

**WOMEN'S RIGHTS ARE HUMAN RIGHTS – A REVIEW OF GENDER BIAS IN SOUTH
AFRICAN TAX LAW**

by

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ABSTRACT

The role of taxation in gender inequality is something that is perhaps not considered earnestly enough. Both in South Africa and within the context of global initiatives such as the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Sustainable Development Goals (SDG) which are aimed at eradicating all forms of gender-based discrimination, the importance of understanding the gender consequences of tax policy, whether intended or not, should not be underestimated.

This study seeks to identify whether or not there are any instances where South Africa's personal income tax laws have an effect which is potentially inconsistent with both the Constitutional right to equality between genders and international gender equality agreements to which South Africa is bound, namely the CEDAW and the SDG. In doing so, determine whether South Africa's personal income tax legislation should become a focal point in this regard and be one of the pillars that could further be used as a means to uphold and further the cause of substantive gender equity.

Keywords: Substantive gender equity, personal income taxes, South Africa, Constitution, Convention on the Elimination of Discrimination Against Women (CEDAW) and the Sustainable Development Goals (SDG).

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LIST OF ABBREVIATIONS AND ACRONYMS

Abbreviation	Meaning
CARE	Childcare Access and Relief from Expenses
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
IMF	International Monetary Fund
NRF	National Research Foundation
OECD	Organisation for Economic Cooperation and Development
SARS	South African Revenue Service
SDGs	Sustainable Development Goals
VAT	Value-Added Tax

LIST OF KEY TERMS

KEY TERM	DESCRIPTION
Constitution	The supreme law governing South Africa which came into effect on 4 February 1997. The provisions of the Constitution cannot be superseded.
Discrimination	The unfair or prejudicial treatment of different categories of people, particularly on the grounds of race, age, or sex.
Feminism	The endorsement of women's rights on the grounds of the equality between men and women.
Gender	Differences between the sexes (male or female), particularly considered in light of social and cultural rather than biological differences.
Gender bias	A preference aimed towards or prejudice against one gender.
Human rights	Basic or inherent rights that should be afforded to every person. Human rights afford people with a dignified standard of living and includes rights to fairness, equality, respect and independence.
Personal income tax	Tax that is levied on amounts of income received by an individual in accordance with the laws of the state.
Tax	A mandatory contribution to government finances imposed by the government on employees' income and business profits, or as a surcharge to the cost of some goods, services, and transactions.

CHAPTER 1: INTRODUCTION

1.1 MOTIVATION FOR THE RESEARCH

The modern world has witnessed great advancements in the movement for gender equality, yet there remains a large gap between men and women which still needs to be bridged (D'Attoma, Volintiru & Steinmo, 2017:1). The twentieth century has provided for the entry of women into economic and political spheres which were historically dominated by men and the commitment of the international community towards attaining gender equality and women's advancement (Stotsky, 2016:4). Nussbaum (2016:590) states that, "women have been making progress" and substantiated the claim with the following examples:

- In 1893, New Zealand became the first country to give women voting rights. In December 2015, women in every nation were allowed to vote after Saudi Arabia became the last country to grant women the right to vote.
- In 1900, there was no female representation of women in Parliament globally. By 1990, women held 12.74% of the proportion of seats in Parliament worldwide. This figure rapidly increased to 21.77% in 2013.

However, despite the strides taken by most countries in eradicating gender disparities, women still trail behind men in accessing education and health care, obtaining paid employment and political participation. These gender disparities, particularly with regards to differences in men and women's role in economic activities, in the management and ownership of productive assets and in political participation, are especially more prevalent in developing countries (Stotsky, 2016:4).

Notwithstanding the progress made, gender inequality remains an unfortunate global reality. The World Economic Forum's Global Gender Gap Report is an annual report that seeks to measure gaps between men and women in areas such as health, education, economy and politics in countries around the world. The Global Gender Gap Report 2020 found that the global population-weighted average achievement made towards gender parity is at 68.6%, leaving a 31.4% average gender gap remaining. The population-weighted average was determined using data and population figures from 153 world

economies across four sub-indexes; women's economic opportunities and participation, educational attainment, health and survival, and political empowerment (World Economic Forum, 2019:4-5). If progress towards achieving overall gender parity globally continues to be made at current rates, the Gender Gap Report provides that the various gender gaps outlined above will only close in another 99.5 years (World Economic Forum, 2019:6, 10-15). United Nations Women and the United Nations Department of Economic and Social Affairs published a report titled, *Progress on the Sustainable Development Goals: The gender snapshot 2019*, revealing a wide range of areas in which women globally still fared inferior to men. Following, are some of the findings included in the report (United Nations Entity for Gender Equality and the Empowerment of Women and Department of Economic and Social Affairs, 2019:6-14):

- Gender gaps persist in labour force participation. As recently as 2018, young women were more than twice as likely as young men to be unemployed, outside the labour force or not in school or any formal training programme.
- Women are more likely than men to be victims of extreme poverty. Globally, women are 20% more likely to live in extreme poverty than men. This gap increases significantly for women who are between the ages of 25-34 years old as they are 25% more likely to suffer from extreme poverty.

Eliminating all forms of gender discrimination in a bid to attain equality between men and women is a fundamental human right (Ohchr.org., 2014:1). Gender equality is also a fundamental human right as well as a cornerstone of a flourishing, modern economy that provides sustainable inclusive growth. Indeed, "gender equality is essential for ensuring that men and women can contribute fully at home, at work and in public life, for the betterment of societies and economies at large" (OECD, 2017:3).

State laws and policies have the potential to play a pivotal role in moulding the economic agency of women. Scholars contend that egalitarian laws – laws which are premised on the belief that all people are equal and equally deserving of rights and opportunities – is the most critical precondition to ensure women's economic empowerment. Women's legal capacity – their autonomy to make their own decisions regarding money, travel, work, property, and children – strongly correlates with the portion of women who have bank accounts, and participate in the labour force and firm ownership. These factors provide

women with income and resources, and as a result increase their lives as well as the wellbeing of the broader society. For example, women who control property have more bargaining power which enables them to leave an abusive relationship more easily (Htun, Jensenius & Nelson-Nuñez, 2019:193-195).

A critical factor which needs to be addressed in the quest to attain a more gender-balanced society is that of tax policy and the determination of the interrelationship between gender and taxes. Taxation, as a branch of the law, has potentially far-reaching gender implications and represents a key area which can be used as a weapon to promote the advancement of women. Tax structures frequently discriminate against women directly and indirectly, therefore, taxation is a key determinant of gender inequality in the enjoyment of economic and social rights (Saiz, 2013:82).

A simple illustration of how gender discrimination may be found in a facially neutral tax law is found in the existence of 'tampon tax'. Tampon tax is an umbrella term used to describe the practice of many countries to levy tax on the sale of menstrual hygiene-products, the cost of which is unavoidable and involuntary for most women (Crawford & Spivack, 2017:493). The inequities found in tax systems, therefore, present tax policy with the opportunity for gender reform to help ensure gender equality.

Gender equality is the focal point of several global initiatives. Despite their aspirational nature, international agreements have played a significant role in shaping policy decisions and directing resources towards socially good causes. In this regard, these agreements have fought against injustice and influenced social and cultural norms around the world (Esquivel & Sweetman, 2016:2). One such initiative is the United Nations' Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often regarded as an international bill of rights for women (CEDAW, 2003:n.p.). CEDAW is a treaty that sets out the measures required for the elimination of gender-based discrimination in all its forms and manifestations. The treaty is well-subscribed to, with 189 member states. South Africa has ratified the convention without ascension or succession, thereby rendering the country legally bound to comply with the principles contained in the treaty (UNTC, n.d.:n.p.). It is, therefore, imperative that consideration is given to whether our tax law aligns with the principles contained in the Convention.

The United Nations' 2030 Agenda for Sustainable Development Goals (SDGs) is an international agenda adopted in 2015 that is aimed at providing a global blueprint for peace and prosperity (Sustainabledevelopment.un.org., n.d.). SDG 5 of the Agenda is formulated on the basis of gender analysis and is aimed at achieving gender equality and female empowerment. The goal recognises that gender inequality is made up of interconnected economic, political and social aspects (Esquivel & Sweetman, 2016:2). South Africa is an early supporter of SDG and is committed to realising the goals contained therein (Statistics South Africa. 2019:7). In order to ensure that the country makes progress towards meeting these international goals, the role of tax law with regards to gender equality must be analysed.

The Constitution of the Republic of South Africa, 1996 (hereafter "Constitution") has been hailed as one of the most impressive human rights documents of the twentieth century (Andrews, 2001:694). South Africa's globally commended Constitution seeks to achieve substantive equality across all spheres of life – including, but not limited to, gender equality (Smith, 2014:615; Kaganas & Murray, 1994:1). Tax policy plays a crucial role in the achievement of substantive equality between men and women and to redress systematic discrimination on the grounds of gender (Sepulveda Carmona, 2013:12).

To date, limited research has been performed on the interaction of tax legislation and the Constitution in South Africa. The most notable contribution in this regard comes from the study by Goldswain (2011:1), which describes the constitutional compliance of overall tax legislation and the revenue collection methods. In this research he stated the scope of South African constitutional rights to equality in tax matters are not specified and therefore, there is difficulty in determining whether tax legislation and the practices of revenue collectors are compliant with or violate the constitutional right to equality. This study will follow a slightly different approach, which has not yet been applied, by looking at more detailed aspects of personal income tax law in order to determine if it complies with the constitutional provision of equality for all as it pertains to women as well as whether or not it complies with the CEDAW and SDG 5.

This mini-dissertation will seek to identify the role of taxation in gender inequality in South Africa within the context of global initiatives such as CEDAW and the SDG 5 which are aimed at eradicating all forms of gender-based discrimination in order to contextualise South Africa's progress and position in this regard and in order to identify any room for improvement.

1.2 PROBLEM STATEMENT

This mini-dissertation seeks to identify whether or not there are any instances where South Africa's personal income tax laws have an effect which is potentially inconsistent with both the constitutional right to gender equality as well as international gender equality instruments, namely the CEDAW and the SDG.

1.3 RESEARCH QUESTION

Are South Africa's personal income tax legislation consistent with the gender equality provisions promulgated by the Constitution, CEDAW and SDG?

1.4 RESEARCH OBJECTIVES

Primary Objectives:

- To determine whether South Africa's personal income tax legislation is substantively gender neutral.

Secondary Objectives:

- To determine whether South Africa's personal income tax legislation conforms to the gender equality principles promulgated in the Constitution.
- To determine whether South Africa's personal income tax legislation conforms to the gender equality principles contained in the United Nations' CEDAW.
- To determine whether South Africa's personal income tax legislation conforms to the gender equality goal of the United Nations' SDGs.

1.5 STRUCTURE OF THE MINI-DISSERTATION

The structure of the mini-dissertation is as follows:

- Chapter 1: Introduction;
- Chapter 2: Research design and methodology;
- Chapter 3: Literature review;
- Chapter 4: The effect of personal income tax laws on gender equality; and
- Chapter 5: Concluding remarks.

CHAPTER 2: RESEARCH DESIGN AND METHODOLOGY

2.1 RESEARCH DESIGN

Research design is concerned with the organisation of research activity in a manner that will meet the aims of the research study (Easterby-Smith, Thorpe & Jackson, 2015:67). The research design for this study is set out below.

2.1.1 Philosophical stance of the study

Research philosophy is, “a system of beliefs and assumptions about the development of knowledge” (Saunders, Lewis, Thornhill & Bristow, 2019:130). Philosophical stances that a study may adopt include:

- Positivism: A research philosophy that adopts an objective view of reality using scientific methods devoid of subjective bias (Giacobbi, Poczwardowski & Hager, 2005:21).
- Interpretivism: A philosophy that views research as subjective observations made through the direct experience of people rather than objective observations. Research following an interpretivism philosophy, desire to understand situations more than explain them (Mack, 2010:8).
- Realism: A philosophical position which holds the view that objects exist independently of human knowledge or perceptions of them (Maxwell & Mittapalli, 2010: 150).
- Pragmatism: A philosophical stance that is characterised by practice and human experience (Simpson, 2009:1333). The researcher’s views and knowledge are shaped by the research question (Thornhill, Saunders & Lewis, 2009:109).

This mini-dissertation falls within the ambit of pragmatism. Pragmatic research is conscious of the social, historical, and political context of the study being conducted. The research process values social justice and practical problems experienced by people (Giacobbi *et al.*, 2005:18). Pragmatism, not unlike feminism, often has a political or social focus, campaigning to change oppressive political and social structures (Whipps & Lakes, 2017:n.p.). A pragmatic approach is, therefore, fitting to this study which aims to analyse

the potential for gender bias in South African personal income tax laws within the context of the Constitution and global initiatives aimed at protecting women's rights.

2.1.2 The nature of the study

The nature of studies may be subdivided into three categories:

- Exploratory research: A research type conducted to study a subject matter about which little is known and where available literature is limited. Exploratory research studies are characterised by a high level of flexibility and aims to explore the subject matter further (Van Wyk, 2012:8).
- Descriptive research: A research type that is designed to describe situations as they exist. This type of research seeks to characterise a particular issue, including people and social structures (Akhtar, 2016:75).
- Causal research: A research type that focuses on analysing situations or problems in order to identify and analyse cause-and-effect relationships. Causal research may seek to determine and assess the impact caused by changing a variable in a study (Dudovskiy, n.d.).

This mini-dissertation constitutes a descriptive research as it seeks to identify and analyse the potential for existing gender bias in South African tax law.

2.1.3 Reasoning methods

The types of reasoning which may be adopted by a study are:

- Inductive reasoning: A logical process of observing phenomena in order to establish a general theory (Zikmund Quinlan, Griffin, Babin, & Carr, 2019:80). Inductive reasoning moves from particulars to generalisations in that researchers generalise limited observations of specific circumstances to general conditions. (Zalaghi & Khazaei, 2016:228). The conclusions drawn using inductive reasoning are not analytically implied by the premises upon which it is based and are, therefore, not merely restatements of those premises (Ketokivi & Mantere, 2010: 5).

- Deductive reasoning: “The logical process of deriving a conclusion about a specific instance based on a known general premise or something known to be true” (Zikmund *et al.*, 2019:80).
- Abductive reasoning: A process whereby hypothesis or explanations are developed from observations made. The developed explanation is thereafter tested against known theories or rules. Abductive reasoning is best suited to making sense of unfamiliar situations. (Richardson & Kramer, 2006:499-500).

This study will follow an inductive reasoning approach. The gender bias in tax systems as observed in the literature examined will be used to make an analysis of gender bias in South African personal income tax law.

2.1.4 Time horizon for the study

The time horizon refers to the time period over which research is conducted. Two types of time-horizons can be identified:

- Cross-sectional study: Cross-sectional research studies “investigates the state of affairs in a population at a certain point in time” (Bethlehem, 1999:110).
- Longitudinal study: Longitudinal studies involve the study of phenomena over various points in time. This method enables researches to identify changes and developments across periods (Thornhill *et al.*, 2009:155).

This study qualifies as a cross-sectional study as the data used was collected at a specific point in time, and will examine the tax system in its current form.

2.1.5 Unit of analysis

A unit of analysis constitutes “the most basic element of a scientific research project” (Lewis-Beck, Bryman & Futing Liao, 2004:1157). The unit of analysis describes the subject, or the “who or what”, of the research being undertaken (Lewis-Beck *et al.*, 2004:1157). A study may contain more than one unit of analysis if the theoretical research objective warrants doing so (Easterby-Smith *et al.*, 2015:99).

The unit of analysis for this study will be the South African tax legislation, Constitution, articles of the CEDAW and the SDGs and literature related to gender bias in tax systems.

2.1.6 Sources of data

Data used in a research study may be collected from either a primary or a secondary source. Primary data is original data that is gathered specifically for a research study. In this regard, primary data contributes new data to existing knowledge. Conversely, secondary data is data that was previously collected for another purpose or research and is reused (Hox & Boeijs, 2005:593). Secondary data is widely available and may be found in forms such as books, journals and magazines. When using secondary data, an assessment must be made of the quality of that data in order to ensure that only reliable information is presented in the research study (Walliman, 2006:52-53).

No new data will be obtained for the research study, therefore, this mini-dissertation will rely solely on secondary sources of data, thus taking care to ensure the credibility of the data source.

From a legal perspective, primary sources constitute original material and the body of the law itself. Primary sources, therefore, include legislation, treaties and conventions. Secondary sources provide commentary on the primary sources and include journals, encyclopaedias and textbooks (Subject Guides, n.d.). Therefore, this mini-dissertation will make use of primary data in so far as it represents legislation and international treaties.

2.1.7 Types of data

Walliman (2006) contended that the nature of data has important implications for the reliability and the type of analysis to which it may be subject to. It is, therefore, necessary to identify the different types of data (Walliman, 2006:51).

Data may be either qualitative or quantitative. Quantitative data is of a numerical nature that can be measured. Qualitative data is non-numerical and as such cannot be accurately measured and counted. Qualitative data makes use of words and includes literary texts

(Walliman, 2006:54-55). The data used in this mini-dissertation is primarily qualitative in nature as texts and legislation will be used extensively. Quantitative data, in the form of tax statistical data, will be used where necessary, but to a limited extent.

2.2 RESEARCH METHODOLOGY

Research methodology is the overall set of procedures used to conduct research. Methodology narrates an approach which is implemented to address a problem in the research process (Remenyi, Williams, Money & Swartz, 1998:28). The section that follows explains the methodology employed in this study.

2.2.1 Methodological classification

This study seeks to identify and analyse instances of gender bias in South African tax law by means of thorough reading and the analysis of the relevant literature and legislation. As a result, this mini-dissertation will primarily follow a qualitative approach. The objective of qualitative methodology is, “to produce in-depth and illustrative information in order to understand the various dimensions of the problem under analysis” (Queirós, Faria & Almeida, 2017:370).

Traditionally, feminists researching gender issues have displayed a preference for using qualitative methods on the basis that only qualitative methods are able to capture the subtleties and nuances of women's lived experiences (Hesse-Biber, 2010:170). In contemporary times, feminist research embraces both qualitative and quantitative methodologies in order to be more inclusive and address shortfalls associated with qualitative methods (Campbell & Wasco, 2000:774). In keeping with this, this study will make use of qualitative methods and use some quantitative data where necessary in order to provide necessary context or substantiate any claims made.

2.2.2 Research methods

This mini-dissertation will employ a combination of two research methods, namely the doctrinal research method and the ‘Asking the Woman Question’, a feminist legal method.

