

INTERNATIONAL AND EUROPEAN TAXATION POLICIES
AND GENDER DISCRIMINATION

*POLÍTICAS FISCALES INTERNACIONALES Y EUROPEAS Y
DISCRIMINACIÓN DE GÉNERO*

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ABSTRACT: Tax policies and practices have an impact on women's empowerment and condition progress towards truly egalitarian societies.

Tax systems are not gender-neutral, as their design is embedded in a particular conception of the social organization model. Tax systems influence multiple factors, such as economic security; the accessibility and quality of public services; how women access the labour market and thus their income.

Tax models may tend, in a more or less direct way, to perpetuate and even reinforce the patriarchal system, promoting a traditional conception of the family based on the figure of the male breadwinner and the female career and encouraging gender roles and the gender division of labour.

KEY WORDS: International and European taxation and fiscal policies; gender bias and discrimination, tax law.

RESUMEN: *Las políticas y las prácticas fiscales tienen un impacto en la capacidad emancipadora de las mujeres y condicionan el progreso hacia sociedades verdaderamente igualitarias.*

Los sistemas impositivos no son neutros con relación al género ya que su diseño lleva integrado una determinada concepción de modelo de organización social. Determina el nivel de presión fiscal, sobre quien recae y través de qué mecanismos afecta a la seguridad económica y a los ingresos de las mujeres, la accesibilidad y la calidad de los servicios públicos y también a su forma de incorporación al mercado laboral.

Los diseños fiscales pueden de forma más o menos directa tender a perpetuar e incluso a reforzar el sistema patriarcal promoviendo una concepción de familia tradicional basado en la familia de hombre sustentador/ mujer cuidadora e incentivando los roles de género y la división sexual del trabajo

PALABRAS CLAVES: *Políticas fiscales y tributarias internacional y europea; sesgos y discriminación de género; norma tributaria.*

SUMMARY.- I. INTRODUCTION.- II. EU FISCAL POLICIES ON GENDER DISCRIMINATION.- III. THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION IN IMPLEMENTING EUROPEAN GENDER POLICIES.- IV. RECENT INTERNATIONAL REPORTS ON TAX POLICY AND GENDER OUTCOMES.- V. SOME CONCLUDING REMARKS.

I. INTRODUCTION.

Gender aspects also concern the specific design and impact of taxes since taxes correlate in many ways with gender-related socio-economic inequalities and can therefore hinder, as well as also further gender equality¹. Although men and women are normally taxed under the same rules, their different social and economic characteristics (e.g., income levels or labour force participation) cause the tax system to inadvertently contribute to gender inequalities in society.

Understanding and improving the impact of taxes on gender equality is a key dimension that governments need to consider as part of tax design to support inclusive growth². The issue of gender taxation has been addressed in several international conferences and conventions³.

“Between the adoption of the Beijing Platform for Action at the Fourth World Conference on Women in 1995 and the establishment of the Sustainable Development Goals (SDGs) in 2015, increasing attention has been focused on how tax laws shape women's lives, affect their access to property, incomes, and public services, and transmit gendered social expectations and stereotypes within societies, across borders, and through the generations”⁴.

The different impact of tax measures, even if they appear formally neutral, on the male and female gender was analysed in relation to the different economic, social, and physical characteristics of the genders.

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- 1 DOORLEY, K., KEANE, C.: “Tax-Benefit Systems and the Gender Gap in Income”, *IZA – Institute of Labor Economics*, www.iza.org, DP No. 13786, 2020. “The gender gap in disposable income is made up of a number of components: the gender gap in hours of work, the gender gap in wages, the gender gap in non-labour income and the transformation of market income into disposable income via the tax-benefit system”.
 - 2 OECD, “Tax Policy on Gender Equality: A Stocktake of Country Approaches”, 2022.
 - 3 First of all, Fourth World Conference on Women, Action for Equality, Development and Peace, pp. 4-15 - Beijing, China, September 1995. In September 1995, thousands of women, and men from around the world will meet in Beijing for the Fourth World Conference on Women. Participants will assess how women's lives have changed over the past decade and take steps to keep issues of concern to women high on the international agenda.
 - 4 LAHEY, K.: “Gender, Taxation and Equality in Developing Countries” - *Discussion Paper Issues and Policy Recommendations*, 2018.

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For instance, income generated through taxes enables governments to absorb social inequalities and cushion the burden of unpaid care work, which is still predominantly done by women⁵. Most Member States have abolished tax regulations that explicitly differentiate between men and women. But what's happened about implicit differentials? Tax provisions and tax policy decisions that are technically gender-neutral often affect men and women in a different way. This may happen for a lot of reasons.

In particular, due to gender differences in employment rates and patterns, in the allocation of unpaid and paid work, in the allocation of income and wealth or in the risk of poverty. Although a variety of measures to address these differences are necessary in order to achieve gender equality, taxation itself adds to disadvantages for women.

Tax laws reflect and construct dominant societal assumptions of normality that are often based on male norms and exclude and discriminate against women's socio-economic realities⁶. One of the critical obstacles to gender equality is joint tax and benefit provisions, such as income splitting, tax allowances or tax credits, based on the income of both spouses and transferable tax reliefs⁷.

My short article will then describe International and European actions to address gender equality in taxation. For this purpose, it will be important both to explain the interdependencies of socio-economic gender inequalities and taxation and to outline the major problems in current tax laws for gender equality.

First, I will focus on EU's competences in the area of taxation in general and gender taxation in particular. I will then try to understand if the European Union has sufficient powers to affect Member States tax systems with the aim of reducing gender inequalities.

