

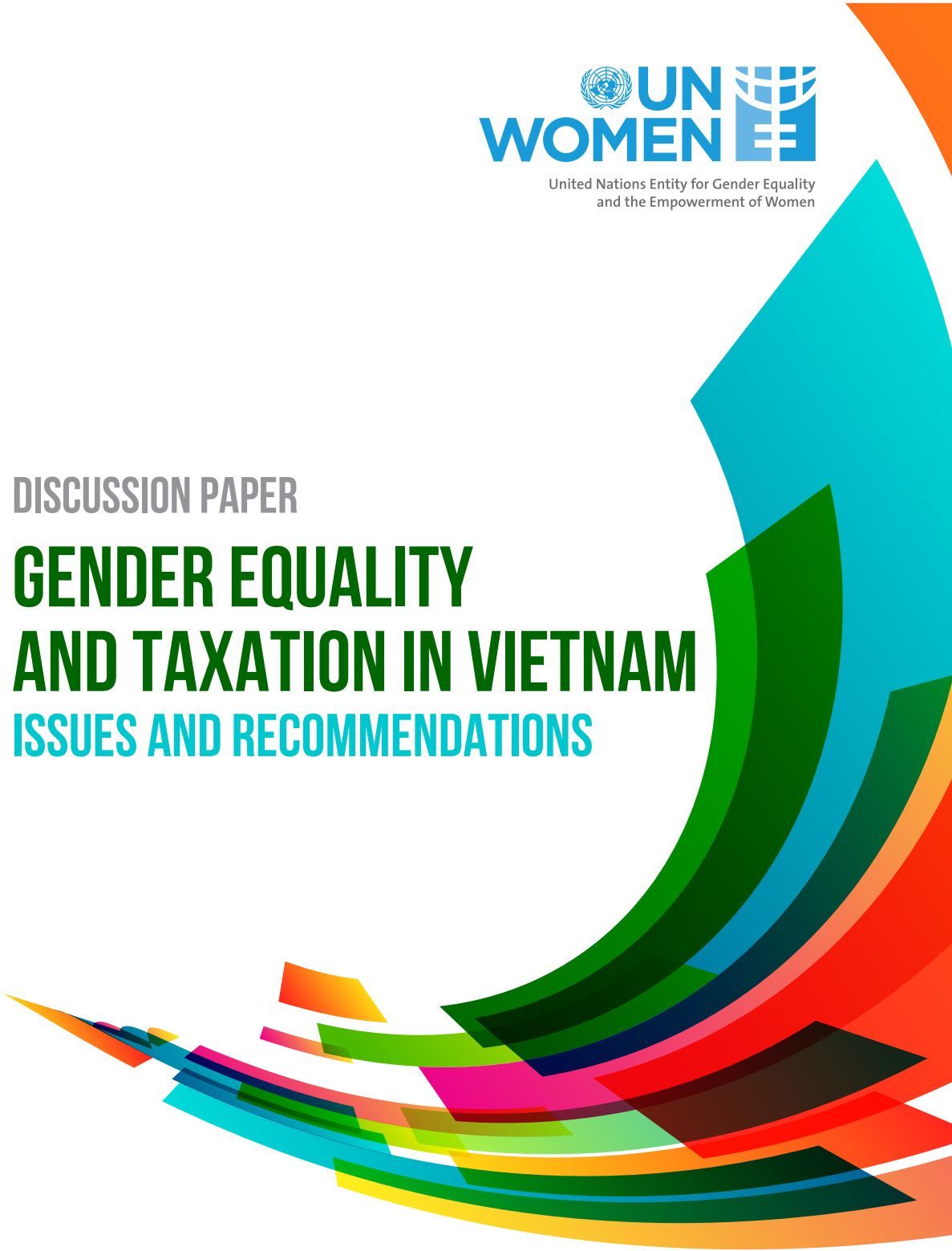


United Nations Entity for Gender Equality
and the Empowerment of Women

DISCUSSION PAPER

GENDER EQUALITY AND TAXATION IN VIETNAM

ISSUES AND RECOMMENDATIONS



UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports Member States in setting global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services required to implement these standards. UN Women stands behind women's equal participation in all aspects of life, focusing on the following priorities areas: increasing women's leadership and participation; ending violence against women; engaging women in all aspects of peace and security processes; enhancing women's economic empowerment and making gender equality central to national development planning and budgeting. UN Women also coordinates and promotes the UN system works in advancing gender equality.

GENDER EQUALITY AND TAXATION IN VIETNAM: ISSUES AND RECOMMENDATIONS

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FOREWORD

Together with 192 member states of the United Nations, Viet Nam adopted the ambitious Post-2015 Development Agenda. Entitled *“Transforming our world: The 2030 agenda for sustainable development,”* it establishes a comprehensive, far-reaching and people-centred set of universal and transformative Goals for the next 15 years. One of the most significant aspects of the new development framework is the overwhelming priority accorded to gender equality and the empowerment of women.

At the same time, the international normative order established in 2015 by the Sustainable Development Goals, the Addis Ababa Action Agenda, and renewed commitments to gender equality in the Beijing+20 Review of the application of the Convention on the Elimination of All Forms of Discrimination against Women clarify the nature of State obligations to women -- including in relation to taxation – and affirms member states’ commitments to achieving gender equality via “significant increase in investments to close the gender gap and strengthen support for institutions in relation to gender equality and the empowerment of women at the global, regional and national levels.” UN Women is calling for transformative financing, from all sources and at all levels, to ensure that these commitments are robustly resourced and that all actors are held accountable for their contributions to achieving gender equality.

Viet Nam has made important achievements in gender equality during the past decades through improvements in policies, legal frameworks, and national institutional mechanisms responsible for promoting gender equality and the advancement of women. This progress has been reflected in diverse areas of society, including in the education and training, economic, employment, health care, labour, and political sectors. At the same time, however, challenges related to employment in the informal sector, the effects of climate change, and access to the social security system continue to affect the lives of a large proportion of the country’s population, the majority of whom are women and the poor. Social inequalities, particularly disadvantaging for ethnic minorities and marginalized groups, are emerging and becoming more visible. Women’s representation in politics and decision-making, especially in leadership and management positions in public institutions from local to central levels, has not been commensurate with improved gender equality in education and the economy. Persistent gender stereotypes, exacerbated by media messaging reinforcing the traditional roles of women and men, remain barriers to changing society’s perceptions of gender equality.

One method that is capable of meeting and overcoming these challenges is gender responsive budgeting (GRB), which is a mechanism for developing, financing, and implementing Government laws, policies, and programs that are carefully designed to promote gender equality and improve the recognition of gender equality rights. Gender budgeting procedures include the identification and reflection of essential interventions capable of addressing gender inequalities in policies, plans, and budget lines for all sectors and fields addressed by the Government, including policies that regulate private business and household relations. GRB also encompasses analysis of the gender impact of domestic policies on resource collection and allocation as well as of the goals and forms of official development assistance funding. Globally, UN Women has supported over 92 countries in integrating gender impact analysis methods into their public finance management and decision making systems

while building the capacity of government actors to apply GRB to ensure that budget policies and outcomes promote substantive gender equality. This approach also emphasizes the importance of bringing gender equality advocates, women's rights organizations, and other stakeholders into the budgeting process. To date, GRB tools are most often used to examine the adequacy and gender impact of budgetary expenditures. The tax and general revenue side has received less attention from both academic and government policy units due to lack of funding for such work and also due to lack of the specialized skills, statistical data, and revenue data that are needed for this form of fiscal analysis.

In Viet Nam, there have been several GRB interventions in recent years, including programs that raise awareness and understanding of GRB and that introduce gender mainstreaming methods into budgetary processes. This work has been done in the context of the revision of the State Budget Law in 2015, which itself confirms that gender equality is one of the principles that must guide state management of budgets.

This discussion paper "Gender equality and tax: issues and recommendations for Viet Nam" was developed when UN Women Viet Nam contributed the gender analysis for the desk review on Vietnam's Tax Incentive Policies commissioned by Oxfam International in 2016. As Viet Nam is taking further steps to operationalize the gender equality principles set out in the State Budget Law 2015, this discussion is designed to help policymakers and relevant stakeholders understand the linkages between gender inequalities, tax laws, and tax policy options. Specifically, this paper examines the gender impact of tax laws and tax incentives in Viet Nam, including in relation to personal income taxes, corporate income taxes, consumption taxes such as the VAT, and the role of social protection programs. Drawing on the growing literature documenting these linkages, this discussion paper demonstrates how gender inequalities and tax laws interact to maintain women's disproportionately large shares of unpaid domestic and business work; lower levels of employment and business profits; limited access to loan capital and tax benefits delivered generously to large companies; lack of adequate social protection for those vulnerable to poverty; and lack of sufficient care resources to enable women to participate on an equal footing with the majority of men in paid work of all kinds. For example, women's traditionally large shares of unpaid work reduce the time they can spend in paid work, and thus their incomes and chances for advancement, economic security, and risks of poverty, while they receive fewer tax considerations and incentives available to those with higher incomes and more assets, yet pay generally higher proportions of their incomes on consumption taxes.

This paper concludes with a discussion of institutional and governance challenges for Viet Nam in accurately identifying the gender effects of specific tax provisions, and recommends tax policy changes and institutional measures that can ensure that fiscal policies promote gender equality instead of covertly undercutting it. This process will confirm the importance of engaging with and building the capacities of sectoral agencies, including of the financial sector, in advancing the national gender equality agenda. More importantly, this paper also calls for urgent development of institutional understanding of the meaning of substantive equality as essential to women's full economic, social, and political development, expansion of institutional capacities for gender-based analysis and

gender budgeting particularly of taxation, tax benefit, tax expenditure, direct expenditure, and other fiscal policies, and widespread engagement of civil society and business communities in expanding women's access to the growing and most productive sectors of the Viet Nam economy.

We hope that this paper discussion will serve as a reference document for policymakers in Viet Nam, and that it will encourage the adoption of gender perspectives across all Government policies and programmes. Let us continue to work together towards the advancement of gender equality in Viet Nam.



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Within UN Women, the discussion paper was coordinated by Vu Phuong Ly under the guidance of Shoko Ishikawa and Yamini Mishra.

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ACRONYMS AND ABBREVIATIONS

CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CIT	Corporate income tax
DI	Gender Development Index
GINI	Gender Inequality Index
OECD	Organisation for Economic Co-operation and Development
PIT	Personal income tax
SDGs	Sustainable Development Goals
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
VAT	Value-added tax

EXECUTIVE SUMMARY

Viet Nam has a strong record of commitment to gender equality, and has implemented legislation and gender mainstreaming practices to reduce gender inequalities between women and men in all aspects of life, including in economic status. Although women in Viet Nam have made progressively moved toward increased gender equality since the 1980s, however, global shifts in economic priorities and tax policies have produced increased income inequalities, and have reinforced or contributed to increased gender inequalities in relation to incomes and related areas as well. At the same time, the new international normative order established in 2015 by the Sustainable Development Goals, the Addis Ababa Action Agenda, and renewed commitments to gender equality in the Beijing+20 Review of the application of the Convention on the Elimination of All Forms of Discrimination against Women clarify the nature of State obligations to women – including in relation to taxation.

This discussion paper outlines Viet Nam’s commitments to gender equality in this context, and focuses on how they apply to and can affect the status of women in the area of tax laws and policies. Drawing on the growing literature documenting the many linkages between gender equality and taxation, this discussion paper examines the gender impact of tax laws and tax incentives in Viet Nam, including in personal income taxes, corporate income taxes, consumption taxes such as the VAT, and, consequently, the role of social protection programs.

Among the main findings of this paper are the subtle ways in which personal income taxation (PIT) places women at a disadvantage in claiming tax allowances for dependents and in leaving women-owned unincorporated businesses vulnerable to higher tax rates than male-predominant businesses that can operate under the corporate income tax (CIT) as formally organized companies. At the same time, in more obvious ways the value-added tax (VAT) places women and children at greater risk of poverty, malnutrition, and limited potential to develop their human capital as compared with men. At the same time, CIT tax rates and tax benefits for corporations investing in encouraged sectors and initiatives aimed at promoting gender equality hiring and working conditions and employment of ethnic minorities appear to benefit men’s businesses more than they benefit women’s.

Throughout this analysis, familiar features of contemporary gender inequalities are exposed as driving these negative tax effects: women’s disproportionately large shares of unpaid domestic and business work; lower levels of employment, earnings, and business profits; limited access to loan capital and tax benefits delivered generously to large companies; lack of adequate social protection for those vulnerable to poverty; and lack of sufficient care resources to enable women to participate on an equal footing with the majority of men in paid work and entrepreneurial opportunities of all kinds.