2.2.2.1 *Doctrinal method*

Legal research involves systematic examination of problems relating to law within an appropriate methodological framework (Kharel, 2018:1). The doctrinal research method is the core legal research method (Hutchinson & Duncan, 2012:85). Literature specific to doctrinal research methods is limited. The doctrinal method is assumed knowledge within the legal discipline and as a result, legal researchers have not habitually described their research methodology even within their academic work (Hutchinson, 2015:131). It has become obvious that many researchers and legal jurists know how to undertake a doctrinal approach, but are unable to explain the methodology (Smits, 2015:13).

Hutchinson and Duncan (2012:84) mention that the word ‘doctrinal’ means “instruction, knowledge or learning” from its Latin roots. The Merriam-Webster dictionary defines ‘doctrine’ as a “principal or law established through past decisions” (Merriam-Webster, n.d). Hutchinson and Duncan (2012) expound on this definition by defining the word ‘doctrine’ as, “a synthesis of various rules, principles, norms, interpretive guidelines and values. It explains, makes coherent or justifies a segment of the law as part of a larger system of law. Doctrines can be more or less abstract, binding or non-binding” (84); these definitions lead to the knowledge that legal doctrine consists of a body of rules associated with legal concepts or principles. Therefore, doctrinal legal research relates to a detailed enquiry of legal concepts, values, principles and existing legal texts such as statutes and case laws (Kharel, 2018:2).

Hutchinson and Duncan (2012) describe the doctrinal method as “research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and predicts areas of future developments” (101). The doctrinal research method systematically analyses and logically orders statutory provisions and their related legal principles. Doctrinal researchers emphasise substantive law, doctrines, concepts and judicial pronouncements (Gawas, 2017:129).

Smits (2015:5-7) breaks down the doctrinal method into three essential elements. Firstly, he contends that the doctrinal method adopts an internal perspective in that the researchers place themselves inside the legal system. Secondly, legal doctrine must be

seen as more than simply a description of existing legislation. Rather, doctrinal research commands that the law be seen as a system. All the relevant elements of the law – including principals, case law and concepts – must be fitted together into a working whole. The third element is that the doctrinal approach systemises present law only. Past or foreign laws are taken into account in the context of further developing the system of present-day law rather than being systemised itself. In order to achieve development of the present law, it is also essential that the doctrinal approach be able to accommodate recent developments in legislation and case law against the backdrop of societal change (Smits, 2015:5-7).

This mini-dissertation will make use of the doctrinal legal method. In following the doctrinal research method, this mini-dissertation will seek to systematically analyse tax law, with a particular focus on personal income tax, in order to identify whether or not the law is detrimental to women and whether there are gaps in the law which have the potential to be detrimental to the interest of women.

Doctrinal research methods are not merely literature reviews. Literature reviews are a part of doctrinal research in that existing research literature related to the research topic under review must be critically analysed. However, the crux of doctrinal research is that primary legal sources such as legislation, rather than only secondary sources, must be extensively analysed (Hutchinson & Duncan, 2012:113). Doctrinal research is described colloquially as ‘black-letter law’ as it is characterised by the study of legal texts (Chynoweth, 2008:29). The interpretation of the legal rules under review is increasingly impacted by multiple other legal sources, including international treaties (VanGestel & Micklitz, 2011:29). This study will analyse the South African tax legislation in order to identify inconsistencies with personal income tax laws and the gender equality provisions of the Constitution. Tax legislation will also be tested against two international agreements – CEDAW and the SDG – in order to identify areas of gender bias in legislation. Furthermore, this study will make use of and provide an in-depth analysis of literary texts related to the legal provisions issue under review.

Doctrinal research does not deal with primary data of social facts collected first-hand from surveys, field study or any other empirical means (Kharel, 2018:10). Instead, data is obtained through authoritative sources – either the law itself or other legal texts such as

scholarly publications and precedent (VanGestel & Micklitz, 2011:26; Kharel, 2018:10). This study has not sought to obtain any first-hand primary data and the study will be conducted through the careful analysis and reading of authoritative text, most notably personal income tax legislation.

Doctrinal research methodologies are primarily qualitative in nature (Pidduck, 2019:206). However, doctrinal research contains aspects associated with both qualitative and quantitative aspects (Hutchinson & Duncan, 2012:116). This mini-dissertation provides a discussion on gender bias in the South African tax legislation derived from an extensive reading of literary texts and legislation and is thus largely qualitative.

Doctrinal research has been criticised on the basis that it views the law as existing in an objective doctrinal vacuum rather than within a social framework or context. However, the law affects society and does not operate in a vacuum (Kharel, 2018:13). Consequently, while doctrinal research has remained true to its core, it is less constrained than it was in the past (Hutchinson, 2015:138). Doctrinal researchers are to some extent beginning to incorporate statistics and social science evidence and methods into their research in order to provide more balanced recommendations for reform (Hutchinson, 2015:130). The use of the doctrinal method is, therefore, encouraging for legal researchers as it allows the use of official statistics in order to elucidate their views on the workings of the law (Burns & Hutchinson, 2009:167). Doctrinal research has also gained importance in sociological law which seeks to determine the effect of law and associated legal institutions on society and human attitudes (Gawas, 2017:130). This mini-dissertation will make use of official statistics published by the government and international organisations where relevant in order to explain or substantiate any claims made. These statistics may elucidate the role that gender biased tax laws play in the broader South African society and the impact it has on citizens.

Contemporary legal researches acknowledge that it is important to build on the conclusions drawn from doctrinal research by using sociological or other outside perspectives. (Hutchinson & Duncan, 2012:116). In the United States, doctrinal teachings have begun to understand and appreciate the impact of extra-legal influences and the importance of recognising such influence in their research (VanGestel & Micklitz, 2011:27). Many researches have also fused doctrinal research with non-doctrinal methods, and have

incorporated evidence from other disciplines into their research. (Hutchinson, 2015:131). This mini-dissertation will, therefore, employ the doctrinal method together with the 'Asking the Women Question' question, a feminist legal method.

2.2.2.2 Feminist Legal Method

Feminism is a movement that desires to achieve social change (Bartlett, 2000:33). Finley (1988:352) contended that feminism is one of the most important and most potentially transformative movements in legal scholarship because it challenges the definitions, assumptions, ideals, and epistemological notions of a universal, objective rationality that underlies our legal system.

Feminism has evolved over time to the modern day "third-wave feminism" which is more inclusive of women from all races, classes, sexualities and ethnicities than previous feminist movements (Harding, 2018:139). Third-wave feminism is rooted in the theoretical concepts of feminist legal theory and demands that the various different conditions under which women exist be taken into account in feminist jurisprudence (Janus, 2013:256; Barnett, 1998:9). Feminist researchers have sought to achieve the feminist aim of societal redress for woman through researching issues pertinent to women and legitimising women's knowledge through including women as both researchers and participants in research (Harding, 2018:144).

Feminist legal theory is based on the premise that law has played a major role in the subordination of women. Feminist legal theories are derived from female experience – a contradictory viewpoint to the dominant male perception of reality (Cain, 1998:191). Feminist jurisprudence grew out of the need for scholarship based on women's experience and the need to rethink the law in light of the gender norms embedded therein (Baer, 2011:6; Juergens, 1991:31). Feminists distrust traditional legal methods on the basis that they represent only male power structures and consider only a male view of the world (Clougherty, 1996:2). The dissatisfaction of traditional legal methods warrants the development of feminists' own methodology to satisfy their aim of challenging and reforming existing legal theory (Alkan, 2013:4).

Feminist scholars argue that women live a vastly different reality to men, so much so that theories developed by men are ill-suited to women (Baer, 1999:16). Theories of gendered reality have been used in feminist jurisprudence as a means to counter-acting implicit male views (Baer, 1999:16-17). In this regard, Baer (1999:38) identified the three organising premises of feminist theory as:

- Conventional theory is male biased: The founders of traditional legal theory are male. This is not to say that maleness was an intended consequence of traditional theory, however, the derivation of universal truths in traditional legal theory has been done from a male viewpoint (Baer, 1999:23).
- Reality is gendered: Gendered reality refers to notions of gender differences (Baer, 1999:22). A crucial gendered reality is the power difference, or the difference between the position of men and women in society (Baer, 1999:27) Despite legal rights to equality, power and privilege, dynamics continue to shape the lives of women (Janus, 2013:255).
- Female specific theory is a necessary corrective: By drawing from the experience of women, feminist legal theory is able to analyse the relationship between gender and law in a manner that provides an understanding of the limits and opportunities for legal reform (Bartlett, 2018:1).

Feminist jurisprudence argues that the law entrenches male supremacy, regardless of whether or not it is intentional (Baer, 2011:6). Dowd (2008:202) contends that feminists seek to explain the real inequality of women in relation to men, even in instances where the law has granted formal equality between men and women. Through such advocacy of feminist scholars, the equality of women has been greatly advanced (Barnett, 1998:9).

Feminist jurisprudence has gained ground in the legal field, and its credibility is proven by its use in distinguished journals and texts in recent times (Conaghan, 2020:352). If feminists desire to achieve their goal of revealing gender biases embedded in law and prompting policymakers to implement reforms it is important that feminist scholars do not ignore traditional legal structures altogether (Alkan, 2013:4). Despite feminist criticisms of traditional legal theory, feminist legal methods should instead be used to complement traditional methods (Baer, 1999:25).

This mini-dissertation seeks to uncover potential gender bias in tax systems. In order to discover the ways in which the law treats women differently, it is necessary that we look at tax law through a feminist lens. Men and women experience reality differently. The United Nations Human Development Report (1995), as cited by O'Connor, Smithson and Guerreiro (2002), introduced the discussion on gendered realities with the following excerpt: "no society in the world treats its women as well as its men"; that is to say that "in no society today do women enjoy the same opportunities as men....."; ... "a widespread pattern of inequality between men and women persists" (2, 29, 75). These studies have supplemented the statements with findings that women earn less than men; are less likely to be employed in managerial positions; are more likely to work part-time or have reduced working hours; and are more likely to primarily shoulder the responsibility of childcare. This gendered reality demands that women's experience with tax law be considered separately from men. This study, therefore, incorporates a feminist research method in order to better reflect and understand the gendered impact of South African tax law. However, as noted, feminist methods must take traditional methods into account and based on this reason, the feminist method will be used together with the doctrinal method for the purposes of this study.

The feminist legal method that this mini-dissertation will employ is the 'Asking the Woman Question' method. This method contends that asking a question on a frequent enough basis becomes a method. The 'Asking the Woman Question' method involves the determination of how existing laws fail to account for the experiences of women rather than just men, or how these laws may be disadvantageous to women. The woman question is comprised of a rich series of questions which has continued to challenge inequality as well as expose the silences and absences of women in law and society (Dowd, 2008:203). This method demands explanations for women's exclusion from all areas of life and it demands justification from those who perpetuate women's exclusion (Barnett, 1998:22). This method, although simplistic, is an effective method which seeks to expose and attempts to correct the purported male-centric or gender non-neutral features of law (Bartlett, 1990:837). Only by asking the woman question and by deconstructing texts and institutional practices, can the position of women be revealed and justifications and rationalisations can be demanded and the discriminations and disabilities be removed (Barnett, 1998:23).

Clougherty identified the three essential features of asking the woman question as:

- “to identify bias against women implicit in legal rules and practices that appear neutral and objective,
- to expose how the law excludes the experiences and values of women, and
- to insist upon application of legal rules that do not perpetuate women’s subordination” (Clougherty, 1996:7).

Bartlett (1990:838) argues that not asking the woman question paves the way for the justification of laws that disadvantage women as differences in the treatment of women goes unchecked. The woman question is an effective demonstration tool used to show the potential impact of laws which may prejudice women.

The woman question is an appropriate method to use for the purposes of this study because tax policy has disparate effects on men and women in ways which may either reinforce or overcome existing gender inequalities. It is, therefore, necessary that we examine these differential impacts from a feminine perspective (Grown & Valodia, 2010: 301). An awareness of this differential impact, which will persist for as long as men and women face different socio-economic realities, is important and must be borne in mind by policymakers seeking to use tax as a means of achieving gender equality. This method will be applied by examining personal tax law in order to identify how tax law does not serve the interests of woman, or in effect treats women differently to men. This is in keeping with the core principles of feminist legal theory and the ‘asking the women question’ method as it is undertaken with the aim of women in mind, identifying how the law excludes or places women at a disadvantage.

2.3 CONCLUSION

This chapter detailed the design and research methodology employed in this mini-dissertation. The methods to be used in this mini-dissertation, the doctrinal legal method and the asking the woman question method, were highlighted and explored.

CHAPTER 3: LITERATURE REVIEW

3.1 GENDER BIAS AND GENDER INEQUALITY

This section will explore the concepts of gender biases and gender inequality overall, as they pertain to legislation, specifically tax legislation.

3.1.1 Overview of gender bias and inequality

In order to make a meaningful analysis of gender bias in tax systems, it is necessary that to firstly unpack what is meant by the term 'gender bias'. OED online defines 'gender' generally as "males or females viewed as a group" (OED Online, 2020:n.p.). However, in terms of psychology and sociology, this definition is expounded and explained as, "The state of being male or female as expressed by social or cultural distinctions and differences, rather than biological ones; the collective attributes or traits associated with a particular sex, or determined as a result of one's sex" (OED Online, 2020:n.p.). The word bias is defined as "a particular tendency, trend, inclination, feeling, or opinion, especially one that is preconceived or unreasoned" (Dictionary.com; n.d:n.p.). It therefore follows that gender bias is an "inclination towards or prejudice against one's gender" (Lexico, n.d.:n.p.).

Closely related to gender bias, and often used interchangeably, is gender discrimination. Article 1 of CEDAW outlines discrimination against women as:

... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (CEDAW, 2003:n.p.).

Grown (2010:3-4), in clarifying the term 'gender', contends that differences between men and women in economic, social and political spheres stem from differences in societal views on female and male roles, obligations, rights and responsibilities rather than biological differences. It is evident from the literature that these differences between men and women are what lead to gender bias. According to Beaumont (2016) it is the, "invisible-hand" mechanism – "a social dynamic through which underlying biases influence

perceptions and behaviour, generating and legitimating patterns of inequality within and across institutions – including law” (668) – that perpetuates gender inequality in the modern world.

3.1.2 Gender bias and inequality in legislation

According to the World Bank, women have on average only three-fourths of the legal rights afforded to men. South Africa achieved a score of 88.1/100 on the same gender equality index (World Bank, 2020:1-7). This indicator suggests that although South Africa is above average and great strides have been made in the fight for gender parity, there is still much progress to be made on the side of the law. As will be evident from the discussion on bias in tax legislation, legislation has the ability to provide an impediment to the global goal of eliminating all forms of gender bias, and yet it also possesses the ability to be an important tool in narrowing the gender gap.

Although legislation is, generally, less overtly discriminatory than in previous years, some forms of direct discrimination continue to exist. Discrimination is direct when differential treatment on the basis of sex or gender is explicitly conveyed by norms or practices. When such discrimination is envisaged by law, it is *de jure* or in essence, sanctioned (Cotula; 2006:5). In their paper on women’s rights in relation to the law written over 25 years ago, Kaganas and Murray (1994:4) found that South African law had already at that time removed most of the blatant discrimination against women.

However, that is not to say that gender bias or discrimination does not exist at all in South African law. *De facto* discrimination, which is the persistence of discrimination despite the law being, on the face of it, non-discriminatory, may still exist in relation to gender (Cotula; 2006:5). Law is potentially able to sustain a system of gender discrimination through the achievement of superficial, or formal equality, without true substantive change as will be discussed later in section 3.3.1. Briefly, this refers to the stated commitment of treating men and women equally under the law, while still assuming or permitting stereotypes, discrimination, and inequalities related to gender and family to exist (Beaumont, 2016:670). Differently put, not taking women into account when writing legislation could lead to this inadvertent bolstering of discriminatory practices.

The wording in legislation is primarily gender-neutral in that it does not differentiate between men and women. Despite the overall appearance of the law as being gender blind, the reality is that the law operates in a manner that materially impacts gender equality (Barnett, 1998: 22). Therefore, merely having ostensible equality in the law does not translate to equality in reality (Hodgson & Sadiq, 2017:101). The use of gender-neutral language in law hides the extent to which the law is permeated by male constructs and standards. Laws which appear to be gender neutral usually aid conditions which result in the subordination of women (Barnett, 1998:6). It follows that if law seeks to be truly gender-neutral, it must seek to incorporate women's subjective reality and women's positions in society (Barnett, 1998:23; Deane 2005:302). Laws which seek to differentiate between people on the basis of different characteristics, identities and historical experiences in a bid to achieve equal outcomes for all people advocate for true, or substantive equality (Smith, 2014:613). The concept of substantive equality and its role in taxation is explored further in section 3.3.1.

3.1.3 Gender bias and inequality in tax

Tax systems, often unwittingly, display gender biases and exacerbate existing gender inequalities. This section will examine the concepts of gender biases and inequalities in tax systems, with a specific focus on personal income tax systems.

3.1.3.1 Overview of gender bias in tax legislation

Gender bias in tax systems refers to any form of discrimination which is based on the sex of taxpayers (Pfeuffer & Weißert, 2006:35). Discrimination in tax policy may arise as tax law is, "affected by a wide range of political, economic, cultural, institutional, and historical factors" (Morrissey, 2017:40) which impact men and women differently. This section will explore the gender biases which may prevail in tax systems, both explicit and implicit, and the impact of such biases on women as follows:

- Explicit biases in tax legislation

Gender bias in tax systems is a global issue and can be found in both developed and developing nations. Stotsky (1997:31) identified that gender bias in tax systems may be

explicit or implicit. Explicit bias refers to specific provisions of the law which treat men and women differently. Identifying explicit bias is relatively simple as it is largely dependent on the language or wording used in the tax legislation. Personal income tax applies to individuals or family units such as married couples, therefore, personal income tax is able to differentiate between taxpayers on the basis of gender more easily (Pfeuffer & Weißert, 2009:40). As a result, in both developed and developing nations, explicit gender bias is most commonly found in personal income tax compared to other types of taxation (Stotsky, 1997:31).

An example of an explicit bias can be found in the Moroccan personal income tax system. A woman who is the breadwinner of the household only qualifies for a tax exemption if she is able to legally prove that her spouse and children are dependent on her. Conversely, in instances where a man is the breadwinner of a household, the tax exemption is automatically available. As a result, in dual-earner households, where the woman is the higher income-earner, she will pay more tax than a household where the male spouse earns the higher income. Women are, therefore, penalised by the tax system if they assume a less traditional role within the family unit (Grown & Komatsu, 2010:30; Capraro, 2014:10).

