

Changes Affecting Divorce in Light of the Tax Cut and Jobs Act

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The new Tax Cuts and Jobs Act — signed in December 2017 — brings significant change to the divorce landscape.

The new bill eliminates the deduction for alimony payments and the receiving spouse will no longer have to declare alimony as taxable income. The new law applies to divorce or separation agreements executed after December 31, 2018, which means that divorcing spouses will have a good reason to finalize their divorce by the end of the year.

For divorcing spouses, the new law means that the method for calculating alimony payments will be significantly changed and could lead to less spousal support. The

payor spouse will now be taxed on a higher income base and more often than not, at higher income tax rates. Under the old rules, alimony payments were taxed at the receiving spouse's presumably lower tax rate. Because the paying spouse will be making the payments with post-tax dollars, the amount available for alimony is likely to be less.

For example, let's say the payor spouse pays \$50,000 in annual alimony payments and is in the 35 percent tax bracket. Under the old tax rules, the \$50,000 in alimony payments only cost the payor \$32,500 because of the tax savings of the deduction. Under the new rules, there would be no tax savings and the cost would be the full \$50,000.

While the payee may seem to benefit by the new law by not paying tax on the payments he/she receives, the new rule could also have adverse effects. Since the payor spouse will not receive a tax benefit, he or she will likely have less money available for alimony payments. Another adverse effect would be that since the alimony is no longer taxable, it can no longer be considered earned income. This for many, is the only earned income available to be used to contribute to their own retirement plan. Post-divorce, the lower-earning spouse may want to take extra steps to ensure a financially healthy retirement.

The new rules don't just affect couples divorcing after December 31, 2018. Ex-spouses who seek a spousal maintenance modification have to specifically opt in to the new law, otherwise the deductibility and taxability of the spousal maintenance remains the same as it was when the agreement was originally awarded. Couples with prenuptial agreements will also want to revisit the alimony provisions to take into account the tax law change.

For additional information or to address questions about the impact of the new laws, contact your Anchin Relationship Partner or Antonia Greenwald, a Director in Anchin's Matrimonial Advisory Group, at [212.840.3456](tel:212.840.3456) or info@anchin.com.