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ABSTRACT

This Article addresses the difficult problem of raising revenue in developing countries with significant outmigration. Migrant-source country governments face a unique policy dilemma because emigration reduces domestic human capital and tax revenue, but simultaneously improves outcomes for migrant workers and their families. Thus, governments must balance contrasting needs to maximize government revenue while protecting the welfare of migrant worker households. I argue that migrant-source countries may find a solution to this dilemma by taxing income remitted by migrant workers to family members remaining in their home countries. If constructed properly, a tax on remittance payments could raise revenue without burdening migrant workers or restricting their freedom to migrate.

In this Article, I push back against common anti-remittance-taxation arguments based on both normative and practical considerations, with a focus on improving and updating the taxation of families separated by national borders. After surveying the tax policy instruments available in remittance-receiving developing countries, I offer a menu of policy designs through which policymakers can leverage these important inflows. Proposed policies range from an ideal case of bilateral cooperation between host and home countries to a third-best regime that seeks to harness remittance gains indirectly via consumption and property taxation.

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INTRODUCTION

This Article addresses the difficult problem of raising revenue in developing countries with significant outmigration. Migrant-source country governments face a unique policy dilemma because emigration reduces domestic human capital and tax revenue but simultaneously improves outcomes for migrant workers and their families. Thus, governments must balance contrasting needs to maximize government revenue while protecting the welfare of migrant worker households. Migration scholars have proposed various tax policy solutions to this problem, foremost among them being Jagdish Bhagwati's tax on professional emigrants, which has spawned much scholarly discussion and given rise to a subset of migration-taxation literature.[1] However, the Bhagwati tax and many of its intellectual offshoots fail to adequately resolve this policy tension because they prioritize the goal of maximizing government revenue at the expense of protecting migrants' wellbeing.[2] This Article argues that a fairer and more feasible solution to this dilemma is for migrant-source countries to tax income remitted by migrant workers to family members remaining in their home countries. If constructed properly, a tax on remittance payments could raise revenue without burdening migrant workers or restricting their freedom to migrate.

A chorus of voices from the economic development community repeatedly cautions that remittance transfers should not be taxed, as taxation of the flows would result in unfair double taxation, drive the flows underground, or discourage them altogether.[3] As a threshold issue, it is important to realize that remitted income *is* currently being taxed; it is simply a tax imposed by the host country via labor taxation rather than by the recipient developing country.[4] By accepting the current structure as neutral non-taxation, the door is closed on shifting the tax revenue from industrialized nations to low-income migrant-source countries.

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1. Jagdish Bhagwati & Koichi Hamada, *The Brain Drain, International Integration of Markets for Professionals and Unemployment: A Theoretical Analysis*, 1 J. DEV. ECON. 19 (1974); Mihir A. Desai et al., *Sharing the Spoils: Taxing International Human Capital Flows*, 11 INT'L TAX & PUB. FIN. 663, 665 (2004); *see also* discussion *infra* Part I(A)(ii).

2. *See* discussion *infra* Part I(A)(ii).

3. Sanket Mohapatra, *Taxing Remittances is Not a Good Idea*, PEOPLE MOVE BLOG (Dec. 18, 2010), http://blogs.worldbank.org/peoplemove/taxing-remittances-is-not-a-good-idea.

4. This Article specifically addresses remittances sent by documented immigrant workers as well as undocumented immigrants who are paying into tax coffers. Although certainly some undocumented immigrants are working "off the books," the literature suggests that a substantial number of undocumented immigrants pay taxes. *See* U.S. GOV'T PRINTING OFFICE, ECONOMIC REPORT OF THE PRESIDENT: TOGETHER WITH THE ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS 107 (Feb. 2005) ("More than half of undocumented immigrants are believed to be working 'on the books,' so they contribute to the tax rolls, but are ineligible for almost all Federal public assistance programs and most major joint Federal-state programs."); Virginia Harper-Ho, Note, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 L. & INEQ. 271, 295–96 (2000) (noting that many undocumented immigrants go out of their way to file taxes, even without receiving the refund to which they are entitled); *Unauthorized Immigrants Pay Taxes, Too*, IMMIGRATION POLICY CTR. (Apr. 18, 2011), http://www.immigrationpolicy.org/just-facts/unauthorized-immigrants-pay-taxes-too (finding that households headed by undocumented immigrants contributed $11.2 billion in taxes in 2010).

This Article pushes back against the anti-remittance-taxation stance based on both normative and practical considerations. While agreeing with the conventional wisdom that the *transfers* themselves should not be taxed, this Article argues that migrant-source governments should consider taxing *recipient households* on remitted income sent by relatives working in high-income countries. In order to ensure that the flows are not overtaxed, the ideal policy corollary to this home country tax is non-taxation of remittance payments in the high-income host country. This Article offers several justifications for this shift of tax locus from high- to low-income countries, based on first principles of intra-family transfer taxation, considerations of inter-nation equity, and practical tax goal concerns of home country governments. This Article also proposes several policy structures, taking into account tax administrative realities on the ground in migrant-source developing countries.

Part I provides an overview of current research on migration and remittances and of the role of both phenomena in economic development. Looking to past scholarship on emigration costs, this Article pays particular attention to the Bhagwati tax and the scholarship growing from it, as these provide an intellectual launching pad for the proposals presented later in the Article. Part II addresses theoretical and practical justifications for shifting the locus of remittance taxation from high-income host countries to low-income home countries. Part III describes tax realities in developing countries, offering a survey of available tax instruments as well as specific tax data for twenty remittance-receiving countries. Part IV proposes several different mechanisms through which policymakers might leverage these important inflows, starting with the ideal case of bilateral cooperation between host and home countries, and working down to a third-best regime that seeks to harness remittance gains without the use of income taxation. Finally, Part V addresses administrative concerns including behavioral distortions, political resistance, evasion, and corruption.

I.
BACKGROUND ON MIGRATION AND REMITTANCES

A. *Emigration and Taxation in Source Countries*

1. *Emigration and Welfare*

Emigration is a double-edged sword, rightfully touted as a great boon to migrant households and industrialized economies that benefit from lower-cost workers, while at the same time draining human capital and tax revenue from migrant-source economies.[5] Migrant-source developing countries seeking to

5. Desai et al., *supra* note 1, at 665 (exploring lost revenue due to Indian outmigration); *see generally* Pierpaolo Giannoccolo, *The Brain Drain: A Survey of the Literature* 1–2 (Università degli Studi di Milano-Bicocca, Dep't of Statistics, Working Paper No. 2006-03-02, 2009), http://ssrn.com/abstract=1374329 (reviewing literature on the brain drain since the 1950s).

raise revenue find themselves saddled with the difficult task of siphoning water from a leaking bucket as their populace exits in search of better opportunities outside of their borders. Developing creative tax policies is crucial to implementing a lasting solution.

Although the extent of the loss is difficult to calculate, net emigration undoubtedly reduces a country's tax base. Mihir Desai et al. calculate that India loses twelve percent of its income tax base—approximately $700 million—due to high-skilled migration to the United States through the H-1B visa program.[6] Note that this significant figure captures only one kind of migrant to one specific destination country. The authors estimate that only about $300 million makes its way back to India via remittances, leading to a substantial overall loss of government revenue.[7] Additionally, measures of net remittance gains are likely to be overstated, since they fail to account for the local incomes and other household inputs that migrants would have produced domestically had they remained in the home country.[8]

In addition to lost tax revenue, migrant-source countries also lose human capital in the form of their most ambitious and employable citizens who exit in search of greater opportunity.[9] This loss of human capital plagues countries across the developing world and is known as the "brain drain."[10] The migration scholarship documents the negative effect of emigration on human capital development and growth, notably through the work of Jagdish Bhagwati and Koichi Hamada,[11] and more recently by Nadeem Haque and Se-Jik Kim,[12] as well as Kaz Miyagiwa.[13] Haque and Kim go so far as to argue that developing countries should not subsidize higher education, as those citizens who receive advanced education are more likely to migrate to higher-income countries.[14]

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6. Desai et al., *supra* note 1, at 665.

7. *Id*. at 676.

8. *Id*.

9. *See, e.g.*, Anu Bradford, *Sharing the Risks and Rewards of Economic Migration*, 80 U. CHI. L. REV. 29, 34–35 (2013); Giannoccolo, *supra* note 5, at 2.

10. Bradford, *supra* note 9, at 29; Giannoccolo, *supra* note 5, at 2; *see also Massive Brain Drain from Some of the World's Poorest Countries*, WBG (Oct. 25, 2005), http://go.worldbank.org/124ZDBERU0 (summarizing a report finding significant brain drain from Central America and the Caribbean).

11. *See generally* Bhagwati & Hamada, *supra* note 1.

12. Nadeem U. Haque & Se-Jik Kim, *"Human Capital Flight": Impact of Migration on Income and Growth*, 42 IMF STAFF PAPERS 577 (1995) (examining the impact of emigration on growth).

13. Kaz Miyagiwa, *Scale Economies in Education and the Brain Drain Problem*, 32 INT'L ECON. REV. 743 (1991) (demonstrating that brain drain has varying effects on workers of different skill levels, causing particular harm to workers with intermediate skill levels regardless of whether they migrate or remain home).

14. Haque & Kim, *supra* note 12, at 577.

However, despite the negative impact that emigration may have on government revenue and human capital stocks, individuals and households do benefit from the increased employment opportunities found by migrant workers abroad.[15] Confusing the matter further, a body of literature argues that emigration can help the domestic economy by putting upward pressure on wages.[16] Thus, while migrant-source countries often lose out from increased emigration, this same migration is a boon to the migrant worker and his household. Such conflicting outcomes create an inherent policy tension for developing country governments that strive to ensure the continued growth and stability of the domestic economy without harming individual citizens.

2. *Migration Policy Proposals and the Bhagwati Tax*

Before explaining how taxation of remittance flows can balance this inherent policy tension, it is useful to explore other policy solutions that have been proposed to ameliorate the negative effects of emigration. Devesh Kapur and John McHale classify the array of policy options into four broad categories: control, creation, connection, and compensation.[17] Policies in the first two categories aim to directly reduce migration, while those in the third seek to increase remittance payments and spur return migration.[18] This Article is concerned with the final category, that of compensation policies. These policies aim to compensate developing countries and families left back in home countries for the economic losses caused by emigration.[19] Compensation policies can take many different forms, from taxing migration directly via an exit tax, to taxing migrant workers on worldwide income—as the United States does—to sharing tax revenue from rich to poor countries.[20]

15. John Gibson, David McKenzie, & Halahingano Rohorua, *Development Impacts of Seasonal and Temporary Migration: A Review of Evidence from the Pacific and Southeast Asia* 2–3 (Ctr. for Research & Analysis of Migration, Discussion Paper Series No. 08/13, 2013), http://www.cream-migration.org/publ_uploads/CDP_08_13.pdf (explaining that the net effect of emigration on household welfare and economic development is "*a priori* unclear"); Tim Fernholz, Editorial, *An Altruistic Immigration Policy*, REUTERS BLOG (June 26, 2012), http://blogs.reuters.com/great-debate/2012/06/26/an-altruistic-immigration-policy/ (quoting World Bank researchers who find that "improved labor mobility is by far the greatest way to give a leg up to low-income people around the globe").

16. *See, e.g.*, Prachi Mishra, *Emigration and Wages in Source Countries: Evidence from Mexico*, 82 J. DEV. ECON. 180 (2007) (finding that emigration had a positive effect on Mexican wages over the period 1970–2000; also finding a positive correlation between emigration and income inequality and associated aggregate welfare loss); Lawrence Bouton, Saumik Paul & Erwin R. Tiongson, *The Impact of Emigration on Source Country Wages: Evidence from the Republic of Moldova* 2–3 (WBG, Policy Research Working Paper No. 5764, 2011) (finding evidence that Moldovian emigration increases home country wages).

17. Devesh Kapur & John McHale, *The Global Migration of Talent: What Does It Mean for Developing Countries?*, CTR. GLOBAL DEV. BRIEF, Oct. 2005, at 1, 5, http://www.cgdev.org/files/4473_file_Global_Hunt_for_Talent_Brief.pdf.

18. *Id.* at 5–6.

19. *Id.* at 5.

20. *Id.*

Various economists and migration policy scholars have proposed directly taxing migrant workers as a way to compensate home countries for the losses associated with emigration. Perhaps the most famous tax policy proposal was that suggested by Jagdish Bhagwati in 1972, which has come to be known as the "Bhagwati tax."[21] This tax would be imposed specifically on high-skilled migrants from low-income countries, with the dual goals of compensating home countries and decreasing human capital flight.[22] Professional emigrants would bear this tax liability for a limited period after emigration, perhaps ten years.[23] Originally, Bhagwati envisioned the tax being collected by host country tax authorities and administered under the auspices of the United Nations.[24] The United Nations would then distribute the tax revenue according to standard development criteria.[25] Many criticized this approach, arguing that U.S. tax collection of migrant income would violate constitutional principles of equal taxation.[26] In response, Bhagwati altered the proposal such that developing country governments would collect the tax directly.[27] Under this structure, developing countries would tax emigrants under the same rationale underlying the U.S. global tax system, whereby citizens are taxed on income earned both at home and abroad.[28] The Bhagwati tax is noteworthy for a number of reasons, not least among them being its recognition of tax policy as a tool for influencing migration outcomes.