- Implicit biases in tax legislation

Implicit gender bias on the other hand is more of a hidden danger in that it displays neutral wording and therefore, does not distinguish between men and women. Implicit bias arises due to the different social and economic roles and responsibilities of men and women. As a result, the effects of implicit bias on the different genders differs and it is more difficult to detect the presence of implicit bias in tax law due to the judgement required in what constitutes desirable behaviour (Stotsky, 1997:31-32; Pfeuffer & Weißert, 2009:40).

Implicit bias in indirect taxes such as Value-Added Tax (VAT) may arise due to the tax imposed on specific products which are necessary in order to meet basic needs, provide care and reduce women's burdens of unpaid care work, which is the unremunerated responsibility of looking after the household and caring for children and dependents (Joshi, 2017:1; Grown & Komatsu, 2010:47). This implicit bias is as a result of different consumption patterns between men and women as it is believed that

women spend more of their income on basic services as opposed to men (Wanjala, Kiringai & Mathenge, 2006:26). For example, in some countries including South Africa, studies have shown that the poorest female-breadwinner households bear the heaviest incidence of taxes on food and children's clothing (Grown & Komatsu, 2010:47). Wanjala, Kiringai & Mathenge (2006:29) made a similar finding in their study on gender and taxation in Kenya. The study found that female-headed households bore a higher final VAT burden despite many of the basic items which they consume being exempt. This is due to the fact that females generally earned less than men, and as such the proportion of income spent on indirect taxes in relation to their total income is higher.

Implicit biases are also found in personal income tax systems. For example, tax exemptions for interest or dividend receipts are more likely to benefit men instead of women due to the higher likelihood that men own these return-bearing stocks and equities. Implicit biases in personal income tax also arises as a result of men's increased propensity to occupy professional positions or formal employment, thereby placing them in a better position to take advantage of exemptions and deductions allowed by tax legislation (Grown, 2010:12). This study focuses on personal income tax laws and therefore, implicit biases found in personal income tax systems will be explored further in section 3.1.3.4 and in Chapter 4.

- Impact of biases in tax legislation

A deep-rooted principle of the tax system is neutrality. Neutrality, as used in this instance, refers to impartial treatment of taxpayers. An important aspect thereof, is ensuring that chosen tax legislation is applied fairly and evenly on taxpayers. Partiality in tax treatment may, therefore, arise from either differing treatment of taxpayers who are essentially the same, or the same treatment of taxpayers who are essentially different. (Groves, 1948:18). Neutrality in tax systems further demands that tax should not be the basis upon which taxpayers make lifestyle decisions (Furman, 2008:1). Tax systems which are gender non-neutral may, therefore, lead to different decisions taken by men and women on the basis of the tax impact of those decisions. Therefore, even tax laws that appear gender-neutral in that they do not overtly differentiate between men and women, may have different effects on men and women and not taking this into account is potentially problematic for gender equality (Morrissey, 2017:40).

Gender bias in tax law, both implicit and explicit, can affect the decisions taken by men and women on issues including whether, and how much to work, their personal consumption habits and their overall tax liability (Stotsky, 1997:30). This undermines the principle of tax neutrality which is, as previously noted, one of the most widely accepted principles of taxation. The basic premise of tax neutrality is that decisions should be made based on economic or other merits and not because of the tax impact of such a decision. Tax systems should strive to raise required revenues without distorting the decisions that individuals or firms would make in the absence of such taxes. A simple example to illustrate non-neutrality of a tax law is as follows: an efficient economic system would result in consumers deciding between chocolate chip or oatmeal cookies based on personal taste as well as the cost of these items. Should government impose a tax on chocolate chip cookies but not on oatmeal cookies, consumers may now factor taxes into their decision on which cookie to consume and may end up choosing their less-preferred cookie because the lack of tax on the item has made it cheaper (Furman, 2008:1-2). The impact of taxes on consumption habits of women can be displayed through the tax imposed on women's menstrual products. Studies have found that imposing such a tax has forced some poorer women into using unsafe alternatives such as ash or cloth, as they cannot afford the consumption of such goods which are often taxed and where applicable are also deemed luxury products, and not basic necessities, and are therefore, taxed at a higher rate in many jurisdictions (Buenaventura & Miranda, 2017:25).

An example of the behavioural and executive impact of tax policy is found in Japan and has been termed the 'Wall of 1.03 Million Yen'. The Japanese income tax system makes use of a spousal deduction. Up until 2018, this deduction allowed taxpayers whose spouses earned a maximum of ¥1.03 million a year to deduct ¥380,000 from their income for tax purposes in order to reduce their tax burden. This tax reform was intended to increase married women's presence in the labour force. However, the arrangement has been heavily criticised as statistics have shown that its effect was actually to reduce both the average work hours for married women and their annual incomes. This is because the tax reform, rather than encouraging women's labour force participation, incentivised married women to adjust their working hours in order to have their annual income fall below the ¥1.03 million threshold. The trend in reduced working

hours and income was not noted for single women. Furthermore, this policy has been strongly attacked on the basis that it encourages households to have full-time homemakers, which in turn discourages the social advancement of women. Despite widespread criticism of this deduction and calls for it to be abolished, the law is still in effect and the threshold for maximum earnings of a dependent spouse has been increased to ¥1.5 million from 2018, with the amount of the deduction of ¥380,000 gradually declining for taxpayers whose annual income exceeds ¥11.2 million. The exemption falls to zero for taxpayers who earn an annual income of ¥12.2 million or more (Yokoyama, 2015:3; Shigeki, 2017:n.p.).

The impact of taxation on the lifestyles and decisions taken by taxpayers is also illustrated by the true story of Elizabeth R. Johnson as narrated by McCaffery (1992:984). Elizabeth, a working mother in the United States of America, was a magazine editor who left employment after the family accountant pointed out the irrefutable fact that after both taxes and additional expenses, especially the cost of childcare, her work was actually costing her family money. Essentially, she could not afford her job. Despite the time passed between Elizabeth's story and the present day, not much has changed for American women. In the present day in the United States of America, childcare costs are extremely high and in some states are equal to or exceed the cost of college tuition or rent. These costs are seen as private expenses, and are, therefore, not considered tax deductible expenses. The result is that many mothers, especially those with young children, are forced out of the workforce due to the cost of childcare being higher than they are able to afford (McCormack, 2016:1330-1336). The bias presented by the non-deductibility of childcare costs is discussed in further detail in section 3.1.3.3.

It is evident that the gendered effects of taxation have spanned generations and continents. If we wish to attain the fundamental human rights of the equality for women, we must, therefore, understand the impact that taxation can have on women and how this impact affects gender equality so that it may be rectified. Barnett & Grown (2004:3) identified four issues in economic activity related to gender differences which may be used to understand the impact of taxation on men and women; these are:

- Women's role in the unpaid economy:

Unpaid work consists of care work, subsistence production which is the production of goods or services such as food or clothing for home use and unpaid community work such as volunteer work. Unpaid care work specifically, as mentioned in section 3.1.3.2, entails the responsibility of looking after the household and caring for children and dependents. Children under the age of 5 increase care work significantly (Barnett & Grown, 2004:3; Joshi, 2017:1). Care work demands lengthy hours to be spent on laborious tasks, and often goes unnoticed. Around the world, the responsibility for care work falls primarily on women.

Recent studies have found that due to the large care and domestic burden placed on women, women worked an additional five hours each week or a month of eight-hour days compared to men. This imbalance is concerning for gender inequality, not only because such work is underappreciated, but also because women's personal growth and professional development is hindered due to the large amount of time spent performing such unpaid tasks (Marphatia & Moussie, 2013:585; McCormack, 2016:1335). Furthermore, the disproportionate and heavy burden carried by women in performing such care work presents a barrier to women's equal enjoyment of human rights (Sepulveda Carmona, 2014:1).

The value of unpaid non-care work such as subsistence agriculture or work performed in family businesses has been included in country's calculations of gross domestic product and national accounts, and has been given consideration in policy analysis. However, unpaid care work is largely ignored in political and social considerations, despite studies estimating its value being placed at between 10 to 50% in a sample of countries (Sepulveda Carmona, 2014:3).

The debate on the value, if any, that should be attached to the work performed by woman in the unpaid economy, therefore, impacts on taxation as it affects "income" and consequently who bears the responsibility of taxes (Grown, 2010:5). In addition, it is contended that tax should be used as a tool for promoting gender equality by promoting equal sharing of paid and unpaid work, and eliminating any incentives to keep inequitable roles (Morrissey, 2017:40).

Feminist scholars contend that women's disproportionate responsibility for care work is a violation of women's human rights and is a driving cause of inequality. Tax policies which place the burden of tax more heavily on women and underfunded public services serve only to perpetuate women's disproportionate share of care work. Donald and Moussié (2016:1) stipulate that personal income tax policies can play a crucial role in promoting sharing of unpaid work between men and women, and in promoting women's access to paid work. In considering any potential tax reforms, the impact of any proposed tax reforms on paid and unpaid work should be an important consideration for policymakers. In evaluating the impact of tax policies on paid and unpaid work, consideration must be given to the costs and benefits of tax policies that would result for both men and women from proposed potential tax reforms (Grown & Valodia, 2010: 302) as discussed below:

- Gender differences in paid employment – including formal/informal employment, wages and occupational segregation:

A direct result of women's disproportionate burden in carrying out the burden of care work is that it impacts on their role in the paid workforce. Despite the increased representation of women in the paid workforce worldwide, their heavy domestic duties often result in their participation in their paid work force to be intermittent, uncertain and lower paid than compared to men. In developing countries, women are predominantly active in the informal sector due partly to care work restricting their access to formal employment. As a result, women are less likely to be beneficiaries of benefits that are awarded to employees through the tax system (Fredman, 2019:81).

- Gender differences in consumption expenditure:

As has been explained, consumption behaviour is gendered in that compared to men, women spend a larger proportion of their smaller income on household needs (Grown & Valodia, 2010). As will be explored further on in this mini-dissertation, this also has consequences for personal income tax as women are not allowed to deduct the cost of such items in their tax calculation, thereby placing further financial pressure on them.

- Gender differences in property rights and asset ownership:

Some countries deny women the rights of ownership of many assets including land, despite the unpaid work put in by women towards such assets. The area of property rights, taxation and gender requires more scholarly research but implications for tax

systems include tax reforms to incentivise female ownership of property. Such a reform was undertaken in Nepal and there was a considerable increase in property owned by women (Capraro, 2014:19). Nepalese law provides for a 25% to 50% tax exemption on the registration of land in women's names. The percentage varies depending on factors such as the women's marital status and the area of the land. Female ownership of land in Nepal increased significantly from just 11.7% in 2001 to 19.7% in 2011. An unfortunate consequence of the tax incentive has been that men use women's names to register the property in a bid to attain the tax exemption while still retaining control of the land, thereby ultimately not empowering women as intended (Rawal, Basnet & Agrawal, 2016:9, 11, 15).

3.1.3.2 Progressivity of tax systems

Taxes are used for various reasons, with the two main historical aims of personal income taxation being that it is a mechanism of raising sufficient revenue for government to provide services and to serve as a means of redistributing income and wealth (Bird & Zolt, 2005:1632-1633). The redistributive function of taxation is important for gender equality in that resources can be directed towards courses and projects that matter for women's advancement. However, the manner in which taxes are raised also matters significantly for gender equality and countries which truly seek to ensure a gender-equal tax system should look towards increasing the progressivity of their tax systems (Lahey, 2018:16). Thus, the importance of progressivity for gender equality is explored in detail in this section.

A progressive tax system uses taxation as a means to transfer economic resources from those with more wealth to those with the lowest incomes. Imposing more taxes on the rich is a mark of a good personal income tax system and has been long-practiced throughout the history of tax (Lahey, 2018:16-19). Taxing for gender equality entails policy principles which ensure that tax systems effectively promote gender equality. The first important policy principle of taxing for gender equality which governments should strive to uphold is to collect most of the state revenue from progressive personal and corporate income taxes, rather than from regressive taxes (Lahey, 2018:2). Tax systems should be designed to be more progressive and should strive to ensure that progressive taxes are actually collected (Lawson & Martin, 2018: 32). Tax systems which are fair and progressive can

result in wealth redistribution, reduced inequality and allow all people to benefit from economic development (Capraro, 2014:5).

Regressive taxes on the other hand refer to both overall tax systems and specific taxes which place the tax burden disproportionately on those with the lowest incomes and actually shift economic resources from the poor to the wealthy (Lahey, 2018:19). Regressive taxes result in poorer people, who are more likely to be women, spending a larger proportion of their income on taxes compared to the rich. VAT, which imposes a tax on the value of goods or services consumed, is an example of a regressive tax since poor people generally spend proportionally more of their earned income, whereas wealthier people are able to save or invest more of their income (ActionAid International, 2018:2). Many countries collect a greater proportion of their tax revenue from regressive taxes (Lawson & Martin, 2018:32). This is particularly true for low income and developing countries that on average collect over four times more revenue from VAT than from personal income taxes (Lahey, 2018:16). South Africa is different to other developing nations in this regard as the country collected 1.5 times more personal income tax revenue than VAT revenue (National Treasury & South African Revenue Services, 2019:vii). Lahey (2018:45) contends that by taxing those who are living near or below survival margins and who in essence cannot afford to pay taxes, regressive taxes actually have the potential to violate the human rights to life and equality. As more women are considered poor compared to men, regressive consumption taxes such as VAT fall disproportionately on women who tend to spend a greater proportion of their income on items consumed by their families as opposed to only on themselves. As a result, many countries which collect a greater proportion of revenue from regressive taxes run the risk of taxing women more heavily than men (ActionAid International, 2018:2; Lawson & Martin, 2018:32). Due to the fact that women are more likely to be economically disadvantaged and, therefore, more negatively impacted by regressive taxation, the struggle against economic inequality is inextricably linked to the struggle against gender inequality. In order to tackle gender inequality and realise women's rights, it is imperative to ensure that a tax system is designed to be more progressive and to tax for gender equality (Lawson & Martin, 2018:17; Lahey, 2018:2).

In order to reduce poverty levels in developing countries such as South Africa, it is necessary that the tax systems generate sufficient revenue in an equitable manner. Tax

raising efforts have been done primarily through the collection of personal income taxes and VAT. While VAT has proven to be an efficient source of revenue collection, it is regressive and can therefore undermine redistributive goals (Steenekamp, 2012:40). It is worthwhile to note that while VAT is a regressive tax, there is room to manoeuvre VAT policy and in so doing reduce its regressive impact. This can be done through, for example, exempting certain basic goods and applying a different tax rate to different consumption items (Capraro, 2014:12). However, personal income tax allows for both revenue collection and achieving equity goals to become easier as it is more suited to capturing revenue from high-income earners and allowing for redistribution of such income (Steenekamp, 2012:40). As a result, personal income tax is a more progressive form of taxation and is, therefore, best suited for tax systems striving to attain gender equality.

3.1.3.3 Gender bias in personal income tax systems

Appropriately designed personal income tax systems have the potential to promote equality in terms of both their overall weighting and design, as evidenced in section 3.1.3.2, and also to reduce disposal income inequalities between both men and women and between rich and poor women (Elson, 2005:100). However, many countries' existing personal income tax laws contain provisions that are disadvantageous to women and the poor. It is necessary that these features which discriminate against women are corrected in order to ensure that personal income tax systems are able to fulfil one of its most important functions – that is to redistribute unequal incomes in a fair manner (Lahey, 2018:16). Additionally, it is also important that tax systems be used as a mechanism to redress women's socio-economic disadvantage by making sure that women and marginalised groups do not bear disproportionate burdens (UN Women, 2015:16).

An examination of the literature related to gender and taxation has revealed that tax structures which require joint tax filing of married couples display more inherent bias against women than individual taxation. The system of joint filing, although decreasing in prominence, is still present in tax systems such as the United States of America and France. The exact system of joint filing differs between jurisdictions, but the basic premise remains the same. Under a system of joint filing, couples are taxed on their combined income and are jointly liable for the tax thereon. Joint filings have faced criticism

particularly for what is termed the 'secondary-earner bias'. Joint-filing results in the lower-earning spouse in a marriage, who is most often a woman, being subject to a greater amount of tax on their income than would have applied had separate tax systems been in place. Furthermore, the primary earner who is the spouse with the greater income-earning capacity is often the spouse to benefit from the deductions, rebates and credits available in tax systems. In most countries, men still earn more than women and are, therefore, more often the primary earners. As a result, this secondary earner bias has the effect of encouraging male single-earner households. Women are discouraged from participating in paid work outside the home, which has negative consequences for the concepts of gender equality and human rights (Waller, 2019:210-211). South Africa applies a system of individual filing, and therefore, the criticisms which are levelled at joint filing systems is not applicable. However, any discussion on the gender bias in personal income tax systems must highlight the gender discrimination posed by joint filing systems.

Two of the most important principles that must be reflected in personal income tax systems is that of equitable taxation and ensuring that tax is levied on taxpayers in accordance with their ability to pay such taxes. Analysts distinguish between horizontal and vertical equity. In terms of horizontal equity, taxpayers in the same economic position should be taxed equally. On the other hand, vertical equity requires that taxpayers who face different economic circumstances should be treated differently (Fredman, 2019:83). In order to achieve this, tax systems should provide exemptions which allow taxpayers to obtain basic living necessities. Unfortunately, many tax systems provide minimal or inadequate relief for the cost of basic living. Due to the fact that women tend to earn less than men and spend a greater proportion of their income on basic necessities, the result is that many women bear a disproportionate tax burden (Lahey: 2018:16).

Personal income tax systems also display an inherent bias against women due to the increased likelihood that deductions and allowances granted against income are applicable to men rather than women, and to higher income earners rather than lower income earners. These provisions, therefore, allow men, especially those in top positions, to innovatively utilise tax deductions and allowances to reduce or avoid their tax liability. Furthermore, men are more likely to be wealthy and be able to employ knowledgeable tax consultants who will enable them to make full use of such tax reducing mechanisms (Smith, 2000:18). Deductions also benefit men more than women as the rate at which

taxpayers benefit therefrom is their marginal tax rate. This results in a greater benefit for wealthier taxpayers, who are more likely to be men, and little to no benefit for those who earn lower incomes (Andrews, 1972:310). The claim that men are higher income earners is supported by data from the 2018 financial year which revealed that women earned 22.6% less income than men (National Treasury & South African Revenue Service, 2019:52).