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- 5 Women tend to rely more on public services and financial transfers, which in many countries are depleted and underfunded after years of fiscal austerity. See MARINI, G., - SALVINI, L.: "Tassazione di genere, lavoro femminile e delega fiscale", *Rassegna Tributaria*, n. 1, 2022, p. 218; ALFANO, R., "Gender discrimination and taxation in the EU. Tax policy and gender equality in Italian and Spanish systems" in *Diritto e Pratica tributaria Internazionale*, n. 1, 2023, pp. 30- 66.
 - 6 SPANGENBERG, U.: "Gender equality and tax policies in the EU", *European equality law review, European network of legal experts in gender equality and non-discrimination*, 2021. "The same applies to other categories that refer to people or groups who have experienced structural discrimination". See too note n. 12, INFANTI, A., CRAWFORD, B.: *Critical tax theory. An introduction*, Cambridge University Press, 2009.
 - 7 RASTRIGINA, O., VERSHCHAGINA, A.: "Secondary earners and fiscal policies in Europe, European Union", 2015, https://ec.europa.eu/info/sites/info/files/150511_secondary_earners_en.pdf.
GUNNARSSON, A., SCHRATZENSTALLER, M., SPANGENBERG, U.: "Gender equality and taxation in the European Union": IDD. (2021): "Gender equality and tax policies in the EU", 2017, the author notes that while in a system of individual taxation, the marginal tax rate for each person increases only in relation to their own income. In systems of joint taxation, one spouse's marginal tax rate increases in relation not only to their own income but also to the spousal income. Thus, elements of joint taxation produce disincentives for secondary earners, mostly women, to take up or increase paid work. However, joint tax and benefit provisions also further income differences and create financial dependencies.

Subsequently I will briefly describe the content of two interesting reports by OECD and IMF both published in February 2022 on gender taxation across the world. Finally, I will end my short reconstruction with some concluding remarks.

II. EU FISCAL POLICIES ON GENDER DISCRIMINATION.

As we very well know EU has only limited governance capacities in the field of taxation. Despite the increasing significance of the European Union, taxation remains closely linked to Member States' sovereignty. The legislative tax competences of the European Union were conceived to facilitate the implementation and functioning of the internal market and prevent distortions of competition between Member States.

“The role of taxation within the European Union has risen (and is rising) over the years due to the establishment of the Economic and Monetary Union and the economic/financial and COVID crises. It is well established that taxation is characterized as an obstacle for the functioning of the internal market and the interpretation of the fundamental freedoms has a direct impact on the design of the domestic tax systems”⁸.

The European Union has adopted several directives concerning e.g., indirect taxes, such as value-added tax or excise duties, and direct taxes, such as the UE tax fraud policy or the proposal for a common consolidated corporate tax base (CCCTB). At a national level, States use taxes to generate revenue as a means to finance public expenditure. In EU law, taxes do not have such a role.

The European Union, lacking until now a full fiscal sovereignty, relies mainly on the Member States' contributions, based on the 'own resource decision', provided in Article 311 TFEU. As a result, the EU has only limited legislative powers in the field of taxation.

The promotion of gender equality at European level seems to be further hindered by the specific purpose and underlying principles of taxation in EU law and the lack of actors that may promote the incorporation of a gender perspective. The Treaties provide the European Union with the competence of adopting legislative measures to abolish discrimination and ensure gender equality.

In fact, in January 2019 the European Parliament adopted a resolution on gender equality and tax policies in the EU⁹, which rightly pointed out than Articles

8 BIZIOLI, G.: “Building the EU Tax Sovereignty: Lessons from Federalism”, *World Tax Journal*, Volume 14, 2022, No. 3.

9 European Parliament, “Resolution on gender and taxation policies in the EU”, 2018/20195 (INI), 2019.

2 and 3 of the Treaty on European Union (TEU) acknowledge non-discrimination and equality between women and men as two of the core values and aims on which the EU is founded. Articles 8 and 10 of the Treaty on The Functioning of The European Union (TFEU) oblige the European Union to aim at eliminating inequalities, promoting gender equality, and combating discrimination when defining and implementing its policies and activities. Article 21 of The Charter of Fundamental Rights of the European Union contains rights and principles that refer to the prohibition of direct and indirect discrimination.

Article 23 provides that equality between women and men must be ensured in all areas, including employment, work and pay¹⁰. Although Article 3 TEU links the establishment of the internal market to the concept of sustainable development, which calls for a balance between economic, ecological, and social objectives, European tax policies still concentrate primarily on economic considerations, based on principles such as neutrality or objectives such as economic growth. Social objectives and values, including gender equality, and shared principles and objectives that (to different extents) have shaped national tax policies, such as the ability-to-pay principle, have little foundation in European law.

EU law also emphasises gender equality and non-discrimination as fundamental values and objectives. These provisions raise the question of whether the legislative competences, the increasing weight of gender equality and non-discrimination, and subsequent obligations, can be used to advance gender equality in taxation.

