

Gender Equality and a Rights Based Approach to Tax Reform

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Abstract:

Gender bias in economic reform is a global issue. UN Women, the United Nations entity responsible for promoting women's empowerment and gender equality, advocates a rights-based macroeconomic agenda that will ensure that human rights, including the right to education and dignified employment are protected, and drive the process of macroeconomic reform. This extends beyond developing countries. Following the GFC, austerity regimes introduced by developed economies and closely linked to tax regimes have impacted on the economic security of women. At the same time, Australia is embarking on another round of tax reform. The reform discussion paper has been framed as "Lower, Simpler, Fairer", and argues that Australia's continued economic growth and international competitiveness depends on tax reform. The purpose of this paper is to establish the need for a framework for macroeconomic policy and, in particular fiscal policy, which incorporates human rights principles which address gender inequality. We propose this framework based on the human rights treaties to which Australia is a signatory.

Once this framework for tax policy is established, we apply the framework to the Australian tax system. We examine the most common taxes (personal income tax, GST, taxes on capital, property taxes and taxes on retirement savings) to determine the extent of any inherent tax bias, then apply a human rights gendered lens to examine a range of tax reform proposals currently under consideration in Australia. In particular, we consider the impact that any reforms may have on the economic and social rights of women. Finally, relying on this analysis we draw conclusions as to the human rights implications in respect of five contentious areas for possible reform.

Gender Equality and a Rights Based Approach to Tax Reform

1. Introduction

Gender inequality in economic reform is a global issue. Women's rights should not and cannot be separated from principles of social and economic justice.¹ Nor can we ignore the gendered assumptions inherent in what appears to be gender neutral tax regimes.² Within this context, UN Women,³ the United Nations entity responsible for promoting women's empowerment and gender equality, advocate for a rights-based macroeconomic agenda that will ensure that human rights, including the right to education and dignified employment are protected, and are driving the process of macroeconomic reform. While often considered a developing nations problem, gender inequality in economic reform extends beyond these countries to also affect developed nations such as Australia.

In recent decades, despite a growing awareness of gender inequality in relation to fiscal policy, most countries have adopted regressive tax reform proposals which have significantly impacted on women's wellbeing, resulting in increased gender inequality. Most recently, following the global financial crisis in 2008, developed economies implemented austerity regimes in the tax and transfer systems that have had a significant impact on the economic security of women. Aggressive tax reform proposals, coupled with the austerity measures, mean that women are further from substantive economic and social gender equality than they were 30 years ago. This result is arguably due to the conservative neoliberal approach to macroeconomic policy adopted by nations where the focus is on taxing for growth rather than a broader objective of taxing for social policy. Such an approach is detrimental to gender

¹ UN Women, 'Progress of the World's Women 2015-16' (UN, 2015) <http://progress.unwomen.org/en/2015/> accessed 16/11/2015 p26.

² Liz Nelson, 'Gender and Tax Justice' (2015) 10(1) *Tax Justice Focus* 4.

³ Above n 1, Chapter 4.

equality. As Lahey explains, 'the negative effects of taxing for growth on the status of women, poverty levels, and human development has been pervasive and profound.'⁴

Within a nation's macroeconomic policy is its fiscal policy, generally with the traditional emphasis on a public finance approach with the criteria of equity, efficiency and ease of administration considered to be the relevant design criteria when proposing tax reform policy.⁵ Both the concepts of equity and efficiency have been critically assessed within the tax and feminist literature with their limitations highlighted in the context of gender inequality and the explicit and implicit impacts on women.⁶ Further, gender responsive budgeting, with both gender impact analysis and political engagement components, has made significant inroads in some countries. However, much of the work focuses on an analysis of existing tax regimes, specific taxes and specific policies rather than a broad approach to tax system design which provides a macroeconomic framework that takes into account gender inequality. As such, we propose a framework for macroeconomic policy, and in particular fiscal policy, which incorporates human rights principles that address gender inequality. We propose this framework based on the human rights treaties to which Australia is a signatory.

Once this framework for tax policy is established, we apply the framework to the Australian tax system. We examine the most common taxes (personal income tax, GST, taxes on capital, property taxes and taxes on retirement savings) to determine the extent of any inherent tax bias, then apply a human rights gendered lens to examine a range of tax reform proposals currently under consideration in Australia. In particular, we consider the impact that any reforms may have on the economic and social rights of women. Finally, relying on this analysis we draw conclusions as to the human rights implications in respect of five contentious areas for possible reform.

⁴ Kathleen Lahey, 'Women and Taxation - From Taxing for Growth and Tax Competition to Taxing for Sex Equality' (2015) 10(1) *Tax Justice Focus* 8.

⁵ Diane Elson, 'Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW' (Unifem, 2006) <http://internationalbudget.org/wp-content/uploads/Budgeting-for-Women%E2%80%99s-Rights-Monitoring-Government-Budgets-for-Compliance-with-CEDAW.pdf> accessed 18/11/2015, p72.

⁶ Neha Hui, 'Gender Implications of Budget Policies' (Centre for Budget and Governance Accountability, March 2013).

2. A Rights Based Approach

Gender Budget initiatives (GBI) are not new and numerous governments around the world have previously or currently attempt to analyse their budgets from a gender perspective. In fact, Australia pioneered GBI with a pilot initiative in 1984 and a move to an annual Women's Budget Statement in 1987. After several changes in design and format the statement ceased being published in 2014.⁷ The annual report was designed to achieve three goals:

- To raise awareness within government of the gender impact of the budget and the policies funded;
- To make governments accountable for their commitments to gender equality; and
- To bring about changes to budgets and the policies they fund to improve the socio-economic status of women.⁸

Three distinct approaches to gender inequality have developed in the literature: an equality approach,⁹ a capabilities approach,¹⁰ and a human rights approach.¹¹ While all three approaches offer insight into gender inequality in economic policies, human rights obligations have generally not been embedded into a narrowly defined macroeconomic framework. Traditionally, fiscal and budgetary policy is analysed separately for any gender impact on the basis of equity principles. This arguably allows an assessment of both the direct and indirect impact of budgetary proposals in deciding whether reforms should proceed.¹² However, where this occurs, the impact assessment is a separate part of the process and, while it can be applied at every stage of policy making, it is not fully incorporated into policy design. That is, such an analysis is separate and evaluative rather than embedded in the process of reform. In

⁷ Rhonda Sharp, Siobhan Austen and Helen Hodgson, 'Gender Impact Analysis and the Taxation of Retirement Income Savings in Australia' (2015) 60 *Australian Tax Forum* 763.

⁸ Above n 5.

⁹ See Janet Stotsky, 'How Tax Systems treat Men and Women Differently' (1997) March 1997 *Finance and Development* 30.

¹⁰ Miranda Stewart, 'Gender Equity in Australia's Tax System: A Capabilities Approach' in Kim Brooks et al (eds), *Challenging Gender Inequality in Tax Policy Making* (Hart Publishing, 2011).

¹¹ Above n 5.

¹² Susan Himmelweit 'Making Visible the Hidden Economy: The Case for Gender Impact Analysis of Economic Policy' Susan Himmelweit, 'Making Visible the Hidden Economy: The Case for Gender-Impact Analysis of Economic Policy' (2002) 8(1) *Feminist Economics* 49, p50.

this context, a gender impact analysis of economic policy applies three principles. First, policies are assessed on both paid and unpaid economies. Second, there is an assessment of the distribution between men and women. Third, equity is evaluated both between and within households.¹³ While each of these assessments is valuable, they tend to provide a framework for assessing evidence of gender inequality and offer accountability solutions rather than a framework for alleviating gender inequality within a macroeconomic framework.

2.1 Equality in Practice

It is recognised that equality in the law between men and women does not guarantee equality in practice.¹⁴ Formal equality and substantive equality, or for the purposes of this paper genuine fiscal equality, must be construed as two separate concepts. While equal rights embedded in the legal system provide a central reference point and reflect policy shifts, 'entrenched inequalities, discriminatory social norms, harmful customary practices, as well as dominant patterns of economic development can undermine their implementation and positive impact.'¹⁵ Rather than the adoption of laws which treat men and women equally, substantive equality considers the application of these laws and the subsequent results and outcomes.¹⁶ UN Women explains:

The concept of substantive equality arose out of the recognition that - because of the legacy of historical inequalities, structural disadvantages, biological differences and biases in how laws and policies are implemented in practice - formal equality is not enough to ensure that women are able to enjoy the same rights as men. To achieve substantive equality, therefore, requires both direct and indirect discrimination to be addressed. It also requires specific measures to be adopted that redress women's disadvantages and, in the longer term, the transformation of the

¹³ Above n 12, p64-65.

