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## Taxation of Households: A Comparative Study

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## TAXATION OF HOUSEHOLDS: A COMPARATIVE STUDY

JOEL S. NEWMAN\*

### INTRODUCTION

Some of us live alone, but most live in groups. Those of us who live in groups usually pool our income and expenses, somehow.<sup>1</sup> In crafting an income tax, one must determine whether or not to take such pooling into account.<sup>2</sup> Either way, some living arrangements will be tax-advantaged, and others will be tax-penalized.<sup>3</sup>

Neither taking pooling into account nor ignoring it is necessarily fair. Furthermore, neither choice is simple. If pooling is taken into account, one must determine which groups should be recognized and when.<sup>4</sup> Also, should there be one aggregate group tax return, or should income and expenses be reallocated to group members?

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1. "We believe firmly that the family is today, as it has been for many centuries, the basic economic unit in society." 3 REPORT OF THE ROYAL COMM'N ON TAXATION, TAXATION OF INCOME, PART A: TAXATION OF INDIVIDUALS AND FAMILIES 123 (Reprt. 1968). "When it is asked whether one taxpayer is in the same situation as another, is the taxpayer an individual or a family? The sharing of both consumption and wealth within families supports continuation of present law in regarding the family as the unit of comparison." DAVID F. BRADFORD & THE U.S. TREASURY TAX POLICY STAFF, BLUEPRINTS FOR BASIC TAX REFORM 25 (2d rev. ed. 1984). See PHILIP BLUMSTEIN & PEPPER SCHWARTZ, AMERICAN COUPLES: MONEY, WORK, SEX 594-96 (Pocket Books 1985) (1983) (providing data on various cohabitation arrangements); Marjorie E. Kornhauser, *Love, Money, and the IRS: Family, Income Sharing, and the Joint Income Tax Return*, 45 HASTINGS L.J. 63, 73 (1993) (discussing income pooling in contexts other than marriage); Michael Young, *Distribution of Income within the Family*, 3 BRIT. J. SOC. 305, 310-11 (1952) (providing data on income distribution and expenditure in various family situations).

2. These issues transcend tax policy; they also impact welfare (especially relating to subsidies for child care), retirement, and health care policies. This Article, however, will stick to tax.

3. Many of us would begin with a presumption that taxation should be neutral among varied lifestyle choices. Some of us would stop there. Others would go on and consider rebutting that presumption, if a strong enough case could be made in societal terms for encouraging one lifestyle choice or another. Unfortunately, it is impossible for taxation to be totally neutral among lifestyle choices. Therefore, realistically, the issue becomes whether we should try to minimize the influence of taxation on lifestyle choices, or whether we should determine which lifestyle choice we favor and then use taxation to encourage it.

4. See *infra* Part II.A.

If pooling is not taken into account, then different groups will be taxed differently on the same aggregate income, depending upon who earns the income within the group.<sup>5</sup> One must also determine which “intra-group” transfers will be recognized and which will be finessed. For example, do we tax Junior on the cost of his breakfast?

Different countries have made different choices at different times.<sup>6</sup> Structurally, the choices fall into two categories: individual taxation and group taxation. Within the category of individual taxation, some countries rigorously tax individuals.<sup>7</sup> Others tax individuals on earned income, but tax other income differently.<sup>8</sup> Within the category of group taxation, some countries aggregate all household income to be taxed to one family member.<sup>9</sup> Others

5. See *infra* Part I.A.

6. For a comparative perspective on the income taxation of households, see generally HUGH J. AULT ET AL., *COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS* (3d ed. 2010) (laying out taxation structures and principles in a variety of nations); 57a 26TH INT’L CONGRESS OF FIN. & TAX LAW, *STUDIES ON INTERNATIONAL FISCAL LAW: THE INCOME, FORTUNE AND ESTATE TAX TREATMENT OF HOUSEHOLD UNITS 4–5* (Int’l Fiscal Ass’n [I.F.A.] 1972) (providing taxation data for a variety of nations); K.C. MESSERE, *TAX POLICY IN OECD COUNTRIES: CHOICES AND CONFLICTS* (1993) (comparing tax structures and reforms across nations); Grace Blumberg, *Sexism in the Code: A Comparative Study of Income Taxation of Working Wives and Mothers*, 21 BUFF. L. REV. 49 (1972) (examining how the I.R.C. discriminates against dual wage earner families, disincentivizing work for women); Norma Briggs, *Individual Income Taxation and Social Benefits in Sweden, the United Kingdom, and the U.S.A.*, 39 BULL. FOR INT’L FISCAL DOCUMENTATION 243 (1985) (analyzing how tax systems in Sweden, the United Kingdom, and the United States affect women); Oliver Oldman & Ralph Temple, *Comparative Analysis of the Taxation of Married Persons*, 12 STAN. L. REV. 585, 586 (1959–1960) (analyzing taxation of married couples in various nations); Henry Ordower, *Commentary, Comparative Law Observations on Taxation of Same-Sex Couples*, 111 TAX NOTES 229 (2006) (noting developments in various countries regarding same-sex unions and listing relevant statutes and court decisions); Joseph A. Pechman & Gary V. Engelhardt, *The Income Tax Treatment of the Family: An International Perspective*, 43 NAT’L TAX J. 1, 12, 13 (1990) (analyzing income tax treatment of families in developed nations); Janet Stotsky, *Gender Bias in Tax Systems*, 14 INT’L TAX NOTES 1913 (1997) (examining gender bias in taxation structures in developed and developing nations). For a broader perspective on the policy treatment of family units, see generally GÖRAN THERBORN, *BETWEEN SEX AND POWER: FAMILY IN THE WORLD, 1900–2000* (2004) (documenting the evolution of the family unit during the twentieth century); Nancy E. Dowd, *Envisioning Work and Family: A Critical Perspective on International Models*, 26 HARV. J. ON LEGIS. 311 (1989) (analyzing how other nations have drafted social policy to eliminate conflicts between work and family and proposing how to apply those models in the United States); Ann Shola Orloff, *Gender and the Social Rights of Citizenship: The Comparative Analysis of Gender Relations and Welfare States*, 58 AM. SOC. REV. 303 (1993) (analyzing the gender content of social provision).

7. See *infra* Appendix, Table 3.

8. See *infra* Appendix, Table 4.

9. See *infra* Appendix, Table 5. But see REPORT OF ROYAL COMM’N ON THE STATUS OF WOMEN IN CANADA 304 (1970) (explaining the Royal Commission on the Status of Women in

aggregate household income, but actually tax it as if a percentage was deemed earned by various family members.<sup>10</sup> Still others allow the taxpayers to elect either aggregate or separate taxation.<sup>11</sup>

There are other permutations of group taxation. Some countries split income among more than one wife.<sup>12</sup> Also, one can tax larger groups. There is the Hindu Undivided Family, which is recognized for tax purposes in India, Malaysia, Myanmar, Singapore, Nepal, Bangladesh, and Sri Lanka.<sup>13</sup> Conceivably, one could tax the aggregate income of a hippie commune<sup>14</sup> or some other group living arrangement.<sup>15</sup>

## I. TWO NUMERICAL EXAMPLES

Two numerical examples are set forth below, one comparing individual taxation, aggregate taxation, and the American joint return, and the other describing the French *foyer fiscal*. These examples show what is at stake, in terms of fairness and simplicity. They also demonstrate which lifestyle choices are tax-advantaged and which lifestyle choices are tax-penalized, by the various tax structure options.

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Canada recommended in 1970 that a husband and wife form a taxation unit with aggregated incomes).

10. See *infra* Appendix, Table 6.

11. See *infra* Appendix, Table 7.

12. Nigeria and other Muslim countries have recognized multiple wives. Nigeria, in fact, grants a tax preference to the first wife, as opposed to succeeding wives. Stotsky, *supra* note 6, at 1919. Iraq grants an additional allowance for each of the taxpayer's wives. Tax Strategy of 2004, Al-Waqaeah al-Iraqia [Iraqi Official Gazette] 39 of May 2004 6 (Iraq).

13. Income Tax Ordinance 1984 § 5(d) (Bangl.); Income Tax Act, No. 43 of 1961 §2, INDIA CODE (1995), available at <http://indiacode.nic.in>; Income Tax Act (Act No. 53/1967) § 72 (Malay.); Income Tax Act § 3 (1974) (Myan.); Income Tax Act 1974 § 4 (Nep.); Singapore Income Tax Act Part I, § 2 (Sing.); Inland Rev. Act (Act No. 10/2006) § 217(2) (Sri Lanka). See also ACHARYA SHUKLENDRA, HINDU UNDIVIDED FAMILY: TAXATION AND TAX PLANNING 238–85 (2000) (discussing the principles of the system and how to create such a system and explaining that the Hindu Undivided Family has some tax advantages over a partnership); Aurobindo Ponniah, Speech at the IBFD: The Hindu Undivided Family, Amsterdam (July 2004); *How One Can Create HUF (Hindu Undivided Family)*, SIMPLETAXINDIA.ORG (Jan. 18, 2010), <http://www.simpletaxindia.org/2008/05/how-one-can-create-hufhindu-undivided.html> (describing how to arrange capital to be recognized as an HUF).

14. See Penelope Green, *A Modern Answer to the Commune*, N.Y. TIMES, Oct. 1, 2009, at D1 (discussing modern non-familial collective living arrangements).

15. Israel allows kibbutzim to file a single tax return. Income Tax Ordinance, 5737–1967, 1 LSI 168, 57 (1967) (Isr.). However, the kibbutz itself functions as a government, taxing its members, often progressively, to equalize incomes and to pay for community services. JO-ANN MORT & GARY BRENNER, OUR HEARTS INVENTED A PLACE: CAN KIBBUTZIM SURVIVE IN TODAY'S ISRAEL? 75 (2003).

