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Is a Gender-Neutral Income Tax Feasible – or Desirable?

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Abstract

It is increasingly recognized that the individual income tax leads to disparate treatment by race, ethnicity, and gender, even when the statutory tax code is written in a race-, ethnicity-, and gender-blind way. Partly in response to these disparate treatments, there have been many suggestions for moving the income tax to more neutral treatments of taxpayers. In this paper, we focus on a specific aspect of these reform efforts: making the individual income tax gender neutral. We first examine the many sources of gender non-neutrality in the income tax. We argue that gender non-neutrality arises largely because of deviations of "income" in the tax code from "comprehensive income," deviations that are driven by the many things that we want the tax to achieve, by the ways in which the specific features of the income tax interact with the economic decisions and roles of individuals, and by the differences in these decisions and roles between women and men. We illustrate the results of these tax features on gender non-neutrality with several specific examples drawn largely from Scandinavian tax practices. We conclude that it is possible to make the income tax more gender neutral, so that a gender-neutral income tax is feasible. However, we also conclude that complete gender neutrality would come at the expense of other desired goals; that is, complete gender neutrality is at odds with all that we ask of the tax code, including targeting tax benefits at groups – like women – who have experienced significant historical inequities in their tax treatment, so that a completely gender-neutral income tax is not desirable because we wish to use the income tax to achieve many other worthwhile goals. Safeguards actively promoting the specific circumstances of women may be necessary, as such biased tax features could be used as a way of moving toward more gender-equal outcomes. In light of these arguments, we suggest that one alternative to promoting complete gender neutrality in the tax code could be to consider affirmative action in some circumstances as a way of fostering gender-neutral outcomes, rather than to aim for a gender-neutral tax code with inequitable outcomes induced by societal and cultural influences. Another option that has proven successful elsewhere could be to actively employ gender budgeting assessments when introducing new tax legislation and budgets.

Keywords: Broad-based, low-rate taxation, comprehensive income, Haig-Simons standard, optimal taxation, tax reform

JEL codes: H2, H7

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*James Alm & Yvette Lind**

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It is increasingly recognized that the individual income tax leads to disparate treatment by race, ethnicity, and gender, even when the statutory tax code is written in a race-, ethnicity-, and gender-blind way. Partly in response to these disparate treatments, there have been many suggestions for moving the income tax to more neutral treatments of taxpayers. In this paper, we focus on a specific aspect of these reform efforts: making the individual income tax gender-neutral. We first examine the many sources of gender non-neutrality in the income tax. We argue that gender non-neutrality arises largely because of deviations of “income” in the tax code from “comprehensive income,” deviations that are driven by the many things that we want the tax to achieve, by the ways in which the specific features of the income tax interact with the economic decisions and roles of individuals, and by the differences in these decisions and roles between women and men. We illustrate the results of these tax features on gender non-neutrality with several specific examples drawn largely from Scandinavian tax practices. We conclude that it is possible to make the income tax more gender neutral, so that a gender-neutral income tax is feasible. However, we also conclude that complete gender neutrality would come at the expense of other desired goals; that is, complete gender neutrality is at odds with all that we ask of the tax code, including targeting tax benefits at groups—like women—who have experienced significant historical inequities in their tax treatment, so that a completely gender-neutral income tax is not desirable because we wish to use the income tax to achieve many other worthwhile goals. Safeguards actively promoting the specific circumstances of women may be necessary, as such biased tax features could be used as a way of moving toward more gender-equal outcomes. In light of these arguments, we suggest that one alternative to promoting complete gender neutrality in the tax code could be to consider affirmative action in some circumstances as a way of fostering gender-neutral outcomes, rather than to aim for a gender-neutral tax code with

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INTRODUCTION

The design of a tax system reflects the balancing of multiple goals. One such goal is often “gender neutrality.” The precise definition of gender neutrality is not entirely clear-cut, but the basic notion is a simple one: individuals should not be subject to differences in tax burdens solely because of their gender.¹ Indeed, there is growing recognition that gender—along with race and ethnicity—interacts in important but not fully understood ways with taxation.² Of course, tax burdens depend on the tax code, and the tax code may have specific provisions that treat men and women differently, sometimes referred to as *explicit bias*.³ In addition, there may be *implicit bias* in taxation because of the different ways in which specific provisions of the tax code interact with the economic decisions of men and women, their

1. Note that we refer throughout the paper to “gender” and to “sex.” These concepts are often used interchangeably, but they are not in fact the same. “Gender” refers to socially constructed characteristics, and it is shaped by social, cultural, and personal factors. “Sex” has a more scientific, biological basis, referring to one’s biological and physiological characteristics, such as one’s chromosomes, hormones, and genes, leading to individuals being classified as male or female. As discussed in the Merriam-Webster Dictionary, Gender, Usage Guide, Merriam-Webster.com Dictionary, “[a]mong those who study gender and sexuality, a clear delineation between sex and gender is typically prescribed, with sex as the preferred term for biological forms and gender limited to its meanings involving behavioral, cultural, and psychological traits.” *Gender: Are Gender and Sex the Same? Usage Guide*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/gender> [<https://perma.cc/4AVD-BXPV>]. For convenience, we use both terms interchangeably throughout the paper, especially in our discussion of tax burdens that differ between men and women, recognizing that this semantic treatment is incorrect.

2. See, e.g., Dorothy A. Brown, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021) (showing the multiple ways by which the U.S. tax system creates systematic differences in tax burdens by race, given the ways in which the tax system interacts with household decisions); James Alm et al., *Race, Ethnicity, and Taxation of the Family: The Many Shades of the Marriage Penalty/Bonus*, 76 NAT’L TAX J. 525, 525 (2023) (“In this paper, we quantify the racial disparity in the magnitude of the ‘marriage penalty’ or ‘marriage bonus,’ using individual micro-level data from the Current Population Survey for the years 1992–2019. We find that Black married couples nearly always face a higher averaged marriage penalty (or a smaller averaged marriage bonus) compared with white married couples, even when we compare couples with similar family earnings.”); Janet Holtzblatt et al., *Racial Disparities in the Income Tax Treatment of Marriage*, 38 TAX POL’Y & ECON. 25, 35 (2024) (presenting detailed calculations of the disparate income tax treatment of Blacks and Whites in the U.S. individual income tax and suggest possible reforms). For a more general discussion of the role of race in taxation, see, for example, William G. Gale, *Public Finance and Racism*, 74 NAT’L TAX J. 953, 953 (2021): “Mainstream public finance research has largely ignored racial issues. This paper calls on public finance economists to explore racial issues more extensively.”

3. See, e.g., Janet Stotsky, *Gender Bias in Tax Systems* 1 (IMF, Working Paper No. 099, 1996) <https://www.elibrary.imf.org/view/journals/001/1996/099/article-A001-en.xml> [<https://perma.cc/NH3L-87E4>] (“Gender bias may take both explicit and implicit forms. Explicit forms are specific provisions of the law or regulations that identify and treat men and women differently.”).

economic roles, and the existing and historical structures of economic and societal institutions.⁴

Eliminating explicit bias in the income tax code is relatively straightforward. Eliminating implicit bias is much more difficult, largely because it is nearly impossible to identify all the ways by which the many features of the tax code interact with decisions, roles, and institutions. The process of eliminating explicit bias in the income tax code could also instigate implicit bias effects as unintended side effects, as we illustrate later in this paper. Increasingly, scholars have identified many ways by which men and women are treated differently by the income tax code. More broadly, scholars have also identified many other areas of the tax code that may impose disparate impacts by gender, given the interaction of the tax code with existing patterns of income, wealth, and family structure.

Ideally, taxes should treat men and women equally. However, when we scrutinize the design, application, and effects of taxes (and other policies), it is apparent that taxes do indeed affect men and women differently.⁵

4. See Stotsky, *supra* note 3, at 1, 13 (“Implicit forms are provisions of the law and regulations that, because of typical social arrangements and economic behavior, tend to have different implications for men than for women.” “The implicit bias results from the assumption that although men and women may share the same household, they derive utility from consumption separately.”)

5. There are many studies of disparate treatment of men and women in the tax codes of many countries. See Stotsky, *supra* note 3, at 1 (“[M]any tax systems exhibit gender bias—they treat men and women differently in ways that can negatively affect their decisions on whether and how much to work, their personal consumption habits, and their overall tax liability.”); Edward J. McCaffery, *Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code*, 40 UCLA L. Rev. 983, 987 (1993) (“[T]he Article explores how the tax laws provide behavioral incentives that affect three types of decisions: whether to marry, whether to form a one- or a two-earner household, and whether to work full or part time. The bottom line that emerges is that tax laws contribute to the marginalization of women in the workplace, and impede a more creative formulation of alternative models of work and family.”); INST. FOR WOMEN’S POL’Y RSCH., TAXING WOMEN—HOW THE TAX CODE DISCRIMINATES AGAINST WOMEN AND FAMILIES 4 (1997), <https://iwpr.org/wp-content/uploads/2020/12/E505.pdf> [<https://perma.cc/QC48-B5CC>] (“[S]ix features of the tax code combine to constitute a substantial bias against married women with children who work outside the home.”); Ann Mumford, TAX POLICY, WOMEN AND THE LAW: UK AND COMPARATIVE PERSPECTIVES 1 (2010) (“There is a view that to deploy tax law for any instrumental purpose somehow detracts from its purity and causes it to function less well as a system of tax law. The project of this book is to argue, within the constraints of the first observation, that the second observation is not correct and that the tax system should be deployed to militate against economic discrimination against women.”); Lisa Philipps et al., *Introduction to CHALLENGING GENDER INEQUALITY IN TAX POLICY MAKING: COMPARATIVE PERSPECTIVES* 2, 2 (Kim Brooks et al. eds., 2011) (“[F]iscal policy has deep-rooted, long-standing gender implications that affect virtually every aspect of our social, political, and economic lives whether we live in Canada, Australia or Kenya.”); *Gender Equality & Taxation in the European Union*, EUR. PARL.’S COMM. ON WOMEN’S RTS. & GENDER EQUAL. 7 (Apr. 2017), <https://www.europarl.europa.eu/RegData>

The core of this paper, therefore, lies in the central question of whether and how our tax systems lead to unequal outcomes. Moreover, if this is the case, another question is whether we should attempt to tackle societal injustices such as gender inequality through our tax systems. If so, still another question is how this can be done in a best practice fashion. A final question is whether we wish, in all cases, for men and women to be treated equally in the tax system, or if there are situations that warrant a preferential tax treatment of one gender above the other in order to achieve more equal economic outcomes, as well as to address historical inequities. It is all of these questions that we examine here.

We first examine the many sources of gender non-neutrality in the individual income tax. We argue that an income tax based on Haig–Simons (H–S) “comprehensive income” would be (largely) gender neutral; that is, a gender-neutral income tax is feasible. It follows that the many departures from the H–S comprehensive income standard, along with the ways in which these departures interact with the economic decisions of individuals, are a main source of gender non-neutrality in the individual income tax.

Indeed, these deviations from comprehensive income are driven by the many things that we want the tax to achieve, the ways in which the specific features of the income tax interact with the economic decisions and roles of individuals, and the differences in these decisions and roles between women and men.⁶ We illustrate the results of these tax features on gender non-neutrality with several specific examples

/etudes/STUD/2017/583138/IPOL_STU(2017)583138_EN.pdf [https://perma.cc/G8PK-HVWG] (“Most Member States have abolished tax regulations that implicitly differentiate between men and women. Still, tax systems and fiscal policy decisions affect women and men differently because tax regulations interact with socioeconomic realities. Thus, gender gaps in employment, income, unpaid work, old age security, poverty and wealth persist.”); Michelle Harding et al., *In Tax, Gender Blind Is Not Gender Neutral: Why Tax Policy Responses to COVID-19 Must Consider Women*, ECOSCOPE (June 1, 2020), <https://oecdscopescope.blog/2020/06/01/in-tax-gender-blind-is-not-gender-neutral-why-tax-policy-responses-to-covid-19-must-consider-women/> [https://perma.cc/7M6U-NHAL] (“Tax systems that are gender-blind on paper can, in practice, exhibit a hidden, implicit bias and may even exacerbate gender inequalities, particularly in times of crises. As long as men and women face different socioeconomic realities, tax systems will affect them in different ways. Therefore, it is necessary to go beyond a cursory analysis of the tax law and to understand how it interacts with the different socioeconomic realities of men and women—such as persisting gender gaps in income levels, labour-force participation, consumption, entrepreneurship and wealth.”). This list is far from exhaustive.

6. See, e.g., James Alm, *Is the Haig–Simons Standard Dead? The Uneasy Case for a Comprehensive Income Tax*, 71 NAT’L TAX J. 379, 388 (2018) (“[T]here are . . . compelling reasons for departures based on equity, efficiency, and even adequacy considerations.”)

based on Scandinavian tax systems. We conclude that it is possible to make the income tax more gender neutral, but that this would come at the expense of other desired goals; that is, complete gender neutrality is at odds with all that we ask of the tax code, including targeting tax benefits at groups—like women—who have experienced significant historical inequities in their tax treatment. Put differently, we argue that *a completely gender-neutral income tax is not desirable because we wish to use the income tax to achieve many other worthwhile objectives*, including deliberate gender non-neutrality to benefit women who have been otherwise disadvantaged by other aspects of the income tax, their economic decisions, and their societal-determined roles.

In the light of these arguments, we suggest that a possible alternative to promoting complete gender neutrality in the tax code could be to consider affirmative action—in some instances—as a way of fostering a gender-neutral outcome rather than a gender-neutral tax code with an outcome plagued by inequity induced by societal and cultural influences. Another option that has proven successful elsewhere could be to actively employ gender budgeting assessments when introducing new tax legislation and drafting annual budgets.

I. SOURCES OF GENDER NON-NEUTRALITY IN INDIVIDUAL INCOME TAXATION

In this section, we discuss what we believe are the main sources of gender non-neutrality in individual income taxation: departures from “comprehensive income” in defining the base of the individual income tax, and gender differences in economic decisions, roles, and institutions. These factors are related and are not independent of one another. Even so, we think that it is useful to discuss each separately.

A. The Notion and the Appeal of “Comprehensive Income”⁷

For much of the last century, discussions of the “ideal” form of individual income taxation around the world have largely been based on some variant of the standard suggested independently by Haig (1921) and Simons (1938).⁸ This “Haig–Simons” (H–S) standard

7. See Alm, *supra* note 6 (explaining many discussion points referring to Alm’s, *Is the Haig–Simons Standard Dead? The Uneasy Case for a Comprehensive Income Tax*).