¹⁴ Above n 1.

¹⁵ Above n 1, p12.

¹⁶ Above n 1, p12.

institutions and structures that reinforce and reproduce unequal power relations between women and men.¹⁷

Traditional gender inequality frameworks which analyse gender bias in tax systems recognise this difference. Stotsky¹⁸ was among the first, and her framework of explicit and implicit bias is seen as a foundational tool for analysis. Explicit biases arise where the law specifically establishes rules that treat men and women differently. Implicit biases are more pervasive, and arise where the operation of the rules has a different effect on men and women, based on the interaction of the tax laws with social and economic norms. Consequently, explicit biases are observed and addressed through formal equality measures, while implicit biases are observed and addressed with substantive equality measures.

Barnett and Grown¹⁹ built on Stotsky's framework to design a hypothetical tax typology to develop recommendations for developed and emerging economies based on their level of development and the range of tax bases available. This typology is explained in Table 1 below.

¹⁷Above n 1, p35.

¹⁸ Janet Stotsky, 'Gender Bias in Tax Systems' (1996) http://www.elibrary.imf.org.dbgw.lis.curtin.edu.au/doc/IMF001/02720-9781451852226/02720-9781451852226/Other_formats/Source_PDF/02720-9781455230235.pdf accessed 10/11/2015.

¹⁹ Kathleen Barnett and Caren Grown, 'Gender Impacts of Government Revenue Collection: The Case of Taxation' (Commonwealth Secretariat, 2004) <http://www.gsdr.org/document-library/gender-impacts-of-government-revenue-collection-the-case-of-taxation/> accessed 18/11/2015.

Table 1 Hypothetical Gender-Tax Typology

Level of Development	Principal Women's Economic Activities	Principal Taxes Affecting Women	Principal Type of Gender Bias	Principal Tax Recommendations
Very low	Agriculture Market selling Small trade Home-based production Unpaid domestic work	VAT Selective sales taxes Property taxes User Fees	Implicit	Simplify Low-income relief/credits No user fees for basic services Exemptions for food and basic necessities
Medium low	Agriculture Market selling Small trade Small services Unpaid domestic work	VAT Selective sales taxes personal income tax & Corporate taxes Property taxes User Fees	Implicit	Simplify income taxes Low-income relief Low tax rates No user fees for basic services
Medium high	Small trade Small services Public Sector Factory Work Unpaid domestic work	VAT Selective sales taxes personal income tax & Corporate taxes Property taxes User Fees	Explicit	Remove explicit bias Low-income relief Increase marginal rates Some targeted tax incentives/credits
High	Full economic integration	VAT/Sales tax Selective sales taxes personal income tax & Corporate taxes Wealth & inheritance taxes Property taxes User Fees	Explicit	Remove explicit bias Low-income relief Increase marginal rates Some targeted tax incentives/credits

Grown and Valodia²⁰ subsequently conducted a comparative gender analysis across ten countries with different levels of economic development, and different tax systems. Their analysis examined the structure and incidence of the various direct and indirect taxes that form the basis of the tax system in each country examined, then simulated the effect of a range of reforms to determine the gender impact of those reforms.

While offering insight into explicit and implicit gender inequality issues, the above frameworks have ultimately been criticised as being based on the criteria of equal

²⁰ Caren Grown and Imraan Valodia, *Taxation and Gender Equity: A Comparative Analysis of Direct and Indirect Taxes* (Taylor and Francis, 2010).

treatment for men and women.²¹ As such, they arguably fail to recognise and address differences as required human rights treaties explained below. Hence, the identification of explicit or implicit bias is only the starting point. Explicit bias can be addressed through adopting an equality framework; but implicit bias needs more nuanced policy, and is best addressed through a human rights or capabilities framework.

2.2 Fiscal Equality

It has been argued that women's fiscal equality is fundamental to all human rights.²² Therefore, logically, macroeconomic policy and its subset of fiscal policy needs to take into account the human rights principles which governments have committed to. In its recent Report entitled the *Progress of the World's Women*, UN Women, an agency of the United Nations, uses international human rights standards to assess both laws and policies for substantive equality. It suggests that action is required in three interrelated areas: redressing women's socioeconomic disadvantage; addressing stereotyping, stigma and violence; and strengthening women's agency, voice and participation.²³ Part of the progress towards substantive equality relates to women's rights to information about laws, government policy and budgetary details including the right to scrutinize public budgets to 'ensure public services meet women's needs better; and having access to a range of high quality services can in turn support women's right to work, creating powerful synergies.'²⁴

UN Women stresses that if substantive equality is to be achieved, economic and social policies must work in tandem.²⁵ It recognises that economic policy is generally seen as promoting economic growth while social policy addresses its 'causalities' such as poverty and inequality.²⁶ However, economic policy can pursue the goal of gender

²¹ Elson above n 5, p 77; Claire Young, 'Taxing Times for Women: Feminism Confronts Tax Policy' (1999) 21 *Sydney Law Review* 487.

²² Above n 4, p10.

²³ Above n 1, p13.

²⁴ Above n 1, p13.

²⁵ Above n 1, p13.

²⁶ Above n 1, p13.

equality and social justice, while social policies can contribute to economic growth.²⁷

UN Women states:

The specific policy package to achieve substantive equality will differ from context to context. Ultimately, the aim is to create a virtuous cycle through the generation of decent work, gender-responsive social protection and social services, alongside enabling macroeconomic policies that prioritize investment in human beings and the fulfilment of social objectives.²⁸

While UN Women provide for targeted 'grass roots' action as previously outlined, it also recognises that broad based priority areas within a policy based framework must also be prioritised. In addition to decent work for women and gender responsive social policies UN Women views rights based macroeconomic policies as a key priority area. It is the third of the priority areas, rights based macroeconomic policies, which are the primary focus of this paper.

2.3 Human Rights Obligations

Human rights treaties have been signed by many nations, with two especially significant in the global context and specifically relevant in the Australian fiscal policy context: the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These treaties have been recognised as important contributors to macroeconomic policy, not only to guide that policy but especially in the context of the need for temporary special measures to correct for indirect discrimination. This is particularly relevant where there is a lack of substantive equality and applies where gender neutral policies are actually modelled on male norm and

²⁷ Above n 1, p13.

²⁸ Above n 1, p13.

lifestyles and inherently incorporate stereotypical expectation, attitudes and behaviour.²⁹

The first international human rights treaty of relevance to fiscal policy is the ICESCR, which was ratified by Australia on 10 December 1975. It recognises that, 'in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.'³⁰ These socio-economic rights are understood to include the right to education, housing, healthcare and a certain standard of living. Of particular importance for fiscal policy are the following Articles:

Article 3: Ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 6: Recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 9: Recognize the right of everyone to social security, including social insurance.

Article 10: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

²⁹ Above n 1, p36.

³⁰ United Nations, 'International Covenant on Economic, Social and Cultural Rights ' (1966) <https://www.humanrights.gov.au/international-covenant-economic-social-and-cultural-rights-human-rights-your-fingertips-human-rights> accessed 18/11/2015.

Article 11: An adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

Article 12: The right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The second international human rights treaty of relevance to fiscal policy and of critical importance in addressing gender inequality is the CEDAW. In 1979, the UN adopted the CEDAW, with Australia ratifying the Convention on 28 July 1983. The CEDAW is generally understood to be a 'bill of rights' for women and contains 30 Articles defining key principles of equality 'based on the belief that basic human rights include the true equality of men and women.'³¹ As a signatory, Australia has committed itself to ensuring the elimination of discrimination against women, defined 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.³²

Of particular importance for fiscal policy are the following Articles:

Article 2: Eradicate discrimination against women by introducing new laws or policy, changing existing discriminatory laws and providing sanctions for discrimination where it occurs.

Article 3: Actively promote women's full development and advancement, so that they can enjoy human rights and fundamental freedoms on the same basis as men.

³¹ Australian Human Rights Commission, *Woman of the World: What is CEDAW* (12/11/2015).

³² United Nations, 'Convention on the Elimination of All Forms of Discrimination against Women' (1979) <https://www.humanrights.gov.au/convention-elimination-all-forms-discrimination-against-women-human-rights-your-fingertips-human>, Article 1, accessed 18/11/2015.

Article 5: Address and change social and cultural patterns that reinforce the stereotyping of women and traditional gender roles, or that promote the relative superiority or inferiority of either of the sexes.

Article 7: Women should have the right to vote, the right to stand for election, be involved in formulating government policy and actively participate in political parties, lobby groups and NGOs

Article 10: Women have the same opportunities as men in all aspects of education and training - from kindergarten to tertiary education. Governments are required to ensure that stereotypical concepts of the roles of men and women are eliminated.