Putting aside the preeminent role that the Bhagwati tax proposal plays in moving forward migration policy scholarship, the plan is vulnerable to several criticisms. First and foremost, by increasing the costs of migration the tax imposes a direct restriction on citizens' international mobility, which reduces personal freedom and economic efficiency.[29] Economic efficiency aside, the

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21. John Douglas Wilson, *Taxing the Brain Drain: A Reassessment of the Bhagwati Proposal*, in TRADE, GLOBALIZATION AND POVERTY 256–60 (Elias Dinopoulos et al. eds., 2008) (arguing that Bhagwati's proposal remains remarkably valid after 30 years); Yariv Brauner, *Brain Drain Taxation as Development Policy*, 55 ST. LOUIS U. L. J. 221, 247–56 (2010) (proposing parameters for practical administration of the Bhagwati tax); Jagdish Bhagwati & William Dallalfar, *The Brain Drain and Income Taxation: A Proposal* (Mass. Inst. of Tech. Dep't of Econ., Working Paper No. 92, 1972).

22. Bhagwati & Dallalfar, *supra* note 21, at 3.

23. *Id.* at 7.

24. *Id.* at 6.

25. For example, the United Nations could withhold funds from corrupt or dictatorial regimes. *Id.*

26. John McHale, *Taxation and Skilled Indian Migration to the United States: Revisiting the Bhagwati Tax*, *in* SKILLED IMMIGRATION TODAY: PROSPECTS, PROBLEMS, AND POLICIES 362, 363–65 (Jagdish Bhagwati & Gordon Hanson eds., 2009); Wilson, *supra* note 21, at 2.

27. Wilson, *supra* note 21, at 2; McHale, *supra* note 26, at 363–65.

28. Wilson, *supra* note 21, at 2.

29. Michael A. Clemens, *Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?*, 25 J. ECON. PERSPECTIVES 83, 83–84 (2011) (detailing the significant economic gains to be had from reducing barriers to emigration); *see, e.g.*, Speranta Dumitru, *Skilled Migration: Who Should*

right to migrate is itself valuable. Sperantru Dumitru argues that the right to emigrate is a fundamental human right and that restrictions on this right, such as those imposed by the theoretical Bhagwati tax, conflict with important social justice goals.[30] The United Nations has codified the right to emigrate in Article 13 of the Universal Declaration of Human Rights, which states that, "[e]veryone has the right to leave any country, including his own."[31] Thus, the Bhagwati tax conflicts with key human rights and social justice goals by reducing individuals' international mobility.

Additionally, a tax on only high-skilled migration misses potential productivity gains that accrue to unskilled migrants when they move to higher-income countries. Although these unskilled individuals would have perhaps contributed relatively less to source country economies had they remained back home, migration can cause significant productivity gains simply from changing locations.[32] A tax based on pre-migration skill level, as the Bhagwati tax is, will fail to capture these productivity gains. While perhaps effective as a means of restricting mobility, this limited policy will therefore be relatively less effective at compensating the home countries for emigration losses, compared with a policy that seeks to harness gains accruing to all migrants.

Desai et al. recently revisited compensatory emigration policies, agreeing with Bhagwati that taxation schemes are an effective way to reduce the negative effects of the brain drain in developing countries.[33] The authors propose three possible tax structures that aim to correct various deficiencies of the Bhagwati tax proposal.[34] These structures include: 1) taxing emigrants on global income, as the United States does; 2) a cooperative regime in which host countries remit a portion of taxes back to developing source countries; and 3) an exit tax on skilled emigrants.[35] Although a step in the right direction, these policies continue to raise administrative, efficiency, and human rights concerns. The second policy is the most promising, but it lacks sufficient detail to make it a workable policy solution for developing countries.

The first policy, taxing global income, involves significant administrative difficulties. It would entail not only maintaining a functional domestic income tax system, but also requires the ability to assess income earned by migrant workers residing in foreign countries. This demands substantial tax collection and enforcement infrastructure, and is likely beyond the capacity of most

Pay for What? A Critique of the Bhagwati Tax, 14 DIVERSITIES 9, 13 (2012).

30. Dumitru, *supra* note 29, at 14.

31. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 13 (Dec. 10, 1948).

32. Clemens, *supra* note 29, at 96 (synthesizing current research to conclude that productivity gains associated with migration are based significantly on location effects, rather than innate personal characteristics or self-selection biases).

33. Desai et al., *supra* note 1, at 664.

34. *Id.* at 682–85.

35. *Id.*

developing countries.[36] Further, a global income tax places the migrant taxpayer within the home country's tax brackets, which assesses his income against a wholly different distribution of wealth compared with the country in which he actually lives. While a migrant taxpayer who earns $15,000 per year in the United States might be subject to a relatively low U.S. tax rate, this might place him in a comparatively high tax bracket in his home country. This raises concerns about deprivation and fairness. Finally, these complications might induce emigrants to renounce their home country citizenship in order to avoid such taxation, reducing the likelihood of return migration or beneficial investment in the home country economy.[37] Thus, although worldwide taxation of citizens is feasible for the United States, administrative challenges and other concerns make it an unrealistic solution for most developing countries.[38]

The third policy option, the exit tax, implicates liberty and efficiency concerns much like the Bhagwati tax.[39] Similar to emigrant taxation, exit taxes reduce overall economic efficiency by reducing voluntary labor exchange.[40] According to Trebilcock and Sudak, shifting from voluntary migration to coercive or planned migration may produce efficiency losses similar to those associated with trade restrictions, thereby reducing overall welfare.[41] Desai et al. propose several modifications to reduce these inefficient distortions, for example, structuring the exit tax as a forgivable education loan, only to be repaid in the event of emigration.[42] Trebilcock and Sudak point out that these proposals do not ameliorate the risk that emigrants will renounce home country citizenship or reduce remittances or investment in home countries.[43]

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36. *See, e.g.*, Richard M. Bird & Eric M. Zolt, *Redistribution Via Taxation: The Limited Role of the Personal Income Tax in Developing Countries*, 52 UCLA L. REV. 1627, 1629–30 (2005) (discussing tax limitations in developing countries, focusing on the income tax); Robin Burgess & Nicholas Stern, *Taxation and Development*, 31 J. ECON. LITERATURE 762, 770 (1993) (providing an overview of tax administrative limitations in developing countries); Michael Keen, *Taxation and Development—Again* 2–3 (IMF Fiscal Affairs Dep't, Working Paper No. WP/12/220, 2012) [hereinafter Keen, *Taxation and Development*].

37. Desai et al., *supra* note 1, at 682–85.

38. The United States can serve as a cautionary tale when questioning whether tax policies actually drive citizens to expatriate. The number of U.S. citizens renouncing their citizenship reached an all-time high in 2015, which most experts and commentators attribute to U.S. taxation of worldwide income, as well as increased enforcement of the Foreign Account Tax Compliance Act. *See, e.g.*, Laura Saunders, *Record Number Give Up U.S. Citizenship*, WALL ST. J. BLOG (May 7, 2015, 11:13 A.M.), http://blogs.wsj.com/totalreturn/2015/05/07/record-number-give-up-u-s-citizenship/; Robert W. Wood, *New Un-American Record: Renouncing U.S. Citizenship*, FORBES (May 8, 2015), http://www.forbes.com/sites/robertwood/2015/05/08/new-un-american-record-renouncing-u-s-citizenship/.

39. Clemens, *supra* note 29, at 83–84; Dumitru, *supra* note 29, at 14, 16.

40. Clemens, *supra* note 29, at 83–84; Dumitru, *supra* note 29, at 14.

41. Michael J. Trebilcock & Matthew Sudak, *The Political Economy of Emigration and Immigration*, 81 N.Y.U. L. REV. 234, 263 (2006).

42. Desai et al., *supra* note 1, at 685.

43. Trebilcock & Sudak, *supra* note 41, at 263.

The second option—in which host countries remit a portion of tax revenue back to developing home countries—remedies many of the complications associated with the first and third policies. Although negotiating a web of bilateral treaties may seem difficult, Desai et al. explain that several trends point to the feasibility of such bilateral cooperation.[44] Namely, there is increasing need in the industrialized world for developing country labor as well as an increased reluctance on the part of developing countries to relinquish such labor without compensation.[45] Such pressures might tip the scales in favor of sharing tax revenues from high- to low-income countries. However, this policy option is too imprecise to provide a workable solution, as it fails to adequately address how the tax revenues should be properly divided. Trebilcock and Sudak, working under the assumption that such tax revenue would be divided according to income tax rates in each country, point out that such a policy would likely result in little revenue unless the migrant-source country imposes very high income tax rates.[46] Thus the underlying basis for the division is integral to the workability and efficacy of such a policy. Ideally such a division would be based on some observable characteristic and firmly justified by basic tax principles, as this will prove more defensible and stable in the long run. Basing the division on remittance payments, as this Article proposes, offers one way to solve this deficiency.

B. Remittances and Welfare in Source Countries

1. Background on Remittance Flows[47]

Understanding the nature and influence of remittance inflows in developing countries is a prerequisite for understanding their potential role as a tax handle for resource-poor migrant-source countries. There has been a dramatic upsurge in remittance flows over the past few decades. At three times the size of official development aid, they have reached a monumental level.[48] For most of the past dozen years they have exceeded private debt and portfolio equity inflows, as

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44. Desai et al., *supra* note 1, at 684.

45. *Id.*

46. Trebilcock & Sudak, *supra* note 41, at 263.

47. This Article focuses on the specific category of remittance transfers known as worker remittances or personal transfers—typically small, regular financial transfers from migrants living and working abroad sent to support relatives living back home. IMF, INTERNATIONAL TRANSACTIONS IN REMITTANCES: GUIDE FOR COMPILERS AND USERS 20–21 (2009), http://www.imf.org/external/np/sta/bop/2008/rcg/pdf/guide.pdf. Other remittance categories not covered here include cross-border employee compensation and remittance of public benefits accrued abroad. *Id.* at 19–20.

48. DILIP RATHA ET AL., MIGRATION AND REMITTANCES TEAM, DEV. PROSPECTS GRP., WBG, MIGRATION AND DEVELOPMENT BRIEF NO. 21, MIGRATION AND REMITTANCE FLOWS: RECENT TRENDS AND OUTLOOK, 2013–2016 2 (2013), http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationandDevelopmentBrief21.pdf [hereinafter 2013 REMITTANCE OUTLOOK].

well.[49] Flows into developing countries are estimated to have reached $414 billion in 2013, which is a 6.3% increase from 2012.[50] The amounts exceed foreign exchange reserves in at least fourteen developing countries.[51] These figures show that remittances are not merely a stopgap response to a temporary situation, but rather an increasingly significant economic phenomenon that developing countries must learn to harness.

As would be expected, the top remittance recipients measured by aggregate amount are large economies for which remittance inflows comprise merely one source of economic vitality.[52] As reflected in Table 1, in 2013, the World Bank identified India, China, the Philippines, Mexico, and Nigeria as the top recipients in terms of absolute amounts.[53] For smaller economies with a disproportionate share of migrant households, these remittance inflows become a dominating capital source. For example, according to World Bank estimates shown in Table 2, in 2013 remittances comprised 48% of the GDP of Tajikistan, 31% of the Kyrgyz Republic GDP, and 25% each of Nepal and Lesotho's economies.[54] As these lists demonstrate, remittance-receiving countries vary drastically according to demographic, economic, political, and geographic classifications.

Table 1: Top Ten Recipients by Amount in 2013[55]

Country	Amount Received

49. *New Rivers of Gold: Remittances from Unlikely Places are Helping Poor Countries in the Downturn*, ECONOMIST, Apr. 28, 2012, http://www.economist.com/node/21553458 [hereinafter *New Rivers of Gold*]; *see* DILIP RATHA & ANI SILWAL, WBG, MIGRATION AND DEVELOPMENT BRIEF NO. 18, REMITTANCE FLOWS IN 2011—AN UPDATE 1 (2012), http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/MigrationandDevelopmentBrief18.pdf.

50. 2013 REMITTANCE OUTLOOK, *supra* note 48, at 2.

51. *Id.* (listing countries in which remittance inflows exceed foreign exchange reserves, including Tajikstan, Ecuador, Sudan, and Egypt, among others).

52. *Id.* at 5.

53. *Id.*

54. *Id.*

55 *Id.*

	(estimate)
India	$71 billion
China	$60 billion
Philippines	$26 billion
Mexico	$22 billion
Nigeria	$21 billion
Egypt	$20 billion
Bangladesh	$15 billion
Pakistan	$15 billion
Vietnam	$11 billion
Ukraine	$9 billion

Table 2: Top Ten Recipients as Percentage of GDP[56]

Country	**Percentage of GDP (based on estimate)**
Tajikistan	48%
Kyrgyz Republic	31%
Nepal	25%
Lesotho	25%
Moldova	24%
Armenia	21%
Haiti	21%
Samoa	21%
Liberia	20%
Lebanon	17%

2. *Remittances and Welfare*

Many in the economic development community present remittances as a panacea to the negative effects of migration because remittances inject money into economies that have lost human capital.[57] However, it is questionable whether remittances truly offset the negative effects of labor migration out of source countries.[58] Although they are likely a boon to the households that receive them, economists have been unable to establish a robust link between remittances and aggregate economic growth in low-income countries.[59]

56 *Id*.