At the European Union level, gender aspects of taxation seem to be gaining attention. For a while the European Commission has acknowledged the impact of taxation on low-wage and second-income earners, among whom women are over-represented¹¹. In January 2019, the European Parliament adopted a resolution on gender and taxation policies in the EU The Resolution focused on the relationship between socio-economic gender differences and the impact of different types of taxation in relation to gender equality¹². The resolution itself is a non-binding legal instrument, but it refers to an extensive legal framework of values, objectives

10 Art. 51 clarifies that the provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

11 It is important to recall briefly the most significant acts of 2017-2020 years. European Commission: "Tax policies in the European Union", 2017. In 2017, the European Institute for Gender Equality (EIGE) published a study on gender in economic and financial affairs that also refers to selected gender aspects in personal income taxation, particularly joint tax and benefit provisions. The Gender Equality Programme addressed the impact of various tax systems on gender equality, focusing on joint tax and benefit provisions EIGE (2018) Gender in economic and financial affairs. In 2018, the Horizon 2020 call for research proposals explicitly addressed questions of gender equality in taxation". Most recent: European Commission: "Tax policies in the European Union", 2020, pp. 69 -73.

12 This resolution noted that across the European Union women remain underrepresented in the labour market with the overall employment rate of women still being almost 12 % lower than that of men. In the EU 31,5 % of working women work part-time compared with 8,2 % of working men.

and obligations concerning gender equality and non-discrimination. By such Resolution the European Parliament has invited Member States and the European Commission to ensure non-discrimination and gender equality in tax matters and to take the appropriate implementing measures as soon as possible.

It should be noted, however, that despite such European Parliament resolution adopted more than three years ago, the different fiscal policies of the Member States still tend to be designed without much consideration for gender equality.

So far, the European Parliament resolution has had little impact on European or national tax policies.

This is partly because the resolution is a non-binding instrument with no obligations for the Member States and the European institutions to implement the recommendations addressed to them. Furthermore, the European Union in general and the European Parliament have only limited legislative powers taxation matters. This may partially explain why the EU uses often soft law mechanisms, such as guidelines, recommendations, or reports, to influence Member States' tax policies¹³.

The lack of attention to gender aspects of taxation contradicts the increasing relevance of gender equality in EU law. Indeed, recent research suggests that the wages of men and women are converging in many countries. This is largely due to the fact that women are catching up with men in terms of education and skills¹⁴.

However, it's clear that the gender wage gap and the gender work gap are sizable, persistent, and well documented for many countries. The result of the gender wage and gender work gap combined is an income gap between men and women. A small literature has begun to examine how the tax-benefit system contributes to closing gender income gaps by redistributing between men and women. Although the founding EU treaties prioritised economic objectives, social objectives (and the ensuing legislative competences and obligations, including gender equality and non-discrimination) have gained increasing significance.

In 2020 the European Commission published an important communication: "A Union of Equality: Gender Equality Strategy 2020-2025"¹⁵. The Communication

13 See: CNOSEN, S.: "Tax Policy in the European Union: A Review of Issues and Options", *FinanzArchiv/ Public Finance Analysis*, Vol. 58, No. 4, 2001, pp. 466-558 for a fuller description of the UE tax policy.

14 DOORLEY, K., KEANE, C.: "Tax-Benefit", cit., 2020.

15 European Commission, Communication to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions, *A Union of Equality: Gender Equality Strategy 2020-2025*, Brussels, 5 of March 2020. 14 of the top 20 countries worldwide on gender equality are EU Member States. Thanks to robust equal treatment legislation and jurisprudence, efforts to mainstream the gender perspective into different policy areas, and laws to address particular inequalities, the EU has made significant progress in gender equality in the last decades.

clarifies that European Union is a global leader in gender equality. However, no Member State has achieved full gender equality and progress is slow¹⁶. In particular, while the gender gap in education is being closed, gender gaps in employment, pay, care, power and pensions persist. The EU policy objectives and key actions for the 2020-2025 period gives a new impetus to gender equality. The implementation of this strategy is based on the dual approach of targeted measures to achieve gender equality, combined with strengthened gender mainstreaming¹⁷.

III. THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION IN IMPLEMENTING EUROPEAN GENDER POLICIES.

An important role in the implementation of the European Union gender policies has been played by the Court of Justice of the European Union (CJEU) too. The Court of Justice of the European Union interprets EU law to make sure it is applied in the same way in all member States and settles legal disputes between Member States and EU institutions.

While the provision on equal pay does not apply to taxes, the Union's competences in the areas of equal treatment and non-discrimination, the prohibition of discriminations provided in the Charter of Fundamental Rights and the principle of gender mainstreaming have the potential to promote gender equality also in the area of taxation, in particular in the taxation of labour income.

It is well known that taxation of labour income is likely to be the most important aspect of taxation to be tackled from a gender perspective, since it is most directly linked to family and labour supply decisions, which in turn have a major impact on the incomes and security of women. This section firstly provides two of the most important decisions that are affected by labour taxation and then goes through common features of tax systems and their impact on such decisions.

The CJEU decided to expand to tax provisions the scope of directives in matters of equal treatment and non-discrimination. It follows that the existing directives on protection against discriminations are at least partially applicable to Member States tax law and that Article 157 and Article 19 Treaty on The Functioning of The European Union (TFEU) are to be interpreted as providing the EU with the necessary legislative competences for preventing gender-related disadvantages also in tax law. The relevant EU Court cases concerned access

16 Member States on average scored 67.4 out of 100 in the EU Gender Equality Index 2019, a score which has improved by just 5.4 points since 2005. European Institute for Gender Equality (EIGE): <https://eige.europa.eu/gender-equality-index/2019>.

17 According to Article 10 TFEU, when defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, the Commission wants to enhance gender mainstreaming by systematically including a gender perspective in all stages of policy design in all EU policy areas, internal and external.

to employment or vocational training as well as working conditions governing employment or dismissal.

