

2006

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### Recommended Citation

Ordower, Henry, Comparative Law Observations on Taxation of Same-Sex Couples (April 10, 2006). Tax Notes, Vol. 111, pp. 229-233, 2006.

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## Comparative Law Observations on Taxation of Same-Sex Couples

By Henry Ordower

Henry Ordower is a professor of law and codirector of the Center for International and Comparative Law at the Saint Louis University School of Law.

In the continuing debate concerning same-sex marriage and civil unions, Ordower finds that several commentators have considered the tax ramifications of those unions. Increasingly, he asserts, U.S. treaty partners sanction same-sex marriage so that the United States and other countries ultimately will have to address how domestic tax laws will treat same-sex partners who become temporarily or permanently subject to their tax laws, when the countries otherwise do not recognize those relationships. With an eye to taxation, this article surveys international developments in same-sex marriage and civil unions and assembles references to the enabling statutes or court decisions. An earlier version of the article appears on the CD-ROM for the American Bar Association Section of Taxation winter meeting held in February 2006.

The author thanks Margaret McDermott, associate law librarian, for research assistance.

As part of the larger project, *Intersections of Constitutional and Tax Law: Restricting the Legislative Power to Tax*, undertaken for the 17th Congress of the International Academy of Comparative Law,<sup>1</sup> I asked the national reporters, as the general reporter, to identify how their countries' tax laws distinguish married from unmarried individuals and whether the tax characteristics of married individuals apply to other relationships, including cohabitation, same-sex unions, and other non-traditional family units. I also inquired whether taxpayers have challenged limitations on the availability of beneficial tax structures to individuals who are in committed, unmarried relationships. To date I have received responses from the national reporters from France, Greece, the Netherlands, Poland, the United States, Croatia, Hungary, Australia, and Italy. This article reports those responses and supplements them with research on the Nordic countries, Germany, Canada, New Zealand, Spain, Portugal, Argentina, South Africa, and the United Kingdom, but not the United States.

Regarding the United States, there is considerable literature on the topic of same-sex marriage, civil unions, and taxation.<sup>2</sup> Moreover, the Defense of Marriage Act

defines marriage for tax purposes as heterosexual marriage only,<sup>3</sup> thereby precluding same-sex couples who marry in jurisdictions that permit those marriages from claiming the tax status that accompanies marriage. However, the Defense of Marriage Act does not prohibit Congress or states (concerning state taxes only) from extending tax structures for married individuals to other nonmarital relationships. California already has included same-sex partners in a civil union in its community property regime, although it excluded those unions from joint return filing.<sup>4</sup> That inclusion has led to discussion in the literature of income splitting by same-sex partners<sup>5</sup> under the authority of an early Supreme Court decision.<sup>6</sup> Chief Counsel to the IRS has determined that the California statute does not support income splitting.<sup>7</sup>

The number of countries that provide for same-sex marriage or have a parallel registration system, defining rights and obligations comparable to marriage, for domestic partnerships is rapidly evolving among countries with European origins.<sup>8</sup> Despite rejection by France and the Netherlands of the proposed constitution for the European Union,<sup>9</sup> article 8A of the EU treaty (the Maastricht Treaty) guarantees all citizens of the EU the right to move freely, work, and live anywhere in the EU.<sup>10</sup> The right to move freely within the EU necessitates some convergence in the laws of the member states governing family matters, so that a family moving from one jurisdiction to another does not have to change its fundamental

*Race and Just.* 267 (2002); Anthony C. Infanti, "The Internal Revenue Code as Sodomy Statute," 44 *Santa Clara L. Rev.* 763 (2004); 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 (1998); Michael G. Myers, "Comment: Polygamist Eye For The Monogamist Guy: Homosexual Sodomy . . . Gay Marriage . . . Is Polygamy Next?" 42 *Hous. L. Rev.* 1451 (2006) (inquiring whether enabling same-sex marriage strengthens arguments for permitting polygamy).

<sup>1</sup>U.S.C. section 7 (2000).

<sup>4</sup>Cal. Fam. Code section 297, although not for purposes of state income tax return filing. Cal. Fam. Code section 297.5 (2006).