57. *New Rivers of Gold*, *supra* note 49.

58. Trebilcock & Sudak, *supra* note 41, at 259 ("Whether remittance payments on their own are a net benefit is a question less complex than whether remittance payments might sufficiently spur development to offset the human capital concerns raised above. That question is largely an open one.").

59. *See, e.g.*, Adolfo Barajas et al., *Do Workers Remittances Promote Economic Growth?* 1 (IMF Middle E. and Cent. Asia Dep't, Working Paper No. WP/09/153, 2009) (finding at best no relationship between remittances and growth and for some countries a negative relationship); *see*

Understanding the limitations of remittances in spurring economic growth demonstrates why compensatory tax policies remain necessary in migrant-source countries, despite the large and often increasing size of remittance inflows.

At the household level, data supports the intuition that remittance payments reduce deprivation by providing resources for basic household needs. The corollary to this is that remittances are not typically invested or saved in a way that supports long-term growth. According to research collected by the International Fund for Agricultural Development, eighty percent to ninety percent of remitted income is used for basic consumption, healthcare, and education.[60] The remaining ten percent to twenty percent is saved or invested in either formal or informal financial instruments.[61] Research conducted among Latin American immigrants living in Connecticut reveals similar findings, with over half of respondents listing food as an important use of remittances.[62] Over a third of respondents in the Connecticut study also listed home maintenance as an important expense, suggesting that the remitted funds need not be used for only the most basic needs.[63] Less than ten percent of respondents reported that remitted funds were used to finance investments in home countries.[64] Thus, across different populations, research tends to agree that remitted funds are used to boost consumption rather than increase long-term savings and investments.

Lack of savings aside, a good deal of evidence supports the assumption that remittances benefit the individuals and communities that receive them in myriad ways, including by alleviating poverty,[65] contributing to human capital development,[66] and increasing investment in microenterprise,[67] among other

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infra, note 75 and accompanying text.

60. INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT, SENDING MONEY HOME: WORLDWIDE REMITTANCE FLOWS TO DEVELOPING AND TRANSITION COUNTRIES 7 (2007), http://www.ifad.org/remittances/maps/brochure.pdf [hereinafter IFAD, SENDING MONEY HOME].

61. *Id.*

62. CHARANYA KRISHNASWAMI, ARIEL STEVENSON & CELSO PEREZ CARBALLO, SUPPORTING TRANSNATIONAL FAMILIES: IMPROVING REMITTANCE AND BANKING SERVICES FOR IMMIGRANTS IN NEW HAVEN 13 (2012), http://www.law.yale.edu/documents/pdf/News_&_Events/Remittances_Report2012_FINAL.pdf.

63. *Id.*

64. *Id.* at 32.

65. *See* Pablo Acosta et al., *Do Remittances Lower Poverty Levels in Latin America?*, in REMITTANCES AND DEVELOPMENT: LESSONS FROM LATIN AMERICA 87, 128 (Pablo Fajnzylber & J. Humberto López eds., 2008) (the authors find that remittances are positively correlated with poverty reduction as well as economic growth, with data showing a 0.4% decrease in the fraction of the population living in poverty for every one percent increase in the share of remittances to GDP); *see also* Pia M. Orrenius et al., *Do Remittances Boost Economic Development? Evidence from Mexican States*, 16 L. & BUS. REV. AMERICAS 803 (2010) (finding that remittances lessen certain measures of income inequality).

66. *See* Dean Yang, Remittances and Human Capital Investment: Child Schooling and Child Labor in the Origin Households of Overseas Filipino Workers 1 (June 17, 2003) (unpublished

things. A World Bank study examining data from 115 developing countries found that international remittances reduced both the level and depth[68] of poverty.[69] The study also found that remittance-receiving households spent less on immediate consumption goods for each additional dollar received and more on investments such as education, housing, and entrepreneurial activities.[70] Research from Guatemala shows that remittances have played a large role in reducing the depth of poverty, meaning that they are particularly helpful to the poorest of the poor.[71] A study in El Salvador found that remittances reduce the probability of children leaving school, even when compared with other sources of income.[72] Additionally, although investment might not comprise their primary use, remittances have been found to support urban microenterprises in Mexico[73] and to ease credit constraints for new businesses in the Philippines.[74] From poverty alleviation, to educational attainment, to business investments, remittance transfers ease constraints and provide beneficial support for countless migrant households in the developing world.

Despite the notable positives listed here, researchers have consistently been unable to robustly link international remittances with long-term economic

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manuscript) (http://www-personal.umich.edu/~deanyang/papers/old/yang_remittances.pdf) (finding that, for children aged 17–21, a ten percent increase in remittances received by a household results in a 10.3% increase in the number of students in that household).

67. *See* Christopher Woodruff & Rene Zenteno, Remittances and Microenterprises in Mexico 3–4 (Aug. 14, 2001) (unpublished manuscript) (on file with author), http://dx.doi.org/10.2139/ssrn.282019 (finding that remittances play an important role in funding microenterprises, estimating that nearly a third of funds invested in Mexican microenterprises come from remittances).

68. The level of poverty refers to the percentage of the population living below the poverty line, while the depth of poverty refers to the amount by which the average income of the poor falls below the poverty line.

69. Richard H. Adams, Jr., *International Remittances and the Household: Analysis and Review of Global Evidence* 1 (WBG Policy Research Working Paper No. 4116, 2007), https://openknowledge.worldbank.org/handle/10986/7146.

70. *Id.* at 26 (measuring marginal budget shares on expenditures in remittance receiving and non-remittance receiving households).

71. Richard H. Adams, Jr., *Remittances and Poverty in Guatemala* 12–13 (WBG, Policy Research Working Paper No. 3418, 2004); *but see* Alejandro de la Fuente, *Remittances and Vulnerability to Poverty in Rural Mexico*, 38 WORLD DEV. 828, 838 (finding that remittances tend to benefit households that are already better off financially compared with non-recipients).

72. Alejandra Cox Edwards & Manuelita Ureta, *International Migration, Remittances, and Schooling: Evidence from El Salvador*, 72 J. DEV. ECON. 429, 450 (2003); *see also* Gordon H. Hanson & Christopher Woodruff, Emigration and Educational Attainment in Mexico 16 (Apr. 2003) (on file with author) (finding that Mexican children in transnational households completed significantly more schooling, with the largest impact being on girls with mothers with low levels of education).

73. Douglas S. Massey & Emilio A. Parrado, *International Migration and Business Formation in Mexico*, 79 SOC. SCI. Q. 1 (1998).

74. Dean Yang, *International Migration, Human Capital, and Entrepreneurship: Evidence from Philippine Migrants' Exchange Rate Shocks* 1, 24–25 (WBG Policy Research Working Paper No. 3578, 2005).

growth in recipient countries.[75] The economic literature points out several growth-hampering negative consequences of remittances, including reduced labor market participation by recipient family members,[76] exchange rate appreciation and Dutch Disease,[77] and volatility due to the uncertainty of remittance flows.[78]

Further, as explained above, remittances are more likely to spur consumption rather than productive investment, limiting an important potential avenue of long-term growth.[79] Although it may seem that remittance-receiving households should save more than non-receiving households, Pablo Acosta et al. find that remittance inflows are actually correlated with lower savings rates among remittance-receiving households in certain Latin American countries and for high-income remittance recipients in general.[80] The authors also find that

75. Yasser Abdih et al., *Remittances and Institutions: Are Remittances a Curse?*, 40 WORLD DEV. 657, 664 (2012) (concluding that remittances may harm growth by reducing the quality of government institutions); Pablo A. Acosta, Emmanuel K.K. Lartey & Federico S. Mandelman, *Remittances and the Dutch Disease* 1 (Federal Reserve Bank of Atlanta, Working Paper No. 2007-8, 2007) (finding that remittance flows, whether altruistically motivated or not, lead to a reduction in the labor supply and exchange rate appreciation that hampers growth) [hereinafter Acosta et al., *Remittances and the Dutch Disease*]; *see, e.g.*, Barajas et al., *supra* note 59, at 1 (finding at best no relationship between remittances and growth and for some countries a negative relationship); Ralph Chami, Connel Fullenkamp & Samir Jahjah, *Are Immigrant Remittance Flows a Source of Capital for Development?* 5 (IMF Inst., Working Paper No. WP/03/189, 2003) (finding that remittances have a negative effect on growth and attributing this effect to a severe moral hazard problem).

76. Pablo Acosta, Pablo Fajnzylber & J. Humberto López, *Remittances and Household Behavior: Evidence for Latin America*, *in* REMITTANCES AND DEVELOPMENT: LESSONS FROM LATIN AMERICA 133, 161 (Pablo Fajnzylber & J. Humberto López eds., 2008) (using data from all ten countries for which data is available, the authors find that receiving remittances reduces the number of hours worked by per week by recipient family members) [hereinafter Acosta et al., *Remittances and Household Behavior*].

77. Dutch Disease, named for a notable instance of the phenomenon in the Netherlands in the 1960s, occurs where increased foreign currency inflows lead to exchange rate appreciation that in turn reduces exports, hinders import competition, and slows growth. *See, e.g.*, Christine Ebrahim-zadeh, *Dutch Disease: Too Much Wealth Managed Unwisely*, 40 FIN. & DEV. 1 (2003), http://www.imf.org/external/pubs/ft/fandd/2003/03/ebra.htm; Joong Shik Kang, Alessandro Prati & Alessandro Rebucci, *Aid, Exports, and Growth: A Time-Series Perspective on the Dutch Disease Hypothesis* 3 (IMF Research Dep't, Working Paper No. WP/13/73, 2013) (exploring links between aid and Dutch Disease). For a discussion of the link between remittances and Dutch Disease, see J. Humberto López, Luis Molina & Maurizio Bussolo, *Remittances, the Real Exchange Rate, and the Dutch Disease Phenomenon*, *in* REMITTANCES AND DEVELOPMENT: LESSONS FROM LATIN AMERICA 217, 232–34 (Pablo Fajnzylber & J. Humberto López eds., 2008).

78. Trebilcock & Sudak, *supra* note 41, at 257–59 ("Volatility might make it difficult to make long-term plans that would put remittance payments to their most efficient uses, and could in some situations create a culture of dependency . . . .").

79. Trebilcock & Sudak, *supra* note 41, at 259; B. Lindsay Lowell, *Some Developmental Effects of the International Migration of Highly Skilled Persons* 19 (Int'l Labour Office, Int'l Migration Papers No. 46, 2001).

80. Acosta et al., *Remittances and Household Behavior*, *supra* note 76, at 134–39 (finding lower savings rates among remittance recipients in Mexico, El Salvador, Peru, and Nicaragua, and among high-income recipient households across all countries in the sample).

recipient family members work fewer hours per week, confirming other evidence that remittance payments reduce labor market participation in home countries.[81]

These negative effects may be especially pronounced in smaller countries. Several studies highlight that smaller economies with high remittance-to-GDP ratios face special challenges in harnessing remittance inflows for economic growth. J. Humberto López et al. explore fears that remittance inflows may lead to exchange rate appreciation and Dutch Disease, especially where inflows are too large relative to the domestic economy.[82] Their research shows that indeed remittance inflows are associated with exchange rate appreciation in Latin America.[83] They further find that these results are broadly applicable across regions, suggesting that any remittance-receiving countries may be at risk of Dutch Disease, particularly where remittance inflows are large relative to GDP.[84] In addition to exchange rate appreciation, smaller economies are more sensitive to the inherent volatility of remittance flows. Katsushi Imai et al. find that remittance volatility can have a negative effect on economic performance where recipient countries are unable to protect themselves against sudden swings in flows.[85]

It would be folly to argue that remittances are wholly detrimental at the household, community, or even country level. Rather, the literature demonstrates that remittance inflows can have varying effects on different kinds of households and in different domestic settings—many positive and some negative.[86] Further, researchers are repeatedly unable to establish a robust link between remittance inflows and sustained economic growth, and some even find negative consequences of the flows in the aggregate.[87] Thus, remittances alone are not the solution to persistent poverty in migrant-source countries. Remittance-receiving countries must do more to ensure that remittance inflows contribute to improved long-term growth and aggregate welfare.

3. The Argument Against Remittance Taxation

Despite the massive and increasing size of remittance flows, and their uncertain effect on growth, experts tend to agree that developing countries should not seek to ameliorate emigration costs through remittance taxation.[88]

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81. *Id*. at 158–66, 161.

82. López et al., *supra* note 77.

83. López et al., *supra* note 77 , at 232–34.

84. *Id*.

85. Katsushi S. Imai et al., *Remittances, Growth and Poverty: New Evidence from Asian Countries* 21 (IFAD, Discussion Paper No. 15, 2012).

86. Abdih et al., *supra* note 75, at 664, and accompanying text; Acosta et al., *Remittances and the Dutch Disease*, *supra* note 75, at 1, and accompanying text; *see generally* Barajas et al., *supra* note 59 and accompanying text; Chami et al., *supra* note 75, at 1, and accompanying text.

87. *Id*.