By the irreferences for a preliminary ruling national jurisdictions requested to the Court of justice both the interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions¹⁸ and the interpretation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security¹⁹. Two were the leading cases, which relate respectively to United Kingdom and Italy legislations.

The first was Case C-116/94, *Meyers v. Adjudication Officer*²⁰. In *Meyers* the Court did not deal with a tax provision but a social security benefit. The benefit is similar to a tax relief and, likewise with tax-law provisions, raises the question of the scope of a directive in matters of equal treatment. The specific benefit was a family credit, intended to supplement the income of paid workers responsible for a child.

The decision concerned the question of whether this family credit falls within the scope of Directive 76/207/EEC, a predecessor of Recast Directive 2006/54/EC in force at present on equal treatment of men and women in employment and occupation. In the opinion of the United Kingdom, social security systems are excluded completely from the scope of the directive by virtue of the provision in Article 1. The Court's judgment in *Joined Cases C-63/91 and C-64/91 Jackson and Cresswell* held that the directive cannot be declared inapplicable solely because a scheme is part of a social security system. The Court declared that a scheme which is part of a social security system will fall within the scope of Directive 76/207 only if its subject-matter is access to employment, including vocational training and promotion, or working conditions²¹.

18 The purpose of Directive 76/207, as is clear from Article 1 thereof, is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. Article 2 of the directive provides: "the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status". Article 5 of the directive provides the application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

19 Article 4 of Directive 79/7 provides that the principle of equal treatment means that there is to be no discrimination whatsoever on ground of sex either directly, or indirectly by reference in particular to marital or family status. Article 7 of Directive 79/7 provides that the directive is without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits.

20 Judgment of the Court of Justice of 13 July 1995, *Meyers v. Adjudication Officer*, Case C-116/94, ECLI:EU:C:1995:247

21 See Opinion of Advocate General Lenz, Case delivered on 11 May 1995, par. 26, 27. In the case *Jackson and Cresswell*, the Court answered that question in the negative, in respect of income support in the United

A benefit such as family credit, which may be paid to a person in Great Britain if his income is no higher than a given ceiling, if he, or if he is a member of a couple, he or the other member of the couple, is engaged in remunerative work and he or the other member of the couple is responsible for a child or another member of the same household performs the dual function of keeping poorly paid workers in employment and of meeting family expenses. According to the Court such a benefit has by virtue of its first function an objective which brings it within the scope of Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training, and promotion, and working conditions.

The concept of access to employment referred to in Article 3 of the directive must not be understood as relating solely to the conditions existing before an employment relationship is created. Articles 3 and 5 forbid discriminations on the grounds of sex in the conditions for access to all jobs or posts and working conditions, including conditions governing dismissal. Although the Directive left matters of social security explicitly to subsequent instruments, the Court held that the Directive applies to social security benefits that concern access to employment and working conditions.

The Court argued that the family credit encourages unemployed workers to accept work and therefore relates to considerations governing access to employment, covered by the scope of the Directive. The prospect of receiving family credit if he accepts low-paid work encourages an unemployed worker to accept such work, with the result that the benefit is indeed related to considerations governing access to employment.

Furthermore, compliance with the fundamental principle of equal treatment presupposes that a benefit such as family credit, which is necessarily linked to an employment relationship, constitutes a working condition within the meaning of Article 5 of the directive. To confine such a concept solely to working conditions set out in the contract of employment would remove situations directly covered by an employment relationship from the scope of the Directive.

The second case was C-207/04, Vergani v. Agenzia delle Entrate ²².The reference was made in proceedings between Mr. Vergani and the Italian tax authorities concerning the taxation, determined by reference to the worker's

Kingdom, on the ground that the purpose of that benefit was merely to supplement low incomes. Since this was the sole function of income support, it did not come within the scope of Directive 76/207. The fact that the method by which the conditions for the granting of income support were calculated could affect the ability of single mothers to gain access to employment was not sufficient to bring that benefit within the scope of Directive 76/207.

22 Judgment of the Court of Justice of 21 July 2004, Vergani v Agenzia delle Entrate, Case C-207/04, ECLI:EU:C:2005:495

age, of a payment made on voluntary redundancy. At the time of the facts in main proceedings the Italian law on pensionable age provided that male workers reached retirement age at 60 years of age and female workers at 55 years of age. The law provided in both cases that they have paid the requisite contributions for the requisite amount of time²³.

Article 17 of this law provided that that in the case of sums paid in relation to cessation of the employment relationship in order to encourage workers, who have passed the age of 50 years in the case of women and 55 years in the case of men, to take voluntary redundancy, the tax would be apply at a rate equal to one half of the rate applied for the taxation of severance pay and the other allowances. Mr. Vergani brought an action before the Commissione tributaria provinciale di Novara against the notice by which the tax authorities refused to refund him amounts he had paid as personal income tax (*imposta sul reddito delle persone fisiche*, 'IRPEF').

The CJEU declared firstly that a tax rule determined by the reference to the worker's age, such as the provision of Italian law at issue in the main proceedings, constitutes unequal treatment on grounds of the worker's sex. Consequently, since in accordance with Article 5 of Directive 76/207, the same conditions governing dismissal must apply to men and women without discrimination on grounds of sex, a difference in treatment resulting from the taxation, at a rate reduced by half, of sums paid on the cessation of the employment relationship, which applies to workers who have passed the age of 50 years in the case of women and 55 years in the case of men, constitutes unequal treatment on grounds of the workers' sex²⁴.