It concludes with a discussion of institutional and governance challenges in accurately identifying the gender effects of specific tax provisions, and recommends tax policy changes and institutional measures capable of realigning fiscal policies so that they promote gender equality instead of undercutting or reinforcing it. Among these recommendations fall into three categories. First, it is urgent to develop institutional and social understanding of the meaning of substantive equality as essential to women's full economic, social, and political development in Viet Nam. Formal legal equality is a necessary precondition to eradicating gender inequalities, but the true long-term goal of gender equality commitments is to bring about factual and pervasive equality on the basis of gender. The second is the expansion of institutional capacities for gender-based analysis and gender budgeting, particularly of taxation, tax benefit, tax expenditure, direct expenditure, and other fiscal policies. Every aspect of every tax law or fiscal measure has a unique gender footprint, and, starting with the more important aspects of such provisions, each needs to be evaluated for gender impact and aligned with the promotion of gender equality. Third, the widespread and durable engagement of civil society and business communities is crucial to expanding women's access to the growing and most productive sectors of the Viet Nam economy.

1

VIET NAM'S COMMITMENTS TO GENDER EQUALITY

The Government of Viet Nam's commitments to equalizing the status, rights, and opportunities available to women and men are grounded in domestic constitutional, statutory, and policy commitments, as well as commitments of international treaties and human rights conventions. This section provides an overview of these obligations as they relate to women's economic equality, because they provide the contexts in which taxation, related fiscal policy, and gender equality issues arise.

1.1 CONSTITUTIONAL AND LEGAL GENDER EQUALITY PROVISIONS IN VIET NAM

Since 1946, the Viet Nam Constitution has recognized men and women as having equal rights. In 1959, this basic constitutional gender equality guarantee was strengthened by recognizing that these equal rights extend widely to 'all aspects of political, economic, cultural, social, and family' issues.¹ In 1980, the Government added voting rights and an express prohibition against sex discrimination to the *Constitution*¹ as it became one of the first countries to sign and then ratify the *United Nations Convention on the Elimination of All Forms of Discrimination against Women*.² By 1992, Viet Nam's commitment to promoting gender equality became apparent as it achieved higher rankings on the UN Gender-related Development Index than on the more general Human Development

Index.³ Especially for other countries of similar size and resources, this was an impressive achievement.

As a signatory to the *Beijing Platform for Action*, 'adopted in 1995 at the United Nation's Fourth World Conference on Women to establish a new framework for mainstreaming gender equality, Viet Nam became one of the first countries to enact both statutory and constitutional provisions requiring systematic gender mainstreaming. The 2006 *Gender Equality Law* requires gender mainstreaming in all laws, policies, ordinances, and resolutions as well as in allocating budgetary resources to gender equality activities and in 2011, the Government then adopted the ten-year National Strategy on Gender Equality.⁵ In 2013, the Constitution was amended to place an affirmative obligation on the State to 'guarantee the right to and opportunities for gender equality.'⁶ This was followed by enactment of the *State Budget Law 2015*, which directs that gender equality, hunger eradication, poverty reduction, and ethnic policies are to be prioritized in budgetary allocations, and that state budget estimates are to include gender equality.⁷

1 Constitution of 1946; Constitution of 1959, article 24; Constitution of 1980, articles 52, 54, 64; Constitution of 1992, articles 53, 54, 63, 65.

2 *Convention on the Elimination of All Forms of Discrimination against Women*, UN GA res. 34/180 (18 Dec. 1979) (signed Jul. 29, 1980; ratified Feb. 17, 1982) [CEDAW].

3 Viet Nam was ranked 120 on overall levels of human development on the Human Development Index (HDI) on 1992 data, but was ranked significantly higher – 74 – on the Gender-related Development Index (GDI). United Nations, *Human Development Report 1995* (New York: UNDP, 1995), table 3.1, 225 (based on 1992 data).

4 For the full texts of the *Beijing Declaration and Platform for Action*, see UN, *Report of the Fourth World Conference on Women* (17 October 1995) [PFA or Platform].

5 *Gender Equality Law 2006*, articles 21, 22, and 24.

6 Viet Nam Constitution of 2013, articles 16, 26.

7 State Budget Law, 2015, articles 8 and 41. Other provisions of this law call for publication of the budget and inclusion of five year financial plans.

The results of these commitments have been impressive. As of the latest *Human Development Report*, Viet Nam was ranked 60th on the new UN Gender Inequality Index (GII).⁸ The expectation is that increased focus on gender equality programming and funding in Viet Nam's highly public annual budget in future years will result in further progress toward gender equality by offering increased transparency and public discussion of these complex but urgent issues.

1.2 VIET NAM'S INTERNATIONAL COMMITMENTS TO GENDER EQUALITY

As a signatory to the *CEDAW* and the *Beijing Platform*, Viet Nam has agreed to bring its constitutional, legal, and policy frameworks into line with the gender equality standards and mechanisms set out in those international legal and implementation agreements. The provisions of the *CEDAW* form the core of these commitments. The *Platform* outlines in detail the many specific steps states and other entities are to take in order to implement these commitments. The *CEDAW* Committee uses periodic report and review mechanisms to provide ongoing monitoring and feedback to ensure that these commitments are pursued to the fullest extent of the signatory's capabilities.

The **CEDAW** places positive obligations on signatories to 'take...all appropriate measures' to secure the 'full development and

advancement of women' (article 3), 'de facto equality' (article 4), and 'the elimination of prejudices...and practices' that express 'the idea of inferiority...or stereotyped roles for men and women' (article 5). These provisions make it clear that governments are obligated not just to eliminate formal legal distinctions or official governmental discrimination found in existing laws, policies, and practices, but to implement and enforce the highly specific and substantive financial, material, social, and political commitments that are spelled out in the Convention. These commitments range from securing full equality in relation to education, health, society, and politics to the full range of economic rights. Economic rights extend to equality in earnings, incomes, promotions in employment, vocational training, and social security, as well as to removal of all barriers to full participation in public life and paid work, adequate maternity leave, job protection rights, childcare (article 11), social benefits including credit, recreational, and cultural resources (article 13), and development rights of women in unpaid, subsistence, and rural areas (article 15).

The *Beijing Platform for Action* sets out a detailed action plan for how gender mainstreaming is to be carried out in implementing each of the *CEDAW* provisions. This action plan includes fine-grained guides on exactly how to conduct gender-based analysis of all types of equality rights issues that fall within the scope of State sovereignty. Numerous paragraphs spell out how the *CEDAW* gender equality principles are to be applied to the entire realm of economic relations, including to fiscal instruments, through gender budgeting or gender-responsive budgeting (GRB), which is the very specific form of gender-based analysis that is applied to Government budgets and

8 United Nations, *Human Development Report 2015* (New York: UNDP, 2015), table 5, 225 (based on 2014 data). The GII rankings are not strictly comparable to the GDI rankings, but are designed to more accurately calibrate gender equalities.

fiscal matters generally.⁹

Since 1995, when the *Platform* was adopted, there has been no doubt that all types of taxation, tax benefit, spending, and social protection laws and policies must be examined using gender-based analysis and GRB. Paragraph 58(c) in particular makes it clear that gender impact analysis of budgets must be very wide in scope: it includes issues pertaining to macroeconomic stability, structural adjustment, external debt, government investments, employment, markets, and all relevant sectors of the economy – including, specifically, taxation. It also spells out that the gender impact of fiscal policies is to be analyzed from the perspectives of women, poverty, inequality, and family well-being. Finally, this one paragraph directs that whenever any negative gender effects are found to exist in connection with such measures, States are to ‘adjust them... to promote more equitable distribution of productive assets, wealth, opportunities, income, and services.’

Paragraph 58(a) requires ‘the full and equal participation of women’ in reviewing and modifying all macroeconomic policies ‘with a view to achieving the objectives’ of the entire *Platform for Action*. Paragraph (c) extends women’s full and equal participation to the design and monitoring of all policies pertaining to sustainable economic growth, poverty eradication, gender equality, and anything that falls within the ‘overall framework of achieving people-centred development.’ Paragraph

58(d) expands this framework for achieving fiscal gender equality to the restructuring and allocation of all public expenditures using as the measuring stick the extent to which they ‘promote women’s economic opportunities and equal access to productive resources’ as well as ‘address the basic social, educational, and health needs of women, particularly those living in poverty.’¹⁰

In the *Beijing+20* review conducted in 2015, the review outcome document for the first time made explicit reference to the fact that the *Platform* commits State parties to gender-based analysis of all fiscal measures in their linkages and impact on women.¹¹ Shortly thereafter, the *Addis Ababa Action Agenda* on financing for development affirmed commitments to significant increases in investments to close gender gaps and strengthen support for institutions in relation to gender equality and the empowerment of women at the global, regional and national levels in the development context. In each of these processes, specific commitments were made to gender equality, gender mainstreaming, gender-based analysis of all relevant action areas, and the use of gender budgeting in relation to both overseas aid and

9 *Beijing Platform*, paragraphs 58, 150, 155, 165(f), (i), 179(f), 205(c), 245-349. Reflecting the trend in the literature, gender-responsive budgeting is also referred to in the shorter forms ‘gender budgeting’ and GRB.

10 This discussion paper is itself based on the directions set out in this and related sections of the *Platform*, and applies many of the gender budget and legal methodologies in Kathleen A. Lahey, ‘Women, Substantive Equality, and Fiscal policy: Gender-based Analysis of Taxes, Benefits, and Budgets,’ 22: 1 (2010), *Canadian Journal of Women and the Law*, 27-106.

11 United Nations Economic and Social Council, *Review and appraisal of the implementation of the Beijing Declaration*, Commission on the Status of Women, Fifty-ninth sess., E/CN.6/2015/3, Mar. 9-20, 2015, 65, paragraph 247.

all aspects of domestic development.¹²

When the **Sustainable Development Goals** were adopted globally in 2015, State signatories explicitly committed to gender equality as a stand-alone goal and to the use of gender-based analysis in relation to all other goals.¹³ And in the **Paris Agreement** on climate change, gender equality is recognized as a key value, to be attained through gender-responsive participation rights as well as in all planning processes implementing this 2016 treaty.¹⁴

In sum, the *Beijing Platform* forms the authoritative and comprehensive framework and guidebook on how States are to carry out the gender mainstreaming of gender equality objectives using both gender-based analysis of all laws, policies, and gender budget analysis of all matters touched upon or addressed within government budgets. And now all relevant international agreements contain provisions that reinforce and give further depth of detail and scope to these commitments, including all aspects of taxation and other fiscal policies

that may touch or concern any of these international agreements. The remainder of this discussion paper demonstrates how such obligations can be met by the Viet Nam Government.

Viet Nam has made great progress in relation to all its constitutional, legal, and policy commitments to gender equality. But, it has increasingly been recognized in the expert literature that stereotyped views of women's and men's capabilities and roles are so deeply embedded in culture, law, and governance that they cannot be eliminated easily.

As in virtually every country that has made these comprehensive commitments, the fulfillment of gender equality and advancement of women remains challenging in all spheres of life in Viet Nam. Progress has been steady, but it has also been uneven. After ranking 74th on the United Nations Gender Development Index in 1995 (on 1992 data), Viet Nam then fell to 89th on that scale in the 2000 report (on 1998 data). When the Gender Inequality Index was implemented, Viet Nam was ranked an impressive 58th on that scale (on 2008 data), but has slipped slightly to 60th in the current ranking. Both of these trends invite intensified efforts going forward.¹⁵

The United Nations CEDAW Committee outlined key challenges specific to the Viet Nam context in its 2015 review of Viet Nam's periodic CEDAW progress reports: '[T]he implementation of laws and policies remains weak due to the lack of accountability

12 *Addis Ababa Action Agenda*, Third International Conference on Financing for Development (Addis Ababa, Ethiopia: 2015), endorsed by the United Nations General Assembly, Res. 69/313, Jul. 27, 2015, paragraphs 1, 6, 21, 30.

13 United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development, Seventieth Sess., agenda items 15 and 116, A/Res/70/1, Oct. 21, 2015; this resolution was further elaborated in United Nations General Assembly, *Critical milestones toward coherent, efficient and inclusive follow-up and review at the global level*, Seventieth sess., agenda items 15 and 16, A/70/684, Jan. 15, 2016, goals 5 and 5.c.1.

14 United Nations, *Paris Agreement*, Twenty-first sess., Framework Convention on Climate Change, CN.63/2016; Treaties XXVII.7.d, in force Oct. 11, 2016, preamble and articles 7.5 and 11.2.

15 The GDI and GII rankings for all years can be found in the annual United Nations *Human Development Reports*, <http://hdr.undp.org/en/global-reports>. The data used in calculating rankings are usually two years behind the years in which the reports are published.

mechanisms and insufficient human, technical, and budgetary resources and unawareness of the concept of substantive gender equality by law and policy makers and government officials.¹⁶

The recommendation to raise awareness of the concept of substantive equality is important because it emphasizes that gender equality cannot be achieved simply by making legal or policy declarations that women and men are equal in name or equal in law. By calling for the use of gender mainstreaming to achieve substantive equality, the CEDAW is confirming that the Government must take all aspects of gender roles into consideration in order to eliminate all manifestations of gender inequalities in day to day life as well as in laws.