88. *See, e.g.*, Dilip Ratha, *Leveraging Remittances for Development*, MIGRATION, TRADE, &

According to the most common arguments, taxing remittances would: 1) result in unfair double taxation; 2) reduce the incentive to send remittances, thereby reducing total flows; 3) drive the transfers into informal channels, which reduces the use and attendant benefits of formal financial institutions; and 4) entail significant administrative challenges.[89] Although not without merit, these concerns are insufficient to justify a blanket anti-remittance taxation stance. Importantly, these arguments fail to recognize that remitted income is currently being taxed—it is simply a tax imposed by host countries via labor taxation rather than the recipient developing country. By accepting the current structure as neutral non-taxation, the door is closed on shifting the tax revenue from industrialized nations to low-income migrant-source countries. Further, much of the concerns, such as fears of double taxation and high administrative costs, can be addressed through targeted tax policy design.[90]

C. Migration Taxation in Practice

Not blind to the costs of emigration, developing country governments have attempted in various ways to compensate domestic economies for shrinking human capital stocks and associated dwindling tax revenues. Although most countries avoid taxing remittances, those countries that do tax remittances largely do so indirectly by requiring recipients to convert the payments to overvalued local currency at uncompetitive official exchange rates.[91] Ethiopia, Pakistan, Venezuela, and Cuba are examples of countries that have employed such policies.[92] Hidden taxes such as this preclude effective public oversight, thereby engendering corruption.[93] Cuba previously imposed this method of taxation by requiring all remittances sent from the United States to Cuba be paid to recipients in Cuban Convertible Pesos, then levying a ten percent conversion tax.[94] The United States originally stymied this tax policy by allowing remittances to Cuba to be paid directly in the Cuban currency, enabling remitters

DEV. 173, 180 (James F. Hollifield, Pia M. Orrenius & Thomas Osang eds., 2006), http://www.dallasfed.org/assets/documents/research/pubs/migration/migration.pdf#page=171 (arguing against remittance taxation in part because remittances are private transfers that "should not be expected to fund public projects"); Sanket Mohapatra, Blanca Moreno-Dodson & Dilip Ratha, *Migration, Taxation, and Inequality*, ECON. PREMISE, May 2012, at 2 (noting that countries typically resist the temptation to tax remittances, which would drive them into informal channels).

89. Mohapatra, *supra* note 3.

90. *See* discussion *infra* Part IV.

91. Mohapatra, *supra* note 3.

92. *Id*.

93. *See* Susan Eckstein, *Remittances and Their Unintended Consequences in Cuba*, 38 WORLD DEV. 1047, 1051–52 (describing the Cuban government's remittance appropriation practices, which undermined the state's moral authority and contributed to corruption and state profiteering).

94. *Tax on Cuban Cash Exchange Lifted*, AL JAZEERA (Dec. 28, 2010), http://www.aljazeera.com/news/americas/2010/12/2010122835942593588.html.

to avoid the conversion tax[95]—although these efforts will be moot once Cuba realizes its intention to eliminate the Cuban Convertible Peso altogether.[96] While the Philippines does impose a documentary stamp tax on remittance transfers, in November 2010 the Philippine Bureau of Internal Revenue passed a regulation exempting all overseas foreign workers from the tax.[97] The regulation covers foreign workers who are registered with the Philippine Overseas Employment Administration and who are able to show valid proof of foreign employment.[98] Because only Filipino emigrants in the formal economy will benefit from the exemption, informal workers may decide to remit funds back to the Philippines via informal channels or to reduce remittance transfers overall. Thus, while remittance taxation does occur, so far no government has developed an effective and fair remittance tax policy that compensates the domestic economy without distorting transfer behavior or engendering corruption.

Outside of remittance taxation, some migrant-source countries impose direct and indirect burdens on emigrants in an effort to reduce emigration costs. Because these policies seek to reduce individual mobility, they often raise liberty concerns. In the most restrictive cases, certain countries impede emigration through the use of exit visas. For example, the former Soviet Union employed exit visas to prevent emigration, and today Cuba and Nepal still require citizens to obtain a permit to leave.[99] Other countries, such as Saudi Arabia and Qatar, require foreign workers to obtain exit permits.[100] These policies raise significant human rights concerns.

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95. *Id.*

96. Marc Frank, *Cuba Likely to End Dual Currency System*, FIN. TIMES (June 15, 2015), http://www.ft.com/cms/s/0/b34fd7b8-fb12-11e4-9aed-00144feab7de.html#axzz3pGfJb4Q6.

97. Tax Treatment of Income Earnings and Money Remittances of an Overseas Contract Worker (OCW) or Overseas Filipino Worker (OFW), REVENUE REG. 1-2011 § 3(c) (Phil.) ("The remittances of all [overseas Filipino workers], upon showing of [the same proof of entitlement by the overseas Filipino worker's] beneficiary or recipient, shall be exempt from the payment of documentary stamp tax . . . .").

98. Hanna Karen V. Almario, *BIR Will Tax Earnings from Undocumented Overseas Filipino Workers*, GLOBAL NEWS ONLINE, http://www.globalnewsonline.blogspot.com/2012/10/bir-will-tax-earnings-from-undocumented.html# (last updated 2011) (clarifying application of the remittance tax exemption).

99. *See, e.g.*, Jeffrey Barist et al., *Who May Leave: A Review of Soviet Practice Restricting Emigration on Grounds of Knowledge of "State Secrets" in Comparison with Standards of International Law and the Policies of Other States*, 15 HOFSTRA L. REV. 381, 430 (1987) (describing the Soviet Union's exit visa policies and criteria); Bradford, *supra* note 9, at 39–40; Eric Retter, Comment, *You Can Check Out Any Time You Like, But We Might Not Let You Leave: Cuba's Travel Policy in the Wake of Signing the International Covenant on Civil and Political Rights*, 23 EMORY INT'L L. REV. 651, 661–65 (2009) (discussing the difficulties associated with obtaining a Cuban exit visa, or tarjeta blanca).

100. Bradford, *supra* note 9, at 39–40 n.39; Heather E. Murray, Note, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 CORNELL INT'L L.J. 461, 471 (2012); Katherine Scully, Note, *Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and Around the World*, 41 COLUM. HUM. RTS. L. REV. 825, 852–53 (2010) (explaining that Saudi Arabia's *kafala* immigration law requires a domestic worker who seeks to leave prior to the expiration of her contract to obtain an exit visa, which is

Moving away from direct migration restrictions, certain countries have adopted forms of emigrant taxation much like that envisioned by Bhagwati and Desai et al. Eritrea is a primary example, imposing a two percent "voluntary tax" on emigrants' annual income.[101] The tax applies to all Eritreans living abroad, regardless of income.[102] In exchange for the tax, the government provides emigrants full citizenship and robust political rights.[103] Studies suggest that the vast majority of citizens pay the tax, either out of patriotism or social pressure, as paying the tax is a "public" act.[104] The Eritrean government has also undertaken significant steps to attract remittances from Eritreans living abroad.[105] Government policy enables tax-free remittance transfers[106] in any major global currency and with favorable exchange rates.[107]

In a more targeted attempt to harness gains in migrant workers' income, South Korea has previously imposed taxes on certain emigrant citizens working abroad under construction contracts that the Korean government negotiated.[108] Under this program, the Korean government assisted domestic companies that used Korean migrant workers to secure projects in the Middle East.[109] The government then withheld income taxes from workers' income and required that their Korea-based employers deposit a percentage of the salaries into Korean bank accounts.[110] Kim Barry suggests that this type of program unfairly burdens participating migrant workers and conflicts with a progressive taxation structure,

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controlled by the visa sponsor, as well as a court order releasing the worker from her contract); HUMAN RIGHTS WATCH, "AS IF I AM NOT HUMAN": ABUSES AGAINST ASIAN DOMESTIC WORKERS IN SAUDI ARABIA 26–33 (2008), http://www.hrw.org/sites/default/files/reports/saudiarabia0708_1.pdf (describing how *kafala* sponsorship system gives the visa sponsor near total control over the migrant workers' entry into and exit from the country).

101. Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 N.Y.U. L. REV. 11, 38 (2006).

102. *Id*.

103. *Id*.

104. *Id*. The tax is often called a "healing tax," and is viewed by some as an "affirmation of citizenship." *Id*. at 39. "In the words of one Eritrean in Germany, nonpayment 'would be declaring that I am not an Eritrean.'" *Id*.

105. *See* Nadje Al-Ali, Richard Black & Khalid Koser, *The Limits to 'Transnationalism': Bosnian and Eritrean Refugees in Europe as Emerging Transnational Communities*, 24 ETHNIC & RACIAL STUD. 578, 589 (2001).

106. As explained *infra*, Part IV, this Article does not advocate for taxation of remittance transfers directly. Rather, the Article argues that remitted income should be relieved of taxation in the host country and then subjected to a progressive income tax in the recipient nation, thereby shifting tax revenue from high- to low-income nations. This Article agrees that remittances should free from transfer taxation, as Eritrean policy provides.

107. *Id*.

108. Barry, *supra* note 101, at 37.

109. *Id*.

110. *Id*.

since migrant workers in more lucrative industries are not subject to the same obligations.[111]

Encouraging emigrants to send remittances is the least burdensome emigration compensation policy. Many remittance-receiving countries have established programs designed to harness remittances for development purposes by creating specialized development funds or targeted financial instruments known as remittance or diaspora bonds.[112] Remittance-sending nations have started capitalizing on remittances as well, often in partnership with recipient countries. For example, the U.S. and Mexican governments have entered into a joint financial program, called *Directo a México*, which aims to assist banks in the United States in remitting customers' funds to Mexico by promoting the use of an Automated Clearing House channel.[113] Both governments stand to profit from these money transfers. Mexico also matches migrants' contributions made via "hometown associations," which are organizations that link migrants with home communities and utilize funds for local community development.[114] Since 2002 this matching-funds program has financed more than 6,000 development projects, taking advantage of an average annual investment of $15 million from the Mexican federal government.[115]

Altogether, the policies discussed above demonstrate the recognized need to compensate developing countries for economic losses due to net emigration. Taxing remittance inflows could provide a partial answer to the problem of lost capital in migrant-source countries. A well-constructed tax on remitted income would build on the longstanding scholarly discussion of migration-compensation policies, as epitomized by the Bhagwati tax and similar proposals. Remittance taxation improves on these earlier proposed policies by preserving migrant workers' freedom to emigrate and reducing various administrative limitations. Before describing potential policy regimes in greater detail, the next section explores normative and practical justifications for taxation of remittance inflows by recipient developing countries.

II.
NORMATIVE AND PRACTICAL JUSTIFICATIONS FOR REMITTANCE TAXATION

Through taxation of remittance inflows, migrant-source country governments would gain a robust and visible income stream from which to draw public revenue. It is important to realize that even if a recipient country does not

111. *Id.* at 37–38.

112. B. LINDSAY LOWELL & RODOLFO O. DE LA GARZA, INTER-AMERICAN DIALOGUE, THE DEVELOPMENTAL ROLE OF REMITTANCES IN U.S. LATINO COMMUNITIES AND IN LATIN AMERICAN COUNTRIES 11–12 (2000), http://ww.thedialogue.org/PublicationFiles/Final%20report.pdf.

113. *See* FED. RESERVE BANKS SERVS., DIRECTO A MÉXICO: FREQUENTLY ASKED QUESTIONS (2005), http://www.frbservices.org/files/help/pdf/DirectoMexicoFAQ.pdf.

114. Francisco Javier Aparicio & Covadonga Meseguer, *Collective Remittances and the State: The 3x1 Program in Mexican Municipalities*, 40 WORLD DEV. 206 (2012).

115. *Id.*

tax remitted income, the income remains subject to taxation by the host country. Both theoretical and practical considerations support shifting the point of taxation from the host country to the low-income recipient country.

Experts correctly argue against directly taxing remittance transfers, which would reduce transfers overall and drive them underground. Further, a tax on transfers is likely regressive because it is calculated independent of the remitter's ability to pay. However, by moving one step down the transfer stream and taxing remittance *recipients*, governments would be able to raise revenue in a progressive way that compensates for emigration without restricting labor mobility or drastically reducing remittance inflows.[116] Under an ideal policy structure, the transferred income would be free of taxation in the host country to enable subsequent taxation in the home country.[117] This contravenes the standard practice in which labor income is taxed where the work is done.[118] Such a policy would also breach current accepted doctrine regarding non-deductibility and non-taxation of gifts and intra-family transfers.[119] Thus, it is first necessary to explain why remittance taxation justifies such a divergence from tax policy custom.

A. Taxation of Intra-Family Transfers[120]

Crafting an ideal tax policy for international remittances entails defining the proper tax treatment of transnational families. Looking to first principles of family taxation, it actually makes good sense to tax recipient family members on remittance inflows received, rather than taxing remittance senders on relinquished labor income. This is because transnational families are not subject to the same concerns that underlie customary non-deductibility and non-taxation of intra-family transfers—namely, income pooling and bracket shifting.

With regard to income pooling, the first question in determining how best to tax transnational families is whether they should be taxed jointly or separately.[121] Under joint taxation of spouses or family units, intra-family

116. For details on how such a tax policy structure would operate progressively, and with limited impact on labor mobility and remittance inflows, see *infra* Parts IV and V.

117. *See infra* Part IV.

118. *See, e.g.*, Lucas v. Earl, 281 U.S. 111, 114–15 (1930) (declaring that the U.S. tax code taxes income to earner).

