TOPIC

TAXATION OF (EX-)PARTNERS AND CHILDREN

Tiberghien

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TOPIC
TAXATION OF (EX-)PARTNERS AND CHILDREN

Let's live like a river flows,
carried by the surprise
of its own unfolding…

SOME POINTS OF ATTENTION FOR SPOUSES, LEGAL COHABITANTS AND SEPARATED PARENTS.

SUBJECT TO PERSONAL INCOME TAX IN BELGIUM.

- You are separated or in the process of separating and are wondering **how you will be taxed** and who benefits from **the tax-free amounts for dependent children**?
- You have heard about **fiscal co-parenting** and are wondering what it is and what are the advantages and disadvantages?
- Do you receive child support or alimony payments from your former spouse and are wondering **how these will be taxed?**
- Do you pay alimony and wonder whether these payments are **deductible** from your taxable income?
- **Your child is** receiving alimony payments and you are wondering whether he or she is still **fiscally at charge** or whether he or she **should file a tax return**?
- You are separated and are worried whether the tax authorities can turn to you, or even seize your assets, regarding the **tax debts of your ex-spouse** or former legal cohabitant?

Below you will find a first answer to all these questions, and many more.

The amounts indicated are those relating to tax years 2021 (2020 income) and 2022 (2021 income).

The reader's attention is drawn to the fact that this article is a general overview of certain tax rules that apply to (ex-)partners and divorced parents. The subject matter is not dealt with exhaustively and therefore this article cannot be considered as legal advise. Furthermore, the article sets out the authors' point of view without guarantee that it will be followed in all respects by the tax authorities in the event of a dispute.

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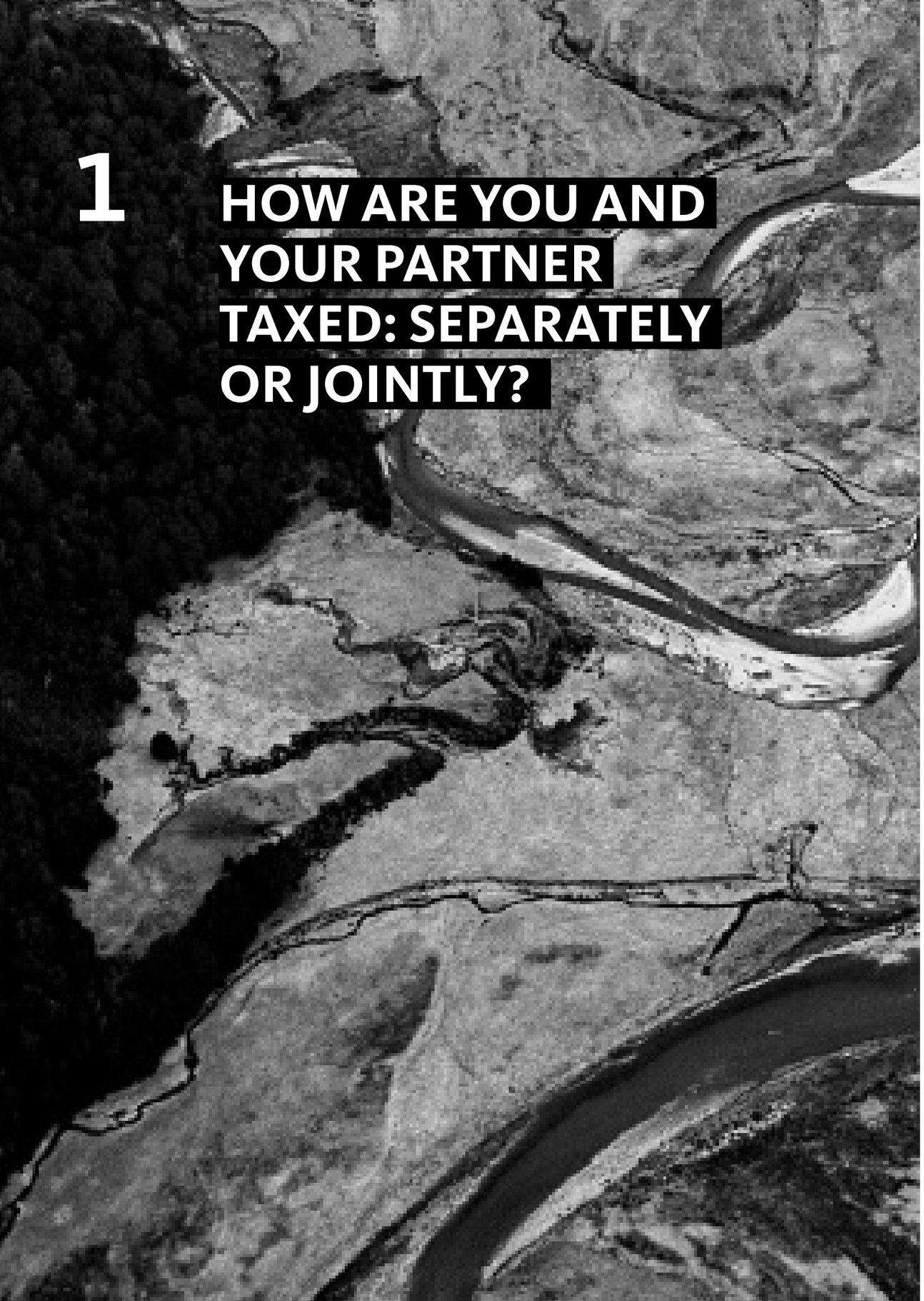


1 HOW ARE YOU AND YOUR PARTNER TAXED: SEPARATELY OR JOINTLY?

You are taxed differently depending on whether you are single (or de facto living together with your partner), or legally cohabiting or married.
You are separated from your spouse but the divorce has not (yet) been declared, in such case the rules may also vary.

Below you will find an overview of how you are taxed, either alone or with your partner (de facto cohabitant, legal cohabitant or spouse), as from the year before your marriage or legal cohabitation up to the year after your marriage, legal cohabitation, de facto separation, divorce or the end of your legal cohabitation.

1.1 The year preceding the conclusion of the marriage or the declaration of legal cohabitation

- When two people live together, in the same *de facto household*, without being married or bound by a declaration of legal cohabitation, in other words when they '***de facto cohabiting***', each partner files his or her own income tax return and is taxed **separately** (Article 126 ITC92).

- If you are de facto cohabitants and have a **common child**, then which parent can enjoy the tax benefit for children at charge?
  The parent/partner who is in fact the '**head of the household**' may take the child at charge for tax pusposes. He or she must indicate this status in his or her tax return under codes 1030-37/1031-36 and 1038/1039 (box II.B). The concept of 'household management' is explained below in Section 2.2.

1.2 The year of the conclusion of the marriage or the declaration of legal cohabitation

- First, it should be pointed out that, for income tax purposes, legal cohabitants are treated in the same way as married persons. The rules applying to spouses also apply to legal cohabitants.
  The status of 'legal cohabitants' requires an official step, cohabitants must make a declaration of legal cohabitation to the registrar of the municipality (commune/gemeente) of their common residence.

- In principle, for the year in which the marriage is contracted, or in which the declaration of legal cohabitation is made, each of the partners remains taxed separately, as indicated in point 1.1. above (Article 126, § 2, paragraph 1, 1° ITC92).

- **There is**, however, an **exception** for l**egal cohabitants who marry**.
  In the year of their marriage, they are jointly taxed and file a joint tax return unless the declaration of legal cohabitation was made in the same year as the marriage (Article 126, § 2, paragraph 2, ITC92).

As a result, in this particular case, joint taxation is established even though the spouses have not been married for a full calendar year (from 1 January to 31 December) and have not previously been legal cohabitants for a full calendar year.

! This exception could allow partners who wish to take advantage of the tax benefit of the marital quotient more quickly - and without waiting a full year (see point 1.3.).

- Do you and your spouse or legal cohabitant have a common child?
  The child is deemed for tax purposes to be at charge of the parent who is 'the head of the household'. He or she must indicate this in his or her tax return under box II.B, codes 1030-37/1031-36 and 1038/1039. The concept of 'the head of the household' is further explained below in Section 2.2.

1.3 The first full year under the status of 'married' or 'legal cohabitants' (from 1 January to 31 December)

- Legal cohabitants and spouses must file a joint tax return in which the income of each of them is declared. A joint tax assessment is established in the name of both spouses/legal cohabitants (Article 126, § 2 ITC92 What does 'established on behalf of both spouses' mean? It means that you only receive one tax assessment notice (a tax bill) on behalf of both spouses/cohabitants.

- However, even if you only receive a joint tax assessment, the tax is calculated for each spouse/cohabitant separately: the taxable base, any tax-free amounts and the tax due. This is the principle of the decumulation of income (Articles 126, § 1 and 127 ITC92).

- An exception exists when the marital quotient applies.
  The marital quotient has the effect of transferring part of the income of the spouse who earns the most to the spouse who earns the least, for tax calculation purposes. There are two possible scenarios:
  - Only one of the spouses has any professional income (Article 87 ITC92).
    In this case, a share of his or her professional income is transferred to the spouse without professional income, unless the non-application of the marital quotient is more advantageous for both spouses together.
    The share amounts to 30% of the income but may not exceed EUR 11,090 (for the tax year 2021, income 2020) and EUR 11,170 (for the tax year 2022, income 2021).

  - Both spouses have professional income, but the income of one is less than 30% of the total professional income of both spouses (Article 88 ITC92).

