

# UNVEILING THE HIDDEN UNPAID CARE ECONOMY:

## Envisioning a better tax landscape for women



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It is the eve of South African Women's Day 2023. My phone chimes, signalling the commencement of the customary Women's Day platitudes. *"Treat the special women in your life to a service for a sparkling home. Shower her with love and more 'her' time."*

Encouragement of this nature from a well-known cleaning service, innocent as it seems, contains the inherent assumption that it is incumbent upon women to clean the house. This reinforces the notion that adults who co-inhabit a space need not assume co-responsibility for that space. Calls to gift a clean house to a woman in order to create leisure time (something which should not be seen as discretionary) is the type of gender stereotyping that exacerbates the difficulties women face.

Such is the systemic nature of our assumptions about gender that we cannot escape them either in everyday life or in the field of tax. This deep-rooted societal approach to gender roles impacts tax in the same way that tax impacts each and every one of us. It is therefore important that even or rather especially in the field of tax, due consideration be given to issues of gender and gender equality.

To this end, the term 'gender' must be used carefully at the macro-economic levels in which tax policy operates. Gender, when considered alongside tax, can lead to a binary use of the term which means erasure of genders and the reduction of women to one monolithic entity. Nevertheless, it remains useful to see gender as a social construct that leads to certain roles and expectations in order to meaningfully engage with tax policy and legislation. These expectations include that women generally bear the brunt of the unpaid care economy. Women are often expected to keep the home fires burning, which either makes participating in the labour market challenging or downright impossible.

Studies around the world have shown that women (and sometimes even young girls, who happened to be the oldest women in the household) spent significantly more time than men (or boys) on childcare during the pandemic. In fact, the pandemic seems to have left something of a gender equality recession in its wake. We are going backwards; urgent redress is needed.

In this regard, section 9 of our Constitution tells us the following:

- (1) *Everyone is equal before the law and has the right to equal protection and benefit of the law.*
- (2) *Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.*
- (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.*
- (4) *No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.*
- (5) *Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.*

There are scholars who argue that section 9(2), read with section 9(5), empowers us to explore and enforce a far more transformative brand of equality than we necessarily have to date. It is mostly true that overt discrimination has been removed from the South African tax legislation. For example, the married person definition and higher marginal taxation of married women has been abolished. Yet, the language of the acts often still uses 'he' to indicate any gender. Despite progress in eradicating overt discrimination, a more insidious inequality lingers just beneath the surface of the tax legislation. We have not yet formally considered gender equality at any stage in the creation and reinvention of our tax policy. Tax legislation in South Africa operates under the ingrained assumptions about gender roles that serve to eradicate women's voices, wants and needs. Our Constitution arguably allows us to turn this on its head and uproot these systemic biases.

However, when the seminal literature on tax equality is explored,

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it reveals income as the driver of what is equal and what is not, forgetting class, race and gender. Anthony Infanti refers to this as the 'sanitizing effect' of tax equity (See Infanti, A. C. (2007). Tax Equity. Buffalo Law Review, 55(4), 1191–1260 <https://heinonline.org/HOL/P?h=hein.journals/buflr55&i=1199>). Yet, gender informs roles, rights and access to resources; therefore, it also informs the ways in which seemingly neutral tax policy impacts a specific gender.

The practical fact remains that women generally need to source a safe place to leave their children before they can move freely into focusing on their careers and entering the labour market. This is a clear hurdle which women generally need to face more often than men. It only makes sense, then, both logically and constitutionally, that tax policy intervenes here and offers childcare assistance in the form of a deduction, a credit or free childcare centres. This would not be unprecedented—either worldwide or in South Africa. Several countries offer some form of childcare deductions or credits and South Africa boasts an Employment Tax Incentive designed to subsidise and encourage employment of the youth. Why not similarly advance the employment of women? Aside from being the right thing to do, research shows that encouraging women to enter the workplace makes every one of every gender happier and more productive at work.

I forward the message about 'treating' the special woman in your life to a clean house and some relaxation time to a friend. *"Did you see this? It's 2023!"* I ask indignantly before deciding that this is about as much as I can tolerate today. Acutely aware of how privileged I am to be able to do this, I call the local pizza place. *"Toy for a boy or a girl?"*, they earnestly ask when I order a kiddie's pizza. *"How about you describe the toys to me and I tell you which suits the child's personality better?"*, I counter.

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