A. *Individual Taxation, Aggregate Taxation, and the Joint Return*

Imagine a tax regime in which the first \$10,000 of income is taxed at 10%, income in excess of \$10,000 but not over \$20,000 is taxed at 20%, and income in excess of \$20,000 is taxed at 30%.<sup>16</sup> Under such a regime, the following individual taxpayers would pay tax as set forth in Table 1.<sup>17</sup>

Table 1

Taxpayer	Income	Tax as Individual
Alex	\$15,000	\$2,000
Becky	\$15,000	\$2,000
Charles	\$0	\$0
Deborah	\$30,000	\$6,000
Edward	\$30,000	\$6,000

16. This example is inspired by Boris I. Bittker's seminal article, *Federal Income Taxation and the Family*, 27 STAN. L. REV. 1389, 1396-97 (1975). The other classic article in the field is Michael J. McIntyre & Oliver Oldman, *Taxation of the Family in a Comprehensive and Simplified Income Tax*, 90 HARV. L. REV. 1573 (1977) (developing a normative model for comprehensive family taxation). See also CHANCELLOR OF THE EXCHEQUER, THE TAXATION OF HUSBAND AND WIFE 5, 12 (1980) (examining the effect of tax provisions relevant to married couples in the United Kingdom); CONG. BUDGET OFFICE, FOR BETTER OR WORSE: MARRIAGE AND THE FEDERAL INCOME TAX (1997) (examining how changes to the U.S. labor market have affected the impact of tax provisions relating to married couples); EDWARD J. MCCAFFERY, TAXING WOMEN 14 (1997) (analyzing the impact of tax structures on women); MICHAEL J. MCINTYRE & EUGENE C. STEUERLE, THE FINANCE PROJECT, FEDERAL TAX REFORM: A FAMILY PERSPECTIVE (1996) (examining three major proposals to alter the taxation of families in the United States); WHITE HOUSE WORKING GRP. ON THE FAMILY, UNITED STATES DEP'T OF EDUC., THE FAMILY: PRESERVING AMERICA'S FUTURE 43-45 (1986) (recommending updates to the Internal Revenue Code to benefit families); U.S. GEN. ACCOUNTING OFFICE, GAO/GGD-96-175, TAX ADMINISTRATION: INCOME TAX TREATMENT OF MARRIED AND SINGLE INDIVIDUALS (1996) (listing the Internal Revenue Code provisions likely to create marriage "penalties" or "bonuses" and estimating the number of citizens affected).

17. The computation of both Alex's and Becky's tax is:

$$\begin{array}{rcl}
 & 10\% \text{ of the first } \$10,000 \text{ of income} & = \$1,000 \\
 + & 20\% \text{ of the last } \$5,000 \text{ of income} & = \$1,000 \\
 \hline
 \text{Total Tax} & & = \$2,000
 \end{array}$$

The computation of both Deborah's and Edward's tax is:

$$\begin{array}{rcl}
 & 10\% \text{ of the first } \$10,000 \text{ of income} & = \$1,000 \\
 & 20\% \text{ of the second } \$10,000 \text{ of income} & = \$2,000 \\
 + & 30\% \text{ of the third } \$10,000 \text{ of income} & = \$3,000 \\
 \hline
 \text{Total Tax} & & = \$6,000
 \end{array}$$

Now, imagine that Alex and Becky establish a joint household, and Charles and Deborah establish a joint household. Edward remains single. If all five continue to be taxed as individuals,<sup>18</sup> then Alex and Becky will pay an aggregate tax of \$4,000 on their aggregate income of \$30,000,<sup>19</sup> while Charles and Deborah will pay an aggregate tax of \$6,000 on the same aggregate income of \$30,000.<sup>20</sup> Edward, of course, continues to pay \$6,000.

Why should Charles and Deborah pay more tax than Alex and Becky? If households with the same aggregate income should pay the same aggregate tax, then either both couples should pay tax of \$4,000 or both couples should pay tax of \$6,000. The simplest thing is for both households to pay \$6,000. This result is achieved by consolidating the household income into one return and applying the rates.<sup>21</sup>

This solution, however, penalizes Alex and Becky. When they were single, each paid taxes of \$2,000, for a total of \$4,000. When they become a household, however, they pay total taxes of \$6,000. Why should the mere status of “household” cause them to pay \$2,000 more in tax? Moreover, consider that both couples—Alex and Becky and Charles and Deborah—have \$30,000 to maintain the lifestyles of two people, while Edward has \$30,000 to maintain the lifestyle of just one person. Surely, Edward has more ability to pay taxes than either couple. Shouldn’t he pay more?

The alternative is to levy a tax of \$4,000 on each couple. This solution is achieved by the American joint return.<sup>22</sup> In each case, half of the aggregate household income of \$30,000 is taxed to each spouse, regardless of how it was in fact earned.<sup>23</sup> Clearly, this solution is unfair to Edward.<sup>24</sup> Why is his \$30,000 of income taxed at \$6,000, while the income of the two couples is taxed at \$4,000? Further, as to Edward’s purported better ability to pay, he will point out that he lacks the economies of scale enjoyed by the two couples. Therefore, his ability to pay is not that much better after all.

As Boris Bittker pointed out decades ago, one can have three goals: 1) progressive rates; 2) fairness as between couples and single taxpayers; and 3) fairness to couples with the same aggregate income.<sup>25</sup> One can achieve two of

18. See *infra* Appendix, Table 3 for countries which take this approach.

19. \$2,000 tax on Alex + \$2,000 tax on Becky = \$4,000.

20. \$6,000 tax on Deborah + \$0 tax on Charles = \$6,000.

21. See *infra* Appendix, Table 5 for countries which take this approach.

22. See *infra* Appendix, Table 6 for countries which take this approach. For the impact of this approach on reporting and liability issues, see Lily Kahng, *Innocent Spouses: A Critique of the New Tax Laws Governing Joint and Several Tax Liability*, 49 VILL. L. REV. 261 (2004).

23. See I.R.C. § 1(a) (2006).

24. For more on the unfairness to singles, see Katherine D. Black, Mary K. Black, & Julie M. Black, *The Bias Against Single Parents in the Internal Revenue Code*, 126 TAX NOTES 1397 (2010).

25. Bittker, *supra* note 16, at 1396.

the three goals, but never all three.<sup>26</sup> So far, it would appear that the simplest solution would be to tax only individuals, no matter what. This solution is the most popular.<sup>27</sup> The next simplest solution would be to aggregate the income of husband and wife, and apply the rates.<sup>28</sup> However, both options raise fairness issues, as shown above.

Anything which reallocates income to those who did not in fact earn it seems more complex. The American joint return was discussed above. The French *foyer fiscal* might be viewed as the American joint return on steroids.

### B. The French Foyer Fiscal

In the *foyer fiscal*, each household member receives a share or a fraction of a share.<sup>29</sup> All household shares are totaled to derive the family coefficient.<sup>30</sup> Aggregate household income then is divided by the family coefficient, to determine the income allocated to each share.<sup>31</sup> Finally, each household member is taxed accordingly.<sup>32</sup> Note that, in this system, it does not matter which family member actually earned the income.

Consider the following possibilities: 1) bachelor; 2) childless couple; 3) couple with one or two children; 4) single or divorced parent with one or two

26. *Id.* at 1396. One obvious solution is to abolish progressive rates. However, that debate goes beyond the bounds of this inquiry. *See id.* *See also* Lawrence Zelenak, *Doing Something About Marriage Penalties: A Guide for the Perplexed*, 54 TAX L. REV. 1, 6 (2000). For discussion of the marriage penalty on the earned income tax credit, see generally Pamela B. Gann, *The Earned Income Deduction: Congress's 1981 Response to the "Marriage Penalty" Tax*, 68 CORNELL L. REV. 468 (1983); Oldman & Temple, *supra* note 6. For a discussion of the particular impact of the marriage penalty on minorities, see Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469 (1997); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751; Mylinh Uy, Comment, *Tax and Race: The Impact on Asian Americans*, 11 ASIAN L. J. 117 (2004).

27. *See infra* Appendix, Table 3.

28. *See infra* Appendix, Table 5.

29. CODE GÉNÉRAL DES IMPÔTS [C.G.I.] art. 194 (Fr.). *See also* Ayla A. Lari, *Sharing Alike: French Family Taxation as a Model for Reform*, 37 DUQ. L. REV. 207, 233 (1999).

30. CODE GÉNÉRAL DES IMPÔTS, art. 5, 156. *See also* Lari, *supra* note 29, at 232–33.

31. CODE GÉNÉRAL DES IMPÔTS, art. 193. *See also* Lari, *supra* note 29, at 232–33.

32. CODE GÉNÉRAL DES IMPÔTS, art. 194. *See also* PUB. FIN. GEN. DIRECTORATE & TAX POLICY DIRECTORATE, THE FRENCH TAX SYSTEM 28–29 (2009) (explaining the French income taxation system in English), available at [http://www.impots.gouv.fr/portal/deploiement/p1/fiche\\_descriptive\\_1006/fichedescriptive\\_1006.pdf](http://www.impots.gouv.fr/portal/deploiement/p1/fiche_descriptive_1006/fichedescriptive_1006.pdf); Dowd, *supra* note 6, at 335; Lari, *supra* note 29, at 238. *See generally* Louis Kaplow, *Optimal Distribution and the Family*, 98 SCANDINAVIAN J. ECON. 75, 77–87 (1996) (analyzing various family taxation models utilizing household shares). There are caps expressed in Euros for tax advantages for larger families. A similar taxation scheme was considered in the United Kingdom in 1920. REPORT OF THE ROYAL COMM'N ON THE INCOME TAX 59 (1920). *See also* McIntyre & Oldman, *supra* note 16, at 1605 (suggesting a scheme similar to the *foyer fiscal* in Table 1).

children.<sup>33</sup> In each case, assume that the aggregate household income is \$30,000 and that the tax rates are as before.