A fundamental tax principle is that taxpayers be allowed to deduct costs incurred to earn income without having strict limitations prohibiting those deductions (McCormack, 2016:1330). The tax systems of many countries, including South Africa, distinguish between personal and trade expenses. Whereas, trade expenses may be deducted in determining a taxpayer's taxable income, personal expenses are denied as a deduction. However, these expenses are not always separate or distinct from each other. The cost of childcare is seen as a personal expense for which no deduction is granted in some jurisdictions including South Africa, but which many taxpayers incur for the purpose of leaving their homes in order to earn an income and as such it should constitute a trade expense (Waller, 2019:216). In developing countries, women are restricted from undertaking paid work opportunities due to the childcare costs that would have to be incurred in order to work (Lahey, 2018:26). Furthermore, many tax systems allow taxpayers to deduct losses incurred from their profit-making activities and to set such losses off against future income. Many mothers, especially in the early years of their children's lives, cannot find work that covers the cost of childcare. If young women or new mothers incur childcare costs in excess of their current income, they will not be able to recover these losses. The high cost of childcare in deterring the work participation of women is particularly pronounced in systems of joint filing.

Feminist scholars have cited the minority judgement given by two female judges in the Canadian court case *Symes v. Canada*, (1993), 4 SCR 695 (SC) challenging the non-deductibility of childcare expenses in tax systems. The judges stated (at 798):

The [traditional interpretation] of 'business expense' was shaped to reflect the experience of businessmen ... As a consequence, the male standard now frames the backdrop of assumptions against which expenses are determined to be, or not to be, legitimate business expenses. Against this backdrop, it is hardly surprising that child care was seen as irrelevant to the end of gaining or

producing income from business but rather as a personal non-deductible expense (O'Connell & Sadiq, 2018:180).

It was, therefore, contended that the meaning of business expense must be reviewed in light of the changing social environment in which we live. As the working world finds itself increasingly populated by women, the meaning of 'business expense' must be revised in order to ensure that it accounts for the experience of all participants and not just men (O'Connell & Sadiq, 2018:180-181).

The limitation of expenditures allowed as deductions from personal income tax is, however, to some extent, necessary. Developing countries such as South Africa, which tend to collect significantly less tax revenue than developed countries, are often advised to broaden their base, which comprises of, "any movement towards capturing the entire potential number of taxable entities, activities or values" (Calitz, 2019:1). A strong tax base furnishes the state with the necessary resources for addressing poverty and provide public services. The limitation of deductions is a measure which is able to contribute to the broadening of the personal income tax base. The limitation placed on deductions which may be claimed by employed taxpayers, for example, has broadened the tax base by an equivalent of R191 million in 2018 (Calitz, 2019:1-13; De Paepe & Dickinson, 2014:167). Although this mini-dissertation makes an argument for allowing deductions centred on women's needs; from an affordability perspective, certain personal expense deductions may not be as feasible in South Africa as it would be in other developed nations, however, the gender impact thereof cannot be denied.

South Africa's income tax system, like most other countries in the world, has the potential to present gender biases. In broad terms, the implicit bias arising from South African personal income tax laws stems from the deductions available to taxpayers which do not act to serve the interests of women or mainly benefit men. An example of such biased deductions is the non-deductibility of childcare expenses. A further example of this bias is that the rebate allowed for contributions to medical aid schemes benefits men more than women as they are more likely to be the main members of a medical aid fund (Smith, 2000:17). South Africa's personal income tax system is explored in more detail below in section 3.2 and more hidden biases found in the South African personal income tax laws will be explained and further analysed in Chapter 4.

3.2 GENDER DIMENSIONS OF SOUTH AFRICA'S PERSONAL INCOME TAX SYSTEM

South Africa's changeover into democracy in 1994 was thought to result in a significant triumph for women as the new government expressed a commitment to gender equality. However, despite the outward political commitment to gender equality, progress made towards the implementation of policies aimed at achieving gender equality has been slow, with some notable exceptions. The national budget, which has differential impacts on men and women, has played a role in perpetuating gender inequalities through both expenditure as well as taxation policies. Tax reforms implemented in South Africa since the dawn of democracy have sought to remove explicit gender bias, however, the tax system continues to display implicit gender bias against women. It is, therefore, imperative that more efforts are undertaken to consider the gendered impact of government policies (Budlender, Casale & Valodia, 2010: 206; Valodia, Smith & Budlender, 2001:84).

3.2.1 History of gender bias in South Africa's personal income tax system

South Africa's tax system has undergone significant reform in gender equality since its inception in 1914. When the Income Tax Act was first passed, explicit discrimination between men and women was in place. The household was taken as the unit of taxation, and the combined income was taxed. Thus, women were taxed at a disproportionately higher rate than they would have been subject to had their income been taxed separately, as their income when combined with the income of their husbands, fell into a higher tax bracket. Furthermore, women taxed jointly with their husbands were subject to a different tax rate than their husbands. The applicable tax rate and associated rebates were determined based on the category of the taxpayer. Three different categories of taxpayers were provided for, namely 'married woman', 'married person' and 'unmarried person'. Married men fell into the category of 'married person', which was subject to the lowest tax rates. Married women however, fell into the 'married woman' category which was subject to the highest tax rates. A married woman was only able to be categorised as a 'married person' and qualify for lower tax rates if she was able to prove that she was the main income earner in her household (Smith, 2000: 10; Valodia *et al.*, 2001:84).

The rationale behind the old system of taxation was that dual-earner households were better off than single-earner households, therefore, the second earning spouse was subject to a higher rate of tax. In designing this system, tax authorities displayed an inherent bias against women by assuming the notion of a 'typical' family in which the man was the head of the household. The system also had the effect of stripping women of the power that came from having their own money by assuming that altruism – a selfless concern for the wellbeing of others – was prevalent in households. The altruism assumption held that household income would be shared equally among all members of the household regardless of who earned that income. By undertaking such an assumption, the system ignored that the power and control over available income differs between members of the household. Power and control over income usually stem from the earner of that income, however, gender is an important factor in determining where the ultimate power and control lies. By subjecting women's income to higher rates of taxes, the system reduced the power of women in households which stemmed from having their own income (Smith, 2000:11; Valodia *et al.*, 2001:85, 87).

Some traction was made in terms of reforming the tax legislation to be more gender equal in 1980 with the *Margo Commission of Inquiry into the Tax Structure of the Republic of South Africa* (hereinafter referred to as the Margo Commission). The Margo Commission made a number of recommendations which formed the basis of several phased in reforms to the tax system. Although gender issues in taxation were not a focus of the Margo Commission, the Commission, nevertheless, made some recommendations of importance to woman. For example, as a result of the Margo Commission's findings, since 1988, the income of a married women that was subject to SITE (Standard Income Tax on Employment), a prepayment of income tax, was allowed to be taxed on an individual basis and not together with her husband's income. On the back of such a change, the trading income of a married woman was taxed separately as from 1990 and investment income followed suit in 1991. Even though married women were taxed separately in light of these reforms, they were still subject to a tax rate at a higher rate than their husbands were. However, these reforms were effective in considerably reducing the tax burden of dual earner households (Smith, 2000:5, 10; Valodia *et al.*, 2001:84).

In 1994, at the end of the Apartheid era, the new government appointed the *Commission of Enquiry into Certain Aspects of the Tax Structure of South Africa*, known as the Katz

Commission, to investigate the suitability and efficiency of the tax system and to make recommendations that were in line with internationally accepted principles and practices. The Katz Commission was mandated to focus on, amongst other aspects of tax, personal income tax. The inquiry into personal income tax was to make special reference to gender, tax thresholds, tax rates, income tax brackets and fiscal drag. The concept of 'fiscal drag' is defined by the National Treasury and South African Revenue Service (2019),

when salaries are adjusted to compensate for the effect of inflation on the value of money, the taxpayer is pushed into an income tax bracket where higher rates apply. In this way the individual's effective tax rate is increased, even though the taxpayer's income in real terms may not be increasing (283).

The recommendations of the Katz Commission lead to several reforms of the tax system in order to increase gender equality (Smith, 2000:11; Valodia *et al.*, 2001:85), which include the following :

- Abolishing the categories of 'married woman', 'unmarried person' and 'married person' and introducing a single tax rate structure applicable to all taxpayers regardless of their gender or marital status.
- Introducing the same rebate, which is a reduction of tax liability, for all taxpayers regardless of gender or marital status.
- All taxpayers were granted the same deduction for contributions made to retirement annuity funds. Under the old tax system, married women were only entitled to half the deduction made available to married men and unmarried persons (Smith, 2000:11; Valodia *et al.*, 2001:85).

These reforms eliminated explicit discrimination against women in the personal income tax law. Such reforms were necessary in order to ensure that the tax law was compliant with the Constitution which requires that no direct or indirect discrimination be made between people on the basis of, amongst other characteristics, gender or sex (Smith, 2000:11). However, the reforms made on the basis of the Margo and Katz Commission's recommendations did not eliminate indirect or implicit gender biases in the tax system. Removing such biases is made particularly more difficult by the fact that while tax is imposed by individuals, after tax income is consumed by households. (Valodia *et al.*, 2001:85). The current tax system removed explicit discrimination between men and women, but makes no distinction between poor and rich people and households. Given the

fractured household types in South Africa, there is still room for redesign of the tax system in order to achieve substantive gender equality (Smith, 2000:11). An example of indirect discrimination still prevalent against single-earner households is explored below in section 3.2.2.

3.2.2 Indirect discrimination in South Africa’s present personal income tax system

Despite the reforms taken by the democratic South African government to remove gender discrimination in South Africa’s tax system, scholars believe that the individual rate structure of the new system discriminates against single-earner households (Smith, 2000:11; Valodia *et al.*, 2001:86). The current tax regime has removed direct discrimination against women but the single-earner discrimination problem has in fact been deepened since the tax laws have been reformed. This problem of discrimination against single-earner households is illustrated in Table 1 below, by comparing two hypothetical households, each consisting of two adults and two children with the same household taxable income.

Table 1: Comparison of tax liability for dual earner versus single earner households

	Household One	Household Two
Household members	Working husband Working wife Two children	Employed single mother Non-working grandmother Two children
Taxable income earned	Husband: R8000 per month Wife: R7000 per month	R15 000 per month
Tax liability for the year based on 2019/2020 tax rates:	Husband: $(R8000 \times 12) \times 18\% - 14220$ = R3 060 Wife: $(R7000 \times 12) \times 18\% - 14220$ = R900 Household tax liability: R3 060 + R900 =R3 960	Household tax liability: $(R15000 \times 12) \times 18\% - 14220$ = R18 180

Source: Authors own calculations derived from Smith, 2000: 11-12; Valodia et al., 2001:8; Income Tax Act No. 58 of 1962, section 6 and rates of tax)

As is evident from the table, household two is subjected to a much larger tax liability than household one. Household two, headed by a single working mother, is liable for almost 4.5 times more tax than household one despite both being similar households. The old system of taxation attempted to subject household one and household two to a similar amount of tax through taxing the wife in household one at a higher rate of tax than the husband would have been subject to had he earned the full R15 000 a month. Single-earner households are, therefore, more likely to shoulder higher personal income tax burdens than dual income households. This difference is pinned down to the fact that dual-income earner households are able to benefit twice from tax rebates, and certain other deductions or credits which are only available once-off to single-earner households, thereby reducing the rate at which dual-earner households move into higher income brackets (Grown & Valodia, 2010:307).

The bias displayed against single-earner households has important gender ramifications due to the high prevalence of female-breadwinner households in South Africa. The Statistics South Africa General Household Survey 2018 revealed that 37.9% of South African households were female headed (Statistics South Africa, 2018a:5). Based on data from 2016 and analysed in 2018, it emerged that 45.6% of households with children under the age of 6 were led by single female-earners (Statistics South Africa, 2018b:9). The single earner bias thus impacts on gender inequality as it is more likely to affect women than men.

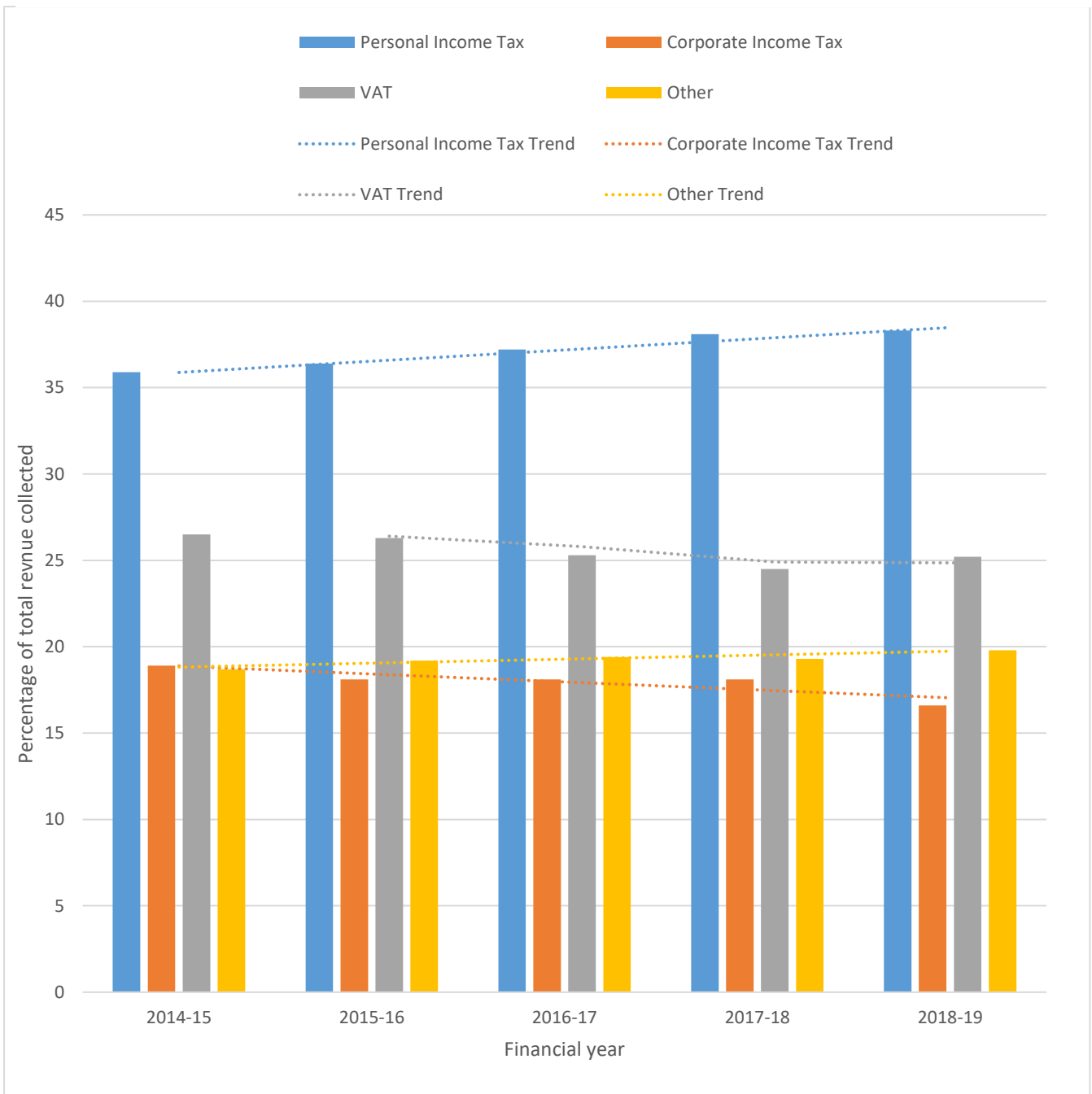
It is important to note that this bias does not affect women who earn too little to be subject to tax on their income. Data released by National Treasury and South African Revenue Service (2019) on the 2018 tax year reveals that 9.2% of 2 236 580 female taxpayers assessed, earned well below the tax threshold. A further 11.8% earned taxable incomes which, depending on their age, meant that they would be liable for no or very little tax. The data also revealed that female taxpayers were on average subjected to a tax rate of 18.4%, which is extremely close to the minimal tax rate of 18% (National Treasury & South African Revenue Service, 2019:52-53). Therefore, although this does not impact the poorest of women, it does impact greatly on those entering the initial tax bracket which are largely women.

3.2.3 Progressivity of the tax system in South Africa

Progressive tax systems matter for gender equality – this principle was established in section 3.1.3.2. Therefore, any discussion on the gendered aspects of South Africa’s tax system must incorporate an analysis of the progressivity of South Africa’s tax system. This section will thus briefly discuss the overall progressiveness of South Africa’s current tax system and how it bodes for gender equality in the country.

Firstly, in order to determine the progressive element of a tax system is to decipher the composition of tax revenue. Figure 1 on the following page, displays trends in the composition of South Africa’s tax revenue over the past five years.

Figure 1: Composition of main sources of South African tax revenue



Source: Own calculations from (Budlender et al., 2010:208; National Treasury & South African Revenue Services, 2019:vii)

As can be seen on the chart in Figure 1, personal income tax has consistently been the biggest source of tax revenue, which bodes well for the progressivity of the tax system. There has also been a notable upward trend in the share of personal income tax as a percentage of total tax revenue collections over the last five reported fiscal years. This is a positive trend in that resources can be shifted from the wealthiest towards those who need

it the most, especially poorer women. However, it must be noted that South Africa's personal income tax base is already under significant pressure, with three million taxpayers out of a population of 56 million (5.4%), accounting for 97% of personal income tax revenue collection (Kruger, 2020:n.p.). Any efforts to increase personal income tax revenue collection in future will, therefore, have to be focused on broadening the tax net by ensuring that more citizens become liable for tax rather than further taxing the existing tax base. This will have important implications for women as they start to earn higher incomes and move into taxable income ranges. The increase in female personal income taxpayers necessitates the current study and others similar to it so that structures in the tax system which discriminate against women can be identified, and where possible, rectified, especially as these biases start to have an impact on a greater proportion of women.