<sup>3</sup>Patricia A. Cain, "Taxation of Same-Sex Couples in State-Sanctioned Relationships," ABA Tax Section, Midyear Meeting, Teaching Taxation Section CD-ROM (2006).

<sup>6</sup>*Poe v. Seaborn*, 282 U.S. 101 (1930) (determining that community property law splits income between spouses who each must report half the community income on their separate federal income tax returns).

<sup>7</sup>Chief Counsel Memorandum 200608038, *Doc 2006-3875*, 2006 *TNT* 39-13 (Feb. 24, 2006). See Dennis J. Ventry Jr., "No Income Splitting for Domestic Partners: How the IRS Erred," *Tax Notes*, Mar. 6, 2006, p. 1221.

<sup>8</sup>Although significantly out of date, for a project surveying developments in the area, see the International Gay and Lesbian Association's World Law Survey, available at [http://www.ilga.info/Information/Legal\\_survey/europe/world\\_legal\\_survey\\_europe.htm](http://www.ilga.info/Information/Legal_survey/europe/world_legal_survey_europe.htm).

<sup>9</sup>France rejected the constitution in a May 29, 2005, referendum; the Netherlands rejected it on June 1, 2005.

<sup>10</sup>The member states signed the treaty February 7, 1992, in Maastricht, Belgium, to take effect on November 1, 1993.

<sup>1</sup>For the Tax Law outline and a list of national reporters, see the conference Web site at <http://www2.law.uu.nl/priv/AIDC/index1.asp>.

<sup>2</sup>For example, Patricia A. Cain, "Federal Tax Consequences of Civil Unions," 30 *Capital Univ. Law Rev.* 380 (2002); Patricia A. Cain, "Dependency, Taxes, and Alternative Families," 5 *J. Gender*

(Footnote continued in next column.)

## COMMENTARY / VIEWPOINTS

relationship or economic structure. But local differences in the laws persist.<sup>11</sup> EU member states have adopted differing models for cohabiting, opposite-sex relationships and for committed, same-sex relationships.<sup>12</sup> For same-sex relationships, some states — the Netherlands,<sup>13</sup> Belgium,<sup>14</sup> and most recently Spain<sup>15</sup> — permit same-sex, civil marriages.<sup>16</sup> On signing the Spanish law, the king of Spain appended a lengthy preamble acknowledging the tension between civil law and canon law but concluding that same-sex marriage is consistent with the needs and relationships in modern Europe, of which Spain is part.<sup>17</sup> The Nordic countries — Denmark, including Greenland but not the Faeroe Islands,<sup>18</sup> Norway,<sup>19</sup> Sweden,<sup>20</sup>

Iceland,<sup>21</sup> and Finland<sup>22</sup> — all have adopted substantially the same domestic partnership law.<sup>23</sup> Those countries and, more recently, the United Kingdom<sup>24</sup> have quasi-marriages in the form of registered partnerships that resemble marriage in nearly all respects<sup>25</sup> while registration in Germany,<sup>26</sup> France,<sup>27</sup> and Portugal<sup>28</sup> creates a more limited semi-marriage.<sup>29</sup> Hungary<sup>30</sup> lacks a registration system but protects same-sex cohabitation in many respects. Other states, such as Poland,<sup>31</sup> Greece,<sup>32</sup> and

<sup>11</sup>Compare community and common law property rules in the United States.

<sup>12</sup>Kees Waaldijk, "Others May Follow: The Introduction of Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries," 38 *New Eng. L. Rev.* 569 (2004) (identifying and discussing the various general provisions for same-sex couples in Europe). This article uses Waaldijk's categories for classifying relationships — marriage, quasi-marriage, semi-marriage, and unregistered partnerships.

<sup>13</sup>*Wet van 21 december 2000 tot wijziging van Boek 1 van het Burgerlijk Wetboek in verband met de openstelling van het huwelijk voor personen van hetzelfde geslacht (Wet openstelling huwelijk)*, available at <http://www.wetten.overheid.nl> — search: (zoek) "openstelling huwelijk," (Law of 12/21/2000 modifying Book 1 of the Civil Code in connection with opening of marriage to individuals of the same sex) (author's translation).