The bachelor has one share, leading to a family coefficient of one.<sup>34</sup> The entire \$30,000 of household income would be allocated to his one share. Thus, he would pay a tax of \$6,000.

For the childless couple, each receives one share.<sup>35</sup> Therefore, the family coefficient would be two. The household income of \$30,000 divided by two allocates \$15,000 to each share. Accordingly, the husband would pay tax on \$15,000, or \$2,000 tax, and the wife would pay the same. The aggregate household tax would be \$4,000, just like an American joint return.

With a father, a mother, and one child, the father receives one share, the mother receives one share, and the child receives a one-half share.<sup>36</sup> Therefore, the family coefficient would be two and one-half. Dividing household income of \$30,000 by two and one-half, \$12,000 of income would be allocated to each full share, and \$6,000 would be allocated to the one-half share. Accordingly, the father would pay \$1,400 tax on \$12,000 of income, the mother would pay the same, and the child would pay \$600 tax on \$6,000 of income, for an aggregate tax of \$3,400.

With a father, a mother, and two children, the father receives one share, the mother receives one share, and each child receives a one-half share.<sup>37</sup> The family coefficient is three. The father pays \$1,000 tax on \$10,000 of income, the mother pays the same, and each child pays \$500 tax on \$5,000 of income, for an aggregate tax of \$3,000. The shares of the third and subsequent children increase to full shares.<sup>38</sup>

For a single or divorced parent with one child, each individual receives a full share.<sup>39</sup> Thus, the total tax is \$4,000, just like an American joint return. For a single or divorced parent with two children, the parent and the first child receive a full share, and the second child receives a one-half share.<sup>40</sup> Thus, the parent would pay \$1,400 tax on \$12,000 of income. Child #1 would pay the same. Child #2 would pay \$600 tax on \$6,000 of income, for an aggregate tax of \$3,400. The third and subsequent children receive full shares.<sup>41</sup>

33. Divorced ex-spouses are treated differently from widowed ex-spouses. CODE GÉNÉRAL DES IMPÔTS, art. 194.

34. *Id.* See also Lari, *supra* note 29, at 233.

35. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 233.

36. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 233.

37. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 233.

38. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 233.

39. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 234.

40. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 234.

41. CODE GÉNÉRAL DES IMPÔTS, art. 194. See also Lari, *supra* note 29, at 234.



These results are summarized in Table 2

	Single: No Children	Couple: No Children	Couple: One Child	Couple: Two Children	Single: One Child	Single: Two Children
Members	<b>Bachelor</b>	<b>Man Woman</b>	<b>Man Woman Child</b>	<b>Man Woman Child #1 Child #2</b>	<b>Adult Child</b>	<b>Adult Child #1 Child #2</b>
Coefficient for Each Member	<b>Bachelor:</b> 1	<b>Man: 1 Woman: 1</b>	<b>Man: 1 Woman: 1 Child: ½</b>	<b>Man: 1 Woman: 1 Child #1: ½ Child #2: ½</b>	<b>Adult: 1 Child: 1</b>	<b>Adult: 1 Child #1: 1 Child #2: ½</b>
Family Coefficient	1	2	2.5	3	2	2.5
Income/ Coefficient	\$30,000	\$15,000	\$12,000	\$10,000	\$15,000	\$12,000
Income for Each Member	<b>Bachelor</b> \$30,000	<b>Man</b> \$15,000 <b>Woman</b> \$15,000	<b>Man</b> \$12,000 <b>Woman</b> \$12,000 <b>Child</b> \$6,000	<b>Man</b> \$10,000 <b>Woman</b> \$10,000 <b>Child #1</b> \$5,000 <b>Child #2</b> \$5,000	<b>Adult</b> \$15,000 <b>Child</b> \$15,000	<b>Adult</b> \$12,000 <b>Child #1</b> \$12,000 <b>Child #2</b> \$6,000
TE Member	<b>Bachelor</b> \$6,000	<b>Man</b> \$2,000 <b>Woman</b> \$2,000	<b>Man</b> \$1,400 <b>Woman</b> \$1,400 <b>Child</b> \$600	<b>Man</b> \$1,000 <b>Woman</b> \$1,000 <b>Child #1</b> \$500 <b>Child #2</b> \$500	<b>Adult</b> \$2,000 <b>Child</b> \$2,000	<b>Adult</b> \$1,400 <b>Child #1</b> \$1,400 <b>Child #2</b> \$600
Total Tax	\$6,000	\$4,000	\$3,400	\$3,000	\$4,000	\$3,400

Note that households with the same aggregate income of \$30,000 pay taxes that range from \$3,000 to \$6,000, depending upon the size and nature of the household. Clearly, single, childless taxpayers bear the heaviest burden. Partners and children lower the family income taxes, sometimes in surprising ways.

## II. COMPONENT FACTORS

An initial decision must be made whether to tax individuals or groups. If groups are to be taxed, then one must also decide which groups. Moreover, one must decide whether income should be allocated to those who did not earn it, or whether expenses should be allocated to those who did not pay them. There is no obviously fair way to do it, and a multitude of factors come into play. Each of these factors will be addressed in turn.

### A. Which Groups Should be Recognized?

Should taxes reflect the way people actually live, or not? Some address the issue of recognizing groups in those broad terms.<sup>42</sup> However, all of us have some level of concern regarding the consequences of our decisions.<sup>43</sup> Would recognizing groups help them or hurt them, in tax terms?

As shown by the numerical examples above, there is no easy answer. If there is only one rate schedule, then aggregating the income of a group will usually lead to increased taxation of that group.<sup>44</sup> On the other hand, reallocating income within a group, as is done in the American joint return and the *foyer fiscal*, will usually lead to lower aggregate taxation of the group.<sup>45</sup> If, however, there is more than one tax rate—perhaps one for single people and one for married people—then all bets are off. One would need to know more about the different rate schedules to know who is tax-favored and who is not.

#### 1. Heterosexual Couples

##### a. Married

Does marriage deserve special tax treatment? Arguably, marriage is a time-honored institution which strengthens the stability of society.<sup>46</sup> Therefore, it should be encouraged. Regarding administrative concerns, it is easier to define and determine the existence of the formal marriage relationship than it is to determine some other group arrangements.<sup>47</sup> Therefore, formal

42. See Lari, *supra* note 29, at 240–42, 258–59.

43. See Christopher T. Nixon, *Should Congress Revise the Tax Code to Extend the Same Tax Benefits to Same-Sex Couples as are Currently Granted to Married Couples?: An Analysis in Light of Horizontal Equity*, 23 S. ILL. U. L.J. 41, 58–62 (1998) (discussing the social and financial consequences of taxing cohabitating versus married couples similarly or differently).

44. See Michael Keen et al., *The “Flat Tax(es)”: Principles and Experience*, 15 INT’L TAX & PUB. FIN. 712, 713 (2008) (discussing how moving to a flat tax will necessarily change the rate of taxation of particular groups).

45. See Lari, *supra* note 29, at 237 (noting that the steep progressivity of taxation in the French system is alleviated through larger families).

46. See Amy M. Braverman, *Healthy, Wealthy, & Wed*, U. OF CHI. MAG., Oct. 2003, at 32, 34–35 (offering statistical arguments that married people are healthier and richer). David Cameron, the leader of the Conservative Party in the United Kingdom, agrees and feels that marriage should be recognized in the tax system. *David Cameron Reflects*, Interview by Andrew Marr with David Cameron MP, Leader of H.M. Opposition, BBC SUNDAY AM (July 8, 2007), [http://news.bbc.co.uk/2/hi/programmes/sunday\\_am/6281810.stm](http://news.bbc.co.uk/2/hi/programmes/sunday_am/6281810.stm).

47. Formal marriage may be easier to define than some relationships, but that does not make it easy to define. See Toni Robinson & Mary Moers Wenig, *Marry in Haste, Repent at Tax Time: Marital Status as a Tax Determinant*, 8 VA. TAX REV. 773, 788–95 (1989) (describing various difficulties in ascertaining an individual’s marital status for tax purposes). Even in the United States, notions of family have changed over time. Courtney G. Joslin, *The Evolution of the American Family*, HUM. RTS., Summer 2009, at 2–4. See also Anne Garrels, *Short Term*

marriage has certain advantages from a historical and administrative perspective.

b. Unmarried

Unmarried heterosexual couples presumably pool income and expenses in the same variety of ways that married couples do. Therefore, if taxation should follow the money, then married and unmarried couples should be treated the same.<sup>48</sup> Some, however, would argue that unmarried heterosexual relationships are immoral and should be discouraged.<sup>49</sup> Alternatively, some might argue that such relationships are inherently unstable and, therefore, detrimental to society.<sup>50</sup> Yet, how much can the institution of marriage do to strengthen society when 50% of marriages fail in the United States?<sup>51</sup>

Administration of a civil union regime should not be too difficult, in light of recent experiences.<sup>52</sup> Presumably, it would entail the same problems as marriage, which, of course, is defined differently in different states and

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*Marriages Gain Popularity in Iraq*, NPR (Mar. 7, 2006), <http://www.npr.org/templates/story/story.php?storyId=5248949>.

48. For data on how married couples are treated differently from unmarried couples, see Elaine Maag, *Taxes and Marriage for Cohabiting Parents*, 107 TAX NOTES 1031, 1031 (2005).

49. See Dee Ann Habegger, Note, *Living in Sin and the Law: Benefits for Unmarried Couples Dependent upon Sexual Orientation?*, 33 IND. L. REV. 991, 992, 1012 (2000) (outlining court cases showing moral disapproval of heterosexual cohabitation without marriage).

