Equality and Non-discrimination in Tax Policy

BOX 1

Progressive and regressive taxes in Brazil

In a visit to Brazil the Special Rapporteur on the Right to Food showed that according to one estimate, families with an income amounting to less than two minimum wages pay an average of 46 per cent of their income in indirect taxes, while families earning over 30 times the minimum wage pay around 16 percent in indirect taxes.

One could similarly compare indirect taxes with the property taxes. In a country with such high level of land concentration, property taxes are set so low that they represent, as a percentage of GDP, 0.01 per cent and, as a percentage of total taxation, only 0.04 per cent.

In contrast, taxes on goods and services, as well as social contributions to pensions and social security accounted for over 70 per cent in 2008.

Normative basis

A fundamental pillar of international human rights law and an immediate obligation of all states is the obligation to guarantee that human rights are exercised without discrimination of any kind. (para. 12)

In revenue-raising policies, this means that any action or omission by the State in this area must not discriminate, either directly or indirectly, against any individual or group (including on the basis of race, gender, disability or economic and social status) or perpetuate discrimination and inequality. (para. 13)

Moreover, in some circumstances, these rights require States to take affirmative action or special measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate systemic or de facto discrimination. (para. 15)

Applications in tax policy

Regressive vs progressive taxes

Revenue collection is a critical tool for States in tackling and redressing systemic discrimination and ensuring equal access to economic, social and cultural rights. (para. 16)

Compliance with [the rights to equality and non-discrimination] may require States to set up a progressive tax system with real redistributive capacity that preserves, and progressively increases, the income of poorer households. (para. 16)

While widening the tax base will in principle provide more resources for satisfying human rights obligations and is, therefore, a positive from a human rights perspective, it is “crucial that taxes be raised and collected in human rights-compliant ways, where those who can least afford it are not asked to pay more.” (para. 55)

A progressive tax system is one where those with more ability to pay, proportionately more taxes than those with less ability to do so. Direct taxes, such as tax on income, wealth, rent or property, are generally more progressive. “Personal income tax is one of the most progressive and important kinds of tax…” (para. 46)

Indirect taxes, such as taxes on consumption – value added tax or sales tax – are generally more regressive. Among the reasons is that they generally constitute a larger proportion of the income of people living in poverty. (para. 46)

“The higher the prevalence of regressive taxes in the mix of revenue-raising sources, the more likely it is that a State will run afoul of the principles of equality and non-discrimination and that the minimum essential levels of rights enjoyment by the poorest will be threatened.” (para. 47) (See Box 1)

In the European Union and other developed countries, direct taxes represent more than 16 per cent of GDP compared with a 12 per cent of GDP for indirect taxes. In Latin America, the respective figures are 5.6 per cent and 9.6 per cent of GDP. This correlates with the situation of Latin American countries where the GINI coefficient after taxes tends to worsen compared to the GINI before taxes, whereas in the developed countries the opposite is the case. Reforms in some countries have made the importance of the relation between
direct and indirect taxes evident. (See Box 2) It is worth noting some direct taxes can be designed in a regressive way. For instance, if they end up being paid only by people with wage income, because tax authorities are less willing or able to tax other types of income. In Latin America, although personal income taxes exist in a number of countries, a common practice is to provide exemptions for capital-based income, thereby tilting the burden to those with labor-based incomes. Likewise, some indirect taxes can be shaped in a progressive way. For instance, value-added taxes can have exemptions for goods consumed by the poorest. Nonetheless, exemption regimes can be quite cumbersome and costly to implement.

Comparison with social-spending programmes

“[T]he negative effect of indirect taxes on the income of people living in or on the verge of poverty can be greater than the positive effect of cash transfers. Such regressive tax structures also restrict the redistributive aspect of social programmes, resulting in them effectively being funded by the very persons whom they seek to benefit.” (para. 47)

In many countries, cash transfers have been adopted as a tool to enable vulnerable and marginalized people to complement their income, oftentimes conditioned upon verifying that they sent their children to school, took a vaccine or realized some other desirable action. As such, they belong in the spending side of the budget and can help improve equality outcomes. While they are undoubtedly welcome from a human rights perspective, to fully examine their equalizing impact it is important to see how they are financed.

Setting the income tax threshold

“A well-placed tax threshold (namely, the income below which an individual or household is exempted from income tax) is also crucial for ensuring that the taxation system does not jeopardize the ability of people living in poverty to enjoy minimum essential levels of economic, social and cultural rights. Unfortunately, in some countries, households are required to pay tax before they earn enough to even meet minimum food basket requirements.” (para. 48)

Levying taxes on people who are already living in poverty before taxes are considered will lead to growing inequality. (See Box 3)

The poverty line and the cost of living can serve as references to determine whether the tax threshold has been set too low. When tax thresholds are set as an absolute number, they should be updated alongside the evolution of inflation.

