

To Tax or Not to Tax? Tampon Taxes and Gender (In)Equality: The Cyprus Case-Study

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Abstract

The ‘tampon tax’ is a consumption based tax, imposed on products of menstrual hygiene, which has come to the centre of attention worldwide as feminist activists keep protesting against its imposition. This article suggests that the VAT directive itself violates the charter of fundamental rights of the EU, as it obliges the member States to impose at least 5% VAT on sanitary products, the consequence of that being that the domestic law implementing the directive necessarily violates the charter as well. Although Cyprus imposes the lowest VAT rate possible, the level of awareness in the Republic as well as the cover of the topic by the local media is surprisingly low compared to the international evolutions in the field, while its domestic law is violating gender equality, despite the correct implementation of the directive.

Keywords: tampon tax, gender inequality, discrimination, VAT Directive, taxation

Introduction

Back in 1789, Benjamin Franklin’s famous quote states, ‘in this world nothing can be said to be certain, except death and taxes’.² According to this opinion it is sure that we will die and that at some point of our life, we will be obliged to pay taxes.

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² Benjamin Franklin in A Jay (ed.), ‘The Oxford dictionary of political quotations’ Oxford University Press (1996).

While taxes are unavoidable for everyone, a portion of the population pays more. Moreover, and most important, this portion sometimes remains in bliss because certain people are ignorant. We are talking about women and a specific tax they bear the burden to pay, the so-called ‘tampon tax’.

This tax raises serious issues of gender equality having a major connection to human rights. Additionally, there is a strong interrelation with the issue of access to feminine hygiene products and its consequences, given that menstruation is still surrounded by multiple stereotypes and is a taboo even though we have entered the second decade of the 2000.

For this article Cyprus will constitute our sample country because despite the fact that it is one of the two countries in the European Union (EU) that imposes 5% VAT on feminine hygiene products,³ this was not always the case and our research has shown that there has not been much public debate about this issue neither has it attracted much media attention. Hence, our first goal (and hope) is to raise the level of awareness in Cyprus. Furthermore, Cyprus is an EU member-state. Thus, we will have the opportunity to examine the Cyprus domestic law, as it has implemented the critical EU VAT Directive,⁴ under the prism of the Charter of Fundamental Rights (the Charter).⁵ Such an examination, according to our best knowledge, is taking place for the first time in academic literature. Part I will be dedicated to the international movements in this field after shortly explaining the notion of ‘tampon tax’. In Part II we will analyse the Cypriot domestic law arguing that although the Republic has implemented the directive correctly, there are severe issues regarding its compatibility with the Charter and the Treaty of the Functioning of the European Union (TFEU), arising from the compatibility of the directive itself with the latter. In the last part of this article, we will argue in favour of the repeal of the ‘tampon tax’ in Cyprus from both a legal and a social perspective.

What is the ‘Tampon Tax’?

Before starting any analysis it is useful to understand the term ‘tampon tax’. These authors use it as a broad term which includes the value-added tax (VAT) in Europe, the sales tax in the US, as well as the Goods and Services Tax (GST) and other taxes of the same nature imposed on menstrual hygiene products. Thus, it is a consump-

³ The other country is the UK.

⁴ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

⁵ Charter of Fundamental Rights of the European Union of 26 October 2012, 2012/C 326/02.

tion-based tax and refers not only to tampons but also to sanitary pants, napkins, washable underwear and disposable menstrual cups.

Most countries tax the products more heavily which can be considered as luxury⁶ items and impose a reduced rate or create exemptions for the necessary ones.⁷ Undoubtedly, products of menstrual hygiene cannot be included in the first category mentioned, simply because menstruation cannot be avoided: It is not a matter of choice; either you belong in this part of the population who menstruates or not. Nonetheless, in many countries worldwide they are taxed at a higher rate than necessary. A detailed analysis of the reasons behind this phenomenon is beyond the scope of this article but it is interesting to note that Viagra, the closest comparable product designated to cure erectile dysfunction is exempted in almost all states of the US^{8,9}, while the latter cannot be said for products of menstrual hygiene, despite their connection to women's health. Fortunately, 'tampon taxes' have come to the centre of attention worldwide both by the media and the academic literature.

The International Scene: It is More than a Simple Tax

The year 2016 could easily gain a title named 'The Big Bang Year against Tampon Tax', signifying the commencement of huge movements of feminist activists protesting against its imposition and asking for legal intervention with a single purpose: the abolition of indirect taxes imposed on products of feminine hygiene. In London, Kiran Gandhi runs the London marathon while menstruating, letting the blood flow freely and *Cosmopolitan* (including others) applauds this, considering that an action of emancipation.¹⁰ In the US, the *Time Magazine* declares 2016 as 'Year of the Period' and regards as wins of the global movement legislative amendments which eliminate the tax of menstrual products in New York State and Illi-

⁶ Alcohol and tobacco products are characteristic examples of this category. In Cyprus, bottled water and other industrial and fruit drinks are subject to a reduced rate of 5% while beverages, alcoholic drinks, beer and wine are subject to the 'normal' 19% VAT, considered as luxury products according to Annex V, catalogue B, para. (10)(b) of the law L.95(I)/2000 as amended by the law L.142(I)/2007.