50. See *id.* at 1009–10, 1012 (discussing perceptions that extending certain benefits to heterosexual cohabiting partners might undermine formal marriage, a societal building block).

51. U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 2009: THE NATIONAL DATA BOOK 818 (128th ed. 2008). Table 1292 demonstrates that the United States has a relatively high divorce rate and Japan, Ireland, Italy, and Spain have relatively low divorce rates. *Id.*

52. See, e.g., Frank S. Berall, *Tax Consequences of Unmarried Cohabitation*, 23 QUINNIPIAC L. REV. 395, 395–99 (2004) (detailing civil unions and same-sex marriages in Vermont and Massachusetts). Mozambique's Personal Income Tax Code allows de facto unions to elect to be taxed as a married couple. Personal Income Tax Code (IRPS) art. 18.1 (Mozam.). See also Income Tax Act, R.S.C. 1985, c. P-17 (Can.) (detailing the Canadian statutory definition of "common law partner"); VT. STAT. ANN. tit. 15, § 23 (2002) (the Vermont Civil Union statute). Australia, France, Iceland, The Netherlands, and the United Kingdom also recognize unmarried couples for tax purposes. AULT ET AL., *supra* note 6, at 320–21 (Australia, Netherlands, United Kingdom); Marjorie E. Kornhauser, *Deconstructing the Taxable Unit: Intrahousehold Allocations and the Dilemma of the Joint Return*, 16 N.Y.L. SCH. J. HUM. RTS. 140, 142 (1999) (France); Ruud Sommerhalder, *The Taxation of Families and Individuals in Europe*, in TAX UNITS AND THE TAX RATE SCALE 163, 166 (John G. Head & Richard Krever eds., Austl. Tax Res. Found., Conference Ser. No. 16, 1996) (Netherlands); Kees Waaldijk, *Civil Developments: Patterns of Reform in the Legal Position of Same-Sex Partners in Europe*, 17 CAN. J. FAM. L. 62, 85 (2000) (noting Iceland recognizes heterosexual, but not homosexual, de facto unions).

countries.<sup>53</sup> Accordingly, considering both general and administrative concerns, the case for separate treatment of married couples is neither better nor worse than the case for separate treatment of unmarried heterosexual couples.

## 2. Homosexual Relationships

Those who favor traditional marriage as a bulwark of society would oppose tax advantages for homosexual marriage. Also, there are those who oppose homosexual marriage on moral, religious, and legal grounds.<sup>54</sup> However, in certain situations, homosexual couples are tax-favored over heterosexual couples. For example, in the United States, homosexual couples avoid tax penalties that they otherwise would incur if legally married.<sup>55</sup>

Children, however, are another matter. The relevance of children and population policy will be addressed in their own right below. However, assuming that encouraging children is a legitimate interest of the state, one might argue that benefiting heterosexual relationships encourages children, while benefiting homosexual relationships does not.

53. For an example of the difficulties of determining the tax consequences of the creation and dissolution of unmarried cohabitation, see *Reynolds v. Comm'r*, 77 T.C.M. (CCH) 1479, 1483 (1999).

54. There is a rich literature on tax issues related to homosexual couples, especially relating to the Defense of Marriage Act in the United States. See generally James Alm et al., *Wedding Bell Blues: The Income Tax Consequences of Legalizing Same-Sex Marriage*, 53 NAT'L TAX J. 201 (2000) (arguing that legalizing same-sex marriage would lead to a revenue increase through income taxation); Patricia A. Cain, *Dependency, Taxes, and Alternative Families*, 5 J. GENDER RACE & JUST. 267 (2002) (examining how law is biased against dependent children in non-traditional families); Patricia A. Cain, *Relitigating Seaborn: Taxing the Community Income of California Registered Domestic Partners*, 111 TAX NOTES 561 (2006) (considering how community earnings rulings should be applied to same-sex domestic partners); Patricia A. Cain, *Taxing Families Fairly*, 48 SANTA CLARA L. REV. 805 (2008) (discussing eliminating discrepancies in how "family" is defined in different tax jurisdictions); Patricia A. Cain, *Unmarried Couples and the Mortgage Interest Deduction*, 123 TAX NOTES 473 (2009) (discussing limitations on the mortgage interest deduction for unmarried couples); Anthony C. Infanti, *Prying Open the Closet Door: The U.S. Defense of Marriage Act and Tax Treaties*, 36 TAX NOTES INT'L 765 (2004) (exploring whether a same-sex couple could file a joint return internationally, despite the inability to do so in the United States); William Kratzke, *The Defense of Marriage Act (DOMA) is Bad Income Tax Policy*, 35 U. MEM. L. REV. 399 (2005) (arguing that the Internal Revenue Code should not be interpreted in line with the Defense of Marriage Act); Henry Ordower, *supra* note 6 (comparing how same-sex couples are taxed in various countries); Dennis J. Ventry Jr., *No Income Splitting for Domestic Partners: How the IRS Erred*, 110 TAX NOTES 1221 (2006) (arguing that the IRS's decision not to allow domestic partners to split income for tax purposes was incorrect).

55. In the United States, there are homosexual couples where each partner earns more or less half of the household income. In many cases, these couples pay less aggregate tax than they would if they were allowed to marry. See Alm et al., *supra* note 54, at 212–13.

This position can be attacked as well. Homosexual couples can, and do, adopt.<sup>56</sup> Moreover, it seems unlikely that homosexual parents are less capable parents, or manage less stable households, than heterosexual couples.<sup>57</sup> However, there are those who believe that heterosexual couples, married or unmarried, make better parents.<sup>58</sup>

Whether or not homosexual relationships should be recognized, and possibly tax-favored, depends upon a number of factors. First, the income pooling and expense sharing is probably no different than in heterosexual relationships. Second, one would have to sort out one's views on homosexual relationships on non-tax grounds. Finally, at this time, administration in most jurisdictions would be problematic. However, if the country or state were willing to provide a statutory definition for recognized homosexual relationships, they would be no more difficult to administer than heterosexual relationships.

### 3. What's Love Got to Do With It?

So far, the couples considered have all, presumably, enjoyed some sort of romantic attachment. What about couples (and, presumably, larger groups) who are together for reasons other than affection? What about two roommates, of whatever gender, who share an apartment and other expenses because neither one alone could afford Manhattan rentals? What about a niece who lives with and cares for her disabled aunt? A Canadian report proposed that, if romantically intertwined groups are to be recognized by the government, then non-romantic groups should be recognized as well.<sup>59</sup> Once again, as one strays

56. "We estimate that approximately 65,500 adopted children are being raised by lesbian or gay parents, accounting for more than four percent of all adopted children in the United States." GARY J. GATES ET AL., ADOPTION AND FOSTER CARE BY GAY AND LESBIAN PARENTS IN THE UNITED STATES 7 (2007), available at [http://www.urban.org/UploadedPDF/411437\\_Adoption\\_Foster\\_Care.pdf](http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf).

57. See Jeffrey G. Gibson, *Lesbian and Gay Prospective Adoptive Parents: The Legal Battle*, HUM. RTS., Spring 1999, at 7, 8 (outlining social science research showing heterosexual and homosexual parents do an equally good job).

58. One might also argue that couples of whatever gender, married or unmarried, are better at child-rearing than are single parents. However, "the effects of single-parent family status on children's well-being is not fully conclusive." ORG. FOR ECON. CO-OPERATION & DEV., DOING BETTER FOR CHILDREN 141 (2009).

59. LAW COMM'N OF CAN. BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL ADULT RELATIONSHIPS 6-7 (2001). See also Neil Brooks, *The Irrelevance of Conjugal Relationships in Assessing Tax Liability*, in TAX UNITS AND THE TAX RATE SCALE, *supra* note 52, at 35, 36, 39 (suggesting that the individual should be the base unit for taxation, and other relationships should be irrelevant); Shari Motro, *A New "I Do": Towards a Marriage-Neutral Income Tax*, 91 IOWA L. REV. 1509, 1543-44, 1549, 1558-59 (2006) (proposing that couples legally committed to sharing their income, regardless of marital status, be permitted to file jointly); Lisa Philipps, Comment, *Cracking the Conjugal Myths: What Does it Mean for the*

further from traditional family groupings, difficulties of documenting the living arrangements multiply. And yet, the pooling of income and sharing of expenses might well be identical.

#### 4. Larger Groups

Should larger groups be recognized? Recall that simply aggregating the taxable income of a larger group of adults, without providing a separate rate schedule, would probably result in higher taxes on the group.<sup>60</sup> Adding in the children, however, is another matter. Presumably, adding children to the taxable mix is usually irrelevant on the income side since children earn negligible taxable income. However, if the medical and other expenses of children are added in, certain floors on deductions might be more easily achieved.<sup>61</sup>

Administration, however, is a problem. We know what a married couple is. Presumably, we would have little trouble documenting a civil union. The Hindu Undivided Family (HUF), similarly, is probably easy to define, since it flows from a long tradition in Hindu law.<sup>62</sup> However, when it comes to larger entities, such as the nuclear family plus a few in-laws or the hippie commune, one does wonder how the groups would be defined and documented, and whether society would be comfortable with the invasions of privacy necessary to apply the definitions to real-life situations.<sup>63</sup>

#### B. Children

As a general matter, personal expenditures are nondeductible.<sup>64</sup> One's tax bill should not depend upon whether one lives extravagantly or frugally. Moreover, if one were to compare two taxpayers with equal personal expenditures, it should make no difference in their taxes if one spends her money on opera tickets, while the other spends her money on a yacht. But are

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*Attribution Rules?*, 50 CAN. TAX J. 1031, 1031–32, 1034–35 (2002) (examining the report and extrapolating its recommendations). For further thoughts on the difficulties of defining the relevant groups, see Wendy C. Gerzog, *Families for Tax Purposes: What about the Steps?*, 42 U. MICH. J.L. REFORM 805 (2009) (discussing taxation of step-parents and step-children).