In this case, a share of the professional income of the spouse who earns the most is transferred to the other spouse to enable him or her to reach 30% of the spouses' combined income, without the amount thus transferred exceeding EUR 11,090 (for the 2021 tax year, 2020 income) and EUR 11,170 (for the 2022 tax year, 2021 income). Again, this mechanism is not applied if the non-application is more advantageous for both spouses together.

! Due to the the marital quotient, a part of the professional income is taxed at a lower rate. This can result in a maximum benefit of approximately 5,300 EUR on an annual basis, or 440 EUR on a monthly basis.

1.4 The year in which the *de facto* separation occurs

- To be considered as '*de facto* separation' under tax law, the separation must be effective before 1 January of the tax year.
  Specifically this means that if separation occurs on 30 May 2020, then the partners (spouses or legal cohabitants) will not be considered as '*de facto* separated' for the 2021 tax year - 2020 income.
  If, on the other hand, their separation continues until 2021 and throughout 2021, they will be considered '*de facto* separated' for the 2022 tax year - 2021 income.

- Consequently, in the year of the *de facto* separation, the tax regime of the partners remains unchanged. The same rules as set out **in point 1.3**. apply: their income is subject to joint taxation.
  In principle, spouses or *de facto* separated legal cohabitants have to submit a joint tax return, which is not always easy when the partners are on bad terms. Therefore, **it is possible to file separate tax returns**, but in this case the tax authorities will in principle calculate the tax as if the partners were not *de facto* separated.

! However, it is not possible to file two separate tax returns in the year of the effective separation via Tax-on-Web. To file separate tax returns in the year of the effective separation, a paper filing of the tax return will be required and the deadline for the filing of paper tax returns should be taken into account (end of June instead of mid-July).

The tax return forms must be sent to the tax office of the municipality of residence if both spouses or legal cohabitants are still living in the same municipality on 1 January of the tax year. If the spouses or legal cohabitants no longer live in the same municipality, then the tax return must be sent to the tax office of the municipality of last common residence.

- **What is meant by 'de facto separation'?**
  De facto separation is the situation in which partners, spouses or legal cohabitants are no longer living together, without being officially divorced.
  De facto separation requires two elements (Com.ITC., no. 128/17):
  - A material element: spouses or legal cohabitants no longer live together in the same home;
  - An intentional element: at least one of the spouses or legal cohabitants wishes to no longer live with their partner. Consequently, there is no 'de facto separation' when living apart is not desired by at least one of the partners, but is for instance due to professional, social or medical reasons (i.e. hospitalisation).

  This separation may be voluntary and agreed by both partners or be imposed by one of the partners, or by a court (at the request of one of the partners).

- **How to prove the reality of this de facto separation to the tax authorities?**
  The tax authorities consider a de facto separation to exist when the spouses have a factual and permanent separate residence.
  The taxpayer can provide proof of the de facto separation, the date on which the separation took effect and its lasting nature, by any legal means (other than the oath), for example by means of a rental agreement or utility bills.

  Entry in the population registers at different addresses constitutes a (rebuttable) presumption of separation.

- What happens when the divorce transcript or the declaration of the end of legal cohabitation takes place in the year in which the de facto separation takes place?
  In such an event, ex-partners are taxed separately, as indicated in point 1.6. below.

1.5 The first full year of de facto separation, i.e. from 1 January to 31 December.

- When partners (non-divorced spouses or legal cohabitants) live de facto separated from 1 January to 31 December, they are, as from this first full year of de facto separation, taxed separately, as explained above in point 1.1. (Article 126, § 2, paragraph 1, 2° ITC92).

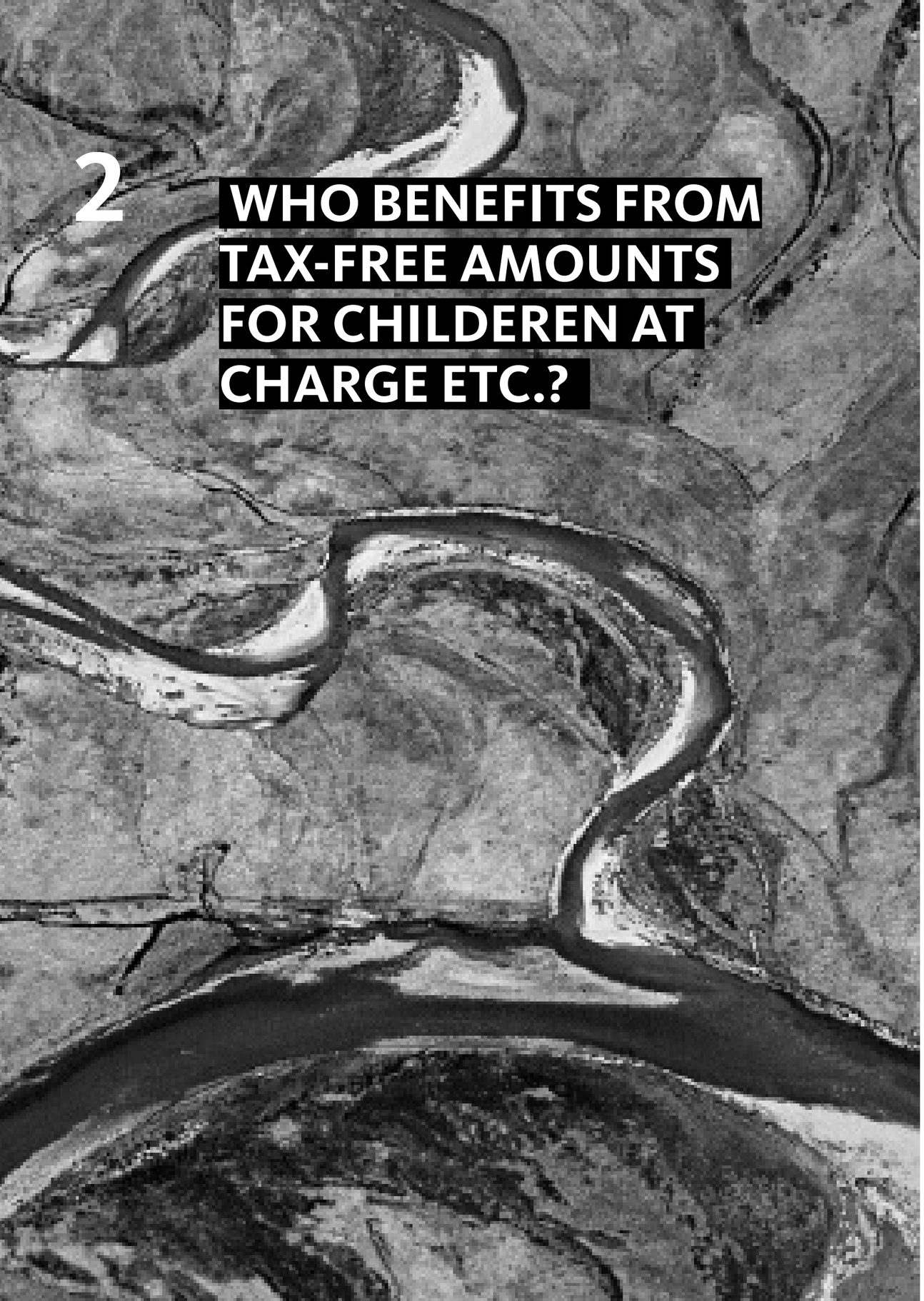
1.6 The year in which the divorce was entered in the population register / tax return of the end of legal cohabitation, and subsequent years

- As far as the tax authorities are concerned, the divorce has no effect (i.e. legal consequences) until it is registered in the national population register.

- The rules set out in point 1.1. apply.
  Each of the partners must file their own income tax return and is taxed separately.

1.7 Conclusion

- The partners are subject to joint taxation in:
  - The first full year of marriage or legal cohabitation;
  - The first year of marriage, even if it is not complete, when they were legally cohabiting the year before the marriage;
  - All subsequent years under the status of 'married' or 'legal cohabitants', as long as they have not been de facto separated for a full year;
  - The year in which the de facto separation occurs.



2 WHO BENEFITS FROM TAX-FREE AMOUNTS FOR CHILDEREN AT CHARGE ETC.?

- The net income of a taxpayer - after deduction of deductible expenses - is subject to tax (Article 6 ITC92).

  The tax rate is:
  - **25%** for the income bracket from EUR 0.01 to EUR 13,440 for the tax year 2021 (2020 income) and from EUR 0.01 to EUR 13,540 for the tax year 2022 (2021 income);
  - **40%** for the income bracket from EUR 13,440 to EUR 23,720 for the tax year 2021 (2020 income) and from EUR 13,540 to EUR 23,900 for the tax year 2022 (2021 income);
  - **45%** for the income bracket from EUR 23,720 to EUR 41,060 for the tax year 2021 (2020 income) and from EUR 23,900 to EUR 41,360 for the tax year 2022 (2021 income);
  - **50%** for the income bracket above EUR 41,060 for the tax year 2021 (2020 income) and EUR 41,360 for the tax year 2022 (2021 income).

As explained above (see point 1.3.), these tax rates are applied to the income of each of the married or legally cohabiting partners separately, even if they are taxed jointly (Article 130, paragraph 2 ITC92).

A specific example: a taxpayer receives a net annual income of EUR 45,000 in 2021 (tax year 2022).
The tax due on this total income - before the application of any tax-free amounts and reductions - amounts to EUR 17,206, calculated as follows:
- 25% for the income bracket from EUR 0.01 to EUR 13,540: EUR 3,385
- 40% for the income bracket from EUR 13,540 to EUR 23,900: EUR 4,144
- 45% for the income bracket from EUR 23,900 to EUR 41,360: EUR 7,857
- 50% for the income bracket above EUR 41,360: EUR 1,820

- However, **a proportion** of the income subject to personal income tax is **tax-exempted**.
  It is not as straightforward as simply deducting tax-exempt amounts from taxable income. The calculation of this tax-free amount is more complex. We will come back to this below with a practical example (point 2.5).