The Court examined finally whether such a difference in treatment was covered by the derogation provided for in Article 7 of Directive 79/7, by virtue of which the directive was without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits. The Court explained that, given the fundamental importance of the principle of equal treatment, the exception to the prohibition of discrimination on grounds of sex, provided for in Article 7 of Directive 79/7, must be interpreted strictly²⁵.

23 Special provisions are laid down in respect of employees of undertakings declared to be in crisis by the "Comitato interministeriale per il coordinamento della politica industriale" (Inter-departmental committee for the coordination of industrial policy). Law No 155 of 23 April 1981 entitles such employees to take early retirement at the age of 55 years in the case of men and 50 years in the case of women.

24 Case C-207/04, Vergani, par. 30 – 31.

25 See, in particular, Judgment of the Court of Justice of 26 February 1986, *M. H. Marshall v. Southampton and South-West Hampshire Area Health Authority (Teaching)*, Case 152/84, ECLI:EU:C:1986:84, par. 36 and Judgment of the Court of Justice of 26 February 1986, *Secretary of State for Social Security v. Evelyn Thomas and Others*, Case C 328/91, ECLI:EU:C:1993:117, par. 8.

That provision applied only to the determination of pensionable age for the purposes of granting old-age and retirement pensions and to the consequences thereof for other social security benefits²⁶. That exception to the prohibition of discrimination on grounds of sex was therefore not applicable in the case of a tax concession such as that at issue in the main proceedings, which did not constitute a social security benefit.

Since, first, the difference in treatment provided for in the contested provision in the main proceedings was directly based on sex and, second, Directive 76/207 did not provide for any exception applicable in the present case, the principle of equal treatment, the Court ruled that that difference in treatment constituted discrimination on grounds of sex.

It followed from all the foregoing that Directive 76/207 interpreted as precluding a provision such as that at issue in the main proceedings, which grants to workers who have passed the age of 50 years in the case of women and 55 years in the case of men, as a voluntary redundancy incentive, an advantage consisting in taxation at a rate reduced by half, of sums paid on cessation of the employment relationship.

The tax subsidy granted to female workers over the age of 50 and male workers over 55 was thus considered discriminatory on the grounds of sex. In line with its judgment in *Meyers*, the Court interpreted the relevant Italian tax rule as a discriminatory condition governing dismissal and therefore a violation of Article 5 of Directive 76/207/EEC.

The Italian Court of Cassation by its judgment n. 28536 of 20 December 2013, has executed the judgment of the Court of Justice in Case C-207/04. The Italian Supreme Court established that application of the rate of taxation in respect of IRPEF, in accordance with the tax rules laid down in Article 17 (later transposed into Article 19) of Decree No 917/86, entailed unjustified unequal treatment²⁷.

The worker who at the date of the facts in the proceedings was between 50 and 55 years old, was therefore entitled to reimbursement of the higher tax paid in respect of his female colleagues.

²⁶ Judgment of the Court of Justice of 26 February 1986, *Joan Roberts v. Tate & Lyle Industries Limited*, Case 151/84, ECLI:EU:C:1986:83, par. 35; Judgment of the Court of Justice of 4 March 2004, *Peter Haackert v. Pensionsversicherungsanstalt der Angestellten* Case C 303/02, ECLI:EU:C:2004:128, par. 30.

²⁷ Article 17(4a) of Decree No 917 of the President of the Republic of 22 December as amended by Legislative Decree No 314 of 2 September 1997 provided: 'In the case of sums paid in relation to cessation of the employment relationship in order to encourage workers who have passed the age of 50 years in the case of women and 55 years in the case of men to take voluntary redundancy, as provided for in Article 16(1)(a), the tax shall apply at a rate equal to one half of the rate applied for the taxation of severance pay and the other allowances and sums mentioned in Article 16(1)(a).' After the time of the facts in the present case, Article 17 of Decree No 917/86 became Article 19 as a result of amendments made by Legislative Decree No 344 of 12 December 2003

Joint tax provisions may also fall within the scope of the Directive, because the disproportionately high tax burden on secondary earners affects access to employment. The judgments suggest that the legislative competence in Article 157 TFEU and Article 19 TFEU comprises tax provisions that directly or indirectly hinder employment or vocational training based on categories listed in these provisions²⁸.

IV. RECENT INTERNATIONAL REPORTS ON TAX POLICY AND GENDER OUTCOMES.

In February 2022, the IMF and OECD published two important cross-country reports analyzing national approaches to tax policy and gender outcomes.

The IMF Working Paper is: “Gendered Taxes: The Interaction of Tax Policy with Gender Equality”²⁹. The paper provides an overview of the relation between tax policy and gender equality, covering labour, capital, and wealth, as well as consumption taxes. The report orients the implicit and explicit gender biases and corrective taxation. On labour taxes, the paper focuses on the well-established findings on female labour supply and present new empirical work on the impact of household taxation. It also analyses the impact of progressivity on pay gaps and labour supply. On capital and wealth taxation, it discusses the implications of lower effective capital income taxation on the personal income tax burden gap across genders.

The paper aims to provide an overview of the interactions between tax policy and gender equality, covering both those that have been extensively studied and those have received comparatively little attention. The paper illustrates that the gender income gap is pervasive, reflecting a variety of factors. Across advanced and emerging economies, women's gross incomes are just 70 percent of men's, on average; this fraction ranges from 60 to 94 percent in the country sample.