60. See *supra* Part I.

61. See *infra* Part II.D.

62. The Hindu Undivided Family (HUF) is all persons who are lineal descendants of a common ancestor, their wives, and unmarried daughters. However, to achieve the special tax treatments of HUFs under *Mitakshara*, the property must be owned by the “coparcenary,” which is only the male members of the family, who hold property interests due to their birth. See SHUKLENDRA, *supra* note 13, at 16–26, 30.

63. DAVID G. DUFF ET AL., CANADIAN INCOME TAX LAW 25 (2d ed. 2007).

64. I.R.C. § 262 (2006).

the expenses of supporting children in the same category as opera and boating?<sup>65</sup>

Somehow, it just doesn't seem right to categorize child-rearing as just another hobby. Admittedly, there are some who take their hobbies very seriously—perhaps even more seriously, than others take their child-rearing responsibilities.<sup>66</sup> And yet, at the very least, there is the dimension of population policy. If everyone decided not to have children, then assuming no immigration, the nation would cease to exist. No such stakes are at play when we decide whether to go sailing or to attend the opera.

Also, children are citizens, whom the state is obligated to nurture and protect. If their parents do not pay for child care, then the state must pay.<sup>67</sup> As yet, the state has no similar obligation toward neglected pleasure boats or opera houses. These differences suggest that the state already subsidizes child-

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65. I have argued elsewhere that discretionary personal expenses should be nondeductible, while nondiscretionary expenses should be deductible. In this light, the expenses of child-rearing are nondiscretionary. One might argue that, even though child care expenses are nondiscretionary once the babies are born, they are the product of an initial personal choice to have children. However, one might also argue that the nondiscretionary expenses of treating lung cancer were initially caused by the personal decision to smoke, etc. Therefore, if child care expenses should be deemed nondeductible due to the personal choice involved, then so should many medical expenses. See Joel S. Newman, *The Deductibility of Nondiscretionary Personal Expenses*, 6 AM. J. TAX POL'Y 211, 240–42 (1987). See also *Symes v. Canada*, 4 S.C.R. 695, ¶ 227 (1993).

The decision to have children is not like any other 'consumption' decision. To describe the raising of children in comparable terms to 'choosing' to purchase a certain kind of automobile or live in a certain dwelling is simply untenable. As well, the many complexities surrounding child care make it inappropriate to adopt the language of voluntary assumption of costs, where those costs may, in fact, be allocated in a discriminatory fashion—the burden falling primarily on women.

*Id.* (L'Heureux Dube, J., dissenting). As household income rises, the welfare arguments for tax breaks for children subside. Therefore, I supported the temporary phase-out of the dependency exemption for higher incomes in I.R.C. § 151(d)(3), and wished that it had been made permanent.

For more background on the changing role of women in the workplace and childcare costs, see generally Tsilly Dagan, *Ordinary People, Necessary Choices: A Comparative Study of Childcare Expenses*, 11 THEORETICAL INQUIRIES L. 589 (2010); Audrey Macklin, Comment, *Symes v. M.N.R.: Where Sex Meets Class*, 5 CAN. J. WOMEN & L. 498 (1992); *Women in the Workplace: Female Power*, ECONOMIST, Jan. 2, 2010, at 49.

66. See, e.g., *Humanity and Pets Partnered Through the Years Act*, H.R. 3501, 111th Cong. § 224 (2009) (proposing a tax deduction for pet care expenses).

67. For low-income families, the welfare dimensions of child expenditures are paramount, because the government is more likely to step in for these cases. In contrast, for high-income families, the welfare dimension is far less important. Perhaps it makes sense, then, that in the American system, the dependency exemption temporarily phased out for higher incomes. I.R.C. § 151(d)(3) (2006).

rearing far more than other personal lifestyle choices. Are these subsidies sufficient, or should there be tax benefits as well?<sup>68</sup>

Population policy should be addressed in its own right. Most developed countries are now facing declining birth rates.<sup>69</sup> As a result, there are questions as to whether the birth rate is sufficient to keep the population constant.<sup>70</sup> Further, as birth rates decline and life spans are increasing, populations are aging, seriously impacting retirement, health care, and other state policy.<sup>71</sup> Depending on one's perspective, these trends could be good news<sup>72</sup> or bad news.<sup>73</sup>

Population policy has always been deemed a legitimate area for state intervention. To give a few examples, bachelors were penalized in ancient Rome.<sup>74</sup> In Germany during the Third Reich, mothers with four or more children were given Mother's Honour Crosses—bronze for four children, silver for six, and gold for eight or more.<sup>75</sup> Holders of the Cross were entitled to go to the head of the line in grocery stores and be saluted by Hitler Youth.<sup>76</sup> Hitler personally pinned on the gold cross.<sup>77</sup> For mothers who had ten children, Hitler himself would be godfather, provided that the tenth child was a boy, and the mother named him Adolf.<sup>78</sup>

68. An unstated premise of this discussion is that children do better if they come from households with more money. Tax subsidies are one way of providing more money to those households. There is a correlation between household income and child well-being, but it is not as strong as some might think. See ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 58, at 31 (providing a summary of factors that contribute to children's well-being).

69. *A Slow-Burning Fuse: Special Report on Aging Population*, ECONOMIST, June 27, 2009, at 3, 4.

70. *Go Forth and Multiply a Lot Less*, ECONOMIST, Oct. 31, 2009, at 29.

71. *A Slow-Burning Fuse: Special Report on Aging Population*, *supra* note 69, at 3–5.

72. See *Go Forth and Multiply a Lot Less*, *supra* note 70, at 29–32 (discussing the environmental benefits of a declining population).

73. See *A Slow-Burning Fuse: Special Report on Aging Population*, *supra* note 69, at 3–5. Israel has its own population dilemma, as it wishes to replace those who were killed in the Holocaust. Lourdes Garcia-Navarro, *No Small Family Gatherings for 99-Year-Old Rabbi*, NPR (Oct. 13, 2009), <http://www.npr.org/templates/story/story.php?storyId=113742211>. Sadly, Israel is not the only nation with such genocide concerns.

Of course, this discussion becomes silly unless it can be shown that government policy, and especially fiscal policy, is effective in manipulating the birth rate. There is some evidence that it is indeed effective. See, e.g., Alma Cohen et al., *Do Financial Incentives Affect Fertility?* (Harvard John M. Olin Ctr. for Law, Econ., & Bus., Discussion Paper No. 605, 2007), available at <http://papers.ssrn.com/abstract=1077841>.

74. 4 DIO'S ROMAN HISTORY 323 (E. Capps et al. eds., Earnest Cary trans., 1917).

75. RICHARD J. EVANS, *THE THIRD REICH IN POWER: 1933–1939*, at 516–17 (2005).

76. *Id.*

77. *Id.*

78. *Id.* For a similar, more recent example in Russia, see C.J. Chivers, *Putin Urges Plan to Reverse Slide in the Birthrate*, N.Y. TIMES, May 11, 2006, at A1 (proposing cash and cover child care subsidies on a sliding scale relative to the number of children in a family).



Tax incentives and penalties are also common.<sup>79</sup> The U.S.S.R. and many former Soviet satellite nations enacted bachelor taxes to increase population.<sup>80</sup> Some American territories and states, when they were under-populated, also contemplated bachelor taxes.<sup>81</sup> Also, the French *foyer fiscal*, the Hindu Undivided family, and even the American dependency exemption can be seen as tax devices which encourage large families.

In terms of personal allowances for children, there is a wide variety of approaches. Some countries give the same allowance per child, no matter how many children.<sup>82</sup> Some cap the allowances after a certain number of children.<sup>83</sup> In some countries, the per-child allowances get larger as the number of children increases.<sup>84</sup> In others, the allowances get smaller.<sup>85</sup> In Myanmar, the allowance goes up as the child gets older.<sup>86</sup> In two countries,

79. There is a rich literature on children, tax, and fiscal policy, especially in the United States. See, e.g., WHITE HOUSE COUNCIL OF ECON. ADVISORS, *THE ECONOMICS OF CHILD CARE* (1997) (examining changes in family structure and earning and their impact on childcare); Dorothy Brown, Essay, *Race and Class Matters in Tax Policy*, 107 COLUM. L. REV. 790 (2007) (noting that the Senate Finance Committee did not want to increase the earned income tax credit for additional children for fear that it would create an "economic incentive for having more [low-income] children"); Leonard E. Burman & Laura Wheaton, Commentary, *Who Gets the Child Tax Credit?*, 109 TAX NOTES 387 (2005) (presenting statistics on race, gender, and family status of who actually receives the child care tax credit); William G. Gale & Laurence K. Kotlikoff, *Effects of Recent Fiscal Policies on Children*, 103 TAX NOTES 1281 (2004) (arguing that tax cuts and Medicare prescription drug coverage negatively impact children); C. Garrison Lepow, *The FlimFlam Father: Deconstructing Parent-Child Stereotypes in Federal Tax Subsidies*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 129 (2001) (examining how custody-based tax incentives fail); Nina E. Olson, *Uniform Qualifying Child Definition: Uniformity for Most Taxpayers*, 111 TAX NOTES 225 (2006) (arguing that the uniform definition of a qualifying child is an improvement from past rules); Katherine T. Pratt, *Inconceivable? Deducting the Costs of Fertility Treatment*, 89 CORNELL L. REV. 1121 (2004) (considering whether fertility treatments should be deductible as medical expenses).