⁷ Foodstuff and pharmaceutical products are typically included in this category. This is also the case for Cyprus.

⁸ With the exception of Illinois.

⁹ Gwenyth S. Gamble Jarvi, Thank Hefner Erectile Dysfunction Is A Medical Condition: A Period Piece (2018) 15(2) *Pittsburgh Tax Review* 151, available at DOI 10.5195/taxreview.2018.72, <http://taxreview.law.pitt.edu>.

¹⁰ Helin Jung, '26-Year-Old Woman Free Bleeds Proudly Through Her First Marathon' *COSMOPOLITAN* (August 6, 2015), available at <http://www.cosmopolitan.com/healthfitness/q-and-a/a44392/free-bleeding-marathoner-kiran-gandhi/> [<https://perma.cc/4C9TUX29>].

nois.¹¹ Simultaneously, *New York Times* in an editorial titled ‘End the Tampon Tax’ raise the issue of accessibility to products of feminine hygiene, arguing that the elimination of the tax is a primary step so as to become more affordable.¹² The issue reaches the White House when former President Barack Obama, when interviewed by a famous YouTuber, replied: ‘I have to tell you, I have no idea why States would tax these [tampons] as luxury items. I suspect it is because men were making the laws when those taxes were passed. And I think it is pretty sensible for women in those States that you just mentioned to work to get those taxes removed.’¹³

His answer, clearly supportive indicates the problem of women representation but fails to understand the cultural roots of the issue that regard menstruation as unclean and the uneasiness around it.¹⁴ Meanwhile, online petitions like those launched by Jennifer Weiss-Wolf of the Brennan Center for Justice at New York University along with *Cosmopolitan*¹⁵ in the US and by Laura Coryton, a young British activist in the UK¹⁶ saw massive success gaining thousands of signatures¹⁷ indicating that the ‘tampon tax’ is not only a matter of collection of revenues but has a strong social background, being addressed as a matter of unfairness and discrimination against women which has lasted for too long and it is high time that it come to an end.

The increase of public awareness and the significant pressure created led to the abolition of ‘tampon taxes’ in Canada,¹⁸ after a long political debate in Austral-

¹¹ Maya Rhodan, ‘Tampon Tax Ends After ‘Year of the Period’, *TIME* (June 3, 2016), available at <http://time.com/4355164/tampon-tax-ends-in-states-after-year-of-the-period> [<https://perma.cc/A7ZR-PH3J>]

¹² The Editorial Board, ‘End the Tampon Tax’ *N.Y. TIMES* (February 8, 2016), available at <https://www.nytimes.com/2016/02/08/opinion/end-the-tampon-tax.html> [<https://perma.cc/CSR9-KG3F>].

¹³ Ingrid Nilsen Interviews Obama, YouTUBE (January 16, 2016), available at <https://youtu.be/K2OaaWjB6S8> [<https://perma.cc/4CE4-EKSA>].

¹⁴ Bridget J. Crawford and Emily Gold Waldman, *The Unconstitutional Tampon tax 2018* 53 *University of Richmond Law Review* 439.

¹⁵ Jennifer Weiss-Wolf & *Cosmopolitan Magazine*, ‘No Tax on Tampons: Stop Taxing Our Periods! Period’, *CHANGE.ORG*, available at <https://www.change.org/p/u-s-state-legislators-stop-taxing-our-periods-period> [<https://perma.cc/6X8T-3FJS>].

¹⁶ Laura Coryton, ‘Stop taxing Periods. Period#EndTamponTax’ *CHANGE.ORG*, available at <https://www.change.org/p/george-osborne-stop-taxing-periods-period>.

¹⁷ The first gathered 71,906 supporters and the second 318,498 supporters.

¹⁸ Jason Fekete, ‘Federal Government Taking the Tax off Tampons and Other Feminine Hygiene Products, Effective July 1’ *NAT’L POST* (May 28, 2015), available at <http://news.nationalpost.com/news/canada/federal-government-taking-the-tax-off-tampons-and-other-feminine-hygiene-products-effective-july-1> [<https://perma.cc/29KY-KSL9>].

ia,¹⁹ in India,²⁰ in Malaysia,²¹ in Ireland, Jamaica, Nigeria and Tanzania²² as well as some States in the US.^{23,24} In Europe, countries cannot opt for the repeal of the ‘tampon tax’ because of the provisions of the²⁵ EU VAT Directive which will be analysed shortly. However, some of those have opted for a reduced VAT in the light of the global evolutions. Cyprus and the UK impose the lowest rate possible, i.e. 5%, followed by France (5.5%),²⁶ while Spain and Germany recently decided for a reduction.²⁷

In the first part of this article the focus was on the most important activism movements on an international level and the consequent legislative reactions in an effort to show that this tax and more specifically the request to be repealed shares a strong connection with the idea of fairness and justice. In this part, we will first examine the impact of the global activism on Cyprus and thereafter we will argue in favour of its repeal as a violation of the EU Charter Fundamental Rights and of the EU treaties.

¹⁹ Eli Meixler, ‘Australia Ditches ‘Tampon Tax’ after 18 Years of Outrage From Women’s Rights Groups’ TIME (October 3, 2018) available at <https://time.com/5413585/australia-ends-tampon-tax-gst/>.