8. See Robert Murray Haig, *The Concept of Income—Economic and Legal Aspects*, in *THE FEDERAL INCOME TAX* (Robert Murray Haig ed., 1921); Henry C. Simons, *PERSONAL INCOME*

argues that an ideal income tax should be imposed on “comprehensive income,” or a measure that includes all sources of real income net of the expenses of earning the income, whether the income is realized or accrued, whether it is cash or in-kind, whether it is earned income or transfer income, and whether it is domestic or foreign generated.⁹ In practice, the H–S standard plays an especially important role in tax reform discussions, as reflected in the frequently heard call for a “Broad-based, Low-rate” (BBLR) tax reform strategy, in which the income tax base is broadened by eliminating exclusions, adjustments, deductions, exemptions, and other tax preferences in exchange for which marginal tax rates are imposed at lower rates on the now broader tax base.¹⁰

As discussed later, the arguments underlying the H–S standard are simple and appealing, based on the underlying taxation goals of equity, efficiency, and adequacy. However, despite the positive and normative appeals of the H–S standard, a truly comprehensive individual income tax has in fact never been fully applied, either in the design of a new income tax or in the reform of an existing one.¹¹ Indeed, despite the frequent invocations for a BBLR tax system, there are no individual income taxes that come anywhere close to a H–S standard.¹² In this context, we make two basic arguments here. First, *an income tax based on “comprehensive income” would be (largely) gender neutral*. Second, *the many departures from the H–S comprehensive income standard, along with the ways in which these*

TAXATION: THE DEFINITION OF INCOME AS A PROBLEM OF FISCAL POLICY (1938). Both Haig and Simons present detailed rationales for an income tax based on the taxation of comprehensive income. See also Alm, *supra* note 6, at 380 (“For much of the last century, discussions of the ‘ideal’ form of individual income taxation have largely been based on some variant of the standard suggested by Haig (1921) and Simons (1938).”).

9. See Alm, *supra* note 6, at 380–81 (“This ‘Haig–Simons’ (H–S) standard argues that an ideal income tax should be imposed on ‘comprehensive income,’ or a measure that includes all sources of real income net of the expenses of earning the income, whether the income is realized or accrued, whether it is cash or in-kind, whether it is earned income or transfer income, and whether it is domestic or foreign generated.”).

10. See, e.g., Richard M. Bird, *The BBLR Approach to Tax Reform in Emerging Countries*, INT’L STUD. PROGRAM 1 (Dec. 2008), <https://icepp.gsu.edu/files/2015/03/ispwp0804.pdf> [<https://perma.cc/Y8SY-VJZS>] (“[F]ifty years of experience suggests that what might be called the BBLR—broader bases and lower rates—to tax structure reform holds up fairly well.”).

11. See Alm, *supra* note 6, at 380–81 (“However, despite these positive and normative appeals of the H–S standard, a truly comprehensive individual income tax has in fact never been fully applied.”).

12. See *id.* at 381 (“Despite the frequent invocations for a BBLR tax system, there are no individual income taxes that come anywhere close to a H–S standard, including (especially) the U.S. income tax.”).

departures interact with the economic decisions of individuals, are a main source of gender non-neutrality in the individual income tax.

To illustrate these arguments, consider in more detail an ideal H–S comprehensive individual income tax.

Haig (1921) and Simons (1938) originally proposed their respective, if related, standards largely in the context of the “appropriate” definition of taxable income. Haig (1921, p. 7) wrote that “. . . [i]ncome is the money value of the net accretion to one’s economic power between two points of time.” Similarly, Simons (1938, p. 50) wrote that personal income for tax purposes “. . . may be defined as the algebraic sum of the market value of rights exercised in consumption and the change in the value of the store of property rights between the beginning and end of the period in question.” In both cases, the resulting

H–S standard is an accretion standard, which can be represented by the simple (and somewhat tautological) formula:

$$(1) \ I = C + \Delta W$$

where I is income, C is consumption, W is net wealth, and Δ denotes a change. Since the change in net wealth ΔW is equivalent to savings S , equation (1) essentially measures income in terms of the *uses* of income, or $I = C + S$. It is also possible to define income in terms of the *sources* of income, or:

$$(2) \ I = (\text{Gross Earnings} - \text{Expenses}) + \text{Transfers} + \text{Capital Gains}$$

H–S income, or *Comprehensive Income*, is therefore best measured as the increase in an individual’s potential power to consume over the relevant period, whether the consumption is actually undertaken or not. There are, of course, many other possible definitions of “income”.¹³

So, what should be included in the H–S standard? Some obvious distinctions follow immediately from the definitions in equation (1) and in equation (2). Clearly, income is meant to be income net of the expenses of earning income, since it is only net income that increases the power to consume. For similar reasons, income must reflect any

13. For dated but still-useful discussions of “income,” see, for example, Richard Goode, *THE INDIVIDUAL INCOME TAX* (1976); Joseph A. Pechman, *COMPREHENSIVE INCOME TAXATION* (1977); and Joseph A. Pechman, *WHAT SHOULD BE TAXED: INCOME OR EXPENDITURE?* (Brookings Inst., 1980). All discuss the many reasons for taxing income using a comprehensive income base.

changes in prices since nominal changes in income accompanied by equal proportional changes in prices do not change one's ability to consume.¹⁴

More meaningful distinctions are less obvious. Income does not have to be realized in order for it to increase an individual's ability to consume.¹⁵ An increase in, say, the value of one's stock ownership increases one's ability to consume regardless of whether the capital gain is realized or not. Also, income does not have to be received in the form of cash to be included in comprehensive income because in-kind income increases an individual's ability to consume.¹⁶ An especially important form of in-kind income is imputed income, such as imputed income that accrues to homeowners on the basis of their home equity; another important form of in-kind income is an employer's contributions to employee pension and insurance plans.¹⁷ The popular distinction between "earned" and "unearned" income is irrelevant to the H–S definition, because any form of income increases one's ability to consume.¹⁸ For example, government transfer payments, gifts and bequests, and alimony should all be included.¹⁹ Similarly, income that is generated either from domestic sources or from foreign sources should be included; that is, the H–S definition is a global measure of one's income.²⁰

The resulting measure of comprehensive income, taxable under the H–S standard, would therefore include any and all: (real) wages and salaries, interest income, rental income, profit income, in-kind income (e.g., net imputed rental income, employer contributions to pensions and insurance plans), government transfer payments, gifts and bequests, alimony, and capital gains whether realized or not, less any expenses of earning these incomes.²¹

There are, of course, many other issues that any individual income tax must also consider, such as the time period that is used to measure income (e.g., annual income versus lifetime income) and the rate structure of the tax (e.g., regressive versus proportional versus

14. See Alm, *supra* note 6, at 382.

15. See *id.*

16. See *id.*

17. See *id.*

18. See *id.*

19. See *id.*

20. See *id.*

21. See *id.*

progressive taxation). An especially important issue that must be addressed for gender neutrality is the unit of taxation (e.g., the individual versus the family).²² Even so, the definition of the base of the individual income tax is an essential first step in the design of the tax.²³

Haig (1921) and Simons (1938) generally intended their definition as a practical and positive way of designing an individual income tax.²⁴ However, the H–S standard has since become invoked in many settings as a normative criterion, in large part because the H–S notion of income came to be seen as the best measure of an individual’s *Ability to Pay*.²⁵ There are of course other normative criteria that we wish a tax (or a tax system) to achieve.²⁶ How does the H–S standard measure along these criteria?

A “good” tax is designed to achieve multiple objectives.²⁷ An obvious purpose is to raise the revenues necessary to finance government expenditures (sometimes termed *Adequacy*), and also to ensure that the growth in revenues is adequate to meet expenditure requirements (*Elasticity* or *Flexibility*). Another is to distribute the burden of taxation in a way that meets with a society’s notions of fairness (*Equity*) typically defined in terms of *Ability to Pay*, such that those with equal ability should pay equal taxes (*Horizontal Equity*) and those with greater ability should pay greater taxes (*Vertical Equity*).²⁸ Taxes can also be used to influence the behavior of those who pay them, and a common goal is to minimize the interference of taxes in the economic decisions of individuals and firms (*Efficiency* or *Neutrality*). Taxes should be simple, both to administer and to comply with because a complicated tax system wastes the resources of tax administrators and taxpayers (*Simplicity*). Taxes also need to be politically viable (or *Acceptability*), and they need to achieve macroeconomic goals as defined by the Musgrave (1959) *Stabilization* function of government.²⁹ Overall, as argued by Alm (1996), most of these criteria can be usefully

22. *See id.*

23. *See id.*

24. *See id.* at 383

25. *See, e.g.,* Richard A. Musgrave, *ET, OT and SBT*, 6 J. PUB. ECON. 3, 3 (1976) (“The normative theory of taxation has a long history . . .”).

26. *See id.*

27. *See* Alm, *supra* note 6, at 383 (discussing the multiple goals of a “good” tax system).

28. *See, e.g.,* Richard A. Musgrave, *THE THEORY OF PUBLIC FINANCE: A STUDY IN PUBLIC ECONOMY* (1959) (providing a comprehensive analysis of the many goals of taxation).

29. *See id.*

collapsed into the three main goals of *Adequacy*, *Equity*, and *Efficiency*.³⁰

The H–S standard clearly meets the goal of *Adequacy*. For any given tax rate (or tax rate structure), a tax base that includes all sources of income will generate more revenues than a more narrowly defined tax base. Alternatively, the broader H–S tax base will raise any given level of tax revenues with a lower tax rate. These conclusions may not necessarily hold in a dynamic setting, when consumption-savings decisions are considered. The elasticity of a comprehensive income tax base relative to taxes that utilize alternative definitions of income (or consumption) is also uncertain. Even so, these conclusions seem uncontroversial in a purely static framework.

The H–S standard also largely meets the goal of *Efficiency*, at least in the absence of other types of efficiency considerations like externalities, public goods, and asymmetric information. When a tax leads individuals to change their decisions solely because of the existence of the tax, then the tax generates an efficiency cost, or an excess burden. In this regard, any typical individual income tax—including an income tax based on the H–S definition of income—will create multiple distortions along multiple dimensions of behavior. The existence of a marginal tax rate that reduces the return to work or the return to savings will reduce the incentive to work or save, under plausible conditions on preferences. The existence of tax preferences that reduce the relative cost of, say, charitable donations will encourage donations. Indeed, there is an enormous amount of research in the past 50 years that demonstrates the distorting effects of the individual income tax on behavior in such dimensions as labor supply, savings, charitable donations, capital gains realizations, compensation choice, housing, health insurance, tax shelters, tax evasion, and income reporting, to name only a few such dimensions. These studies generally find that individuals respond in significant ways to changes in the individual income tax, especially to marginal tax rate changes, although there is much debate on whether these responses represent changes in real

30. See, e.g., James Alm, *What Is an “Optimal” Tax System?*, 49 NAT’L TAX J. 117, 125 (1996) (“[A] careful examination of these factors suggests that they all involve trade-offs among essentially three main criteria: . . . revenue-yield, . . . equity, [and] . . . efficiency.”).

behavior or simply changes in either the timing or the financial form of transactions.³¹

As has been discussed previously,³² an individual income tax that utilizes the H-S standard is not immune to these distorting effects. Even so, it is plausible that the distorting effects of a comprehensive income tax are smaller than those of the typical income tax. If an individual income tax base included all forms of income and made no special allowances for certain types of discretionary spending, there would be virtually no tax incentive for an individual to make charitable donations; to change the realization of capital gains by the sale of assets; to get more of their income in fringe benefits versus wages versus capital income versus tax shelters; to change housing decisions between owner-occupied versus rental housing; and so on. It is when different forms of income are treated differently by the income tax, or when different forms of spending are treated differently, that the distorting effects of the tax on behavior are most felt. To be sure, even the H-S standard will distort decisions like labor supply, savings, or tax evasion, by affecting the returns to these decisions. Further, it is well-known that, in a second-best world, it is impossible to say with certainty that these distorting effects will be smaller under the H-S standard than under alternative measures of income. However, the H-S standard clearly reduces the margins of behavioral responses relative to alternative tax bases. As a result, it is certainly plausible to argue that the H-S individual income tax will generate a smaller excess burden of taxation than these alternative taxes. The likelihood that the broader base of a comprehensive individual income tax will allow the use of a lower marginal tax rate to generate any given level of tax revenues also suggests that the efficiency cost of the H-S standard will be lower than other taxes, given that excess burden increases with the (square of the) tax rate.

31. This literature is enormous and still growing. For still useful surveys of much of this work, see, for example, Alan J. Auerbach & Joel Slemrod, *The Economic Effects of the Tax Reform Act of 1986*, 35 J. ECON. LITERATURE 589, 590 (1997): “[W]e consider the evidence of the [Tax Reform] Act’s impact on economic activity and how this evidence squares with initial predictions[.]” and Emmanuel Saez et al., *The Elasticity of Taxable Income with Respect to Marginal Tax Rates: A Critical Review*, 50 J. ECON. LITERATURE 3 (2012): “This paper critically surveys the large and growing literature estimating the elasticity of taxable income (ETI) with respect to marginal tax rates using tax return data.”

32. See Alm, *supra* note 6, at 383-85 for a more detailed discussion of the H-S standard, especially the benefits of an individual income tax that uses the H-S standard as the base of the income tax.

Of most importance for our discussion of gender neutrality are *Equity* considerations. A tax base that includes all sources of income will treat individuals with different sources of income but with equal amounts of income equally, thereby achieving horizontal equity. Under the typical individual income tax in which wage income is fully taxable but, say, employer-provided health insurance is not taxable, two individuals who have equal H-S income but who receive their compensation in forms that are treated differently by the income tax will pay different amounts of income taxes. Similarly, under the typical individual income tax, an individual who owns his or her own home will pay less in income taxes than an otherwise identical individual who rents; an individual who sells an asset for realized capital gains will pay more in taxes than an identical individual who does not sell an equally valued asset; an individual who has fully taxed wage income will pay more in taxes than an identical individual who has preferentially taxed capital gains income; an individual who receives interest income from a fully taxable financial institution will pay more in taxes than an identical individual who receives an equal amount of interest income from non-taxable state and local bonds; and so on. Similar considerations apply to vertical equity. It should not matter for vertical equity whether an individual receives income in tax-favored versus tax-penalized forms. Rather, all that matters for the appropriate treatment of unequals is the total amount of their incomes, regardless of the specific forms in which these incomes are received. A tax base that includes all sources of income will allow individuals with different incomes to be treated in an appropriately differentiated manner, according to the specific form of vertical equity that informs tax policies.

The appeal of the H-S standard is therefore understandable.³³ However, as we discuss next, this standard has in fact never been really used anywhere, and we argue, again, that the many departures from the H-S comprehensive income standard, along with the ways in which these departures interact with the economic decisions of individuals, are a *main source* of gender non-neutrality in the individual income tax.

33. For a detailed critique of the H-S standard, see Alm, *supra* note 6, at 379: “[T]here are compelling arguments that can be made for an individual income tax that is in fact imposed on an even narrower tax base, with even more extensive use of the many exclusions, adjustments, deductions, and exemptions that currently populate most all income taxes.”

*B. Sources of Gender Non-neutrality:
Departures from “Comprehensive Income” and
Their Interactions with Individual Economic Decisions*

The typical individual income tax base that is in place in countries around the world vastly differs from the H–S standard. Consider the United States as only one illustrative example. On a *practical* level, the steps involved in calculating income (and taxes) in the individual income tax are, in principle, straightforward.³⁴ Using the 2023 Internal Revenue Service (“IRS”) Form 1040 as a reference, these steps are as follows:

- Add all taxable forms of income (e.g., wages, salaries, tips, taxable interest, dividends, alimony received, business income, capital gains, individual retirement account distributions, pensions and annuities, rental real estate, royalties, partnerships, farm income, unemployment compensation, social security benefits) on lines 1 to 8 of Form 1040 to generate Total Income (or Gross Income) on line 9;
- Subtract various allowed items (or *Adjustments* from Schedule 1) on line 10 of Form 1040, to generate Adjusted Gross Income on line 11, including such items as educator expenses, business expenses, health savings accounts, moving expenses, various self-employment payments, alimony paid, individual retirement account deduction, and student loan interest;
- Subtract *Deductions*, either a standard deduction or itemized deductions (as detailed in Schedule A—the main itemized deductions include Medical and Dental Expenses, Taxes Paid to state and local governments, Interest Paid, Gifts to Charity, and Casualty and Theft Losses) to generate Taxable Income on line 16;
- Calculate the Tax that is payable (line 16) based on Taxable Income (line 16);
- Modify the Tax (line 16) by several additional considerations (e.g., Child Tax Credit on line 19) on lines 16 to 23, to give the Total Tax on line 24.