The recommendation that the Government increase the human, technical, and budgetary resources needed to increase gender equality reflects two intertwined goals. The first goal is that the Government must assign enough budgetary resources to all Ministries so that they can equip themselves in staffing, training, supervising, and evaluating officers and employees to carry out gender mainstreaming of all relevant laws, policies and programs. That is, the Government must develop its own institutional capabilities of performing ongoing gender impact analysis. And of course these capabilities must include understanding of how substantive gender equality principles shape the type of training and accountability carried out in all such departments.

The second goal is that all Ministries must also receive funding sufficient to enable it to turn its human capabilities into actual laws, programs, and policies that are designed to promote gender equality. And the element of accountability also means that designing or implementing a program is not the end of the process: funding must also provide for assessment of the gender impact of each specific gender equality initiative, for engagement of civil society, and for ongoing improvements or adjustments to such initiatives. As well, the Government is expected to do pursue both of these intertwined goals at the same time. Institutional capacity development has to lead policy development, but the funding needs to be sufficient to then support the use of enhanced institutional capacity to implement, operate, evaluate, and finetune new initiatives.

16 Concluding Observations on the combined seventh and eighth periodic reports of Viet Nam, CEDAW/C/NVM/CO/7-8, Jul. 29, 2015, 3, paragraph 8(b).

2

SUBSTANTIVE ECONOMIC GENDER EQUALITY IN VIET NAM: PROGRESS AND CHALLENGES

This section addresses each of these points, all of which are crucial to improving existing levels of gender equality across the complex policy areas, regional characteristics, and gendered social, cultural, political, and economic realities that currently shape gender relations in States such as Viet Nam.

2.1 THE MEANING OF SUBSTANTIVE VS FORMAL GENDER EQUALITY IN THE CEDAW

Early gender equality laws had the very basic purpose of recognizing that women are legal ‘persons’ with basic capacities or legal rights to own property, vote, enter into contracts of employment, and form businesses. This oldest and most fundamental understanding of ‘gender equality’ continues to be essential to contemporary laws establishing the right to gender equality. For example, if women are prohibited by law from working in some types of employment because such work is not regarded as suitable for women for social reasons, then their chance of earning equal wages and having equal life choices is reduced, and places women more at risk of living in conditions of economic and social dependency on others. This in turn limits their scope for full personal and human development.

This first set of gender equality laws enacted in most countries were designed to provide women with formal legal equality. This form of equality is also referred to as ‘equality before the law’ or ‘equality in law.’ Most countries now provide this minimum but very essential level of gender equality. Formal legal equality rights are extremely important because they guarantee to women the full range of civil and

political engagement.

Over time, the concept of ‘substantive equality’ has been used to refer to formal rights plus rights to equal opportunities and equal outcomes. Over time, countries with national constitutions have adjusted equality provisions to secure many different forms of expressing gender equality rights, because women’s rights have now been contested in many different complex contexts. Accordingly, UN Women has now taken the position that the wide and inclusive language used in article 1 of the *CEDAW* takes a ‘first step toward advancing the notion of substantive equality in its comprehensive definition of ‘discrimination against women’ as -- any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.’¹⁷

In this context, ‘substantive equality’ is intended to encompass older narrower concepts of discrimination *and* deeper concepts of equal opportunities and outcomes. For example, substantive gender equality includes the concepts of ‘direct discrimination’ (discriminatory treatment) and ‘indirect discrimination’ (discriminatory outcomes of gender neutral laws), and it also includes the concepts of ‘purposive discrimination’ (deliberate or intentional discrimination) as well as ‘discrimination in effect’ (without deliberate intent to produce a discriminatory outcome). This usage of the term ‘substantive

¹⁷ UN Women, *Progress of the World’s Women 2015-2016: Transforming Economies, Realizing Rights* (NY: UN Women, 2015), 35.

equality' was first elaborated and defined by the CEDAW Committee in 2004. Since then it has been used interchangeably with the term 'de facto equality'.¹⁸

In its 2015 Concluding observations on Viet Nam, the CEDAW Committee advised the Government to develop and use expertise in applying the concept of substantive equality as a matter of urgency. It made this recommendation because without using this comprehensive and outcome-focused understanding of equality, it will continue to be difficult for program officers and even for gender equality advisors to understand how to move beyond simply removing gender-specific concepts from laws to bring them into compliance with the CEDAW. For example, a son inheritance preference in customary law that is read as prevailing over a gender-equal inheritance law would be considered to violate the CEDAW guarantee of substantive equality.¹⁹

2.2 GENDER RESPONSIVE BUDGETING IS ESSENTIAL TO ATTAINING SUBSTANTIVE GENDER EQUALITY

Gender-responsive budgeting is an accountability tool that involves a variety of processes. At the first instance, gender budget analysis is used to assess the gendered impacts of entire government budgets, and to identify those plans that will further gender equality, ignore it, or undermine it. On an ongoing basis, gender responsive budgeting is also used to design and plan laws and programs funded through budgets that are capable of promoting all aspects of gender equality as effectively as possible.²⁰

Gender-responsive budgeting is not a specific type of budgeting, but rather a process of gender-specific analysis of whether the allocation of resources is equal between genders. The only exception permitted from equal resource allocation is for extra attention or allocations made for the purpose of ameliorating or reducing really urgent or damaging forms of gender inequalities. For example, if domestic violence were a serious problem in a particular country, then it might be justifiable for the Government to provide additional special gender-specific funding for services and resources for the gender most needing such enhanced assistance, which is usually women, which might be much larger than the allotments to combatting domestic violence against men. These priorities are defined by need in light of existing gender inequalities, as demonstrated by empirical evidence, identification of best policy practices, and ongoing monitoring and evaluation.

²⁰ Gender Budget Research Centre, <http://gb.kwdi.re.kr/en/contents/system/system.jsp>.

¹⁸ UN CEDAW, General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures (2004), paragraph 8.

¹⁹ See *Jance Faransina Mooy-Ndun v. Junus Ndoj, et al.* (Indonesian Supreme Court, 2012), discussed in Mary Jane N. Real, *CEDAW Casebook: An Analysis of Case Law in Southeast Asia* (Bangkok: UN Women, 2016), 49-51, and other cases in this volume.

This type of gender-based analysis of budgets engages multiple dimensions of governance – civil society, stakeholder groups, researchers, and government policy experts, as well as identification of policy needs, priorities, costs, design options, evaluation, and funding. Thus it has been described as a ‘fiscal innovation that translates gender-related goals into budgetary commitments’ in a structured process that is participatory, transparent, flexible, and accountable.²¹

The International Monetary Fund (IMF) has just published the results of a comprehensive project on the uses of gender budget analysis, plus recommendations on the best types of functional tools to use in implementing and upgrading gender budget programs. In the scientific research accompanying this project, the IMF documented the GRB programs of over 60 countries, and examined them for structural differences as well as for levels of success. This project found that the most effective gender budgeting approaches appear to be those that are embedded in both the statutes and constitutions of the country, make Ministers of Finance primarily but not exclusively responsible for gender responsive budgeting, and empower civil society groups to address fiscal gender impact issues on an ongoing basis.²² This IMF research has also found that when properly designed, gender responsive budgeting can improve all government budgeting processes as well as

strengthen gender equality.

To date, gender responsive budget tools are most often used to examine the adequacy and gender impact of budgetary expenditures. The tax and general revenue side has received less attention from both academic and government policy units. This is due to lack of funding for such work, and also due to lack of the specialized skills and data that are needed for this form of fiscal analysis. Recognition of the importance of gender analysis of tax laws in particular has however now been called for in relation to Financing for Development, the post-2015 development framework, and the need to mobilize more domestic financial resources as a reliable long-term resource for sustainable development.

2.3 SUBSTANTIVE GENDER EQUALITY AND TAX POLICY ISSUES

It is well recognized that the combination of intensified international competition for investment and economic growth has led both to increased income inequalities in general and to non-inclusive growth patterns that may privilege some regions, industries, and skill sets over others. Tax policies are strongly implicated in both aspects of those dynamics.

Oxfam has documented how international tax competition, tax avoidance, tax planning, and changes in domestic tax laws have privileged the wealthy while failing to provide sufficient revenues to meet domestic development needs. In recent publications, Oxfam has also demonstrated how falling domestic revenues in turn reinforce gender inequalities as the result of economic dislocations, shrinking revenues, and longstanding income disparities

21 Lekha Chakraborty, ‘Gender-Responsive Budgeting as Fiscal Innovation: Evidence from India on Processes’, Working Paper No. 797 (NY: Levy Economics Institute, 2014).

22 Janet Gale Stotsky, *Gender Budgeting: Fiscal Context and Current Outcomes* (Washington DC: International Monetary Fund, 2016), 39, table A3. The IMF is one of the international financial agencies that now uses the short form ‘gender budgeting’; the World Bank has followed suit in its major GRB initiatives.

between women and men.

Thus as overall general levels of income inequalities increase, gendered inequalities in aftertax incomes also increase.²³ Oxfam has concluded that the effects of political capture and market fundamentalism have combined to erode tax laws at the same time that they have intensified privatization of public services and left women with continuing responsibility for high levels of unpaid and underpaid work.²⁴ In parallel research, the IMF has also found strong associations between gender-based economic inequalities and overall inequalities in income distributions.²⁵

Research in Viet Nam on the sources of economic inequalities between women and men has led to similar conclusions. Expert studies have found that women in Viet Nam have unequal access to incomes, care resources, education and training, and capital, are still limited by social norms and legal discrimination, which have set women and men up for being affected quite differently by types and locations of economic growth and opportunities. While placing less emphasis on tax policies as causes or solutions to such problems, this work demonstrates how gendered inequalities in responsibility for unpaid work and access to incomes perpetuate gender inequalities in Viet Nam, and has already begun the complex process of determining how each component of

the overall economic system contributes to ongoing economic inequalities.²⁶

Although gender impact analysis of tax and other revenue laws is an essential component of GRB, simply repairing transnational and domestic tax systems alone cannot eliminate all forms of discrimination against women. All laws, practices, and policies need to be scrutinized for their role in perpetuating gender inequalities at the same time that all tax laws, tax benefits, and direct expenditures are also examined for how they reflect and magnify existing gender inequalities.

As the most recent Viet Nam studies have concluded, gender inequalities are reflected in all economic arrangements. Thus until commitments to gender equality are reflected in all tax, business, employment, property, and other laws affecting economic arrangements, gender inequalities will continue to disadvantage women as compared with men.²⁷

Tax laws, tax benefits, and income protection programs generally do little to eradicate all forms of economic and income gender inequalities. Most tax laws magnify existing economic inequalities between women and men, and thus reinforce existing gender and income inequalities. Until commitments to gender equality are also reflected in all taxation, tax benefit, and income redistribution provisions, those fiscal laws will reinforce economic and income inequalities and block meaningful change.

At the same time, governments need to

23 Emma Seery and Ana Caistor Arendar, *Even it Up: Time to End Extreme Inequality* (London: Oxfam, 2014).

24 Francesca Rhodes, *Women and the 1%: How Extreme Economic Inequality and Gender Inequality must be Tackled Together* (London: Oxfam, 2016), 3-4.

25 Christian Gonzales, Sonali Jain-Chandra, Kalpana Kochhar, Monique Newiak, and Tlek Zeinullayev, *Catalyst for Change: Empowering Women and Tackling Income Inequality* (Washington DC: IMF, 2015), 27.

26 UN Women, *Toward Gender Equality in Viet Nam: Making Inclusive Growth Work for Women* (Ha Noi: UN Women, 2016) [UNWomen, *Inclusive Growth*].

27 *Ibid.*, 19.

increase revenues through fair and progressive taxation so that they have sufficient resources to combat gender inequalities, redistribute unpaid care work, use progressive public spending to improve health, education, and labour market resourcing, and reduce the use of corporations to conduit extreme wealth to the few.²⁸ When both taxation and spending policies are all coordinated to promote gender equality, that goal will be attained more efficiently and in keeping with the overall goal of implementing substantive gender equality.

28 Rhodes, 5.

3

GENDER IMPACT ANALYSIS OF REVENUE LAWS: ‘TAXING FOR EQUALITY’

Identifying the gender effects of tax laws is not a purely mechanical process. Considerable expertise in actual tax law analysis is needed, because much of tax policy discourse tries to apply somewhat abstract principles to resolve contests over who should pay taxes, and at what rates. At the same time, expertise in gender issues and in legal concepts of equality is important in being able to pinpoint specific linkages between gender realities in a particular country or region and their aftertax impacts on women in diverse walks of life.