²⁰ Karen Zraick, ‘22 States Considered Eliminating the ‘Tampon Tax’ this Year: Here’s what Happened’ New York Times (July 12, 2019), available at <https://www.nytimes.com/2019/07/12/us/tampon-tax.html>.

²¹ Karen Zraick, ‘22 States Considered Eliminating the ‘Tampon Tax’ this Year: Here’s what Happened’ New York Times (July 12, 2019), available at <https://www.nytimes.com/2019/07/12/us/tampon-tax.html>.

²² Christina Do, Helen Hodgson and Nicole Wilson-Rogers, ‘The Tax on Feminine Hygiene Products: Is This Reasonable Policy’ (2017) 32 Australian tax Forum 521.

²³ Connecticut, Florida, Maryland, Massachusetts, Pennsylvania, Minnesota, New Jersey, Illinois and New York.

²⁴ Maria Alvarez Del Vayo and Ena Belmonte, ‘Half of the European countries levy the same VAT on sanitary towels and tampons as on tobacco, beer and wine’ EUROPEAN DATA JOURNALISM NETWORK (July 17, 2019), available at <https://www.europeandatajournalism.eu/eng/News/Data-news/Half-of-the-European-countries-levy-the-same-VAT-on-sanitary-towels-and-tampons-as-on-tobacco-beer-and-wine>.

²⁵ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

²⁶ Maria Alvarez Del Vayo and Ena Belmonte, ‘Half of the European countries levy the same VAT on sanitary towels and tampons as on tobacco, beer and wine’ EUROPEAN DATA JOURNALISM NETWORK (July 17, 2019), available at <https://www.europeandatajournalism.eu/eng/News/Data-news/Half-of-the-European-countries-levy-the-same-VAT-on-sanitary-towels-and-tampons-as-on-tobacco-beer-and-wine>.

²⁷ The Spanish government announced a VAT reduction in 2019 while the reduction in Germany took place from January 1st 2020.

Cyprus As Part of The International Evolutions: The Untouched

It has already been mentioned above that Cyprus is the one out of two countries that impose the lowest VAT possible in the EU. Hence, when we started our research we were expecting the Republic to be deeply influenced by the evolutions worldwide. Surprisingly, we could find no traces of public or political debate regarding this issue and focused our efforts on the media coverage. Only six articles in the electronic versions of the big Cypriot newspapers were dedicated, and none of those was relevant to the domestic news, where instead their coverage was on the reforms in the legal field. One article in CyprusNews.eu which concerns the ‘tampon tax’ in Germany just contains the link to the original source which was a Greek newspaper.²⁸ Interestingly, the article names the tax as ‘bloody tax’ which gives the reader the impression of irony and reduces the significance of the topic at stake. Articles in CYtoday²⁹ and philenews³⁰ cover the repeal of the tax in Australia, SIGMALIVE communicates the repeal request of a Turkish parliamentary member³¹ and CyprusMail³² and POLITIS³³ the developments in the EU. This indicates that

²⁸ Cyprus.eu, ‘Germany: The ‘bloody tax’ makes women furious’ (May 30,2019), available at <https://cyprusnews.eu/protothema-kosmos/9090590-γερμανία-ο-«φόρος-αίματος»-ξεσηκώνει-τις-γυναίκες.html>, which contains the link to Mina Aggelini, ‘Germany: The ‘bloody tax’ makes women furious’ TO PROTO THEMA (May 30,2019), (Γερμανία: Ο «φόρος αίματος» ξεσηκώνει τις γυναίκες’) (ΤΟ ΠΡΩΤΟ ΘΕΜΑ) (30 Μαΐου 2019) (in Greek), https://www.protothema.gr/world/article/895302/germania-o-foros-aimatos-xesikonei-tis-gunaikes/?utm_source=rss.

²⁹ CYtoday. ‘The controversial tax which divides a country for almost 20 years’, (October 3, 2018), available at <http://www.cytoday.eu/index.php/index.php?id=17&nid=10715315>, (‘Ο αμφιλεγόμενος φόρος που διχάζει μια χώρα εδώ και σχεδόν 20 χρόνια’) (CYtoday) (3 Οκτωβρίου 2018) (in Greek), <http://www.cytoday.eu/index.php/index.php?id=17&nid=10715315>.

³⁰ Philenews, Australia: Repeals the ‘tampon tax’ (October 3, 2018), available at <http://www.philenews.com/eidiseis/kosmos/article/589228/afstralia-katargi-ton-foro-ton-tampon>, (Αυστραλία: Καταργεί τον «φόρο των ταμπόν») (philenews) (3 Οκτωβρίου 2018) (in Greek), <http://www.philenews.com/eidiseis/kosmos/article/589228/afstralia-katargi-ton-foro-ton-tampon>.

³¹ SIGMALIVE ‘Parliamentary member in Turkey requests the repeal of tax on sanitary napkins’, (February 14,2019), available at <https://www.signalive.com/news/international/554691/vouleftis-stin-tourkia-zita-na-katargithei-o-foros-stis-servietes>, (Βουλευτής στην Τουρκία ζητά να καταργηθεί ο φόρος στις σερβιέτες’) (SIGMALIVE)(14 Φεβρουαρίου 2019)(in Greek), <https://www.signalive.com/news/international/554691/vouleftis-stin-tourkia-zita-na-katargithei-o-foros-stis-servietes>.