119. I.R.C. § 102(a) (2015) (providing that gross income does not include gifts).

120. These principles address concerns of high-income host countries. Rather than attempt to define global principles, the Article uses the United States as a likely model host country. Although taxation principles underlying U.S. taxation may not apply in all countries, they are likely applicable among many OECD nations.

121. For the purposes of this discussion, the family unit refers to nuclear family members—i.e., spouses and children—since extended family members are already taxed separately. For a related discussion addressing joint taxation of spouses, see, e.g., Lawrence Zelenak, *Marriage and the Income Tax*, 67 S. CAL. L. REV. 339, 387 (1994) (exploring the appropriateness of joint taxation of

transfers are neither deductible to the transferor nor taxable to the transferee since relevant members are taxed as one unit. Although governments adopt family taxation policies for a variety of reasons, the standard justification for joint taxation of households is that families act as single economic units that pool their income.[122] However, income pooling is practically impossible for transnational families because national borders separate their household finances. Consequently, it is more appropriate to tax transnational family members as separate entities in each country of residence.

Furthermore, much of the policy underlying family taxation arises out of a concern over bracket shifting, where a high-tax spouse shifts income-producing property to a low-tax spouse in order to reduce tax liability.[123] This same concern partly explains the parallel treatment extended to gifts, which are nondeductible to the giver and tax-free to the recipient.[124] Bracket shifting is hardly a concern in the context of transnational remittances. Because many remittance senders are low-income taxpayers in host countries,[125] they have little incentive or ability to engage in tax evasion through bracket shifting. Bracket shifting among transnational families is also unlikely because family members often reside in home countries, making transferring capital across borders much more difficult. This suggests that non-deductibility and non-taxation of intra-family transfers may be less justified in the case of international remittance payments.

Instead of treating transnational households like standard families, it may be more appropriate to treat them like divorced families. Under this framework, remittances are akin to alimony payments, which are taxed as income to the recipient and deductible by the sender.[126] The tax treatment of alimony demonstrates the principle that where intra-family payments result in a fully executed transfer—i.e., where there is no risk of bracket shifting or income pooling—then taxing the income to the recipient is more appropriate than continuing to tax it to the earner.[127] This is certainly the case for remittance

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spouses in the United States).

122. *Id.* at 342–43.

123. *See* HARVEY S. ROSEN, PUBLIC FINANCE 375–76 (2d ed. 1988).

124. I.R.C. § 102 (West 2014).

125. *See, e.g.*, ROBERT SURO, PEW HISPANIC CTR., REMITTANCE SENDERS AND RECEIVERS: TRACKING THE TRANSNATIONAL CHANNELS 7 (2003), http://pewhispanic.org/files/reports/23.pdf (reporting that, of survey respondents, forty-six percent of Latino remittance senders earn less than $30,000 annually).

126. I.R.C. § 71(a) (West 2014) (mandating that alimony received must be included as income); I.R.C. § 215(a) (West 2014) (allowing deduction from income equal to the amount of alimony paid).

127. The unique tax treatment of alimony is also based in part on the idea that the alimony payment "legally" belongs to the recipient since it is a court-ordered payment. MARTIN A. CHIRELSTEIN & LAWRENCE ZELENAK, FEDERAL INCOME TAXATION 295 (13th ed. 2015) ("[T]he [husband] is treated as a conduit for gross income that legally belongs to the [wife] under the divorce decree."). Although remittances may not be legally mandated, there is evidence that they are sent pursuant to strict moral obligation. *See infra* note 130 and associated text.

transfers, as national boundaries separate the recipients from the sender who is unlikely to benefit from the funds.

One possible counterargument to taxing remittance recipients is that income should be taxed to the person who earns and controls the income, rather than the person who consumes or benefits from the income.[128] This concept, sometimes referred to as the "control principle," is a pillar of tax policy design.[129] However, taxation of remittances to the recipient rather than the sender still satisfies the control principle for a number of reasons. First, unlike single-nation families in which the earner can maintain practical control of his earned funds, the recipients in transnational families obtain full control of the remittance payments due to physical separation between the senders and recipients. This means that an earner relinquishes actual control of the income once he transmits the money abroad. At best he can request how the money be used, but he likely has little recourse or knowledge if the family members back home choose an alternative expense.

The control principle further supports taxation of recipient family members because remittance-receiving households should properly be considered the earners of transferred income rather than the beneficiaries of charitable transfers. This perspective arises out of an evolving understanding in remittance research, which suggests the payments should be viewed as rightful investment income rather than mere gifts. A great deal of empirical research shows that migrant households are more likely to view remittances as an agreed-upon return on an investment made by the entire household, rather than a result of altruism on the part of the sender.[130] Although there is perhaps no legal requirement that family

128. Zelenak, *supra* note 121, at 343 ("In an income tax, control should govern, not consumption."). Although the control principle establishes that an ideal tax is levied on the controller of income, tax systems instead tax income earners because it is simple to determine who earns income, but much more difficult to determine who controls income. For a discussion of the control principle and taxation of earners as controllers, see Lucas v. Earl, 281 U.S. 111, 114–15 (1930); Zelenak, *supra* note 121, at 343 ("The evidence on marital pooling suggests that, although spouses may share the consumption of resources rather evenly, the control over income remains with the earner.").

129. *Lucas*, 281 U.S. at 114–15; Zelenak, *supra* note 121, at 343.

130. The development community has recently started to understand this and to reframe remittances as a household investment rather than a windfall gain. *See, e.g.*, Michael Clemens & Timothy Ogden, *Migration as a Strategy for Household Finance: A Research Agenda on Remittances, Payments, and Development* (Ctr. for Global Dev., Working Paper No. 354, 2014) (arguing that migration is seen as an investment by the migrant household, and remittances as a return on investment). This view is bolstered by migration research that emphasizes that migration decisions are based on joint decision-making by the entire household, which is a line of discourse termed the "new economics of migration." For an in-depth explanation of the new economics of migration, see Oded Stark & David E. Bloom, *The New Economics of Labor Migration*, 75 AM. ECON. REV. 173 (1985). *See also* Douglas S. Massey et al., *Theories of International Migration: A Review and Appraisal*, 19 POPULATION & DEV. REV. 431, 436 (1993) (summarizing recent theories of migration); Oded Stark, Book Review, 14 J. DEV. ECON. 251 (1984) (reviewing MIGRATION DECISION MAKING (Gordon F. DeJong & Robert W. Gardner eds., 1981)). For example, research

members remit money back home, as there is for alimony payments, in many cases the senders have a binding moral obligation to make remittance payments.[131] Conceptualizing the payments as a return on investment thereby further suggests that remittances are properly taxed to the recipients as a form of rightful income, as the control principle argues. Thus, in the case of a transnational household, satisfying the control principle may actually entail taxing recipients rather than earners.

Upon considering first principles of family taxation, we see that the concerns that justify the customary treatment of intra-family transfers do not apply to families separated by national borders. From the perspective of the host country, taxing remitted income to recipients rather than senders would achieve a more appropriately tailored transnational family tax policy, and one that is better supported by first principles of family taxation.

B. Inter-Nation Equity

Pulling back from the household to the international level, concepts of residence-based taxation and inter-nation equity provide support for developing countries' claims to remittance tax revenue.[132] As a threshold matter, it is widely accepted that both the source country and the residence country have a claim to foreign income earned by a resident taxpayer.[133] The "residence principle" states that taxpayers who earn money through labor or investment abroad are considered to owe tax allegiance to their residence countries in return for the rights and privileges that they receive as residents.[134] In this context, "residence"

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conducted among cyclical migrants in Albania found that migrants' decisions to return home were based on risk-pooling among all household members, rather than individual decisions by the migrants themselves. Talip Kilic et al., *Investing Back Home: Return Migration and Business Ownership in Albania*, 17 ECON. TRANSITION 587, 591 (2009). A case study of migrant households in Santa Ana, Mexico also found that migration resulted from household-level decision making among nuclear or extended families. Dennis Conway & Jeffrey H. Cohen, *Consequences of Migration and Remittances for Mexican Transnational Communities*, 74 ECON. GEOGRAPHY 26, 37 (1998). The Santa Ana case study revealed that migration decisions are typically based on improving family or household livelihoods. *Id*. Working together, the family decides which member to send abroad in order to realize sufficient gains to counteract stagnant home economies and market failures. *Id*. Thus, empirical evidence suggests that remittances are not actually considered gratuitous gifts, but rather entail a joint household investment in the migrant, who then repays this investment through sending remittances home.

131. *See* Charles Tilly, *Trust Networks in Transnational Migration*, 22 SOC. FORUM 3 (2007) (exploring various trust relationships that arise in migration, particularly the obligation of sending remittances back home).

132. *See, e.g.*, Nancy H. Kaufman, *Fairness and the Taxation of International Income*, 29 LAW & POL'Y INT'L BUS. 145, 148 (1998) ("Source, residence, and citizenship taxation provide the framework within which each country legislates its domestic rules for the taxation of international income.").

133. *See, e.g.*, Peggy B. Musgrave, *Sovereignty, Entitlement, and Cooperation in International Taxation*, 26 BROOK. J. INT'L L. 1335, 1336 (2001) (explaining that under the "residence principle", "[r]esidents are held to owe tax allegiance in return for the rights and privileges which they receive as residents"); Kaufman, *supra* note 132, at 148.

134. *See, e.g.*, Kaufman, *supra* note 132, at 148; Peggy B. Musgrave, *Sovereignty, Entitlement,*

refers to the residence country of the recipient household, rather than the host country where the migrant worker lives and works. Given the long-accepted right of both source and residence nations to tax income,[135] the question then becomes how the tax revenue should be divided by both nations. Although host countries currently dominate taxation of remitted income, considerations of inter-nation equity and international distributional concerns justify shifting some portion of remittance tax revenue to home countries.

The concept of inter-nation equity, developed by Peggy and Richard Musgrave, provides a framework to challenge the current source country primacy in the taxation of remitted income. The theory posits that considerations of equity between national units, as opposed to purely inter-individual equity concerns, might provide guidance as to how to distribute tax revenue between home and host countries.[136] Unlike inter-individual equity, wherein countries seek to promote equity among individual taxpayers, inter-nation equity refers specifically to equity at the national level.[137] The concept attempts to address at what point a government is entitled to collect tax revenue, based on the allocation of gains and losses between nations.[138] Imagine the case of an investor from Country B earning income on a project operating within Country A's borders.[139] Under the inter-nation equity framework, when Country A taxes that foreign investor on the income earned within its borders, Country B's potential gain decreases by the amount of the tax.[140] The Musgraves' work, on which the hypothetical is based, specifically addresses corporate taxation, but the general principles are broadly applicable to individual income taxation and taxation of remitted income.[141]

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and Cooperation in International Taxation, 26 BROOK. J. INT'L L. 1335, 1336 (2001) (explaining that under the "residence principle," "[r]esidents are held to owe tax allegiance in return for the rights and privileges which they receive as residents . . . .").

135. Although some may disagree with the normative implications of this statement, the primacy of the residence principle in shaping international tax policy is unchallenged. *See* Michael J. Graetz, FOUNDATIONS OF INTERNATIONAL INCOME TAXATION 5 (2003) ("Nations universally recognize that both the country of residence and the country of source have a valid claim to tax income.").

136. *See* PEGGY BREWER RICHMAN, TAXATION OF FOREIGN INVESTMENT INCOME: AN ECONOMIC ANALYSIS 103–04 (1963); Kaufman, *supra* note 132, at 153–54 (summarizing Musgrave's work over several decades).

137. Kim Brooks, *Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value*, *in* TAX REFORM IN THE 21ST CENTURY 4 (Richard Krever & John G. Head eds., 2009).

138. Reuven S. Avi-Yonah, *Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State*, 113 HARV. L. REV. 1573, 1575 (2000); Kaufman, *supra* note 132, at 153–54; Richard A. Musgrave & Peggy B. Musgrave, *Inter-nation Equity*, *in* MODERN FISCAL ISSUES 6 (Richard M. Bird & John G. Head eds., 1972).

139. Brooks, *supra* note 137, at 4.

140. *Id.*

141. Note that the Musgraves' work has been criticized for, among other things, lacking

The concept of inter-nation equity is more than just a positivist description of inter-nation distributions of gain loss. It suggests that distributional concerns ought to govern the division of tax entitlements between high-income and low-income nations.[142] Although largely absent from the scholarly discussion of inter-nation tax equity, which focuses on corporate investment, tax policies generate gains and losses in the context of labor income as well. When a migrant worker from Country B earns income in Country A with the intention of remitting a certain portion back home, a tax on this income in Country A reduces the potential gain to Country B. Recognizing that taxation of remittances in the host country represents a net loss to the home country, high-income host countries should consider ceding certain limited tax authority to low-income recipient countries in the furtherance of international equity concerns.