34. See FORM 1040 (AND FORM 1040-SR) INSTRUCTIONS, I.R.S. (2024), <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf> [<https://perma.cc/R863-WA52>].

There are also several additional computations involved in making Payments (lines 25 to 33) and Refund (lines 34 to 36) before calculating the Amount You Owe (line 37).³⁵ An especially prominent tax credit is the Earned Income Credit (line 27).

On a more *conceptual* level, one can progress from H–S comprehensive income to Form 1040 Taxable Income, Total Tax, and the Amount You Owe by a slightly different procedure, one that illustrates more clearly the specific ways in which H–S income differs from income actually subject to the income tax. Starting with comprehensive income:

- Subtract income that is illegally excluded (e.g., *Evasion*) from comprehensive income;
- Subtract *Exclusions*, or income that is legally excluded from the individual income tax base, which encompasses many of the myriad and legal ways in which H–S income diverges from Form 1040 Taxable Income. *Exclusions* are typically not required to be reported on Form 1040, and they include such forms of income as employer contributions to pensions and insurance plans, many government transfer payments, interest paid by state and local governments, net imputed rental income, and any unrealized capital gains, all of which are legally excluded.³⁶ The resulting income measure is Total Income (or Gross Income);
- Subtract *Adjustments* from Gross Income to get Adjusted Gross Income;
- Subtract *Deductions* to generate Taxable Income;
- Calculate the Tax;
- Subtract from the Tax the tax value of various *Exemptions* to give the Total Tax;
- And modify the Total Tax by various other considerations to give, once again, the Amount You Owe.

35. These additional considerations include the alternative minimum tax, various tax credits, and several additional taxes. Note that the specific steps that are involved in these calculations have changed over time, as the individual income tax has changed over time.

36. Again, see FORM 1040 (AND FORM 1040-SR) INSTRUCTIONS, *supra* note 33: “Generally, you must report all income except income that is exempt from tax by law.”

The end points—Total (or Gross) Income, Adjusted Gross Income, Taxable Income, Tax, Total Tax, and Amount You Owe—are, of course, necessarily identical in either approach.

Aside from *Evasion*,³⁷ it is mainly through these *Exclusions*, *Adjustments*, *Deductions*, and *Exemptions* that the H–S standard of comprehensive income differs from the Taxable Income that shows up on line 43 of Form 1040; the uses of various tax credits also lead to a divergence between H–S income and Taxable Income. Indeed, the amounts of these various leakages, sometimes referred to as *Tax Expenditures*, are enormous.³⁸ In the most recent estimates from the U.S. Department of the Treasury, Office of Tax Policy, the three largest of the tax expenditures for the individual income tax in fiscal year (“FY”) 2023 are estimated to be the exclusion of employer contributions for medical insurance and medical care, the exclusion of net imputed rental income, and the exclusion of defined contribution employer plans.³⁹

37. Note that recent evidence indicates that evasion in many countries, both in absolute amounts and in relative terms, increases with income. Given that men’s income is typically greater than women’s income, the failure to detect and to penalize tax evasion tends to benefit men and to penalize women. See, for example, James Alm, *Do We Have the Tools for Achieving Distributive Tax Justice?*, 38 S. AFR. J. ACCT. RSCH. 211, 211–28 (2024): “[T]here is accumulating evidence for the U.S. and elsewhere that clearly indicates that tax evasion is greater—both in absolute amounts and in amounts relative to income—at the top of the income scale.”

38. The term *Tax Expenditures* was suggested by Stanley S. Surrey when he was serving as Assistant Secretary of the Treasury for Tax Policy in 1967. See STANLEY S. SURREY, *PATHWAYS TO TAX REFORM: THE CONCEPT OF TAX EXPENDITURES* (1973).

39. The most recent estimates of the major tax expenditures in the individual income tax are for fiscal year 2023, as calculated by the U.S. Department of the Treasury, Office of Tax Policy:

Item	Amount (\$ billions)
Exclusion of employer contributions for medical insurance and medical care	215.9
Exclusion of net imputed rental income	147.2
Exclusion of defined contribution employer plans	133.9
Exclusion of capital gains (except agriculture, timber, iron ore, and coal)	115.6
Exclusion of defined benefit employer plans	70.1
Child Tax Credit	67.5
Exclusion of capital gains on home sales	54.4
Exclusion of step-up basis of capital gains at death	49.2
Deductibility of charitable contributions, other than education and health	46.3
Exclusion of self-employed plans	43.2
Deduction of certain pass-through income	37.2
Exclusion of qualified dividends	35.9
Exclusion of Individual Retirement Accounts	32.7

There are similar if somewhat smaller tax expenditures for the corporate income tax, for which the single largest item in FY 2023 is the reduced tax rate on active income of controlled foreign corporations (\$45.2 billion). In total, the U.S. Treasury, Office of Tax Policy, estimates that there are 171 separate tax expenditure items in the income tax, and the total tax expenditures for individuals and corporations are estimated to exceed \$1.8 trillion in FY 2023.

The United States is hardly an outlier, as demonstrated in a number of studies. For example, various publications of Pricewaterhouse-Coopers (PwC), working with The World Bank Group on worldwide tax summaries, demonstrate clearly the departure from the H-S standard in real-world tax systems.⁴⁰

Why do these deviations from comprehensive income matter for gender neutrality? It is largely because individuals make differential use of these various tax preferences in their many economic decisions that the tax code is far from gender neutral; that is, the distribution of these tax preferences across individuals varies quite significantly because of differences in the economic decisions of individuals and also because of differences in the economic roles of individuals.⁴¹ Simply put, individuals—men and women—who may otherwise be equal in comprehensive income do not pay the same amount of income taxes because their use of these tax preferences is not the same.⁴²

Deductibility of mortgage interest on owner-occupied homes	31.8
Exclusion of Social Security benefits for retired and disabled workers and spouses, dependents, and survivors	30.7
Exclusion of interest on public purpose state and local bonds	23.4

Source: *Tax Expenditures*, OFF. OF TAX ANALYSIS, U.S. DEP'T OF THE TREASURY, TAX EXPENDITURES 33 (2024), <https://home.treasury.gov/system/files/131/Tax-Expenditures>

-FY2025.pdf [<https://perma.cc/Y5N6-BM7W>], (Table 3, "FISCAL YEAR 2024-2033 PROJECTED REVENUE EFFECT, INCOME TAX EXPENDITURES RANKED BY TOTAL").

40. See, e.g., *Paying Taxes 2020*, PWC (Dec. 2, 2019), <https://www.pwc.com/gx/en/paying-taxes/pdf/pwc-paying-taxes-2020.pdf> [perma.cc/ZTC7-L8L2]. This publication has now been discontinued by the World Bank.

41. See Alm, *supra* note 6, at 387 (noting the widely different use of tax preferences across individuals).

42. See *id.*

Consider some of the main features of income tax systems that generate differences in tax burdens by gender.⁴³ Some of these features lead to gender non-neutrality, but a non-neutrality that actually benefits women.⁴⁴ For example, features have been frequently discussed and analyzed, which include such common policies as earned income tax credits, child tax credits, and dependent care tax credits.⁴⁵ These tax provisions are designed to support lower income women and their families.⁴⁶ Indeed, studies of the distributional effects of these tax provisions demonstrate that their presence has generally significantly benefitted women.⁴⁷ As a result, these tax provisions generate gender non-neutrality, but this non-neutrality clearly benefits women.⁴⁸ Similarly, the typical practice of not taxing the imputed income of stay-at-home women reduces their income liabilities, a non-neutrality that again benefits women.⁴⁹

43. For a comprehensive review of much of the empirical evidence discussed here, with a focus mainly on the United States, see, for example, Ariel Jurow Kleiman et al., NAT'L WOMEN'S L. CTR., THE FAULTY FOUNDATIONS OF THE TAX CODE: GENDER AND RACIAL BIAS IN OUR TAX LAWS 2 (2019), <https://nwlc.org/wp-content/uploads/2019/11/NWLC-The-Faulty-Foundations-of-the-Tax-Code-Accessible-FINAL.pdf> [<https://perma.cc/8VKX-UEWC>]: "This report examines the outdated assumptions and gender and racial biases embedded in the U.S. tax code. It highlights tax code provisions that reflect and exacerbate gender disparities, with particular attention to those that disadvantage low-income women, women of color, members of the LGBTQ community, people with disabilities, and immigrants." For an international focus, see, for example, Maria D. Coelho et al., *Gendered Taxes: The Interaction of Tax Policy with Gender Equality* (Int'l Monetary Fund, Working Paper No. 2022/026), <https://www.imf.org/en/Publications/WP/Issues/2022/02/04/Gendered-Taxes-The-Interaction-of-Tax-Policy-with-Gender-Equality-512231> [<https://perma.cc/7PT9-BMWD>], which discusses the sources of gender non-neutrality in tax systems around the world. For a comprehensive discussion of gender and taxation, see, for example, INST. FOR WOMEN'S POL'Y RSCH., *supra* note 5, at 4: "[S]ix features of the tax code combine to constitute a substantial bias against married women with children who work outside the home."

44. See, e.g., Beatrice Nordling, *The Swedish Women's Lobby, Gender Equal Taxes: How the Swedish Tax System Affects Women's Lives* 4 (2002), https://sverigeskvinnoorganisationer.se/wp-content/uploads/2024/04/Jamstallda-skatter-2023_ENG_for-publication.pdf [<https://perma.cc/FU5D-23LM>] ("A progressive and redistributive tax system benefits women since they have lower incomes.").

45. See, e.g., Emily Y. Lin & Joel Slemrod, *Gender Tax Difference in the U.S. Income Tax*, 31 INT'L TAX & PUB. FIN. 808 (2024) ("Rather, the difference in average tax rates is largely due to the fact that unmarried women are more likely than unmarried men to have children and other dependents in the households, which qualifies them to the Earned Income Tax Credit (EITC), the Child Tax Credit (CTC), the Credit for the Other Dependents (ODC), and the head of household filing status.").

46. See *id.* at 809 ("Some of the difference arises because women have lower income on average and the tax system is intentionally progressive.").

47. See Nordling, *supra* note 44, at 5 ("A progressive and redistributive tax system benefits women since they have lower incomes.").

48. See *id.*

49. See *id.*

Many other features of the individual income generate gender non-neutrality that creates increased tax burdens on women.⁵⁰ Some features include the many types of income that are included or excluded from taxable income.⁵¹ As demonstrated in the United States, many forms of comprehensive income are excluded from taxable income, such as employer provision of many types of employee benefits (for example, health care and savings plans), imputed rental income of owner-occupied housing, and various types of capital income (including dividends, interest, and capital gains, especially step-up basis at death).⁵² Because the distribution of these tax preferences differs significantly between women and men, with men disproportionately making use of many of these provisions, these tax preferences lead to significantly higher tax burdens on women relative to men. Similarly, the tax codes in many countries allow various business expenses as deductions. However, childcare expenses are seldom, if ever, deductible as a business expense, something that again leads to higher tax burdens on women relative to men. Similar comments apply to the differences between women and men in the tax benefits of homeownership via mortgage interest deductions, the deductibility of state and local taxes, and the deductibility of charitable contributions.⁵³

Further, the tax benefits of any adjustments, exclusions, and deductions increase with the taxpayer's income. Given that men typically have higher incomes than women, these tax benefits again disproportionately benefit men and penalize women.

50. See, e.g., Alm et al., *supra* note 2 at 526 ("More broadly, scholars have identified many other areas of the tax code that may impose disparate impacts on . . . households, given the interaction of the tax code with existing patterns of income, wealth, and family structure.").

51. See Lin & Slemrod, *supra* note 45, at 824 ("Certain income and expenses are excluded or deductible from income in deriving AGI, meaning that they are not in the tax base in the year earned. Thus, the average tax rate, or the share of a person's income paid in taxes, varies by how income is defined.").

52. See, e.g., Marjorie E. Kornhauser, *Gender and Capital Gains Taxation*, in CHALLENGING GENDER INEQUALITY IN TAX POLICY MAKING: COMPARATIVE PERSPECTIVES 275, 275 (Kim Brooks et al. eds., 2011) ("[M]en as a group benefit more from the [capital gains tax] preference than women because they generally have more capital gains than women.").

53. For a recent examination of gender differences in the U.S. income tax, see, for example, Lin & Slemrod, *supra* note 45, at 808: "Unmarried women face a significantly lower average federal income tax rate than unmarried men, 6.3% versus 10.9%. Some of the difference arises because women have lower income on average and also because the tax system is progressive. Using a non-parametric decomposition analysis, we show that tax progressivity accounts for less than 60% of the gender tax rate difference, leaving the rest being explained by gender differences within income classes."

Also, in countries like the U.S. that use the family (and not the individual) as the unit of taxation, an especially important feature is joint filing, in which the incomes of both partners are combined to determine the taxable income of the family unit. This feature creates a significantly increased tax burden on secondary earners because they are taxed at the higher marginal tax rate of their (higher) combined family income rather than the lower marginal tax rate of their (lower) single income. Because secondary workers tend to be women, joint filing imposes a higher tax burden on women than they would face if the individual were the unit of taxation.⁵⁴

Relatedly, defining the taxable unit as the family creates disparate tax treatment of households, typically favoring single-earner married couples and penalizing two-earner married couples. Given that labor force participation rates of women and men vary significantly across households and given also that marriage rates and the prevalence of two-earner versus single-earner households vary significantly across households, the frequency and the size of the so-called “marriage penalty/marriage bonus” also vary significantly across households.

For example, the labor force participation rates of Black women are higher than those of white women, and this makes it much more likely that Black women and their families will be two-earner households. Thus, black women are more likely to face a marriage penalty, in which they pay a higher tax liability as a married couple than their combined tax liabilities as single individuals. In contrast, white women and their families are more likely to be single-earner households who experience a marriage bonus in which they pay less taxes as a married couple than their combined taxes as singles.⁵⁵ Importantly,

54. See Stotsky, *supra* note 3, at 6 (“A system of joint filing with a progressive marginal rate schedule may discourage secondary workers because tax on the secondary income starts at the highest marginal tax rate of the primary income unlike under a system of individual filing, where the tax on the secondary income is unrelated to the marginal tax rate of the primary income.”).

