



“The Bottom Line” SIMMONDS LE-FEVRE

Tax & Super Information that's Important to You

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Who is a spouse under the tax laws, and why does it matter?



About this newsletter

Welcome to your tax and super update from Simmonds Le-Fevre. This newsletter is aimed at keeping you on top of the issues you need to know about and changes as they happen. If you have any queries don't hesitate to contact us.

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While Australia doesn't have a joint filing option for married couples, there are some aspects of your individual tax assessment that depend on your spouse's income.

For example, your eligibility for the private health insurance rebate and your liability for the Medicare Levy Surcharge both take into account your spouse's income. Other tax attributes affected by your spouse's income include the senior and pensioner tax offset, the Medicare Levy reduction for families, the zone and overseas forces tax offsets, and the invalid and invalid carer offset.

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Who is a spouse under the tax laws cont

Under Australian tax law, a spouse is a person (of any gender) with whom you were in a relationship that was registered under a prescribed State or Territory law, or not legally married, but who lived with you on a genuine domestic basis in a partnership as a couple.

So, spouses are either legally married or living in a de facto relationship under the same roof. Note the additional requirement for cohabitation for de facto couples, which is in itself evidence of the relationship.

Sounds simple enough, but here are some commonly asked questions about spouses:

Q WHAT ABOUT OVERSEAS MARRIAGES?

Many marriages for Australian residents took place in other jurisdictions. The Marriages Act has reciprocal provisions and most overseas marriages are recognised in Australia.

Q WHAT IF MY SPOUSE IS STILL A FOREIGN RESIDENT?

Sometimes visa requirements prevent both spouses from entering Australia at the same time. Where this occurs and the parties are legally married, the foreign partner is regarded as a spouse. All their global income needs to be disclosed in the Australian tax return of the resident partner. Where the parties are in a de facto relationship and they are not cohabiting, the foreign partner will not be treated as a spouse under the tax rules.

Q WHAT IF I DON'T KNOW MY SPOUSE'S INCOME?

You might need to lodge by 31 October, but your partner runs a business and uses his tax agent's extension to lodge by the following May. Or you and your partner may be going through a difficult separation and the communication process is far from ideal. Make your best estimate, based on what you know about their affairs. If you have acted in good faith you won't be penalised for getting it wrong, although the Tax Office might adjust your return down the track.

Q WHAT IF MY RELATIONSHIP LASTED FOR LESS THAN A YEAR?

Most people don't start or finish relationships on 1st July. There is space on your tax return to indicate when you have started or finished a spousal relationship part way through the year of income. The Tax Office will pro-rate the various tax rebates or surcharges as necessary.

Q WHAT IF I AM SEPARATED BUT NOT DIVORCED?

Couples who are legally married but who subsequently separate continue to be spouses until their divorce is finalised. On the other hand, couples who were in a de facto relationship but who subsequently separate cease to be regarded as spouses from the time they are no longer cohabiting.

Q DOES COHABITING NEED TO BE FULL-TIME FOR A COUPLE TO BE REGARDED AS BEING IN A DE FACTO RELATIONSHIP?

Some couples prefer to maintain their own respective households while engaging in a co-dependent intimate relationship with another person. They might spend a number of nights together at either one of their homes but also spend time apart, which gives them independence and makes their relationship work.

These things are a question of fact and degree. If the couple spend most nights together at one place or the other and conduct themselves as a couple they might be regarded as being in a de facto relationship.

If they were legally married this would not be an issue, as they would be regarded as each other's spouse regardless of how much time they spend apart. Perhaps not the most romantic reason for popping the question, but marriage would sort out any tax uncertainty there might be. 💰

This information has been prepared without taking into account your objectives, financial situation or needs. Because of this, you should, before acting on this information, consider its appropriateness, having regard to your objectives, financial situation or needs.