The actual size of the loss created by the host country's tax will depend on the elasticity of remittances to taxation, which is largely an empirical question. To see why, imagine a scenario in which the host country, Country A, imposes no income tax. A migrant worker, X, from Country B earns $100 per week while working in Country A and remits $20 of his earnings to family back home each week. Now suppose that Country A implements a twenty percent income tax, thus reducing X's after-tax income to $80. There are three possible outcomes. First, knowing his family needs the full $20, X does not reduce the remitted amount. Here there has been no loss to Country B, but X bears the cost in that he now must live on only $60 per week. Second, knowing he needs the full $80 to survive in the host country, X cuts out his remittance entirely. In this case, Country A has effectuated a $20—or one hundred percent—loss on Country B.[143] Third, X splits the difference between himself and his family, reducing remittances by some amount—perhaps twenty percent, to $16. In this case, Country A has effectuated a $4—or twenty percent—loss on Country B. If either the second or third scenarios dominate, which they likely do in many cases, then taxation by the host country results in a redistribution of gain from Country B to Country A. In the case of low-income migrant-source countries,

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practical application and offering no guidance in the actual distribution of tax entitlements among nations. *See, e.g.*, Avi-Yonah, *supra* note 138, at 1648–49 (describing Musgrave's formulation of inter-nation equity as vague and offering no practical guidance in allocating tax entitlements among countries); Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 54 TAX L. REV. 261, 284–94 (2001) (explaining that application of Musgrave's principles would have destroyed nearly all incentives for U.S. taxpayers to invest abroad).

142. *See, e.g.*, Avi-Yonah, *supra* note 138, at 1650 ("More specifically, when a choice is presented between two otherwise comparable alternative rules, one of which has progressive and the other regressive implications for the division of the international tax base between poorer and richer countries, the progressive rule should be explicitly preferred to the regressive one.").

143. Note that this example equates the gain to the recipient household with the gain to Country B. The actual loss to Country B's treasury would depend on complicated factors such as tax effort and tax efficacy, which become yet more complex in a developing country setting. This simple hypothesis assumes that Country B seeks to maximize gain to households, ignoring country-level gain for the moment.

the result is redistribution from a low-income country to a high-income country, worsening preexisting global inequity.

This discussion presumes that international equity is indeed a concern for high-income host countries, and further that countries are willing to address this concern via taxation. This need not be the case. It remains an open question whether the tax system is an appropriate mechanism through which to pursue redistribution of global income.[144] However, high-income nations should at least seek to not exacerbate an already inequitable global distribution. This is particularly true where the home and host countries both have some claim to tax the income at issue, as is the case with remitted labor income. In such an instance, the primary explanations for the regressive redistribution from poor to rich countries are the weak bargaining power and low tax capacities of low-income migrant-source nations. Neither of these reasons ought to impose a permanent barrier to a more equitable distribution of tax revenue between home and host countries.

C. Government Tax Goals Principles

Finally, looking to the home country perspective, taxation of remittance payments to the recipient household would support important tax goals of migrant-source country governments. Specifically, a properly crafted remittance tax policy would mobilize needed government revenue, and do so in a relatively progressive way.

1. Increasing Revenue Mobilization

Increasing tax revenue is an important objective of resource-poor countries seeking to improve development outcomes via the stable provision of security and other public goods.[145] Although certainly there are reasons to be cautious when considering taxation of remittance flows, these challenges need not

144. *See, e.g.*, Graetz, *supra* note 141, at 300–01 (discussing whether tax law's role in redistributing income from rich to poor should stop at national borders).

145. *See, e.g.*, FISCAL AFFAIRS DEP'T, IMF, REVENUE MOBILIZATION IN DEVELOPING COUNTRIES 7 (2011), http://www.imf.org/external/np/pp/eng/2011/030811.pdf (explaining that the spending needs of developing countries are substantial and constant); Thomas Baunsgaard & Michael Keen, *Tax Revenue and (or?) Trade Liberalization*, 94 J. PUB. ECON. 563, 565 (2010) ("[I]ncreased domestic revenue mobilization clearly is, and has long been, a central element of the development strategies of many low income countries. . . . [A]ny substantial loss of total tax revenue following trade reform . . . is prima facie cause for significant concern."); Burgess & Stern, *supra* note 36, at 769 ("[T]here is no viable, long-term, and substantial alternative to taxation as a means of financing government expenditures."); Deborah Itriago, *Owning Developing: Taxation to Fight Poverty*, OXFAM RESEARCH REPORT 9 (Sept. 2011) (describing the relatively low tax collections of developing countries compared with high-income countries, arguing that increased tax collections would help governments fight poverty).

overshadow the ongoing need for sustainable government resources in developing countries.

A government needs revenue to provide the public services necessary to ensure stability and long-term growth. Individual households cannot provide public goods. Thus, the government must impose taxes in order to raise the requisite funds. Underlying the opposition to remittance taxation is an implicit belief that the individual household is the optimal unit to leverage remittance payments to improve overall welfare. However, as explained above, empirical data fail to show a robust positive relationship between remittance receipts and long-term growth.[146] This is partly due to the fact that remitted funds are often used for nondurable consumption rather than being invested in pro-growth activities.[147] Although the government may not make better use of the funds in all instances, the fact remains that individual households have been unable to leverage remittances for sustained growth. Taxing remittances would help ensure that the transfers are partially funneled toward providing the public goods necessary to engender long-term growth.

Opponents to raising revenue via remittance taxation may counter that remittance recipients should not bear a greater burden than their neighbors in supporting overall domestic welfare. Although all taxation rests on the assumption that the government has a right to transfer resources from the private to the public sector in return for the provision of public goods, the distribution of this tax burden must be considered fair.[148] This idea is expressed in part by the "benefit principle," which states that a taxpayer's tax liability should correspond to the benefits that the government provides.[149] Taken a step further, this principle leads to the normative conclusion that those who receive greater benefits should pay higher taxes.[150] Thus, in order for the benefits principle to justify remittance taxation, recipient households must receive greater public benefits than non-recipient households. The evidence suggests that they likely do—although admittedly the gap in benefits is difficult to measure and may be

146. *See* Abdih et al., *supra* note 75, at 664, and accompanying text; Acosta et al., *supra* note 75, and accompanying text; *see, e.g.*, Barajas et al., *supra* note 59, and accompanying text; Chami et al., *supra* note 75, at accompanying text.

147. Barajas et al., *supra* note 59, at 6 (explaining that remittances may not lead to growth because they likely finance consumption rather than investment).

148. Perceptions of the fairness of the tax system are very important to constructing a functional tax system and ensuring broad compliance. *See, e.g.*, Deborah A. Bräutigam, *Introduction: Taxation and State-Building in Developing Countries*, *in* TAXATION AND STATE-BUILDING IN DEVELOPING COUNTRIES 7 (Deborah A. Bräutigam, Odd-Helge Fjeldstad & Mick Moore eds., 2008) ("[C]ompliance will be affected by perceptions of the government's legitimacy and the fairness of the tax system . . . .").

149. The benefit principle is a foundational concept and mainstay of tax policy design. *See, e.g.*, Patricia D. White, *An Essay on the Conceptual Foundations of the Tax Benefit Rule*, 82 MICH. L. REV. 486 (1983). For an enlightening discussion of the benefits principle and the political morality of taxation, see LIAM MURPHY & THOMAS NAGEL, THE MYTH OF OWNERSHIP: TAXES AND JUSTICE 16–19 (2002)*; see also* JOEL SLEMROD & JON BAKIJA, TAXING OURSELVES: A CITIZEN'S GUIDE TO THE DEBATE OVER TAXES 63 (4th ed. 2008).

150. *See* SLEMROD & BAKIJA, *supra* note 149, at 63.

small. As one example, many developing country governments undertake specific efforts to promote remittances and ensure safe and cost-effective transfers.[151] Additionally, remittance transfers result from migration of family members who often benefitted from state-subsidized education.[152] These public services are typically considered to be government investment in the economy, but without a way to harness remittance inflows, much of the consequent gains are lost or, at best, spent on basic consumption rather than long-term growth. Taxing the transfers upon their return is perhaps the most straightforward way for governments to ensure a positive return on their public investment.

The revenue argument is particularly compelling for countries with very high emigration relative to the total population, as taxing remittances may be one of the few ways to compensate the government for the tax revenue lost due to emigration. In a country where remittances make up a large percentage of domestic GDP, there may be few other viable domestic sources of tax revenue. In Tajikistan, for example, remittances comprise forty-eight percent of GDP.[153] Countries such as Tajikistan may have few other options outside of taxing remittances in order to raise enough revenue to provide basic public services for their citizens.

2. *Progressivity*

The goal of raising revenue must be balanced with the equally important goal of ensuring progressive taxation. Taxing remitted income offers a relatively progressive tax policy compared with both current non-taxation and with alternative emigrant tax proposals such as the Bhagwati tax or the global citizenship taxation proposed by Desai et al.[154]

Taxing remittance-receiving households may improve progressivity in part by targeting a group of taxpayers that is often relatively better off than their non-recipient neighbors. Of course, the progressivity of a remittance tax policy will depend on the demographics of each particular country, so taxing recipient

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151. *See, e.g.*, Zeno Ronald R. Abenoja, Presentation at the 9th National Convention on Statistics, Promoting Greater Use of Formal Remittance Systems by Overseas Filipinos 12 (Oct. 4–5, 2004) (listing various efforts by the Philippine government to promote remittances, including international agreements to reduce remittance costs, support for overseas workers, and easing restrictions on banks to enable them to increase money-changing services, among other things); *see* discussion *supra* Part I(C) (describing Mexico's efforts to promote and protect remittance transfers).

152. *See* Jagdish N. Bhagwati & John Douglas Wilson, *Income Taxation in the Presence of International Personal Mobility: An Overview*, *in* INCOME TAXATION AND INTERNATIONAL MOBILITY 5 (Jagdish N. Bhagwati & John Douglas Wilson eds., 1989) (using past education benefits to justify citizenship-based taxation on developing country emigrants in order to mitigate the brain drain); Michael S. Kirsch, *Taxing Citizens in a Global Economy*, 82 N.Y.U. L. REV. 443, 477 (2007) (exploring past benefits as a rationale for U.S. citizenship-based taxation, concluding that it is more applicable to low-income country emigrants).

153. 2013 REMITTANCE OUTLOOK, *supra* note 48, at 2.

154. *See supra* Part I(A)(ii).

households may not improve progressivity in all contexts. That said, remittance recipient families often inhabit middle- or high-income groups in the home country, even if a worker occupies a low-income group in the host country.[155] Further, research from Egypt demonstrates that remittances can worsen inequality in situations where higher-income households contribute more to emigration.[156] Ensuring a progressive tax system is particularly important where remittances tend to worsen inequality or benefit higher-income households.

Taxing remittance recipients also offers a more progressive method of compensating migrant-source countries for emigration compared to emigrant tax regimes that Bhagwati and Desai et al. propose. Specifically, remittance taxation is superior to emigrant taxation because it can account for a taxpayer's ability to pay the tax. The "ability-to-pay principle" states that tax burdens should be measured in accordance with a taxpayer's economic well-being.[157] Determining a taxpayer's ability to pay is inherently relative, introducing additional complexities in an international tax context.[158] When contemplating a migration-related tax policy that affects citizens living abroad, policymakers must decide whether to compare a taxpayer's ability to pay with the host country's population or the home country's population. A taxpayer may be relatively well off compared to one group while being relatively poor compared to the other. For this reason, imposing a home-country tax on an emigrant living abroad may worsen distributional outcomes compared to the host-country populace. Taxing recipient households on remittance payments, on the other hand, ensures an appropriate comparison of tax burden only among residents in the same domestic economy. Therefore, where progressivity is a significant concern, a tax on remittance recipients is preferable to the emigrant tax policy proposed throughout migration taxation scholarship.

As the above analysis demonstrates, taxing remittance recipients would advance the important home-country tax goal of raising revenue, and do so in a more progressive way than is currently proposed in the literature.

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155. *See, e.g.*, de la Fuente, *supra* note 71, at 838 (finding that remittances tend to benefit households that are better off than non-recipients).

156. *See, e.g.*, RICHARD H. ADAMS, JR., INT'L FOOD POL'Y RESEARCH INST., RESEARCH REPORT NO. 86, THE EFFECTS OF INTERNATIONAL REMITTANCES ON POVERTY, INEQUALITY, AND DEVELOPMENT IN RURAL EGYPT 10 (1991) (finding that remittances reduced poverty but increased inequality among Egyptian remittance recipients).

157. *See, e.g.*, SLEMROD & BAKIJA, *supra* note 149, at 165–67 (explaining that distributional equity is achieved in part through the use of ability-to-pay measurements); Kirsch, *supra* note 152, at 479 (describing the ability-to-pay principle as one "traditionally applied to questions of distribution").

158. *See* Kirsch, *supra* note 152, at 480–84.

III.
TAX REALITIES IN DEVELOPING COUNTRIES

A. Tax Policy Building Blocks

Policymakers seeking to compensate domestic economies for emigration will need to consider on-the-ground tax policy realities. Governments can reach recipient household finances through three main tax instruments: the individual income tax, the consumption tax, and the property tax. Remittance-receiving countries with a functioning progressive income tax regime should be able to tax remittance inflows primarily via taxing income to the recipients. Those without an income tax will have to look to other options. For example, these nations can rely on indirect taxation or forge tax-sharing treaties with host countries. To better understand the policy proposals described below, this section provides a brief background on tax structures in developing countries and highlights specific tax characteristics among a group of remittance-receiving nations.

