

As of January 1, 2011 the rules surrounding the tax partnership were changed. The changes which have taken place may have consequences for:

- Unmarried cohabitants; and
- Married couples who want to divorce and/or married couples who live “permanently separated”.

Tax Partnership

If you and your partner are registered as tax partners with the tax office, this means that for certain incomes and expenditures you yourself can choose which person the addition/deduction is applied to in the income tax returns. By careful allocation you can ensure that the final tax calculation is in your advantage.

From January 1, 2011 a married couple no longer had the choice of whether they were a tax partnership or not. To now be eligible for a tax partnership you must fulfil a number of conditions as established by the legislature.

Conditions tax partner

If you were unmarried but lived together with your partner, and were registered with the municipality at the same address in 2011, then you are a tax partner if you meet one of the following conditions.

- you have a cohabitation contract (samenlevingscontract); or
- you have a child together; or
- you or your partner have a child and the other has recognized the child; or
- you are considered partners as part of a pension plan; or
- you are both the owner of a property which serves as your main residence.

Your tax partnership begins at the moment that both of you are registered with the municipality at the same address and ends when this is no longer the case. If you do not fulfil any of the above conditions then you are not tax partners. You no longer have a choice for the income tax return (from 2011).

Gift and inheritance tax

For gift and inheritance taxes stricter conditions apply for treatment a tax partnership. If you have a cohabitation contract you are automatically tax partners for income tax. However for gift and inheritance tax you are only tax partners if the mutual obligation of care is included in the cohabitation contract. The fulfilment of the conditions for income tax such as a shared purchased property, a child or a joint pension are not sufficient. Benefits of the tax partnership for inheritance tax include the right to an increased exemption (equal to that for married couples) as well as a significantly lower tax rate.

Ending tax partnership for married couples

Before January 1, 2011, tax partnership ended at the moment that the partners permanently separated. Under the old legislation the definition of permanently separated was that one of the partners moved out of the matrimonial home and was registered at another address. With effect from January 1, 2011 this has changed and the tax partnership ends at the moment that the lawyer sends the application for divorce to the court.

Conclusion

The new rules regarding tax partnership bring amendments with it which unmarried couples who live together and married couples in divorce proceedings should be conscious of. Unmarried couples who want to be tax partners in 2011 should fulfil one of the above conditions to be eligible. To be treated as a tax partner from January 1, 2011 you can be married or undergo a cohabitation agreement.

Married couples who live permanently separated but have not yet submitted a divorce application to the courts will be automatically treated as tax partners in 2011 (again). In order to end the tax partnership they should submit a divorce application as soon as possible.