DIVORCE AND YOUR BUSINESS

Advisory Handbook 2025

When you, as an entrepreneur, go through a divorce, this will in most cases affect your business—regardless of whether it is a sole proprietorship or a private limited company (BV). Owning a business makes the divorce process significantly more complex.

You may be faced with questions such as:

- Can the business continue to operate?
- Is your partner entitled to a portion of the business (or its value)?
- What happens to the pension arrangements?
- Which financial data should be used to calculate alimony?

This Advisory Handbook provides an overview of several key matters you, as an entrepreneur, may encounter during a divorce. These are complex issues requiring professional guidance. This guide will help you assess your personal situation and address topics such as:

- **Marital property regime**: Are you subject to full community of property (prior to 2018), limited community of property (as of 2018), or do you have prenuptial or partnership agreements in place?
- **Applicable law**: Is Dutch law applicable? This may be relevant if you lived abroad after marriage or if either of you holds a different nationality.
- **Legal form of your business**: Is it a sole proprietorship, general partnership, professional partnership, private limited company, or another form? Is the business registered in your name and/or your partner's? Do you both work in the business? Is there an agreement concerning ownership and/or entitlement to a share of the business's value?
- **Asset and income position**: What constitutes your private and business assets? What is the composition of household income? Do you have children?
- **Pensions**: What arrangements have you and your partner made? What entitlements have each of you accrued before and during the marriage?
- **Taxation**: What are the tax implications of the divorce? Do you need to settle taxes on the value of the business? What tax pitfalls should you be aware of?

Tip!
Regularly assess whether your marital property regime still aligns with your business and personal interests. Stay up to date with relevant laws and regulations.

Note!
Since 1 January 2018, limited community of property is the standard for marriages concluded thereafter. Instead of a single joint estate, there are now three: a marital estate and two individual estates. Business assets acquired before marriage are excluded from the limited community (refer to the Advisory Handbook on the New Marital Property Law).

However, a reasonable remuneration must be paid to the community for knowledge, skills, and labour—unless this has already benefitted both spouses in another way. This necessitates accurate bookkeeping during the marriage. It is advisable to determine the value of the premarital business and to record the basis on which the valuation was made.

Due to the new legal framework, prenuptial agreements have become even more important.

DISTRIBUTION

Under full or limited community of property, assets included in the community must be divided upon divorce. Both parties are entitled to their share. For the division, business assets or company shares must be valued, provided they are part of the community.

PRENUPTIAL OR PARTNERSHIP AGREEMENTS

Without prenuptial or partnership agreements, the business (or its value) forms part of the divisible community—excluding premarital business assets under limited community of property. In this case, a reasonable remuneration may still be due to the community for the knowledge, skills, and labour contributed by a spouse, unless already compensated by other means.

Your prenuptial or partnership agreements may include specific clauses on business entitlement. For example, a settlement clause may require the value of all or part of the business to be financially settled.

You may also have an annual settlement clause that was never implemented. In such cases, the law generally assumes that total assets must be equally divided during divorce.

Although it is possible to provide counter-evidence, this is often very difficult in practice. Even if annual calculations were made, they may be inaccurate; for instance, retained earnings in the BV might not have been included when they should have been. This may require recalculation—which is often complex—or lead to total assets still needing to be settled.

As part of a divorce, a request can be made to settle prenuptial agreements. This may involve dividing a simple community or applying a settlement clause. Determining what must be settled can be difficult after the fact.

Important!
If you had a sole proprietorship before marriage and transferred it into a private limited company during the marriage (under limited community of property—applicable to marriages entered into after 1 January 2018), then the company is not automatically considered a premarital business. This may mean that the company has become part of the community and your partner may be entitled to half the value of the shares.

As an entrepreneur, you may therefore need to share the business's value with your (ex-)partner. The company's assets and liabilities must be valued realistically. The divorce could threaten business continuity if a buy-out of the ex-partner is required. If the business is also the main source of income, practical solutions are essential. These might include your ex-partner temporarily retaining an interest, or compensating them through other assets or by assuming liabilities.

Important!
Check whether personal guarantees, such as a mortgage on your home, have been provided for business financing. This requires special attention during the divorce settlement.

PENSION RIGHTS EQUALISATION

In principle, an ex-partner is entitled to half of the old-age pension accrued during the marriage. This is known as pension equalisation. The ex-partner receives a conditional right. Additionally, the ex-partner has a right to a special partner's pension/survivor's pension.

Tip!
You and your (ex-)partner may agree on a different distribution or waive pension equalisation altogether. Pension conversion is also possible. This converts the ex-partner's rights into their own pension, removing financial dependence. Any deviation from the statutory arrangement must be documented in the prenuptial agreements or the divorce settlement.

Important!
If you wish to waive the special partner's/survivor's pension, this must be done explicitly.