Article 11: Protect women's rights to work, to ensure that women have the same training and employment opportunities as men, that women receive equal pay for work of equal value. Ensure that women have access to the same benefits, compensatory schemes, and allowances as men, especially in relation to retirement and incapacity to work.

Article 12: Take all necessary measures to eliminate discrimination against women in the field of health care and ensure women and men have equal access to health services.

Article 13: Women have equal access to family benefits, forms of financial credit, including mortgages, and the same rights as men to participate in recreational activities and cultural life.

Previous studies have adopted a CEDAW perspective as the basis for analysing public revenue, also drawing on the work of GBIs.³³ These studies provide useful insight into current tax regimes. However, in a similar vein to previously described research, they also tend to evaluate existing taxes rather than provide the foundation for reform with human rights obligations built in to a broader macroeconomic policy framework. That is, rather than starting from a human rights perspective, these studies recognise the current criteria of tax reform design (efficiency, equity and ease of administration) as

³³ Above n 5.

the design principles and reconceptualise current policy through a human rights lens. As an alternative, we propose that human rights obligations need to be built into fiscal policy.

The two treaties, when incorporated into fiscal policy, must work in tandem to achieve substantive gender equality. While the CEDAW provides an understanding of what is meant by gender equality and is specifically targeted at discrimination against women, the ICESCR specifically addresses women's economic and social rights. These treaties clarify the obligations of signatory states and provide the basis for legislative change as well as obligations and guidance on appropriate means of addressing inequality. They require the states to take a proactive role in ensuring equality in social and economic rights. Once entrenched in domestic legislation, these 'laws that establish that women and men have equal rights provide the basis for demanding and achieving equality in practice. They are a touchstone for political and cultural struggles, set standards and incentives for changes in social norms and attitudes and influence shifts in policy.'³⁴ However, there are recognised limitations as legislative changes are only part of the story with such obligations providing 'the ethical basis and inspiration for collective action to change policies as well as social norms, attitudes and practices.'³⁵ As UN Women explains, 'human rights principles are also an important basis for the design of policies, for monitoring their implementation and outcomes and for holding all duty-bearers—States as well as global institutions and corporations—to account for the realization of substantive equality.'³⁶ Human rights principles and the ensuing legislative enactment of the required standards provide the basis for equality with 'power inequalities, structural constraints and discriminatory social norms and practices' needing to be addressed.³⁷ Despite the implementation of these treaties, women continue to experience economic inequality.³⁸ It is suggested, therefore, that states 'have a proactive role as arbiters of social and economic rights'³⁹ and human rights commitments must be incorporated into macroeconomic policy if there is to be substantive gender equality.

³⁴ Above n 1, p28.

³⁵ Above n 1, p16.

³⁶ Above n 1, p17.

³⁷ Above n 1, p24.

³⁸ Above n 4, p8.

³⁹ Above n 1, p25.

2.4 Rights Based Macroeconomic Policies

A global approach to human rights needs to be acted upon by being incorporated into state based policies to support gender equality. The economic environment of a nation is created through its macroeconomic policies which, in turn, 'shape the overall economic environment for realising women's economic and social rights.'⁴⁰ As such, the macroeconomic framework of a nation provides the foundation for advancing substantive equality for women.⁴¹ Macroeconomic policy is traditionally regarded as gender neutral. As such, it customarily fails to take into account substantive gender equality, instead focusing on the operation of the economy as a whole to provide a stable economic environment which in turn fosters strong and sustainable economic growth. Lahey explains that this has occurred because 'fiscal policies are constructed around one goal – taxing for growth – and largely ignore taxing for social needs.'⁴² However, distributive consequences are not gender neutral. The focus of traditional neoliberal macroeconomic policy is on fiscal (tax and government expenditure) and monetary policy for the creation of jobs, wealth and improved living standards.⁴³ Yet macroeconomic policy has a significant effect on paid employment and then the flow on of the fiscal resources needed to implement the needed social policies and programs. Because of the emphasis on paid employment, macroeconomic policies also fail to adequately consider the importance of unpaid care and domestic work as well as non-market investments in people.⁴⁴ Macroeconomic policies affect gender equality in four distinct ways: a direct impact on the quantity and quality of employment opportunities; the burden of unpaid care and domestic work; distributive consequences through taxation; and resources available to finance social policies.⁴⁵

The current, narrowly focused, approaches to macroeconomic policy, with an emphasis on GDP growth, mean that structural disadvantages faced by women are

⁴⁰ Above n 1, p194.

⁴¹ Above n 1, p196.

⁴² Above n 4.

⁴³ Robert Dolamore, *The tools of macroeconomic policy—a short primer* (Parliament of Australia) http://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/MacroeconomicPolicy accessed 12/11/2015.

⁴⁴ Above n 1, p192.

⁴⁵ Above n 1, p194-195.

not addressed.⁴⁶ GDP itself is measured according to goods and services produced which means that non-market services (unpaid care and domestic work) is excluded, reinforcing the stereotype of the lack of value in such work. In addition to the narrow definition of GDP, within a human rights context, GDP growth is only seen as successful⁴⁷ if it leads to better social outcomes, which includes gender equality.⁴⁸ The lack of focus within macroeconomic policy on employment creation also limits the ability to address women's socio-economic advantage in the labour market.⁴⁹ Finally, restrictive macroeconomic policy choices affects the ability to fund gender equality social policy initiatives and ensure that the tax system has positive redistributive consequences.⁵⁰ Recent austerity measures post 2008 are indicative of the consequences tight budgetary measures have on transfers and spending as well as their regressive effects on gender inequality. Again, such narrowly focused neoliberal macroeconomic policy has decreased the ability of governments to raise the revenue needed, spending cuts have ensued and women have been disproportionately affected.⁵¹

While the issues outlined above are well known, very seldom are they addressed through macroeconomic policies. This is despite the recognition that 'markets do not always function well; unregulated markets can result in financial crises, too little employment, an inadequate supply of public goods and services and environmental deterioration; distribution matters; and inequality affects economic stability and performance.'⁵² In contrast, feminist macroeconomists have developed frameworks which incorporate broader concepts such as unpaid labour and consider distributive outcomes. Building on this, a human rights based approach to macroeconomic policy requires a broader set of objectives to be considered as well as the inclusion of social policies such as gender equality.⁵³ As UN Women explains, such an approach provides an alternative framework for assessing and prioritising economic policy choices which can lead to, among other things, the democratisation of economic

⁴⁶ Above n 1, p196.

⁴⁷ Although it is recognised that the casual relationship between GDP growth and gender equality is mixed: above n 1, p197.

⁴⁸ Above n 1, p197.

⁴⁹ Above n 1, p197.

⁵⁰ Above n 1, p197.

⁵¹Diane Elson, 'Gender Equality Requires More Tax Revenue' (2015) 10(1) *Tax Justice Focus* 8.

⁵² Above n 1, p210.

⁵³ Above n 1, p15.

governance.⁵⁴ The key principles and obligations for a human rights based macroeconomic policy require: non-discrimination and equality; minimum essential levels of social and economic rights; progressive realisation and non-retrogression; maximum available resources; accountability, transparency and participation, and extraterritorial obligations.⁵⁵

The Centre for Economic and Social Rights (CESR) highlights four crucial functions of tax from a human rights perspective: resourcing, redistribution, representation and re-pricing.⁵⁶ It argues that 'each is potentially a powerful channel for tackling inequality: the first in terms of providing further resources for accessible and high-quality public services, the second in redistributing income and wealth more fairly, and the third by increasing the voice and power of disadvantaged people in fiscal and political affairs, while also strengthening the accountability of those in power. Fourth, shaping positive and negative incentives through re-pricing goods and services and correcting market distortions can be a powerful tool to instil more substantive equality.'⁵⁷

Supporting the proposition that human rights obligations should be built into macroeconomic policy, UN Women summarises the value of a robust fiscal regime in the human rights context as follows:

Human rights emphasize the dignity and freedom of the individual, but their realization depends heavily on solidarity and collective action. Putting in place policies for substantive equality requires collective financing, ideally through progressive taxation. The narrow targeting of social protection to the poorest households may seem to make it more affordable than building universal systems that benefit everyone. But universal systems can actually expand financing options by increasing the willingness of middle and higher income groups to pay taxes for well-

⁵⁴ Above n 1, p193.

⁵⁵ Above n 1, p210-211.

⁵⁶ Kate Donald, *Women's Rights and Revenues: Why We Can't Achieve Gender Equality Without Fiscal Justice* (26/03/2015 Centre for Economic and Social Rights) <http://cesr.org/article.php?id=1710> accessed 24/11/2015.