55. For a detailed analysis of the marriage penalty/marriage bonus in the U.S. income tax, see, for example, James Alm & J. Sebastian Leguizamon, *Whither the Marriage Tax?*, 68 NAT’L TAX J. 251, 251 (2015): “We use household data from the Current Population Survey to calculate how the real value of the so-called ‘marriage tax’ or ‘marriage subsidy’ in the federal individual income tax has changed over the period 1969 to 2009 . . . We find that the tax treatment of the family has changed significantly over time, from a large averaged marriage bonus in 1969, to a large marriage tax in much of the 1990s and early 2000s, to a large marriage subsidy since 2003.” For an analysis that focuses on disparate racial impacts of the marriage penalty/bonus, see, for example, Alm et al., *supra* note 2, at 525: “[W]e quantify the racial disparity in the magnitude of the ‘marriage penalty’ or ‘marriage bonus,’ using individual micro-level data from the Current Population Survey for the years 1992 to 2019. We find that Black married couples nearly always face a higher averaged marriage penalty (or a smaller averaged marriage bonus) compared to white married couples, even

even though the tax code is race-blind by design, the effects of the tax code may still disproportionately penalize Black married households relative to their white counterparts, given the ways in which the many features of the tax code interact with the existing and historical structures of economic institutions and the resulting economic decisions of the households.⁵⁶ This result parallels our earlier conclusion that the interaction of the tax code with economic decisions and roles of individuals, as well as the differences in these decisions and roles between men and women, can create significant gender non-neutralities in the income tax, even when the income tax is itself written in a gender-neutral way.

In all of these features, the United States is neither an outlier nor an isolated example, as we discuss next in some detail, focusing on Scandinavia as a case study.

II. A CASE STUDY OF GENDER EQUALITY AND FORMAL GENDER NEUTRALITY IN SCANDINAVIAN TAX SYSTEMS

In the previous section, we emphasized that neutrality in many cases yields an unequal—or unequitable—result due to factors external to the tax system itself, such as gender, race, financial situation, and relationship status. In this section, we explore these findings in order to shed additional light on the ambition—and consequently the feasibility—of a gender-neutral tax system through a study of formal tax laws.

Gender equality in this setting is defined in terms of theories generally perpetuated in the Scandinavian countries and by Scandinavian legal scholars.⁵⁷ There is a need to highlight this definition, as it may

when we compare couples with similar family earnings” and Holtzblatt et al., *supra* note 2, at 26–29, which presents detailed calculations of the disparate income tax treatment of Black and White couples in the U.S. individual income tax and suggesting possible reforms.

56. See Holtzblatt et al., *supra* note 2, at 25 (“Nevertheless, the income tax can create and reinforce racial disparities due to the way factors that affect taxes are correlated with race.”); see also ANTHONY C. INFANTI, OUR SELFISH TAX LAWS: TOWARD TAX REFORM THAT MIRRORS OUR BETTER SELVES (2018) (critiquing the U.S. tax system’s structural inequities and arguing for reforms that address race, gender, sexuality, and economic marginalization).

57. See, e.g., ÅSA GUNNARSSON, FÖRDELNINGEN AV FAMILJENS SKATTER OCH SOCIALA FÖRMÅNER [THE DISTRIBUTION OF FAMILY TAXES AND SOCIAL BENEFITS] (2003); Åsa Gunnarsson et al., *Economic Dependence and Self-Support in Family, Tax and Social Law*, in NORDIC EQUALITY AT A CROSSROADS: FEMINIST LEGAL STUDIES COPING WITH DIFFERENCE 135 (Eva-Maria Svensson et al. eds., 2019); RUTH MANNELQVIST, SAMBAND I SOCIALFÖRSÄKRINGEN: EN RÄTTSVETENSKAPLIG STUDIE AV SAMBANDET MELLAN FÖRMÅNER OCH AVGIFTER I SOCIALFÖRSÄKRINGEN [RELATIONSHIPS IN SOCIAL INSURANCE: A LEGAL STUDY OF THE

differ from that employed by, say, U.S. tax scholars.⁵⁸ This is only naturally given that the legal systems—most notably the extent of social welfare and the grounds for awarding such benefits—largely differ between these jurisdictions, along with different cultural views about the role of women within the home sphere versus the labor market.

To summarize, gender equality in this section entails what can be described as a market-oriented socialist approach where women's equality relies on providing avenues for women where they can garner economic security and independence through their labor market participation.⁵⁹ This labor market participation is in turn enabled through

RELATIONSHIP BETWEEN BENEFITS AND CONTRIBUTIONS IN SOCIAL INSURANCE INTERIM REPORT] (2003).

58. It should be noted that U.S. tax professor Edward J. McCaffery employs a market-oriented liberal approach in *Taxing Women*. See EDWARD J. MCCAFFERY, *TAXING WOMEN* (1997). The Scandinavian market-oriented approach to gender equality does not entail a liberal tradition, instead using a tradition where social institutions like the government direct and guide individuals' choices. U.S. tax professor Nancy C. Staudt has also employed an alternative approach in *Taxing Housework*, in which the market-oriented approach is acknowledged yet where the weaknesses of it are presented, especially its dismissal of women's work in the home setting. Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1573 (1996).

59. Sizeable parts of social welfare benefits like childcare infrastructure are awarded on the basis of labor market participation. While the U.S. Social Security system is funded through Social Security taxes levied on an individual basis, the Swedish system is financed through both employment income taxes and corresponding payroll taxes paid by the employer. The payroll tax currently corresponds to 19.80% of the individual's gross salary. There is also no requirement to have actually paid taxes. Instead, it is sufficient that the individual simply prove it likely that he or she has had an income on which the presumption is that income taxes and payroll taxes have been paid. The easiest way to verify this would be to examine the declared income of the individual, which is easily facilitated due to the enforcement of civic personal numbers in Sweden. The Swedish system differs from the other Scandinavian countries. For example, Denmark utilizes a labor market contribution fee (*AM bidrag* in Danish), which, unlike Sweden but similar to the U.S., burdens the individual and not the employer. This type of social security system is felt most by lower income wage-earners and as such it is regressive in nature. As a result, the Danish employee is not only taxed on the income but is also liable to pay a social insurance contribution currently corresponding to 8%. For further reading, see Yvette Lind & Åsa Gunnarsson, *Gender Equality, Taxation, and the COVID-19 Recovery: A Study of Sweden and Denmark*, 101 TAX NOTES INT'L 581, 584–87 (Feb. 1, 2021). Swedish social insurance law that comprises various rules on the distribution of basic benefits is clearly designed with the intention of facilitating and increasing female participation in the workforce and labor market. The Swedish Social Insurance Code applies two criteria when granting access to basic benefits: (1) the payment of fees and/or income taxes that can be accounted for, or the so-called work-based benefits that are of a more general and discretionary nature; and (2) Swedish domicile that allows the individual in question to qualify for residence-based benefits that are of a social nature. Work-based benefits encompass compensation for salary losses linked to employment leave due to sickness or parental leave. Residence-based benefits are cash benefits such as housing contributions, childcare contributions, and parental leave minimum payments to those without an employment income. There is additionally the right to receive (heavily) subsidized healthcare. The first criterion grants access to work-based benefits such as sickness allowance, income-based pensions, and occupational injury compensation to those who have

state intervention and the offering of an extensive use of childcare infrastructure and an increased regulation of men taking greater responsibility over (unpaid) childcare.⁶⁰

In the next section (Section A), we first introduce the idea of gender neutrality from a legal viewpoint. This introduction describes the

Swedish employment and, as such, contribute with taxes on employment income (in addition to the employer paying corresponding payroll taxes). The individual is therefore assumed to contribute with taxes (income and payroll) through full-time employment while the Swedish state supports the individual with basic benefits when so needed. However, this criterion is considered inadequate from a gender perspective as in practice it generally includes men while excluding women, given that men more often have full-time employment. This inadequacy has been acknowledged as the Swedish system applies the second criterion of Swedish domicile as a safeguard that primarily targets women. It should be mentioned that this safeguard has become a topic of discussion due to the Swedish increased intake of immigrants in recent years. It is now also an essential safeguard for immigrants to receive the minimum protection in the Swedish welfare state. Consequently, the second criterion introduces residence-based benefits that safeguard part-time working women and women who remain at home. This could also be considered an attempt to place the carer at home on a more equal footing as the worker or provider of the family in accordance with Frasier's theory. Awarding access to benefits through tax payment alone acknowledges the working male spouse as the norm because women are more likely either to work part-time and/or to stay more at home. By awarding access to some residence-based benefits rather than to tax payments, the norm of the full-time working male is acknowledged and revised in order to ensure that part-time working women can access benefits despite not having full-time employment. Further, these benefits are arguably inherently family-friendly because they comprise parental allowance, child benefits, and a guaranteed pension (ensuring that women will have a pension even if they have not been able to work full-time or have not worked at all) and are awarded in accordance with residence rather than economic activity. For additional reading on social security, see Yvette Lind, *Voting Rights Compared to Income Taxation and Welfare Benefits Through the Swedish Lens*, 23 FLA. TAX REV. 713, 713–42 (2020).

60. Childcare infrastructure encompasses the goal of removing barriers for increased gender equality in the labor market through the inclusion of childcare infrastructure, primarily paid parental leave, regulation of maternal and paternal leave, and universal childcare. Measures such as these do not only support women but also help low-income families who otherwise would be disproportionately burdened by the costs of childcare, often forcing these families to remain a one-earner family rather than having both parents working. Moreover, the U.S. case *Smith v. Commissioner* established that childcare expenses were personal expenses and not deductible as ordinary business expenses. 40 B.T.A. 1038, 1039–40 (1939). All the Nordic social security systems offer heavily subsidized childcare costs in addition to public childcare institutions. In some Nordic countries, like Norway, parents may deduct childcare costs (foreldrebetaling). Foreldrebetaling allows for a parent to deduct 25 000 NOK (circa 2 450 USD) for the first child and 15 000 NOK (circa 1 450 USD) per subsequent child on their annual tax returns. If one has expenses for childcare for children who are 11 years old or younger at the end of the income year and/or children who are 12 years old or older with special needs for care and nurturing, one can get a deduction. One can also get a deduction for expenses for leisure activities. Childcare infrastructure such as these measures enable families to avoid having their after-tax wages further lowered by childcare costs incurred while the parent is working; this infrastructure also supports low-income families through the opportunity to have two wage-earners instead of one. U.S. tax scholars have argued for the overturning of the *Smith* case and the introduction of tax deductions for childcare costs. See, e.g., McCaffery, *supra* note 5, at 114. For a more detailed introduction to childcare infrastructure in the Nordic countries and the regulation of paternal leave, see, for example, Yvette Lind, *Childcare Infrastructure in the Nordic Countries as a Way of Enabling Female Labor Market Participation*, 74 NAT'L TAX J. 937, 943–48 (2021).

historical development of moving from a tax system largely built on the needs of male taxpayers and where safeguards targeting women exclusively were integrated as ways of mitigating gender inequality and/or of considering the needs of women.⁶¹ This built-in biased legislation has largely been abandoned as most legal systems today employ complete and formal gender neutrality, in which the legal system—and subsequently also the tax system—applies all laws equally to men and women and where there is no preferential treatment given to either men or women. When introducing the development of moving from built-in safeguards through biased tax rules towards a gender-neutral tax system in Scandinavia, we outline how gender neutrality has been concretely translated into the legislative texts in Scandinavia and what effects this has generated when we consider gender equality—viewed as a market-oriented socialist approach to gender equality—and the situation of women.

In the following section (Section B), we then show how external factors affect the overall tax system and the outcomes of individual tax rules when striving for gender equality. These non-legal factors disrupt formal gender neutrality and the intention of providing a gender-equal outcome. We illustrate the latter effect through a selection of tax treatments linked to capital and employment income taxation and the resulting distribution of income and wealth. As a whole, we attempt to illustrate two main issues: the effects of having a *gender-neutral tax system* and whether such a system fosters gender-equal outcomes; and the ways by which individual tax rules and policies can be used as legal tools able to more efficiently foster *gender-neutral outcomes*. One of the main findings from this section of the paper, as well as the Scandinavian case study, is that it is challenging to achieve gender-

61. There has been some research on the historical drafting of tax legislation and the extent to which past legislations considered men and women. As lawmakers and rulers, laws (including tax laws) typically reflected the viewpoints of men. Over time there has been a shift by which the governing body composition was still all male but where the needs of women began to be considered. As a result, some rules considering women specifically were introduced as a way of providing preferential treatment in at least some situations. As time passed and the composition of the governing body also changed; the line between rules generally targeting men and rules specifically considering women was blurred. At present, most tax systems have opted for gender neutrality as a way of removing any biases. See, e.g., Sandra Petersson, *Gender Neutral Drafting: Historical Perspective*, 19 STATUTE L. REV. 93, 111 (1992); Gerda Lerner, *THE CREATION OF PATRIARCHY* (1986); Christopher Williams, *The End of the "Masculine Rule"? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland*, 29 STATUTE L. REV. 139, 139 (2008); Sandra Petersson, *Gender-Neutral Drafting: Recent Commonwealth Developments*, 20 STATUTE L. REV. 35, 35 (1999) [hereinafter Petersson, *Recent Commonwealth Developments*].

equal outcomes through the use of a gender-neutral tax system. There may be a need to introduce biased tax measures in certain situations, where one gender is actively favored over the other in order to achieve gender-equal outcomes. However, the Scandinavian case study also illustrates that attempts to foster gender-neutral outcomes often fail—or arise unexpectedly—and this can be seen as an indication that gender inequality is difficult to resolve through the tax system alone. Taxes and fiscal policies can achieve much, but they should not be considered as universal solutions.

*A. The Notion of “Gender Neutrality” and the
Fundamentals of Tax and Spend in a Gender Equality Context*

In its simplest form, the notion of “gender neutrality” is the idea that language, policies, or institutions should not make distinctions grounded in an individual’s gender or sex.⁶² This is based on the belief that making these distinctions may lead directly or indirectly to discrimination toward individuals.⁶³ For example, gender-neutral language has the goal of eliminating any reference to gender when describing, say, occupations; that is, gender-neutral language would avoid such terms as “policeman,” “fireman,” or “chairman,” replacing these gender-identifying terms with “police officer,” “fire fighter,” or “chair.” Instead of gender-identifying language, the goal is to use more inclusive language that does not distinguish individuals by their gender or sex.

The legal concept of gender neutrality is considerably more complex, which can be seen through the existence of a vast body of literature that has explored gender neutrality within tax law.⁶⁴ Initially, the

62. See, e.g., Maria Vittoria Buiatti, *Gender Neutral Legal Language: A Comparative Overview*, 1 COMP. L. & LANGUAGE 33, 34 (2022) (“The concepts on which the language is based are the principle of fairness, that of inclusivity, and that of equality. The way in which gender-neutral legal language is enforced is that of drafting legislation, contracts, case law and legal opinions in universal terms, actively ignoring and/or avoiding gender-specific situations and power relations between women and men that underpin sex and gender-based discrimination, including gender-based violence, in particular against women.”).

63. See, e.g., *id.* at 36.

64. See, e.g., McCaffery, *supra* note 5; Philipps et al., *supra* note 5; Anthony C. Infanti & Bridget C. Crawford, *CRITICAL TAX THEORY: AN INTRODUCTION* (2009); Kathleen A. Lahey, *Uncovering Women in Taxation: The Gender Impact of Detaxation, Tax Expenditures, and Joint Tax/Benefit Units*, OSGOOD HALL L.J. 427 (2015); Yvette Lind, *A Critical Analysis of How Formal and Informal Citizenships Influence Justice Between Mobile Taxpayers*, in TAX JUSTICE AND TAX LAW: UNDERSTANDING UNFAIRNESS IN TAX SYSTEMS 117, 117–33 (Dominic de Cogan & Peter Harris eds., 2020); Mumford, *supra* note 5; Miranda Stewart, TAX, SOCIAL POLICY AND

actual wording of the legislative text—formal law—may be considered when studying gender neutrality; that is, is there a formally expressed favoring of one gender compared to the other? Some countries, such as Italy, actively use both male and female pronouns in the tax code; other countries, like Sweden, have kept the traditional male pronoun exclusively. Do these different usages mean that the Italian tax system is more gender-equal than the Swedish one? The short answer would be “No,” as least if we consider gender equality measurements such as the United Nations Gender Equality Index.⁶⁵ However, instead of focusing on the formal regulation, a multidimensional understanding of gender neutrality in the law is key when attempting to answer the question of whether one gender is favored over the other. In other words, does the law in question yield a gender-neutral result once interpreted and applied?