- Depending on your status, you can benefit from various tax-free amounts, as further explained below:
  - The basic tax-free amount;
  - Increased tax-free amount for children at charge;
  - The tax-free amount applicable to single persons with (a dependent child(ren);
  - Plus many other tax-free amounts that are beyond the scope of this article.

- Depending on the case, the tax-free amount applies to the income of both parents, where applicable in equal parts, or to the income of only one of them.

2.1 Basic tax-free amount (Article 131 ITC92)

- Each taxpayer is granted an tax-free amount of a part of his or her income before taxation. This is the **basic tax-free amount**.
  - For the tax year **2021** (2020 income), out of an amount of **EUR 8,990.**
  - For the tax year **2022** (income 2021), out of an amount of **EUR 9,050**.

  The method of calculating this tax-free amount is explained below in point 2.5.

- In addition, should the taxpayer have a disability, the basic amount of the tax-exempt portion of income is increased by:
  - 1.630 EUR for the tax year 2021 (income 2020).
  - 1,650 EUR for the tax year 2022 (income 2021).

2.2 Increased tax-free amount for children or another person at charge (Article 132 ITC92)

- Where a taxpayer is responsible for one or more persons at charge, additional tax-free amounts may be granted.

- These increased tax-free amounts do not only benefit single taxpayers but also married or legally cohabiting persons.
  For spouses or legal cohabitants for whom joint taxation is established, the tax-free amount is in principle allocated with priority to the income of the spouse whose taxable income is the highest (Article 134, § 4, paragraph 1, 2° ITC92), unless it is fiscally more advantageous when it is allocated to the income of the other spouse (Article 134, § 4, paragraph 3 ITC92).
  As this calculation is not carried out in the last stage of the tax calculation but at an intermediate stage, this method of calculation may be disadvantageous. Therefore, the Minister of Finance has announced that the necessary corrections will be applied. There is however no legal basis for this administrative leniency.
  In the case of partners living together but taxed separately (not subject to joint taxation), this tax-free amount is allocated to the income of the partner who is the 'head of the household' (Article 140 ITC92). In practice, it is left to the partners to decide which partner is considered the head of the household.

- The following persons can be considered as being at charge for tax purposes (Article 136 ITC92):
  - The children of the taxpayer
  - His or her ascendants (i.e parents, grandparents)
  - Collaterals up to and including the second degree (i.e. brothers and sisters)

  - Persons who were assumed to be at the taxpayer's exclusive or principal charge during childhood, for example the uncle or aunt who cared for the taxpayer after the death of his or her parents.

! The legally cohabiting partner or the de facto cohabiting partner cannot be considered as fiscally dependent if they do not fall into one of the above-mentioned categories of persons.

- The abovementioned persons are considered to be fiscally at charge provided that the following **three conditions** are met:
  1. The person must be **part of the taxpayer's household** on 1 January of the tax year.

  2. The person may not have a **net income** exceeding (when the taxpayer is taxed jointly):
     - 3.380 EUR for the tax year 2021 - income 2020
     - 3,410 EUR for the tax year 2022 - income 2021

     When the taxpayer is taxed as 'single', the person at charge may not have a net income exceeding:
     - 4,880 EUR (Article 141 ITC92) for the tax year 2021 - income 2020.
     - 4,920 EUR for the tax year 2022 - income 2021.

     ! A point for attention regarding parents in the process of separation: as stated above, in the year in which the separation occurs, if the spouses are still married, then neither of them can be considered as 'single', even if they live separately. For that year, the net resources of each dependent child, if any, may not exceed EUR 3,380/3,410.

  3. The person at charge may **not receive remuneration that constitutes a professional expense for the taxpayer** (Article145, 1° ITC92).

     ! However, this rule does not apply where the parent is self employed in a company and his or her child receives remuneration from that company.

- What is meant by '**being part of the household**'?
  This means living permanently under the same roof, in other words, it implies "*a community of domestic life, and in particular of residence, without excluding temporary interruptions*", such as distance justified by studies, the need for health care, or professional reasons.
  This is a factual assessment that takes account of various factors such as the child's official domicile, a possible court's decision on the child's main residence, the actual place where the child lives, the parent who receives family allowances for the child, the parent who bears the main responsibilities for the child, etc. The assessment is made on the basis of the factual situation.

The official address of domicile is therefore an important factor, but it is not decisive. However, if the child's actual place of residence does not coincide with his or her official address, this increases the likelihood of a tax audit or a dispute with the tax authorities.

A practical example: in the case of a student who rents a studio near his university, in which he lives together with his student friends, who registers in the local population register and concludes utility contracts in his name and who pays the bills himself with, among other things, the alimony paid by his parents and income from a summer job. This student can no longer be considered part of his parents' household because he has established a domestic life elsewhere. On the other hand, in this case, if the student is no longer part of his parents' household, then the alimony paid to him by his parents could be deductible from his parents' taxable income under Article 104 ITC92 (more details below, in point 4.1.).

- What is meant by '**the head of the household**'?
  Where the parents are de facto cohabitants or de facto separated, the tax-free amount for dependent children is granted to parent who is 'the head of the household'.
  The taxpayers can choose which parent is considered as the 'head of the family'. They inform the tax authorities of their choice via their tax return. If there would be a dispute between the parents on this issue, then the tax authorities can determine which parent is to be considered the head of the family. In this case, in principle, the tax authorities consider the parent with the higher income as the head of the house (which is, usually, most advantageous for the taxpayer).

- What is meant by '**net resources**'?
  This is the **gross** amount of income received (wages or other), from which the following income components **are deducted**:

Amounts that are not taken into account as income (Article 143 ITC92) include:

- **Alimony payments** received by the child in the year in which they are due, up to a cap of EUR 3,330 (2019 income) and EUR 3,380 (2020 income);

  ! Practically, this means that a child remains fiscally at charge if the alimony that he or she receives:
  - For the tax year 2021: does not exceed: EUR 4,225 (i.e. the 'cap' of the gross authorised resources plus 20% of deductible expenses) + EUR 3,380 (the amount of the tax-exempt maintenance contribution), i.e. EUR 7,605;
  - For the tax year 2022: does not exceed: EUR 4,262 + EUR 3,410, i.e. EUR 7,672.

If the parent is taxed as 'single':
  - For the tax year 2021: EUR 6,100 (i.e. the 'cap' of authorised gross resources of EUR 4,880 plus 20% of deductible expenses) + EUR 3,380, i.e. EUR 9,480;
  - For the tax year 2022: EUR 6,150 + EUR 3,410, i.e. EUR 9,560.

- Alimony payments and supplementary alimony payments paid in execution of a court decision that has fixed or increased the amount with retroactive effect for a previous year;

- Certain remuneration received by students up to a cap of EUR 2,820 (2020 income) and EUR 2,840 (2021 income);

- Alimony or allowances in lieu received by parents up to a cap of EUR 27,230 (2020 income) and EUR 27,430 (2021 income);

- Family allowances, birth and other benefits;

- Gifts received, for instance by a child from his/her grandparents.

- The actual professional costs or the lump sum cost, set at 20% (with a minimum of EUR 470) (Article 142 ITC92);

- Any social security contributions paid, in the case of employees.

  ! Children who solely receive income on which their parents have a legal right of enjoyment, i.e. income that is cumulated with their parents' income (point 3. below), are always considered as being fiscally at charge, regardless of the size of their income (Article 137 ITC92).

- Where the persons at charge are children, the additional tax-exempt amounts are the following:
  - 1 child
    - 1,630 EUR for the tax year 2021 - income 2020
    - 1,650 EUR for the tax year 2022 - income 2021
  - 2 children:
    - 4,210 EUR for the tax year 2021 - income 2020
    - 4,240 EUR for the tax year 2022 - income 2021
  - 3 children:
    - 9,430 EUR for the tax year 2021 - income 2020
    - 9,500 EUR for the tax year 2022 - income 2021
  - 4 children:
    - 15,250 EUR for the tax year 2021 - income 2020
    - 15,360 EUR for the tax year 2022 - income 2021

- More than 4 children:
  * 15,250 EUR plus EUR 5,820 per child from the 5th child onwards for the tax year 2021 - 2020 earnings
  * 15,360 EUR increased by 5,860 EUR per child from the 5th child for the tax year 2022 - income 2021.

- Moreover, per child that is **under 3 years old**, the following **additional amount** is exempted, provided that the taxpayer does not deduct childcare expenses:
  - From EUR 610 for the tax year 2021 - income 2020
  - From EUR 610 for the tax year 2022 - income 2021

- If the taxpayer has **a person who at charge** (ascendants, collateral up to and including the second degree) who has reached the **age of 65**, then he or she benefits from the following **additional exception**:
  - From EUR 3,270 for the tax year 2021 - income 2020
  - From EUR 3,290 for the tax year 2022 - income 2021

- Where the taxpayer has another person at charge, for example an uncle or brother (who has not reached the age of 65), he or she benefits from the following **additional exception**:
  - From EUR 1,630 for the tax year 2021 - income 2020
  - From EUR 1,650 for the tax year 2022 - income 2021

- An example of a practical calculation is given in 2.5 below.

2.3 Additional tax-free amount for a single parent with a dependent child (Article 133 ITC92):

2.3.1. A single person with a child at charge

- Under certain conditions, a single parent with (a) childr(en) at charge can benefit from an additional tax-free amount.

