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## Fiscal marriage penalty and full splitting – let's split again

Dear Sir or Madam,

The fiscal marriage penalty has always been associated with direct federal tax where so far all attempts to eliminate the unconstitutional discrimination of married couples, as opposed to cohabiting couples, have at best been only partially successful. There still exists an unconstitutional double taxation of married couples with double income as opposed to unmarried couples.

To eliminate the problem of marriage penalty on a cantonal level the canton of St. Gallen took on a lead role and, in 2001, introduced the full splitting system, with the taxable income of married couples divided by the factor "2". The cantons of Basel-Landschaft, Aargau and Appenzell-Innerrhoden also adopted this system. This solution seems captivating, and comparative calculations yield, at least on cantonal level, satisfying results, if either partner of a cohabiting couple is regularly taxed as a single person.

Net income partner 1 CHF 100'000, Partner 2 CHF 60'000, 1 child, child care paid by partner 1 and claimed back in tax declaration, travel expenses CHF 960, without splitting cohabiting partner.

	Taxes BL 2017				
	Partner 1	Partner 2	Married	Difference	%
Canton and local authority	13'631	5'646	19'895	618	9.5%
Direct federal tax	844	490	2'670	1'336	
				<b>CHF 1'954</b>	

*Consequently, married couples pay CHF 1'954 more in tax than cohabiting couples with the same income.*

So far, so good. Apart from the equal treatment of married couples and cohabiting couples, people with support obligations towards children should receive privileged fiscal treatment as well. This has been carried out in all cantons applying full splitting by the same tax law article. Consequently, not only did taxpayers living in an unseparated marriage get mentioned in the tax law, but also widowed taxpayers, or those who are either separated or divorced, and they all are entitled to this full splitting, and the same goes for single taxpayers who have support obligations towards other persons or children in the same household. Also included in this category, as a matter of course, are cohabiting couples with children.

With joint custody by both unmarried parents the more favourable tax rate applies to the parent who primarily supports the child; generally, this applies to the parent who has the higher taxable income of the two partners. Therefore, we again have full splitting for cohabiting couples here, maybe not affecting the total income of the couple, but at least a substantial part. To summarise, it can be said that the method of full splitting has prevailed on all levels. However, with all this splitting in mind the original target, to abolish the marriage penalty, has completely gone out of sight, as the following calculations will show.

### Canton Basel-Land

Net income partner 1 CHF 100'000, partner 2 CHF 60'000, 1 child, child care paid for by partner 1 and claimed back in tax declaration, travel expenses CHF 960, with splitting cohabiting partner with higher income.

	Taxes BL 2017				
	Partner 1	Partner 2	Married	Difference	%
Canton and local authority	7'858	5'646	19'895	6'391	52.1%
Direct federal tax	844	490	2'670	1'336	
				<b>CHF 7'727</b>	

*Therefore, in Baseland married couples, in this example, pay CHF 7'727 more in taxes than cohabiting couples, an added burden of 52.1%.*

### Canton Aargau

Net income partner 1 CHF 100'000, partner 2 CHF 60'000, 1 child, child care paid for by partner 1 and claimed back in tax declaration, travel expenses CHF 960, with splitting cohabiting partner with higher income.

	Taxes AG 2017				
	Partner 1	Partner 2	Married	Difference	%
Canton and local authority	7'106	5'452	16'160	3'602	35.5%
Direct federal tax	844	490	2'670	1'336	
				<b>CHF 4'938</b>	

*In Canton Aargau married couples pay CHF 4'938 more in taxes.*

### Canton St. Gallen

Net income partner 1 CHF 100'000, partner 2 CHF 60'000, 1 child, child care paid for by partner 1 and claimed back in tax declaration, travel expenses CHF 960, with splitting cohabiting partner with higher income.

	Taxes SG 2017				
	Partner 1	Partner 2	Married	Difference	%
Canton and local authority	9'718	6'558	20'190	3'914	29.8%
Direct federal tax	844	490	2'670	1'336	
				<b>CHF 5'250</b>	

*In canton St. Gallen married couples pay CHF 5'250 more in taxes than cohabiting couples.*

Consequently, as the calculations in the cantons with full splitting show, in comparison to cohabiting couples with supporting obligations towards children, we are way above the added burden of 10% which, according to a Federal Court decision from 1984, is deemed discriminatory.

In canton St. Gallen, with care for the child equally shared, splitting is applied to the lower income, which does alleviate but not prevent the issue. The higher tax burden for married couples in the example above is CHF 3'407 or 17.5%.

Net income partner 1 CHF 100'000, partner 2 CHF 60'000, 1 child, costs for childcare of child equally shared and claimed back in tax declaration, travel expenses CHF 960, with splitting cohabiting partner with lower income according to court decision SG.

<b>Taxes SG 2017</b>					
	Partner 1	Partner 2	Married	Difference	%
Canton and local authority	14'932	3'175	20'243	2'136	17.5%
Direct federal tax	1'044	355	2'670	1'271	
				<b>3'407</b>	

## **Conclusion**

The definition of taxation of married couples in the cantons BL, AG and SG, according to the legal order by the Federal Court, is unconstitutional.

Kind regards

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