3.1 FISCAL POLICY PRINCIPLES AND OBJECTIVES

From the public finance perspective, tax systems are often said to be evaluated in terms of three main criteria: equity, efficiency, and adequacy of revenues.²⁹ In practice, these criteria are easily manipulated to come to quite contradictory conclusions. For example, advocates of ‘taxing for economic growth’ recommend that progressive personal and corporate income tax systems should be replaced with sales, consumption, and commodity taxes in order to enhance rates of economic growth. The premise is that progressive or redistributive income taxation inhibits productivity, innovation, and motivation to increase economic activity at high income levels. The cure for this is said to be the restructuring of domestic tax systems around flat-rated consumption, social security, and property taxes, and either flattening or reducing progressive PIT and CIT tax rates in order to incentivize domestic and

overseas investment.³⁰ This approach gained prominence when the OECD began structural surveillance of the GDP growth of all its members each year, and then began in 2007 to promote this approach to tax and expenditure policies to all regions from then on.³¹

Especially when gender equality and poverty reduction objectives are added to the list of policy criteria, however, an older tax principle – ability to pay – also becomes relevant. This principle ensures horizontal and vertical equity in the allocation of tax burdens, so that tax burdens are matched with factual ability to pay taxes. According to this principle, taxpayers with equal abilities to pay are expected to pay the same amount of tax, while taxpayers with greater ability to pay should pay progressively larger amounts of tax and those who have no or limited ability to pay should pay no or very low taxes.

Beyond these principles, however, identifying what taxing for gender equality might mean in a particular tax system calls for analysis of the overall tax mix, of the sectoral impact of the tax structure in question, and of the tax burdens borne by individuals by reference to personal characteristics including gender, age, education, household composition, and geographic location.

On a practical level, the measurement of gender gaps and poverty gaps in paid work, incomes, and basic needs become more relevant measures of the gender impact of tax systems than the more abstract concepts

29 A neoclassic application of these policy criteria can be found in Canada. Royal Commission on Taxation, and Kenneth Le M. Carter, chair, *Report of the Royal Commission on Taxation* (Ottawa: Queen's Printer, 1966) [Canada, Carter Commission].

30 Kathleen A. Lahey, *The Alberta Disadvantage: Gender, Taxation, and Income Inequalities* (Edmonton AB: Parkland Institute, 2015), 71.

31 OECD, *Economic Policy Reforms 2007: Going for Growth* (Paris: OECD Publishing, 2007), 17-19, doi: 10.1787/growth-2007-en.

of equity or efficiency. Ability to pay, however, can have concrete material meaning when the issue is the actual ability to pay taxes without risking malnutrition, diminished health, or inability to engage in the economy due to low incomes.

For example, studies have revealed that ideas about gender roles influence and inform the way in which economic policies, including tax systems, are organized, because men's and women's decisions about employment, spending, saving, and investments are all shaped by tax policies.³² Unfortunately, tax systems in most cases do not correct these gender differences. Even though most tax systems appear to be gender neutral, they can nonetheless reinforce and thus reproduce gender inequalities, thus placing extra economic and personal pressures on women due to their roles in the family system and society. However, the relationship between gender and taxation still remains unexplored in most economies.³³

3.2 GENDER EQUALITY AND THE NATIONAL REVENUE STRUCTURE

Governments obtain revenues from a wide variety of types of taxes. Major revenue sources are the personal, corporate, and consumption tax (including the VAT) usually provide the largest components of total tax revenues. But all levels of government have many other smaller taxes, such as luxury taxes on specific items, fuel taxes, parking fees, education levies,

or licenses for businesses. Taken together, the combination of all the major and minor taxes forms the 'tax mix' of a country.

The composition of the total tax mix of a specific country is what affects the overall distributional impact of the total tax system. Some taxes may sit more heavily on the poor, which would be described as regressive taxation. Other taxes may sit more heavily on the wealthy, which would be described as progressive taxation. When mixed together, whichever taxes produce the largest shares of revenues overall will determine whether the tax system of the entire country can be seen as redistributive or progressive – transferring economic power from the wealthy to those with the lowest incomes – or as being regressive – transferring economic power from those with low and/or middle incomes to those with higher incomes.

Each of type of tax will also have a gender impact footprint. There is general agreement that reducing and flattening the graduated tax rates on personal and corporate incomes can have negative aftertax effects on women. This happens when those with the highest incomes – corporations and persons – pay proportionately lower taxes than those with the lowest incomes. And because women tend to have lower and fewer incomes than men, on average, such flattening of the graduated rate structures can have a negative effect on more women than men.

Direct taxes, which include personal income tax (PIT), corporate income tax (CIT), and taxes on property, all have the potential to redress inequality through the principle of progressivity if they use graduated tax rate structures to impose higher tax rates on larger amounts of incomes or property. However,

32 Caren Grown and Imraan Valodia, *Taxation and Gender Equity: An Eight-country Study of the Gendered Impact of Direct and Indirect Taxes* (Ottawa: IDRC, 2010).

33 'Taxation and Gender: Why Does it Matter?' 2: 1 (2011) *Africa Tax Spotlight*.

since the mid-1980s, most countries have cut their top tax rates as part of the transnational movement toward ‘taxing for growth.’ As a result, the degree of progressivity in many personal and corporate income tax systems is weak. Thus more of the direct tax burden falls on those with middle and low incomes as less revenue is received from those with the highest incomes paying taxes at lower marginal rates.

Direct taxes impact women differently from men because women largely earn less, tend to enter and exit the labor market at different stages of life, and provide unpaid labor in family businesses and in the community disproportionately. This affects women’s participation in paid work. In turn, women’s degree of involvement in paid work affects how many taxes they pay, and how many benefits they might be entitled to then receive from social security provisions and public services. Thus one important step toward improving the overall gender impact of the total tax system is to restructure tax systems to raise proportionately more revenue via graduated tax rates payable on incomes and wealth, and to reduce the degree of revenue raised via flat-rated consumption and social security taxes.

Viet Nam has gone quite a long distance toward this ‘taxing for growth’ revenue structure. As of 2010, the OECD concluded that Viet Nam raises relatively little from its personal income tax system. In a year when the OECD average of PIT was about 24% of total tax revenues, and the Latin American average close to 7%, Viet Nam’s PIT was virtually identical to the Latin American average, while the rate for other Asian countries was much higher. For example, Japan raised 18% of its total tax revenues via its PIT, and Korea, Malaysia, and Indonesia,

around 15%.³⁴

In contrast, however, Viet Nam does collect a large share of its total GDP as revenues. In 2010, its revenues came to 25% of GDP, one of the highest tax ratios in emerging Asia. But of this total revenue, only 4% came from the PIT, while 29% came from consumption taxes (value-added taxes, VAT), and 26% came from corporate taxes.³⁵ Because there are so many opportunities to flow taxable incomes through corporations at preferential corporate income tax (CIT) rates, the bottom line on the gender impact of the tax mix is that it likely over-taxes women via the VAT and social security taxes, and under-taxes those with the highest incomes, who will pay more of the small shares of PIT and the lower rated CIT.

The tax mix is an important structural gender tax issue, yet it is highly technical when done on a detailed comparative basis. Without comprehensive and gender disaggregated data, it is difficult to evaluate just what the actual gender impact of the total tax system might be. Thus building the Government and civil society expertise in analyzing the gender impact of budgetary tax measures and changes includes improving national and regional fiscal and statistical databases to support this type of comprehensive analysis.

34 OECD, *Social Cohesion Policy Review of Viet Nam* (Geneva: OECD Publishing, 2014), 185, figure 4.2 (2010 data).

35 IMF, ‘Tax Reform in Vietnam: Issues for 2-11-2015’ (2016), 8, <https://www.imf.org/external/country/VNM/tr/2012/031412a.pdf> (2010 data).

4

GENDER IMPACT OF PERSONAL INCOME TAXATION IN VIET NAM

Personal income tax (PIT) systems are similar across countries and regions. Thus it is valuable to consider gender issues encountered in other countries as reference points in relation to the Viet Nam PIT system. The main transnational issue considered here is the use of joint spousal or family tax units in other countries. Related to this is the similar practice of offering selected other ‘joint’ income tax measures, such as dependent person family tax allowances or similar deductions, exemptions, and credits. This is followed by discussion of other gender equality issues posed by Viet Nam PIT laws.

4.1 GENDER ISSUES IN PIT SYSTEMS – COMPARATIVE PERSPECTIVES

Personal income taxes are not always paid by individuals. Most PIT systems originated in European countries that had themselves derived their tax systems from feudal taxes imposed on households. The number and relationships of those in households were not necessarily relevant, because these older tax systems made the economic head of the household legally responsible for paying taxes on behalf of the entire household. Because the earliest types of income taxes were flat taxes with just one rate for all situations, taxing the head of the household did not create any serious problems of unequal taxation. Whether taxed as individuals or as a household group, everyone in the household would pay exactly the same tax rate if they had any taxable incomes.

In the last several hundred years, personal income taxes have come to be collected with graduated rates that start out at zero or a low rate for low incomes, and go up to higher rates for larger incomes. Under graduated income

tax rate schedules, it is important to ask what the **personal income tax unit** will be. It might be the married couple, as in the US, or it might be the entire family, as in France. Or, as in the majority of countries in the world, it might be the individual.

The definition of the PIT unit is not just a technical issue. It is also an important gender equality issue. When the tax unit combines spouses or families into one ‘taxpayer,’ serious gender inequalities can flow from that structure. For example, if all couple or family incomes are taxed as if they belong to one person, then the addition of a second income to that of the ‘breadwinner’ or first income is likely to increase the total tax bill for the family.

Using the example of the Viet Nam PIT tax rates, adding two incomes together in this way could change the tax rate paid on the second income from 10% to a top rate of 25%. For example, assume that two adult spouses both earn VND228 million per year. At the present time, using 2016 tax rates and brackets, each spouse would receive an annual personal allowance, or tax deduction, of VND9 million/month, or VND108 million per year. Subtracting that allowance from each income leaves taxable income of VND120 million for each for the year. The first VND60 million for each would be taxed at the rate of 5%, then the next VND60 million would be taxed at the rate of 10%. Each would pay a total of VND9 million.³⁶

³⁶ These tax rates apply to bands or slices of income. In 2016, an individual will pay 5% on the first VND60 million per year, but if another VND60 million is also earned, that second slice of income will be taxed at a totally different rate of 10%. So the tax bill will be the total of 6% of VND60 million (VND3.6 million) plus 10% of the second VND 60 million (VND6 million), for a total tax bill of VND9.6 million. The rate that applies to the last VND earned in a year is called the top marginal tax rate. But the average tax rate paid on the whole taxable income will be much lower – 8% on the whole VND120 million.

Now assume that one spouse is required to treat both incomes as belonging to him or her. Assume also that as earned incomes, both incomes of VND228 million will be reduced by the personal allowance to a total of VND120 million taxable income. But when both incomes are treated as belonging to one spouse, the first income would still only produce a tax bill of VND9 million. But the second income treated as belonging to the first spouse would produce a total tax bill not of just VND9 million, but would instead produce a total tax bill of VND66 million. That is because the tax rates that would apply, in steps, for the second income would start at 15% and go up to 25%. So the second spouse would be taxed at higher tax rates with this method of 'joint' taxation.

This type of tax unit rule creates a tax disincentive to women's paid work, because it would mean that a single woman would be taxed on income at the same rate as the first married spouse. But a married spouse would be taxed at a much higher set of rates. That would in turn mean that a married person who is a second earner could not make their paid work 'pay' as well as a single person could, or as their own spouse. At that point, it might begin to make more financial sense for the second spouse to carry out unpaid work in the home, or in a family business, than to work for pay. This This would also reinforce gender roles, including taking part-time or low paid work, or increased responsibility for unpaid work, because as gender wage gaps have begun to increase in Viet Nam, it is more often women who have lower wages than men.

In a variation of joint income taxation, if all couple or family incomes are combined together but then each individual is treated as receiving an equal share of that income as their

taxable income (income splitting on the US model), then those with lower incomes will still be exposed to tax penalties or disincentives for paid work. For example, if a couple lives on one income, then each is treated as owning just half of that total income for tax purposes, and so each may pay a lower tax rate on their share. But if the nonearner decides to take up paid work, then that tax reduction is no longer available to the first earner, and the couple together lose that valuable tax benefit. This type of joint taxation is also well known to have a negative impact on women's freedom to enter into paid work.³⁷

To summarize, in joint couple or household income taxation, there may be a strong disincentive for women to seek paid employment, because the pooling of income, for tax purposes, either increases the tax rate on the second spouse's earned income directly, or increases it indirectly due to tax reductions given to the first earner. Since women tend to earn less than their male partners, they may thus opt not to seek paid work, and/or to increase their unpaid business or household work to increase the 'breadwinner's' aftertax income.

Joint tax unit rules like these cause both formal discrimination and substantive discrimination, depending on how they are structured. If a tax system requires spouses or other members of the family to file jointly, and only allows married men to file those types of returns, but does not allow married women or single mothers to file jointly and get joint tax benefits, then this is formal discrimination on the basis of gender. ³⁸If joint tax benefits can be claimed

37 One of the leading authorities on this point is Patricia F. Apps and Ray Rees, *Optimal Taxation, Child care, and Models of the Household* (Munich: CESifo, 2014).