- What is meant by a 'single person' for income tax purposes?
  Any taxpayer who is not de facto cohabiting, on 1 January of the tax year, with persons other than:
  - His or her children, grandchildren, great-grandchildren, foster children;
  - His or her ascendants (i.e. parents, grandparents, great-grandparents, foster parents);
  - Collaterals up to and including the second degree (i.e. brothers and sisters);
  - The person(s) who assumed the taxpayer's care during his/her childhood (adoptive parent).

This tax-free amount also benefits married taxpayers and legal cohabitants for the year of their marriage or their declaration of legal cohabitation, provided that they are taxed separately and that neither of them have resources of a net amount exceeding EUR 3,380 for the tax year 2021,

income 2020 and EUR 3,410 for the tax year 2022, income 2021 (Article 133, paragraph 1, 2° ITC92).

! Married partners and legal cohabiting partners will therefore not be considered as single persons from the year following the year of their marriage or legal cohabitation onwards, provided that they are not de facto separated for the whole of the year concerned.

- The additional amount exempted for a single parent with (a) dependent childr(en) is:
  - **1.630 EUR** for the tax year **2021** (income 2020)
  - **1,650 EUR** for the tax year **2022** (income 2021)

- This tax-free amount for 'single person with a dependent child' benefits each of the parents provided that each of them is taxed separately.

- The taxpayer must indicate in his or her tax return that no person (other than the persons above) is part of his or her household on 1 January of the tax year under code 1101-63 (box II. A).

2.3.2. A single person with a child at charge and limited income

- A single person with a dependent child and limited income is entitled to an additional increase of the tax-free amount.

- To benefit from this increase:
  - The single person's taxable income must be less than EUR 20,090 for the tax year 2021 (2020 income) and less than EUR 20,240 for the tax year 2022 (2021 income);
  - His or her net professional income must be at least EUR 3,380 for the tax year 2021 (2020 income) and EUR 3,410 for the tax year 2022 (2021 income). Unemployment benefits, pensions and separately taxable income are not taken into account in determining this income.

- The additional exempt amount is:
  - 1,060 EUR for the tax year 2021 (income 2020)
  - 1,070 EUR for the tax year 2022 (income 2021)

- If the amount of taxable income exceeds EUR 15,860 for the tax year 2021 and EUR 15,980 for the tax year 2022, then the additional tax-free amount is proportionally reduced.

- In addition, a single person with a dependent child and limited income also benefits from a greater tax advantage for childcare costs, i.e. a tax reduction of 75% instead of 45%.

2.4 Which parent benefits from the increased tax free amount for children at charge when the parents are separated or divorced and no longer part of the same household? (Article 132bis ITC92) - fiscal co-parenthood

- Where the parents are no longer part of the same household, the increased tax free amount for children at charge (see above in Section 2.3.) is in principle granted in full to the parent with whom the child is domiciled.

- Where the parents opt for the tax co-parenting scheme, this benefit is shared equally between the parents. In addition, under this co-parental tax regime, each parent may benefit from the additional increase of the tax free amount for a 'single person with dependent child' and a 'single person with dependent child and limited income' if they meet the conditions (see Sections 2.3.1. and 2.3.2.).

Note that this situation cannot occur in the following years:
- The first year of marriage or legal cohabitation (unless you were legally cohabiting before marrying);
- The first full year under the status of "married" or "legally cohabitating";
- All subsequent years under the status of "married" or "legally cohabitating";
- The year in which the *de facto* separation takes place.

After all, during these years, the parents are part of the same household for income tax purposes.

- For the tax co-parenting scheme to apply, **4 conditions** must be met:
  1. The parents are no longer part of the **same household** on 1 January of the tax year;
  2. Each of the parents must **fulfill his or her obligation of maintenance** towards the child under Article 203 § 1 of the Belgian Civil Code or a similar provision under foreign law;
  3. **The accommodation** of the child must be **shared equally** between the two parents:
     a. Either to satisfy a court decision that orders alternating accommodation for equal duration at both parents. In this case, it has generally been accepted that this regime applies automatically. However, the Court of Cassation recently issued a ruling (of 17 February 2020) in which it explicitly stated that this fiscal co-parenting regime is not an (automatic) obligation but a possibility for parents.
     In light of this judgment, the parents either agree on the application (or non-application) of this fiscal co-parenting regime, or they do not agree, in which case one of the parties must, if necessary, request the court for its application. The court will then decide whether this benefit is granted in its entirety to the parent with whom the child is domiciled or whether it is to be divided in half between each of the parents.

! A point to note regarding separated parents: in the event of a disagreement, the parents must ensure that they ask the court hearing their dispute to also decide on who will benefit from this additional tax free amount for children at charge.

b. Or where the parents have concluded a divorce agreement by mutual consent in which they explicitly provide that the child's accommodation is shared equally between them and that they want to share this additional tax free amount for dependent children equally between them.

! This agreement must be registered or approved by the court, or this court decision must be made at the latest by 1 January of the tax year. For instance, if the agreement is registered during the year 2020, this regime will be effective for the income year 2021 (tax year 2022).

4. **Parents do not deduct alimony payments for these children**

! A parent who pays an alimony contribution cannot benefit from the tax free amount for dependent children if he or she has deducted the alimony that he or she pays for that child from his or her tax base.
If one parent opts for the deduction of the alimony payments, the other parent does not lose his or her right to this tax-free amount (limited to 50%).

! When alternating accommodation for equal duration is provided for, it is advisable for the parent who pays alimony for the child to assess what is most advantageous:
- Half of the increased tax free amount for dependent children;
- The deduction of 80% of the alimony that he or she pays for this child.

A concrete example:
- Parents with three dependent children who are in the process of a divorce procedure by mutual consent opt for alternating accommodation for equal duration;
- The father has a higher income than the mother and they agree on the amount of alimony that the father will pay for the three children, i.e. EUR 50 per month per child, i.e. EUR 1,800 per year in total;
- We have seen that for the tax year 2021 (2020 income), the tax-exempt amount for 3 dependent children amounts to EUR 9,430;
- The concrete tax advantage therefore amounts to EUR 2,354.5 (Article 134, § 2 ITC92 - point 2.5.).

  - If the parents opt for fiscal co-parenting, the father can enjoy a tax advantage of EUR 1,177.25 per dependent child, whereas if he opts for the deduction of alimony for these three children, then 80% of the contributions he pays can be deducted from his taxable income, i.e. EUR 1,440, which will not be subject to tax at the progressive rates (ranging from 25% to 50%) and municipal tax.
  - In this particular case (if only the elements set out above are taken into account), it is more advantageous for the father to opt for the deduction of alimony than for fiscal co-parenting.

- Where one parent opts to deduct the alimony that he or she pays, the other parent will not automatically benefit from 100% of the tax-free amount for dependent children. He or she will benefit from the 50% and must lodge a claim or an application for automatic relief within the time limit set for this purpose.

- A parent can benefit both the fiscal co-parenthood regime (Article 132bis ITC92) and the tax reduction for childcare expenses provided for by Article 145/35 ITC92 (Article 132, paragraph 1, 6° ITC92).

- Where the conditions set out above for fiscal co-parenting are not met, the parent with whom the child is domiciled enjoys the entire increased tax-free amount for children at charge.
  This will be the case, for example, when:
  - The parents have never been married or are divorced, but no court decision has ruled on alternate egalitarian accommodation;
  - The parents divorced by mutual consent but did not opt for fiscal co-parenting.

- How to fill in your **tax return** in the event of co-parenting for tax purposes or sharing the tax benefit for dependent children?
  Boxes are provided for this purpose in the tax return under box II.B, codes 1034-33, 1035-32, 1054-13 and 1055-12 or codes 1036-31, 1037-30, 1058-09 and 1059-08.
  - The parent who has the child at charge but for whom half of the tax benefit is attributed to the other parent fills in section B2, codes 1034-33, 1035-32, 1054-13 and 1055-12.
  - The other parent, who is entitled to half the tax benefit, fills in section B2, codes 1036-31, 1037-30, 1058-09 and 1059-08.

2.5 How is the amount of tax due and the tax free amount calculated?

- As we have seen above, a proportion of the overall taxable income is tax-exempted, but it is not a question of simply deducting tax-exempt amounts from the taxable income. The calculation is more complex.
  Let us for instance take the case of a divorced mother, receiving a net annual remuneration of EUR 45,000, with two dependent children, one of whom is less than three years old, who receives alimony for her children not exceeding the portion not taken into account as net resources (see point 2).