VAT revenue is the second largest contributor to national revenue. VAT is regressive and therefore, as previously emphasised, places the tax burden disproportionately on poorer women. There has however, been a slight downward trend in the percentage of tax revenue derived from VAT which positively impacts the gender equality aspects of the structure of South Africa's tax system. However, care must be taken to ensure that the efforts of raising future-revenue do not seek to increase the revenue raised from VAT due to the ease of collecting VAT revenue. Corporate income tax revenue is the third largest contributor to South Africa's tax revenue. While the composition of tax revenue which is made up of corporate income tax revenue has remained relatively constant over the last five years, there has been a slight decline in the percentage of corporate revenue collection, with corporate income tax contributing 16.6% towards tax revenue in 2018–2019 compared to 18.9% of overall revenue in 2014–2015. This puts South Africa in line with other developing countries. The International Monetary Fund (IMF) as cited by Keen, Perry, de Mooij, Matheson, Schatan, Mullins and Crivelli (2014:7), found that for the period from 1980–2012 corporate income tax accounted for approximately 16% of government revenue in the low to middle income countries compared to slightly more than 8% in high-income countries. This relatively low contribution to tax revenue is concerning from a gender equality standpoint. Despite the fact that multinational corporations operating in developing countries contribute a major share of the corporate income tax collected, these corporations are also able to avoid paying tax on their full profits. This is partly because tax authorities in poorer developing countries lack the resources required to track the large network of cross-border transactions which determine these companies overall tax

positions. The result is that developing countries lose large amounts of potential tax revenue due to multinational tax avoidance (ActionAid International, 2016:5). Furthermore, governments of developing countries often forego huge amounts of potential tax revenue by providing tax incentives to multinational and domestic companies. However, studies performed by the IMF and other organisations have found that tax incentives do not significantly incentivise investment into a country (IMF Fiscal Affairs Department, 2011:35). It was estimated that in the 2013–2014 financial year, South Africa lost a potential US\$304 million in corporate tax revenue due to special provisions for corporate income tax (ActionAid International, 2016:5). Although a detailed discussion on corporate income taxes is beyond the scope of this text, the key point from the discussion is that the South African government, like the governments of other developing countries, could revise its corporate income tax collection approach in order to increase the overall progressivity of its tax system and collect more revenue from corporates. Ensuring more effective corporate income tax collection will enable the country to combat both economic and gender inequality.

The composition of South Africa's tax system, as displayed by the chart in Figure 1, has a high incidence of personal income tax. Compared to the global trends in tax revenue composition, it focuses more on less regressive personal income taxes than the far more regressive indirect taxes such as VAT. Therefore, this makes it all that more important that South Africa's personal income tax system is a factor in issues of gender equity. South Africa's tax policies strive to distribute wealth more equally between the rich and poor, and consequently between men and women. Trends in the tax systems of countries at all levels of development have shown a propensity towards adopting 'taxing for growth' policies which have previously been advocated for by organisations including the Organisation for Economic Cooperation and Development (OECD) (OECD, 2010:21-24). These policies have typically involved cuts in personal and corporate income tax rates, application of a flat-rate of taxation for individuals and attempting to raise revenue through high-rate consumption taxes such as VAT or sales tax. The global result of such policies has been an increased concentration of wealth and income in the hands of large corporations and few wealthy individuals, and therefore, increasing the inequalities between the rich and the poor. As more women are poor compared to men and very few women are represented in the top wealth brackets, taxing for growth policies have also exacerbated the gap between men and women (Lahey, 2015:8). In recent years however,

there is rising recognition that effective macroeconomic planning requires stable and adequate revenues, and that cutting taxes to prompt Gross Domestic Product growth is not sufficient to realise substantial economic development. As a result, there has been a move towards restoring graduated personal income tax structures (Lahey, 2018:22). Graduated personal income tax rates impose a higher rate of marginal tax to those earning higher incomes than on those earning lower incomes and as such is one of the most progressive tax forms (ActionAid, 2019:1, Grown:2005:5). The Katz Commission addressed the need for progressivity in the tax system by recommending a restructuring of South Africa's income tax brackets and tax rates which sought to make the income tax system more progressive. These reforms brought some relief to women in that it enabled individuals in lower income categories, the majority of whom are women, to pay less tax on their income (Smith, 2000:28). South Africa's personal income tax system provides for graduated personal income tax rates ranging from 18% to 45%.

From the discussion thus far, it is evident that progressive personal income tax systems seek to tax the higher income taxpayers more than the lower income taxpayers, and this can be achieved through the use of different tax rates for different income levels. However, when taxpayers earn more, simply because their earnings are adjusted for inflation, their real income and consequently their standard of living, is not increased and it is, therefore, unsound policy to subject these taxpayers to higher rates of tax. This situation has been termed 'fiscal drag' and if not accounted for by the tax system, will most adversely impact women who find themselves bearing a disproportionate tax burden. In order to rectify this phenomenon, the Katz Commission was mandated to look into fiscal drag as part of the overhaul of the tax system when the new government came into power in 1994 (Smith, 2000:6). To account for fiscal drag, income tax brackets are adjusted annually. The tax brackets applicable to lower income earners have been increased proportionally more than the higher income brackets in a bid to assist low income earners (National Treasury & South African Revenue Service, 2019:34, 286). Smith (2000:13) contends that any efforts to reduce fiscal drag should benefit poor workers the most and because women are poorer than men, this practice should bode well for gender equality. However, in a bid to raise more revenue, these tax rates have not always been increased to accommodate inflation nor have they been increased at below-inflation rates. For example, in the 2018–2019 fiscal year, the budgeted increase in tax revenue came almost entirely from direct taxes due to no inflationary adjustment to personal income tax brackets (National Treasury,

2018:41). This in turn affects poor people, with women being affected the most, as they find themselves being pushed into higher tax brackets despite having no real increase in their incomes and despite having a reduced capacity to bear the burden of these taxes. Thus, this practice has negative connotations for gender equality and is a means by which the personal income tax system may actually perpetuate gender inequality.

A further element which increases the progressivity of the tax system and is necessary for gender equality is to provide for tax thresholds which remove the poor from paying taxes and ensure that no person is taxed into poverty (Bird & Zolt, 2004:1679; Lahey, 2015: 9). Section 6 of the Income Tax Act provides for rebates whereby a taxpayer can claim against their tax liability. When these rebates are divided by the lowest marginal tax rate applicable to individuals, which is currently 18%, the tax threshold for individuals is determined. The tax threshold indicates the minimum amount of taxable income which must be earned in order for a tax liability to arise. Therefore, individuals earning below the tax threshold applicable to them are not liable for tax on their taxable income. South Africa's tax rebates and tax thresholds are set out in Table 2 and Table 3 below.

Table 2: Section 6 rebates available to individuals

Tax Rebate	2021	2020	2019
Primary	R14 958	R14 220	R14 067
Secondary (65 and older)	R8 199	R7 794	R7 713
Tertiary (75 and older)	R2 736	R2 601	R2 574

Source: (SARS, 2020:n.p.)

Table 3: Tax thresholds for individuals

Tax Rebate	2021	2020	2019
Under 65	R83 100	R79 000	R78 150
65 and older	R128 650	R122 300	R121 000
75 and older	R143 850	R136 750	R135 300

Source: (SARS, 2020:n.p.)

These rebates and thresholds have generally been increased since 1994. However, the year-on-year increases in these amounts have sometimes not fully accounted for inflation (Smith, 2000:14). For example, from the 2018–2019 fiscal year to the 2019–2020 fiscal year, the rebates were increased by only 1.1%, increasing the tax threshold from R78 150 to R79 000, in order to provide minimal relief for inflation (National Treasury, 2018:41). The inflation rates in 2018 and 2019 were 4.62% and 4.13% respectively (Statista, 2020:n.p.). These below inflationary increases saw taxpayers with inflationary increases in their income face a larger tax burden (National Treasury, 2018:41). As more South African women than men are taxed closer to the tax threshold, these increased tax burdens place more pressure on women than on men which serves only to undermine the gender equal status of the tax system.

Based on the above overall analysis of the makeup of tax revenue sources in South Africa and inflationary adjustments where appropriate, South Africa's personal income tax system, therefore, appears to be formatively progressive, despite some aspects, such as below inflationary increases to tax rates and tax thresholds, which serve to hinder progression towards gender equality. Therefore, in theory, the progressivity of South Africa's tax system bodes well for the fight towards gender equality. This is as a result of a progressive revenue composition, and a personal income tax system which places a higher burden on those with a greater ability to pay. This statement is supported by Oxfam's Commitment to Reducing Inequality Index 2018, as cited by ActionAid (2019:3), which ranked South Africa's tax system as one of the most progressive tax systems in the world and the most progressive in Africa.

It must however be noted that despite South Africa's good score on the index, there is still rising levels of inequality in the country (Lawson & Martin, 2018:16). Smith (2000:28) contends that despite the more progressive tax system, the employment profile of women in South Africa has meant that relatively few women have benefitted from this system. Women are more likely than men to be providing unskilled labour or working in the informal sector, the result of which is that they are unlikely to be subjected to a large amount of tax on their income, if at all (Smith, 2000:4). This is supported by the following tax statistics released for the 2018–2019 financial year (National Treasury & South African Revenue Service, 2019:31, 53 and 68):

- 54.5% of assessed taxpayers were male and 45.5% were female.
- The average taxable income of females was R290 672 and females were, therefore, liable for tax of R53 620, calculated at an effective rate of 18.4%. This is in contrast with males who had an average taxable income of R375 442 and were liable for tax of R88 147, calculated at an effective rate of 23.5%. Therefore, on average, females earned 22.6% less than males as measured by taxable income, and were liable for 39.2% less tax than males.
- Women were more concentrated in the lower tax brackets and were poorly represented in the maximum tax brackets. Only 13% of top earners in South Africa were female.

(Note that all figures and calculations are taken directly from the source document, and appear to have some rounding adjustments factored in).

However, despite the current limited reach of personal income tax on South African women, it does not mean that personal income does not affect women at all. There is still a significant number of women who are impacted by the personal income tax system and its associated laws. It is, therefore, necessary that studies which determine the impact thereof on women are carried out in order to achieve a truly gender-equal South Africa. Furthermore, as South Africa witnesses an increase in the middle-class population, it will see more money being placed in the hands of women. However, these women will soon be impacted by personal income tax, making this study all the more relevant.

3.3 GENDER EQUALITY AND TAX

This literature review has uncovered that tax systems have the potential to reinforce gender inequalities. It, therefore, follows that for gender equality to be achieved, tax systems have a role to play. This section will thus explore equality in taxation.

3.3.1 Formal and substantive equality

Despite there being no clear consensus on what constitutes equality, the literature has revealed that a clear distinction can be drawn between the concepts of formal and substantive equality.

Formal equality requires that people in the same situation be treated equally or consistently. Characteristics such as gender do not warrant different or preferential treatment. Discrimination in formal equality does not exist for as long as there is equal application of the law as the context within which such laws operate or the impact of such laws is not examined (Smith, 2014:611–612).

Substantive equality is less concerned with ensuring consistent treatment in the subjects of law, but rather takes the impacts of laws into consideration. Laws which are substantive in nature seek to provide individuals or groups who have been subject to political or social disadvantage with equal opportunities and equal outcomes rather than simply equal treatment (Smith, 2014:613). In order to achieve substantive equality between men and women, it must be realised that gender equality is not sameness and the law must, therefore, adapt to and recognise gendered-realities (Baer, 2011:4). Kaganas and Murray (1994:1) contend that women's lives will only change if legal rights transcend into reality and are accompanied by social changes. This will not be achieved through only formal equality, thus substantive equality in law is necessary.

A recent example of this is found in the Hugo Case, (*President of the Republic of South Africa v Hugo*, 1997, 6 BCLR 708 (CC) in *Unite for Reproductive Rights*, n.d.) which considered gender equality in South African law. This case illustrates the ever-important principle of what constitutes women's equal status before the law. The background to this case presents as follows:

A male respondent who was in prison and had a child under the age of 12 challenged the Presidential Act No. 17 at the time that it was promulgated on the basis of gender equality. Presidential Act No. 17 provides a special pardon to certain categories of persons in prison, including mothers with a child below the age of 12 years. The rationale behind including mothers with young children within the category of those eligible for the special pardon was grounded in the belief that this would be in the best interests of children since, "it is generally accepted that children bond with their mothers at a very early age and that mothers are the primary nurturers and care givers of young children." (*Unite for Reproductive Rights*, n.d.:n.p.). The respondent challenged the law on the basis that it displayed gender discrimination towards fathers and won the case in the Durban and Coastal Local Division of the then Supreme Court. The decision was overturned by the

Constitutional Court as the majority opinion of the Constitutional Court judges was that the Presidential Act No. 17 did not violate the gender equality provision of the Constitution (Unite for Reproductive Rights, n.d.:n.p.).

Despite criticism of the ruling stemming from the opinion that the notion of women as the primary caregivers of young children is a root cause of gender inequality, the Hugo case established important legal principles. Firstly, it established that measures which differentiate between men and women based on actual differences between their positions in society do not necessarily contravene the Constitution. Furthermore, it established that, “while discriminatory measures which disadvantage women are likely to be unlawful, measures which grant women certain advantages which show consideration for their social inequality may be justified provided that no fundamental human dignity is impaired” (Deane, 2005:303). Lastly, the Hugo case is important as it indicates that the court is aware of the prevalence of gender inequality in South Africa and the problems that may be experienced in addressing such inequality (Deane; 2005:303). In the same vein, should tax laws seek to redress women’s historic disadvantages through the use of female-centred tax reforms, it would not violate the constitutional principle of equality.

Scholars contend that tax, which is the principal resource-generating instrument available to governments, is a powerful tool which can be used to realise substantive gender equality (Carpraro, 2016:19; Donald & Moussié, 2016:2). The CEDAW also advocates for substantive equality rather than mere formal equality, requiring states to actively work towards ensuring gender equality and making sure that government measures are non-discriminatory (CEDAW, 2003:n.p.; Elson, 2005:141). This may require the use of “temporary special measures’ and require ‘modification of social and cultural patterns of conduct’ based on ‘stereotyped roles for men and women” (Elson, 2005:141). South Africa as a member of CEDAW is, therefore, obliged to address the more nuanced and deeper issues of substantive equality, including tax legislation.

3.3.2 Achieving gender equality through a human-rights based tax reform

Analysing tax policy through a gender lens aims to identify the impact of tax systems on women and men in order to ensure gender equality. As a result of such analysis, tax reforms have taken place in several countries in order to reflect changing views on the role

of men and women in society (Pfeuffer & Weißert, 2006:34). India presents an example where taxes have been used as an affirmative action policy and where women have been explicitly advantaged by certain provisions of the tax system. In order to encourage women's workforce participation, India provided for special tax rebates and higher tax exemptions for women. During the period from 2001 to 2007, women under the age of 65 were granted a special rebate of Rs.5000 against their tax liability. Women were also granted higher tax thresholds – meaning that they became liable for tax at higher amounts of income than men. The threshold for men in 2005 was Rs.100 000, compared to Rs.125 000 for women. This special tax threshold was increased to Rs.145 000 by 2007. Only a small number of Indians, approximately 2.7%, earned enough income to be subject to personal income tax at all, and women constituted less than 3% of this already very small tax net. Therefore, the provisions – which have since been removed – only reached a minimal percentage of women. The provisions did however, somewhat increase women's proportionate share of property ownership, thereby providing them with increased bargaining power within their homes (Grown, 2010:13; Chakraborty, Chakraborty, Karmakar, & Kapila, 2010:92, 103).

Traditionally, equality in taxation systems has been analysed in terms of equity. Section 3.1.3.3 differentiated between two forms of equity, horizontal equity which seeks to tax taxpayers in the same position in the same manner and vertical equity, which seeks to tax taxpayers in different economic positions differently. (Fredman, 2019:83). Recently, there has been a trend towards reducing focus on the traditional approach to gender equality and instead, undertaking tax reforms to increase gender inequality within a human rights context. Tax policies, not unlike other economic policies, function in a world that is riddled with gender, race and class inequality. Coupling tax matters with human rights presents an excellent opportunity to reverse inequalities, to innovatively promote accountability for human rights and for bringing prominence to the issue of how to realise human rights (Carpraro, 2016:18 - 20).

Human rights agreements all advocate the right to equality. CEDAW emphasises this right to equality as it pertains to women, but progress towards the realisation of women's rights has been "slow and uneven" (Fredman, 2019:83; Carpraro, 2016:18). Traditional fiscal policy has, however, not been rooted in human rights obligations with respect to gender. Instead, the impact of fiscal policy on gender equality has been subject to a separate

analysis (Hodgson & Sadiq, 2017:100). This sub-section analyses the literature which focuses on using a rights-based approach that is consistent with CEDAW as the basis of tax reforms for removing gender inequality in tax. As the SDG also advocates for substantive gender equality, fiscal policy should also be determined with the objectives of SDG in mind (Seguino, 2016:4).

Women's economic rights have not been sufficiently realised across the world. In order to achieve women's rights and gender equality, it is both necessary and possible that governments implement gender transformative policies, diminish the unequal outcomes of current policies that threaten women's rights and gender equality, and ensure that maximum resources are put towards achieving these goals (Bürgisser & Nissan, 2017:9). Women's fiscal equality is essential for women's rights; therefore, the two concepts must be investigated in tandem when fiscal policy is developed. UN Women (2015:13) has highlighted that social and economic policies must work together in order to achieve substantive equality. Rights based macroeconomic policies, therefore, play a vital role in the movement for gender equality (UN Women, 2015:13). In keeping with this principle, Hodgson & Sadiq (2017:100), drawing from the work of UN Women, propose the use of a framework for fiscal policy which incorporates human rights principles that address gender inequality.

In advocating for the rights-based approach, Hodgson and Sadiq (2017:102) contend that an approach to tax reform based on human rights is necessary because although explicit bias can be remedied by adopting the traditional equality framework and focusing on horizontal and vertical equity, implicit bias needs more nuanced policy which is best addressed through the proposed human rights framework.

Human rights treaties do not make explicit reference to specific macroeconomic policy recommendations, but they clearly indicate the desired outcomes of economic policy (Carpraro, 2016:19). CEDAW treaties should be used as a guide to develop macroeconomic policy within the context of needing to implement special measures in an effort to correct indirect discrimination. This is especially important in areas where there is a lack of substantive equality and seemingly gender-neutral policies are actually patterned on male norms and lifestyles, and therefore, inherently incorporate stereotypical male expectations, attitudes and behaviour to the exclusion of women (UN Women 2015:36;

Hodgson & Sadiq, 2017:104). In order for tax policies to achieve gender equality, the outcome of such a policy should be an important consideration. A policy that achieves substantive equality may require differential treatment between men and women. The adoption of a human rights approach to tax reform allows policymakers to adopt such differential treatment where it is necessary to address discrimination (Hodgson & Sadiq, 2017:102).

3.4 TAX POLICIES FOR GENDER EQUALITY – LESSONS FOR SOUTH AFRICA

A review of the literature related to gender and taxation has revealed tax policies in other countries which have worked to achieve substantive gender equality for women. This section explores two of these foreign tax laws on the basis that it presents important policy lessons from a gender equality perspective for South Africa.