Nordic countries like Sweden and Denmark reformed their legal systems and introduced formal gender equality in the 1970s and 1980s. Formal gender neutrality in this context does not entail the use of several pronouns but instead the abandonment of legislation that actively favored one of the genders. The reform was instigated for several reasons, including women entering the workforce in larger numbers, the introduction of individual taxation instead of joint taxation,⁶⁶ and later the introduction of the European Union principle of equality to which Sweden and Denmark must adhere as EU Member States.⁶⁷ Before this development, the ambition had been to address structural gender inequality through a formally expressed preferential treatment of women, which is clearly the direct opposite of the modern conceptualization of formal gender neutrality.⁶⁸

One example of the historical ambition would be the now-abolished widow's pension. A widow's/widower's pension is generally

GENDER: RETHINKING EQUALITY AND EFFICIENCY (2017); Stotsky, *supra* note 3; Harding *et al.*, *supra* note 5; Lind & Gunnarsson, *supra* note 59; Petersson, *supra* note 61; Lerner, *supra* note 61; Williams, *supra* note 61; Petersson, *Recent Commonwealth Developments*, *supra* note 61.

65. See *Gender Inequality Index (GII)*, UNDP, <https://hdr.undp.org/data-center/thematic-composite-indices/gender-inequality-index#/indicies/GII> [<https://perma.cc/N4VG-58BG>].

66. For a detailed account, see, for example, Åsa Gunnarsson & Martin Eriksson, *Eliminating the Secondary Earner Bias: Policy Lessons from the Introduction of Partial Individual Taxation in Sweden in 1971*, 2017 NORDIC TAX J., 89, 89–99.

67. The legislative change was a result of the implementation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. Council Directive 79/7/EEC, 1978 O.J. (L 6) 24.

68. Åsa Gunnarsson & Martin Eriksson, *supra* note 66.

understood as a payment—indeed, a social security transfer in the case of the Nordic welfare states—from the state to a person whose spouse has passed away, regardless of gender. Nordic neighbors often mimic each other as a result of the strong and overlapping Nordic legal culture, and consequently there are many similar developments across these tax systems due to borrowing and an inherent tax competition.⁶⁹ The Swedish reform of the pension system that is described below was driven by previous changes to the Danish pension system that took place in the 1970s, in which Denmark raised the retirement age of women from sixty-two to sixty-seven as a way of matching the retirement ages of men and women. The Danish change and the subsequent Swedish change were argued to be a result of the implementation of the EU principle of equal treatment for men and women in social security matters.⁷⁰

Historically, Sweden awarded the widow's pension exclusively to a widow (e.g., a woman) who had reached the age of thirty-six at the time of her husband's death and who had at the time of death been married to her husband for at least five years (or alternatively who had custody of, and permanently lived, with children under the age of sixteen).⁷¹ If the widow had no children and was not yet of the age of fifty

69. Within legal scholarship, there are some key legal families, like national legal systems that have been divided into larger groups known as families based on certain characteristics and their origin and that are claimed to have influenced most legal systems around the world. *See, e.g.*, Konrad Zweigert & Hein Kötz, AN INTRODUCTION TO COMPARATIVE LAW 63–73 (Tony Weir Trans., Oxford Univ. Press 3rd rev. ed. 1998) (1997); René David & John E.C. Brierley, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW 9 (1978). The existence of the Nordic legal family is often accepted and justified by tax scholars on the basis that the individual Nordic tax systems largely contain similar features—such as the high tax and redistribution elements associated to welfare states—and the practice of often borrowing tax instruments from each other. For a detailed background, see, for example, Yvette Lind, *Scandinavian Law Through the Looking Glass: A Comparative Study on the Historical Development of GAARs in Sweden, Denmark, and Norway*, in 11 STUDIES IN THE HISTORY OF TAX LAW 439 (2023).

70. The legislative change was a result of the implementation of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. 1978 O.J. (L 6/24). *See also* KIRSTEN KETSCHER, SOCIALRET: ALMINDELIGE PRINCIPPER, RETSSIKKERHED OG ADMINISTRATION [SOCIAL LAW: GENERAL PRINCIPLES, LEGAL CERTAINTY AND ADMINISTRATION] (1998) (Den.) (discussing foundational principles of Danish social law, including gender equality and the administrative implementation of EU social security directives).

71. *See, e.g.*, Statens Offentliga Utredningar [SOU] 1987:55, Efterlevandepension: reformeringen av den allmänna försäkringens efterlevandeförmåner; delbetänkande [Survivors' Pension: Reform of the General Insurance Survivors' Benefits; Interim Report] [government report series] (Swed.),

at the time of death, then the widow's pension was reduced by 1/15 for each year that the widow's age fell below fifty years.⁷² The pension was subsequently paid until the widow reached the age of sixty-five.⁷³ As a result, Sweden had the widow's pension feature replaced with a provision for surviving dependents in 1989 as part of its formal gender neutrality reformation.⁷⁴

In the preparatory works attached to the change, Swedish lawmakers put forth several arguments to justify the need for the abandonment of preferential treatment of women.⁷⁵

First, it was argued that the widow's pension was based on the societal conditions of an older era. This archaic perception of the family arguably infused the pension system and reflected a family pattern where the division of labor between spouses was that commonly found in the early 20th century, in which married women largely devoted themselves to work only in the home⁷⁶. As a rule, the family's finances were—when considering this dated view—based exclusively on the man's earned income and not based on a two-income household that had become the norm in Sweden by the second half of the 20th century.⁷⁷ Historically, it had been considered prudent, and possibly also essential, to create through a family pension financial protection for the preservation of a certain measure of the previous income standard, should the breadwinner die. This protection mainly targeted minor children, but widows were also regularly assumed to be in need of support from society through the social security system after the death of their husbands. When the widow's pension was originally introduced, it was argued that a corresponding need for protecting men was not considered, as they were the breadwinners and so they would not forfeit their financial security if the wife should die.⁷⁸

<https://lagen.nu/sou/1987:55?attachment=index.pdf&repo=soukb&dir=downloaded>
[<https://perma.cc/7JAT-43HK>].

72. *See, e.g., id.*

73. *See, e.g., id.*

74. *See, e.g., id.* at 19. For a scholarly description of the historical development of this legal provision, see, for example, Mannelqvist, *supra* note 57.

75. *See, e.g.,* Prop. 1987/88:171 om reformering av den allmänna försäkringens efterlevandeförmåner m. m. [On Reform of General Insurance Survivor Benefits, Etc.] [government bill] (Swed.); SOU 1987:55, *supra* note 71, at 21.

76. *See* Lind, *supra* note 60, at 937-38.

77. *See* Lind, *supra* note 60, at 937-38.

78. *See, e.g.,* SOU 1987:55, *supra* note 71.

Second and relatedly, it was argued that women had now entered the labor market to a greatly increased extent and that those women remained in the labor force even after starting a family.⁷⁹ This change in the traditional breadwinner model had, it was thought, led to women achieving greater independence in financial terms and a reduced dependence on their spouse for their livelihood.

Third, it was argued that this change in the breadwinner model meant that women had started to earn the right to pension payments from the social security system to a completely different extent than was the case in the first years after the introduction of the Swedish pension system. Between 1960 and 1985, the proportion of women with a pensionable income more than doubled.⁸⁰ In 1960 barely 32% of women aged sixteen to sixty-five were credited with pensionable income; by 1985 this percentage had increased to nearly 80%, and in younger age groups the percentage was even higher and almost corresponded to that of men in the same age group.⁸¹ It should be emphasized that women at this time had still not yet achieved a fully equal position in the labor market when compared to men.⁸² Indeed, this inequality remains a problem today.⁸³ There are still relatively large gender differences when it comes to the length of the average working hours, the extent to which women engage in full-time employment, and the size of the wage gap, all of which are detailed below. These circumstances contribute to women still having lower annual retirement pensions than men.⁸⁴ There has clearly been some equalization between men and women in recent years, but women still have on average lower pensions, and the vast majority of poorer pensioners in Sweden are women.⁸⁵ In fact, the pension gap between women and men in Sweden was still 31% in 2022 (and 28% if the reformed survivor's pensions were included).⁸⁶

79. See Prop. 1987/88:177 (Swed.)

80. SOU 1987:55, *supra* note 71, at 13.

81. See, e.g., *id.*

82. See Lind, *supra* note 60, at 937-38.

83. See, e.g., Lind, *supra* note 60, at 948.

84. See Nordling, *supra* note 44, at 31.

85. Sweden determines pensioner poverty on the basis of a pensioner receiving less than SEK 13,300/month (circa USD 1,200/month). See *Poverty Report Sweden 2019*, Eur. Anti Poverty Network (Oct. 2019), <https://www.eapn.eu/wp-content/uploads/2020/04/EAPN-PW2019-Sweden-EN-EAPN-4306.pdf> [<https://perma.cc/2T4P-NQB6>].

86. For a detailed account of this for the case of Sweden, see Nordling, *supra* note 44, at 31.

Fourth and finally, it was argued that the basic pension benefits had improved significantly in the time since the introduction of the family pension.⁸⁷ State pensions have been increased (and also been calculated in fixed monetary value) on several occasions.⁸⁸ For pensioners with either no income or a lower income, pension supplements have been added.⁸⁹ There have also been substantial improvements in the municipal housing supplements that match the state pension.⁹⁰

To summarize, these many changes to society and family life were argued to be sufficient to prompt the abolishment of the widow's pension and the introduction of the (reformed) survivor's pension.⁹¹ It should be noted that, in the preparatory works to this abolishment, there was also criticism of the structuring of the Swedish retirement system, especially the fundamental weakness that men and women were treated differently.⁹² Despite this criticism, it was emphasized that, while a widow's pension is issued after a deceased husband, there is no right to any corresponding benefit in the case of a woman who died and left her husband as a surviving dependent.⁹³ This fundamental separation between genders was argued to be principally wrong and unjust as there should be no difference made between genders in today's modern society.⁹⁴ As a result, the favorable pension treatment of women was removed, despite the recognition that there was indeed still an inequality between men and women stemming from societal conditions and norms that had originally warranted this preferential treatment.⁹⁵

In conclusion, Swedish lawmakers acknowledged the existence of gender inequality.⁹⁶ However, instead of attempting to mitigate it through legal preferential treatment, Sweden introduced formal gender neutrality, a neutrality that results in disparate and unfavorable treatment of women compared to men given that economic situation of women, and subsequently the possibilities to save for retirement of women, are different than those of men: women work part-time to a

87. *See id.* at 32.

88. SOU 1987:55, *supra* note 71, at 13.

89. *Id.* at 141.

90. *Id.*

91. *Id.* at 151, 173.

92. *Id.* at 13-14.

93. *Id.* at 14.

94. *Id.* at 14.

95. *Id.* at 11, 13-14.

96. *See Prop.* 1987/88: 177 (Swed.).

greater extent,⁹⁷ women take parental leave and care for children to a greater extent,⁹⁸ women live longer lives,⁹⁹ and women are often younger than their partner in couple relationships.¹⁰⁰ Instead of attempting to equalize the treatment of women and men, the formal gender neutrality now asserted through the legal system reinforces the male norm and as such leads to unequal outcomes for men and women.

These historical developments tell us that there are various external factors that could—and possibly should—be included in the description and analysis of gender neutrality measures within the tax system as a way of better understanding the outcomes of the law being interpreted and applied. Here, we must ask ourselves *why* women's income looks so different from men's, and how this leads to systematic differences in tax costs across genders.

Women tend to work-part time more often than men and they engage to a greater extent in unpaid work within the home sphere,¹⁰¹

97. See Lind, *supra* note 60, at 944-55. At present, women constitute nearly half of the Swedish workforce at 48% in 2022, yet the extent of working hours differs when compared to that of men. See, e.g., *Antal förvärvsarbete ökade med 2,6% [The Number of Gainfully Employed Persons Increased by 2.6%]*, STATISTICS SWEDEN (Nov. 24, 2022) <https://www.scb.se/en/finding-statistics/statistics-by-subject-area/labour-market/labour-force-supply/labour-statistics-based-on-administrative-sources/pong/statistical-news/labour-statistics-based-on-administrative-sources-rams-and-gross-pay-statistics-based-on-administrative-sources-lsum-2021/> [https://perma.cc/F2SA-92BG]. This change has been attributed to Sweden's introduction of individual taxation in 1971. See, e.g., Lind, *supra* note 60, at 943.

98. See Lind, *supra* note 60, at 949. Swedish statistics indicate that 70% of parental allowances paid out through public funds were paid to women in 2021. See FÖRSÄKRINGSKASSAN [SWED. SOCIAL INS. AGENCY], SOCIALFÖRSÄKRINGEN I SIFFROR [SOCIAL INSURANCE IN FIGURES] 21 (2022), <https://www.forsakringskassan.se/download/18.7fc616c01814e179a9f192/1656398049738/socialforsakringen-i-siffror-2022.pdf> [https://perma.cc/5KDN-V738]. Furthermore, 64% of the public funds that were paid out for caring for sick children were paid to women in 2021. See *id.* at 28. For more statistics, see, for example, FÖRSÄKRINGSKASSAN [SWED. SOCIAL INS. AGENCY], SOCIALFÖRSÄKRINGEN I SIFFROR [SOCIAL INSURANCE IN FIGURES] (2022), <https://www.forsakringskassan.se/download/18.7fc616c01814e179a9f192/1656398049738/socialforsakringen-i-siffror-2022.pdf> [https://perma.cc/5KDN-V738].

99. As for life expectancy by sex and education level, women live longer than men in all OECD member and partner countries. This gender gap averaged 5.3 years across OECD countries in 2019, and life expectancy at birth for women was 83.6 years compared with 78.3 years for men. See, e.g., *Life Expectancy at Birth*, OECD, <https://www.oecd.org/en/data/indicators/life-expectancy-at-birth.html> [https://perma.cc/WYJ4-MAX9].

100. There is a body of scholarship in which differing aspects of these demographics are presented using data from various periods of time. For an introduction to the topic, see, e.g., Michel Bozon, *Women and the Age Gap Between Spouses: An Accepted Domination?*, 3 POPULATION: AN ENG. SELECTION, 113, 113 (1991).