³² Francesco Guarascio, ‘EU to give states more powers on VAT rates to tackle fraud’ CyprusMail (April 7,2016) available at <https://cyprus-mail.com/2016/04/07/eu-to-give-states-more-powers-on-vat-rates-to-tackle-fraud/>, Alastar Macdonald, ‘Cameron declares Brussels victory to end ‘tampon tax’ CyprusMail (March 17,2016), available at <https://cyprus-mail.com/2016/03/17/cameron-declares-brussels-victory-to-end-tampon-tax/>.

³³ POLITIS ‘The EU allows for reduction or repeal of VAT in some products’ (January 1,2018), available at <https://politis.com.cy/politis-news/oikonomia/perithorio-meiosis-toy-fpa-i-katargisis-se-ka>

the level of public awareness which would contribute to fertile dialogue is extremely low and this is the cause behind the inexistence of movements of activism in the Republic. We reached the same conclusion after conducting empirical research based on questionnaires, as will be analysed below. It could be argued that Cypriots do not have to fight for a reduction in the light of the low rate of the domestic law. With outmost respect, the authors of this article do not believe that this is the case. The examination of the global scene has revealed that the main request of the movements is the repeal and not simply the reduction of ‘tampon taxes’ and if more well-known, they could bring the necessary inspirational power at a societal level.

Method of our Research

Many of the questionnaires have been disseminated to first, second and third year undergraduate students at the University of Nicosia. The students had 30 minutes to fill in the questionnaires after they had a two hours exam. Additionally, the researchers had sent the questionnaire to the e-mails of their own personal contacts. The majority of the respondents work as lawyers, accountants, secretaries and insurers and they at least had a five-year working experience. The questionnaire consisted of 16 questions and the researchers gave the opportunity to the respondents the opportunity to answer some multiple-choice questions and to provide answers that are more extensive by responding to some open-ended questions. By offering the chance to the respondents to answer the open-ended questions we gathered some valuable information regarding the experiences they had during their school and university years.

Findings of our Research

The first important question which had been asked to the respondents was the following: ‘How familiar are you with the topic of tampon tax?’ 75% of the respondents had answered that they are not familiar at all with the tampon taxes issue, 20% of the respondents were very little familiar with this important topic and only 5% knew many things about this subject.

In relation to the second question of the questionnaire, ‘How would you describe the level of the awareness for the topic of tampon taxes from the Cypriot media?’, that had been disseminated to the respondents, the vast majority of them

poia-proionta-dinei-i-ee/, (Περιθώριο μείωσης του ΦΠΑ ή κατάργησης σε κάποια προϊόντα δίνει η ΕΕ’) (ΠΟΛΙΤΗΣ) (1 Ιανουαρίου 2018) (in Greek), <https://politis.com.cy/politis-news/oikonomia/perithorio-meiosis-toy-fpa-i-katargisis-se-kapoia-proionta-dinei-i-ee/>.

(90%) answered that the level of the awareness is at minimum levels and 10% argued that occasionally some of the television and radio programmes make sporadic statements and provide little information about this important topic. Here, it is worth mentioning that many of the respondents argued that while many of the TV and radio programmes in Cyprus spend many hours of their daily programmes to analyse and deal with sports topics such as the 'card fan topic' that are mainly connected with men and totally neglect to deal with, and analyse important topics that are related to women such as the 'tampon tax subject', the sexual harassment issues, etc.

The third question of the questionnaire was the following: 'Do you believe that the 'tampon tax' is sexist?' 70% of the respondents highly believe that the tampon tax is a sexist tax. Other respondents express the opinion that the tampon tax is a bit sexist but that there are additional reasons for its imposition from the government, irrelevant to sexist or nonsexist behaviours.

In another interesting and important question for this research: ('Do you believe that feminine hygiene products during the menstruation phase are luxury products?') The vast majority of the respondents (75%) shared the opinion that these products must not under any circumstances be considered as luxury products since menstruation is something that you cannot avoid and additionally that these products are more than necessary to the women to cover their basic needs. As one of the respondents had put it, 'These products are not and must not be considered by the governments as luxury products since the menstruation is an unavoidable thing and all women have it'. A small proportion of the respondents (15%) argued that some of the feminine hygiene items are a bit of a luxury of products and only a very small percentage of the total sample (5%) shares the idea that these products must be considered luxury goods.

Another fundamental question posed to the women that participated in this important research had been the following: 'What is the main reason behind the taxation of the female hygiene products during the menstruation period?.' The majority of the women share the view that the main reason behind the taxation of these products is that very few women participate in the law making bodies that enact the legislation concerning this important topic. Additionally, other participants pointed out the fact that the Cypriot government has an urgent need to increase the taxes so as to cope with the economic crisis. As some of the participants have put it, 'Cypriot government needs to collect more and more taxes to cope with the economic

crisis and the easiest way is to heavily tax the female hygiene products in order to raise the level of taxes’.