⁵⁷ Above n 56.

functioning education, health or pension systems that they would also use.⁵⁸

Within a fiscal policy context, there are numerous measures that can be adopted as part of the tax and transfer system. UN Women suggests four broad tax policy considerations,⁵⁹ and associated tax strategies,⁶⁰ which are adopted in this paper. In Table 2 below we suggest a framework for considering human rights obligations within fiscal policy.

Table 2: Tax Policy Strategies for a Human Rights Framework

Raise resources for gender-sensitive social protection and social services by enforcing existing tax obligations.	Improve the efficiency of tax collection through addressing institutional and capacity constraints, which can mobilize additional resources even if the tax mix and tax rates do not change.
Reprioritizing expenditure (for example, reducing expenditure on defence and increasing expenditure on social services).	Reprioritize expenditures towards areas that advance gender equality and support the realization of rights. Design tax systems to redistribute income and to redress socio-economic disadvantage by ensuring that women and marginalized groups are not disproportionately burdened. Use gender-responsive budgeting to guide revenue mobilization and spending decisions.
Expanding the overall tax base (minimising or removing tax exemptions and allowances that primarily benefit wealthier groups).	Increase tax revenues by introducing new taxes and tax policies that generate resources from under-taxed areas, such as the financial sector or natural resource exports.
Global policy coordination to minimise spill-overs and ensure governments can mobilise resources.	Global cooperation for the realization of economic and social rights could be achieved through the universal acceptance of extraterritorial obligations of governments with regard to the realization of rights beyond their own borders, as outlined in the Maastricht Principles, which include consideration of the roles of transnational corporations, non-governmental organizations and intergovernmental institutions.

⁵⁸ Above n 1 p17.

⁵⁹ Above n 1 p16.

⁶⁰ Above n 1 p214-215.

The strategies in the table encompass accountability measures, both domestically and globally, as well as measures that address the adequacy and distribution of tax revenue. We focus on the adequacy and distribution of tax revenue.

Earlier in the paper we highlighted the difference between formal equality and substantive equality. In practice, and within a human rights based macroeconomic policy framework, this means that equality also needs to be considered in the context of not only opportunities but also outcomes. Consequently, different treatment may be required to achieve substantive equality. The need for such an approach is well understood in a human rights context but is little understood in an economic policy context. UN Women explain that ‘the concept of substantive equality has been advanced in key human rights treaties to capture this broader understanding: that inequality can be structural and discrimination indirect; that equality has to be understood in relation to outcomes as well as opportunities; and that ‘different treatment’ might be required to achieve equality in practice.’⁶¹

To the extent that a human rights framework requires the elimination of discriminatory practices, whether legislative or a result of cultural and societal norms, feminist frameworks that identify explicit and implicit discrimination are an important starting point. However a human rights approach allows policy makers to adopt differential treatment where it is necessary to address discrimination in macro-economic policy.

The end goal of a broad based human rights based macroeconomic policy which incorporates gender equality issues is the recognition of economic and social rights for all.⁶² The connection of the two, however, is not enough to ensure the desired outcomes as the balance between social and economic policy must be considered. Even when the divisions between social and economic policy are removed and the two are seen as one, there should not be an over emphasis on fiscal policy to the detriment of social justice. As Lahey points out:

For more than a generation, the IMF and the World Bank have pushed governments to prioritise economic growth over social justice in their approach to fiscal policy. The results of this experiment are now in;

⁶¹ Above n 1, p35.

⁶² Above n 1, p209.

sluggish growth, steepening inequality and the continued subjugation of women. It is time for a new vision of development, in which real needs take precedence over the fantastical desires that incubate in the global institutions.⁶³

Now that we have argued that human rights obligations should be incorporated into fiscal policy and outlined a framework for evaluating tax reform proposals within that context, we move to consider the Australian tax system.

3. The Optimal Tax Mix

Australia is currently embarking on another round of tax reform. The reform discussion paper has been framed as “Lower, Simpler, Fairer”,⁶⁴ and argues that Australia’s continued economic growth and international competitiveness depends on tax reform.

Prior to embarking on an analysis of specific tax reform, an optimal tax mix within a human rights framework needs to be considered. It has been recognised in the literature that the main issue to consider when human rights principles are applied to entire programs of tax reform, is the balance between corporate and personal tax, and then the balance between direct and indirect tax.⁶⁵ Previous analysis also suggests that when corporate taxes are lowered, personal taxes are increased and when income taxes are reduced, sales taxes are increased, all with a greater incidence of tax falling on women.⁶⁶

UN Women makes the case that progressive taxes are directly related to community solidarity.⁶⁷ It lists income tax as most progressive, followed by earmarked taxes, indirect taxes, public then private insurance schemes, user fees and self-provision as the most regressive forms of financing the provision of social services.⁶⁸

⁶³ Above n 4, p8.

⁶⁴ Australian Government, 'Re:Think Tax Discussion paper' (15 March 2015 http://bettertax.gov.au/files/2015/03/TWP_combined-online.pdf at iii, accessed 24/11/2015.

⁶⁵ Above n 5, p95.

⁶⁶ Above n 5, p76.

⁶⁷ Above n 3, p207.

⁶⁸ Above n 3, p207.

We first provide the context of the current review by setting out the salient measures of economic participation by women in Australia. We then assess the gender impact of the current tax reform proposals in Australia against the criteria in Table 2. Our review focuses on reform to improve the adequacy and distributional impact of the following taxes applied in Australia: personal income tax; goods and services tax (GST); taxes on capital assets; property taxes and taxes on retirement savings. Although we do not extend our analysis to the transfer system, we identify areas where reform would result in a more progressive system, allowing the Government to redirect resources into the transfer system.

3.1 Fiscal Inequality in Australia

Economic gender gaps tend to arise from societal norms and expectations, particularly labour market with stereotypes about suitable occupations, social norms which assume women will take primary responsibility for domestic chores and the care of young children and the power of social norms so that women don't exercise their rights. All of these factors can all be observed in Australia.

The gender pay gap is 18%⁶⁹ and has increased over the last 10 years. Female workforce participation rates grew strongly over the late 20th century, but has levelled out at 70.5% for women aged between 15 and 64.⁷⁰ The gender wealth gap is estimated at 23%,⁷¹ with significant differences in superannuation balances at the time of retirement.⁷² Significantly, women still undertake more unpaid care than men, most while maintaining engagement with the paid economy, leading to one of the highest rates of part time female workforce participation in the OECD.⁷³

⁶⁹ WGEA, *Gender Pay Gap Statistics* (September 2015 WGEA) https://www.wgea.gov.au/sites/default/files/Gender_Pay_Gap_Factsheet.pdf accessed 18/11/2015.

⁷⁰ Above n 64, p44.

⁷¹ The gender wealth gap was calculated as 23% between single men and single women. Siobhan Austen, Therese Jefferson and Rachel Ong, 'The Gender Gap in Financial Security: What We Know and Don't Know about Australian Households' (2014) 20(3) *Feminist Economics* 25.

⁷² Ross Clare, 'An Update on the Level and Distribution of Retirement Savings' (Association of Superannuation Funds of Australia., 2014)17 September 2015.

⁷³ Lyn Craig, 'How Employed Mothers in Australia Find Time for Both Market Work and Childcare' (2007) 28(1) *Journal of Family and Economic Issues* 69.

There is an increasing political awareness of the issues surrounding women's workforce participation. A paid parental leave scheme was introduced with effect from 1 January 2011, and in 2015 there were governmental reviews into the funding of childcare,⁷⁴ paid parental leave⁷⁵ and women's retirement income security.⁷⁶ However, consistent with the austerity regimes adopted internationally, the Government is seeking to fund any expansion of these programs through existing portfolio allocations: for example proposing that funding for increased childcare come from savings in the existing family transfer payment programmes, and reducing benefits to single income families.⁷⁷

Within this context we would argue that a human rights framework requires that the Government direct more resources to removing barriers to full economic participation by women. In the remainder of this paper we focus on a gender assessment of the tax system, and the current reform proposals.

3.2 Personal Income Tax Systems

The Australian personal income tax and transfer systems no longer include any formal bias, with formal equality in tax and transfer legislation. Primary carers and spouses are recognised as gender neutral, although the data reflect social norms, showing that primary carers are predominantly female and that male workforce participation rates are higher.

Gendered effects of the personal income tax can be observed primarily through two mechanisms: the tax unit, and whether income is assessed or returns filed jointly or

⁷⁴ Productivity Commission, 'Inquiry into Childcare and Early Childhood Learning' (2015) <http://www.pc.gov.au/inquiries/completed/childcare#report> accessed 18/11/2015.