38 Africa Tax Spotlight, 2011.

by any type of adult or spouse, the joint filing may still lead to substantive discrimination because the first earner will be pushed into a higher marginal tax bracket when a second earner's income is added to the income of the first earner. In effect, this exposes the second earner's income – usually a female income – to a higher level of taxation than if he or she were taxed as an individual.

This was the case in Kenya, where until 2005, married women's incomes were required to be filed jointly with their husbands' incomes. Since then, married men and women now have the option of filing separately. Tax payable is computed separately even when they actually file a joint tax return form. This ensures that neither member of the couple will enter into a higher marginal tax bracket when their incomes are jointly taxed. This eliminates substantive discrimination because it ensures that each income earner will bear the same tax regardless of whether they are married or single.

However, even formally individual income tax systems can still contain hidden 'joint' tax provisions. For example, if each adult gets to claim **tax allowances for economically dependent persons**, whether spouses, children, or elders, these tax deductions or credits can also impose a tax penalty on the dependent person seeking paid work. This is because in a progressive personal income tax system, the loss of a dependent allowance may cost the first earner more in lost tax benefits from those dependent deductions than the after-tax income earned by the second earner. So long as both spouses or all members of families earn the same incomes, then no one family member will have a better chance of receiving permission from the tax office to take that dependent allowance. But

if married men tend to earn more than their own spouses, for example, then they will feel more entitled to claim any dependent allowances permitted. This result is also 'smart' family tax planning, because a taxpayer with a high income will save more tax by using the dependent allowance than would a taxpayer with a low income. A taxpayer with income of more than VND960 million pays a tax of 35% on that part of their income. A dependent allowance of VND43.2 million would save tax of VND15.12 million. But if the other taxpayer has income of just VND60 million, then the value of that dependent allowance is just 5%, or VND2.16 million.

An eight-country study revealed the importance of these types of tax allowances for children and financially dependent adults in examining the gender impact of the PIT system. This issue of dependent care is addressed in different ways in various countries. Some countries provide support for dependent care through direct expenditure programs, such as social protection payments. Others provide tax allowances for dependent children and adults.³⁹ Tax allowances for dependants do not go directly to the women who do the actual unpaid care work.⁴⁰ In low-income countries, most of the poor and the majority of women, who are likely to be unpaid family workers or poorly paid informal workers, fall outside the income tax net. In such cases it may be more appropriate to deal with care provision on the expenditure side of the budget, since tax allowances will not reach most low-income households.⁴¹

39 Caren Grown and Imraan Valodia, 2010.

40 Taxing Men and Women: Why Gender is crucial for Fair Taxation (London: Christian Aid, 2014).

41 Caren Grown and Imraan Valodia, 2010

These gender issues arise regardless of whether joint or individual tax provisions take the form of deductions, or joint filing and assessment rules, or tax credits. In all situations, there may be both formal or facial discrimination and substantive discrimination all arising from the same tax provision.

In cases of Austria and Canada, most tax exemptions and other types of tax credits or special treatment benefit men relatively more than women. This is mainly due to the fact that men work more hours per week, or, in the case of Austria, work more overtime hours for which they receive more tax-free wage supplements for dirty, extra hard, or dangerous work, receive higher deductions for using a car to commute to work, and have higher marginal (top) personal income tax rates. Therefore, tax exemptions taken together weaken the redistributive effect of income taxation, but do not reverse income inequalities or gender income inequalities.⁴²

The above analysis shows that PIT policy can play a critical role in promoting access to paid work, access to individual incomes, and sharing of unpaid care work among couples even in situations in which women's earning potential might otherwise be equal or close to that of men. Thus PIT rules can reinforce after-tax income inequalities between women and men generally, and also, working through family-specific PIT rules, further intensify women's economic disadvantages by placing fiscal barriers in their paths to equal after-tax incomes.

42 Kathleen A. Lahey, *Equal Worth: Designing Effective Pay Equity Laws for Alberta* (Edmonton Can.: Parkland Institute, 2016), 7-13; Arnd Einhaus, Edith Kitzmantel, and Anton Rainer, 2007.

4.2 GENDER ISSUES IN THE VIET NAM PIT SYSTEM

Tax residents are subject to Vietnamese PIT on their worldwide taxable income, wherever it is paid or received. In Viet Nam, employment and business income is taxed at graduated or progressive tax rates. Other income is taxed at a variety of different rates. PIT rates ranging from 5% to 35% apply to both Vietnamese and expatriate residents.

In the Viet Nam PIT system, **the individual is the basic tax unit** or tax filer. This means that each income earner is individually responsible for filing taxes based on their earnings, regardless of marital status or household structure. And this system keeps the tax liabilities of spouses and members of households separate from each other at least to the extent that no one's income is added to any other person's tax return. This avoids the types of lifelong tax biases faced by women in joint tax systems, discussed in section 4.1 above.

The PIT rates are graduated, with the lowest taxable incomes being taxed at the rate of 5%, and the highest, at the rate of 35%. This means that the Viet Nam PIT is progressive in structure, and respects the principle of ability to pay tax. The poor and women have less ability to pay tax than men because they earn less than men do.

The Viet Nam PIT system ensures that it respects the principle of ability in two ways. First, it applies the lowest PIT rates to low incomes, and applies higher rates to increased amounts of incomes. Second, it provides tax exempt allowances for each individual taxpayer. Each individual may earn up to VND108 million on a tax exempt basis each year. (The personal allowance for an individual taxpayer is VND108

million/year, or VND9 million/month). So long as the VND108 million can secure the basic necessities of living, the PIT is not considered to violate the fundamental principle of ability to pay taxes. And at present, the first band of taxable income over the VND108 million allowance is taxed at the low rate of 5%.

However, **tax exempt dependent allowances** may still violate the principle of gender equality even if they are designed to protect ability to pay. The Viet Nam PIT provides dependent allowances for a wide category of persons, which can include children, elderly members of the household, a financially dependent spouse, or other qualifying individual. These tax allowances can be claimed for an unlimited number of persons (VND43.2 million/year or VND3.6 million/month per dependent). These allowances are not automatically granted; the taxpayer needs to register qualifying dependents and provide supporting documents to the tax authority to obtain permission to claim this exemption.

These allowances can violate the principle of gender equality in two types of situations. First, if an individual is not able enough to work for pay, and can qualify as being a disabled spouse, then the other spouse may be able to obtain permission to claim the dependent spouse allowance for that individual. And that dependent allowance can also be enough of an incentive for such a person to withdraw from paid work, especially if it is part time or poorly paid work. For example, if the supporting earner has an income of more than VND960 million for the year, then the value of the VND43.2 million tax allowance might be as much as VND15.3 million to the spouse who has permission to deduct that dependent allowance. And if the dependent adult is able to perform valuable unpaid work,

either caring for children and thus saving on the cost of childcare expenses, or caring for older family members, or performing unpaid business or agricultural work and thus saving the cost of hiring others for those roles, then the dependent adult is driven out of paid work and financial self-dependence as the result of the tax allowance system.

Second, even with two able spouses in paid work, the allocation of the tax allowances can have negative gender impact. If the higher earner is usually the husband and the husband is the spouse who is authorized to take all of the dependent allowances (and they must all go to the same person), then it may pay for the married woman to work only in the home or household business, and to perform valuable unpaid care or business work to save the cost of paying a third party for those services. In this way, the example in section 4.1 above will apply to this situation.

Either scenario imposes disparate negative gender effects on women in paid work, and thus would violate substantive equality guarantees. The fact that the dependent allowances will be more profitable for the spouse with the higher income will then always discriminate against women to the extent that their incomes are not higher than their spouse's incomes. Even if two spouses have exactly equal incomes, one will be able claim the benefit of the tax allowances for dependents, and the other cannot. This will then create a comparative disadvantage to paid work for the second earner, even when they start out with equal pretax incomes. Depending on the bargaining power between the two spouses, only one may continue in paid work in this situation.

Detailed sex-disaggregated administrative

and tax data showing which spouses claim the PIT tax allowances would make it possible to assess the degree of gender inequality caused by this provision. Women of course are much more vulnerable to this effect because unpaid domestic, care, and business work still remains the primary responsibility of women. According to the most recent Viet Nam data on unpaid work by gender, women were found to spend an average of 314 minutes per day doing housework, while men reported spending 190 minutes.⁴³ These figures mean that women perform 62% of all unpaid work. But even more importantly, these figures reveal that while men work slightly more than three hours per day in unpaid work, women work almost five and a half hours of unpaid work per day. This is a lot of work time, which cuts down on time and energy left for equal hours of paid work with men. And this also means that women will on average be counted on to perform a great deal of unpaid work if they are not in paid work. All of these gender realities mean that women remain more vulnerable to being pressured to let their spouse apply for the dependent tax allowances.

Even with an equal income, a married woman with average unpaid work hours would earn the same income as her spouse, but would have to pay PIT on the VND43.2 million she could have claimed for a dependent tax allowance if she were not married – and do much more unpaid work than her spouse each day. Even with an equal income, her spouse will have this tax allowance to reduce taxable income by at least VND2.16 million (if the spouse has a top tax rate of 5%) and thus more aftertax income – and will do much less unpaid work each day. This is a violation of substantive equality, because it reinforces and magnifies social and cultural gender inequalities through

the application of the tax rules. The tax rules ignore gender inequalities in hours of unpaid work for women and men, and thus unequally reduce women's aftertax incomes when they cannot obtain equal dependent allowances.

This dependent tax allowance provision could be made more gender equal in several ways. One solution would be to require the spouse with the lower income to claim the tax allowances if they can use them, in order to increase their incentive to engage in paid work. An even more effective policy would be to provide refundable tax credits that will be the same amount for either spouse, so that there is no pressure for the lower income spouse to drop out of overtaxed low paid work. Or each spouse could be allowed to take a proportionate share of such allowances. Many alternative options would be tested, in gender-based analysis, to find the one that fits best with the specific Viet Nam PIT rate structure. The research literature on these options would also provide many suggestions and reports on how some of the tested options work.

In fact, because of extensive testing of these types of policies, other countries have devised many different systems to avoid or minimize this problem. Solutions range from abolishing dependent allowances to turning them into refundable tax credits, cash allowances for adult dependents, or social protection payments for low income parents. This form of gender inequality can be minimized or eliminated completely, and it is a worthwhile change, because it eliminates the risk that these allowances perpetuate gender inequalities in predictable circumstances

43 Reported in ActionAid 2016 (forthcoming).

4.3 STRUCTURAL PIT REVENUE ISSUES

Without reliable data on the actual cost of basic consumption and living needs, it is difficult to determine whether the tax allowance system in Viet Nam is too generous, or about right. However, when sex-disaggregated data is available, it would be urgent to examine this question. The greater the share of total PIT raised, as a percentage of total revenues, the more progressive the allocation of the total tax burden in Viet Nam will be. This will increase the beneficial gender impact of the PIT system and reduce the negative gender impact of the total revenue system. At the present time, the PIT has little effect on redistribution of aftertax incomes in Viet Nam. An OECD simulation demonstrated that if all those receiving taxable incomes in Viet Nam paid their full PIT liability, it would reduce overall aftertax income inequalities by small amounts – just 0.8 to 1.5 points on the Gini coefficient.⁴⁴ This is because Viet Nam collects a very small portion of its total tax revenues from the PIT – just 6.3% of all revenues.⁴⁵

There is one other potential improvement that can be made to the PIT system. The OECD analysis resulted in the hypothesis that not all income earners pay their full tax bill. If compliance enforcement is not strong enough to secure the full payment of taxes, this would justify increasing tax compliance activities either through cross-checking with other sex-disaggregated administrative data, such as VAT return information, by increasing audit activities, or by obtaining permission in

the next census to link personal and corporate tax returns with census data (on the highest level of confidentiality, of course). Women would benefit from improved compliance with the PIT because that would increase the progressivity of the total tax burden with respect to their aftertax incomes. It could also increase revenues so that the Government has more resources to devote to policies capable of promoting gender equality.

44 OECD, *Social Cohesion*, 187, table 4.2 (2012 tax year).

45 Ministry of Finance, *Citizen Budget Report* (Viet Nam).

5

GENDER IMPACT OF CORPORATE INCOME TAXATION IN VIET NAM

Understanding how the corporate income taxation (CIT) system affects women as compared with men in Viet Nam depends on having adequate information on where women are in the paid work and business sectors of the economy, how women's roles in these sectors shapes their total tax loads, and how the CIT rules may favour incorporated businesses over unincorporated self-employment or small registered businesses. Preliminary conclusions can be drawn on the basis of existing data, but far more information on both the enterprise and the tax sides of these issues is needed before firm conclusions can be drawn.