28 A third case was Judgment of the Court of Justice of 21 November 2016, *de Lange v Staatssecretaris van Financiën*, Case C-548/15, ECLI:EU:C:2016:850. In *de Lange* the Court found an age-based tax concession for vocational training costs to be in violation of the prohibition of discrimination concerning access to vocational training, provided in Article 3 of the Framework Directive 2006/54/EC, based on Article 13 TEC (today Article 19 TFEU). The tax concession was judged discriminatory because the financial consequences resulting from the non-deductibility of the expenses affect the actual accessibility of such training. These decisions of the EU Court extend, at least partially, to Member States tax legislations the scope of existing directives on equal treatment in employment and occupation. In line with *Meyers, Vergani and de Lange*, insufficient tax deductions for work-related childcare costs may, for instance, constitute indirect discrimination on grounds of sex, as such prohibited by European Directive 2006/54/EC, since the financial consequences disproportionately hinder women's access to employment. The insufficient deductibility also constitutes a working condition which is a barrier to women's employment.

29 COELHO, M., AIESHWARYA D., KLEMM, A., AND OSORIO BUITRON, C.: “Gendered Taxes: The Interaction of Tax Policy with Gender Equality”, *IMF Working Paper*, No. 22/26, 2022.

The income gender gap is partly explained by wage rate differentials, as women, on average, are paid 15 percent less per hour of work than men. Employment gender gaps are also meaningful. On average, women are 20 percent less likely than men to participate in the labour force. And if they are employed, women work an average of 85 percent of the number of hours worked by men.

The income gap is also reflected in the composition of the workforce across genders and income levels. Irrespective of their marital status, females tend to be overrepresented at the bottom of the labour income distribution. Within the bottom income decile—which represents less than 5 percent of economies' total income, as depicted in the horizontal axis—more than half of that population segment is female. By contrast, in the top decile, which accounts for an income share between 20 and 40 percent, women are underrepresented and account for less than 40 percent of that population segment³⁰.

While the income gap is driven by mostly non-tax factors, tax policy has an important role to play in addressing gender gaps by directly reducing post-tax inequality, and—more powerfully—by changing incentives³¹. Tax reforms can therefore help by removing any relatively stronger discouragement to working for women, as will be discussed in more detail in the following subsections. Most tax systems treat people differently depending on how much they earn. In progressive tax systems, the average tax rate rises with income³².

30 The report found that the sample corresponded to many LIS national surveys, collected individually. Among these surveys, see Austria 2016, Belgium 2017, Brazil 2016, Canada 2017, Chile 2017, China 2013, Colombia 2013, Germany 2016, Greece 2016, Iceland 2010, Ireland 2017, Israel 2016, Italy 2016, Japan 2013, Lithuania 2017, Luxemburg 2013, Netherlands 2013, Norway 2013, Peru 2016, Russia 2016, Slovakia 2013, South Africa 2017, Spain 2016, Taiwan 2016, United Kingdom 2017, USA 2018.

31 Gender differences in wage rates, for example, reflect differences in education levels, industry-specific characteristics where men or women tend to be over-represented, experience and longevity in the job, willingness to work long-hours, and outright discrimination. While policy interventions other than tax policy could more directly address these issues, tax policy plays an important role, because it affects the return to working and the returns to education. See ONOZUKA, Y.: "The gender wage gap and sample selection in Japan", *Journal of the Japanese and International Economies*, Volume 39, 2016, pp. 53-72. HEATHCOTE, J., PERRIA, F., VIOLANTE G.L.: "The rise of US earnings inequality: Does the cycle drive the trend?", *Review of Economic Dynamics*, Vol. 37, Suppl. 1, 2020, pp. S181-S204. The article documents that declining hours worked are the primary driver of widening inequality in the bottom half of the male labour earnings distribution in the United States over the past 52 years. This decline in hours is heavily concentrated in recessions: hours and earnings at the bottom fall sharply in recessions and do not fully recover in subsequent expansions. Motivated by this evidence, we build a structural model to explore the possibility that recessions cause persistent increases in inequality; that is, that the cycle drives the trend. The model features skill-biased technical change, which implies a trend decline in low-skill wages relative to the value of non-market activities. With this adverse trend in the background, recessions imply a potential double-whammy for low skilled men. This group is disproportionately likely to experience unemployment, which further reduces skills and potential earnings via a scarring effect. As unemployed low skilled men give up job search, recessions generate surges in non-participation. Because non-participation is highly persistent, earnings inequality remains elevated long after the recession ends.

32 As discussed earlier, women's average earnings are 20 percent lower than men. As a result, even in the absence of gender-specific taxes, the impact will differ across genders since their average incomes are not the same.

The gender income gap implies that progressive tax systems can both address general inequality and narrow gender gaps in net incomes. The most obvious tax policy choice countries can take to support female labour supply is to move toward individual taxation. In countries with full household taxation, this means a move to an individualized system.

It is insufficient to allow optional separate filing, since under most circumstances it would not be rational for households to choose this option, and hence the negative effects of joint taxation would remain. In countries with only some family-based elements, such as child allowances, minor adjustments, such as replacing a child allowance (which is worth more to the primary earner) with a flat child tax credit will strengthen married women and mothers' incentives to work. Moving to individual taxation also achieves equal treatment across diverse household types, irrespective of whether they are married.

Moving to individual taxation comes at a cost as it raises many households' average tax rates, including those of poor one-earner households, but there are possible remedies. Earned-income tax-credits, for example, can address poverty, and can be designed in a way that avoids or minimizes negative labour supply effects. They can, for example, be conditional on or rising in hours worked before reaching the threshold for withdrawal³³. The report showed that countries with relatively low female shares of capital income and wealth also tend to tax property and inheritances particularly lightly. On consumption taxes, it covered taxes on feminine hygiene products and excise taxes, which it assessed in relation to externalities and differences in consumption patterns across genders.