<sup>14</sup>13 *Fevrier 2003 Loi ouvrant le mariage à des personnes de même sexe et modifiant certaines dispositions du Code civil*, p. 9880 (published in the *Moniteur Belge* 2/28/03) (Feb. 13, 2003, law opening marriage to individuals of the same sex and modifying certain other matters) (author's translation).

<sup>15</sup>*Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio* (Law 13/2005, of July 1, by which the Civil Code is modified regarding the right to contract marriage), became effective July 3, 2005 (author's translation), available at [http://www.boe.es/g/es/bases\\_datos/doc.php?coleccion=iberlex&id=2005/11364](http://www.boe.es/g/es/bases_datos/doc.php?coleccion=iberlex&id=2005/11364); if not there, go to <http://www.boe.es> and search (buscar): "ley 13/2005 en matrimonio". Europa Press reported that 444 same-sex couples had married in Spain as of November 20, 2005 (available at <http://www.es.news.yahoo.com/051120/4/4ewgw.html>).

<sup>16</sup>Waaldijk, *supra* note 11, at 571.

<sup>17</sup>*Ley 13/2005, supra* note 15, preamble.

<sup>18</sup>*Lov om registreret partnerskab (Lov nr. 372 af 7. juni 1989, som ændret ved lov nr. 821 af 19.12.1989, and others)* (Law on registered partnerships) (author's translation) (same-sex partners only) (available at [http://www.familieadvokaten.dk/index\\_gammel.asp?hovedramme=/lovsamling/lov\\_om\\_registreret\\_partnerskab.html](http://www.familieadvokaten.dk/index_gammel.asp?hovedramme=/lovsamling/lov_om_registreret_partnerskab.html)). Note, however, that the Danish provision did not apply to Greenland or the Faeroe Islands when enacted. Greenland adopted the law with modifications. I have not located adoption information for the Faeroe Islands.

<sup>19</sup>*Lov 1993-04-30 nr 40: Lov om registreret partnerskab* (effective 8/1/1993) (Law on registered partnership) (author's translation) (same-sex only).

<sup>20</sup>*Lag (1994: 1117) om registrerat partnerskap* (law on registered partnerships) (author's translation) (same-sex partners only).

<sup>21</sup>*Lög um staofesta samvoist* (1996 nr. 87 12. júní (töku gildi 27. júní 1996)), (*Breytt meo l. 52/2000 (töku gildi 26. maí 2000)*) (law on registered cohabitation) (author's translation) (same-sex partners only).

<sup>22</sup>*Laki rekisteröidystä parisuhteesta* 9.11.2001/950 (Finnish)/*Lag om registrerat partnerskap* 9.11.2001/950 (law on registered partnerships) (same-sex partners only), available at <http://www.finlex.fi/en/laki/kaannokset/2001/en20010950.pdf>.

<sup>23</sup>With limited exceptions for matters of children, those statutes treat registered partnerships as marriages for purposes of other laws, including tax laws.

<sup>24</sup>The Civil Partnership Act of 2004 (effective Dec. 5, 2005) (available at <http://www.opsi.gov.uk/acts/acts2004/20040033.htm#aofs>). Josephine Cumbo, "Same-Sex Couples to Register as Civil Partners," *Financial Times* 2 (Dec. 5, 2005).

<sup>25</sup>Waaldijk, *supra* note 12, at 572.

<sup>26</sup>*Lebenspartnerschaftsgesetz* (Life partnership law) (author's translation) (effective Aug. 1, 2001), available at <http://www.bundesrecht.juris.de/lpartg/BJNR026610001.html>.

<sup>27</sup>*LOI no 99-944 du 15 novembre 1999 relative au pacte civil de solidarité*.