80. Oldman & Temple, *supra* note 6, at 595–96. See also Chivers, *supra* note 78, at A1.

81. 1820 Mo. Acts. 1st. Sess. ch. 1, § 1 (providing for a one dollar tax on free white bachelors between the ages of 21 and 50). Indiana attempted to tax bachelors over the age of 25 in 1907. *Statehouse Quirks*, UNITED PRESS INT'L, May 19, 1985. On quite a different theory, H.L. Mencken proposed a one dollar a day bachelors' tax because, he claimed, it was worth at least that much to be free. John C. Chalberg, Book Review, NAT'L REV., Oct. 9, 1987, at 67 (reviewing MENCKEN AND SARA: A LIFE IN LETTERS (Marion Elizabeth Rodgers ed. 1992)).

82. See *infra* Appendix, Table 8.

83. See *infra* Appendix, Table 9. Caps on households can perform other functions. See N.Y. CITY, N.Y., HOUSING MAINT. CODE ch. 2, § 27-2075 (1993) (setting maximum permitted occupancy rates for city dwellings).

84. See *infra* Appendix, Table 10.

85. See *infra* Appendix, Table 11.

86. Income Tax Act § 15A (1974) (Myan.).

one gets no tax relief unless one has the requisite number of children.<sup>87</sup> Finally, many countries give no tax relief at all.<sup>88</sup>

These various approaches suggest different ways of thinking. Does each additional child have the same marginal cost? If not, do expenses go up disproportionately as the family grows? Alternatively, are there economies of scale, so that costs go down as the number of children goes up? Do older children cost more than younger children? Surely, older children eat more, but younger children require more constant attention.<sup>89</sup>

Can government justifiably require that a household have at least a certain number of children before granting tax relief? Perhaps having children below the requisite number poses no hardship. Perhaps alternatively, for population policy purposes, having more children should be encouraged. On the other hand, can government justifiably cap the tax relief after a stated number of children? Could they, perhaps, believe that families above a certain size are inappropriate or unhealthy?

Surely, at least some of these concerns, if not all of them, cause discomfort. Why should it be the business of government to inquire so closely into the economics of our child-rearing decisions? Perhaps if we could sort out the discomfort, we would be well on the way to a coherent view on what the tax policy should be.

### C. *Economies of Scale and Imputed Income*

“[W]hile two cannot live as cheaply as one, economies are possible when two people share bed and board.”<sup>90</sup> It is far more efficient to provide housing space for two or more, as compared to a single person. A quick look at any grocery store will prove that food portions are generally designed for households of two or more.<sup>91</sup> Anyone who has booked a vacation trip can tell

87. See Internal Revenue Act (Act No. 592/2000) § 39 (Ghana); Tax Code of the Kyrgyz Republic art. 76 (1996).

88. See *infra* Appendix, Table 12. Of course, it is quite possible that these countries grant subsidies for children outside of the income tax regime. In the United Kingdom, for example, child allowances were abolished in 1979–1980, when the child benefit scheme was introduced. JOHN TILEY, *REVENUE LAW* 61 (3d ed. 1981).

89. For data on the relationship between expenditures for children and the age of the children, see ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 58, at 67. Would it, perhaps, make even more sense to key the children’s allowances to the weight of the children?

90. REPORT OF THE ROYAL COMM’N ON TAXATION, *supra* note 1, at 117. See also DUFFET AL., *supra* note 63, at 24 (suggesting that, because of the advantages enjoyed by cohabiting couples, they should be taxed more heavily than two cohabiting individuals).

91. Okay, so you can save the excess for leftovers, but who wants to? In my experience, some foods, such as lasagna, are better the second night, while others, such as string beans, are assuredly not. The Canadian Royal Commission suggests that there might be diseconomies to married couples for low-income groups (who could otherwise live in larger communities) and economies of scale for middle-income couples. REPORT OF THE ROYAL COMM’N ON TAXATION,

you about the premium prices paid if one goes alone. If the income tax is to be based upon ability to pay, then shouldn't groups be taxed more heavily to reflect these advantages? Arguably, that is what group taxation does.

Moreover, in some groups, some of the adults do not work outside the home. In such cases, those adults (or older children) typically provide services to the household, such as housekeeping and child care. Typically, there is neither money paid nor income taxes levied on the value of this imputed income.<sup>92</sup> Imagine, for example, Couple *AB* and single person *C*. *A* works outside the home, earning \$90,000. *B* does not work outside the home, but does take care of the house. *C* works outside the home and earns \$100,000. However, *C* pays a cleaning service \$10,000 to take care of the house.

The cash flow is set forth below:

	<i>A</i>	+	<i>B</i>		<i>C</i>
Income	\$90,000	+	\$0	= \$90,000	\$100,000
<u>Housekeeping expense</u>				– \$0	– \$10,000
Net cash flow				\$90,000	\$90,000

Both Couple *AB* and single person *C* have net cash flow of \$90,000 and a clean house. Yet, without taxing imputed income, Couple *AB* will be taxed on \$90,000, while single person *C* will be taxed on \$100,000. Given the problems with taxing imputed income, can higher taxation of groups be defended as a viable substitute?<sup>93</sup>

The possible unfairness, however, is not caused by *A* and *B*'s decision to live together. Admittedly, that decision probably made it possible for one of them to stay at home. The presence of one of them in the home increased their housekeeping options and, perhaps, made those options more pleasant. However, *C* is not without options. There is nothing to prevent *C* from doing

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*supra* note 1, at 15–16. McIntyre and Oldman suggested that the actual arrangements of married couples were far too various for any to make blanket assumptions about the presence or absence of economies of scale for the entire category. McIntyre & Oldman, *supra* note 16, at 1595–96 n.80.

92. The failure to tax the imputed income derived from housework and child care denies the dignity and value of the work. Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1576–77 (1996). Also, it can have negative implications on social security benefits. *Id.* at 1574. The 1939 opinion of the Board of Tax Appeals in *Smith v. Comm'r*, gives some insight into how little respect was given to child care and housework in an earlier generation. 40 B.T.A. 1038 (1939), *aff'd*, 113 F.2d 114 (2d Cir. 1940).

93. See DUFF ET AL., *supra* note 63, at 28 (discussing ways Canadian law has adapted to more accurately tax single-earner couples). The Canadian Royal Commission rejected this approach, arguing that it is inconsistent to tax imputed income only when it is convenient to do so. REPORT OF THE ROYAL COMM'N ON TAXATION, *supra* note 1, at 118–19.

the housework himself or herself. Presumably, *C* could stay up later or forego other leisure activities. Similarly, there is nothing to prevent Couple *AB* from hiring out the housework and freeing up *B* to do something else with his or her time. Seen in this light, it would appear that the possible unfairness arising from the failure to tax imputed income from housekeeping services has less to do with group living and more to do with various decisions about balancing leisure and chores.

What if the \$10,000 expense incurred by single person *C* was for child care instead of housekeeping?<sup>94</sup> The numbers would be the same, but the analysis is somewhat different. One can clean the house early in the morning or late at night or instead of reading a book. However, child care is a twenty-four-hour responsibility. One cannot, therefore, blame any unfairness on different choices about how to spend leisure time or how many hours to sleep. However, here, the issue is raised less by the decision to live in a group and more by the decision to have children. There are, of course, issues on the appropriateness of tax subsidies for having children, but they are treated separately above.<sup>95</sup>

#### *D. Floors and Ceilings*

Tax attributes often phase in and out as a function of income.<sup>96</sup> Tax attributes targeted to poor people properly phase out as income rises.<sup>97</sup> The United States's earned income tax credit, for example, phases out at higher incomes.<sup>98</sup> But whose income: the individual's income or the household's income?<sup>99</sup> Similarly, medical expenses are only deductible to the extent that they exceed 7.5% of adjusted gross income.<sup>100</sup> Whose adjusted gross income? If these tax attributes are designed to reflect ability to pay, then should it be the individual's ability to pay or the household's ability to pay?

For purposes of the medical expense deduction threshold, both parents' adjusted gross income is aggregated, if they file a joint return.<sup>101</sup> The medical expenses themselves are aggregated even further, for they can be the medical

94. *C* could adopt. Alternatively, *C* could have been previously married.

95. See *supra* Part II.B.

96. See, e.g., I.R.C. § 32(a) (2006).

97. *Id.*

98. *Id.*

99. See Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 577 (1995) (discussing the difficulty in determining what constitutes the "family" for taxation purposes under current federal tax law). A number of tax systems, including Canada, Australia, and the United Kingdom, while generally taxing individuals, aggregate household income for the purposes of granting personal allowances. AULT ET AL., *supra* note 6, at 320–21.

100. I.R.C. § 213.

101. See *id.*

expenses of the parents and the children.<sup>102</sup> In allowing the aggregation of children's medical expenses, it is far more likely that a family's medical expenses will exceed the 7.5% than it is for a single person's medical expenses to exceed this threshold. This fact is a further tax advantage for families. Can it be justified? Of course it can. When considering a family's ability to pay, it makes no sense at all to consider the costs of the father's prostate cancer, but not the son's appendectomy.<sup>103</sup>

In fact, there are floors and ceilings throughout the Internal Revenue Code.<sup>104</sup> Sometimes, they take groups into account, sometimes not.<sup>105</sup> There does not appear to be any rhyme or reason to this inconsistent tax treatment.<sup>106</sup>

#### *E. Intra-Group Transfers*

If the household were a single taxable unit, then payments from one household member to another would not be considered. They would be treated as a transfer from one's left pocket to one's right. However, if each member of the household were deemed to be a separate taxpayer, then these intra-group transfers would have to be accounted for.