In the same period the OECD-Fiscal Policy Report Tax Policy on Gender Equality. A Stocktake of Country Approaches was also published³⁴. It draws upon input from 43 countries on the issue of gender and tax policy design and explores the extent to which countries consider and address gender equality in tax policy development and tax administration. This working paper has a clear gender perspective since on average, women are three times as likely to work part-time as men³⁵.

This report focuses on various aspects of tax policy design and implementation, on a cross-country basis. It explores the extent to which countries consider gender

33 COELHO, M., AIESHWARYA D., KLEMM, A., AND OSORIO BUITRON, C.: "Gendered Taxes: The Interaction of Tax Policy with Gender Equality", *IMF Working Paper*, cit., 2022, p. 23. Finally, given that the move to individual taxation would by itself raise revenues, a revenue-neutral reform could include reduction in tax rates, which would further strengthen the positive labor supply impact for secondary earners and mitigate the negative impact for primary earners.

34 OECD: "Tax Policy and Gender Equality. A Stocktake of Country Approaches", 2022.

35 As part of the 2022 OECD March on Gender campaign, this event formally launched both the Tax Policy and Gender Equality report and the Taxation of Part-Time Work in the OECD working paper, with a view to raising awareness of the issues and highlighting the need for further work and action in this area.

equality in tax policy development and tax administration, how they address explicit and implicit gender biases in their tax systems, and the availability and use of gender-disaggregated data. It analyses country perspectives on how and to what extent gender should be taken into account in the tax policy development process (including via gender budgeting). It also took stock of the impact of the COVID-19 pandemic on gender equality in the tax system and highlights how countries considered gender outcomes in their tax responses to the pandemic.

The report finds that gender equality is an important consideration in tax policy design for most countries, and that about half of them have already implemented specific tax reforms to improve gender equity, most commonly in the taxation of personal income. The report finds also that tax administration and compliance aspects can also have different outcomes for men and women.

Tax administration processes can be more or less accessible for either gender, can be directed at a specific gender or in practice can be used by one gender more than another. The approach to tax compliance, fraud and avoidance behaviours can have gendered impacts depending on the programmes targeted, or if the approach differs depending on the gender of the taxpayer.

For example, a focus on tackling fraud in relation to childcare provisions may have a deleterious effect on women's labour market participation, relative to a focus on tackling fraud in other areas.

The impact of taxation on gender outcomes is widely considered to be important across the countries surveyed³⁶. Three-quarters of the 43 countries who responded consider tax & gender to be at least somewhat important with eight of these countries considering it to be very important. Countries indicated several priorities for future work. The most common preference was for future OECD work to consider the impact of tax credit or tax allowance provisions on gender equity. A second priority was the design of explicit tax biases to reduce gender inequalities. There was also a strong desire for further work to focus on other labour tax issues, with the impact of taxes on second earners, the progressivity of personal income tax systems, and the impact of tax credits and allowances on gender, among the top four options for future work.

A third priority for future work indicated by countries is exploring gender bias in the taxation of capital income and capital (e.g., wealth and inheritance taxes). Many countries notes that gender equality cannot be dissociated from other social

36 MARTIN, P.: "Pink tax versus blue tax: the case for taxing women lightly", *The Sidney Morning Herald*, June 13, 2018: for example, in Britain right up until 1971, wives weren't usually taxed on their income; their husbands were. A wife's income was deemed to be "stated and accounted for by her husband". It wasn't until 1950 that wives ceased to be classified for tax purposes as incapacitated along with "infants, lunatics, idiots and the insane".

goals such as combating poverty³⁷. Responses to the survey highlight varying degrees of priority and assessment of gender outcomes in tax policy design across the countries surveyed.

Key areas where implicit biases were seen to exist in many countries include differences in the nature and level of income, consumption decisions, and the impact of social roles on the outcomes of the tax system. Further analysis could be pursued to improve the awareness of gender biases in country tax systems, in particular implicit ones, with a view to better assess their impact and reduce them as needed. While many countries indicated that gender is taken into account in their tax policy process, this is not a formal requirement in many countries and guidance is rare.

A useful step for governments wishing to further address the impact of implicit bias in their tax systems could be to consider guidance on how to take gender into account in tax policy design, as well as for tax administration purposes. Consideration of the impact of changes in the tax structure and mix are also important to assess for their impact on gender outcomes. When available, gender-disaggregated data is useful to understand possible biases and gender-specific patterns. The survey has also highlighted the need to improve data collection on men and women's property and capital ownership, in order to facilitate deeper analysis of these issues, which is one of the priorities for future work. Then, it's clear that improving gender equality is not only an issue of fairness but can also produce a significant economic dividend.

Working towards more inclusive economies in which women participate fully is important for economic growth and - in the context of the COVID-19 pandemic, the Russia-Ukraine conflict and the current energy crisis - will be crucial in ensuring an inclusive and robust recovery. Research shows that improving gender equality and reducing gender-based discrimination can generate substantial economic benefits, by increasing the stock of human capital, making labour and product markets more competitive, and increasing productivity.