<sup>28</sup>*Lei N° 6/2001 Adopção Medidas de Proteção das Pessoas que Vivam em Economia Comum* (adopting provision for protection of individuals who live in an economic union) (author's translation) (*Diário da República N° 109 de 11/5/2001, página 2796*) (available at <http://www.portugalgay.pt/politica/parlamento02.asp>) and *Lei N° 7/2001 de 11 de Maio — Adopção medidas de proteção das uniões de facto* (adopting provisions for protection of defacto unions) (author's translation) (*Diário da República N° 109 de 11/5/2001, página 2797*) (available at <http://www.portugalgay.pt/politica/parlamento03.asp>).

<sup>29</sup>Waaldijk, *supra* note 12, at 571.

<sup>30</sup>Not statutory but by decision of the Constitutional Court (Decision 14/1995 (III. 13.) AB), as reported by István Simon, "Restricting the Legislative Power to Tax, National Report: Hungary" (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>).

<sup>31</sup>Włodzimierz Nykiel and Ziemowit Kukulski, "Restricting the Legislative Power to Tax: Poland National Report 2005" (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>), reports that the Polish Constitution defines marriage as between opposite-sex individuals and does not protect other forms of cohabitation. However, the report also notes that continual cohabitation (presumably between opposite-sex individuals) renders the cohabitor (or concubine to use the report's language) part of the family and responsible for the tax debtor's tax liability without limitation. Graham Bowley, "Conservative Poland Roils EU," *The New York Times*, p. A18 (Dec. 4, 2005) (reporting Poland's conservative views on homosexuality and reproductive rights as somewhat problematic in the EU).

<sup>32</sup>Theodore Fortsakis, "National (Greek) Report For The 17th IACL Congress" (2005) (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>), explains that Greek

(Footnote continued on next page.)

Italy,<sup>33</sup> do not provide a legal context for same-sex relationships at all, although all members of the EU have decriminalized same-sex sexual relations and prohibit discrimination on the basis of sexual orientation.<sup>34</sup>

Beyond Europe, some countries that grew from European colonialism and culture have also debated the issue of same-sex relationships and have developed approaches comparable to their forebears. Canada has gone further than England or France and grants marital status to same-sex individuals.<sup>35</sup> The development in Canada occurred over several years as individual provinces enacted legislation recognizing and protecting same-sex marriage. Ontario was first in June 2003.<sup>36</sup> The South African Constitutional Court, in a decision it released on December 1, 2005, held that the law defining marriage must include same-sex unions but deferred application of its decision for one year to give the legislature the opportunity to enact specific same-sex marriage legislation.<sup>37</sup> Once the decision comes into effect or the legislature enacts the implementing legislation, with respect to same-sex marriage, South Africa will become like its colonial forbear, the Netherlands,<sup>38</sup> rather than its other colonial ancestor, England.<sup>39</sup> Australia lags behind Canada and England and treats opposite-sex cohabitation as equivalent to marriage (*de facto* marriage), at least for income tax purposes, but does not do so for same-sex relationships without regard to duration.<sup>40</sup> New Zealand

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tax law requires joint filing for married individuals and equal treatment of all Greek, but not foreign, taxpayers but does not disclose a similar opportunity for same-sex couples.

<sup>33</sup>Carlo Garbarino, "Restricting the Legislative Power to Tax: Italy" (2006) (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>).

<sup>34</sup>See generally comment (Lela M. Ames), "Beyond Gay Parez: What Does the Enlargement of the European Union Mean for Same-Sex Partners?" 18 *Emory Int'l. L. Rev.* 503 (2004) (discussing the effect on same-sex protections in the EU on after accession of some socially conservative countries like Poland).

<sup>35</sup>In the matter of Section 53 of the Supreme Court Act, R.S.C. 1985, c. S-26; and in the matter of a reference by the governor in council concerning the proposal for an act respecting specific aspects of legal capacity for marriage for civil purposes, as set out in Order in Council P.C. 2003-1055, dated July 16, 2003, [2004] 3 S.C.R. 698, 2004 SCC 79 (2004) (holding legislation allowing same-sex marriage to be within the authority of Parliament). Parliament passed the Civil Marriage Act and the Crown assented on July 20, 2005.