5.1 CORPORATE INCOME TAXATION: WOMEN IN CORPORATE CULTURE

To get a clear picture of the gender impact of CIT rules, it is important to recognize that the CIT rules only apply to businesses registered as formal corporations or companies. When properly registered as corporations, these business entities are treated as owning their own assets, and have independent legal existence for contractual, property, and tax purposes under the CIT. If businesses are registered but have not been established as a company, then the personal owner or owners of such unincorporated businesses are taxed on business profits under the PIT rules, not under the CIT rules. Unincorporated businesses may take many different forms, including self-employment, small agricultural businesses, unregistered businesses, registered sole proprietorships, and registered partnerships. All of these are or should be

taxed in the PIT returns filed by their owners.⁴⁶

Because the tax rules that apply to unincorporated business and corporations are so different, it is important to understand where women are located in both corporate and unincorporated business cultures. In general, women are over-represented in the smallest unincorporated forms of business, but they are strikingly under-represented in corporations. Globally, the incorporated business sector appears to be a 'man's world' little affected by gender equality considerations. As seen in the most recent global data, women have some ownership or participation connections with just 35% of all firms worldwide, and only 13.3% of all companies in the world have majority female ownership. Only 18.5% of all firms in the world have a female top manager, and corporations appear to have strong preferences for hiring men: only 33% of all permanent fulltime employees are women, and, when the focus is on permanent fulltime production workers, that number drops to 26%.⁴⁷ The world of corporations is not gender inclusive.

In the Asia Pacific region, this picture is more positive. Taken as a group, countries in the East Asia and Pacific region actually have the highest average regional levels of women's participation in ownership (47%), top management positions (32%), majority ownership (27%), and production positions

46 So are any 'shadow' activities that do not report their profits to tax authorities; these are sometimes called 'informal' businesses, but in this report they are called shadow or unreported businesses and the term 'informal' is used to refer to registered unincorporated business.

47 World Bank Group, *Enterprise Surveys: Data*, <http://www.enterprisesurveys.org/data/exploretopics/gender#2>.

(38.4%). But, the Asia Pacific region falls third behind the high income nonOECD, Eastern Europe, and Central Asia regions in women's shares of permanent fulltime positions overall (38%), and is close to the bottom in shares of nonproduction jobs held by women.

When Viet Nam is compared directly with other countries in the region, however, women appear to be significantly underrepresented in everything except rates of ownership participation, which in Viet Nam is 51%, and shares of nonproduction positions, which is 42.5%.⁴⁸ Only 22% of all Viet Nam corporations have even one female top manager, and only 34% of all permanent fulltime employees in Viet Nam corporations are women.⁴⁹

When the size of companies is taken into consideration, other gender differences become visible. Over half of all small firms in Viet Nam have female participation in ownership, and small firms have more top female managers than bigger firms. However, large firms hire many more women employees than small firms do – over twice as many female production workers than small or medium firms, and more nonproduction workers. Earnings data for employees by gender and firm size are not provided, however.

When looking at the unincorporated business sector, it is clear that large numbers of women

do own businesses of various kinds in Viet Nam. But gender gaps in profits in this sector appear to be extremely large for women who own unincorporated businesses. For example, in a comparison of incomes by self-employment vs employment, women self-employed in nonagricultural work only earned 74% as much as employed women, and women self-employed in agricultural work only earned 34% as much. When women's agricultural self-employment profits are compared with urban male wages, the figure is just 22%.⁵⁰ The gender gaps are even greater when ethnic minority status and regional locations are taken into consideration, especially for women self-employed in agriculture.⁵¹

Information on women's self-employment suggests that large numbers become entrepreneurs not by choice, but by necessity, particularly when they cannot obtain paid employment. In rural areas, self-employed women were over 50% of total employed women in 2012, and 40% in urban areas.⁵² This type of necessity appears to increase for women, for minorities, for rural workers, for those with few assets or little capital to use in building a business, and for those with low levels of educational opportunity or attainment. These factors are identified in numerous studies of women business owners in Viet Nam. Changes in land registration rules extending title to women have helped somewhat, but vehicles,

48 World Bank Group, 'Vietnam 2015 Country Profile,' *Enterprise Surveys*, 12, Appendix, <http://www.enterprisesurveys.org/~media/GIAWB/EnterpriseSurveys/Documents/Profiles/English/Vietnam-2015.pdf>.

49 This pattern may reflect the practice of issuing some corporate shares to spouses or other family members, which is often done for estate planning and/or tax planning purposes.

50 UNWomen, *Inclusive Growth*, 52, table 12.

51 *Ibid.*, 66.

52 Women Empowerment through Business Member Organizations, *Viet Nam's Landscape* (ITC,), 2, http://www.itcilo.org/en/the-centre/programmes/employers-activities/hidden-folder/resources/Women%20Empowerment_Country%20fact-sheet_Vietnam_2015.pdf.

buildings, savings, and bank accounts form the largest majority of business assets used by women in Viet Nam. In contrast, the two most important assets used by male entrepreneurs are bank accounts and registered interests in land.⁵³

In short, embedded economic gender inequalities in Viet Nam marginalize women's businesses. Thus women are underrepresented in Viet Nam corporations, and are more often found in unincorporated small businesses. 'Necessity' for self-employment or small-scale business enterprises is driven by high levels of unpaid domestic work responsibilities, barriers to formality including costs of incorporation and even registration, under-capitalization, lack of collateral, risk aversion, gender stereotypes, constraints on transportation, discrimination against women-owned businesses, and weaker business networks.⁵⁴

5.2 CIT RATE CUTS INCREASE GENDER AFTERTAX INCOME INEQUALITIES

Because women business owners predominate in the unincorporated sector and men predominate in the incorporated sector, the differences in the PIT tax rates that apply to women-led businesses and the CIT tax rates that apply to male-predominant corporations produce different levels of tax liabilities, aftertax incomes, and accumulated capital for women and men.

53 See for example Aimee Hampel-Milagrosa, et al., *Gender related Obstacles to Vietnamese Women Entrepreneurs: Technical Report* (Vienna: UNIDO, 2010), 43, table 8.

54 Rose-Marie Avin and Linda Paul Kinney, 'Trends in Female Entrepreneurship in Vietnam' (Accra: Feminist Economics Conference, 2014), 18-23.

Corporations are taxed as separate taxpayers to enable them to keep their investments and profits separate from the interests of their shareholders. Over the last century, the global trend has been for owners of corporations and capital to seek lower rates of taxation on these assets than is typically borne by employment and unincorporated business incomes. The basic argument of 'taxing for growth' is that because corporations contribute to economic activity, taxing them lightly will increase GDP growth. Since the 1950s, these views have become increasingly influential.⁵⁵ In 1993, the average of all corporate income tax rates worldwide was 38%. By 2016, this average has now fallen to 22.5%.⁵⁶

These changes in CIT rates are not uniform. The average of all CIT rates in Africa remain higher than in all other regions. In the period 2003 to 2016, however, the largest absolute fall in average top CIT rates has been in Asia, with the regional average falling nearly 11 percentage points, from 31% to 20.1% in 2016.⁵⁷ Over the entire period of 1998 to 2016, however, the Viet Nam top marginal CIT rate fell from 35% in 1998 to 20% in 2016 – a total reduction of 15 percentage points. During this same period of time, the highest PIT rate started out at 40%,

55 For an overview of how these dynamics worked their way through the Swedish, UK, and US tax systems, see Sven Steinmo, *Taxation and Democracy: Swedish, British, and American Approaches to Financing the Modern State* (New Haven: Yale Univ. Press, 1996), 22-30.

56 The 1993 figure was reported by the Center for Economic and Social Rights, 2014. [KL could not find this reference.] The 2003-2016 changes are reported in Kyle Pomerleau and Emily Potosky, *Corporate Income Tax Rates around the World, 2016* (Washington DC: Tax Foundation, 2016), 7, figure 2. When CIT rates are weighted by country GDP, this report calculated that the weighted average CIT fell from 34.1% to 29.5% in the last ten years.

57 Ibid., 8, figure 3.

but as of 2016 had only fallen to 35%.

This large difference between the top PIT marginal tax rate of 35% and the top CIT marginal tax rate of 20% means that a business owner who can choose between earning business income personally, as a self-employed entrepreneur or professional, partner in an unincorporated business, or owner of an unincorporated registered company, will choose to form a corporation and pay the CIT at a maximum rate of 20%. No matter how high taxable corporate profits in a year might be, net profits can be taxed at a maximum 20% rate. And, with special exemptions and investment tax breaks, that rate can go lower. In contrast, the unincorporated business at the highest levels of profit will bear the top marginal PIT rate of 35%.

Numerous small details of the tax and transfer system also affect the calculation of net aftertax personal and corporate incomes. But from a structural perspective, the most important gendered tax differential that has been created in Viet Nam is that while women in Viet Nam continue to face gender barriers to forming incorporated businesses, they remain in the more heavily taxed PIT business tax zone than men, and thus face PIT rates as high as 35%. In contrast, men own more incorporated businesses, which are presently taxed at a maximum rate of 20%, and for which rate reductions of as much as 10% are available.

Every time the CIT rates are cut, the gender differences between the aftertax profits earned by women-led vs men-led businesses increase as men's net wealth in the form of corporate shares and accumulate corporate

assets and profits grow larger.⁵⁸ As aftertax profits contained in corporations grow due to CIT rate cuts, aftertax income gaps between owners of incorporated vs unincorporated businesses also grow.

5.2 GENDER IMPACT OF SPECIAL TAX BENEFITS FOR CORPORATIONS AND SHAREHOLDERS

Aftertax income gaps between owners of incorporated and unincorporated businesses grow through many different channels. Tax exemption of employee benefits, opportunities for family income splitting of salaries or professional fees obtained through incorporated family businesses, tax exemptions from salaries for employee contributions to mandatory social, health, unemployment insurance, and special tax treatment of private pension plans all contribute to the income security and standard of living of corporate owner-managers.

Beyond these types of provisions, however, special tax rates and concessions further reduce the CIT payable on incorporated businesses. For example, when the standard CIT rate was reduced from 25% to 20%, companies previously paying a special 20% CIT rate automatically received a reduction to 17% for the remaining period of their special CIT rate. The Viet Nam CIT rate structure has continued to offer new incentive rate reductions for a wide range of activities. All of these rate cuts further increase the structural gender gap that exists between unincorporated and incorporated

⁵⁸ For an example of how this has occurred in the context of Canadian provincial taxation, see Lahey, 2015: 66.

businesses. And because of more women own and work in unincorporated businesses while men predominate in incorporated businesses, the growing gap between PIT and CIT rates increases aftertax incomes earned through corporations than through unincorporated businesses – thus accelerating aftertax income gender gaps invisibly but powerfully.

Two types of special CIT rates are now provided. The first type applies generally to regulated encouraged sectors. The second applies to businesses that satisfy special gender equality conditions.

With respect to special tax rates for **regulated encouraged sectors**, eliminating tax exemptions in the corporate and personal income tax may encourage gender equality in terms of the tax burden because men tend to benefit disproportionately from such exemptions. This is mainly due to the fact that they are more likely to run a business and/or be a shareholder whose corporation will benefit from these rate reductions. Raising the contribution of the CIT to overall tax revenues not only makes tax systems in developing countries fairer, but also indirectly reduces the relative tax burden on poor women.⁵⁹

In general, the special tax rate reductions offered to regulated encouraged sectors are granted to new investment projects based on the sector involved, the encouraged location, and the size of the project.⁶⁰ The sectors that are encouraged by the Government include education, health care, sport and culture, high technology, environmental protection, scientific research, infrastructure projects, and similar activities. Qualifying businesses can

get preferential rates of 10% for fifteen years or 20% for ten years, but a new preferential 15% rate was also made available in 2015. Only socialized sectors such as health and education receive the 10% rate for the entire period of the business operation.

Businesses can also qualify for special rate reductions by investing in encouraged locations. These include qualifying economic and high-technology zones, difficult socioeconomic zones, and special export zones. Also qualifying for special CIT rates are large manufacturing projects that invest at least VND6,000 billion within three years, achieve revenues of at least VND10,000 billion per year by their fourth year of operation, or employ at least 3,000 by that year. This manufacturing qualification is also from 2015 available for even larger investments that will take five years to become operational, and projects that promote the high technology sector or support mass export manufacturing facilities not in operation as of 2015.

The expansion of these types of special rates risks ‘hollowing out’ the CIT by cutting tax rates on the newest sectors of the national economy. Other low medium income countries that have used this strategy have found that the existence of large numbers of special agreements with corporations makes general tax reform efforts difficult to coordinate or even to plan, because so much of the economy is subject to special rules that may not be recorded accurately, easy to amend, or capable of estimation.⁶¹

From the perspective of gender impact, however, the additional problem is that as the largest corporations enjoy the lowest CIT rates, even the promotion of increased numbers

59 GIZ Gender and taxation, 2011

60 Decree No 85, 2015.

61 These detail summaries are taken from PriceWaterhouse, *Vietnam Pocket Tax Book 2016*, 7.

of women on corporate boards will do little to equalize the economic status of women involved in businesses with that of male predominant businesses.