⁷⁵ Senate Community Affairs Legislation Committee: *Report on Inquiry into the Fairer Paid Parental Leave Bill 2015* Sep 2015 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Fairer_Parental_Leave/Report accessed 18/11/2015.

⁷⁶ Senate Standing Committee on Economics: *Inquiry into Economic Security for Women in Retirement* to report March 2016.

⁷⁷ *Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015*.

individually, and the effective marginal tax rate, which can discourage workforce participation.

As discussed in part 2 of this paper, the relevant human rights treaties require that signatory states not only ensure equal economic rights to men and women,⁷⁸ but specifically recognise the right to work.⁷⁹ Barriers to workforce participation through joint filing systems and high effective marginal tax rates are in breach of these treaty obligations.

The choice of the tax and/or transfer unit can impact on the efficiency of the system by creating a couple, or marriage, penalty or bonus. A penalty exists where the tax payable by the couple is higher than the tax payable by two individuals.⁸⁰ Conversely, a bonus may exist where the couple pays lower tax or receives higher transfer payments than two individuals. Given that an efficient tax-transfer system should not induce people to change behaviours, the existence of a couple penalty can create inefficiency in the system because it may change the behaviour of the members of a couple, particularly in relation to how family income is distributed between the couple. The choice of the individual or the couple as the unit on which tax liabilities or transfer payments are assessed is where the penalty is most likely to be observed.

The unit of assessment for the tax system may not be the same as for the transfer system. Couple penalties arise in relation to transfer payments because firstly, the application of the couple income test limits access by the lower earner to credits that would be available to a single person, and secondly, payment rates are established on the basis of equivalence scales showing that the household costs of a couple are lower than the costs of two individuals.⁸¹ However the existence of a couple bonus or penalty in the tax system does not take into account the value of household production where a member of the couple substitutes household production for paid labour market participation. Consequently, under integrated tax and benefit systems where the individual is the unit of assessment for tax purposes but the couple is the unit for transfer purposes, there is a mismatch that can result in the application of a couple

⁷⁸ ICESCR Article 3; CEDAW Article 3.

⁷⁹ ICESCR Article 6; CEDAW Article 11.

⁸⁰ Stuart Adam and Mike Brewer, 'Couple Penalties and Premiums in the UK Tax and Benefit System' (The Institute for Fiscal Studies, 2012).

⁸¹ Above n 80.

penalty under the integrated system. A couple penalty creates inefficiency in the labour market if the higher rates of tax on the earnings of the secondary earner create a labour force disincentive that could discourage participation in the labour market.

While Australia has adopted the individual as the tax unit, its transfer payments are determined on the basis of household income. Australia has paid payments in respect of dependents directly to the primary carer since the 1980s.⁸² However, it is means tested on the basis of family income. Therefore the couple penalty arises when the primary carer assesses whether to increase paid work, as the effective marginal tax rate on those earnings is considerably higher than the marginal tax rate if the primary earner takes on additional work. Apps⁸³ has examined the incidence of tax over the life stages of families, and has found that across household types, the highest effective marginal tax rates are imposed on middle income women during their child rearing years.

An implicit bias can also arise in relation to workforce participation and effective marginal tax rates, particularly where women may also be entitled to transfer payments reflecting their role as primary carer. It is well established that the elasticity of labour supply for women is higher than for their male counterparts⁸⁴ as they spend more time engaged in the unpaid care economy. Notably, the UN Women framework classifies self-provision as the most regressive form of provision of social services, yet this is the norm for many women who are unable to access adequate or appropriate child or elder care. When women allocate time between their participation in the paid labour market and unpaid labour, the effective marginal tax rates will be relevant in making that decision. As such, women are consistently overrepresented in the lowest levels of income and wealth globally.

In order to increase access to work, the human rights treaties require signatories to provide protection to new mothers, including access to paid parental leave,⁸⁵ to

⁸² Aside from a short period in the first term of the Howard Government when benefits were returned to the tax system. From its introduction in 2000 the Family Tax Benefit was always claimed primarily as a transfer payment; and from 2009 the option of claiming as a tax offset was removed.

⁸³ Patricia Apps, 'Labour Supply, Saving and Family Tax Reform' in CC Evans (ed), *Australia's Future Tax System: A Post Henry Review* (2010).

⁸⁴ Patricia Apps, 'Taxation and Labour Supply' (2007) 22(3) *Australian Tax Forum* 89.

⁸⁵ ICESCR Article 10.

address social and cultural patterns that reinforce gender stereotypical roles,⁸⁶ and ensure that women have the same training and employment opportunities as men.⁸⁷ This requires a greater investment in policies around paid parental leave and childcare.

Although personal income taxes are the most progressive tax, there has been a clear trend across the OECD since the 1980s to flatten personal income tax rate schedules. Further, among emerging nations, income tax tends to be less significant as a source of revenue than among developed nations.⁸⁸ In Australia, personal income tax collections are currently approximately 50%⁸⁹ of Australian Government tax collections with direct taxes slightly above the OECD average.⁹⁰ However, personal marginal tax rates have decreased significantly since the 1980s. Following tax reform initiatives in 1985⁹¹ and 2000⁹² personal income tax rates were reduced in conjunction with tax reform packages. Notably, in the resources boom of the 2000s personal marginal tax rate cuts delivered substantial benefits to high income earners, reducing the progressivity of the personal income tax system.

As women are overrepresented among lower income earners, they will pay less personal income tax as a result of their lower income. However, tax reform that reduces personal income tax rates is not only regressive but it will reduce the revenue available to Governments to deliver social services. This creates a feedback loop: governments cannot afford to provide care services, pushing the burden back to women, who may further reduce their hours in the paid workforce in order to provide unpaid care.

Although high effective marginal tax rates are recognised as a major deterrent to workforce participation rates, measures to address the issue to date have been focussed on the restructuring of transfer payments to withdraw eligibility for benefits

⁸⁶ CEDAW Article 5.

⁸⁷ CEDAW Article 10.

⁸⁸ World Bank, World Development Indicators <http://data.worldbank.org/data-catalog/world-development-indicators> accessed 11/11/2015.

⁸⁹ Above n 64, Chart 2.6.

⁹⁰ Above n 64, Chart 2.5.

⁹¹ Australian Treasury, *Reform of the Australian Tax System - Draft White Paper* (AGPS, 1985).

⁹² Australian Treasury, *Not A New Tax: A New Tax System* (AGPS, 1998).

from women when their children reach a certain age.⁹³ While this may have the desired effect of motivating women to increase their workforce participation, in the absence of other forms of support, it may merely reduce the income of that family, increasing disadvantage among single income families.

3.3 Broad Based Consumption Taxes

The second major tax base is a broad based consumption tax, generally imposed as either a value added tax (VAT) or a goods and services tax (GST), and existing in about 160 economies globally. Bias in consumption tax systems depends on the extent of any exemptions in the base on which the consumption tax is levied. Generally, the fewer exemptions in the consumption tax base, the less likelihood there is of explicit bias occurring in the system.

Gender bias in consumption taxes is most likely to result from different consumption patterns between men and women. Applying a human rights approach, a larger proportion of spending by women is on household necessities. ICESCR specifically recognises that States should protect the right to an adequate standard of living, including food, clothing, housing⁹⁴ and health.⁹⁵ CEDW adds the protection of equal access to education and training.⁹⁶

Gendered spending patterns have been a rich field of study over the past 20 years, and it has been consistently shown that household finances should not be regarded as pooled funds.⁹⁷ A gender impact analysis of intra-household finances depends not only on who earns the money, but how financial resources are managed and controlled. Although researchers report that women are taking a more active role in

⁹³ For example changes to parenting payment in 2013 and proposed changes to FTBB in 2015 remove entitlements to the parents of children based on their age.

⁹⁴ Article 11.

⁹⁵ Article 12.

⁹⁶ Article 10.

⁹⁷ Stefanie J Sonnenberg, Carole B Burgoyne and David A Routh, 'Income Disparity and Norms Relating to Intra-Household Financial Organisation in the UK: A Dimensional Analysis' (2011) 40 *The Journal of Socio-economics* 573.

household financial decisions, there is some evidence that this control is nominal rather than in substance, meaning that management does not equate to control.⁹⁸

Gendered spending patterns within households result in a transfer of taxes and benefits from “purse to wallet”. This has been explicitly recognised in relation to the delivery of benefits based on children and family, which are more effectively delivered directly to the primary carer than through tax concessions to the breadwinner in the family, and is recognised in the treaties that explicitly recognise the rights for everyone to receive social security.⁹⁹

Studies in both Australia¹⁰⁰ and the United Kingdom¹⁰¹ have surveyed mothers about the use of payments that were received by way of family payments, either directly to the mother or through tax credits. In both studies the findings showed that mothers generally used direct transfer payments for the benefit of children within the household. Benefits that were delivered through the pay packet, such as tax concessions, were not recognised as being based on the family structure and were less likely to be earmarked for the specific needs of the children. These findings were similar in both reports, despite being from different countries, more than ten years apart, and based on systems that differed in their technical detail.