<sup>36</sup>See generally Wikipedia entry on same-sex marriage in Canada, available at [http://www.en.wikipedia.org/wiki/Same-sex\\_marriage\\_in\\_Canada](http://www.en.wikipedia.org/wiki/Same-sex_marriage_in_Canada).

<sup>37</sup>Case CCT 60/04, available at <http://www.constitutional.court.org.za/uhtbin/hyperion-image/J-CCT60-04>.

<sup>38</sup>The Netherlands has same-sex marriage, *supra* note 13.

<sup>39</sup>England has civil unions with the tax characteristics of marriage, *supra* note 24.

<sup>40</sup>Miranda Stewart and Kristen Walker, "Restricting the Legislative Power to Tax in Australia" (2005) (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>). Some Australian states, Tasmania in particular, have greater protections for same-sex relationships than federal law provides.

modified its Matrimonial Property Act (1976) in 2001 into the Property (Relationships) Act (1976) that recognizes both opposite-sex and same-sex relationships. The new act gives extensive property rights to *de facto* relationships — defined as couples who live together but are not married and are in relationships of more than three years' duration.<sup>41</sup> Latin American countries, predominantly Catholic, tend to lag behind the social development of their European forebears, Spain and Portugal, and do not offer legal protection to same-sex relationships. The city of Buenos Aires, Argentina, has a domestic partnership law and a registration system<sup>42</sup> and there is a movement for civil unions in Brazil and possibly Columbia.<sup>43</sup>

Tax rules that marriage, cohabitation, or domestic partnerships may affect include income splitting — including joint reporting of income, gift, inheritance, or estate tax on transmission of property at differing rates that depend on the closeness of relationship between the donor and the donee — deductible contributions to retirement plans on behalf of a spouse or domestic partner, responsibility of a spouse or domestic partner for the tax liability or the other spouse or domestic partner, and imputation of income from barter transactions. Perhaps the most critical issue, for which no decisions of competent authorities yet exist, is the interplay of same-sex marriage with international tax treaties. Treaties often require treaty partners to treat citizens of the other state no less favorably than citizens of the taxing state when they are resident in the taxing state. For example, if a Canadian same-sex married couple resides in the United States, the tax treaty may require the United States to permit or even mandate the couple to file their U.S. income tax return as married.<sup>44</sup> The same issues may not arise for registered partnerships under laws that extend marital rules to registered partnerships as Denmark does<sup>45</sup> because the statutes exempt international treaty operation from those marital rules.<sup>46</sup>

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<sup>41</sup>Bill Atkin, "The Challenge of Unmarried Cohabitation — The New Zealand Response," 37 *Fam. L. Q.* 303 (2003) (describing the development of property and family law in New Zealand for cohabiting couples and the effect of the 2001 legislation).

<sup>42</sup>*Ley de Unión Civil N° 1004* (effective July 18, 2003). I also found a reference to similar legislation in Rio Gallego in Patagonia, but I have not been able to confirm the information.

<sup>43</sup>I have been unable to confirm passage of any legislation in either Brazil or Columbia, although some Web sites suggest its existence in those countries.

<sup>44</sup>Anthony C. Infanti, "Prying Open the Closet Door: The Defense of Marriage Act, and Tax Treaties," *Tax Notes*, Oct. 25, 2004, p. 563 (discussing the probable conflict between the U.S. treaties with Canada, the Netherlands, Belgium, and Spain and the Defense of Marriage Act, and arguing that the treaties should override the act).

<sup>45</sup>*Lov om registreret partnerskab* (Denmark), *supra* note 18, section 3 extends marital rules to registered partnerships generally.

<sup>46</sup>*Id.* section 4., Stk 4. "Bestemmelser i internationale traktater finder ikke anvendelse på det registrerede partnerskab, medmindre medkontrahenterne tilslutter sig dette" (provisions of international treaties do not include registered partnerships unless the treaty partner agrees to it) (author's translation).