1. The Personal Income Tax (PIT)

The income tax should be the first choice for policymakers seeking to harness remittance gains because it is one of the few moderately progressive taxes among developing countries.[159] Unfortunately, however, the personal income tax in developing countries faces significant constraints. Although wealthy countries raise substantial revenue via income tax, on average collecting the equivalent of seven percent of GDP, developing nations raise only the equivalent of two percent of GDP through the tax.[160] This is due in part to local administrative and political difficulties in implementation and enforcement.[161] In practice, developing country governments rarely collect more than withholding taxes on employees working in the formal sector, specifically those working for the government or for large corporations.[162] Tax agencies are often unable to reach labor income earned in the large informal sector.[163]

In spite of continually low collection rates, Alberto Barreix and Jerónimo Roca describe the income tax as one of the primary fiscal pillars in Latin America because it promotes progressivity.[164] Barreix and Roca argue that

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159. Bird & Zolt, *supra* note 36, at 1682–83.

160. Richard M. Bird, WBG, *The Personal Income Tax*, PREMNOTES, June 2009, at 1.

161. Bird & Zolt, *supra* note 36, at 1629–30.

162. REVENUE MOBILIZATION IN DEVELOPING COUNTRIES, *supra* note 145, at 31; Bird & Zolt, *supra* note 36, at 1629.

163. Roy W. Bahl & Richard M. Bird, *Tax Policy in Developing Countries: Looking Back—and Forward*, 61 NAT'L TAX J. 279, 287 (2008) (noting the continued inability of income tax administrations to sweep the informal sector into the tax net).

164. Alberto Barreix & Jerónimo Roca, *Strengthening a Fiscal Pillar: The Uruguayan Dual Income Tax*, 92 CEPAL REV. 121, 137 (2007).

developing countries should pay greater attention to the personal income tax because of its potential ability to reduce income inequality and, by extension, promote social cohesion.[165] Ky-young Chu et al. find further support for the tax's progressivity, demonstrating that virtually all studies of the income tax's incidence from 1975–1998 document its progressivity and redistributive effect.[166] However, much of the literature also notes income tax's declining progressivity over time as well as its diminishing importance in the developing world.[167] Thus, while an ideal remittance policy would utilize the personal income tax to capture gains, a realistic policy portfolio must look to other options, as well.

2. *Consumption Taxation—The VAT*

The widespread adoption of the value-added tax (VAT) over the past two decades has nearly amounted to a tax policy revolution in developing countries. The VAT has been promoted and adopted in part for its large revenue-raising potential because of the efficacy of the tax on its own, as well as its tendency to improve overall tax administration and compliance.[168] Indeed, generally the VAT is found to increase revenue.[169] Further, despite popular criticisms of the tax as regressive,[170] it is generally found to have little effect on income distribution, with the exception of certain sector-specific taxes. For example, a tax on kerosene will be more regressive than a tax on luxury goods.[171]

However, the literature notes that certain countries have had less success raising revenue through the VAT. Poor performance is associated with political instability and administrative limitations, particularly in Sub-Saharan African countries.[172] Joshua Aizenman and Yothin Jinjarak caution that enthusiasm for

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165. *Id.* at 138.

166. Ke-young Chu et al., *Income Distribution and Tax and Government Social Spending Policies in Developing Countries* 34–38 (World Inst. for Dev. Econ. Research, Working Paper No. 214, 2000) (Table 10 summarizes findings of tax incidence studies from 1975–1998).

167. *See also* Bahl & Bird, *supra* note 163, at 289 (noting a sharp reduction in corporate and personal income tax rates around the world, reflecting increased international tax competition); Bird, *supra* note 160, at 2; Chu, *supra* note 166, at 42–46.

168. Michael Keen & Ben Lockwood, *The Value Added Tax: Its Causes and Consequences*, 92 J. DEV. ECON. 138 (2010).

169. Keen, *Taxation and Development*, *supra* note 36, at 11–12; Keen & Lockwood, *supra* note 168, at 138.

170. Richard M. Bird & Pierre-Pascal Gendron, *Is VAT the Best Way to Impose a General Consumption Tax in Developing Countries?* 1 (Andrew Young School of Policy Studies, Int'l Studies Program, Working Paper No. 06-18, 2006) (commenting on anti-VAT protests and popular concern about equity aspects of the VAT).

171. Norman Gemmell & Oliver Morrissey, *Tax Structure and the Incidence on the Poor in Developing Countries* 18 (Univ. of Nottingham Ctr. for Research in Econ. Dev. and Int'l Trade, Working Paper No. 03/18, 2003).

172. Joshua Aizenman & Yothin Jinjarak, *The Collection Efficiency of the Value Added Tax: Theory and International Evidence*, 17 J. INT'L TRADE & ECON. DEV. 391, 393 (2008) (finding that political instability is correlated with reduced effectiveness of the VAT); *see also* Kelly D. Edmiston & William F. Fox, *A Fresh Look at the VAT*, *in* THE CHALLENGE OF TAX REFORM IN A GLOBAL

the VAT should be tempered by the awareness that the VAT is not costless to administer, due to large expenditures to collect and process information, prosecute agents found underpaying the tax, and otherwise ensure broad compliance with the complex tax structure.[173] Importantly, Joseph Stiglitz criticizes overzealous promotion of the VAT because of its inability to reach the informal sector, leading to significant distortions in consumption and employment.[174] In all, while the VAT is undoubtedly a useful tax for developing countries, it may not be the ideal tax to capture remittance gains because of its weaknesses in capturing the informal sector and other limitations discussed in the following section.[175]

3. *The Property Tax*

Developing countries infrequently use property taxation, on average raising revenue equal to only 0.6% of their GDPs.[176] Common explanations for the dearth of property taxation include the high costs of accurate valuation,[177] political unpopularity,[178] and enforcement difficulties.[179] However, despite the

ECONOMY 249–50 (James Alm, Jorge Martinez-Vazquez & Mark Rider eds., 2006) (examining the divergence between the theory of the optimal VAT versus the actual experience of the VAT in practice; arguing that the gap between theory and practice arises due to political and administrative realities and constraints).

173. Aizenman & Jinjarak, *supra* note 172, at 393; *see also* Patrick Fossat & Michel Bua, *Tax Administration Reform in the Francophone Countries of Sub-Saharan Africa* 29 (IMF Fiscal Affairs Dep't, Working Paper No. WP/13/395, 2013) (detailing problems with VAT administration in Sub-Saharan Africa, including burdensome paperwork requirements, rent-seeking through lobbying for exemptions, lack of confidence in the tax system, etc.).

174. Joseph E. Stiglitz, *Development-Oriented Tax Policy*, *in* TAXATION IN DEVELOPING COUNTRIES 11, 11–12 (Roger Gordon ed., 2010) (inefficiency occurs as taxpayers shift into the relatively less productive informal sector, reducing growth and increasing unemployment as labor shifts to the informal sector as well).

175. *See infra* Part III(B)(i).

176. *See* Roy Bahl & Jorge Martinez-Vazquez, *The Property Tax in Developing Countries: Current Patterns and Prospects* 1 (Lincoln Inst. of Land Policy, Working Paper No. WP07RB1, 2007).

177. *See, e.g.*, Roy Bahl, Jorge Martinez-Vazquez & Joan Youngman, *The Property Tax in Practice*, *in* MAKING THE PROPERTY TAX WORK: EXPERIENCES IN DEVELOPING AND TRANSITIONAL COUNTRIES 3, 3–4 (Roy Bahl, Jorge Martinez-Vazquez & Joan Youngman eds., 2008).

178. *Id.*

179. Enforcement difficulties occur because local officials lack the capacity and desire to enforce the tax, particularly because property owners are often community leaders. One exception here has been South Africa, where local authorities have used the threat of cutting off electricity for failure to pay property taxes. *See* Bahl et al., *supra* note 177, at 42. At the other end of the spectrum, in the United States local tax authorities have gone so far as to impose tax liens on property and eventually foreclose on homes for unpaid property taxes, even where tax debts are as low as $134. *See* Michael Sallah, Debra Cenziper & Steven Rich, *Left with Nothing*, WASH. POST, Sept. 8, 2013, http://www.washingtonpost.com/sf/investigative/2013/09/08/left-with-nothing/ (reporting on a controversial local tax policy of foreclosing on homes with unpaid tax debts). Clearly enforcement of property taxes must find a middle ground between no enforcement and foreclosure for minor

costs and challenges of imposing the tax, property taxation boasts many benefits that make it a good choice for developing countries, in particular at the local government level. For one, property taxes theoretically reflect the actual government services provided as long as these services are capitalized into property values.[180] Further, because the taxes will finance local services, there is a high level of correspondence between those who pay the tax and those who receive the benefits, which should increase the accountability of government officials.[181] Property also provides a highly stable revenue source for resource-starved localities, one that other levels of government mostly fail to tax.[182] This characteristic renders the property tax especially important for fiscal authority decentralization and development of local government capacity and autonomy.[183] At best, however, the current weakness of property taxation regimes relegates it to being merely one component of a migration tax policy portfolio. In the absence of significant expansion of the property tax, it is unlikely to adequately compensate home countries for outmigration.[184]

B. *Tax Capacity of Remittance-Receiving Countries*

1. *Survey of Tax Policies in Selected Migrant-Source Countries*

Migrant-source countries might rely on a mix of tax structures to harness remittance flows as compensation for outmigration. Table 3 provides a snapshot of the tax policy landscape among a group of remittance-receiving countries, including data for the top ten aggregate remittance recipients as well as data for the top ten recipients by percentage of GDP.[185] The table reveals the wide range in tax policies and taxing capacities in remittance-receiving developing countries. The absence of data for property taxation reveals both the relatively low utilization of the tax as well as the lack of institutional knowledge about property tax implementation in developing countries.

The data in Table 3 is drawn from the U.S. Agency for International Development's (USAID) Collecting Taxes project, which assembles national tax

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debts.

180. Bahl & Martinez-Vazquez, *supra* note 176, at 35; *see also* Enid Slack, Presentation at the Fourth IMF-Japan High-Level Tax Conference, Property Tax Reform in Developing Countries 4 (Apr. 3, 2013).

181. Bahl & Martinez-Vazquez, *supra* note 176, at 4–5.

182. *Id.* at 2–3, 8.

183. *See, e.g.*, Richard M. Bird & Enid Slack, *Property Tax and Rural Local Finance*, in MAKING THE PROPERTY TAX WORK: EXPERIENCES IN DEVELOPING AND TRANSITIONAL COUNTRIES 103, 103–04 (Roy Bahl, Jorge Martinez-Vazquez & Joan Youngman eds., 2008) (arguing that the property tax is vitally important for rural development because it is necessary to allow localities to provide public services and to ensure viable and effective local government).

184. For the property tax to capture emigration gains, some portion of remittance-receiving households would need to own property. The likelihood of this is addressed *infra* Part IV(c)(i).

185. For remittance amounts and percentages for these countries, see *supra* Tables 1 and 2.

structure and performance data for all countries annually.[186] Although most of the categories are relatively straightforward, several of the performance indicators require further explanation. The PIT Productivity column presents figures from the USAID's "PITPROD" indicator. This indicator seeks to capture the revenue production performance of the PIT in each country and is calculated by dividing the total PIT revenue as a percentage of GDP by the average PIT rate.[187] The indicator will fall between zero and one. The VAT Gross Compliance column presents figures from the USAID's "VATGCR" indicator, which is intended to measure how well the VAT produces revenue for the government.[188] The figure is calculated by dividing total VAT revenue as a percentage of GDP by the product of total private consumption and the VAT rate.[189] In this way, it measures actual VAT collections divided by potential VAT collections, expressed as a percentage.[190]

The broad takeaways from the table touch upon tax policy design in several ways. For one, relatively low levels of tax effectiveness—as in, for example, India, Liberia, Haiti, and Nigeria—might counsel policymakers in those countries toward tax reforms that avoid direct self-reporting and other input-intensive methods. In contrast, those countries with a relatively productive personal income tax—such as Vietnam, Lesotho, and Mexico—will likely be more successful at capturing remittance gains through a standard household income tax compared with other low-income countries. Countries that lack a robust income tax—such as Bangladesh and Liberia—need not avoid income taxation altogether but should perhaps instead implement tax policies that do not rely on self-reporting, such as source withholding or presumptive taxation.[191]

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186. *See* U.S. AGENCY FOR INT'L DEV. (USAID), COLLECTING TAXES (last visited Mar. 31, 2014) (the project has since been decommissioned; relevant data is on file with the author). For information on data collection and methodology, see USAID, COLLECTING TAXES 2012–2013: WORKS CITED AND REFERENCES, http://pdf.usaid.gov/pdf_docs/pbaaa609.pdf (last visited Oct. 28, 2015).

187. USAID, COLLECTING TAXES 2012–2013 (last visited Mar. 29, 2014) [hereafter USAID 2012–2013] (tax data spreadsheet is on file with the author).

188. *Id.*

189. *Id.*

190. *Id.*

191. Presumptive taxation entails utilizing administrative assessments where possible in order to avoid reliance on self-assessments for "hard to tax" entities that can easily evade tax authorities. *See* Richard M. Bird & Sally Wallace, *Is It Really So Hard to Tax the Hard-to-Tax? The Context and Role of Presumptive Taxes* (Andrew Young Sch. of Policy Studies, Int'l Tax Program Paper No. 0307, 2003); Sona Gandhi, *Presumptive Direct Taxes*, WBG (2011), http://go.worldbank.org/OCOJ6VGSH1 (last visited Feb. 12, 2015). Methods of presumptive taxation can include: standard lump-sum taxes based on visible indicators such as occupation or business activity, estimated income assessments based on various indicators such as number of employees or land value, assessed agricultural income based on potential land output, comparing net wealth at the start and end of the year, taxation of visible signs of wealth, and minimum taxes. *Id.* In the context of remittance taxation the obvious proxy for income would be the amount of remittances received.