The earning and allocation of household income is still gendered.¹⁰² In the context of a broad based consumption tax, women are more likely to be responsible for spending in relation to household and family expenditure.¹⁰³ Therefore, a broad based consumption tax without exemptions, as in NZ, is likely to have an implicit bias as women are responsible for more of the spending within the household. To the extent

⁹⁸ Fran Bennett, Jerome De Hanau and Sirin Sung, 'Within-household inequalities across classes? Management and control of money' in Jacqueline Scott, Rosemary Crompton and Clare Lyonette (eds), *Gender Inequalities in the 21st Century* (Edward Elgar, 2010) 215.

⁹⁹ ICESCR Article 9; CEDAW Article 13.

¹⁰⁰ Office of the Status of Women, 'What Women Think: A Survey of Mothers' Attitudes to Family Allowance, The Dependent Spouse Rebate and Family Finances' (AGPS, 1985).

¹⁰¹ Jackie Goode, Claire Callender and Ruth Lister, *Purse or Wallet? Gender Inequalities and Income Distribution within Families on Benefits*, Findings (Joseph Rowntree Foundation, 1998).

¹⁰² Janeen Baxter, Belinda Hewitt and Michele Haynes, 'Life Course Transitions and Housework: Marriage, Parenthood, and Time on Housework' (2008) 70(2) *Journal of Marriage and Family* 259; Himmelweit above n 12; Stotsky above n 18, p 14.

¹⁰³ Above n 98.

that spending on family consumption is from the woman's earnings from labour, or from family benefits paid directly to her, this will reduce her own disposable income.

Elson¹⁰⁴ goes further in applying the human rights framework, to note that spending patterns vary between higher and lower income families; and that tax policymakers should also take into account inequality between women, to ensure that assistance can be redistributed to women and families facing multiple disadvantages.

Low income households are more likely to be headed by women, and in both developed and emerging economies, single parent households are overrepresented among the lowest income households in the economy.¹⁰⁵ The GST is acknowledged as a regressive tax, therefore the burden will fall more heavily on those households.

There are certain categories of expenditures that will be more significant in a household budget, and this may be reflected in the structure of the broad based consumption tax adopted in a particular jurisdiction. The OECD notes that most OECD countries have reduced rates for a range of goods and services. The four main categories of reduced rates are:

- Basic essentials, including food, medical, energy and water;
- Utilities that may have been publicly provided, including public transport, postal services and telecommunications;
- Activities that provide social benefits, including charitable activities, culture, support or employment services; and
- Geographic locations that are considered to warrant special treatment.¹⁰⁶

An example of an exemption with an implicit gender bias toward women is the zero rate applied to children's clothing and footwear in Ireland and the UK, which is not available on other clothing. As children's clothing is likely to be purchased by the

¹⁰⁴ Above n 7, p 88.

¹⁰⁵ ABS, '6523.0, Household Income and Income Distribution, Australia, 2013-14' (Australian Bureau of Statistics, 4/9/2015 <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6523.0> accessed 18/11/2015).

¹⁰⁶ OECD, 'Consumption Tax Trends 2014: VAT/GST and excise rates, trends and policy issue' (OECD, 2014).

primary carer, the lower VAT rate will reduce the cost to that parent, which will flow through to the family budget.

The OECD Report goes on to say that:

The OECD study confirms and provides evidence that most, if not all, of the reduced rates that are introduced to support the poor, such as reduced rates on food and on energy products, do have the desired progressive effect. Nevertheless it clearly shows that despite this progressive effect reduced VAT rates are a poor tool for targeting support to poor households.¹⁰⁷

Alternative compensation methods usually proposed are direct compensation through transfer payments or reductions in other personal taxes, notably restructured income tax rate schedules. The report goes on to note that where alternative methods of delivery of benefits are not available, reduced rates may be the most appropriate tool. Thus, each system needs to be considered on a case by case basis.

Given that any increase in consumption taxes has an implicit adverse impact on women, any compensation should also be delivered symmetrically, to recompense women. Income tax cuts would result in a transfer from purse to wallet due to the lower workforce participation rate and lower income earned by women in both developed and emerging economies. However compensation delivered through the transfer system is subject to the politics of the day, and is at risk of being scaled back if fiscal policy deteriorates, as was evident across the OECD following the GFC.¹⁰⁸

Australia has a single rate GST with a range of exemptions including food, health, education, financial services. Reform proposals in relation to the GST are based around either increasing the rate and/or the base of the GST. Australia has comparatively strong public funding of both health and education, and it is argued¹⁰⁹ that the GST exemptions on these items are regressive as private health and education services are accessed by higher income Australians. NATSEM modelling¹¹⁰

¹⁰⁷ Above n 106, p57.

¹⁰⁸ Above n 1, p195.

¹⁰⁹ Above n 64, p136.

¹¹⁰ Ben Phillips and Matt Taylor, 'The Distributional Impact of the GST' (NATSEM, 2015) <http://www.natsem.canberra.edu.au/storage/ACOSS%20GST%20Report.pdf> accessed 16/11/2015.

supports this in respect of education, finding that expanding the GST base to include private education would be neither progressive nor regressive, but in respect of food, health, and water an expansion in the base would be regressive.

The modelling included a breakdown between male and female headed households. The differences were most notable in respect of health and education, with more male headed households adversely affected by the inclusion of health (79.9% to 74%) and education (32.7% to 24.5%). This could be a consequence of the overrepresentation of female headed households in lower income quintiles, with lower use of private health and education services.

The results of modelling an expansion in the rate of the GST to 13% or 15% show that all quintiles would be worse off,¹¹¹ which would require compensation to be paid to low income earners following any change in the base or rate of the GST. The NATSEM report¹¹² went on to examine the outcome if changes to the GST were combined with lower personal income tax rates. Changes of both 3% and 5% in the marginal tax rate structure were modelled and were shown to be regressive overall, with female headed households significantly worse off. This supports the proposition that compensation is better targeted through the transfer system.¹¹³

There are substantial political hurdles that will need to be overcome to allow any reform of the GST, most notably the requirement that all states and the Federal Government must agree to the change. For this reason it is highly unlikely that there will be any substantial changes without public endorsement through a Federal election. Any proposal for compensation would need to pass public scrutiny, including addressing the risk that the compensation would later be clawed back.

Overall, the implicit gender bias of the GST results in any changes to the GST being detrimental to women. The expansion of the GST rate and base would collect more revenue, but it would not be redistributive as the increased taxes would largely be collected from those who are already at a social-economic disadvantage. Redistribution would need to be effected by delivering appropriate compensation.

¹¹¹ Above n 110, Tables 17 and 18.

¹¹² Above n 110,

¹¹³ Above n 110, p57.

However the introduction of GST on the provision of private education would allow additional revenue to be applied to the public education system.¹¹⁴

3.4 Taxes on Capital Assets

A significant element of the tax reform debate in Australia is the proposal to lower the corporate tax rate in order to encourage investment in Australian companies. As a company is a legal entity without specific gender a gender impact analysis of the effect of changes in the corporate tax rate will depend on the profile of the company in relation to its stakeholders: investors, customers and employees. Australian Treasury analysis¹¹⁵ indicates that changes in corporate tax rates are shared among shareholders, customers and employees. As a consequence, the gendered effect of tax changes would be different in respect of a company that has a substantially male workforce to a company with a substantially female customer base.

Taking that caveat into account, there is a global trend to reduce the effective tax rates on investment income in order to counter the mobility of capital. There is also literature that suggests that lower tax rates on savings will encourage increased savings among low income earners, although higher income earners are more likely to redirect savings into tax-preferred models.¹¹⁶ However, there is evidence that reductions in corporate tax rates lead to a greater reliance on other taxes to meet the fiscal requirements of government. Elson¹¹⁷ documents examples where the burden is shifted either to personal income tax or, more usually, to indirect taxes to ensure fiscal adequacy. As shown in the analysis above, a shift to make personal income tax more progressive would provide additional revenue to provide social services. However, the shift may be accompanied by measures to further flatten the personal income tax schedules. In the Australian context, it is argued that the gap between the top marginal

¹¹⁴ Note that this paper does not take account of the behavioural effect and the likelihood that some parents would exit the private system into the public school system.