## COMMENTARY / VIEWPOINTS

Common to EU states is substantial revenue dependency on indirect consumption taxes, such as value added or turnover taxes. For example, Germany raises nearly as much revenue from its turnover tax and other consumption taxes as it does from its income taxes.<sup>47</sup> Generally, the states impose their consumption taxes at a flat rate, although some goods that are necessities may be taxed at a lower rate than goods generally. While family composition may affect the amount of tax the family pays — that is, families with children may consume more of the types of items taxed at a lower rate — imposition of value added-type taxes is unrelated to family structure. Married individuals do not enjoy exemptions or lower consumption tax rates than unmarried individuals.

While application of marital tax rules to same-sex relationships in most cases has accompanied recognition and protection of those relationships, several distinct implementation models appear. The most straightforward model emerges in countries that have same-sex marriage and automatically apply identical tax treatment under all taxing provisions to same-sex married couples as to opposite-sex married couples. The Netherlands, however, recognizes other types of cohabitation for tax purposes and gives those relationships income tax treatment equivalent to marriage, such as income splitting.<sup>48</sup> Nearly as straightforward is the model that applies in all the Nordic countries, where the statute that implements same-sex unions includes language treating same-sex partnerships as marriages for all purposes, except regarding the relationship to children and assumptions of paternity and the operation of international treaties.<sup>49</sup> The United Kingdom's statute that created same-sex civil unions followed a third model requiring separate implementing regulations for tax purposes. Those regulations came into force along with the law itself and apply the same tax rules to civil partnerships that apply to married couples.<sup>50</sup>

<sup>47</sup>Statistisches Bundesamt Deutschland, *Kassenmäßige Steuereinnahmen Deutschland* (available at <http://www.destatis.de/indicatoren/d/lrfin02ad.htm>) discloses that the turnover tax in 2003 produced approximately 21.5 percent of revenues while the personal income tax produced 35.9 percent. Adding other consumption taxes to the turnover tax, the percentage increases to 33.5 percent.

<sup>48</sup>J.L.M. Gribnau and Richard Happé, "Restricting the Legislative Power to Tax, National Report: The Netherlands" (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>).

<sup>49</sup>The Danish law is representative of the legislative model. Section 3 of the *Om registreret partnerskab*, *supra* note 18, reads: "[r]egistrering af partnerskab har . . . samme retsvirkninger som indgåelse af ægteskab" (registration of a partnership has the same legal effect as entry into marriage) (author's translation).

<sup>50</sup>Tax and Civil Partnership Regulations 2005 (available at <http://www.opsi.gov.uk/si/si2005/20053229.htm>). See also Explanatory Memorandum to the Tax and Civil Partnership (No. 2) Regulations 2005, 2005 No. 3230 (available at <http://www.hmrc.gov.uk/si/2005-3230-em.pdf>) (disclosing the government's commitment to treat civil partnerships in the same manner as marriage for tax purposes).

Portugal<sup>51</sup> and the city of Buenos Aires<sup>52</sup> similarly treat civil unions the same as marriages but adopt a modified civil union as a marriage model by limiting application of the law to partners who have lived together continually and openly for at least two years. Buenos Aires's statute provides for registration but the Portuguese statute does not create a registry system. The Portuguese statute specifically addresses taxation and confirms marriage-equivalent treatment.<sup>53</sup> Still another model applies in France. France permits parties to a *pacte civil de solidarité* to split income as married individuals do (and concubines may) but only from the third year of the civil partnership.<sup>54</sup>

Germany's model for tax treatment of civil unions represents the exception among jurisdictions with statutes creating civil partnerships. Germany, like Poland,<sup>55</sup> protects marriage under its constitution.<sup>56</sup> Decisional law defines marriage under the constitution as opposite-sex unions, not same-sex.<sup>57</sup> Under both the income tax, which allows married couples to elect joint assessment<sup>58</sup> and income splitting,<sup>59</sup> and the inheritance tax,<sup>60</sup> parties in a *Lebenspartnerschaft* (life partnership) are unrelated individuals. Proposed legislation to alter that treatment and conform it to that of other EU member states providing same-sex partners the same treatment as married individuals passed the German *Bundestag* (the lower house of parliament) but has not passed the German *Bundesrat* (the upper house of parliament).<sup>61</sup> Lack of tax legislation

<sup>51</sup>Artigo 1º 1 of *Lei N° 6/2001 de 11 de Maio*, *supra* note 28.