3.4.1 Argentina – tax deductions for privately employed domestic workers

An essential principle when using tax policy to achieve gender-related goals is to recognise, value and redistribute the burden of care work borne disproportionately by women. In so doing, women's economic autonomy is increased and their rights are less violated. This objective was achieved through a law promulgated in Argentina which, as part of a broader framework to improve the labour conditions of domestic workers in private homes, sought to create a fiscal incentive for employers to formalise the employment of domestic workers. The incentive permitted employers a limited tax deduction for their employer contributions and the salary of their household workers. The results of the policy were noteworthy – over the period from 2004 to 2014, formal employment of domestic workers increased by 18%. Formal employment also paved the way for these employees to obtain retirement benefits and social security services (Rodríguez & Itriago, 2019:8).

At present, section 23(a) of the Income Tax Act of South Africa prohibits taxpayers from claiming deductions for private expenses, which includes the salaries paid to private domestic workers (Income Tax Act No. 58 of 1962). Women dominate employment as domestic workers in South Africa. The Quarterly Labour Force Survey for Quarter 1:2020 revealed that of 1 004 000 employed domestic workers, 954 000 (95.01%) were women.

Should such a provision be promulgated in South Africa, it is posited that women would benefit therefrom through increased employment.

3.4.2 Child-care benefits – Canada

Section 3.1.3.3 established that South Africa, like many other countries, including Canada provides taxpayers with a Child- Care Expense Deduction, which was first established by the federal government in 1972. This provision allows the parent earning a lower income to deduct an amount for eligible childcare costs from their taxable income. This deduction is limited to two-thirds of the income of the lower-earning spouse, or a specific maximum amount dependant on the child's age or disability. Children aged 0–6 qualify for a higher deduction than children aged 7–16 (Laurin & Milligan, 2017:4). There is some evidence that this benefit, at least partly, had a positive impact on the workforce participation of mothers. Statistics Canada relays an increase in the employment rate of women with children after the benefit was introduced. The employment rate for women with children under the age of six years was 66.9% in 2010, a considerable increase from only 31.4% in 1976 (Liu, 2012:n.p.). Criticism of such a deduction has been levelled on the basis that progressive rate schedules, such as the one applied in Canada and South Africa, provide higher value tax reductions allowing high-income earners to unfairly gain a benefit of subsidised childcare. Evidence suggests that the taxpayers with higher incomes were three times more likely to claim the childcare expense deductions than those taxpayers represented in the lower income groups. Furthermore, the deductions were only claimed by approximately 40% of eligible taxpayers, with lower income earners more constrained by the income limitation and higher income earners more constrained by the maximum amount limitation (Laurin & Milligan, 2017:4, 7).

However, in addition to the Child-Care Expense Deduction, the Canada Revenue Agency provides eligible families with the Canada Child Benefit. The Canada Child Benefit is a tax-free monthly payment made to assist taxpayers with the cost of raising children under 18 years of age, and encompasses related disability, provincial and territory benefits (Government of Canada, 2020:n.p.). The Canada Child Benefit programme is aimed at bettering the financial situation of the low- and medium-income families with children. Families with an income of less than Can\$30 000 income per year are eligible to receive

the maximum amount of the benefit, and the benefit amount is gradually reduced as the family income increases (Petersson, Mariscal & Ishi, 2017:20).

Variations of the tax system can be found within different Canadian provinces. For example, in Quebec, citizens are taxed differently to the federal government tax system. Quebec provides relief for childcare costs in the form of either:

- direct subsidies to certain childcare centres to enable the centres to charge lower fees to parents; or
- refundable tax credits for parents who make use of private childcare services that do not receive the government subsidy. The refundable credit is reduced as family income increases. There is evidence that this credit is worth considerably more to low income earners than the deduction (Laurin & Milligan, 2017:4, 6).

Quebec has the highest rate of female labour force participation in Canada (86.7%) (Car, 2019:11). In Ontario, where childcare costs are the second-highest in the country and the 2018 labour force participation rate of core-age females was the lowest in the country at 81.7%, policymakers introduced an additional tax incentive in an attempt to stimulate female workforce participation. In 2019, the Ontario provincial government announced the Childcare Access and Relief from Expenses (CARE) tax credit in acknowledgement of the fact that the cost of child care can discourage individuals from seeking employment. The CARE tax credit is a refundable credit and is intended to lower the cost of childcare for working-class families and to, “help experienced employees return to work sooner after a parental leave or job separation” (Car, 2019:11). To be eligible to receive the CARE tax credit households are compelled to claim the Child-Care Expense Deduction on their tax return. The CARE tax credit is calculated as a percentage of the household’s childcare expenses, with households with an income of less than Can\$20 000 a year allowed to claim up to 75% of the care costs as a tax credit. The claimable percentage gradually decreases as income increases, and will reach zero once household income reaches Can\$150 000. The implementation of the credit is too recent to determine the impact thereof, but it was estimated that the credit will create between 6000 to 19000 new labour entrants (Car, 2019:13-21). It is indisputable that the cost of both the subsidy and the credit will be large for the affected provinces. However, it is contended that the increased employment will ultimately impact public finances positively and the costs will be at least

partially recouped through the additional taxes charged on the income earned (Laurin & Milligan, 2017:2; Car, 2019:13-21). While there might be justifiable concerns that labour demands will not meet increased labour supply, scholars contend that Quebec is evidence that the labour market is able to adjust to accommodate the extra workers (Laurin & Milligan, 2017:10).

At present in South Africa, relief for childcare costs to low-income earners are granted in the form of child support grants which amounts to R440 per child per month. The grants are dependent upon certain requirements, including maximum earnings of the caregivers and that the primary caregiver may not be paid for looking after the child (South African Government, 2020). However, from a gender equality perspective, it is contended that the tax system should provide more relief for these childcare expenses. However, the South African fiscus might not have the capacity to handle all the childcare benefits implemented in Canada. The inability of South Africa's finances to support these further tax deductions does not make it any less important from a gender equality perspective that such policies at least be considered. However, the key takeaway point from this discussion is that the government is not restricted to the childcare grant if it seeks to subsidise the cost of childcare for South African women. Possible tax policies that could be implemented is a deduction for childcare costs which decreases with rising income, or a refundable tax credit which works similar to the newly implemented CARE credit in Ontario. In this way, women with low taxable incomes who might otherwise not qualify for childcare cost relief currently provided by government, will receive government assistance for childcare costs which will likely influence their working hours, incomes and social status positively.

3.5 CONCLUSION

This chapter examined the broad literature available on gender and taxation. Tax systems have a long history of being inequitable towards women. Progress has been in most countries including South Africa to rectify such inequality, but this progress has largely been on the surface and has failed to consider the practical applications of tax systems for women. The study of the literature has revealed that the role of tax in ensuring the human rights to gender equality has gained global prominence in recent years. This human-rights based approach to gender equality is gaining prominence as it considers the impact of tax policies on the lives of women and is in keeping with the objectives of international treaties

such as CEDAW and the SDGs to grant substantive, rather than superficial, equality to women. The next chapter of this mini-dissertation will further analyse South Africa's personal income tax laws looking through the gender and human rights lens.

CHAPTER 4: GENDER AND THE SOUTH AFRICAN PERSONAL INCOME TAX SYSTEM

4.1 OVERVIEW OF THE SOUTH AFRICAN PERSONAL INCOME TAX SYSTEM

In order to understand the potential gender bias exhibited by South Africa's personal income tax system, it is necessary to understand how individuals are taxed in South Africa. Therefore, this chapter begins with a brief overview of the workings of individual taxation in South Africa. The explanation is intended to provide insight into the basic mechanisms of individual taxation and is not an in-depth analysis of the individual's tax framework.

South Africa's personal income tax system applies a residency basis of taxation. Individuals who are residents of South Africa are taxed on their income from a worldwide source, whereas individuals who are non-residents are taxed on their income from a South African source only (Income Tax Act No. 58 of 1962, 'gross income' definition in section 1).

Section 5: "Levy of normal tax and rates thereof" of the Income Tax Act provides the basis for the taxation of individuals in South Africa as follows:

... there shall be paid annually for the benefit of the National Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of ...

(c) any person (other than a company) during the year of assessment ending during the period of 12 months ending the last day of February each year (Income Tax Act No. 58 of 1962, section 5).

Income tax is, therefore, payable by an individual on an annual basis with various intermittent collection mechanisms such as Pay as you Earn and Provisional Tax in place (Income Tax Act No. 58 of 1962, Fourth Schedule). The tax liability is calculated on an individual's taxable income which is defined in section 1 of the Income Tax Act (hereinafter 'the Act') as:

the aggregate of ... (a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and (b) all amounts to be

included or deemed to be included in the taxable income of any person in terms of this Act (Income Tax Act No. 58 of 1962, section 1).

In accordance with this definition, a taxpayer is allowed certain deductions, which are subject to limitations, from their income. The term 'income' is also defined and it has important implications for unearthing potential gender bias in the tax system. 'Income' is defined as:

The amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax

(Income Tax Act No. 58 of 1962, section 1).

The gross income of a person, which is also defined in section 1 of the Act and is used in the definition of 'income', includes all amounts received by or accrued to a taxpayer that are not of a capital nature. In order to derive income from gross income, certain amounts of gross income are allowed an exemption from tax. These exemptions are stipulated in section 10 of the Act (Income Tax Act No. 58 of 1962, section 1 and section 10). Deductions are governed by various sections in the Act. For purposes of this mini-dissertation, the focus will be on deductions allowed by section 11 which provides for the deduction of trade expenditure as follows:

For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person ... (Income Tax Act No. 58 of 1962, section 11).

Section 11F for deductions for contributions to retirement funds is also of importance to this study. These deductions may be limited or prohibited by section 23 of the Act. The prohibitions contained in sections 23(a), (b) and (m) are of particular importance to individuals and will, therefore, be explored in this chapter. The Act, and the rules pertaining to the taxation of individuals, is very broad. This mini-dissertation will, therefore, focus on select provisions which are of importance to women and which may present some form of biases against women.

The taxable income, determined in accordance with the rules of the Act and excluding certain lump sums received by an individual from retirement funds and employers, is then

multiplied by the tax rate applicable to that individual (Income Tax Act No. 58 of 1962, section 5). From the determined tax liability, natural person taxpayers are allowed to deduct a rebate which is increased as taxpayers reach certain age groups. These rebates are governed by section 6 of the Act. If an individual has received a lump sum from retirement funds or an employer during a year of assessment, an additional tax liability arises on that amount (Income Tax Act No. 58 of 1962, section 6). The tax liability on these lump sums is calculated using different tax rates compared to other amounts of taxable income. Lastly, taxpayers are allowed to deduct a rebate for contributions made to a medical aid as well as certain qualifying medical expense (Income Tax Act No. 58 of 1962, section 6A and section 6B).

The framework in Figure 2 on the following page, provides a useful guide for calculating the tax liability of an individual in South Africa.

Figure 2: Framework for calculating South African tax liability of an individual

Gross income (defined in section 1)	Rxxx
Less: Exempt income (section 10(1)(i) and s 10(1)(k))	(xxx)
Income	xxx
Less: Deductions and allowances (section 11 limited by section 23(a), section 23(b), section 23(g) and section 23(m);	
Excluding (section 11F)	(xxx)
Add: Taxable capital gains (section 26A) (Note 1)	xxx
Add: Allowances and advances included in 'taxable income' (for example, section 8(1)(a))	xxx
Less: Retirement fund contributions (section 11F)	(xxx)
Taxable income	xxx
Normal tax (schedule tax based on tax table (section 5))	xxx
Less: Rebates (section 6(2))	(xxx)
Normal tax after rebates	xxx
Add: Normal tax on lump-sum benefits and severance benefits	
xxx	
Less: Sections medical scheme fees tax credits (section 6A and section 6B)	(xxx)
Less: PAYE and provisional tax	(xxx)
Normal tax liability	xxx
Note 1:	
The taxable capital gain of a natural person may be determined as follows:	
Sum of capital gains for the year of assessment (paragraph 3)	
Rxxx	
Less: Sum of capital losses for the year of assessment (paragraph 4)	
(xxx)	
Annual exclusion (paragraph 5)	
(xxx)	
Aggregate capital gain for the year of assessment (paragraph 6)	
Rxxx	
Less: Assessed capital loss brought forward (paragraph 9)	
(xxx)	
Net capital gain (paragraph 8)	
Rxxx	
Multiplied by inclusion rate (paragraph 10) 40%	
Taxable capital gain	
Rxxx	

Source: Authors own derived from Income Tax Act No. 58 of 1962

The components displayed in the above framework will now be analysed from a gender perspective to determine the impact of these provisions on women and how these provisions of the South African personal income tax system may potentially display gender biases.

4.2 EXAMINATION OF POTENTIAL GENDER BIAS IN THE SOUTH AFRICAN PERSONAL INCOME TAX SYSTEM

This section will explore certain provisions of the Income Tax Act in an effort to unearth the biases contained therein. As explicit biases have been mostly removed from legislation, the focus is on implicit biases and exploring the underlying causes of such biases. Chapter 3 established that implicit biases in personal income tax systems are primarily as a result of the nature and structure of the exemptions and deductions allowed by countries' tax laws as well as the way in which such exemptions and deductions correlate to the distribution of income and employment between men and women (Valodia, 2010:305). The analysis undertaken of the South African personal income tax laws will, therefore, be undertaken with this knowledge in mind as it has important ramifications for the potential biases which may be discovered.

4.2.1 Retirement fund savings related deductions

Section 11F of the Income Tax Act specifically allows taxpayers a deduction for contributions made by individuals to retirement funds, subject to certain (comparatively generous) limitations (Income Tax Act No. 58 of 1962, section 11F).

As South African women are under-represented in secure employment with pension funds, these deductions disproportionately benefit men (Valodia, 2009:38). The greatest deduction allowed to individual taxpayers in the 2018-2019 tax year was for contributions to pension, provident and retirement annuity funds under section 11F. These deductions amounted to R193.5 billion and made up 85.2% of all deductions granted (National Treasury & South African Revenue Service, 2019:31). Inferences made from available

statistics confirm that these deductions were more available to men than women. The 2018 the General Household Survey found that 23.6% of men compared to 17.1% of women had pension accounts. Women on the other hand, appear to be more likely to be contributors towards informal savings schemes as 13.3% of women compared to 6.4% of men claimed ownership of informal saving scheme assets (Statistics South Africa, 2018a:62).

Informal saving schemes such as 'stokvels' are excluded from the section 11F deduction. Furthermore, Quarterly Labour Force Survey, Quarter 1:2020 revealed that while pension funds were a condition of employment for 50% of men, the condition only applied to 46% of women. In absolute terms, the difference is even greater as 3 738 000 men held jobs which required retirement fund contributions, whereas the same applied to only 2 873 000 women. Therefore, it is evident that more men than women were in employment that mandated use of the section 11F deduction.

Furthermore, given that women earn less than men, the tax benefit of the deduction allowed for contributions to retirement funds is lower for women in a progressive tax system such as South Africa's. As the retirement income, such as annuities or lump sums, will also be taxed at a higher rate, the effect of the lower tax benefit is somewhat mitigated. However, the time lag between when tax relief is granted for contributions to retirement funds and when the retirement income is taxed creates a further benefit for higher income earners, who are more likely to be men (Spangenberg, 2011:261). Spangenberg (2011:261) explains that despite there being no empirical evidence to support this claim, there are two arguments which support it. Firstly, higher amounts of income are earned during the working and saving period of a person's life than during retirement, therefore, the tax rate applied to income earned during retirement (such as annuities) is likely to be lower – thereby, lowering the tax burden. In South Africa, lump sums received on qualifying retirements are also taxed at a more favourable rate than other forms of income. Secondly, because interest and compounding interest on contributions made are not taxed, the funds contributed are able to accumulate value faster than they otherwise would have.

It is, therefore, clearly evident that the section 11F deduction, which is the largest monetary deduction granted by SARS, is not gender neutral. This is a result of the fact that

men are more likely to claim this deduction than women, and as a result of the fact that higher-income earners – who are more likely to be men – obtain a higher reduction in their tax liability.

4.2.2 Deductions against allowances received

Allowances are amounts given, usually by an employer to an employee, to defray expected amounts of expenditure. While most allowances are fully taxable in terms of section 8(1) of the Act, deductions are allowed against travel allowances and subsistence allowances for the business expenditure actually incurred. Travel allowances may be a fixed amount or an amount per km travelled, and the related deduction is based on the kilometres travelled by the employee for business purposes in relation to the total number of kilometres travelled by the taxpayer for the year. Subsistence allowances are granted when an employee is required to travel for business purposes away from their usual home within South Africa for at least one night. Subsistence allowances are intended to cover meals, accommodation and other incidental costs and deductions for these costs are allowed against the total amount received (SARS, 2019:3, 6-12). Such allowances display an obvious bias towards men because jobs which typically require employees to be more mobile and travel extensively, are generally dominated by men. Furthermore, a woman's reproductive and care work typically compels them to be based at home (Valodia & Smith, n.d.:23; Budlender, 2009:9). Men will, therefore, be able to benefit more from the deductions allowed against these allowances.

Travel allowances constituted 24.9% of all assessed allowances in the 2018-2019 year of assessment. The deductions allowed against these travel allowances amounted to R22185 billion, which comprised 9.8% of all deductions granted (National Treasury & South African Revenue Service, 2019:32, 89). In terms of these deductions, 82.1% were claimed by taxpayers who earned taxable income of R350 000 or more for the year of assessment. As 61.7% of taxpayers earning taxable income above R350 000 for the year of assessment were male, it can be deduced that males benefited more from this deduction than females (National Treasury & South African Revenue Service, 2019:54, 94-95).

4.2.3 Prohibited deductions

Section 23 of the Income Tax Act limits the deductions which a taxpayer may claim against their income. Some of these prohibitions have the ability to potentially present implicit biases against women. These prohibitions will be explored in this section.

4.2.3.1 *Limitation of private expenditure*

The general prohibition on non-trade related deductions is found in section 23(g) which prohibits a deduction of any moneys which are “not laid out or expended for purposes of trade” (Income Tax Act No. 58 of 1962, section 23(g)). Furthermore, section 23(a) and section 23(b) specifically, prohibits the tax deduction of an individual’s personal expenses as follows:

- (a) the cost incurred in the maintenance of any taxpayer, his family or establishment;
- (b) domestic or private expenses ... (Income Tax Act No. 58 of 1962, section 23(a) and section 23(b)).