101. See, e.g., Cristian Alonso et al., *Reducing and Redistributing Unpaid Work: Stronger Policies to Support Gender Equality*, IMF 4 (Oct. 15, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3482305 [https://perma.cc/5UBE-WMH2]. Swedish statistics illustrates that in 2021 women on average spent about 50% more time on unpaid household work related to cleaning,

such as providing childcare, caring for elderly, and taking care of the home.¹⁰² Moreover, women are more prone to take up employment rather than being self-employed and this has several effects. Women have lower employment incomes as they largely work in service sectors. In the cases where women work in sectors with higher wages, they are still subject to the ever-persisting gender pay gap.¹⁰³ Given that women have lower life-time earnings, this will affect their ability to save and invest and subsequently their retirement payments. While men largely work in sectors with higher wages or are self-employed, they can take advantage of various tax benefits for savings, including

cooking, laundry, childcare, and taking care of family pets when compared to their male spouses. The only category in which men spent more time than their female spouse was when dealing with the family finances. This indicates that traditional family patterns, i.e., women taking care of the home while the man is responsible for the finances of the family, still holds true, even in Nordic countries where gender equality is thought of as progressive. For more detailed statistics, see, for example, Uppdrag att genomföra TID—en studie av tidsanvändning bland kvinnor och män [Assignment to Conduct TID—a Study of Time Use Among Women and Men], REGERINGSKANSLIET (Mar. 31, 2021), <https://www.regeringen.se/regeringsuppdrag/2021/03/uppdrag-att-genomfora-tid-en-studie-av-tidsanvandning-bland-kvinnor-och-man> [<https://perma.cc/2UW4-PZ25>]. Furthermore, a report of the Swedish Gender Equality Policy Commission shows that women are more likely to take on the responsibility for the care of relatives. According to the Commission's tabulations, 77% of all care work for the elderly and disabled was carried out by women, compared to 23% by men. Also, twice as many elderly people over seventy-five living at home received care from a relative than received care from home services, and 70% of this care was carried out by women. These numbers are from 2005, but earlier reports indicate that these same the patterns tend to prevail over time, and it is likely that we would see similar numbers today. See, e.g., Statens Offentliga Utredningar [SOU] 2005:66 Makt att forma samhället och sitt eget liv—jämställdhetspolitiken mot nya mål [Power to Shape Society and One's Own Life—Gender Equality Policy Towards New Goals] [government report series] (Swed.), 310 (Aug. 1, 2005), <https://www.regeringen.se/contentassets/b46b81ff8ea142fcb535f70d3919d696/makt-att-forma-samhallet-och-sitt-eget-liv-missiv-och-kapitel-1-5-del-1-av-4-sou-200566/> [<https://perma.cc/ZD5V-JNSE>].

102. See, e.g., Nordling, *supra* note 44, at 48.

103. The gender wage gap is typically measured as the difference between the median earnings of women relative to the median earnings of men. For recent statistics, see, for example, OECD, REPORTING GENDER PAY GAPS IN OECD COUNTRIES: GUIDANCE FOR PAY TRANSPARENCY, IMPLEMENTATION, MONITORING AND REFORM 82 (2023), <https://doi.org/10.1787/ea13aa68-en> [<https://perma.cc/KXR2-VCH7>]. In Sweden, the statistics from 2022 reveal that women earn 74% of men's income before taxes and 78% after taxes. See, e.g., Statens Offentliga Utredningar [SOU] 2022:4, Minska gapet: Åtgärder för jämställda livsinkomster [Reducing the Gap: Measures for Equal Lifetime Incomes] [government report series] (Swed.), https://www.regeringen.se/contentassets/9285046a0df14257b035779c11eb4703/sou-2022_4_webb.pdf [<https://perma.cc/L93L-XCJP>]. In 2017, the most common occupation among women in Sweden had an average salary of SEK 29,500 a month (circa USD 2,710), while the most common occupation among men had an average salary of SEK 46,500 a month (circa USD 4,270). See, e.g., *Prislappen för den strukturella löneskillnaden* [The Price Tag of the Structural Wage Gap], LÖNELOTSARNA [PAYMASTERS] (2017), <https://static1.squarespace.com/static/57bd44a0197acab07f381350/t/5c4c7cd1b8a04550fe91e329/1548516563268/En+%28o%29fullst%C3%A4ndig+bild+av+I%C3%B6neskillnader+2017.pdf> [<https://perma.cc/CXU4-GAAX>].

retirement account benefits, non-taxation of unrealized gains, and capital gains preferences.¹⁰⁴ As men are more likely to own their own business, they have a tax advantage of the provisions that allow people to blend personal consumption with business deductions.¹⁰⁵ Men who run small businesses are more likely than women to run capital-intensive businesses (rather than service businesses), and thus better able to take advantage of the various tax benefits for business capital investments in addition to exploiting various tax planning options such as shifting the income from business taxation towards capital taxation by paying themselves through dividends rather than wages that are subject to higher tax rates and also liable for payroll taxes. Scandinavian statistics indicate that women receive a disproportionate tax treatment relative to men, when considering in particular capital tax benefits.¹⁰⁶ This is most commonly thought of as a result of women traditionally earning their mainstream of income from employment rather than capital- or business-income, in combination with women more often working part-time.¹⁰⁷ The result of these circumstances is that women are overrepresented among the poor.¹⁰⁸ This problem provides the foundation for the following section of the paper where specific tax treatments are described and analyzed.

Lastly, taxes and social insurance tend to be studied separately by different legal fields despite their being naturally intertwined. In welfare states such as Sweden, this relationship is evident given both the extent of funding through taxes necessary to fund public goods and the ways in which tax expenditures are used to distribute these public goods.¹⁰⁹ As a result, one could—and possibly should—see taxation and social insurance as two things that at first glance appear separate and distinct but are in reality related; that is, one collects and the other distributes. The Organisation for Economic Co-operation and Development (OECD) also considers taxes and social insurance transfers jointly in the context of gender equality.¹¹⁰ Many female-friendly

104. Reporting Gender Pay Gaps in OECD Countries, *supra* note 103, at 12.

105. *Id.*

106. For a detailed account of this in the case of Sweden, see, for example, Nordling, *supra* note 44, at 6.

107. See, e.g., *id.* at 6–7.

108. *Id.* at 27.

109. *Id.* at 7.

110. See, e.g., OECD, *The Impact of Tax and Transfer Systems on Gender Equality*, YOUTUBE (June 8, 2022), https://www.youtube.com/watch?v=_JIRqTfWTNI&t=2s&ab_channel=OECDTax [<https://perma.cc/924N-MXEZ>].

measures, such as child allowances and housing benefits, are after all transferred through the social insurance system.¹¹¹ Additionally, some scholars would argue that these transfers are compensation for unpaid work within the household sphere.¹¹² Moreover, redistribution is achieved not only through progressive taxes but also through the combination of the tax system and the social insurance system.¹¹³ In other words, all of these circumstances suggest that men will contribute to a larger extent to overall tax revenues and that these revenues will then be redistributed more heavily to women through the social insurance system via social welfare benefits. This is also one of the motivations for why some of these social welfare benefits, such as childcare allowances and housing benefits, are exempted from taxation. Note again that, while women are compensated by the state through the social insurance system, men are compensated through the tax system as they enjoy to a greater extent tax deductions. Note also that this does not imply that there is a narrowing of the income gap between men and women. Instead, Swedish reports indicate that the income gap has been growing over time, with one important contributing factor being how the Swedish tax system benefits men and how these benefits are not sufficiently offset through the transfer system.¹¹⁴ Therefore, both taxes and social insurance transfers should be considered when considering gender equality.

*B. Gender Neutrality as an (Unexpressed)
Underpinning Policy Goal of the Law when Introduced
and as an (Unexpected) Outcome of the Law When Applied*

After having analyzed formal gender neutrality and its failings in Scandinavia, we now turn to scrutinizing these legal acts from other

111. Nordling, *supra* note 44, at 4.

112. See Nordling, *supra* note 44, at 46.

113. While this claim is not generally accepted among all tax law scholars, we contend that redistribution takes place not only through the tax system itself (pre-tax) but also through the combination of tax and transfers (post-tax). For more extensive scholarly debates about this see for instance the seminal work by Murphy and Nagel (add: Myth of Ownership reference). Also see the stance taken by the OECD, e.g. [The Impact of Tax and Transfer Systems on Gender Equality](#)

114. See, e.g., JÄMSTÄLLDHETSMYNDIGHETEN [THE EQUAL. AUTH.], EKONOMISK JÄMSTÄLLDHET: EN UPPFÖLJNING AV SENARE ÅRS UTVECKLING AV DET JÄMSTÄLLDHETSPOLITISKA DELMÅLET [ECONOMIC EQUALITY: A FOLLOW-UP OF RECENT YEARS' DEVELOPMENT OF THE GENDER EQUALITY POLICY TARGET] (2022), <https://jamstalldhetsmyndigheten.se/media/2rdiwo0s/rapport-2022-2-ekonomisk-jamstallldhet-2022-02-08.pdf> [<https://perma.cc/22L2-BV8K>].

perspectives, so that we may gain a deeper understanding of gender neutrality and the possible unequal outcomes of our tax systems. Tax laws may, intentionally or unintentionally, yield an indirect unequal treatment of certain taxpayer groups, and this is often argued to be a result of inherent societal values that have trickled down into politics and into the resulting legislation and fiscal policies. In other words, discriminatory tax laws are generally the result of non-legal factors, and these factors complicate both the identification of unequal outcomes and the construction of legal remedies.

One possible substitute for considering the formal legal regulation would be to consider the aim or objective of the legislation in addition to considering its outcomes. Stated differently, in some instances, it may be justified to employ an active favoring of women rather than to pursue gender neutrality, as a way of mitigating the unequal outcomes identified above. By considering the Swedish case, we may discern some useful examples.

Sweden has integrated formally gender-neutral tax laws, and yet at the same time Sweden has—in line with its overall female-friendly ambition—introduced tax laws that explicitly aim to foster an outcome favoring largely female taxpayers through formally gender-neutral legislations.

For example, consider in detail the taxation of capital investments such as investment accounts, pension savings, and property improvements in Sweden as a way of illustrating in detail the specific aspects of gender neutrality and biases (both explicit and implicit) that arise in connection to these regulations. We include here the beneficial tax treatment of investment savings accounts (so called ISK accounts) and the effect that this beneficial tax treatment has on the pension savings of men and women.¹¹⁵ We also include the so-called “RUT and ROT deductions”,¹¹⁶ which allow tax breaks for domestic work services. A person who hires a professional to do ROT (Repairs, Conversion, Extension) or RUT (Cleaning, Maintenance and Laundry) work may get a tax reduction (e.g., a ROT or RUT deduction) for the labor cost.¹¹⁷ These differing capital tax treatments should not be seen as

115. See 67 ch. 58-59 §§ Inkomstskattelag [Income Tax Act] (Svensk författningssamling [SFS] 1999:1229) (Swed.); see also OECD, *supra* note 103, at 11 (describing how governments are finding new ways to fix the gender wage gap to benefit women).

116. See, e.g., 67 ch. 11–17 §§ Inkomstskattelag [Income Tax Act] (Svensk författningssamling [SFS] 1999:1229) (Swed.).

117. *Id.*

compartmentalized and subsequently treated as separate because pension savings originate largely from capital investments such as equity and also from the primary residence of the individual. Note that Sweden taxes capital at a lower rate than employment income, and this will have a compounding effect on the wealth gap between men and women as men engage to a greater extent in capital investments and capital ownership.¹¹⁸ Note also that we exclude interest deductions from our discussion, but there is evidence that interest deductions benefit men relative to women because men are more likely to own loan-financed capital and men are also more likely to have their own businesses.¹¹⁹

First, consider a tax treatment that could, in principle, yield a gender-equal outcome: the Swedish special taxation of investment savings accounts, called ISK accounts.¹²⁰ Some background on the Swedish taxation of capital may be helpful in understanding this tax feature. Capital is a broad concept, and it can encompass money in savings accounts, stocks, funds, bonds, and real estate.¹²¹ Sweden does not tax the actual value of capital but instead taxes the returns from capital.¹²² As a general rule, capital income is taxed at 30%, although this tax rate can be lowered due to the existence of numerous exemptions.¹²³ For example, the tax on dividends from closely held companies can be as low as 20%, and this is a common tax planning scheme utilized by (male) entrepreneurs.¹²⁴ Given this, capital is generally taxed significantly lower than income from employment.¹²⁵ The capital tax is also a flat rate tax, and so the tax is not as progressive as many other parts

118. Nordling, *supra* note 43, at 22.

119. This issue has been debated in Sweden. *See, e.g.*, Johan Zachrisson Winberg, Rika får mest av statens 30 miljarder i ränteavdrag [The Rich Get Most of the State's 30 Billion in Interest Deductions], SVT NYHETER (Mar. 24, 2015), <https://www.svt.se/nyheter/ekonomi/rika-far-mest-av-statens-30-miljarder-i-ranteavdrag> [<https://perma.cc/G563-ZWP7>]; *see* Nordling, *supra* note 44, at 6.

120. *See, e.g.*, Lag om investeringssparkonto [Investment Savings Account Act] (Svensk författningssamling [SFS] 2011:1268) (Swed.).

121. Kapitel 23: Inkomst av kapital, SKATTEVERKET 423 (Swed.) https://www.skatteverket.se/download/18.18e1b10334ebe8bc8000115145/1708608355765/kapitel_23.pdf [<https://perma.cc/X8WD-D5LD>].

122. *Id.*

123. SVEN-OLOF LODIN ET AL., *INKOMSTSKATT: EN LÄROBOK I SKATTERÄTT. DEL 1* (SWED.).

124. Mats Tjernberg, *De allt annat än neutrala och jämställda fämansföretagsreglerna*, LUND UNIV. DEP'T OF ECONOMICS 3 (2024), https://lucris.lub.lu.se/ws/portalfiles/portal/179867336/De_allt_annat_n_neutrala_och_j_mst_ilda_f_mansf_retagsreglerna.pdf [<https://perma.cc/7RLC-G8CQ>].

125. SVEN-OLOF LODIN ET AL., *supra* note 123.

of the Swedish tax system.¹²⁶ Swedish economists have argued that the persistent wealth gap between men and women can be explained by the strong capital income growth among the wealthiest in Sweden.¹²⁷ Indeed, the income gap between men and women in Sweden has remained constant for the last thirty years.¹²⁸ “In 2020, women received 23% of the total income generated from interest, dividends, flat-rate rate incomes, and 25% of the profits from the sale of securities and company shares.”¹²⁹ Only 33% of the women in Sweden make out the richest tenth of the Swedish population.¹³⁰ The preferential treatment of capital incomes in Sweden is likely a large contributor to this persistent inequality.