- The first step is to determine the tax due on the total income of EUR 45,000.
  As we have seen above, the tax due on annual income of EUR 45,000 for the tax year 2022 (2021 income) amounts to EUR 17,206.
- The second step consists in determining the applicable tax-free amounts (Article 134, § 1 ITC92).
  For tax year 2022, income year 2021, the tax-free amounts applicable to this divorced mother of two are the following:

  - Under the basic tax-free amount (Article 131 ITC92) = 9,050 EUR
  - Under the tax-free amount for a single person with a dependent child (Article 133 ITC92) = 1,650 EUR
  - Under the tax-free amount for dependent children (x 2) (Article 132 ITC92) = 4,240 EUR
  - Under the tax-free amount for a dependent child under 3 years of age (x1) (Article 132, paragraph 1, 6° ITC92) = 610 EUR
  - In total = **15,550 EUR**

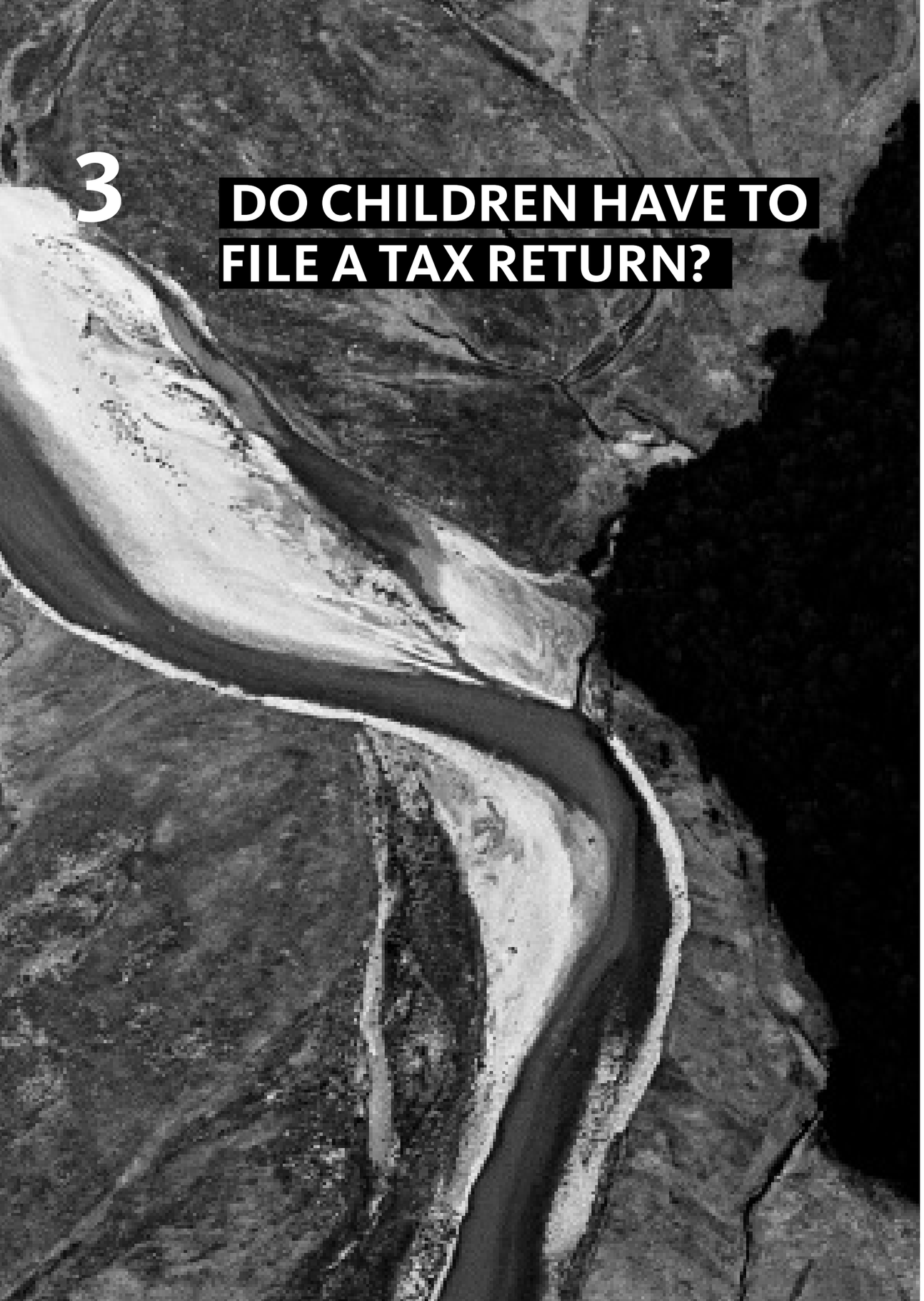
- The third step consists in determining **the amount of the tax-free sum** by applying the following rates to the tax-free amount determined in step 2 (Article 134, § 2, paragraph 2 ITC92).
  For the taxation year 2022 relating to income 2021:
  - 25% on the income bracket from EUR 0.01 to EUR 9,520
  - 30% on the income bracke from EUR 9,520 to EUR 13,540
  - 40% on the income bracke from EUR 13,540 to EUR 22,570
  - 45% on the income bracke from EUR 22,570 to EUR 41,360
  - 50% on the income bracke above EUR 41,360

In our example, the t**ax-free amount** for the 2021 tax year is therefore:
  - 25% on the income bracke from EUR 0.01 to EUR 9,520, i.e. EUR 2,380
  - 30% on the income bracke from EUR 9,520 to EUR 13,540, i.e. EUR 1,206
  - 40% on the income bracke from EUR 13,540 to EUR 15,550, i.e. EUR 804
  - In total = **4.390 EUR**

- The fourth and final step is to offset this tax-free amount against the total net income.
  As we have seen above, the tax due on an annual income of EUR 45,000 amounts to EUR 17,206. The tax finally due after application of the tax-free amounts therefore amounts to 12,816 EUR (before municipal tax).
  In addition, it should be noted that a tax credit may be granted when the tax-free amount for dependent children could not be fully deducted from the tax due, calculated as indicated in Article 130 ITC92 (Article 134, §§ 2 and 3 ITC92).

2.6 Conclusion

- A taxpayer's income is subject to income tax at a rate ranging from 25% (for income below EUR 13,440 - tax year 2021) to 50% (for income above EUR 41,060 - tax year 2021).
- A proportion of this income is however exempted from income tax.
- The amount of the tax-free sum depends on the taxpayer's family situation (civil status and children).
- In some cases, both parents benefit the tax-free amount. In other cases, only the parent with whom the child is domiciled benefits it.
- It may be fiscally more interesting to opt for the deduction of alimony payments instead of the fiscal co-parenting scheme. A case-by-case analysis is advisable.



3 DO CHILDREN HAVE TO FILE A TAX RETURN?

- Children with no income and children who only receive income on which his or her parents have a legal right of enjoyment (e.g. income from real estate, movable income and miscellaneous income, other than alimony, cumulated with his or her parents' income), does not have to file a tax return and is considered to be fiscally at charge his or her parents, regardless of the size of his or her income (Article 137 ITC92).
  Children's earnings are cumulated with those of their parents as long as the latter have legal enjoyment of their children's earnings (Article 126, § 4 ITC92).

- What is meant by '**legal right of enjoyment**' and what income does this legal right of enjoyment relate to?
  Parents have legal right of enjoyment on their children's property until they reach the age of majority or independence (Article 384 Civil Code). However, this legal enjoyment does not extend to i.a. professional income obtained by the child, nor to income from gifs to the child under the express condition of being excluded from the parents' legal enjoyment (Article 387 Civil Code).
  In addition, parents also have no legal right of enjoyment on the alimony paid for their children.

- What if the child **receives alimony or other income**?
  The child's income will be subject to tax and he or she will have to **file a personal income tax return** (or have one filed on his or her behalf) **when receiving**:

  a. **Alimony payments** if the total annual amount exceeds the amount of the tax-exempt portion, i.e.:

  i. When the parent is taxed jointly:
  - 3,380 EUR (Article 136 ITC92) for the tax year 2021 - income 2020
  - 3,410 EUR for the tax year 2022 - income 2021

  ii. When the parent is taxed separately:
  - 4,880 EUR (Article 141 ITC92) for the tax year 2021 - income 2020
  - 4,920 EUR for the tax year 2022 - income 2021

  In this case, the total amount must be declared in the tax return, even though only 80% of the amount is subject to tax.

  b. The **net resources**, such as professional income, the annual amount of which is higher than the cap of permitted net resources, i.e.:

  i. When the parent is taxed jointly:
  - 3,380 EUR (Article 136 ITC92) for the tax year 2021 - income 2020
  - 3,410 EUR for the tax year 2022 - income 2021

  ii. When the parent is taxed separately:
  - 4,880 EUR (Article 141 ITC92) for the tax year 2021 - income 2020
  - 4,920 EUR for the tax year 2022 - income 2021

We refer to point 2.3. above concerning the way in which net income is calculated.

- When these cumulatd caps are exceeded, the child can **no longer be considered as being fiscally at charge** and his or her parents can no longer benefit from the increased tax-free amount for dependent children.

  ! In specific terms, as explained in point 2.2., this means that a child remains fiscally at charge of the **taxpayer who is taxed jointly**, if the alimony he or she receives:
  - For the tax year 2021, does not exceed: EUR 4,225 (i.e. the 'cap' of the gross authorised resources of EUR 3,380 plus 20% of deductible expenses) + EUR 3,380, i.e. EUR 7,605 (the 2021 tax year);
  - The tax year 2022, does not exceed: EUR 4,262 + EUR 3,410, i.e. EUR 7,672.