With respect to **business tax reductions for gender equality and ethnic minority initiatives**, both the form of the tax benefits involved and the conditions to be met are much more complex than the special tax rate reduction formulas above. These tax incentives are available to companies that carry out manufacturing, construction, or transportation activities and that employ many female staff, or that employ ethnic minority workers.

Even the definition of ‘employing many female staff’ is confusing: This condition is satisfied if the employer has between 10 and 100 women workers who form at least 50% of all employees, between 100 and 1,000 women workers who form at least 30% of total employees, or 1,000 or more women workers.⁶² Given employee turnover rates, such precise formulas create the risk of becoming disqualified for these tax incentives unless considerable additional women are employed and under conditions of some job permanence. Also, there is an ambiguity in the text of the Decree itself: It does not indicate whether women on gender-related leaves remain in these quotas. If women who are leave are temporarily removed from the quotas, then the success of the policy increases the risk of losing these tax benefits as the result of participating in the program.

The tax implications of the policy are also confusing. The Decree article 11.2(a) states that any employer employing many female employees is entitled to a reduction in the

62 Decree 85/2015-ND-CP on detailed instruction on implementation on regulation for female employees.

CIT in accordance with the law on CIT, but no specific cross reference is made, leaving it unclear just what reductions may be permitted, nor for what time. There is a second tax benefit as well, which is that any additional expenses paid to women employees can be deducted when calculating taxable corporate income (article 11.2(b)). This is understood as including the following types of expenses: Retraining costs for women being reassigned to other jobs, including tuition fees and full salary; the costs of establishing and operating on-site childcare facilities; maternity leave allowances (up to two children); and overtime allowances for women not taking maternity leave.

Employer eligibility for both sets of tax benefits are contingent on accepting the additional Labour Code provisions set out in the decree, which include accommodation for extraction and storing breast milk, supporting unionization of women workers, complying with gender equality in work rules, providing health and maternity accommodation, and assisting in the creation of or costs of childcare resources.

In a 2015 Consultation workshop on this Decree,⁶³ a number of concerns with these measures were identified, the most obvious being that CIT rate reductions and gender-related business tax deductions might not be very effective in this context. As shared by women entrepreneurs at the consultation, investing in the payment of additional business expenses up front in order to become eligible for CIT rate reductions is not a very strong incentive, because these

63 Consultation workshop on development or preferential policies for women –owned enterprises and enterprises using many female employees in Ho Chi Minh City, Jan. 13, 2015.

expenses have been encouraged, but are not compulsory. This is particularly so because from the business point of view, the benefit of this policy is quite small when compared with the costs of qualifying for it, and it is time consuming to go through all the accounting and management steps involved in getting a CIT deduction for out of pocket expenses. In order to enjoy the preferential enterprise income tax, corporations are required to file complex tax forms and going through time consuming procedures. The effectiveness of this tax initiative is unclear, especially because many businesses find it a burden to employ many female workers, and may even prefer to ‘dodge’ hiring female workers from the outset through tacit agreement.⁶⁴

The second criticism of this combination of optional gender equality actions and future tax benefits made during the consultation was that the special provisions for ‘enterprises using many female employees’ exclude micro-enterprises with less than 10 women employees – the very types of businesses that are most likely to be owned primarily by women. These kinds of micro-enterprises do not get any benefit from this policy even if all their workers are female. Third, CIT rate reductions can only benefit corporations that have net operating profits. In general, as shared by the entrepreneurs, they are not interested in incurring additional expenses in order to get tax reductions when they cannot be sure they will make large enough profits to have any CIT liability in future years, or may even be concerned at the value of these investments if they lose money in some tax years.

According to Decree No 85/2015, enterprises are encouraged to construct kindergarten facilities or provide support or partial support for costs of child care (in cash or in kind). However, most of the businesses consulted reported that they are administratively unable to organize daycare or kindergarten facilities because they have no resources for such activities in terms of having suitable land, sufficient funding, or trained human resources for such projects.

The final concern that arises from this policy is that all the tax benefits flow to the corporations that are already under a legal duty to hire, train, retain, promote, and pay women on a gender equal basis anyway. But there is nothing in the Decree that directs how these tax benefits are to be used, and whether women have to benefit from corporations’ increased aftertax profits resulting from these provisions at all. In any event, it is obvious that in terms of ownership structures of corporations in Viet Nam, shared benefits related to aftertax corporate incomes will be allocated unequally between women and men because of unequal proportions of women as owners and Chief Executive Officers (CEOs). In Vietnam, women account for only 7% of all CEOs and 24.8 % of businesses managed by women. The women-owned enterprises are inversely proportional to the scale of enterprises: 26.8 %, 21.4%, 19.8 % and 13.6 % respectively of micro, small, medium and large sized enterprises.⁶⁵

64 <http://hawee.vn/content/tham-vấn-lấy-ý-kiến-xây-dựng-chính-sách-ưu-đãi-cho-nữ-chủ-doanh-nghiệp-và-doanh-nhiều-lao-động-nữ>.

65 <http://business.gov.vn/tabid/128/catid/432/item/13076/tý-lệ-nữ-lãnh-đạo-trong-doanh-nghiệp-việt-cao-thứ-2-đồng-nam-á>

6

THE VALUE-ADDED TAX AND GENDER IN VIET NAM

As most countries have significantly reduced CIT and trade tax rates, they have had to find other sources of revenues. Since value-added taxes came into widespread use in Europe in the 1980s, even low income, small, and developing countries have increasingly adopted the value-added tax (VAT) to make up for revenue shortfalls. In many countries, the liberalization of the economy has also brought a decline in social expenditures during the same period of time, due at least in part to lower CIT and trade tax rates. This combination of fiscal changes – increased taxation of consumption and reduced public spending on essential services – has affected women's and children's lives more than men's lives, because men on average have higher incomes than women. Thus as men's aftertax incomes have increased due to CIT and trade tax cuts, women's aftertax incomes have fallen due to increased payments for the VAT on everyday consumption.

The Viet Nam VAT system applies three different tax rates: 0%, 5% and 10%.⁶⁶ There are 25 categories of goods and services exempt from VAT.⁶⁷ Many of these have social objectives and are likely to benefit those with low incomes, such as health insurance and medical services,

66 The rate of 0% is applied to exported goods including goods sold to enterprises without permanent establishments in Vietnam (including companies in non-tariff zones), goods processed for export or for sale in duty free shops, exported services and construction, and installation carried out abroad or for export processing enterprises. The rate of 5% applies generally to areas of the economy concerned with the provision of essential goods and services. This includes: clean water; fertilizer production; teaching aids; books; foodstuffs; medicine and medical equipment; husbandry feed; various agricultural products and services, technical/scientific services; rubber latex; sugar and its by-products; social housing. 10% is applied to the goods and services not specified as exempt or subject to the 0% or 5%.

67 Law on VAT, 2013.

agricultural inputs, and goods or services sold by individuals with annual revenue of VND 100 million or less.⁶⁸ The 5% VAT list includes basic goods and services such as drinking water, food, medicines and agricultural inputs.⁶⁹

The gender impact of the VAT is found in the substantive nature of consumption taxes as compared with income-based taxes. This impact is examined in three contexts: the effect of the VAT on the costs of consumption necessities for those living at low income and poverty levels; the influence the VAT has on capacity for financial savings and capital accumulation at high income levels; and structural consequences of the VAT on small, agricultural, household, and women-led businesses.

6.1 GENDER AND ABILITY TO PAY THE VAT AT LOW INCOME LEVELS

The PIT and CIT have one important feature in common: Both the PIT and CIT are paid in cash. The design of income-based taxes limits tax liability to those persons or corporations with incomes or funds that 'come in.' No income means no tax. And those with low incomes are protected from income taxation by personal exemptions and the right to deduct all expenses incurred in producing business profits.

In contrast, the VAT is a tax not on income that 'comes in,' but is a tax on funds that 'go out.' This is because it is a tax on consumption. And it is a tax on consumption paid only by private individuals, not by businesses. In a theoretically

68 Law on VAT, article 5.

69 Law on VAT, article 8.

perfect VAT system, businesses get reimbursed by customers or by the government for all the VAT they pay as they acquire goods and services used to run their business operations.⁷⁰ But at the same time, VAT systems do not provide structural exemptions that guarantee ability to pay the VAT on consumption items in the same way that PIT systems do. PIT systems usually provide a minimum tax exempt amount such as the personal allowance in Viet Nam to protect some minimum basic income for necessities from taxation. But very few VAT systems provide personal exemptions in the same way. Instead, they tend to provide lists of reduced VAT rate, exempt, or zero-rated items. Some of these items are VAT exempt or VAT reduced out of concern for those with no ability to pay the VAT and obtain some necessities. But many other VAT exemptions or reductions are designed as incentives to certain economic sectors, such as tourism or certain industries, or to attract investment. And very few countries exempt all essential consumption needs from VAT charges specifically because of concerns for ability to pay for necessities plus the VAT. Thus the VAT imposes taxes on those with low or no incomes in ways that neither the PIT nor CIT do.

The differences between the gender and poverty effects of the VAT as compared with the PIT and CIT are particularly important in Viet Nam. At the present time, Viet Nam has one of the highest tax ratios in the region, collecting revenues equal to 25% of annual GDP.⁷¹ This is a policy success. But, unlike most countries in the region, Viet Nam raises the largest portion of its revenues from the

VAT – 29% of all revenues. When excise taxes are added to the VAT revenue share, the total rises to 36% of revenues; when trade taxes are included, to 50%. The next largest share of revenue comes from the CIT (26%), while only 4% was raised from the only progressive tax in the country, the PIT, in that same year.⁷²

Overall, the Viet Nam revenue structure means that the allocation of the total tax load is likely to be regressive in incidence. This is because unlike PIT rates, VAT rates are not graduated in accordance with income levels; VAT rates are the same for rich and poor alike. Thus the VAT takes larger shares of incomes from those with low incomes than from those with higher incomes.

Because only 4% of all revenues are raised with progressive PIT rates while 29% of revenues are raised with regressive VAT rates in the year in question (2010), the overall tax mix is flattened. The progressivity of the PIT and of some excises cannot numerically outweigh the regressive impact of such huge amounts of revenue collected through the VAT. Thus at low and no income levels, the cost of the VAT on a market basket of minimum essential needs is likely to take a larger share of incomes for payment of the tax from those with low or no incomes than it will from those with higher incomes.⁷³ And, until the enactment of the VAT, those at no or low income levels did not and still do not pay PIT or CIT on such low incomes.

70 But see section C below, which discusses how some small businesses end up paying 'trapped' VAT.

71 IMF, 'Tax Reform in Vietnam: Issues for 2-11-2015' (2016), 8, <https://www.imf.org/external/country/VNM/rr/2012/031412a.pdf> (2010 data).

72 Ibid., 10. There is some indication that these revenue shares may have shifted slightly with the CIT share slightly exceeding the VAT share, but the PIT share remained extremely small. See OECD,

73 See e.g. Chia-Tern Huey Min, *GST in Singapore: Policy Rationale, Implementation Strategy and Technical Design* (Singapore: Ministry of Finance, 2004), 2.

Because the VAT is a tax on consumption, and because women and those with low or no incomes have less ability to pay for their basic consumption needs, the total tax load from the Viet Nam VAT sits most heavily on women, those living below the poverty level, and, geographically, those living in rural areas.⁷⁴ And, the incomes of these groups are not improving. In fact, gender income inequalities appear to be increasing. In 2004, the earnings gender gap was only 12%. As of 2012, it was nearly 20%. The biggest identifiable factors driving the increase in the earnings gender gap are increasing time pressures and occupational segregation by gender. However, the unexplainable 'residual' drivers of the earnings gap are also increasing, and are presumed to represent general attitudes toward gender equality.⁷⁵

The overall poverty level in Viet Nam is falling. However, the vulnerabilities of poverty are still substantial, particularly where women are concerned. At least 14% of women of reproductive age are anemic, 19% of children under age five are diagnosed as stunted, and 5.7% as wasting.⁷⁶ All of these conditions are the most severe indicators of malnutrition. Even among agricultural regions, income poverty is extremely high. This means that the full range of nutritional needs cannot be met even if daily calorie intakes do meet

minimum international standards. Because women are more vulnerable to these effects of poverty than men, so are significant numbers of children.

Viet Nam does of course provide a reduced VAT rate of 5% for some essentials (clean water, medicine, residential leases and titles, and agricultural products). This lower rate does reduce the costs of essential services for women and thus helps their smaller incomes go further. However, even the 5% VAT is still regressive at the lowest income levels. Women and girls are most often the primary users and managers of water in their households, and are also most often responsible for household hygiene, food preparation, and care work. All these roles have made them more vulnerable to any increased price of the basic goods and services.