<sup>52</sup>Artículo 1º of the Civil Union statute of Buenos Aires provides: "[q]ue hayan convivido en una relación de afectividad estable y pública por un periodo mínimo de dos años" (who have lived in a relationship of affection both stable and public for a minimum period of two years) (author's translation), and Artículo 4º: "los integrantes de la unión civil tendrán un tratamiento similar al de los cónyuges" (the parties to the civil union will have treatment similar to that of spouses) (author's translation).

<sup>53</sup>Artigo 4º 1 c) of *Lei N° 6/2001 de 11 de Maio*, *supra* note 28.

<sup>54</sup>Emmanuel de Crouy-Chanel, "Restricting the Legislative Power to Tax, National Report: France" (unpublished manuscript on file with the author, soon to be published on the 17th Congress Web site at <http://www2.law.uu.nl/priv/AIDC/>).

<sup>55</sup>*Supra* note 30.

<sup>56</sup>Article 6 of the *Basic Law for the Federal Republic of Germany* (Christian Tomuschat and David P. Curry, translators) (Bonn 1998). Translation of *Grundgesetz für die Bundesrepublik Deutschland, Artikel 6*, available at <http://www.bundesregierung.de/pureHtml-413.429735/Grundgesetz-fuer-die-Bundesrep.htm>.

<sup>57</sup>BVerGE 10, 59, 62, see Michael Sachs, *Grundgesetz Kommentar* 381-2 (Munich 1999).

<sup>58</sup>Income Tax Law (*Einkommensteuergesetz*) section 26b, available at <http://www.bundesrecht.juris.de/estg/BJNR010050934BJNE009107301.html>.

<sup>59</sup>*Id.* section 32a.(5), available at <http://www.juris.de/estg/BJNR010050934BJNE009820301.html>.

<sup>60</sup>The German inheritance tax (*Erbschaftsteuer- und Schenkungsteuergesetz 1974*, available at [http://www.bundesrecht.juris.de/erbstg\\_1974/index.html](http://www.bundesrecht.juris.de/erbstg_1974/index.html)) section 15 places spouses in tax Class I and former spouses in Class II. Partners in a life partnership are in Class III. Under section 19, rates increase on inherited property from Class I to II to III.

<sup>61</sup>*Steuernewsletter* of Jan. 1, 2005, available at <http://www.steuer-newsletter.de/archiv/print.php/id/1063>.

creates some conflicts within German law. The inheritance tax law coordinates especially poorly with the life partnership law, as the surviving life partner of a deceased individual participates in the deceased's estate in the same manner as a surviving spouse but does not receive the same inheritance tax classification.<sup>62</sup>

### A Few More Tidbits

An informal report identifies Brazil as permitting joint tax filing for same-sex and opposite-sex couples in stable

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<sup>62</sup>Compare LPartG (Life Partnership Law) section 10, available at <http://www.bundesrecht.juris.de/lpartg/BJNR026610001BJNE001001377.html>, with BGB (Civil Code) section 1931, available at <http://www.bundesrecht.juris.de/bgb/BJNR001950896BJNE187802377.html>, and see note 60, *supra*.

unions.<sup>63</sup> Other informal sources report that, in addition to the countries named in this article, Croatia, Israel, Luxembourg, Andorra, Slovenia (2006), and Switzerland (2007) recognize or will recognize civil unions with varying similarities to marriage.<sup>64</sup> Finally, the Czech Republic became the first member of the former Soviet sphere of influence to enact legislation recognizing and registering civil unions of same-sex partners.<sup>65</sup>

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<sup>63</sup>The Marriage Law Project of Catholic University of America, available at <http://www.marriagelaw.cua.edu/Community/internat/brazil.cfm>.

<sup>64</sup>Wikipedia at [http://www.en.wikipedia.org/wiki/Civil\\_union](http://www.en.wikipedia.org/wiki/Civil_union).

<sup>65</sup>Legislation passed parliament on January 26, 2006; president's veto was overridden on March 15, 2006.