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Married, unmarried cohabitants, (multiple) parents, and (step) children in tax law in the Netherlands and Europe

Nicole Gubbels (Tilburg Law School) · Wednesday, March 17th, 2021

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Nicole Gubbels, Assistant Professor (Vrije Universiteit Amsterdam and Fiscal Institute of Tilburg University, the Netherlands)

Society has changed considerably over the past 50 years. Whereas, previously, most people got married, had several children during the marriage, and divorce was still relatively rare, there is currently much more diversity with different forms of cohabitation. Although this trend is present throughout Europe, there is a significant difference in the pace and manner in which the new patterns of society are manifesting themselves there. This article indicates that the same applies to the fiscal recognition of unmarried cohabitants and stepchildren from a married couple and an unmarried couple ('informal' stepchildren).

In almost every European country, special concessions apply in the income tax and/or gift and inheritance tax if someone is married. In most European countries, however, this favourable treatment does not apply to unmarried cohabitants. The explanation for this may be found in cultural-political views on the importance of marriage as a living arrangement. To the extent that homosexual couples in these countries can also marry or enter into a similar commitment that is recognized for tax purposes, there is also no predominantly principled objection to the different treatment of married couples. In that case, the tax legislator can consciously decide to attach certain advantages to marriage in order to stimulate it just as the Dutch tax legislator chooses to promote labour participation through taxation. In the Dutch tax system, the beginning point is that the legislator is neutral with respect to peoples' decisions whether to cohabitate or get married. This choice is regarded as a private decision that may not – or at least as little as possible – be influenced by taxation. The basic principle in the Netherlands is that taxation accords with social developments but does not steer them. The full equality of unmarried cohabitants with married couples is in line with this principle. Another possible reason for not equating unmarried cohabitants with married couples is that tax regulations are based on the concept that there is a strong financial connection between married couples that is assumed to not be present in the case of unmarried cohabitants. In this context, it may be noted that married couples in the Netherlands can limit their financial connection during the marriage by means of a prenuptial agreement to such an extent that there is virtually no legal difference during the marriage than with unmarried cohabitants. Conversely, unmarried cohabitants can extend their financial rights and obligations in such a manner that they achieve the level of married couples during the relationship. In addition, in

the author's opinion, it is not so much the legal financial connection that is important but rather the actual financial connection. In the Netherlands, this connection between cohabitants appears to be much greater than the legal financial connection and also often larger than in the case of married couples with a prenuptial agreement that stipulates that no income or wealth is shared (cold exclusion). The manipulation sensitivity can also be a reason to not treat unmarried cohabitants in the same way as married couples. However, a system in which only married couples are fiscally recognized can also lead to manipulation. This is inherent in the fact that tax consequences are attached to the marriage – or qualifying cohabitation – that may be advantageous or disadvantageous. Finally, feasibility and efficiency can also be a reason to not treat unmarried cohabitants in the same manner as married couples for tax purposes. By adhering to objective criteria, as has happened in the Netherlands since 1 January 2011, the main objections in this area can be eliminated.

Additionally, in most European countries, special tax concessions apply if someone has children. At a time when children are more often growing up in stepfamilies, the question of whether these concessions also apply to stepchildren is relevant. In the Netherlands, this is the case for both formal stepchildren (child of the spouse) and informal stepchildren (child of the unmarried cohabiting partner) and for both income tax and the inheritance and gift tax. The situation in Europe is much more diverse. In some other European countries, like in the Netherlands, stepchildren are equated with a person's own children. Although this author has not been able to locate any data on this, the conclusion seems justified that this is much less the case for the so-called 'informal' stepchildren since many European countries do not treat unmarried cohabitants in the same way as married couples. If these countries already equate stepchildren with a person's own children, it is not likely that they do the same for children of the unmarried cohabiting partner. The situation is also diverse regarding EU regulations. On the one hand, a stepchild was not considered to be a person's own child within the meaning of the regulation on the coordination of social security systems while, on the other hand, they were treated equally for the regulation on the free movement of workers.

The last, more recent, phenomenon described by the author is the possible tax consequences in the Netherlands of the situation in which more than two parents raise a child (multiple parenthood). In the Netherlands, the Parenthood Review Committee published a voluminous report in 2016 indicating the consequences that these developments should have for family law. In response to the report of the State Committee, a report was published in June 2019 in which the possible consequences of multiple parenthood and multiparent authority are described for taxes and benefits. In the meantime, the Dutch Government has indicated that it will not adopt the recommendations of the State Commission in the area of multiparent authority and multiple parenthood. Although multiple parenthood is increasingly manifesting itself in Dutch society, civil and fiscal recognition of multiple parenthood and multi-parental authority appears to be a step that is regarded as being too drastic for the time being. In practice, however, there are few or no tax obstacles for multiple parenthood. The inheritance and gift tax act already includes multiple parents due to the equation of stepchildren and informal stepchildren with their own children.

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