Exemptions from the 5% VAT for basic commodities such as food and clean water would bring more benefits to women. And women would benefit more than men from zero rating and tax exemptions on food items, because women are likely to spend more of their incomes on food than their male counterparts. However, taking all the existing reduced VAT rates and exemptions together, it is clear that the basic market basket of minimum necessities is not rendered free of the VAT by these ad hoc adjustments.

Complete exemptions from the VAT are more effective than reduced rates or ad hoc exemptions in terms of poverty relief. Fortunately, the 10% standard rate provides exemptions for raw agriculture products, livestock, medical services, education, public transport, and sewer services. However, most of the other exemptions from the 10% rate do

74 For details on distributions of incomes by gender, region, family structure, and expenditures, see Yana Rodgers, 'Gender Differences in Socioeconomic Status: Evidence from the 2012 Viet Nam Household Living Standard Survey' (Hanoi: UNWomen, 2012), 42-43, tables 2-2, 2-3; 57, table 3-9 (based on VNHLSS 2012 data).

75 lb

76 See International Food Policy Research Institute, *Global Nutrition Report 2016: From Promise to Impact: Ending Malnutrition by 2030* (Washington DC: IFPRI, 2016), 123, table A3.5; 120, table A3.2; 121, table A3.3.

not appear to be particularly concerned with those living on low incomes. For example, this list of exemptions includes costly items such as technology and software, capital, land ownership, transportation equipment, and armaments. Thus it is likely that these exemptions produce more VAT reductions for male consumption expenditures and businesses than they do for women, simply because women are less likely to be able to afford to obtain such items. However, it would require detailed analysis of appropriate expenditures data by gender and incomes to determine exactly what these gender effects are.

To the extent that the VAT does burden women's essential consumption needs more than men's, best practices call for increases in social protection payments to cover the costs of the VAT on nonexempt necessities. In Viet Nam, however, it appears that social assistance payments still do not target the poorest, and that most of the working poor are still excluded from such income support programs.⁷⁷ At the same time, social insurance programs both compulsory and voluntary are aimed mainly at those in paid work, and are not taken up as often by those working in the voluntary, informal, or unregistered sectors. Women required to retire at the gender-specific age of 55 are particularly affected by low incomes, lower rates of contribution to income security programs or pensions, and lower earnings than men of the same ages,⁷⁸ and are even more vulnerable to the costs of the VAT.

High levels of VAT revenue are sometimes justified on the basis that their large revenues increase Government budgets so that they

77 OECD, Social Cohesion, 148-149.

78 Ibid., 150-152.

can spend more fully on public services and social protection. However, it is not clear that the regressive impact of this type of tax has yet been offset with universal and effective social protection programs or public services. Nor does it appear that such programs as have been ameliorated in such ways take the conditions and costs of longstanding economic gender inequalities into consideration.

6.2 THE VAT, CAPITAL ACCUMULATION, AND GENDER

Because the VAT is a flat tax on consumption, those who do not have to spend their entire incomes on meeting their basic living needs and investing in education and training for themselves and family members can benefit tremendously from the prevalence of VAT taxation. In a country such as Viet Nam in which the PIT exempts large amounts of incomes and in which the CIT is at a much lower rate than the PIT, incomes not needed for basic living expenses can be invested in increasing human capital through better health, increased knowledge, and thus higher earnings or profits. In addition, excess incomes can also be saved free of the VAT to accelerate the accumulation of capital.

Because women's incomes are on average lower than men's in Viet Nam, and because gender earnings gaps are growing, the shift to high levels of VAT revenue, low CIT rates, and continued high exemptions from the PIT enable men to benefit from these human capital, financial capital, and other savings benefits to a greater extent than women can. Incrementally this capital accumulation gap will increase economic gender inequalities over time, because even women who can save some of their aftertax and afterconsumption

funds will not be able to save at the same rate as men. These area additional factors to consider when examining the gender effects of the tax system.

6.3 THE VAT AND WOMEN-OWNED BUSINESSES

The structural effects of the VAT on the business sector have gendered consequences. The Viet Nam VAT applies automatically to all registered business, whether incorporated or unincorporated. Small businesses are not exempt from collecting the VAT, although the VAT paid to such enterprises can be treated as a deductible expense under the CIT.⁷⁹ The gender issues posed by the VAT arise from the costs of business registration, the risks of noncompliance with registration and VAT filing requirements, and the nature of women's smaller businesses as compared with men's.

Overall, women-led businesses in Viet Nam are smaller, less well capitalized, employ fewer paid workers, are more localized, and have lower profits than male-led businesses.⁸⁰ At the same time, they have less access to unpaid work performed by family members, because the role of unpaid household business worker is more often assigned by gender to women than to men in such circumstances. Thus women's profits will be lower due to higher employee costs, and will be less likely to collect as much VAT on their business value-added

against which to offset input VAT costs.⁸¹

Similar problems arise when women-led businesses acquire capital. Lacking equal access to commercial loans at documented rates or low-cost family loans, women more often than men resort to informal credit at higher rates. Thus they incur greater capital costs due to such financing differences. At the same time, with input VAT credits limited to the reasonable costs of capital, and with reasonableness tested against commercial lending rates that are documentable, women will receive lower input VAT credits for business capital. On average, this will reduce women's overall business profits as compared with men's.

With lower gross receipts and capital, less personal time, and fewer staff associated with women-led businesses, and smaller VAT-driven margins, the costs to women entrepreneurs of enterprise registration and VAT collection are relatively high when compared with more profitable male-led businesses. Thus even the inclusion of encouraged sectors in the VAT laws, such as VAT exemptions for agricultural items, may not be enough to equalize the gender effects of the VAT on small businesses. Because more women entrepreneurs are found in micro, small, and medium enterprises than in large enterprises, these disparate effects will sit more heavily on women.

At the same time, the increased emphasis on shifting revenue collection from progressive PIT and CIT systems to the VAT means that women business owners and particularly those who are self-employed will be burdened by taxes that they would not face if they were only taxed under more comprehensive PIT laws.

79 Law on Corporate Income, Circular No. 78/2014/TT-BTC, article 6, as amended by Circular No. 96/2015/TT-BTC, art. 4 (Jun. 22, 2015).

80 Aaron Akram-Lodhi and Irene van Staveren, *A Gender Analysis of the Impact of Indirect Taxes on Small and Medium Enterprises in Vietnam* (Netherlands: Institute for Social Studies, 2003), 18-20.

81 *Ibid.*, 21-22.

7

CONCLUSIONS AND RECOMMENDATIONS

This review of the major linkages between gender inequalities and taxation demonstrates that tax policies interact with the socioeconomic realities of women's lives to reinforce and intensify existing economic gender inequalities. Because these linkages are constructed and affect women based on characteristics such as age, education, health, geographic location, wealth, incomes, family composition, and opportunities, tax-related gender effects are not uniform. However, they do tend to be consistent overall in cross-country comparisons and over time.

The main conclusion that arises from this review is that just as expenditure and other Government fiscal policies affect women on the basis of their gender, so too do taxation, tax benefit, and tax-related expenditure policies. Thus all of the domestic, constitutional, regional, and international agreements that call for gender-based analysis of expenditure policies also call for analysis of the gender impact of all tax and other fiscal policies as well.

The crucial tool that has emerged for use in benchmarking, monitoring, evaluating, and improving gender equality in relation to taxation is gender impact analysis of revenue measures through the mechanism of gender-responsive budgeting. Well over 90 countries now actively engaged in some form of gender budgeting.⁸² Growing numbers of these countries also engaging in gender-based analysis of tax laws. These developments make it clear that holistic examination of the gender impact of budgets is as important as looking at how each tax, tax benefit, transfer, or expenditure provision independently affects women on the basis of their gender and other

82 Debbie Budlender, Budget Call Circulars and Gender Budget Statements in the Asia Pacific: A Review (UNWomen, 2015), 1.

characteristics.⁸³

Thus the chief recommendation that emerges from this review is that gender-based analysis must be applied systematically to all tax, transfer, benefit, and expenditure laws and policies on an ongoing basis to bring clarity to how these gender effects are maintained. This also means that gender-based analysis of tax policies should be used to design new laws and policies to reduce existing gender inequalities.

Numerous specific recommendations are also made here, because effectively implementing comprehensive gender budgeting and gender-based analysis of specific tax laws depends on establishing key institutional resources and capabilities and on being able to take definitive steps to evaluate and correct tax policies that reinforce gender inequalities or impair progress toward increase gender equalities.

7.1 INVEST IN BUILDING INSTITUTIONAL CAPACITY FOR GENDER ANALYSIS OF TAXATION

- (1) Gender budgeting and gender-based analysis of tax, tax benefit, and tax-related expenditure laws calls for *multidisciplinary expertise in gender, law, public finance, tax policy, and gender-based analytic methods*. Invest in capacity building in Government departments, in civil society, and

83 For an example of gender impact analysis of all expenditure and revenue items in two omnibus budget bills, see Kathleen A. Lahey, *Canada's Gendered Budget 2012: Impact of Bills C-38 and C-45 on Women* (Kingston Ont.; Queen's University, 2013), <http://femlaw.queensu.ca/working-papers>.

collaboratively across policy domains. For example, countries with highly developed expertise in this form of policy analysis often specialize in various aspects of gender analysis of taxation, such as in relation to workforce policies, or pensions, or education.

- (2) Gender analysis of tax laws depends on access to **comprehensive sex-disaggregated data** on all dimensions of women's and men's social and economic conditions, including as a minimum data on pretax and posttax incomes broken down by sources; incomes by occupational classifications and education/training attainment; paid and unpaid work hours; care resources; consumption expenditures; minimum market baskets of necessities; and informal economic activities. Coordinate this with all business and household survey instruments going forward.
- (3) Gender analysis of tax laws also depends on access to up to date and *comprehensive taxation statistics* reporting on each line item in each type of tax return, by gender, age, family status, industry, and other key indicators, and **gendered tax expenditure reports** itemizing all tax incentives and benefits provided through fiscal mechanisms.
- (4) **Maintain comprehensive data, technical, and multidisciplinary libraries** to ensure that Government ministries and educational institutions can take advantage of the latest and most complete sources of knowledge on advantage of advances in this area of knowledge.
- (5) Provide ongoing **research funding** to

ensure that civil society organizations, educational institutions, and Government departments to support all aspects of gender mainstreaming in national and sectoral program and policies to integrate gender considerations at every level of research, policy, and advocacy for tax justice.

7.2 GENDER EQUALIZE THE IMPACT OF THE PIT

- (6) **Benchmark the allocation of the PIT by gender** across the entire population along with data on all potentially taxable incomes and costs of living at the survival and thriving levels to map potential PIT revenue gaps.
- (7) **Examine the gender impact of the allocation of dependency allowances** and use that data to devise more gender equal ways of providing income support for dependents based on need and resources.
- (8) **Calibrate personal allowances with actual costs of living** in order to ensure that the PIT is paid by all individuals with ability to pay while meeting their own consumption and income security needs.
- (9) **Review the distribution of PIT tax exempt employment benefits** for incidence by income and gender, and eliminate gender biases in eligibility requirements.
- (10) **Identify the gender and distributional impacts of replacing the VAT with PIT revenues.**

7.3 CORRECT GENDER INEQUALITIES IN THE CIT SYSTEM

- (11) Increase **women's access to business training, financing, and** incorporation.
 - (12) Examine the gender impact of CIT mechanisms to **block incorporation of employment, professional, and family incomes.**
 - (13) Implement **subsidized social insurance rates for owners of unincorporated businesses.**
 - (14) Carry out detailed gender impact studies of corporate pension programs, tax treatment of **corporate source interest and dividends, and special reduced CIT rates.**
 - (15) Revise both the labour code and the CIT to **require workplace gender equality measures and workable tax benefits for compliance.**
 - (16) Develop gender expertise to conduct a **comprehensive gender impact analysis of the CIT system.**
- D Address the negative gender and poverty effects of the VAT**
- (17) Conduct a comparative study of VAT poverty alleviation and gender equality provisions to **insulate those living in or near poverty levels from VAT costs,** including by removing the VAT from all basic necessities of living and of opportunity.
- (18) Examine the gender impact of coordinating the impact of the PIT, CIT, and VAT on the rate of **accumulation of human and financial capital** at all income levels.
 - (19) Gender equalize the **impact of the VAT on women-owned businesses,** for example with training, formalization support, and meaningful compensation for nondeductible or nonrefundable upstream VAT outlays.
- E Review the overall gender impact of the tax mix on the formal and informal sectors**
- (20) The heavy weighting of the total tax revenue system toward consumption taxes places heavy burdens on those with no and low incomes and opportunities. This issue should be addressed once expertise and data resources for comprehensive gender impact analysis of tax and other fiscal laws are in place by examining **alternative revenue structures to promote aftertax economic gender equality and optimize poverty reduction programs.**
 - (21) Include detailed empirical research on the **links between unpaid work and taxation** in this review.
 - (22) Develop an **economic and tax gender equality monitoring framework** for use in guiding evaluation of policy formation and reform going forward, including the gender impact of all taxation and tax-related measures.

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