Additionally, the respondents pointed out that there are no powerful organisations and movements that would protect the rights of the Cypriot women and this fact reinforces the decisions and the initiative of the Cypriot governments. The absence of pressure on behalf of the society reinforces the decisions and the initiatives of the Cypriot governments to impose heavy taxes on hygiene products because they are sure that they will not have any strong reactions or heavy protests in relation to the imposition of such taxes. Some of the respondents were of the opinion that because the legislation has been enacted mainly by men, these subjects do not take into consideration the interests and the rights of the women when they draft and enact the various laws. On the contrary, if in these legislative bodies the majority of the members had been women, then they would have drafted better laws which would have taken into account the inequalities and the discriminations which women have to suffer in everyday life.

Moreover, in another fundamental question of the research all the respondents unanimously said that they have felt uncomfortable because of their menstruation. In other words, there were some incidents that have occurred that made them feel badly because of their menstruation. Some of the respondents said that during their high school days when they had menstruation there were some spots on their clothes. When the schoolmates had noticed the stains and the spots, they started laughing loudly indicating the marks to the other pupils and all together the make fun of these girls, who had to face this unpleasant situation. Moreover, some of the respondents indicated incidents where some teachers have been involved in the unpleasant incident. Three of the respondents said that during the primary school days when they had menstruation for the first time, all their clothes had blood.

When they stood up to go out from the classroom the teachers pointed out the blood that the girls had on their clothes and they yelled to the students saying the following: ‘Where are you going like this? You cannot see that you have menstruation and your clothes have been covered up with blood? Most significantly, some of the respondents indicated incidents when teachers had been involved in the unpleasant event. Three of the respondents said that during their primary school days, when they were menstruating for the first time, there was blood all over their clothes. When they stood up, the teachers themselves pointed out the blood and yelled at them making the following comment: ‘Where are you going like this?’

Don't you see that you are menstruating and your clothes have been covered up with blood?' As the respondents have pointed out this had been a very awkward and humiliating moment for them since the other pupils started laughing and make fun of them. Additionally they argued that the teachers had not handled this particular incident with the appropriate manner since they should not have yelled at them in front of the whole class.

Now, turning to another important question that has been asked to the respondents, 'If you have access to feminine hygiene products during the menstruation period (and the financial ability to buy these particular products)?' Here the majority of the respondents (95%) said that they have access, since all the major supermarkets and the small convenience stores offer a high variety of these products.

But some of the respondents (30%) said that after the economic crisis they had to reduce the money they spent on hygiene products because they had to save money to spend them on other needs (electricity bills, travel expenses etc.). Additionally some of the respondents argued that if the government would have lowered the taxes on these products, then the women would have to pay a reduced price.

Additionally in a question closely related with the aforementioned question, 'If you are aware of someone that does not have access to products that protect the feminine hygiene during the menstruation period?' Some of the respondents answered that they knew of women who could not afford buying these particular products due to financial problems. 15% of the respondents mentioned that after the economic crisis they had some friends or relatives that faced some difficulties and could not, for a limited period of time buy hygiene products. Additionally another group of respondents mentioned the fact that they had some friends that had been fired from their jobs and for a period ranging from four months to twelve months they could not cover their needs. The majority of the respondents added to the previous that on many instances, they financially supported to a certain extent these women that could not afford buying the hygiene products because they were of the opinion that such products must be considered necessities and every woman must have access and financial ability to buy these products.

Now turning to the important question, 'Whether you were obliged to miss some school, university classes or working days because of your menstruation and what was the duration of this absence?' the totality of the respondents admitted that they could not attend school or university classes or their work because of their menstruation. Once more, a high percentage (95%) of the respondents said that

they had to miss, for at least one day, school and university classes because of their menstruation. The main reason for this absence was the unbearable pain that they felt because of the menstruation. Other reasons cited were that they did not feel well and they had a general weakness and dizziness because of the menstruation, the large blood flow and the feeling of embarrassment they feel because of this situation.

An interrelated question, in conjunction with the above mentioned inquiry that had been asked to the participants was, 'whether they knew another woman that had to miss school or university classes or women that had to miss work because of their menstruation'. The totality of the respondents knew at least three friends or relatives that had to miss school or university classes because of their menstruation. Additionally, many respondents that work as lawyers, accountants or secretaries argued that they knew at least two female colleagues that had to take time off work because of the intolerable pain they felt because of their menstruation. Some of the participants (15%) indicated that they knew female colleagues that had to take five days off work due to the fact that they suffered from intense pain because of their menstruation.

Moreover, the vast majority of the respondents (85%) said that they do not feel comfortable to speak on matters that are related to their menstruation in front of men. Other participants (15%) had indicated that they feel comfortable to speak on issues that are related with their menstruation only to certain men that they know that they will not laugh or make fun of this situation. The main reason for not feeling comfortable to discuss such issues, is because the majority of men consider this particular topic disgusting and if any woman tries to discuss it, they will make fun of her or they will show the feeling of disgust and annoyance. Additionally another important reason that has been cited by the respondents is that their parents or relatives that are older than them indicated to these women that it is not appropriate to discuss such an issue with men. Moreover many mothers have several times told their girls that they should be ashamed of their menstruation and that they must not speak about this topic to other people and especially men because these people will malign them.

