payments, you **can** deduct, on line 232 of your return, legal fees you paid to:

- collect late support payments;
- establish the amount of support payments from your current or former spouse or common-law partner;
- establish the amount of support payments from the legal parent of your child (who is not your current or former spouse or common-law partner) where the support is payable under the terms of an order;
- seek to obtain an increase in support payments; or
- seek to make child support non-taxable.

You **cannot** claim legal costs you incurred to:

- get a separation or divorce; or

- establish custody or visitation arrangements of a child.

For more details, see Interpretation Bulletin IT-99, LEGAL AND ACCOUNTING FEES.