Fundamentally, then, an ISK is an account that can hold financial instruments like shares and funds and that is subject to a favorable tax regime, and the purpose of the ISK is to facilitate individual saving and investing in these financial instruments.¹³¹ The simplification consists of the individual not being taxed on actual income, gains, and losses. Instead, a standardized measure of revenue is taxed, based on the estimated average return to the asset. This means that the individual does not need to report a gain or loss upon sale, which is a major simplification. The standardized revenue is calculated by multiplying the average interest rate by a capital base that is determined by the market value of the account’s assets.¹³² The average interest rate has been increased twice since the introduction of the original 0.75% interest rate and is currently at 2.94%.¹³³ This favorable taxation is to some extent offset by the denial of tax deductions for losses.¹³⁴ The favorable tax treatment of ISK was introduced in 2012 as a way of encouraging low- and middle-income taxpayers to save, preferably in

126. *Id.*127. See Nordling, *supra* note 44, at 21.128. *Id.* at 22.129. *Id.*130. See Anne Boschini et al., *Women in Top Incomes—Evidence from Sweden 1971–2017*, 181 J. PUB. ECON. 1, 2 (2020).131. *Investment Savings Account—a Simple Form of Saving in a Complex Tax System*, RIKSREVISIONEN, 1 (2018), https://www.riksrevisionen.se/download/18.2008b69c18bd0f6ed3f30352/1541659916695/RiR_2018_19_ENGLISH.pdf [<https://perma.cc/M7DE-8LWL>].132. *Investment Savings Account—a Simple Form of Saving in a Complex Tax System*, RIKSREVISIONEN, 1 (2018), https://www.riksrevisionen.se/download/18.2008b69c18bd0f6ed3f30352/1541659916695/RiR_2018_19_ENGLISH.pdf [<https://perma.cc/M7DE-8LWL>].133. *Id.* at 2.134. *Id.* at 4.

a pension program.¹³⁵ Approximately half of the Swedes have an ISK account, and the majority of Swedes invest for their future pensions, which is a good indicator that the tax regime has had its intended effects on saving.¹³⁶ However, the savings of women only totaled 36% of the capital placed in ISK accounts in 2015.¹³⁷ Most of these women use the ISK for their pension savings.¹³⁸ Given the features of the tax regime, a taxpayer needs to make a tax planning assessment whether to use the ISK or regular investment accounts. The types of assets, along with their time horizon, are crucial. One may assume that day traders use conventional accounts and the normal capital tax regime, given the preference for using the account for pension savings. However, the evidence is that high-income individuals, who are largely men, prefer ISK accounts for their investments, and these high-income men are consequently those who largely benefit from the ISK tax regime.¹³⁹ A Swedish survey in 2021 showed that the richest tenth owns 73% of all assets in the ISK system.¹⁴⁰ The absolute top hundredth owns a full 35%.¹⁴¹ As such, this favorable tax treatment has not managed to foster gender-equal outcomes. Moreover, the outcome of the tax measure underlines that it is primarily benefiting affluent taxpayers. The tax measure can prove helpful to more affluent women; yet, women as an overall group are more vulnerable to poverty, and as such, this tax measure may be less effective in alleviating the financial hardship of women when considering retirement savings.

Second, consider the RUT and ROT deductions.¹⁴² The RUT deduction attempts to relieve some of the unpaid homework for women,

135. See *id.* at 1. See, e.g., Proposition [Prop.] 2011/12:1, Budgetpropositionen för 2012 [Budget Bill for 2012] [government bill] (Swed.).

136. See, e.g., Frida Bratt, *ISK 10 år: Hälften sparar på ISK—pensionsspar vanligast* [ISK 10 Years: Half Save on ISK—Pension Savings Most Common], NORDNET (Dec. 20, 2021), <https://www.nordnet.se/blogg/isk-10-ar-halften-sparar-pa-isk-pensionsspar-vanligast/> [https://perma.cc/9UNJ-PNTH].

137. See, e.g., *Skattesystemets utveckling 2006–2015* [Development of the Tax System 2006–2015], SKATTEVERKET [TAX AUTH.] 42 (2017), <https://www.skatteverket.se/download/18.515a6be615c637b9aa48b09/1708609903512/Skattesystemets%20utveckling%202006-2015.pdf> [https://perma.cc/ES36-QNKD].

138. See, e.g., *id.*

139.

140.

141. See, e.g., Olle Lindström, *Skattegynnatt sparande tio år—de är vinnarna* [Tax-Advantaged Savings for Ten Years—They Are the Winners], SVD NÄRINGS LIV [SWEDISH DAILY BUS.] (Dec. 26, 2021), <https://www.svd.se/a/JxRgmp/skattegynnatt-sparande-tio-ar-de-ar-vinnarna> [https://perma.cc/V9PF-B8XW] (Swed.).

142. See, e.g., 67 ch. 11–17 §§ Income Tax Act (SFS 1999:1229) (Swed.).

to allow them to work full-time to a greater extent, which would in turn allow women to accumulate additional pension savings. The RUT deduction also supports entrepreneurs within the domestic sector as these businesses are more often owned by women (when compared to business sectors in general) and the workforce in these businesses is more often female.¹⁴³ As female entrepreneurship is underrepresented as a whole, the RUT deduction is indeed a female-friendly tax feature with several positive outcomes. The deduction was introduced in 2007,¹⁴⁴ and it allows the taxpayer to pay half the labor cost while the other half (up to a ceiling) is subsidized through state funds.¹⁴⁵ The deduction allows the taxpayer to select a supplier and to allocate the public funds to an individual company instead of to the public treasury. This in turn allows the taxpayer (or the property owner, in this case) to take an active part in allocating construction and urban planning resources that otherwise might have been collected and disbursed centrally. Conceptually, the taxpayer acts as a paying agent for the state's share of the costs; alternatively, the government acts as a partner in the venture as the deduction is designed as a matching grant.¹⁴⁶ These domestic services generally encompass housecleaning, laundry, cooking, childcare, and tutoring.¹⁴⁷ Recent statistics indicate that cleaning accounted for 80% of the utilized tax deductions.¹⁴⁸ The intention of the lawmakers was evidently to relieve women from their unpaid housework as a way of engaging in fulltime employment rather than working part-time, and it is mainly for these reasons that women

143. See, e.g., Proposition [Prop.] 2006/07:94 Skattelättnader för hushållstjänster [Tax Breaks for Household Services] [government bill] (Swed.). Swedish statistics from 2022 illustrate that 40% of the companies supplying RUT services are owned by women and that 55% of the labour force in the sector is female. *RUT-avdrag* [RUT Deduction], EKONOMIFAKTA (Aug. 29, 2024), https://www.ekonomifakta.se/sakomraden/foretagande/naringslivet/rut-avdrag_1210664.html [https://perma.cc/Y8UU-R3VQ].

144. See, e.g., Prop. 2006/2007:94 (Swed.).

145. Yvette Lind, *Initial Findings on How Individuals May Indirectly Influence Tax and Spend in Sweden, Germany and the United States*, 48 *INTERTAX* 482, 491 (2020).

146. For further details and analysis, see, for example, Yvette Lind, *Initial Findings on How Individuals May Indirectly Influence Tax and Spend in Sweden, Germany and the United States*, 48 *INTERTAX* 482, 482–97 (2020).

147. 67 ch. 13 § Inkomstskattelag [Income Tax Act] (Svensk författningssamling [SFS] 1999:1229) (Swed.).

148. See, e.g., *Rutavdraget—konsekvenser av reformen* [RUT Deduction—Consequences of the Reform], RIKSREVISIONEN, 25 (2020), https://www.riksrevisionen.se/download/18.2008b69c18bd0f6ed3f29586/1581941851838/RiR%202020_02%20Anpassad.pdf [https://perma.cc/H9KJ-2BRD].

use this tax break.¹⁴⁹ This practice implies that the women using the tax break are from a middle-income or high-income class as it otherwise would be economically inefficient to use the tax break. The RUT deduction has over time been critiqued for failing in the ambition to provide a favorable outcome for women.¹⁵⁰ Initially, a majority of the households that purchased RUT services only made small deductions, corresponding to less than SEK 5,000 (circa USD 460).¹⁵¹ Since the deductions are relatively small, these households accounted for a limited portion of the total deduction amount.¹⁵² In fact, 43% of the total deduction amount in 2017 went to 11% of the households purchasing RUT services, indicating that affluent households were mainly benefitting from the tax benefit. The Swedish National Audit Service report supports this assumption, stating that a quarter of the taxpayers utilizing the RUT deduction—and 40% of the total deduction amount—are among the tenth of households with the highest income.¹⁵³ Furthermore, 55% of the total deduction amount is claimed by the Swedish households with the highest income.¹⁵⁴ Several Swedish Governments have discussed the possibility to abolish it due to its failing to fulfil its original ambition, yet due to its general population among the Swedish population it has been difficult to find the political support for it. This underlines the need for lawmakers to robustly design tax benefits when pursuing specific policy goals alternatively to introduce them with sunset clauses.

149. See, e.g., Prop. 2006/2007:94 Skattelättnader för hushållstjänster, m.m. [Tax Breaks for Household Services, Etc.] 1 (Swed.).

150. For scholarly scrutiny of the tax break, see, for example, Pia Blanck Thörnroos, *Rot och Rut en succé—men det kan bli bättre* [ROT and RUT a Success—but Could Be Better], SKATTENYTT [TAX NEWS] (2013), https://www.faronline.se/dokument/skattenytt/2013/nr-5/skattenytt_2013_a0275/ [<https://perma.cc/VE95-PVYW>]; John R. Bowman and Alyson M. Cole, *Do Working Mothers Oppress Other Women? The Swedish “Maid Debate” and the Welfare State Politics of Gender Equality*, 35 SIGNS: J. WOMEN CULTURE AND SOC’Y 157, 157–84 (2009); Lotta Björklund Larsen, *ILLEGAL YET LICIT: JUSTIFYING INFORMAL PURCHASES OF WORK IN CONTEMPORARY SWEDEN* (2010); and Lotta Björklund Larsen, *Skatteantropologi. Ett nytt vetenskapligt perspektiv på ett klassiskt fält* [Tax Anthropology: A New Scientific Perspective on a Classic Field], 4 SKATTENYTT [TAX NEWS] 153, 153–71 (2020), <https://skattenytt.se/journals/openaccess/16664> [perma.cc/868N-Q5ST].

151. See, e.g., *RUT Deduction—Consequences of the Reform*, *supra* note 148, at 24.

152. See, e.g., *id.*

153. See *id.* at 25.

154. See, e.g., *id.* at 25.

The ROT deduction—not to be confused with the RUT deduction—was introduced in 2009.¹⁵⁵ However, similar tax features had been part of the Swedish tax system much earlier on, not just under the label of ROT deduction.¹⁵⁶ Additionally, tax breaks such as these are not unheard of among the European countries.¹⁵⁷ The ROT deduction provides tax benefits linked to home improvements and subsequently the accumulation of capital gains in connection to home ownership.¹⁵⁸ Similar to the RUT deduction, the ROT deduction results in the taxpayer paying half the labor cost, with the other half (up to a certain ceiling) being directly subsidized by state funds.¹⁵⁹ Unlike with the RUT deduction, this tax break targets the home and its home improvements, instead of domestic services that take place within the home sphere, but without adding any additional capital value to the taxpayer.¹⁶⁰ These home improvements generally extend to repairs, major renovations, and expansion projects. The most common type of renovation service covered by the tax break is construction work.¹⁶¹ Of some importance, the business sector primarily employed due to the tax break is strongly male-dominated. In 2015, 97% of the entrepreneurs in the ROT sector were men, and men accounted for more

155. See, e.g., Prop. 2008/2009:178 Skattereduktion för reparation, underhåll samt om- och tillbyggnad av vissa bostäder [Tax Reduction for Repairs, Maintenance, and Renovations and Extensions of Certain Homes] (Swed.).

156. See, e.g., OM SKATTEREDUKTION FÖR UTGIFTER FÖR BYGGNADSARBETE PÅ BOSTADSHUS [ON TAX DEDUCTION FOR EXPENSES FOR CONSTRUCTION WORK ON RESIDENTIAL BUILDINGS] (Svensk författningssamling [SFS] 1993:672) (Swed.); OM SKATTEREDUKTION FÖR UTGIFTER FÖR BYGGNADSARBETE PÅ BOSTADSHUS [ON TAX DEDUCTION FOR EXPENSES FOR CONSTRUCTION WORK ON RESIDENTIAL BUILDINGS] (Svensk författningssamling [SFS] 1996:725) (Swed.) (now-abolished Swedish tax legislation); see also, e.g., the preparatory works attached to these tax laws: Proposition [Prop.] 1992/1993:150 Med förslag till slutlig reglering av statsbudgeten för budgetåret [With Proposals for Final Regulation of the State Budget for the Fiscal Year] [government bill] (Swed.) (outlining budgetary provisions including early versions of housing-related tax incentives that predate the formal ROT deduction); Proposition [Prop.] 1995/1996:229 Skattereduktion för utgifter för byggnadsarbete på bostadshus [Tax Reduction for Expenses for Construction Work on Residential Buildings] [government bill] (Swed.) (introducing a targeted tax reduction for residential construction work, serving as a precursor to the modern ROT deduction).

157. For additional reading, see, for example, THE POLITICAL ECONOMY OF HOUSEHOLD SERVICES IN EUROPE 39 (Clément Carbonnier & Nathalie Morel eds., 2015).

158. See, e.g., 67 ch. 11–17 §§ Income Tax Act (SFS 1999:1229) (Swed.).

159. Lind, *supra* note 145, at 491.

160. See, e.g., *Developments of the Tax System 2006–2015*, *supra* note XX, at 24.

161. See, e.g., *ROT-reformen—beskrivning av företagens utveckling 2010–15* [ROT Reform—Description of the Development of Companies 2010–15], TILLVÄXTANALYS [GROWTH ANALYSIS] (2018), https://www.tillvaxtanalys.se/download/18.62dd45451715a00666f1dd39/1586366181946/PM_2019_02_ROT_reformen.pdf [https://perma.cc/UBC4-UXUX].

than 91% of the workforce in the ROT sector.¹⁶² The tax break was introduced with the expressed intentions both to formalize undeclared employment and to facilitate the entry of foreign-born workers into the labor market.¹⁶³ This has in fact been the outcome of the tax break.¹⁶⁴ Even so, the present-day critique would be that a sizeable number of the entrepreneurs providing these services stem from other EU countries rather than Sweden, given that Sweden is a European Union Member and subsequently is part of the internal market.¹⁶⁵ No explicit gender equality aspect was expressed in the legislation. Additionally, the tax break was introduced as a temporary measure to mitigate the economic effects of the 2007–2008 financial crisis.¹⁶⁶ As is the case of many temporary tax measures, the ROT deduction has become politically impossible to abolish, even though the economic need for it has passed. The tax break is regularly debated in Sweden, and it is portrayed as problematic, expensive, and ineffective in achieving its policy targets, especially given that it tends to benefit entrepreneurs in other EU Member States.

Importantly, the tax break unexpectedly resulted in a gender equality effect. Home ownership in Sweden has traditionally been the privilege of men. In couple relationships, the societal norm often dictates that women bear the costs related to children and food, while men provide for the mortgage and home improvements. It is therefore common practice that the house would be registered in the name of the

162. See, e.g., *id.* at 40, 47.

163. See, e.g., Prop. 2008/2009:178 (Swed.).

164. See Swedish Nat'l Audit Off., RiR 2023:26, The Costs and Effects of Tax Deduction on Home Repair Services 1 (2023), https://www.riksrevisionen.se/download/18.3ad2ec4c19329a0a7e5634b/1731922871636/RiR_2023_26_summary.pdf [<https://perma.cc/6H82-WQ79>]; see generally, *ROT-reformen—beskrivning av företagens utveckling 2010–15* [*ROT Reform—Description of the Development of Companies 2010–15*], Tillväxtanalys [Growth Analysis] 46–47 (2018), https://www.tillvaxtanalys.se/download/18.62dd45451715a00666f1dd39/1586366181946/PM2019_02_ROT_reformen.pdf [<https://perma.cc/UBC4-UXUX>] (providing a statistical and economic overview of the ROT reform's impact on business development, employment trends, and sectoral growth between 2010 and 2015).