As discussed in Chapter 3, one of the implications thereof, is that the cost of childcare is non-deductible for tax purposes. A survey undertaken of African cities in 2014 found that the childcare costs for one child is, “the equivalent of between one-quarter and nearly half of an average person’s monthly spending” and would, “absorb the entire consumption or more of an extremely poor person in Ghana or South Africa” (Lahey, 2018:27). Scholars, therefore, argue that a tax policy which prohibits tax deductions for childcare is inconsistent with both the objectives of achieving gender equality within the tax system, as well as other social and fiscal policies which advocate for overall gender equality and ensuring that women are able to be a part of the working world without bias. This gender bias has been addressed in various forms by legislation but only to a limited extent. These legislative responses include those which rely on the tax system – for example rebates – as well as those regulated outside the tax system such as direct subsidies (O’Connell & Sadiq, 2018:185). South Africa currently provides for child support grants, which are independent of the tax system, at a rate of R440 per child per month. (South African Government, 2020). Prior to 1994, South Africa provided for a child tax rebate which was removed from the tax system on the basis of recommendations made by the Katz

Commission. The reasons provided for this recommendation was that it was not substantial enough to effectively contribute to the cost of child-rearing and more importantly, it provided relief to families who were wealthy enough to pay income tax in the first place (Smith, 2000:14). O'Connell and Sadiq (2018:185-186) argue that the non-deductibility of childcare costs fails to recognise that the cost of childcare is a cost of working that is incurred in order to earn assessable income for tax purposes and therefore, such costs should be considered by the tax system. Furthermore, they contend that the sole use of methods such as the grant method in South Africa which is means-tested and capped, and reflects the view that a deduction for childcare would only benefit women with high income is contradictory to other tax provisions. There is no requirement that other business deductions should be reasonable so as to curtail the benefit provided to the wealthy. For example, for work-related travel expenses which are primarily incurred by men as discussed above, taxpayers may claim the cost of business class flights and luxury hotels. Deductions for these expenses are not capped at a 'reasonable amount' and therefore, also benefit those with higher incomes.

This limitation of expenditure deductions, therefore, fails to account for the different situations faced by working women compared to working men. The current tax system accounts for the stereotypical male view of trade expenses, without realising that the expenses which women may incur in order to earn an income may be different. This is, therefore, a source of bias against women in the Act which presents a hindrance to the attainment of gender equality.

4.2.3.2 Limitation of employment-related expenditure

Section 23(m) further limits the expenditure which may be claimed by individuals who are employed by others as follows:

any expenditure, loss or allowance, contemplated in section 11, which relates to any employment of, or office held by, any person (other than an agent or representative whose remuneration is normally derived mainly in the form of commissions based on his or her sales or the turnover attributable to him or her) in respect of which he or she derives any remuneration...

(Income Tax Act No. 58 of 1962, section 23(m)).

In terms of section 23(m), such individuals may only deduct the following expenses: contributions to retirement funds; legal fees; wear and tear allowances; bad debts and allowances, therefore, amounts which have been refunded to an employer and expenses incurred in respect of an area of their home used for trade, which itself is further subject to limitations in terms of section 23(b). The implication of section 23(m) is that other expenses incurred for trade purposes, such as fuel costs for traveling to work, may not be claimed as a deduction. Individuals who are self-employed are however, not subject to these limitations and may deduct any trade-related expenses which they incur. While allowing sole proprietors deductions for trade related expenses is sensible from a policy perspective, deductions where the expense provides personal consumption such as with certain meals, travel and luxury office furnishings, taxpayers may realise personal benefits free of tax and as a result be comparatively undertaxed. It must be noted that men are significantly more likely to have their own business than women and are, therefore, more likely to enjoy such personal consumption tax-free. Furthermore, given that deductions allow a taxpayer to pay less tax, higher income men enjoy greater benefits. As a result, specifically women with a low income are more removed from any advantages of this provision (Juwon Kleiman, Matsui & Mitchell, 2019:15). In a South African context, in 2016 it was estimated that there were 2 300 000 million self-employed individuals, who represented 13.9% of the total employment. Men were more likely to be self-employed than women, with 16.2% of all employed men being self-employed, compared to only 11.2% of all employed women being self-employed. Overall, women made up 34.5% of individuals who are self-employed. It is, therefore, evident that South African men are more likely than South African women to benefit from those tax deductions which are available to self-employed individuals but not to individuals employed by other persons.

The non-deductibility of private and certain employment related expenses, therefore, has gender ramifications in that it provides an impediment towards achieving gender equality due to the fact that women are more affected by these prohibitions. The argument may be made that South Africa, as a developing country with already constrained resources, is not able to support a deduction for these costs and that it would further pressurise the fiscus. However, that argument must not detract from the important fact that these provisions do present bias against women which is what this study has sought to uncover.

4.2.4 Interest and dividend exemptions

Returns on investments are typically paid out in the form of dividends and interests. The South African tax system taxes dividends and interest as follows:

- **Dividends:** Dividends declared by South African resident companies are taxed at a rate of 20% (Income Tax Act No. 58 of 1962,; definition of 'gross income' in section 64E). The tax is withheld before payment of the dividend to shareholders. Dividends withholding tax is a separate tax from income tax. Dividends received by South African residents, from both local and foreign dividends, are a special inclusion to gross income in terms of paragraph (k) of the gross income definition in section 1 of the Act (Income Tax Act No. 58 of 1962, definition of 'gross income' in section 1). As a result of the withholding tax applied, local dividends are fully exempted from normal tax by s 10(1)(k) of the Act and foreign dividends are either fully exempted where a 20% tax is assured or partially exempted in order to create the 20% tax according to s 10B (Income Tax Act No. 58 of 1962, definition of 'gross income' in section 10 and section 10B). The tax rate on dividends is, therefore, below the rate of normal tax imposed on most taxpayers. For taxpayers in the maximum tax bracket, for example, dividends are taxed at a rate of 20% compared to other income which is taxed at 45% (Income Tax Act No. 58 of 1962, Rates of Tax 2019/20).
- **Interest:** Interest received by taxpayers is included in gross income. Natural persons may then exempt interest from a South African source in terms of s 10(1)(i) of the Act. The exemption amount is R23 800 for taxpayers younger than 65 and R34 500 for taxpayers 65 or older (Income Tax Act No. 58 of 1962, section 10(1)(i)). Furthermore, any returns in the form of dividends or interest received by an individual in respect of a tax-free investment is fully exempted from normal tax in terms of the provisions of section 12T of the Income Tax Act (Income Tax Act No. 58 of 1962, section 12T). With the introduction of section 12T and tax- free savings incentive schemes, the interest exemptions in terms of section 10(1)(i) were retained but have not been increased for inflation, and the value thereof, will eventually erode over time (National Treasury, 2014:11).

These exemptions present a form of implicit bias as men are more likely to own stock or investments which yield these returns (Grown, 2010:12). This view is supported by the 2018 General Household Survey (Statistics South Africa, 2018a:62) data, which found that 25.3% of women held investment accounts compared to 28.7% held by men. It is thus clear that women's economic reality has resulted in the tax system being less favourable towards them.

4.2.5 Capital gains tax

Capital gains tax forms part of personal income tax and arises when a taxpayer disposes of an asset for an amount of proceeds that exceeds its base cost (SARS, 2019:n.p.). Capital gains are included in taxable income since 1 October 2001 through the workings of section 26A of the Income Tax Act (Income Tax Act No. 58 of 1962, definition of 'gross income' in section 26A). The majority of countries treat capital gains preferentially by either excluding it from taxation entirely, or by taxing it at a lower rate than other amounts of income. One of the most significant rationales provided for such treatment is that it allows for increased economic growth by encouraging investments (Kornhauser, 2011:275). South Africa is no different in this regard. Capital gains derived by an individual are subject to numerous exclusions such as exclusions on assets used mainly for personal use or a limited monetary exclusion on primary residences. The first R40 000 of any remaining capital gains derived by an individual during a year of assessment are exempted from tax, after which a rate of 40% is applied to determine the amount of capital gains which are taxable and must be included in taxable income (Income Tax Act No. 58 of 1962, Eighth Schedule).

Although the method of preferential tax treatment for capital gains is not contentious, it does present gender issues for reasons which include that men are more likely to have access to capital and receive capital income than women are. This is especially true for individuals who hold wealth and income at the top levels where most capital gains occur (Kornhauser, 2011:286; Coffey, Stephenson & Himmelweit, 2019:6). Globally, much of the data related to asset ownership is gathered at the household level and therefore, it is difficult to disaggregate asset ownership by gender. An example of women's comparatively lower asset ownership can be found with respect to ownership of agricultural land – 52% of South Africa's land is owned by men, 34% is owned by women while the gender of the

remaining 14% of land owners is not given (Statistics South Africa, 2019:106). Despite the relatively limited data, it is known that women in South Africa and around the world have less assets than men and are more likely to have assets with a lower value (Department of Women, 2015:97). Furthermore, most of the high-income earners in South Africa are male. This is supported by tax statistics released in 2019 which found that in 2018 only 30.5% of taxpayers with taxable income between R750 000 and R1 million were female. As taxable income increases, the proportions decline as only 13.0% of individuals with a taxable income of more than R5 million were women (National Treasury & South African Revenue Service, 2019:53).

A more subtle explanation for the gendered effect of capital gains tax is the difference in men and women's attitude towards financial risk. Women are considered to be more risk-averse and are, therefore, more likely to invest in fewer risky assets which are the assets that produce the largest capital gains. It is also contended that women might value economic growth less than men and rather prefer economic security with a steady income. Therefore, women might prefer investments which are less volatile and produce more ordinary income than riskier investments which are more likely to produce capital gains. Lastly, it is also contended that jobs, such as entrepreneurial, high-tech, financial and CEO positions, which produce compensation that could increase capital gains are dominated by men (Kornhauser, 2011:275-276). Share incentive schemes structured into compensation packages would be an example thereof. However, it must be noted that South Africa does, at least partly, tax benefits obtained through share incentive schemes. In terms of section 8C of the Income Tax Act, the employee is taxed on the difference between any consideration paid by the employee and the market value of shares acquired on the date the shares vest in the employee. The date of vesting will be when the shares are acquired by the employee or, in the case of shares which are subject to restrictions, the date when the restrictions ease. The market value of the shares then becomes the base cost for the employee for capital gains tax purposes, and any subsequent disposal of the shares will attract capital gains tax (Income Tax Act No. 58 of 1962, section 8C). This section, therefore, bodes positively for gender equality in that for men there is a lesser tax benefit granted on the shares acquired, otherwise the benefit would have benefited men more.

Therefore, as it is evident that men are more likely to realise capital gains than women, the lower rate of taxation applied to capital gains is of more benefit to men than it is to women.

Capital gains tax by design thus, has the potential to exhibit implicit gender bias which is once again as a result of women's inferior economic position compared to men.

4.2.6 Medical expenses credits

Section 6A of the Income Tax Act allows taxpayers to claim a rebate against their tax liability for contributions made to a medical aid. This rebate may only be claimed by the main member of a medical aid and is available in respect of contributions made to the medical scheme on behalf of all dependents. The amount of the rebate is determined per month and for the 2019-2020 year of assessment there was an amount of R310 per month for contributions in respect of the first two dependents and R209 per additional dependent. A taxpayer who is the main member of a medical aid may claim a portion of the excess of contributions made to a medical aid which were not deductible in terms of section 6A under section 6B. The amount of the excess contributions which can be claimed as a rebate is dependent on the taxpayer's age. Medical aid contributions paid on behalf of a person by their employer is treated as if it was made by the taxpayer themselves (Income Tax Act No. 58 of 1962, definition of 'gross income' in section 6A).

Smith (2000:17) argues that males are more likely to benefit in respect of tax benefits given in respect of medical aid contributions as they are, in most cases, the main members of a medical aid. Medical aid contributions paid by employers on behalf of their employees in 2018 amounted to R55 460 million and made up 30.2% of all assessed fringe benefits. Almost half (4.5%) of these benefits were paid in respect of taxpayers with an assessed taxable income of R350 000 or more per annum, which is a taxable income range that comprised of 61.7% men. A further 23.9% of the benefits were paid in respect of taxpayers earning between R250 000 and R350 000 per annum and a much smaller percentage of the total benefits paid in respect of smaller income groups where women are more concentrated (National Treasury & South African Revenue Service, 2019:54, 80, 86). Budlender (2009:18) contends that men are more likely to receive larger contributions from employers and thus, will be able to claim tax benefits in respect of these contributions. Therefore, the medical aid credits have the potential to be more favourable towards men as they are more likely to claim these credits, resulting in potential implicit bias against women in the tax system. It must, however, be noted that some changes have been made to tax relief measures granted for contributions to medical aid schemes. Previously,

taxpayers were granted a deduction from their taxable income. This deduction for contributions was replaced with a credit effective from 1 March 2012 which served to provide greater relief for poorer income earners (National Treasury, 2011:3, 13). Whereas the deduction was worth more to a taxpayer who earned more due to the application of graduated tax rates, the credit is worth more to those with lower incomes. It has been established that women are more likely to be saturated in lower taxable income thresholds than men, and therefore, the change in policy, although not directly focused on the gendered implications, was a positive step towards attaining a more gender equal tax system.

4.2.7 The use of male pronouns

The personal income tax laws promulgated by South Africa's Income Tax Act applies to male and female taxpayers alike and is equally binding on people of all genders. However, the wording of some legislative provisions applicable to individuals employs the use of male pronouns such as 'he' and 'his'. An example includes the wording of section 23(a): "the cost incurred in the maintenance of any taxpayer, **his** family or establishment" (Income Tax Act No. 58 of 1962, section 23(a)). The male pronouns are intended to encompass all genders. Linguistic scholars contend that because the English language lacks a true gender-neutral singular pronoun, over time there has been different approaches taken as to how to refer to people of more than one gender. Some language guides have advocated for the use of 'he' to refer to generic persons on the basis that the word 'they' is plural and cannot refer to a singular person. However, from a gender equality standpoint, the assumption of the male as default has been criticised as sexist and some women have reported feeling ostracised by the use of perceived gender-exclusive language (Bradley, Schmid, & Lombardo, 2019:41). The use of male-specific pronouns may, therefore, present an example of substantive discrimination in the present-day tax laws. It must however, be noted that this bias is not found in all individual tax laws. For example, section 23(m) provides for the words "expenditure ... in respect of which **he or she** derives any remuneration" (Income Tax Act No. 58 of 1962, section 23(m)) with the process of using more gender-inclusive language is a positive step for gender equality.

4.3 DOES SOUTH AFRICA COMPLY WITH THE CEDAW, THE CONSTITUTION, AND THE SDGs WHEN IT COMES TO PERSONAL INCOME TAX?

This chapter has thus far established that South Africa's personal income tax legislation does contain provisions which may potentially, perhaps unwittingly, discriminate against women. In accordance with the stated objectives of this study, personal income tax laws, bearing in mind the implicit biases it displays, should next be measured against prevailing gender equality standards in the form of the Constitution, the CEDAW and the SDG 5.

4.3.1 The Constitution

The Constitution of South Africa is the supreme law which cannot be contradicted by other laws (South African Government, n.d.). Therefore, all other laws, including tax legislation should comply therewith. This study will, therefore, measure the gender equality status of the personal income tax laws against selected provisions of the Constitution which were selected due to these provisions pertaining to the right of South African women to gender equality. Table 4 below measures South Africa's personal income tax law against the Constitutional provisions related to gender equality to determine whether or not personal income tax legislation is compliant with the aforementioned provisions.

Table 4: Evaluation of personal income tax laws against the Constitutional provisions for gender equality

Constitutional provisions	Application of provision to South Africa's personal income tax law
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Constitutional provisions	Application of provision to South Africa's personal income tax law
<p>Section 9: Equality</p> <p>(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.</p> <p>(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.</p> <p>(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including ... gender, sex...</p> <p>(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.</p> <p>(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair (Constitution of the Republic of South Africa, 1996)</p>	<p>The current South African personal income tax law provides facial gender equality in that tax provisions do not explicitly differentiate between male and female taxpayers. However, there is indirect gender discrimination in personal income tax laws due to the disparate effect of tax legislation on men and women. In this regard, personal income tax laws do not conform to the equality provisions promulgated by the Constitution.</p> <p>The Constitution awards the right to differentiate between men and women in tax legislation if this differing treatment is to correct historical disadvantage and ensure equal outcome for men and women. However, the gender-blind approach adopted by tax legislation is in fact gender non-neutral in that personal income tax laws make no differentiation between men and women on the basis of women's historic socio-economic disadvantage. This same treatment of taxpayers who are essentially different, provides reason to conclude on non-compliance with the Constitutional right to substantive equality.</p>

Source: Author's own

The South African Constitution provides for the necessary means required to eliminate gender discrimination across all spheres and aims to achieve substantive equality for women. However, the implicit biases contained in personal income tax laws means that the South African tax system falls short of the stated provisions in the Constitution.

4.3.2 Convention for the elimination of all forms of discrimination against women

As previously discussed, South Africa is a signatory to the CEDAW and has ratified the treaty without ascension or succession. The Constitution of South Africa does not make explicit reference to the CEDAW, but Section 39(1)(b) provides that the court must consider international law on interpretation of the Bill of Rights which would include the CEDAW (South Africa, 2019:6). Furthermore, section 233 of the Constitution instructs that the courts “prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international

law” when interpreting legislation (Constitution of the Republic of South Africa, 1996: section 223). South African law therefore, gives higher preference to international treaties over the Constitution and all South African legislation, including tax, and is therefore, legally compelled to adhere with the provisions contained in the treaty.

The CEDAW does not make any specific reference to the role of taxation in eliminating discrimination against women; nevertheless, the general principles contained therein relating to non-discrimination and substantive equality may be applied in the evaluation of tax policies (Elson, 2005:76). This mini-dissertation briefly evaluates the laws and circumstances surrounding South Africa’s personal income tax system against selected principles of the Convention. These provisions were selected due to their applicability to legislation and the ability of tax laws to play a role in the achievement of the objectives of these principles. Table 5 on the following page measures these selected articles against South Africa’s personal income tax legislation in an effort to determine South Africa’s compliance, from a personal income tax perspective, with the Convention.