Discrimination against women

The first link between taxation and women discrimination has to do with levels of public revenue. When the state does not collect sufficient revenue, the first line of cuts tends to be on essential services, which affects women the most: “... women are more likely to be directly dependent on social protection and health systems for at least some period of their lives because of their sexual and reproductive health and maternity-related needs. Women also serve as unpaid alternative care providers when public services are not adequately funded, increasing their time burden and limiting their opportunities to engage in paid work, education, training or leisure, while also negatively affecting their enjoyment of rights such as health, education, participation and social security.” (para. 44)

In addition to their general regressive effects, the following statement signals the potential of indirect taxes to worsen inequality based on gender:

“Women, who tend to use larger portions of their income on basic goods because of gender norms that assign them responsibility for the care of dependents, bear the regressive brunt of consumption taxes.”(para. 46)
There are other ways in which a tax structure can have negative effects on gender relations. In evaluating the impacts, criteria derived from standard welfare economics —namely, that only those policy reforms that make some persons or groups better off without making other persons or groups worse off are economically desirable-- will fall off target. It becomes necessary to adopt policy evaluation criteria that recognize the need to transform the traditional gendered roles in society that are currently inequitable.

“[T]ax structures frequently discriminate against women directly or indirectly, for example by assuming women’s income to be supplemental to their household. This actively disincentivizes wage-earning and therefore could reduce participation in the labour market by women, potentially threatening their right to work.”

“Certain tax arrangements that directly or indirectly disincentivize women’s participation in the labour force or promote the male breadwinner family model could threaten women’s enjoyment of human rights.” (para. 17)

This could be the case, for instance, when there are higher marginal taxes on secondary incomes.

“Policymakers should be aware of the extent to which tax policies, such as the treatment of income derived from jointly-owned assets of married couples, strengthen or break down gender inequalities, or discriminate against different types of households.” (para. 49)

Processes for assessing differential impacts

“States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those who suffer from structural discrimination.” (para. 17)

One way to establish the differential effects of tax policy is to have institutionalized procedures for determining their structural impacts.

**Tax abuse**

“[H]igh levels of tax abuse undermine the principles of equality and non-discrimination.” (para. 60) “[I]f States do not tackle tax abuse, they are likely to be disproportionately benefiting wealthy individuals to the detriment of the most disadvantaged. Monitoring, preventing and punishing abuse is therefore essential in order to . . . improve the distributive effects of tax systems.” (para. 60)

This is because:

a. “evaders end up paying less than taxpayers with the same – or less – capacity to pay,” (para. 60) which flies in the face of the need for progressivity in the tax system.

b. “tax abuse forces Governments to raise revenue from other sources: often regressive taxes, the burden of which falls hardest on the poor.” (para. 60) Increasing the tax burden on the poor will erode their incomes, running counter to efforts to reduce inequality.

c. “High net-worth individuals and large corporations ... have a far greater ability to evade taxes as they are able to pay tax advisers, lawyers and accountants (who may sometimes provide inappropriate advice and assistance) and to open undeclared foreign bank accounts in low-tax jurisdictions.” (para. 60) The notion of illicit financial flows comprises, among other things, amounts evaded by companies through “tax optimization” schemes that have no economic or business rationale, but just an intention to evade or avoid taxes. Tax abuse is in these cases a violation by not only the country where the revenue could have been collected, but also the country(ies) that enabled the scheme.7

**BOX 3**

**The income threshold to start collecting taxes**

In Zimbabwe the tax-freeband for income from employment was set at USD 150 a month when the economy was dollarised in 2009. Since 2010 it sits at USD 175 a month.

But the amount required to purchase food and other essentials for a family of five to be deemed ‘not poor’ cost USD 477 in August 2010. The Zimbabwe Congress of Trade Unions raised the issue with the Ministry of Finance and advocated for a USD 500 tax threshold.

In Malawi, in 2013, at a time when the government recently raised the tax-free threshold from the equivalent of USD 35 to the equivalent of USD 46 per month, the average cost of living for a low-income household of six living in urban Malawi was estimated at the equivalent of USD 225, while food costs alone at USD 133.6
Questions for reflection

• What proportion of tax revenue comes from indirect vs. direct taxes? Are there features that make the indirect taxes less regressive, and how do they work in practice? Are there measures that make the direct taxes less progressive, and how do they work in practice? When the government considers ways to increase tax revenue, does it factor in whether they will make the system less or more progressive?
• Are there social programmes or cash transfers? Do their equalizing impacts extend, balance or get offset by the effects of tax measures in place to fund them?
• At what level is the income tax threshold set, and how does that compare to the poverty line or other indicators of income? Is the level high enough to not limit the ability of the poorest to enjoy minimum levels of economic, social and cultural rights?
• Is the revenue enough to cover public service provision otherwise likely to be borne by women? Do indirect taxes, based on the goods affected or exempted, have a differential gender impact? Are there other tax measures that, by assuming a certain gender role, end up entrenching structural gender inequalities?
• Are there processes in place to evaluate the differential impacts of tax policies, with the input of those affected? How do they work?
• How much tax abuse is there and who derives benefits from it?

Endnotes

2 Preamble to the Charter of the United Nations and Arts. 1, para. 3, and 55; Universal Declaration of Human Rights, art. 2, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 2; International Covenant on Civil and Political Rights, arts. 2 and 26; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 1; and Convention on the Rights of Persons with Disabilities, art. 2.
3 A/HRC/13/33/Add.6, para. 36.
4 The GINI coefficient measures inequality. It goes up when inequality increases and down as inequality decreases.
6 Christian Aid 2014. Africa Rising?
7 See also fourth advocacy tool in this series: “Tax policy and international cooperation and assistance for the achievement of human rights.”