Spouses routinely share their expenses. Should a payment by one spouse of groceries consumed by the other, be taxable to the other? One would assume not. The United States addresses the problem in part in Section 1041 of the Internal Revenue Code. Most of these kinds of payments are considered tax-free gifts.<sup>107</sup> Any other result would lead to an enormous recordkeeping burden—a burden most taxpayers would probably ignore.

Similarly, parents pay for the food, clothing, and shelter of their minor children. In a world of rigorous taxation of individuals, would these amounts be taxable to the children? One would think not. Again, such payments, in discharge of the parents' legal obligation, would normally be tax-free gifts.<sup>108</sup> Of course, there could be questions at the margin, with difficult issues of

102. *Id.*

103. These concerns are relevant if the group is recognized to some extent. If the group is not recognized, then there are different problems with medical expenses, addressed in the next section on intra-group transfers.

104. *See, e.g.*, I.R.C. § 67 (allowing deductions only if aggregate amount exceeds two percent of adjusted gross income); *Id.* § 223 (limiting deductions for contributions to health savings accounts); *Id.* § 222 (limiting the amount that may be deduction as qualified tuition).

105. *See, e.g., id.* § 223 (limiting deductions for an individual's contribution to a health savings account); *Id.* § 213 (allowing a deduction for "family" medical expenses that exceed seven and one-half percent of adjusted gross income).

106. *See* U.S. GEN. ACCOUNTING OFFICE, *supra* note 16, at 3–5; Robinson & Wenig, *supra* note 47, at 842–47 (illustrating the seemingly arbitrary floors and ceilings throughout the Internal Revenue Code).

107. I.R.C. § 1041.

108. *Id.* § 2503.

valuation and recordkeeping.<sup>109</sup> Generally, however, the income side is not a problem.<sup>110</sup>

What about the deduction side? When one spouse incurs a deductible expense for the benefit of the entire household, who should get the deduction? One easy answer is to follow the money. In the United States, for example, when married couples file separate returns, deductions are usually taken by the spouse who actually pays the money, even if the liability for the payment was joint.<sup>111</sup> Charitable contributions of property are taken by whoever owned the property, and casualty losses are taken by the spouse whose property was damaged.<sup>112</sup> But not all countries follow suit. In Greece, for example, deductible home mortgage expenses are apportioned to the spouses on the basis of the income earned by each.<sup>113</sup> In The Netherlands, the mortgage interest deduction goes to whoever is taxed on the rental value of the home.<sup>114</sup> Some have proposed a similar scheme for the United States.<sup>115</sup>

Would anyone ever argue that children should receive the deductions for medical payments, or even housing payments made on their behalf? Since the income of most children is nominal, such a scheme would be tantamount to denying the deduction. In effect, such a scheme would effectively be a tax penalty on having children.<sup>116</sup>

#### F. Incentives to Work

If a nation taxes individuals, then each one will pay tax on the first dollar of income at the lowest marginal rate.<sup>117</sup> However, if a nation taxes groups, then conceptually, the income of one group member will be taxed first, at the

109. REPORT OF THE ROYAL COMM'N ON TAXATION, *supra* note 1, at 225–26.

110. The Canadian Royal Commission recommends that all intra-family transactions be ignored. *Id.* at 279.

111. *Finney v. Comm'r*, 35 T.C.M. (CCH) 1504, 1507 (1977); John Allain Viator, Comment, *What You Earn is Yours, but You are Jointly and Severally Liable for His: A Proportionate Liability Proposal for Federal Income Taxes*, 58 LA. L. REV. 309, 335 (1997).

112. Viator, *supra* note 111, at 335.

113. IBFD, GLOBAL INDIVIDUAL TAX HANDBOOK: 2009 330 (Nick Crowley et al. eds., 2009).

114. AULT ET AL., *supra* note 6, at 321.

115. Lawrence Zelenak, *Marriage and the Income Tax*, 67 S. CAL. L. REV. 339, 343–44 (1994) (recommending taxing income from property to the spouse who owns the property); Viator, *supra* note 111, at 309–10 (proposing and discussing a proportionate liability system).

116. These questions do not merely impact on the allocation of the deductions per se; they would also have an impact on the various floors and ceilings that might apply to the deductions. See discussion *supra* Part III.D.

117. Margaret Ryznar, *To Work, or Not to Work? The Immortal Tax Disincentives for Married Women*, 13 LEWIS & CLARK L. REV. 921, 926–27 (2009).

lowest marginal rate.<sup>118</sup> Then, the income of subsequent group members will be piled on top and taxed at higher marginal rates.<sup>119</sup>

When a couple marries, will the man's income be taxed first, at a lower rate, and will the woman's income be piled on top and taxed at a higher rate? This argument is silly: It makes just as much sense that the woman's income is taxed first, and the man's income is taxed second. At least, this argument is silly if one imagines the case of a man and woman, both working outside the home, who decide to get married. Surely, neither one's income is taxed first or second.

If, however, one considers an alternative scenario, the argument might make sense. Consider a married couple with one spouse working outside the home and the other not. Assume that the spouse who is not working outside the home decides to enter the labor market. From the perspective of this spouse, his or her new income will be piled on top of the income previously earned by the other spouse. For such a couple, therefore, the aggregation of incomes in group taxation does function as a disincentive to the second spouse entering the labor market outside the home.<sup>120</sup>

In the traditional family, if only one spouse is working outside the home, that spouse is the man.<sup>121</sup> First, even if both spouses entered the marriage gainfully employed outside the home, when the children come, the woman is far more likely to give up her job to stay home and care for them.<sup>122</sup> Second, if one spouse leaves the labor market, it is likely to be the woman because she is likely to earn less than the man.<sup>123</sup> Therefore, it will be the woman whose later decision to enter or reenter the labor market will be penalized.<sup>124</sup> For this reason, among others, the traditional feminist position has been for individual, and not group, taxation.<sup>125</sup>

118. *Id.*

119. *Id.* Some have argued unsuccessfully that the marriage penalty which results from the aggregation of incomes violates the constitution. See Richard L. Elbert, Comment, *Love, God, and Country: Religious Freedom and the Marriage Penalty Tax*, 5 SETON HALL CONST. L.J. 1171, 1172–73 n.7 (1995).

120. See Ryznar, *supra* note 117, at 926 (noting that the tax disincentive is one factor a married woman will consider before seeking employment).

121. See Grace Blumberg, *supra* note 6, at 49 (observing that American working wives are predominantly the secondary family earners).

122. *Id.* at 89–90.

123. *Id.* at 49, 89.

124. Laura Ann Davis, Note, *A Feminist Justification for the Adoption of an Individual Filing System*, 62 S. CAL. L. REV. 197, 210–11 (1988).

125. See Blumberg, *supra* note 6, at 95 (recommending the implementation of individual taxation in order to make the Internal Revenue Code consistent with the principle of sexual equality); Davis, *supra* note 124, at 199 (providing a feminist justification for individual filing); Miranda Stewart, *Gender Equity in Australia's Tax System* 19 (Melbourne Law Sch. Legal Studies Research Paper No. 443, 2009), available at <http://ssrn.com/abstract=1520795> (“[A]n

Does aggregation of incomes truly deter the second spouse from entering the labor market? There is some evidence that it does. In a 1997 study, the Congressional Budget Office estimated that second spouses would work from 4–7% less than they would in a regime of individual taxation.<sup>126</sup> If so, then this aspect of the taxable aggregation of income creates both fairness and efficiency concerns.

#### G. Control versus Benefit

Some have argued, as a theoretical matter, that one should determine at the outset whether it is more important who controls the income or who benefits from the income.<sup>127</sup> Generally speaking, focusing on control is likely to lead to individual taxation, for income is more often than not controlled by the one who earns it.<sup>128</sup> On the other hand, focusing on benefit is more likely to lead to group taxation and reallocation of income from those who earn it, to those who use it.<sup>129</sup> The American approach to assignment of income would probably resemble the control approach.<sup>130</sup> Also, notions of control fit more comfortably with an income tax base, while notions of benefit fit better with a

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approach which takes seriously the capabilities of women provides strong support for a progressive individual income tax . . .”). Cf. Anne L. Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 COLUM. L. REV. 2001, 2005 (1996) (noting the standard feminist preference is for individual filing, but is somewhat weak).

126. CONG. BUDGET OFFICE, *supra* note 16, at 12. See also Siv Gustafsson, *Separate Taxation and Married Women's Labor Supply: A Comparison of West Germany and Sweden*, 5 J. POPULATION ECON. 61, 62, 77 (1992) (noting that the percentage of married women in the workforce in Sweden, which switched to individual taxation, far exceeds the percentage of such women in the workforce in Germany, which taxes jointly); Zelenak, *supra* note 115, at 372–73 (describing how joint returns discourage women from entering the workforce).

127. DUFF ET AL., *supra* note 63, at 24–25.

128. *Id.* at 24–25.

129. *Id.* at 24.

130. In *Lucas v. Earl*, the Supreme Court rejected a test based upon income “beneficially received.” 281 U.S. 111, 114–15 (1930). The famous fruit and tree analogy is a test based upon control, not benefit. In *Geiger v. Comm’r*, the taxpayer was an embezzler who diverted the embezzled funds to other objects of her bounty. 352 F.2d 221, 223 (8th Cir. 1965). She claimed that those objects of her bounty should have been taxed on the income. *Id.* Judge Blackmun wrote:

The taxpayers’ position in effect is that, technically, these funds flowed direct from the bank to the outside beneficiaries and did not pass through Geiger hands. That may be one way to describe it. Another, equally valid, is that the funds came to Mrs. Geiger and were passed out or made available by her to the beneficiaries. These beneficiaries were the objects of her bounty, not the bank’s. She was the force and the fulcrum which made those benefits possible. She assumed unto herself actual command over the funds. This is enough.