V. SOME CONCLUDING REMARKS.

The reports conclude that the most effective measures are to simplify tax rules and to require gender-based analysis of these rules. Promoting gender

³⁷ In that regard, Portugal considers that tax measures that have improved the progressivity of general tax system (namely in what concerns the tax rate structure, personal tax credits and value-added tax (VAT) rates applied to gas and electricity) had a significant indirect impact on gender equality. Finland indicated that while different tax types may have differential impacts, they result primarily from differences in underlying factors, e.g., income, noting that in Finland, the share of progressive income taxes in the tax mix is high, which can be beneficial for women. Norway notes that the distribution of economic assets, primarily wealth, is skewed by gender, leading to potential implicit bias in that changes in the net wealth tax can affect men and women differently.

equality along those margins has been shown to play an important role in boosting economic productivity and growth, enhancing economic resilience, and reducing overall income inequality. Despite, International, European and national obligations and commitments to prohibit discrimination and ensure gender equality, neither the Union nor the Member States adequately acknowledge gender issues in taxation.

It is therefore essential to clarify the legal obligations applicable at the European and national levels and discuss and strengthen mechanisms for enforcing these obligations. This includes ensuring the implementation of gender mainstreaming in all matters of taxation on the European level, a goal that is strongly pushed by the Gender Equality Strategy 2020-2025.

To ensure compliance with legal obligations in taxation matters on the Union level requires at least carrying out regular gender impact assessments for all fiscal policies. An instrument of particular relevance for the design and impact of national tax policies is the European Semester. It is based on Article 5 TFEU, which stipulates that the Union shall adopt measures to ensure the coordination of the economic and employment policies of the Member States.

This enables the European Union to set a good example and promote implementation at the Member State level. The implementation of gender impact assessments also requires specific gender equality-oriented goals for tax policy. In addition to reducing tax-related barriers to employment, it is necessary to consider the distribution of paid and unpaid work and the effects on disposable post-tax income.

Tax policies must at least avoid increasing existing inequalities. Pursuing these goals conforms with the goals and targets of the 17 Sustainable Development Goals (SDGs)³⁸. In fact, Goal 5 of the SDG, referring to Gender Equality, identifies specific targets, such as ending all forms of direct and indirect discrimination and recognising and valuing unpaid domestic and care work. Gender equality is not confined to Goal 5 of the Sustainable Development Goals but should be mainstreamed into other goals. Goal 10, for instance, refers to social inequalities within and between countries and includes targets that specifically address inequalities in income and wealth. These include the aim to progressively achieve and sustain income growth for the bottom 40 % of the population at a rate higher than the national average, adapting fiscal policy accordingly and progressively achieving greater equality.

³⁸ ALFANO, R., ALFANO, S. P. AND OTHERS: "La Agenda 2030 de las Naciones Unidas y los 17 Objetivos de Desarrollo Sostenible (ODS). Análisis de algunas políticas - fiscales y no fiscales – italianas", in *Los objetivos de desarrollo sostenible: principales desafíos jurídicos* (Edited by M. Marcos Cardona y V. Selma Penalva), Dykinson, 2022, pp 207/214.

Taking gender equality into account requires, for example, considering gender inequalities in income and wealth.

To sufficiently address gender inequalities in taxation, it is also crucial to promote the collection of tax data on an individual basis and to close the gender data gaps on consumption patterns, the use of reduced rates, the distribution of entrepreneurial income and related tax payments, and the distribution of net wealth, capital income and related tax payments. Reducing gender inequalities further requires research, focusing on the impact of taxes on gender equality. Particularly relevant is research concerning taxes that play a vital role in restoring state revenues after the COVID-19 crisis without further increasing gender inequalities.

Revenue from taxes will become increasingly important in order to restore state funding after the COVID-19 crisis³⁹. Therefore, it is important to carefully assess the gender impact of the tax measures prior to the recovery phase.

Mapping gender inequalities in national tax systems beyond joint tax measures will help identify appropriate European measures to address these inequalities. This should involve an overview of national non-discrimination and gender equality obligations that apply to tax policies, including state mechanisms that address gender inequalities in taxation. One of the most critical objectives to promote gender equality in taxation remains to eliminate tax-related disincentives to female employment. Therefore, it is vital to increase both soft law and hard law efforts to phase in individual taxation in the Member States and support tax or benefit provisions and institutional forms of care to reduce the financial burden of care work. And furthermore, it is essential to include gender experts in the European Semester and in law-making. Following the proclamation of the European Pillar of Social Rights, the European Semester also provides a framework for coordinating and monitoring Member States' efforts to implement the principles and rights established by the Pillar: Among these must necessarily be gender policy⁴⁰.

The European Commission has already proposed changes to the legislative procedure in matters of taxation because the requirement of unanimity has hampered progress on important tax initiatives. The suggested use of clauses that allow for qualified majority voting also strengthens the role of the European Parliament, which has often promoted gender equality.

39 See, RUBERY, J., TAVORA, I.: "The Covid-19 crisis and gender equality: risks and opportunities", <https://eige.europa.eu/>, 2021.

40 The European Semester is a cycle of economic, fiscal, labour, and social policy coordination within the EU. It is part of the European Union's economic governance framework. Although the European Semester was initially mainly an economic exercise, it has evolved, integrating other relevant policy fields in the process. Its focus is on the 6-month period from the beginning of each year, hence its name - the 'semester'.

In conclusion, analysis of gender implicit bias is not widespread among the countries surveyed. Analyses about this issue seem relatively rare and most countries that have not yet undertaken this type of analysis do not plan to do so in the near future, despite their importance in raising awareness of implicit gender bias. "Support from universities and academic institutions can be useful in such analyses, as they already play an important role in many countries; as well as the role of the law in requesting or considering these analyses as a factor to take into account in the policy design"⁴¹.

⁴¹ See again OECD, (2022), *Tax Policy and Gender Equality. A Stocktake of Country Approaches*, cit., part. 3.

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