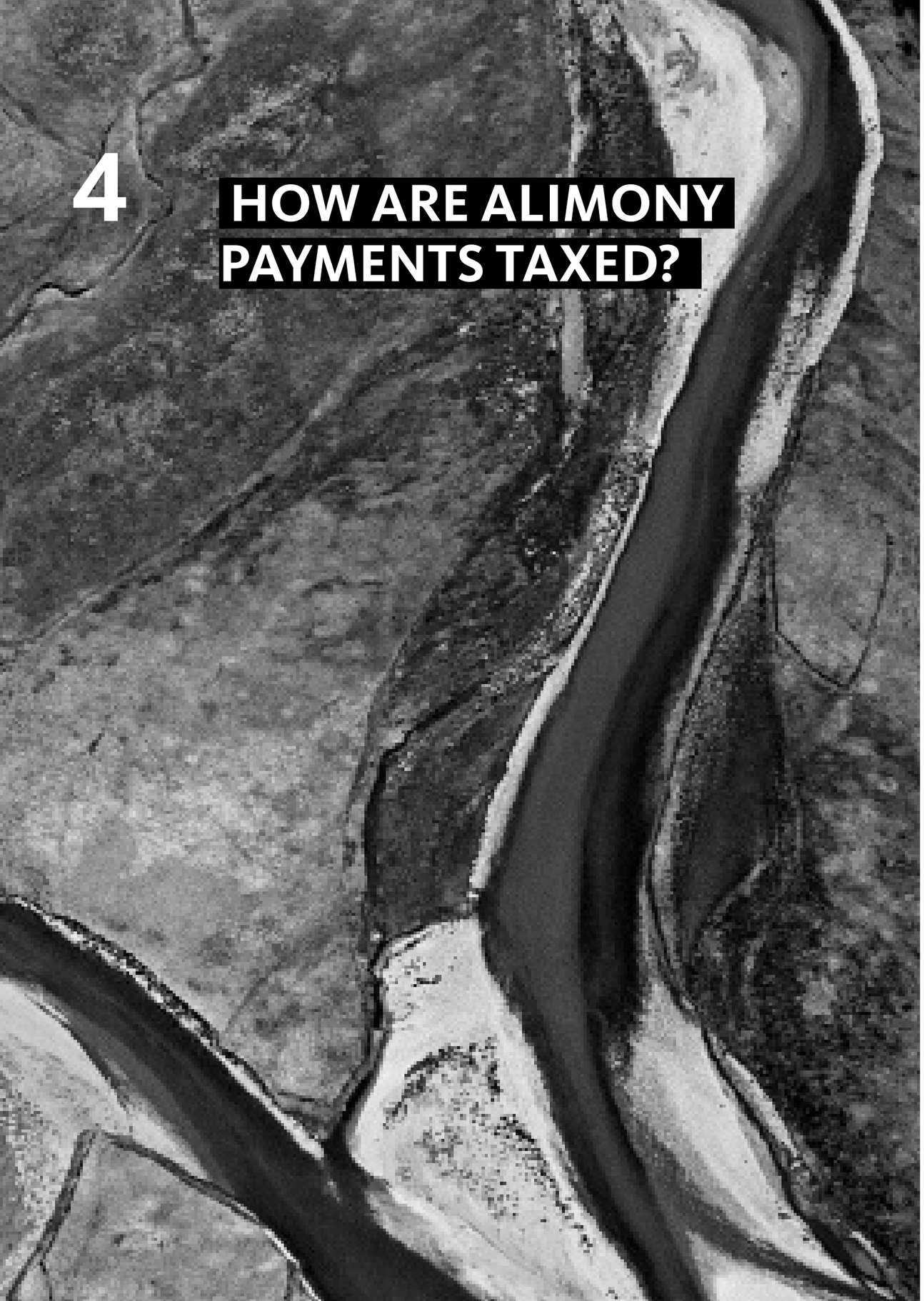
  If the parent is taxed as a 'single person', the alimony received may not exceed the maximum:
  - For the tax year 2021, does not exceed: EUR 6,100 (i.e. the 'cap' of authorised gross resources of EUR 4,880 plus 20% of deductible expenses) + EUR 3,380, i.e. EUR 9,480;
  - For the tax year 2022, does not exceed: EUR 6,150 + EUR 3,410, i.e. EUR 9,560.

- If you not spontounsly receive a tax return form on behalf of your child, you are obliged to request one. In practice, parents do not always think about filing a tax return on behalf of their child who has received alimony payments. The tax authorities seem to tolerate this situation when the amounts received by children under the age of 16 do not exceed the limits of the exempted amounts (see above). However, the legislation is strict, and in the event of an omission or misrepresentation, the tax authorities may in principle impose a fine of between EUR 50 and EUR 1,250.

! It may nevertheless be useful to file an income tax return. This is, for example, the case for children who receive dividends on shares. If the amount of withholding tax withheld at source is higher than the amount of tax due, the withholding tax can be recovered. This is also the case for students subject to the withholding tax on income from employment, who may also benefit from a tax refund if the tax withheld at source is higher than the tax finally due.

Conclusion

- If your children solely receive income that is cumulated with that of their parents (i.e. income on which the parents have a legal right of enjoyment), they do not have to file a personal income tax return.
- If your children (also) receive other type(s) of income (e.g. alimony), a tax return in their name must in principle be filed, even if their income or alimony payments received do not exceed the tax-exempted amounts.
- The tax authorities seem to tolerate that no tax return is filed for children under the age of 16 whose income does not exceed certain caps.
- However, even in this case, it may be advantageous to file a return if the income has been subject to withholding tax (e.g. on a dividend) but the tax finally due is less than the withholding tax withheld.
- The tax return of a minor can be filed by his or her legal representative (in principle his or her parents) on his or her behalf.



4 HOW ARE ALIMONY PAYMENTS TAXED?

4.1 The deduction of alimonay contributions paid

- The alimony payments that you pay to your former spouse and/or child are **deductible** from your taxable income, **up to 80% of** the amount paid, provided **that the following cumulative conditions are met**:

  a. In the case of alimony payments **paid regularly** during the taxable period:
  - If they are paid to persons (whether a child or ex-partner) who are not **part of your household** at the time of the payment (and not on 1 January of the tax year).
  - If they are paid in **fulfilment of a civil obligation** of a maintenance nature.

  b. In the case of alimony, meeting the same conditions as above, which you did **not pay in the year in which they were due** but in a later year ('paid after the taxable period in which they were due'):
  - If they are paid to satsify a court decision that has set the amount, or revalued the amount, with retroactive effect (for a previous period).

  ! Where the payment of alimony is ordered by a **court decision** and is not executed spontaneously, the payments no longer qualify and are no longer deductible.

  When the fiscal co-parenting scheme of Article 132bis ITC92 is applied, alimony paid for the same children cannot be deducted (Article 104, 2° in fine ITC92). It must thus be assessed which scheme is most advantougous for tax purposes.

  c. You are obliged to indicate to **whom these alimony payments have been made and to provide proof of this by means of documentary evidence**, such as a bank transfer.

- What is meant by '**paid regularly**'?
  Payments must be made on a regular basis, i.e. at certain, fixed and known intervals, for example monthly, quarterly or repeatedly on the occasion of certain events.
  For example, a payment made once a year, or two to three times a year, every year, can be considered regular.
  A slight delay in payment is acceptable, for example within two to three months of the period to which the payment relates.

- Moreover, this condition of regularity is not required when the expenses are not of a periodic nature, such as fuel utility bills - which may constitute alimony payments in kind - or extraordinary expenses relating to children (as defined in Article 203bis of the Belgian Civil Code).
  For example, in certain circumstances, the purchase of a car may be accepted as a deductible expense if the other conditions are met (in particular the condition that the payment must be made in the full-fillement of a civil obligation, in this case Article 203 of the Civil Code).

• What is meant by '**not part of the household**'?
Not being part of the household means that the recipient of alimony payments has left the family home with the **intention of living separately** from his or her parents. Therefore, this implies a certain psychological, social and financial autonomy.

If we take the example of our student (see above, point 2.3.), there are good reasons to argue that he is no longer part of his parents' household, but that he has formed a separate household, in a lasting and definitive manner with this desire to live separately.

• What is meant by '**in fulfilment of a civil obligation**'?
Payment must be made in fulfilment of a maintenance obligation provided for and imposed by law. Practically this regards the following civil obligations:
- Parents with regard to their children under Article 203 of the Civil Code;
- Children towards their parents on the basis of Article 205 of the Civil Code;
- Between former spouses on the basis of Article 301 of the Civil Code;
- Between separated spouses on the basis of Articles 221 and 223 of the Civil Code;
- Between legal cohabitants in some cases;
- Or a similar legal obligation in a foreign law.

If the payment is made in the fulfilment of a civil obligation, a court decision ordering the payment of an alimony payment is not required for the alimony payment to be tax deductible in the hands of the debtor. Consequently, an alimony contribution agreed on between ex-spouses without judicial intervention is tax deductible, provided that all the above conditions are met.

! Please note, however, that when alimony payments are not imposed by a court decision or by a divorce agreement under mutual consent, it is more likely that the tax administration would carry out a tax audit.

! A parent who opts for co-parenting for tax purposes (see point 2.4.) cannot deduct alimony payments. If he or she declares the alimony payments paid for a child in his or her tax return, then he or she loses the benefits of fiscal co-parenting for that child.

! Alimony payments must relate to expenses envisaged in the provisions of the Civil Code above. For example, pocket money or money paid into the child's savings account or birthday presents are not accepted as deductible alimony.

• The (full) amount paid must be entered in box VIII 'Previous losses and deductible expenses' in box 1390 (or box 1392 if the alimony is due jointly by both spouses or legal cohabitants).

• What about **alimony paid in kind**?
The alimony payments does not necessarily have to be paid in cash. It can also be paid in kind.
- This is the case, for example, for an ex-spouse who covers certain expenses of his or her ex-spouse in fulfilment of the obligation referred to in Article 301 of the Civil Code, such as the rent of a dwelling or the payment of the water, gas or electricity bills.
- It is also possible that family housing belonging to both spouses is made available free of charge to one of the spouses during the divorce proceedings (as an interim and urgent measure).

  In this respect, do note that the tax authorities take the view that 'the provision of an accommodation free of charge can be assimilated to a duly paid alimony payments, but the rental value of the family home belonging to both spouses and made available to one of the spouses during the divorce proceedings does not constitute alimony', on the grounds that this spouse already had the right of use and enjoyment (Com.ITC no. 90/20 and 104/54).
  In case law, it is indeed accepted that this may constitute a taxable alimony payment in kind.