¹¹⁵ Above n 64, p78.

¹¹⁶ OECD, 'Encouraging Savings through Tax Preferred Accounts' (OECD, 2007).

¹¹⁷ Above n 5, p95.

tax rate of the personal income tax and the corporate rate, which is currently 19%, drives decisions regarding business structures and encourages tax minimisation.¹¹⁸

Studies of the gender wealth gap in Australia¹¹⁹ show that the composition of the assets held by single women includes a higher proportion of wealth held in the primary home than in other asset classes, while men are more likely to hold wealth portfolios with a larger proportion of financial assets. As such, proposals that reduce the tax on investments are likely to deliver higher benefits to male investors. The caveat on this finding is that the dividend imputation system washes out the benefit of the reduction in corporate tax in respect of Australian shareholders when dividends are received.

Without access to differential tax rates, tax on the income from investments, including tax on the realisation of capital assets, is strongly progressive if included in a global definition of income, and taxed at progressive rates as high income earners derive a higher proportion of their income from investments than low income earners. Conversely, many countries impose a schedular tax system under which capital income is taxed at a flat rate, or a final withholding tax.¹²⁰ Such systems will disadvantage low income earners who pay personal income tax rates below the statutory withholding rate on their earned income¹²¹ including investors and retirees who are supporting themselves from the returns on those investments.

In Australia capital gains are included in assessable income when gains are realised, but the application of a discount reduces the gain by 50%. A review of ATO data¹²² shows that although taxpayers across all income ranges derive capital gains, about 3% of taxpayers with a taxable income below \$80,000 received capital gains, compared to 6.6% of taxpayers with a total income between \$100,000 and \$150,000 and 19% of taxpayers with a total income of more than \$500,000. Consequently, any

¹¹⁸ Above n 64, p80.

¹¹⁹ Austen, Jefferson and Ong, above n 71; Deborah A. Cobb-Clark and Vincent A. Hildebrand, 'Portfolio Allocation in the Face of a Means-Tested Public Pension' (2011) 57(3) *Review of Income & Wealth* 536

¹²⁰ Michelle Harding, 'Taxation of Dividend, Interest and Capital Gain Income' (OECD, 2013) http://www.oecd-ilibrary.org/taxation/taxation-of-dividend-interest-and-capital-gain-income_5k3wh96w246k-en accessed 11/11/2015.

¹²¹ For example in Ireland the rate of withholding tax is 30%. A single person who earns less than EUR 5,210 pays no tax, and up to EUR 32,800 the marginal tax rate is 20%.

¹²² ATO Tax Statistics 2012-13, Table 9; <https://data.gov.au/dataset/taxation-statistics-2012-13> accessed 17/11/2015.

tax expenditures that reduce the tax rate on capital gains tax are regressive, and will have an impact on revenue collections.

We argue that reform of taxation on capital assets must expand the tax base by removing exemptions, and make additional revenue available to redirect toward areas of social spending. Consequently, reductions in corporate taxes and other investment taxes are not consistent with a human rights approach to tax reform.

3.5 Property Taxes

A further aspect of the tax reform debate in Australia is the relationship between land tax and stamp duty in the state tax base. One of the UN Women empowerment goals is to increase the level of land and other asset holdings by women, as this will provide a more secure economic base to build capabilities; and will provide more secure housing. The use of property taxes, whether transactional (for example, Stamp Duty and Gift Duty) or on holdings (for example, Land Tax) discourages the transfer of property to another party and will maintain the current gender imbalance in property holdings.

In considering the different assets that may be owned jointly, housing is of particular concern to women. Proposals to extend land tax are based on broadening the base to include land currently exempt, of which the most significant category is the principal residence. ICESCR requires signatories to ensure access to adequate housing.¹²³ The primary home makes up a substantial proportion of the asset portfolio of Australian women,¹²⁴ therefore housing concessions are likely to favour women, and proposals to wind back such concessions will have an adverse gender impact.

In relation to other income producing assets, the gender impact of property taxes will vary significantly between developed and emerging economies. In developing economies, the challenge is to address legal barriers to women holding property and cultural norms that favour the transfer of family assets to males. In developed

¹²³ Article 11.

¹²⁴ Above n 119.

economies, where the legal barriers have been removed, a human rights fiscal policy framework should focus less on the ownership of property and more on control over the property in question. Where a change ownership can be an element in tax planning strategies, the relevant consideration becomes whether the ability to transfer property between spouses erodes the tax base.

In an income splitting system that also applies progressive tax rates and a tax-free threshold, families effectively obtain access to two tax-free thresholds and broader income bands for each step in the tax rates scale. The use of business structures including private companies and discretionary trusts to hold business assets is a significant tax planning opportunity in countries with an individual system of taxation. Much of the discourse in Australia, New Zealand and Canada surrounding income splitting arises from the fact that families in receipt of income from property or business sources are able to access a form of income splitting through the implementation of appropriate business structures.¹²⁵

Such transfers may be nominal only, with control of the asset remaining with the original owner of the asset, which may or may not result in improved bargaining power and economic empowerment. Canadian research¹²⁶ has shown that the allocation of savings between spouses in a household is fluid, and will depend on a range of considerations including taxation issues. To the extent that this may result in a woman having access to property and savings that would otherwise be held by her male partner it does result in intra-household redistribution. However it may also expose the woman to financial liability without any real reallocation of assets.¹²⁷

Studies of household finance also show that management of income may be separated from control of that income within a household. The person who manages the day to day operational decisions over income and spending may not be the person

¹²⁵ Gabriel Baron, 'Selected Considerations in the Use of Professional Corporations' (2013) 61(4) *Canadian Tax Journal* 1167; Meredith Edwards, 'The Australian Tax Unit: An Evaluation' (Paper presented at the Changing the Tax Mix, Melbourne, 1986) Policy Advice Division Inland Revenue, 'Income Splitting for Families with Children' (2008); Helen Hodgson, 'Taxing the Family - The Tax Unit: Should NZ Adopt a Family Based Income Tax?' (2008) 14(3) *New Zealand Journal of Taxation Law and Policy* 398.

¹²⁶ Shelley Phipps and Frances Woolley, 'Control over money and the savings decisions of Canadian households' (2008) 37(2) *Special Issue on the Household Economy* 592.

¹²⁷ Referred to colloquially as sexually transmitted debt.

who controls the household income. This can be extrapolated to the management of financial assets: although legal ownership of the assets may be transferred, economic control of the asset may remain with the original owner.

The dilemma for gender impact analysis is that while the transfer of property holdings to women has a positive gender outcome where it confers substantive rights that improve economic security and independence, the ability to minimise tax through the property transfers has a regressive impact that reduces the ability of the state to fund other necessary services.

3.6 Taxes on Retirement Savings

Retirement income schemes are classified by UN Women as among the more regressive taxes.¹²⁸ Although it could be argued that retirement income schemes are not taxes, to the extent that they are compulsory the principles of gender impact analysis should be applied.¹²⁹ The human rights treaties require that states recognise the right of everyone to social security, including social insurance;¹³⁰ and that they have access to the same retirement and incapacity benefits as men.¹³¹

The World Bank framework to provide a secure retirement income consists of a multi-pillar approach to funding retirement income. It incorporates a universal state-funded pension entitlement; mandated contributory retirement income schemes and voluntary self-provision.

The basic or social pension is often the main source of income in retirement for women who have not participated in the paid economy¹³², and as such it is essential that social pension schemes be maintained at a level that ensures that the recipient can meet the basic living requirements. Australia has adopted a means tested pension which is funded through general revenue. Access to the pension is not gender specific, and

¹²⁸ Above n 3.

¹²⁹ Rhonda Sharp, Siobhan Austen and Helen Hodgson, 'Gender Impact Analysis and the Taxation of Retirement Income Savings in Australia' (2015) 60 *Australian Tax Forum* 763.

¹³⁰ ICESCR Article 9.

¹³¹ CEDAW Article 11.

¹³² Above n 1, p155.

the gender difference in the eligibility age is being phased out. However women are far more likely than men to be reliant on the age pension as their primary source of income in retirement, primarily due to differences in other sources of income. ¹³³

Social pensions are expensive for Governments to provide, and will usually be targeted to the least wealthy members of the community. An adequate level of retirement income will generally require a combination of the universal base level pension and contributory pensions¹³⁴. Contributory pensions provide further insurance against poverty in old age. In Australia the Superannuation Guarantee fulfils this role.