*Id.* at 231 (citing *Corliss v. Bowe*, 281 U.S. 376, 378 (1930)).



consumption tax base.<sup>131</sup> However, given the paramount importance of ability to pay to a discussion of households, perhaps, benefit and not control should be more important.

#### CONCLUSION

Taxing households any way you can think of—and some that you could not possibly have thought of—is being done or has been done, by some country, somewhere. Special circumstances of particular countries explain their taxation choices. Some countries have more serious population problems than others. Some countries have longstanding traditions of polygamy and communal living; some do not. Some countries in the developing world have difficulties with detailed recordkeeping requirements; some do not. Nation-states, however, are far too complex for any easy determinations of why a particular choice was made, or whether or not it has worked out as intended.

Many of the factors described here can cancel each other out.<sup>132</sup> For example, one might establish a regime of group taxation, with reallocation of income within the group, in order to encourage larger families. However, that regime would be unfair to single taxpayers and might deter the second spouse from entering the workforce. On the other hand, taxing married couples more heavily to recognize their economies of scale and untaxed imputed income, discourages marriage. Pick your poison.

Moreover, it is not necessary to change the entire structure of the taxation system, in order to achieve some of the goals described here. For example, if one wanted to encourage group living arrangements, one could devise a system of tax credits or allowances for children or other dependents, or even narrower tax allowances for the expenses of caring for group members, without departing from an individual taxation scheme. What is more, most of these goals could be achieved by means totally extraneous to the tax laws, by welfare subsidies or tuition vouchers. Such non-tax mechanisms would be a far more effective, fair, and transparent way to address population policy concerns.<sup>133</sup>

No structural solution will satisfy everyone, or even achieve fairness. Some goals even cancel out other goals. Accordingly, given the absence of a clear best-case, one-size-fits-all solution, the structural choice should be the simplest choice. The taxpayer should be the individual, period, and there should be only one rate.

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131. Ault suggests that the French *foyer fiscal* can be justified by an emphasis on consumption (benefit) over control. AULT ET AL., *supra* note 6, at 322.

132. *See id.* at 317–18.

133. France offers paid leave of up to €1,000 per month to women who have a third child. Katha Pollitt, *Europeans Do It Better*, THE NATION, Apr. 2, 2007, at 10.

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Taxation should be about money, not relationships. Either all pooling of income and expenses should be recognized for tax purposes, or none. Recognizing none is far simpler.

APPENDIX

The following tables provide non-exhaustive lists of countries categorized by particular attributes of the way they tax families. Paragraph and page citations are from IBFD, *IBFD GLOBAL INDIVIDUAL TAX HANDBOOK* 2009. Ault citations are to the page number in HUGH J. AULT ET AL., *COMPARATIVE INCOME TAXATION: A STRUCTURAL ANALYSIS* (3d ed. 2010).

Table 3

COUNTRIES/REGIMES WHICH TAX INDIVIDUALS ONLY

	IBFD ¶	IBFD Page
Algeria	¶1.10.2	p. 16
Australia	Ault	p. 320
Austria	¶1.1	p. 37
Barbados	¶1.1	p. 51
Belarus	¶1.1	p. 59
Bolivia	¶1.1	p. 73
Canada	¶1.1	p. 93
	Ault	p. 320
Colombia	¶1.1	p. 117
Croatia	¶1.1	p. 129
Egypt	¶1.1.1	p. 171
Finland	¶1.1	p. 189
Japan	¶1.1	p. 331
	Ault	p. 321
Lebanon	¶1.1	p. 363
Moldova	¶1.1	p. 437
Montenegro	¶1.1	p. 447
Netherlands	¶1.1	p. 459
Nicaragua	¶1.1	p. 473
Russia	¶1.1	p. 547
Singapore	¶1.1	p. 559
Slovenia	¶1.1	p. 571
South Korea	¶1.1	p. 349
Sweden	¶1.1	p. 597
	Ault	p. 321
Turkey	¶1.1	p. 655
Ukraine	¶1.1	p. 663
United Kingdom	¶1.1	p. 669
	Ault	p. 321

Table 4

COUNTRIES WHICH TAX INDIVIDUALS ON EARNED INCOME,  
BUT TAX OTHER INCOME DIFFERENTLY

A. *Earned Income Taxed to Individuals; Community Property Income Taxed  
50% to Each Spouse*

Ecuador	¶1.1	p. 165
Italy	¶1.1	p. 323
Mauritius	¶1.1	p. 423
		["income derived jointly"]
Paraguay	¶1.1	p. 505
Peru	¶1.1	p. 509
South Africa	¶1.10.2	p. 581

B. *Earned Income Taxed to Individuals; Other Income Taxed to Husband*

Argentina	¶1.1	p. 21
Chile	¶1.1	p. 103

C. *Earned Income Taxed to Individuals; Other Income Taxed to Higher  
Earning Spouse*

Belgium	¶1.1	p. 63
Iceland	¶1.1	p. 281

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Table 5

COUNTRIES WHICH AGGREGATE HOUSEHOLD INCOME

Liechtenstein	¶1.1	p. 375
Luxembourg	¶1.1	p. 391
Malta	¶1.1	p. 417
Switzerland	¶1.1	p. 605

Table 6

COUNTRIES WHICH AGGREGATE HOUSEHOLD INCOME, BUT TAX AS IF A  
PERCENTAGE WAS DEEMED EARNED BY VARIOUS FAMILY MEMBERS

[Not Necessarily Mandatory]

Estonia	¶1.1	p. 183
France	See description of <i>foyer fiscal</i> , <i>supra</i> notes 29–41 and accompanying text	
Germany	¶1.1	p. 221
Ireland	¶1.10.2	p. 305
Portugal	¶1.1	p. 531

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Table 7

COUNTRIES WHICH ALLOW MARRIED TAXPAYERS TO  
ELECT EITHER AGGREGATE OR SEPARATE

Brazil	¶1.1	p. 61
Estonia	¶1.1	p. 183
Germany	¶1.1	p. 221
	Ault	p. 319
Guernsey	¶1.2.1	p. 254
Hong Kong	¶1.1	p. 263
Indonesia	¶1.1	p. 293
Ireland	¶1.1	p. 299
Malaysia	¶1.1	p. 411
Norway	¶1.1	p. 483
Panama	¶1.1	p. 499
Poland	¶1.1	p. 523
	[spouses in a community property marriage may elect an aggregate return]	
Spain	¶1.10.2	p. 591
Thailand	¶1.1	p. 641
Uruguay	¶1.1	p. 695
Venezuela	¶1.1	p. 701

Table 8  
COUNTRIES WHICH GIVE ALLOWANCES FOR EACH CHILD,  
NO MATTER HOW MANY CHILDREN

Austria	¶1.7.3	p. 39
Belarus	¶1.7.2	p. 60
Brazil	¶1.7	p. 81
Czech Republic	¶1.7.3	p. 44
Germany	¶1.7.2	p. 226
Israel	¶1.7.2	p. 319
Japan	¶1.7.2	p. 334
Latvia	¶1.7.2	p. 359
Liechtenstein	¶1.7.2	p. 377
Lithuania	¶1.7.2	p. 386
Malaysia	¶1.7.2	p. 413
Moldova	¶1.7.2	p. 439
Panama	¶1.7	p. 500–01
Portugal	¶1.7.3.1	p. 535
Romania	¶1.7.2	p. 543
	[but capped at a monetary amount]	
Singapore	¶1.7.3	p. 561
Slovak Republic	¶1.7.3	p. 567
Slovenia	¶1.7.2	p. 573
Switzerland	¶1.7.2	p. 607
Venezuela	¶1.7.2	p. 702–03

Table 9  
COUNTRIES WHICH CAP ALLOWANCES FOR CHILDREN, AFTER A STATED  
NUMBER OF CHILDREN

<i>1 Child</i>		
Gibraltar	¶1.7.2	p. 234
<i>2 Children</i>		
Barbados	¶1.7.2	p. 53
<i>3 Children</i>		
Indonesia	¶1.7.3	p. 294
Mauritius	¶1.7.1	p. 424–25
Thailand	¶1.7.2	p. 641
<i>4 Children</i>		
Nigeria	¶1.7.2	p. 479
Philippines	¶1.7.2	p. 517
<i>9 Children</i>		
Hong Kong	¶1.7.2	p. 265
<i>11 Children</i>		
Croatia	¶1.7.2	p. 131

Table 10

COUNTRIES IN WHICH THE PER CHILD ALLOWANCES INCREASE  
AS THE NUMBER OF CHILDREN INCREASES

Belgium	¶1.7.2.2	p. 65
Croatia	¶1.7.2	p. 131
Lithuania	¶1.7.2	p. 386
Singapore	¶1.7.3	p. 561
Slovenia	¶1.7.2	p. 573
Spain	¶1.7.2	p. 590

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Table 11

COUNTRIES IN WHICH THE PER CHILD ALLOWANCES DECREASE  
AS THE NUMBER OF CHILDREN INCREASES

Tunisia	¶1.7.2	p. 649
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Table 12

COUNTRIES WHICH GRANT NO TAX ALLOWANCES FOR CHILDREN

Australia	¶1.7.2	p. 31
Chile	¶1.7.2	p. 106
Costa Rica	¶1.7.1–2	p. 124
Cyprus	¶1.7.2	p. 136
Greece	¶1.7.2	p. 241
Honduras	¶1.6.2	p. 260
Hungary	¶1.7.2	p. 275
Iceland	¶1.7.2	p. 282
India	¶1.7.2	p. 289
Malta	¶1.7.2	p. 419
Montenegro	¶1.7.2	p. 448
Netherlands	¶1.7.2	p. 462
New Zealand	¶1.7.2	p. 468
Nicaragua	¶1.7	p. 474
Peru	¶1.7	p. 511
Turkey	¶1.7.2	p. 658