  A case-by-case assessment is required.

• What about alimony paid in the form of a single lump sum, '**capitalised alimony**'?
The alimony due to the ex-spouse in the event of divorce can be capitalised and converted into a single payment, deductible in the year of payment.
For the beneficiary of this capital, taxation will be staggered on the basis of an annual annuity (see point 4.2. below).

! Can the payment of this capital be spread over several years, without being reclassified as a regularly paid alimony? This may be advantageous if the debtor's net resources are less than the paid-up capital or if the debtor's net resources do not allow him or her to benefit from the full deduction.

Two rulings by the Belgian ruling commission have been published on this issue. In the first one, relating to the alimony paid in the context of a divorce by mutual consent, the tax authorities have accepted that the payment may be made in five instalments over five years (Ruling 2017.764 of 23.01.2018). In a second decision, payment in three instalments was also allowed (Ruling 2016.773 of 17.10.2017).

• What about the alimony payments paid during the year in which the *de facto* separation takes place?
A distinction must be made between alimony paid for children on the one hand and alimony paid to the spouse from whom the taxpayer is separated on the other hand:

- With regard to alimony paid for children during the year of the parents' separation, the tax authorities admit the simultaneous application of Articles 136 (relating to childcare) and 104 ITC92 (relating to the deductibility of alimony payments) (Circular letter Ci.RH.331/580.592 25 January 2007)
- With regard to alimony paid to the spouse in the year of separation, the tax authorities now also allow for deductibility, provided that the conditions of Article 104, 1°, ITC92 are met and provided that the alimony payments are treated as miscellaneous income in the hands of the other spouse. (Circular letter Ci.RH.331/580.592 25 January 2007)

Conclusion

- Alimony paid to a former spouse or child is tax deductible up to 80% of the amount paid if the following conditions are met:
  - It is paid on a regular basis;
  - To a person who is not a member of the household at the time of payment;
  - In fulfilment of a civil obligation.
- Alimony not paid in the year to which it relates is deductible under certain additional conditions.
- Alimony paid in kind can also be deducted, again under certain conditions.
- Alimony paid in the form of a lump sum can be deducted. A payment in several instalments also seems to be accepted.
- The onus is on the taxpayer to provide proof of payment and to state the name of the beneficiary.

4.2 Are the alimony payments you receive taxable? Must this income be reported in your tax return?

- Alimony received is taxable up to 80% of the amount received as miscellaneous income in the hands of the recipient (the child or the former partner), under the following conditions (Articles 90, 3° and 4° ITC92):
  - The alimony is paid by a person who is not part of your or your child's household;
  - The alimony is paid in fulfilment of a civil obligation.

  Practically:
  - The obligation that is incumbent on each parent regarding his or her minor child or a child who has reached the age of majority but is still studying, under Article 203 of the Civil Code;
  - The obligation of a spouse to support the other spouse during divorce proceedings, under Article 221-223 of the Civil Code;
  - The obligation of a former spouse to pay post-divorce alimony to his or her former spouse under Article 301 of the Civil Code;
  - Between legal cohabitants in some cases;
  - Or a similar legal obligation under foreign law.

- The full amount of the alimony received must be declared in your tax return, but only 80% of the amount received is taxable (Article 99 and 90.3° ITC92). Alimony is taxed at the progressive tax rates and municipal tax.

- The same applies to alimony paid as a capital sum or alimony paid after the taxable period in which it was due in fulfilment of a judicial decision that has fixed or increased the amount with retroactive effect.

- Alimony received must be declared in your tax return under box VI, under the code that relates to your situation: regularly paid alimony, alimony awarded in a court decision with retroactive effect, capitalised alimony paid in the form of a single lump sum. The surnames, first names and addresses of the debtor must be indicated in your tax return.

- Alimony that is awarded for a past period by a court decision with retroactive effect may be subject to a separate tax rate (at the average tax rate for the year in which they are received), instead of the progressive tax rates (Article 171, 6° of the ITC92).

  We can illustrate this with a practical example :
  - A divorce is pronounced on 1 August 2018.
  - In January 2019, the ex-husband is ordered to pay alimony of EUR 400 per month.
  - In January 2019, the ex-husband pays the lump sum of EUR 2,000 (EUR 400 × 5 months).
  - From then on, he pays the sum of EUR 400 per month.

  How should the ex-wife fill in her tax return?
  - For the months of August to December 2018, the amount of EUR 2,000 (EUR 400 × 5 months) must be declared under code 1193-68. This amount will be taxed at the average tax rate for the income year 2019 (tax year 2020).
  - For the months of January to December 2019, this is an alimony payments paid regularly. The total amount of EUR 4,800 (EUR 400 × 12 months) must be declared under code 1192-69. This amount will be taxed at the progressive tax rates.

- Capitalised alimony paid out in the form of a single lump sum is subject to an annual taxation in the hands of the recipient. Each year, as from the date of receipt of the capital until his or her death, the recipient must declare an amount determined by applying the following formula: the amount of the capital received x the percentage determined according to the recipient's age (Article 170, 169, § 1 ITC92). https://finances.belgium.be/fr/particuliers/avantages_fiscaux/rentes_alimentaires/recues#q3

! Alimony payments received for a child must be declared in a tax return filed on behalf of the child, regardless of the age of the child. Where applicable, (see point 3.), the parent must request a tax return form from the tax office for this purpose.

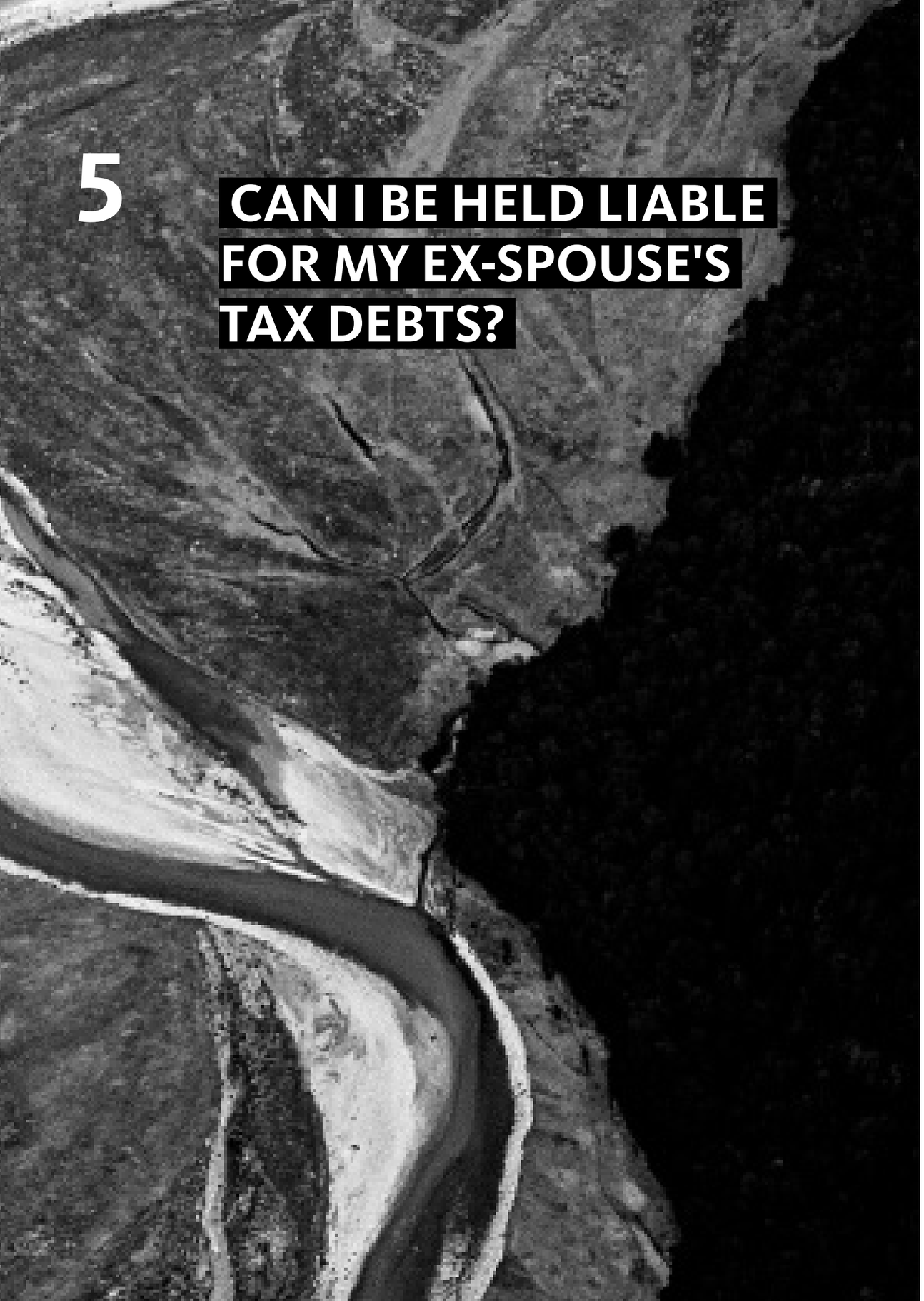
Alimony received for a child may not be included in the personal income tax return of the parent. A separate tax return must be filed for the child.

However no tax will be due if the total annual sum received in this respect (and in respect of certain other income) does not exceed the tax free amount (see Section 3.).