TAX IMPLICATIONS OF PENSION ARRANGEMENTS

If you held pensions in your own company (pension in own management), a decision had to be made before 1 January 2020. Accrual has no longer been permitted since 1 July 2017. If you left the pension in own management unchanged, your ex-partner remains dependent on your BV for their share of the accrued pension. The BV continues to act as the pension provider. This may be disadvantageous for your ex-partner, who might demand a transfer of their share to another provider. You and your BV must cooperate unless this demonstrably threatens business continuity or endangers your own pension. If so, post-relationship solidarity applies, and your ex-partner must share in the shortfall. They will receive a reduced transfer value but retain full entitlement to the pension still held by the BV.

Tip!
You and your (ex-)partner may always agree on an alternative financial solution.

If you opted to buy out the pension rights in own management with a tax discount or converted them into a retirement obligation, your partner loses entitlement to a share of the pension accrued in own management (partner's pension). Your partner may need to be provided with "appropriate" compensation. "Appropriate" may also mean a written agreement stating that compensation will only be paid upon death or divorce. Each option may offer tax advantages but also carries the risk of complications, so careful assessment is essential.

Important!
In some cases, partner compensation is taxable as a periodic payment and/or deductible as a maintenance obligation.

ALIMONY

Even after divorce, you and your ex-partner are required to provide for each other and any children by contributing to their living costs (alimony). The so-called "Trema standards" are used to calculate alimony. For entrepreneurs, it is especially important to consider not only historical financial data but also cash flow, forecasts, and sector-specific information.

SPOUSAL MAINTENANCE

If one ex-partner lacks sufficient income, the other must contribute to their costs. For divorces filed after 1 January 2020, the duration of spousal maintenance is limited. The length of the obligation depends on factors such as the length of the marriage, the ages of the parties and children, and the date of state pension (AOW) entitlement. A common misconception is that spousal maintenance always lasts five years.

Unlike spousal maintenance, child maintenance is not tax deductible for the payer and is tax-free for the recipient.

Important!
Spousal maintenance is tax deductible for the payer and taxable for the recipient.

For the alimony recipient, legal costs related to obtaining alimony are tax deductible if the claim is successful. This also applies if the claim was unsuccessful but reasonably justified. The payer of alimony cannot deduct their legal costs, regardless of the outcome.

You and your ex-partner may agree freely on the amount and duration of alimony. These agreements should be clearly and fully documented in a divorce settlement. Avoid disputes over business income and mutual financial capacity. For entrepreneurs, double counting must be prevented. Future income from the business should not be included in both the valuation of shares and the alimony calculation.

CHILD MAINTENANCE

The costs of children ("needs") are generally calculated based on the net household income at the time of separation. Other factors include the number and ages of the children. Consideration can also be given to high net childcare costs before and after the divorce.

Each parent's ability to contribute is determined using a formula in the Trema standards, based on net disposable income and adjusted for housing costs and other circumstances.

If debts are being repaid or there are specific obligations, such as disability insurance, the formula may be adjusted. Shared care arrangements reduce child maintenance obligations (referred to as a "care discount").

Note!
Multiple maintenance obligations may apply in child maintenance cases. This may arise where, for example, a stepparent is also legally obliged to contribute, or if there are children from other relationships. These circumstances affect the maintenance calculation.

Note!
Child maintenance is not tax deductible for the payer and is tax-free for the recipient.

FISCAL PARTNERSHIP

Divorce can have significant tax implications. Once a petition for divorce or legal separation is filed and you no longer live at the same address, you are no longer considered fiscal partners. However, for that year, you may still opt to file a joint tax return. This option is no longer available the following year. The loss of fiscal partnership immediately affects various provisions under the Income Tax Act and potentially your entitlement to benefits. Key affected provisions are outlined below.

ROLLOVER RELIEF

If business assets are part of community property to be divided, the portion allocated to your partner is deemed transferred at fair market value upon dissolution. You must then settle tax on fiscal gains (goodwill, reserves, hidden reserves). Under certain conditions, this tax can be deferred through rollover relief.

ASSET USED FOR BUSINESS PURPOSES (TBS REGULATION)

If you make an asset (e.g., a property) available to a business, substantial interest company, or professional activity of a connected person, it falls under the TBS regime. Spouses are considered connected persons. Gains or losses are taxed as income from other work (box 1). Upon divorce, the connection ends, and a fiscal settlement of the TBS share is required—unless rollover relief applies. With prenuptial agreements, this situation generally does not arise. The asset remains part of your personal estate, and only you are subject to TBS.

SUBSTANTIAL INTEREST

If both partners hold a substantial interest (more than 5%) in a company, divorce may mean one or both lose this status. This triggers a deemed disposal under substantial interest tax rules, requiring tax settlement. Rollover relief may apply under certain conditions.

OWNER-OCCUPIED HOME

In most divorces, one partner leaves the home. For the departing partner, it is no longer their primary residence, and mortgage interest relief would typically end. However, if the other partner remains, the “divorce provision” allows the owner-occupied home scheme to continue for up to two years. Numerous tax issues can arise involving the home. For example, unclear agreements may lead to a (partial) loss of mortgage interest deductibility.

IN CONCLUSION

A divorce requires thorough fiscal planning. Numerous rules must be taken into account, including the division of annuities and capital insurance policies. We can support you throughout this complex process.

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