165. See, e.g., SWEDISH NAT'L AUDIT OFF., RiR 2023:26, THE COSTS AND EFFECTS OF TAX DEDUCTION ON HOME REPAIR SERVICES 1 (2023), https://www.riksrevisionen.se/download/18.3ad2ec4c19329a0a7e5634b/1731922871636/RiR_2023_26_summary.pdf [<https://perma.cc/6H82-WQ79>]. A more extensive report with the cited statistics can be found in Swedish online. Helena Lindberg & Krister Jensevik, RIKSREVISIONEN [NAT'L AUDIT OFF.], SVART PÅ VITT—ROTAVDRAGETS KOSTNADER OCH EFFEKTER [BLACK AND WHITE—THE COSTS AND EFFECTS OF THE TAX DEDUCTION] (2023), https://www.riksrevisionen.se/download/18.e6f1d6318fa4a7c94deb47/1716897989008/RiR_2023_26_rapport.pdf [<https://perma.cc/4UFL-JUJY>].

166. See, e.g., IMPACT, Sweden-ROT & Rut avdrag, (2025) <https://perma.cc/AUH9-B492> (where a similar measure was previously instated to assist in times of economic downturn).

husband, as he bears the burden of the house loan. However, in the wake of the introduction of the ROT tax break, there was a noticeable transfer of ownership in Sweden.¹⁶⁷ Sizeable numbers of couples re-registered the house in both spouses' names, instead of only the man's name, because this enabled the couple to enjoy the tax break on both incomes due to Sweden employing individual taxation rather than joint taxation as is the case of the U.S.¹⁶⁸ Tax deductions such as the ROT deduction therefore not only favor taxpayers compared to non-taxpayers, but they also favor property owners and high-income earners because the ROT deduction is only available to taxpayers who own their own homes (or primary and secondary ones that include additional apartments or vacation homes) and who have the funds to finance half of the home improvement themselves. Although evidence indicates that most taxpayers using the tax break receive less than SEK 10,000 (circa USD 920), only 1% of all households who exploited the tax break utilized the full amount available to deduct, i.e. SEK 50,000/taxpayer (circa USD 4,590), which indicates that ROT deductions largely benefit taxpayers with the highest disposable (employment) income.¹⁶⁹

In conclusion, there are ways in which lawmakers can address gender neutrality other than formally imposing a preferential treatment for one gender over the other in the legislative text. In the case of the

167. See Maria Brander, *Kvinnor äger endast 15 procent av Sverige [Women Only Own 15 Percent of Sweden]*, LANTMÄTERIET [LAND SURVEY] (Mar. 7, 2016, 12:46), <https://via.tt.se/pressmeddelande/3308720/kvinnor-ager-endast-15-procent-av-sverige?publisherId=3236286&lang=sv> [https://perma.cc/RJ49-Y92Q].

168. Lantmäteriet is the name of the Swedish mapping, cadastral and land registration authority. The agency secures the ownership of Sweden's real property, makes geodata available in society and lays the foundation for a functioning national economy. In a press release in 2016 the agency found that women own 15% of Sweden's land compared to men's 37%. The rest of the land in Sweden is owned by legal entities, companies or organizations. The value of men's assets in the form of single-family homes is SEK 1,602 billion, while women's value amounts to SEK 1,421 billion. Men's total assessed value is thus SEK 181 billion more than women's for Sweden's most common form of housing. Since property ownership is usually long-term, the change is happening slowly, but the agency noted a noticeable change since the ROT deduction was introduced in 2008. This entails that many property owners have transferred part-ownership to their partner through a gift or division of property, in order to be able to fully utilize the tax break. This was particularly evident during the years 2010–2014. As a result, there is now a more equal ownership. See *id*.

169. See, e.g., SWEDISH NAT'L AUDIT OFF., *supra* note 121. A more extensive report with the cited statistics can be found in Swedish online. Helena Lindberg & Krister Jensevik, RIKSREVISIONEN [NAT'L AUDIT OFF.], SVART PÅ VITT—ROTAVDRAGETS KOSTNADER OCH EFFEKTER [BLACK AND WHITE—THE COSTS AND EFFECTS OF THE TAX DEDUCTION] (2023), https://www.riksrevisionen.se/download/18.e6f1d6318fa4a7c94deb47/1716897989008/RiR_2023_26_rapport.pdf [https://perma.cc/4UFL-JUJY].

favorable tax treatment of ISK accounts, there was no evident gender-equalizing intent expressed by Swedish lawmakers. Even so, one may argue that such an intent was expressed indirectly as the pension savings of women have been and still remain a priority of the Swedish government. The ISK tax regime was meant to facilitate pension savings, and, as we know from the removal of the widow's tax, there is an awareness of the precarious pension situation for women. Consequently, the ISK is an *indirect* attempt aimed at mitigating gender inequality by improving the possibilities for women to supplement their state pension with private pension savings. In contrast, the RUT deduction is a *direct* attempt by Swedish lawmakers to improve the situation for women through the tax system, as the tax break both relieves women of unpaid household work and thus frees them to pursue full-time employment in addition to favoring largely female entrepreneurs.

However, this direct attempt is largely a failure because the deduction possibilities have been drastically expanded over time, and no longer focus primarily on female-friendly measures. As for the ROT deduction, this was not an attempt to promote gender-equal outcomes, but even so it has evidently had a positive outcome on women's home ownership and subsequently on their capital wealth.¹⁷⁰ Of note, the RUT deduction was predominantly used by women but with a growing trend of it being utilized equally among male and female taxpayers, while the ROT deduction is provided primarily by male entrepreneurs in addition to being largely used by male taxpayers.¹⁷¹

These aspects highlight that the traditional gender patterns of women being responsible for household chores such as cleaning and childcare, while men are responsible for the maintenance of the house itself, are upheld through the tax and transfer systems. It is unlikely that lawmakers have intentionally designed these tax features in such a manner, but the impacts of these tax preferences clearly underline the importance of lawmakers considering the tax system as a whole when introducing tax measures. Moreover, tax deductions such as the ROT tax break evidently target high-income earners who can afford to outsource home improvements, and this has a compound effect on gender equality as women earn less and have less capital wealth. Scholars interested in pursuing similar studies should study these

170.

171. See discussion *supra* Part B.

findings through an intersectional lens as a way of unveiling other unequal outcomes linked to, for instance, race.

III. WHY NOT GENDER NEUTRALITY?

So why do we not introduce an individual income tax based on comprehensive income, which we have argued would be (largely) gender neutral? There are many possible reasons, but we argue again that the main reason is a simple one. *A completely gender-neutral income tax is not desirable because we wish to use the income tax to achieve many other worthwhile objectives*, including deliberate gender non-neutrality to benefit women who have been otherwise disadvantaged by other aspects of the income tax, their economic decisions, and their socially determined roles.

What are some of these objectives? We argue that there are often compelling reasons for departures from comprehensive income based on the standard taxation goals of *Efficiency*, *Adequacy*, and, especially, *Equity*.¹⁷²

Of most importance are *Equity* reasons. In many cases, we in fact want the individual income tax to differentially benefit certain types of individuals for whom there are compelling reasons for favorable tax treatment, even when it might be possible to argue that such favorable, targeted tax treatment introduces horizontal and even vertical inequities. The many examples that we discussed of Scandinavian tax practices that target tax preferences toward women vividly illustrate the reasons for such preferential tax treatment for women.

There are other equity considerations as well. We often make selective use of exemptions, deductions, and credits, mainly to allow tax liabilities to be adjusted more precisely to individual circumstances. The most prominent example here is the use of personal exemptions, which eliminate from taxation an amount of income thought necessary to maintain a minimum standard of living. In the absence of a personal exemption, an individual (or a family) with income below the threshold of the specified exemption level would be unduly burdened by having to pay income taxes.¹⁷³ This reasoning suggests that the

172. See Alm, *supra* note 6, at 379, 381, 388 (“[T]here are compelling arguments that can be made for an individual income tax that is in fact imposed on an even narrower tax base, with even more extensive use of the many exclusions, adjustments, deductions, and exemptions that currently populate most all income taxes.”).

173. *Id.* at 388.

number of exemptions should vary with the number of family members. It also suggests that the form of relief should be given as a credit rather than as a deduction because the exemption is necessary to better measure the taxpayer's ability to pay, and so the value of the exemption to the taxpayer should not depend upon the taxpayer's marginal tax rate. For similar reasons, there are also special exemptions for taxpayers who are older, blind, or disabled.¹⁷⁴

A related equity consideration is the adjustment of comprehensive income to better measure a taxpayer's ability to pay. Large, unexpected, and non-routine expenditures reduce an individual's ability to pay, and so these expenditures should appropriately be subtracted from income.¹⁷⁵ These types of expenditures include such items as medical expenditures and property losses, typically and properly treated as an allowable deduction from income (above a threshold). This treatment is not without some controversy. To the extent that an individual has discretion over medical expenditures or even over property losses, then these types of deductions represent voluntary consumption expenditures, which should be included in comprehensive income. The costs of earning income should also be allowed as a deduction from gross income, since comprehensive income is meant to measure one's ability to consume, and any costs of earning income do not increase one's ability to consume; that is, comprehensive income is a net income standard. For example, the costs of maintaining a business office, traveling for business, or purchasing a uniform required for work are properly viewed as necessary business expenses, which should therefore be deducted from H-S income as an expense of earning income. Note that, while this practice may seem straightforward, there are often difficulties in defining legitimate business expenses, especially an "expense" that represents a voluntary consumption expenditure rather than a business-related expense.

Overall, these types of issues indicate that equal comprehensive income across individuals may not, in fact, imply equal ability to pay for these taxpayers (horizontal equity), or that unequal H-S income may not imply differential tax treatment (vertical equity).

There are also *Efficiency* reasons for diverging from comprehensive income. We often exclude a specific tax base that theory suggests

174. *Id.*

175. *Id.* at 389.

should be taxed on the grounds that it is administratively costly to tax (e.g., imputed rental income, unrealized capital gains, in-kind income). Perhaps a more compelling efficiency reason is that market provision of certain types of goods and services may be inefficient due to the presence of externalities, public goods, or asymmetric information considerations. In these cases, favorable income tax treatment may lead to efficiency gains, even if this favorable tax treatment is otherwise inconsistent with the H–S standard. A prominent example of this favorable tax treatment is the tax deduction for charitable donations. If charitable organizations provide goods and services that generate positive externalities or that have public good characteristics (e.g., nonrival and nonexclusive), then private markets will provide inefficiently low levels of these goods and services. In this case, favorable tax treatment via tax deductibility may help achieve efficient levels, even at the cost of violating the H–S standard. Similar (if weaker) arguments may justify tax preferences: for housing, given the positive externality and/or public good aspects of owner-occupied housing; for educational expenses, again given the positive externality and/or public good aspects of education; for health-related expenditures, given the asymmetric information problems that are often present; and the like.

A somewhat different efficiency argument invokes dynamic efficiency considerations. It is widely recognized that the individual income tax has significant and negative effects on savings.¹⁷⁶ An income tax leads to “double taxation” of income, when the income is earned as wages and when any interest income is received.¹⁷⁷ This double taxation clearly reduces the return to saving, thereby creating a dynamic inefficiency through lower capital formation and so lower economic growth. It is in part because of concern that the individual income tax generates too little saving (and so too much consumption) that nearly all proposals for fundamental tax reform seek to replace the income tax with some form of consumption tax.¹⁷⁸

Overall, these types of issues indicate that a “level playing field” across comprehensive income sources may not, in fact, lead to efficient taxation of these income sources. Rather, there are often

176. *Id.* at 390.

177. *Id.*

178. *Id.*

compelling efficiency reasons for differential taxation, via exclusions, adjustments, deductions, and exemptions.

Perhaps surprisingly, there may even be some *Adequacy* justifications for diverging from the H–S standard. If some forms of income are relatively unresponsive to taxes, even if they do not truly represent comprehensive income, then their (heavier) taxation will generate (greater) revenues.

Now it is no doubt the case that the design of taxes is not always grounded in purely economic arguments, and political considerations necessarily enter the calculus of politicians in deciding to diverge from the H–S standard. Even so, we believe that there are many compelling equity, efficiency, and adequacy reasons for an individual income tax that diverges from comprehensive income.

CONCLUSION

At the outset, it should be emphasized that gender inequality, or any inequality for that matter, is generally not a direct result of the legislative wording in our tax laws. Tax rules rarely encompass any longer formally expressed discrimination of certain groups of taxpayers, even though there are still some examples of such tax laws. Instead, a gender-neutral tax system has over the last five decades been considered as the starting point for any tax legislation, and, as such, gender neutrality is often viewed today as an essential legislative design feature.

However, we have argued throughout this paper that a tax may be formally gender-neutral but that this does not necessarily yield a gender-neutral result given that men and women have long been subject to embedded, societal practices—and injustices—such as the norms of women working less hours, being paid lower salaries, and having different ownership and enterprise patterns. The ways in which tax systems interact with decisions, roles, and institutions have profound effects on the tax treatment of men and women. Indeed, the many examples that we have discussed underline that men often receive greater financial support from the state via the tax system, while women often receive greater financial support through the social insurance system. In order to achieve true *gender equality*, these asymmetries need to be mitigated, and such mitigation likely requires *gender non-neutrality* in the tax (and transfer) system. In short, as we have argued throughout, *a gender-neutral income tax is not desirable*

because we wish to use the income tax to achieve many other worthwhile objectives.

However, suppose that an individual believes that she is treated unfairly by the income tax system. What other options might be available to address these perceived inequities, options that do not require fundamental and difficult to implement changes in the tax laws?

We suggest that a possible alternative to promoting complete gender neutrality in the tax code could be to consider affirmative action in some circumstances as a way of fostering gender-neutral outcomes, rather than to aim for a gender-neutral tax code with inequitable outcomes induced by societal and cultural influences. As highlighted by our case study of Scandinavian countries, another option that has proven successful in countries like Sweden and beyond could be to actively employ gender budgeting assessments when introducing new tax legislation and budgets. We hope that the search will continue for other remedies that can help address gender-related inequities in the income tax systems around the world.¹⁷⁹

179. Note that still another option that might be available for mitigating perceived inequities at the individual level could be to implement a “Taxpayer Bill of Rights.” In the United States, the IRS has offered since 2014 a list of taxpayer rights, or fundamental rights to which each taxpayer is entitled. *Taxpayer Bill of Rights*, I.R.S., <https://www.irs.gov/taxpayer-bill-of-rights> [<https://perma.cc/RH6R-WBGG>]. These rights include:

- The Right to Be Informed
- The Right to Quality Service
- The Right to Pay No More Than the Correct Amount of Tax
- The Right to Challenge the IRS’s Position and Be Heard
- The Right to Appeal an IRS Decision in an Independent Forum
- The Right to Finality
- The Right to Privacy
- The Right to Confidentiality
- The Right to Retain Representation
- The Right to a Fair and Just Tax System.

Similar rights have now been implemented in many other countries around the world. The existence of a taxpayer bill of rights means that any individual who believes that she has been unfairly treated by the tax authorities has at least an opportunity to make her case in an independent forum. Note in particular the final right: “The Right to a Fair and Just Tax System.” The ability of an individual to appeal to an independent forum an administrative decision that she sees as unfair and unjust is perhaps an imperfect remedy for gender inequities, given that it applies mainly at the individual level, not the group level. However, it is still a possible remedy for gender bias in taxes, at least at the individual level.