Table 5: Evaluation of personal income tax laws against CEDAW principles

CEDAW requirements	Application of article to South Africa's personal income tax system
<p>Article 2 compels States Parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (CEDAW, 2003:n.p.).</p> <p>Article 15 compels States Parties to “accord to women equality with men before the law” (CEDAW, 2003:n.p.).</p>	<p>South Africa's legislation provides formal equality to women. However, the South African government has not taken sufficient action to rectify gender discrimination emanating from tax law to ensure substantive equality. For example, despite the establishment of several commissions to look into various tax related issues – there have been none – bar the Katz Commission – that have sought to eradicate gender discriminations in tax. The Commission for Gender Equality has also not resulted in the attainment of more gender-neutral tax laws. Asking the woman question reveals that concessions allowed by tax legislation to provide relief to taxpayers find more applicability to men than to women, and the failure of tax law to recognise the different social and economic positions of men and women results, inadvertently, in gender discrimination. For example, men are more likely to run their own business and are therefore, more likely to claim deductions for trade purposes.</p>
<p>Article 5: “States Parties shall take all appropriate measures:</p> <p>(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;</p> <p>(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.” (CEDAW, 2003:n.p.).</p>	<p>South Africa's personal income tax laws do not recognise the burden of care placed on women, which often presents a hindrance to women's workforce participation. An example thereof, is the failure of personal income tax laws to provide for the cost of childcare, which may be a factor inhibiting the workforce participation of women and keeping them at home.</p>

Source: Author's own

It is therefore, contended that some of the provisions in the Income Tax Act do not comply with the articles of the CEDAW due to the Act's potential to display implicit bias against women.

4.3.3 Sustainable development goals

The United Nations' 2030 Agenda for Sustainable Development provides a universal set of goals aimed at achieving an end to poverty, protection of the planet and ensuring that all

people enjoy peace and prosperity by 2030 (UNDP, n.d.:n.p.). South Africa, as a member of the United Nations, subscribes to this set of goals. Of particular importance to this mini-dissertation is goal 5 of the SDGs which seeks to achieve gender equality and empower all women and girls. In order to achieve goal 5, it is necessary to counter deeply entrenched gender-based discrimination resulting from patriarchal attitudes and related social norms. Such efforts should incorporate the use of legislative frameworks (UNSD, 2020:n.p.). The Income Tax Act is legislation and therefore, should be evaluated against SDG 5. Personal income tax laws will not be evaluated against each sub-goal of SDG 5. Certain sub-goals were selected due to their ability to be applied against income tax laws. Table 6 on the following page measures these selected principles against South Africa's personal income tax legislation.

Table 6: Evaluation of personal income tax laws against SDG 5

Sustainable Development Goal	Application of article to South Africa's personal income tax system
<p>Goal 5.1: End all forms of discrimination against all women and girls everywhere.</p>	<p>The discussion in Chapter 4 of this mini-dissertation has highlighted that the personal income tax laws in South Africa have the potential to discriminate against women as the effect of many of the provisions in the Act disproportionately benefit men. This is primarily due to the social and economic standing of women.</p>
<p>Goal 5.4: Recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate</p>	<p>It was highlighted in section 3.1.3.1 that the burden of unpaid care placed on women hinders women's professional development and employment. It was highlighted in sections 4.2.1 and 4.2.2 that deductions available for contributions to retirement funds and against allowances disproportionately benefit men due to the fact that men are more likely to be in formal employment and women's reproductive work forces them to be based at home. It is therefore, imperative that women's burden of unpaid care work be reduced so as to ensure that they are able to benefit from some of the provisions in the Act.</p> <p>Figure 3, which follows after this table, indicates that South Africa has made significant progress in reducing the burden of unpaid domestic care work on both men and women. This progress bodes well for taxation as more women will now be able to enter professional positions that enable them to utilise some of the provisions of the Act but this also makes it all the more important that the Act takes the specific needs of women into account and that they have a voice at the table.</p>
<p>Goal 5.a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws</p>	<p>It was indicated in section 4.2.5 that women are less likely than men to have ownership of assets and other economic resources. As a result, women are less likely to benefit from provisions such as capital gains tax to which a lower rate of tax is applied compared to other forms of income, whilst this particular sub-goal is not yet a reality for woman in South Africa.</p>

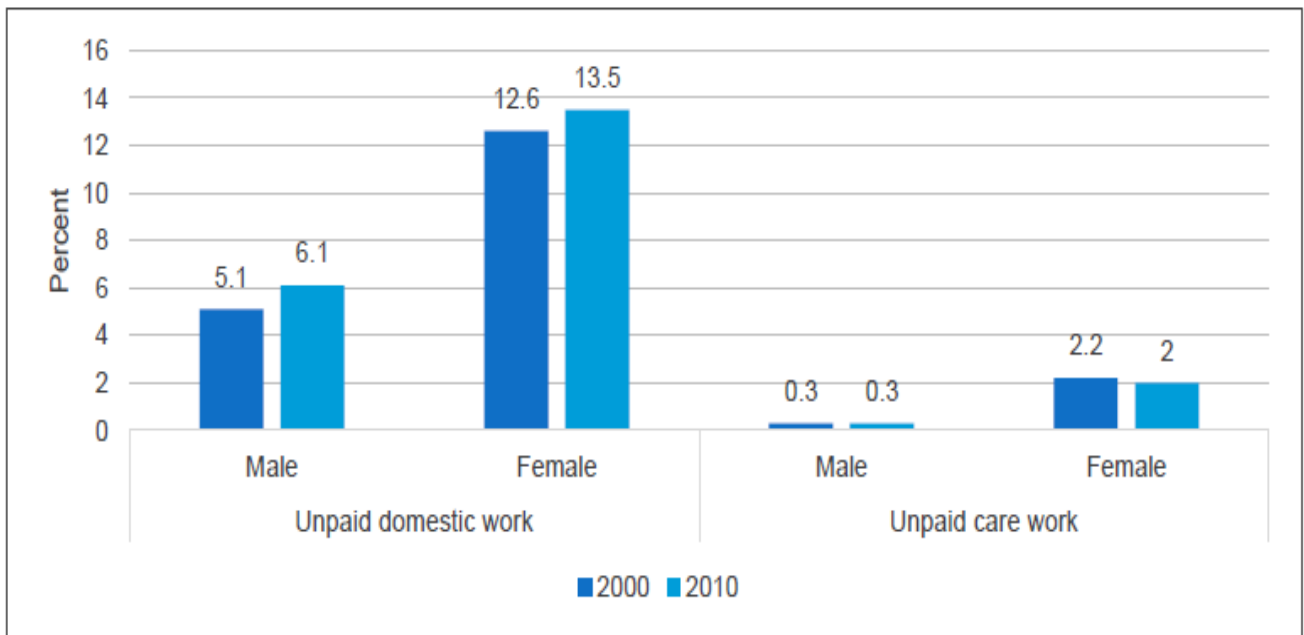
Sustainable Development Goal	Application of article to South Africa's personal income tax system
Goal 5.c: Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels	The establishment of the Katz Commission, which as indicated in section 3.1.3.2, was specifically mandated to look at gender issues with regards to taxation, led to several reforms in the tax system which are aimed to be of benefit to women. This bodes well for the South African government's commitment to ensuring that tax legislation does not unfairly discriminate against women. A more recent example of this commitment, although not related to personal income tax, is the zero-rating of sanitary products for VAT purposes. The decision was made by National Treasury on the basis of recommendations made by an independent panel. The independent panel recommended that the zero-rating be introduced as it would benefit women, although it did recognise that poor women would need more action from government to actually realise any benefit (Independent Panel of Experts for the review of zero-rating in South Africa; 2018:57-60, 69). However, despite this, progress has been slow and personal income tax legislation has never been fully interrogated from a gender perspective.

Source: Author's own

Although South Africa has made progress towards female empowerment, the potential gender bias displayed by the Income Tax Act means that South Africa's personal income tax system and the related circumstances may need to be reformed in order for the country to achieve SDG 5. The current set of personal income tax laws therefore, presents obstacles towards attaining the goal.

Figure 3 on the following page indicates the progress made in South Africa towards reducing the burden of unpaid care placed on women.

Figure 3: Percentage of time spent on unpaid domestic and care work, by sex



Source: Statistics South Africa (2019, 105)

4.4 CONCLUSION

This chapter evaluated provisions of the Income Tax Act which have the potential to be biased against women. Thereafter, it evaluated the personal income tax provisions against selected provisions of the Constitution, the CEDAW and the SDG 5. It is contended that the provisions of the Act which contain implicit biases, contradict certain aspects of these important instruments with regards to the attainment of gender equality. Chapter 5 will conclude on the findings of the study and present closing remarks.

CHAPTER 5: CONCLUDING REMARKS

5.1 INTRODUCTION

This study sought to unearth potential gender biases exhibited by South Africa's personal income tax system in an effort to determine if these personal income tax laws comply with internationally accepted gender-equality provisions. While reforms to tax laws and other forms of tax benefits may be insufficient on its own to eliminate gender and other prevalent forms of inequalities, gender-biased tax laws can augment existing gender inequalities and reinforce gender stereotypes. If we seek to ensure a society that is truly free of all forms gender discrimination, tax law must also be examined to ensure that it does not impede progress towards gender equality and that tax laws afford women their right to enjoy basic human rights.

An analysis of the relevant literature and legislation related to gender and taxation has revealed that while most tax codes are free of explicit or obvious gender biases, implicit gender biases are commonplace. These implicit gender biases arise as a result of the different socio-economic positions of men and women worldwide, and will persist for as long as men and women face different economic and social realities. It is reasonable to conclude that South Africa's personal income tax law is no different in this regard. The biases displayed by South Africa's personal income tax laws stem primarily from the fact that women's positions in society inhibit them from making full use of the deductions and exemptions allowed by the Act.

Tax and human rights are inextricably linked, and women's rights are human rights. As we move forward in the fight to achieve gender parity, policymakers should focus on ensuring that fiscal policies afford all people, women included, with their basic human rights. For as long as tax policies ignore the practical impact of the law on women's lives, gender parity in tax systems will remain a distant dream.

5.2 IMPORTANCE OF THE STUDY

The importance of this study is premised on the fact that we need to identify existing gender inequalities if we are to eradicate discrimination against women. However, over

and above that, tax policy also has some role to play in eliminating gender biases, and there is scope for tax reform in a bid to achieve societal aims – such as the attainment of gender equality. The existence of gender biases is a strong argument for the need for reform.

The formulation of tax policy is complex and is influenced by ever-changing interests and factors. Bahl and Bird, as cited by Grown & Valodia (2010) state that, “tax policy is usually heavily shaped by past decisions and frequently overtaken by current events. Economic, administrative, political, and social realities have always shaped tax policy decisions and constrained what could be done” (299). Over the past 50 years, social scientists have chronicled a ‘gender revolution’ as gender equality movements have made significant progress towards achieving gender equality despite a recent slowdown in momentum (England, Levine & Mishel, 2020:6990). Therefore, the backdrop of the social change towards gender equality warrants the proposal that tax policies be reformed in a bid to achieve gender equity.

The discussions in this study highlighted that explicit gender biases have been removed from South African legislation, and are rarely found in most countries. However, despite this, it is evident that tax systems still have disparate effects on men and women. Tax systems such as South Africa’s which are gender-blind in that they do not differentiate between men and women can still display implicit biases and may even amplify existing inequalities. This differing impact of tax systems on men and women will persist for as long as men and women continue to face different socio-economic circumstances. Gaps between genders in aspects such as income levels, labour-force participation, consumption, entrepreneurship and wealth are all contributing factors to the differing impact of tax systems which should ultimately be understood when any tax reforms are considered (Harding, Perez-Navarro and Simon, 2020:n.p.). ‘Taxing for growth’ policies adopted by many countries ultimately ignored women’s socio-economic circumstances. These policies incorporated aspects such as tax cuts, low tax rates and tax competition on the basis that it was necessary for sustained economic growth but also in some cases undercut women’s progress towards economic equality. It is, therefore, necessary that a tax policy which incorporates women’s social needs is developed and that when developing such a policy it needs to be taken into consideration that women have lower

incomes, more unpaid work, more precarious and low-paid work, less income security, and less political stature than men (Lahey, 2015:1).

It was highlighted in Chapter 4 of this study that certain provisions of the Income Tax Act fall short of the principles advocated by the CEDAW, and certain aspects of Goal 5 of the SDG and the Constitution. The Constitution advocates for substantive gender equality, and the attainment of only formal equality in personal income tax laws, therefore, does not comply with the Constitutional provisions related to gender equality. The CEDAW requires that tax policies must take account of equity. In order to transform the currently inequitable gender roles of society, the Convention is based on principles of substantive equity rather than merely formal equity which requires that all persons be treated in the same manner (Grown & Valodia, 2010:301). Tax reform of the personal income tax system is, therefore, recommended to ensure that the personal income tax system achieves more than stated equality and grants substantive equality to women. With regards to the SDG, Stotsky (2016:4) contends that fiscal policies – such as tax policy – in turn influences outcomes such as economic output, growth and equity. For developing countries such as South Africa, sound fiscal policies are necessary to contribute to the growth required to achieve the SDG 5, therefore, it is recommended that tax policy be reformed so that the SDG 5 may be achieved.

5.3 REFLECTIONS ON ADDRESSING THE RESEARCH QUESTIONS AND OBJECTIVES

In Table 7 below, a reflection on the research objectives of this study reveal the following:

Table 7: Reflection of the study’s research objectives

Objective	Reflection
Primary objective: To determine whether South’s Africa’s personal income tax legislation is substantively gender neutral.	South Africa’s personal income tax laws grant formal equality to women, but not substantive equality to women. In other words, tax legislation does not differentiate between men and women but the application of the laws means that women do not receive the same benefits as men.
Secondary Objective: To determine whether South Africa’s personal income tax legislation, conforms to the gender equality provisions promulgated in the Constitution.	The South African Constitution advocates for substantive equality. The failure of personal income tax laws to be substantively equal means that personal income tax laws do not conform to the gender equality provisions promulgated in the Constitution.

Objective	Reflection
<p>Secondary Objective: To determine whether South Africa's personal income tax legislation conforms to the gender equality principles contained in the United Nations' CEDAW.</p>	<p>The implicit biases found in personal income tax laws results in it falling short of the principles contained in the CEDAW. The CEDAW is based on substantive equality which South African income tax laws have not achieved.</p>
<p>Secondary Objective: To determine whether South Africa's personal income tax legislation conforms to the gender equality goal of the United Nations' SDG.</p>	<p>The gender equality goals of the SDG have not been achieved from a personal income tax perspective due to the disparate effect of personal income tax laws on men and women. This disparate effect results in gender inequality arising from tax legislation.</p>

Source: Author's own

It is, therefore, reasonable to conclude that South Africa's personal income tax laws fall short of the instruments used in this study to measure gender equality. It is however important to emphasise that this study does not suggest that gender discrimination in tax law is intentional. Rather, any potential gender discrimination displayed arises inadvertently and from a failure on the part of lawmakers to holistically consider the impact of such laws on women by taking the circumstances of South African women into account when developing such tax laws.

Furthermore, the basic provisions of South Africa's tax system, such as the progressive design, conforms to the elemental principles of taxing for gender equality. However, there is still potential to reform the tax system to ensure that certain provisions do not disproportionately benefit men more than women.

5.4 LIMITATIONS OF THE STUDY

This study considered possible gender bias present in South African taxes. As the tax law is very broad, this mini-dissertation focused primarily on potential gender biases exhibited through personal income tax laws. The effect of this narrow focus was that the study excluded the effects of tax policy on a large percentage of South African women who earn too little to be subject to tax on their income. The impact of the potential gender bias identified in tax law is, therefore, limited to a small percentage of women in South Africa. However, South Africa's growing middle class and increasingly economically active female population will benefit from the findings of such a study as they slowly start to creep into higher taxable income brackets.

This study also emphasised that tax policy must play a part if we are to achieve gender equality. However, while some sort of tax reform is necessary in order to eliminate implicit biases in the income tax system, these reforms will be met with obstacles which must be examined. For example, Grown & Valodia (2010:300) contend that weak state capacity in developing countries has led to a reluctance to use taxation as a means of redistribution. South Africa is a developing country and therefore, the government must bear this consideration in mind.

It is also important to note that the effect of tax policy on achieving gender equality, although extremely important, is only one aspect of a bigger picture. The effect of tax policy on men and women is dependent on policies in other areas such as employment and education as well as social and cultural norms (Joshi, 2017:1).

Tax reforms might also result in some considerable cost to the fiscus which may make governments reluctant to implement them. In this regard, Lahey (2018:55) contends that if a government claims that the extension of certain exemptions, for example, results in a concerning loss of revenue, high income surtaxes or tax credits can be implemented to protect against such revenue losses. Furthermore, in response to critics who argue against tax reforms to assist women with unpaid care on the basis of affordability, Lahey (2014:428) cites the following extract from Norton and Waldman (2011: 343):

When people say that we cannot afford to pay taxes to provide child and elderly care services, presumably they are not saying that we can no longer afford to look after our children or the elderly. What they must mean is that instead of spreading the cost of these services equitably, through the tax system, across the entire population, we should leave them to be borne by women, by and large, who provide them ... unpaid in their ... homes (Lahey, 2014:428).

5.5 RECOMMENDATIONS FOR FUTURE STUDY

The following recommendations are made for future studies on the topic relating to this mini-dissertation:

- The gendered impact of other direct and indirect taxes, including corporate income taxes, should be researched to identify other possible biases present in South African tax law. These laws may also be analysed against the equality instruments used as a

measure in this study to gain a more comprehensive picture of South Africa's progress made towards gender equality in tax matters.

- This study focused on tax consequences for employed individuals and sole-traders. The impact of tax laws for incorporated small businesses on men and women should be explored in greater detail.
- The way tax is spent matters. There is scope to consider the gendered dimensions of government's tax spending and how these may contribute to gender inequalities in the country.
- This study highlighted the need for tax reform as part of achieving gender equality but did not make policy recommendations. Studies which analyse tax reform options for gender equality should be undertaken, bearing in mind aspects such as:
 - South Africa's financial health and ability to support tax deductions or exemptions which may be needed;
 - the necessity to ensure that tax reforms do not exacerbate existing wealth inequalities and disproportionately benefit the rich;
 - reforms which were proven to work or not work in other countries; and
 - the socio-economic status of women in South Africa.
- Tax reform based on human rights should be studied in further detail and studies making recommendations for a macroeconomic policy to adopt reform based on human rights as part of attaining gender equality, should be undertaken.
- Government specifically should undertake efforts to understand the impact of tax laws on women. Gendered impact of tax should be the mandate of government commissions.

5.6 FINAL REMARKS

Studies on the gendered impact of taxation are growing, and there is room for more detailed studies on how tax systems inadvertently treat men and women differently. Such findings can assist policymakers to ensure that gender biases are not perpetuated through the tax system. Gender and human rights awareness are crucial in the policy-setting if the deeply entrenched gender biases found in our societies are to be eliminated and to truly enforce the message that women's rights are human rights.

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