In practice, parents sometimes forget to file a tax return on behalf of their children who receive alimony. The tax administration seems to tolerate this when the alimony received does not exceed the tax-free amounts (see point 3. above).

Conclusion

- Alimony received by an ex-partner or by a child is taxable if it exceeds the tax-exempt amounts.
- Only 80% of the amount received is subject to tax.
- Capitalised alimony paid in the form of a single capital sum is taxed annually in the hands of the recipient.
- Where children receive alimony payments, a personal income tax return must be filed on their behalf.



5 CAN I BE HELD LIABLE FOR MY EX-SPOUSE'S TAX DEBTS?

- First, a distinction must be made between the *debt obligation* and the *debt contribution.*
  - The debt obligation determines who are the debtors to whom the creditor - in this case the tax authorities - can turn to in order to obtain payment of the ex-partner's debt.
  - The debt contribution determines who ultimately has to bear the debt.

It is possible that one spouse pays a tax debt relating to the other spouse (the debt obligation), whereas due to the matrimonial regime under which they are married, that spouse does not have to bear that debt (debt contribution).
In this case, this spouse can have a right of recourse to the other spouse, following the matrimonial regime applicable to them, and obtain the reimbursement of this debt that he or she did not have to bear.
The rules set out below relate to the debt obligation, i.e. the determination of the persons from whom the tax authorities may recover the tax, dealt with in Article 394 ITC92.

- However, a new code for the amicable and forced collection of tax and non-tax debts of 13 April 2019 (hereafter 'the Collection Code') entered into force on 1 January 2020, leading to the repeal of the former Article 394 ITC92.

- Our article therefore focuses on the regime as it it applied before 1 January 2020 and the regime applying as from 1 January 2020.

5.1 Rules applying to income received before 1 January 2020

- The tax code imposes solidarity between spouses and legal cohabitants, which in principle applies:
  - As from the date of the legal registration of the marriage or the declaration of legal cohabitation in the population registers;
  - Until the legal registration of the divorce or the end of legal cohabitation in the same registers.

- This solidarity applies to all income received during this period, even if the tax is only levied after the legal registration of the divorce.

- The tax relating to the taxable income of one of the spouses may regardless of the matrimonial regime or the notarial agreement regulating the terms of legal cohabitation, be recovered from all the property owned and common to both spouses or partners (Article 394, § 1, para. 1 ITC92).

- However, the tax debt cannot be enforced on the other spouse's own property when the other spouse can prove that it is:
  1° goods he or she owned before the marriage or before the conclusion of the declaration of legal cohabitation;
  2° goods that comes from an estate or a donation made by a person other than his or her spouse;
  3° goods acquired with funds derived from the realisation of such goods;
  4° the others spouse's 'own goods' by virtue of civil law (Article 394, § 1, paragraph 2 ITC92).

- What happens when the partners are **de facto separated**?
  By way of an exception to the abovementioned rule, in the event that the spouses are de facto separated, the tax relating to the income of one of the spouses obtained from the second calendar year following that of the de facto separation may no longer be recovered from the income of the other spouse, nor from the property acquired by the latter by means of that income (Article 394, § 2 ITC92).

  If the de facto separation occurs in 2019, taxes on income received by one of the partners from 1 January 2021 onwards will no longer be recoverable from the income of the other partner, nor from property acquired with this income.

- What about the tax that is levied after the divorce or the termination of legal cohabitation, but relating to income generated before that date?
  It remains subject to the same rules as it relates to income received before this legal registration and is therefore recoverable by both spouses (Article 394, § 3 ITC92).

- Therefore, it cannot be excluded that the tax authorities would revert to you after the divorce regarding the professional income that your former spouse generated during the marriage but did not declare. It is therefore advisable to provide for a special regulation in your pre-divorce agreements by mutual consent in the event that this situation arises and the tax authorities approach you.

5.2 Rules applying to income received after 1 January 2020

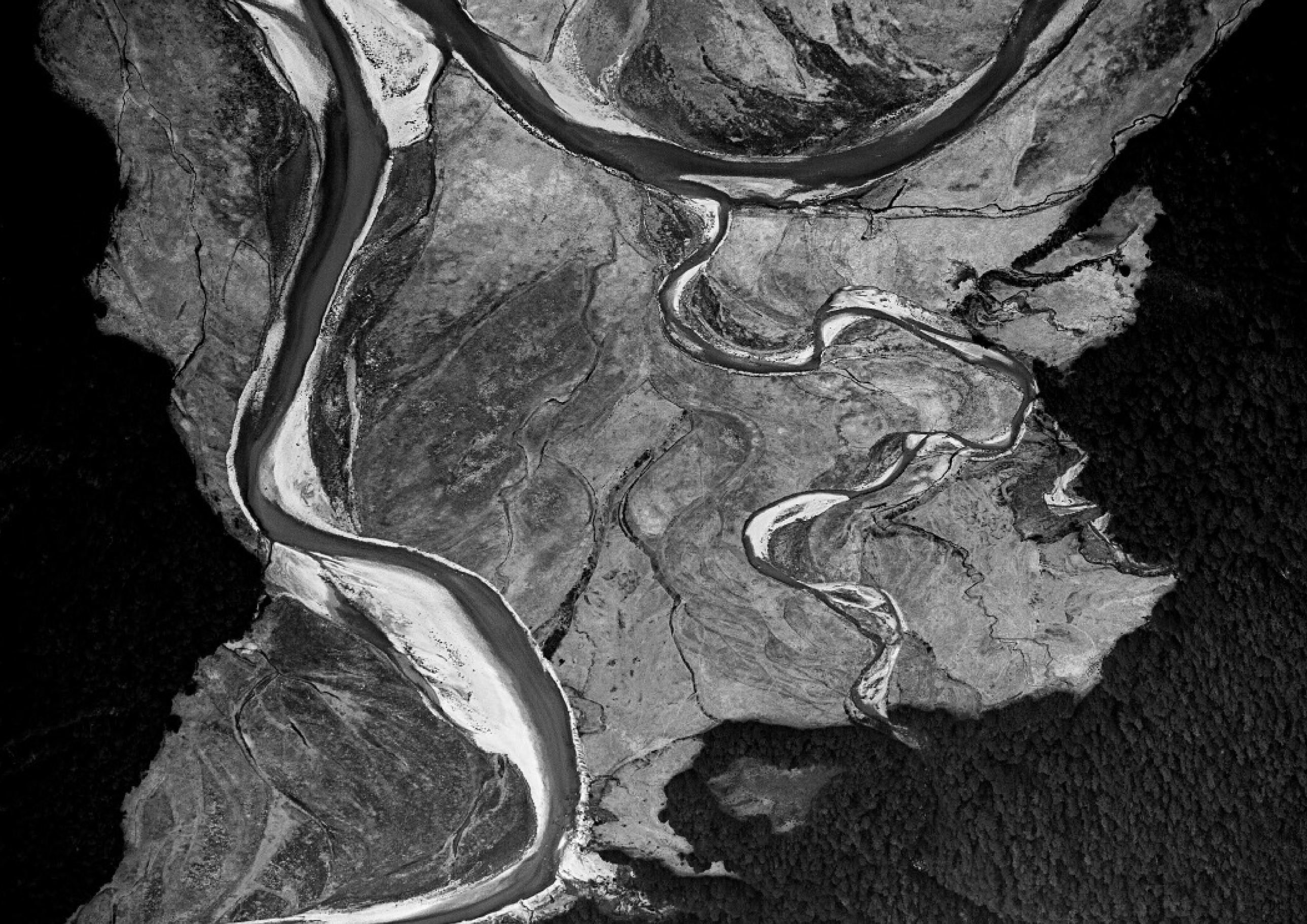
- First, Article 8 of the Collection Code stipulates that:
  - Income tax or withholding tax levied on behalf of several persons may only be recovered from each of them for the portion relating to their income.
    A specific example: two spouses each generate 50% of the couple's taxable income. The tax debt relating to this income can only be recovered up to a maximum of 50% from one spouse and 50% from the other spouse, with each as principal debtor.

  - The tax assessment is enforceable against each of them to the extent that the income tax can be recovered from them under the provisions of the Collection Code or the tax code.
  - The tax assessment is also enforceable against co-debtors (Article 7 of the Collection Code).

- Second, Article 10 of the Recovery Code stipulates, along the same lines as the former Article 394 ITC92:
  - That the income tax or the share of income tax relating to the taxable income of one of the spouses may, whatever the matrimonial regime or whatever the notarial agreement regulating the modalities of legal cohabitation, be recovered from the own property and from the common property of both spouses (Article 10, § 1).
  - Thus the levied tax cannot be recovered from the other spouse's own property when the other spouse can prove that it is (Article 10, § 1):
    1° goods he or she owned before the marriage or before the conclusion of the declaration of legal cohabitation;
    2° goods that comes from an estate or a donation made by a person other than his or her spouse;
    3° goods acquired with funds derived from the realisation of such goods;
    4° the others spouse's 'own goods' by virtue of civil law (Article 394, § 1, paragraph 2 ITC92).

- What happens when spouses are **de facto separated**?
  The new Debt Collection Code also provides for an exemption to the rule set out above in Article 10(2).
  When spouses are de facto separated, a tax assessment in the name of one of the spouses received from the second calendar year following the year of de facto separation can no longer be recovered from the income of the other spouse, nor from the property that the other spouse acquired with his or her income.

- What about the tax levied after the legal registration of the divorce or the termination of legal cohabitation, but relating to income generated before that date?
  This tax assessment is subject to the same rules and exceptions set out above as it relates to income received prior to this legal registration (Article 10, § 3 of the Debt Collection Code).



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