From a gender perspective, however, contributory schemes perpetuate the gender gaps that emerge earlier in life. Contributory schemes operate as a form of insurance by requiring that contributions are made on the basis of income earned while the member is working: they effectively spread the income earned while working across the member's life span. Women are at a disadvantage in systems of this type, as they are generally most effective where a contributor has a stable source of income over a lengthy working life. They do not generally address the typical female pattern of reduced participation in the paid labour market during child rearing years. This is exacerbated by the earlier retirement age provided under many schemes and the longer life expectancy. In this context, UN Women recommend that access to contributory schemes be equalised, and that female paid workforce patterns be considered in the design of such schemes. They also recommend that carer credits be made available to women who are not participating in the paid labour market due to care responsibilities. ¹³⁵

In the Australian system the Superannuation Guarantee is gender blind. It does not recognise the different workforce participation patterns of women; consequently, the gender gap in retirement savings is evident between men and women from their 30s onwards. ¹³⁶ The system should be redesigned to specifically recognise and address gender differences, for example through the introduction of carer credits while the

¹³³ Above n 129.

¹³⁴ Above n 1, p156.

¹³⁵ Above n 1, p155.

¹³⁶ Above n 72.

primary carer is out of the workforce; relaxing the system of annual caps to allow a person who has taken time out of the workforce to catch up the superannuation contributions that were not made during that time; or relaxing the requirements of the Sex Discrimination Act to allow the employer to make contributions that are higher for women than for men.¹³⁷

Self-provision is represented in third tier schemes that encourage private savings to fund retirement. Such schemes are even more regressive than second tier schemes, as they are dependent on the participant having sufficient funds to save for retirement. For reasons discussed above, women are less likely than men to have funds available to invest in third tier schemes. Phipps and Woolley¹³⁸ examined the allocation of retirement savings within Canadian households. They found that even where women take control of the family finances, retirement savings are more likely to be held by men. This has important consequences for bargaining within older households: given the longer lives and earlier retirement ages of women, their retirement savings must be consumed at a slower rate than by their partner. This can lead to conflict over resource allocation where one party controls retirement savings.

In Australia the tax on retirement savings is particularly regressive as tax concessions are available to both second and third tier retirement savings. Not only do higher income earners contribute more through the mandated level of contributions based on payroll, they also have the ability to voluntarily increase pre- and post-tax contributions. Under the current taxation of retirement savings, not only the pre-tax contributions but the earnings on the total fund are subject to tax rates lower than the marginal rate of tax.¹³⁹ Further, withdrawals are tax exempt if the member has retired and is over 60 years of age.

The gender impact of the tax concession is two-fold: not only do women benefit less from the concessions that are available; but by 2018 the cost of the tax concessions on retirement savings are expected to nearly equal the cost to the government of

¹³⁷ Helen Hodgson and Lisa Marriott, 'Retirement Savings and Gender: An Australasian Comparison' (2013) 28(4) *Australian Tax Forum* 725.

¹³⁸ Above n 126.

¹³⁹ Note that the 15% tax rate on earnings of a superannuation fund can be increased to 30% where the member has an income of more than \$300,000 including superannuation contributions: ITAA 97 Div 293; however the marginal tax rate paid by such individuals would be 49% including levies.

provision of the age pension.¹⁴⁰ This is a redirection of public money to retirement savings holders, generally men, away from pension recipients, who are more likely to be women. It also creates intergenerational issues between older and younger citizens.

The imbalance can only be addressed by scaling back the extent of the tax concessions available on retirement savings, and redirecting the savings to social benefit programmes. The current system of tax concessions on contributions and savings with exemption on withdrawal must be reviewed to reduce the extent of the concessions available at all three levels. In particular low income earners, who receive no tax benefit on mandated superannuation guarantee contributions should receive tax concessions ensuring that retirement savings are taxed at a rate of tax that is lower than their marginal tax rate on earnings,¹⁴¹ and the ability to access tax concessions on third tier savings must be scaled back.

It is now generally accepted¹⁴² that the retirement income system needs urgent reform, and that women in particular are disadvantaged under the current system.¹⁴³ There is clearly a case to provide positive targeted tax incentives or credits, including carer credits, to address some of the inequity in retirement savings. The savings from the reduction in benefits to high income earners should then be redirected into other retirement income programmes that benefit disadvantaged and low income earners.

¹⁴⁰ In 2017-18 income support for seniors is projected to cost \$47,719m (Commonwealth of Australia, 'Budget Paper No 1' (12/5/2015) http://www.budget.gov.au/2015-16/content/bp1/html/bp1_bs5-01.htm accessed 23/11/2015. In the same year tax concessions in respect of superannuation contributions and earnings are expected to cost \$45,850m Australian Treasury, 'Tax Expenditures Statement 2014' (Australian Treasury <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/TES-2014> accessed 23/11/2015.

¹⁴¹ The LISC was introduced to achieve this outcome, however it has been repealed with effect from 1 July 2017.

¹⁴² Note the submissions from ASFA, AIST, ACOSS at <http://bettertax.gov.au/publications/discussion-paper/submissions/> accessed 23/11/2015.

¹⁴³ For example the Australian Senate has recently initiated an inquiry into Women's Security in Retirement, above n 76.

4. A Rights Based Approach to Tax Reform

There are numerous measures that a state can take to ensure that a rights based approach to fiscal policy is adopted. Most obviously, it is the general tax system which funds investment in public services. Ensuring that enough revenue is raised can be achieved by both enforcing the current tax regime as well as expanding the tax base. However, in doing so, a state needs to be mindful of the distributive effects along with the progressivity of the relevant taxes. States also need to be able to mobilise their resources without deterrence felt by the tax policies of other countries with preferential tax regimes. As such, a global environment needs to be created to ensure that economic and social policies are seen as connected.

Within the Australian tax reform context, the first issue to consider when human rights principles are applied to entire programs of tax reform is the balance between corporate taxes, personal taxes and indirect taxes.¹⁴⁴ There is demonstrated fiscal inequality in Australia and in this context we argue that a human rights framework requires that the Government direct more resources to removing barriers to full economic participation by women. Specifically, the personal income tax, GST, taxes on capital, property taxes and retirement savings taxes should all be considered within a fiscal policy setting which incorporates human rights obligations.

Ultimately, the human rights treaties ICESCR and CEDAW require that signatory states not only ensure equal economic rights to men and women,¹⁴⁵ but specifically recognise the right to work.¹⁴⁶ Barriers to workforce participation through joint assessment of income in tax and transfer systems and high effective marginal tax rates are in breach of these treaty obligations. Gender bias in consumption taxes is more likely to result from different consumption patterns between men and women. Applying a human rights approach to consumption taxes, a larger proportion of spending by women is on household necessities. Spending patterns also vary between higher and lower income families. As such, tax policymakers should also

¹⁴⁴ Above n 5, p95.

¹⁴⁵ ICESCR Article 3; CEDAW Article 3.

¹⁴⁶ ICESCR Article 6; CEDAW Article 11.

take into account inequality between women, to ensure that assistance can be redistributed to women and families facing multiple disadvantages.

Property rights are integral to economic rights, and UN Women recognises that women are disadvantaged where they do not have access to property. However ownership of property may be separated from effective control. In developed economies where women have full legal capacity to own property, property transfers may be a means of eroding fiscal adequacy through the use of tax planning mechanisms. These tax planning practices increase inequality between women as it reduces the fiscal resources the Government needs to deliver social services.

The ICESCR specifically recognises that States should protect the right to an adequate standard of living, including food, clothing, housing,¹⁴⁷ and health.¹⁴⁸ The CEDAW adds the protection of equal access to education and training.¹⁴⁹ These treaties also require states recognise the right of everyone to social security, including social insurance;¹⁵⁰ and that they have access to the same retirement and incapacity benefits as men.¹⁵¹ Consequently, policy considerations around retirement savings taxes need to take into account implicit bias. Retirement income schemes need to be redesigned to account for the different work and care responsibilities that women face, which impact on the ability of women to contribute consistently to contributory schemes.

Finally, it is recognised that human rights principles and the ensuing legislative enactment of the required standards only provide the basis for equality. 'Power inequalities, structural constraints and discriminatory social norms and practices' also need to be addressed.¹⁵² Formal equality may result in unequal outcomes, and policies may need to treat women differently to men treatment to achieve equality.¹⁵³ Despite the implementation of these human rights treaties, women continue to

¹⁴⁷ Article 11.

¹⁴⁸ Article 12.

¹⁴⁹ Article 10.

¹⁵⁰ ICESCR Article 9.

¹⁵¹ CEDAW Article 11.

¹⁵² Above n 4.

¹⁵³ Above n 1, p24.

experience economic inequality. States, therefore, must adopt 'a proactive role as arbiters of social and economic rights.'¹⁵⁴

¹⁵⁴ Above n 1, p25.