Lastly, the totality of the participants, have mentioned that they have heard negative comments about their menstruation. For instance, many participants that have a relationship, have mentioned that when they have complaining about something to their boyfriends or to their husbands these men have answered back

using the following phrases: ‘You have your menstruation again and this is the only reason why you complain to me’, ‘Oh my God, you have your menstruation again’, ‘For God’s sake, you have menstruation and that is the reason that we cannot make a sensible discussion again we cannot make a sensible discussion. I will wait until your menstruation period ends in order to discuss this matter’. Moreover, many older women have instructed these women not to mention to others that they have their menstruation because this is inappropriate and the woman who proceeds to such action loses her self-respect and dignity. Additionally, some respondents mentioned incidents during their secondary and high school years that many fathers were mad at their daughters because they have not concealed the sanitary napkins they were holding. On top of this, some respondents have mentioned several incidents where the schoolmates of these girls have made negative comments and laugh at them because of their menstruation.

The answers of the respondents confirm that the level of awareness in Cyprus is extremely low and although women regard ‘tampon taxes’ as sexist, they are still unable to even mention issues pertaining to menstruation because of the stereotypes and taboos surrounding it. According to the authors of this article, the societal pressure in conjunction with the abolition of the taxes at stake would be the most useful tools in the battle against the menstruation-related taboos.

The Legal Framework in Cyprus: Who is to Blame?

Until 1993, Cyprus had a uniform VAT rate of 5%³⁴ and no reduced rate which increased to 8%, which remained stable until 2000. On 1st July 2000 the Republic adopted a two-rates VAT system with the normal rate being 10% until June 2002,³⁵ a percentage which climbed to 13% for the rest of the months of the year 2002 and further increased in 2003 to reach 15%. The reduced rate had always been 5% during those years³⁶ while Cyprus did not impose any VAT for some goods and services.³⁷ Products of menstrual hygiene did not enjoy the privileged status of the second category until 2007 and the amendment of the law L.95(I)/2000 by the law L. 142(I)/2007³⁸ which constitutes the current regulatory framework. Subsequent

³⁴ Article 22 of Part IV of the Law L. 254/90.

³⁵ Article 17 of Part II of the Law L. 95(I)/2000.

³⁶ Article 18 of Part II of the Law L.95(I)/2000.

³⁷ Annex VI of the Law L.95(I)/2000.

³⁸ Annex V, catalogue B, para. 14 of the Law N.95(I)/2000 as amended by the Law N.142(I)/2007.

legal amendments did not have any effect on these products and thus there is no need to be analysed.

Cyprus is an EU member State since 1st May 2004. The amendment of the domestic law in 2007 took place so as the Republic implement the EU VAT Directive³⁹ and comply with its EU sourced obligations. However, it must be noted that Article 98 of the directive⁴⁰ just offers member states the discretion to impose a reduced tax rate on the products and services listed in Annex III,⁴¹ one of them being products used for contraception and sanitary protection without though obliging them. Contrariwise, it imposes member states the obligation not to impose a tax rate lower than 5%⁴² apart from those that are exempted⁴³ or should be subject to zero rate according to the directive. Thus, it was a choice of the Republic to impose the lowest rate possible understanding the necessity of the products in question, even without the social pressure that other countries met.

Nonetheless, the implementation of the directive does not automatically mean non-violation of the EU law. The CJEU in the FII case⁴⁴ when assessing the UK underlying foreign tax credit system ruled that in order not to violate the EU law it is not sufficient that a country complies with the secondary EU law⁴⁵ although it must also comply with the requirements imposed by the treaty provisions. The court referred to the treaty because of the nature of that case which involved the fundamental freedoms but of course the same must be admitted for the compliance with the charter. Cyprus' domestic law violates both the treaties⁴⁶ and the charter⁴⁷ because it mirrors the VAT directive provisions and the latter do not comply with the EU primary law.

³⁹ Council Directive 2006/112/EC, supra note 3.

⁴⁰ Council Directive 2006/112, supra note 3, Article 98.

⁴¹ *Ibid.* at Annex III, case (3).

⁴² *Ibid.* at Article 99.

⁴³ *Ibid.* at Title IX.

⁴⁴ Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753 (CJEU) at [45].

⁴⁵ In that case the Parent-Subsidiary Directive, Council Directive 90/435/EEC (recast as 2011/96/EU).

⁴⁶ Consolidated version of the Treaty on the Functioning of the European Union of 13 December 2007, 2008/C 115/01 and Treaty of Lisbon of 17 December 2007, 2007/C 306/01.

⁴⁷ Charter of Fundamental Rights of the European Union, supra note 4.

Gender Equality

Equality between men and women is one of the objectives of the EU according to Articles 2 and 3(3) of the Treaty on European Union (TEU).⁴⁸ Additionally, this fundamental value is protected under the charter⁴⁹ which prohibits any form of discrimination in basis of sex, while Article 8 of the TFEU mandates that the EU take measures so as to eliminate discrimination and promote gender equality,⁵⁰ while Article 19 of the TFEU⁵¹ provides for the necessary authorisation so as the EU adopt active measures to combat any form of discrimination including that based on sex. Article 153 of the TFEU⁵² wants to ensure equal opportunities and treatment between men and women in the labour environment and Article 157 authorises positive measures with the purpose of achieving that goal.⁵³

It is true that the ‘tampon tax’ is a *prima facie* neutral tax, which does not contain any express gender biases.⁵⁴ This does not mean that it is not discriminatory. Such an illusion disappears if we take into account the final consumer of those products and this can be no other than women. Products of feminine hygiene are designated for a specific purpose: the usage during menstruation and only female bodies perform that function. Indeed, in view of the lack of any close comparable product which can be used exclusively by men with the aim of assisting them with an involuntary function of the human body,^{55, 56} the ‘tampon tax’ creates an indirect discriminatory effect against women, who end up bear an extra tax burden. Although there is no case law on ‘tampon taxes’, both domestically and at an EU level, indirect discriminations are a well-known field for the CJEU. Even back in 1986 in

⁴⁸ Consolidated version of the Treaty on European Union of 13 December 2007, 2008/C 115/01, Article 2 and Article 3(3).

⁴⁹ Charter of Fundamental Rights of the European Union, *supra* note 4, Article 21 and 23.

⁵⁰ Consolidated version of the Treaty on the Functioning of the European Union, *supra* note 46, Article 8.

⁵¹ Consolidated version of the Treaty on the Functioning of the European Union, *supra* note 46, Article 19.

⁵² *Ibid.* at Article 153.

⁵³ *Ibid.* at 157.

⁵⁴ Bridget J. Crawford & Carla Spivack, ‘Tampon Taxes, Discrimination, and Human Rights’ [2017] *Wisconsin Law Review* 491, available at 491, <http://digitalcommons.pace.edu/lawfaculty/1070/>.

⁵⁵ Bridget J. Crawford & Carla Spivack, ‘Tampon Taxes, Discrimination, and Human Rights’ [2017] *Wisconsin Law Review* 491, available at 491, <http://digitalcommons.pace.edu/lawfaculty/1070/>.

⁵⁶ Viagra is sometimes suggested as the closest comparable product. However, erectile dysfunction is a medical condition. Despite the connection of feminine hygiene with the right to health, menstruation is a biological function of the female body and thus the authors of this article are of the opinion that Viagra cannot be a good comparator, despite being the closest in view of the different nature of the conditions they are designed to be used for.

Bilka,⁵⁷ the court did not hesitate to recognise the indirect discrimination caused by a pension scheme excluding part-time occupants on the basis that women were the majority of part-time workers because the measure could not be explained by factors which exclude any discrimination on grounds of sex. This emblematic decision indicates the continuous willingness of the court to adopt a ‘substance over form’ approach and although someone should be careful when predicting the CJEU decisions, it seems to these authors that such an approach is embedded in the CJEU legal tradition and would comfortably be adopted had ‘tampon taxes’ reached the court room especially in view of the fact that the court has accepted that taxation measures can violate the gender equality principle.⁵⁸

The gender equality case law is abundant and these authors want to draw on a specific case, i.e. the *Test-Achats*⁵⁹ because the ratio of the court as well as its final decision provides fertile ground for the invalidation of the obligatory imposition of a minimum 5% VAT on sanitary products. In this case, the CJEU declared the invalidity of Article 5(2) of the Goods and Services Directive⁶⁰ as contrary to the principle of equal treatment between men and women. The article in question permitted member states to allow proportionate differences in premiums and benefits in cases where sex was a determinant factor for the evaluation of risks by insurance companies and as result of relevant and accurate actuarial and statistical data without any temporal limitation as a derogation from the general provisions of the directive which required unisex premiums and benefits. Belgium had implemented Article 5(2) in its domestic law. The court accentuated that after 1st December 2009 the charter shares the same legal power as the treaties and following a human rights analysis it examined the directive in the light of the charter concluded that the derogation without any temporal limitation violates the general principle of gender equality. The similarities with the VAT directive are obvious: both directives were adopted prior to the charter and in both cases the States have implemented provisions in compliance with the directives. The difference is that the invalidated

⁵⁷ Case C-170/84 *Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] ECR 1607 (ECJ).

⁵⁸ Case C-175/88 *Klaus Bichl v Administration des contributions du grand-duché de Luxembourg*, [1990] ECR I-1779 (ECJ) at [12], Case C-279/93 *Finanzamt Köln-Altstadt v Schumacker* [1995] ECR I-225 (CJEU) at [23] and Case C-512/13 *C.G. Sopora v Staatssecretaris van Financiën*, [2015] ECLI:EU:C:2015:108 (CJEU) at [22].

⁵⁹ Case C-236/09 *Association belge des Consommateurs Test Achats ASBL and others v Conseil des Ministres* [2012] 1 W.L.R 1933.

⁶⁰ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Article 5(2).

directive offered a simple choice while the VAT directive imposes a positive obligation to the member States allowing them only to decide for the size of the discrimination by permitting them to opt for a reduced or a normal tax rate for the products at stake. Unfortunately, the Cypriot (or any other) domestic law implementing the VAT directive has not been examined yet.

In the same decision, the CJEU stated that:

As is stated in recital 18 to directive 2004/113, the use of actuarial factors related to sex was widespread in the provision of insurance services at the time when the directive was adopted.⁶¹

This statement shows that the use of actuarial factors had become obsolete by the time of the court judgment. Similarly, there are voices in the EU against the outdated and discriminatory character of the directive. The UK government brought the issue of ‘tampon taxes’ to the European Commission demanding for its banishment.⁶² In 2016, the commission in its ‘VAT Action Plan’ announced measures which would give member States the flexibility to opt for a zero rate or an exemption on sanitary products⁶³ with the final proposals getting published in 2018.⁶⁴

Additionally, the European Parliament’s Committee on Women’s Rights and Gender equality took the initiative to request more research in the field of taxation and gender studies⁶⁵ and the parliament itself repetitively called the member States to abolish the tampon tax taking into account both its discriminatory effect and the

⁶¹ Case C-236/09 Association belge des Consommateurs Test Achats ASBL and others v Conseil des Ministres [2012] 1 W.L.R 1933 at [22].

⁶² Jon Stone, ‘French Parliament Votes to Cut “Tampon Tax” VAT on Women’s Sanitary Products’ INDEPENDENT (December. 15, 2015), available at <http://www.independent.co.uk/news/uk/politics/french-parliament-votes-to-cut-tampon-tax-vat-on-womens-sanitary-products-a6773676.html> [<https://perma.cc/Y6LH-BZG6/>].

⁶³ European Commission press notice, ‘Vat Action Plan: Commission presents measures to modernize Vat in the EU’, (April 7, 2016), available at https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1022. See also, European Commission press notice, ‘Action Plan on VAT: Questions and answers’, (April 7, 2016), available at https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_1024.

⁶⁴ European Commission press notice, ‘VAT: More flexibility on VAT rates, less red tape for small businesses’, (January 18, 2018), available at https://ec.europa.eu/taxation_customs/business/vat/action-plan-vat/proposal-vat-rates_en.

⁶⁵ Åsa Gunnarsson, Margit Schratzenstaller and Ulrike Spangenberg for European Parliament Policy Department C: Citizens’ Rights and Constitutional Affairs, Gender equality and taxation in the European Union (April 2017), available at <http://www.europarl.europa.eu/supporting-analyses>.

fact that many women in the EU do not have access to those products.⁶⁶ Nonetheless, albeit those initiatives are admirable and towards the right direction they are not legislative acts but soft-laws, lacking of any legislative power and the implication of this is that Cyprus is still bound by the VAT directive despite the parliamentary calls to the States. Hence, had Cyprus decided to amend its domestic law so as to repeal the tax, the Republic would be subject to legal action against it. The only available forum and the only sustainable solution, since it is highly unlikely that Cyprus will be willing to ‘take the genie out of the bottle’, remains the CJEU, which can rule about the issue through the preliminary ruling procedure.

Thoughts for the Future

When the desired reform turns into reality or the controversial VAT directive provision is invalidated, Cyprus should opt for the total repeal of ‘tampon taxes’. Setting aside the symbolic value, the repeal will result in a reduction in market prices making paid work more appealing than unpaid work given that, according to empirical studies,⁶⁷ the increase of indirect taxes affects women and their access to paid labour more. Importantly, Cyprus, one of the smallest countries in the EU, will have the opportunity to promote a strong political message of progression and equality, against the typical taboos around feminine menstruation in a Europe where the majority of countries still taxes those products in the category of luxuries. It is suggested that the repeal of ‘tampon taxes’ is possible to open the ‘floodgates’ for requests of abolition of indirect taxes in other similar products such as baby nappies or incontinence diapers for elderly people which would gradually erode the indirect taxes system as a whole and would increase complexity.⁶⁸ Undoubtedly, it is an attractive argument which nonetheless loses strength if we consider the life of a woman in a linear way: If someone is born as a girl, initially they have to use baby

⁶⁶ Marisa Matias and Ernest Urtasun, Report on gender equality and taxation policies in the EU (2018/2095(INI)), (November 29,2018) available at http://www.europarl.europa.eu/doceo/document/A-8-2018-0416_EN.pdf, which was adopted by the European Parliament with the European Parliament resolution of 15 January 2019 on gender equality and taxation policies in the EU (2018/2095(INI)),P8_TA(2019)0014,availableathttp://www.europarl.europa.eu/doceo/document/A-8-2018-0416_EN.html.

⁶⁷ Åsa Gunnarsson, Margit Schratzenstaller and Ulrike Spangenberg for European Parliament Policy Department C: Citizens’ Rights and Constitutional Affairs, Gender equality and taxation in the European Union, April 2017, available at <http://www.europarl.europa.eu/supporting-analyses>.

⁶⁸ Christina Do, Helen Hodgson and Nicole Wilson-Rogers, The Tax on Feminine Hygiene Products: Is This Reasonable Policy (2017) 32 Australian tax Forum 521.

nappies, afterwards sanitary products for menstruation and then possibly elderly nappies. This means, that at any case a woman will always be subject to one more tax, contrariwise to men. Besides, menstruation hygiene products are the only category, which is gender specific. Consequently, these authors insist that it can only be beneficial for Cyprus to exempt those products from its VAT base.

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