Importantly, the table also shows that some countries—such as Vietnam, Lebanon, and Pakistan—have particularly high thresholds before income tax applies. Without domestic tax reforms in these countries, many remittance recipients would be exempted from income taxation because they fall below these thresholds. Should these nations maintain their high income tax thresholds, they would need to capture remittance gains instead through indirect tax methods such as consumption taxation and property taxation.

Table 3: Remittance-Receiving Countries' Tax Policies[192]

	Country	Income Tax Threshold[193]	PIT Revenue to GDP	PIT Productivity	Average VAT rate	VAT Revenue to GDP	VAT Gross Compliance	Tax Revenue to GDP[194]
Top ten recipients by amount	India	$3,766	1.89%	0.07	12.5%	0.02%	0.2%	10.72%
	China	$541	4.80%	0.11	17.0%	9.6%	164.2%	18.96%
	Philippines	$1,084	1.99%	0.06	12.0%	1.9%	21.2%	12.35%
	Mexico	$0	5.40%	0.18	16.0%	3.8%	36.9%	15.90%
	Nigeria	$1,005	-	-	5.0%	0.2%	5.7%	11.55%
	Egypt	$1,351	1.39%	0.07	10.0%	3.0%	39.7%	14.01%
	Bangladesh	$2,813	1.10%	0.05	15.0%	3.5%	29.8%	9.30%
	Pakistan	$3,820	3.34%	0.17	16.0%	3.6%	27.0%	9.31%
	Vietnam	$4,845	8.80%	0.25	10.0%	6.1%	97.2%	24.26%
	Ukraine	$0	0.47%	0.03	20.0%	10.0%	75.9%	18.49%
Top ten recipients by percentage of GDP	Tajikistan	$104	2.50%	0.23	20.0%	10.5%	57.1%	18.22%
	Kyrgyz Republic	$0	2.35%	0.24	12.0%	7.8%	77.1%	16.13%
	Nepal	$0	0.87%	0.03	13.0%	4.6%	43.2%	12.60%
	Lesotho	$2,071	9.90%	0.35	14.0%	7.8%	56.4%	21.50%
	Moldova	$516	2.20%	0.12	20.0%	12.7%	65.9%	18.28%
	Armenia	$0	2.15%	0.11	20.0%	8.7%	53.4%	17.32%
	Haiti	$335	2.50%	0.08	10.0%	-	-	12.80%
	Samoa	$3,706	2.60%	0.14	15.0%	6.1%	83.7%	22.84%
	Liberia	$123	2.73%	0.08	7.0%	0.80%	9.1%	17.36%
	Lebanon	$4,973	0.60%	0.03	10.0%	5.2%	65.1%	15.70%

[192] Most data was obtained from USAID 2012–2013, *supra* note 187. Data for income tax thresholds was obtained from USAID as well as information from PKF International reports and Ernst & Young Global Limited reports. *See, e.g.*, ERNST & YOUNG, 2015–2016 WORLDWIDE PERSONAL TAX GUIDE, http://www.ey.com/GL/en/Services/Tax/Worldwide-Personal-Tax-Guide---Country-list; PKF, TAX GUIDES, http://www.pkf.com/publications/tax-guides/.

[193] Thresholds are the average rate for a standard single taxpayer with no dependents, converted to U.S. dollars using the exchange rate on April 11, 2016.

[194] This measures total tax revenues broadly defined, including both domestic taxes and customs duties, as a percent of GDP. *See* USAID 2012–2013, *supra* note 187.

2. *Why the VAT is Not Enough*

Before describing specific policy structure proposals, it is worthwhile to address why it is necessary to harness remittance gains through direct taxation of remittance-receiving households. Intuition suggests that if a country has a functional VAT it should already effectively capture the inflows when recipients spend the remitted funds on consumption. As Table 3 demonstrates, nearly all developing countries utilize a VAT, albeit with varying levels of efficacy. Yet consumption taxation alone has not managed to transform remittance inflows into long-term economic growth and stability. There are several possible reasons for this, which suggest that targeted remittance taxation would be more effective at compensating developing countries for emigration losses compared to relying on consumption taxation alone.

Various factors reduce the revenue collection efficacy of the VAT, including political instability, burdensome information and processing costs, and broad administrative limitations due to low levels of institutional development.[195] Although the widespread adoption of the VAT has increased revenue collection on average throughout the developing world, certain countries have been less successful due, in part, to these political and administrative constraints. In particular, Sub-Saharan African countries have had difficulty utilizing the VAT to increase revenue collection because of burdensome paperwork requirements, political pressure to expand exemptions, and a lack of confidence in the tax system.[196] Table 3 demonstrates this national variation in VAT efficacy. Countries with low compliance rates—such as Nigeria, Liberia, and India—or those in which the VAT raises little revenue relative to GDP—such as the Philippines, Egypt, and Bangladesh—should not expect the VAT to adequately compensate their domestic economies for emigration losses.

The liberal use of VAT exemptions and zero rates in developing countries further weakens the tax's ability to harness gains from remittance inflows. Table 4 lists categories of exempted consumption goods in remittance-receiving countries. In particular, many developing country governments face political pressure to exempt basic consumption goods from taxation, such as food, medical services, and cooking fuel.[197] These exemptions will prevent remittance-receiving governments from harnessing much of the gain from remittance inflows because much of those remittances are spent on exempted basic consumption goods.[198]

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195. *See, e.g.*, Aizenman & Jinjarak, *supra* note 172, at 393 (finding a correlation between political instability and reduced VAT effectiveness); Edmiston & Fox, *supra* note 172, at 249–59 (arguing that VAT underperformance arises due to political and administrative realities and constraints); Fossat & Bua, *supra* note 173, at 29 (describing VAT paperwork requirements, rent-seeking, and lack of confidence in the tax system, etc.).

196. Fossat & Bua, *supra* note 173, at 29.

197. RICHARD M. BIRD & PIERRE-PASCAL GENDRON, THE VAT IN DEVELOPING AND TRANSITIONAL COUNTRIES 76 (2007).

198. IFAD, SENDING MONEY HOME, *supra* note 60, at 7.

Table 4: Examples of Goods Exempted from Consumption Taxation in Select Remittance-Receiving Countries

Country	Selected Consumption Goods Exempted from Taxation or Subject to a Zero-Rate Tax
India	Items subject to a zero-rate tax include agricultural tools and products, such as fresh fruits, vegetables, and other food products; books, periodicals, and journals; and electricity.[199]
China	Agricultural products, contraceptive drugs and devices, antique books, and other items declared by the State Council are exempted.[200]
Philippines	Goods sold by small businesses or small producers,[201] educational services,[202] and sales by registered cooperatives are exempted.[203]
Mexico	Items subject to a zero-rate tax include most non-industrialized animals and vegetables; patent medicines; most products intended for food, including meat, milk, and eggs; ice and water; tractors and other farm equipment; jewelry; and books and magazines.[204]
Nigeria	Essential goods are exempted including medical and pharmaceutical products, basic food, books and educational materials, baby products, fertilizer and agricultural materials, veterinary medicine, and farming transportation equipment.[205]
Vietnam	Certain agricultural products and salt are exempted entirely, and a reduced five-percent rate applies to essential goods and services

199. Ernst & Young, Worldwide VAT, GST, and Sales Tax Guide 418 (2015), http://www.ey.com/Publication/vwLUAssets/Worldwide-VAT-GST-and-sales-tax-guide-2015/$FILE/Worldwide%20VAT,%20GST%20and%20Sales%20Tax%20Guide%202015.pdf [hereinafter E&Y VAT Guide]; KPMG, 2015 Asia Pacific Indirect Tax Country Guide 22 (2015), https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/Documents/2015-asia-pacific-indirect-tax-country-guide.pdf [hereafter KPMG Asia Pacific Guide].

200. KPMG, CHINA: COUNTRY VAT/BUSINESS TAX ESSENTIALS GUIDE 2015 10 (2015), https://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/China-Country-VAT-Business-Tax-Essentials-Guide-201509.pdf.

201. E&Y VAT GUIDE, *supra* note 199, at 752 (noting that businesses with gross receipts below a certain amount are not required to register as a VAT taxpayer); *see also Value-Added Tax*, REPUBLIC PHILIPPINES BUREAU INTERNAL REVENUE, http://www.bir.gov.ph/index.php/tax-information/value-added-tax.html (last visited Mar. 20, 2016).

202. KPMG, ASIA PACIFIC GUIDE, *supra* note 199, at 42.

203. E&Y VAT GUIDE, *supra* note 199, at 756.

204. PWC, DOING BUSINESS IN MEXICO 225 (2015), http://read.pwc.com/i/434024-doing-business-in-mexico-2015/206.

205. Olaoye Clement Olatunji, *A Review of Value Added Tax (VAT) Administration in Nigeria*, 3 INT'L BUS. MGMT. 61, 63 (2009).

	such as fresh foodstuffs, fertilizer, clean water, medical and educational equipment, and books.[206]
Ukraine	Infant foods, education and healthcare services, books and periodicals, housing, religious services, and funeral services are exempted.[207]

In addition to administrative and political constraints, the presence of a large informal sector in many developing countries will further reduce governments' abilities to harness remittance inflows via consumption taxation.[208] Many low-income countries have large informal cash economies, particularly for items such as food and agricultural products,[209] on which a large proportion of remitted income is spent.[210] When purchased products are created or distributed through informal markets, they will escape consumption taxation either partially or fully. Certain remittance-receiving countries may be especially sensitive to this concern. For example, IMF research from 2008 on informal economies in Central Europe estimates that the informal sector accounts for 26.3% of GDP in Kyrgyz Republic, 32.8% of GDP in Tajikistan, and 35% of GDP in Armenia.[211] Thus, for countries with a large informal sector, consumption taxation will prove a particularly ineffective method for capturing remittance gains.

Finally, taxing remittance receipts through the income tax is worthwhile in and of itself because the income tax is the most progressive tax instrument available to policymakers seeking to improve economic outcomes.[212] Despite administrative difficulties and low collection rates, the taxation and development literature continues to describe the personal income tax as one of the few progressive taxes in the developing world.[213] The point here is not that consumption taxation is ineffective or necessarily regressive, but rather that a remittance-receiving government will likely capture remittance gains more effectively and more progressively if consumption taxation is combined with household income taxation in some capacity.[214]

206. KPMG, ASIA PACIFIC GUIDE, *supra* note 199, at 56.

207. E&Y VAT GUIDE, *supra* note 199, at 992–93.

208. *See, e.g.*, Stiglitz, *supra* note 174, at 11–12 (arguing that the VAT produces inefficient outcomes in developing countries due to the strength of the informal sector, which escapes VAT taxation); M. Shahe Emran & Joseph E. Stiglitz, *On Selective Indirect Tax Reform in Developing Countries*, 89 J. PUB. ECON. 599, 621 (2005).

209. Michael Keen & Mario Mansour, *Revenue Mobilization in Sub-Saharan Africa: Challenges from Globalization* 29 (IMF Fiscal Affairs Dep't, Working Paper No. WP/09/157, 2009).

210. IFAD, SENDING MONEY HOME, *supra* note 60, at 7.

211. Yasser Abdih & Leandro Medina, *Measuring the Informal Economy in the Caucasus and Central Asia* 16 (IMF Middle E. and Cent. Asia Dep't, Working Paper No.WP/13/137, 2013).

212. *See supra* Part III(A)(i).

213. *See, e.g.*, Bird & Zolt, *supra* note 36, at 1682–83.

214. Utilizing multiple tax mechanisms to compensate for lost government revenue is not unprecedented and often found to be a more effective revenue recovery strategy. For example, after the international development community advised developing countries to reduce or eliminate trade taxes, research has shown that developing country governments are better able to recover lost

IV. PROPOSED POLICY STRUCTURES

The following policies aim to compensate developing countries for emigration losses via taxing income remitted to transnational households. This Article lays out three different policy structures to account for differing tax capacities among developing countries. All three policies are designed to ameliorate potential double taxation and include modifications that allow those policies to work in countries with weak personal income tax systems. In broad brushstrokes, an ideal remittance taxation policy would utilize bilateral treaties between host and home countries to allow deduction of remittance payments by the sender and enable subsequent taxation of recipient households in home countries. Where bilateral treaties are not feasible, under a second-best policy home countries would tax recipient households directly, either through self-reporting or withholding by transfer companies, and utilize tax credits to counteract double taxation. Finally, the third policy package suggests ways in which developing countries can capture remittances through indirect taxation of consumption and property, either in lieu of or in addition to income taxation.

A. *Policy 1: Deduction in the Host Country via Bilateral Tax Treaties*

This policy involves negotiating bilateral tax treaties between wealthy host nations and low-income home countries to provide for deduction of remittances in the former and subsequent taxation in the latter. Coordinating such a policy would entail significant cooperation by high-income host countries because they would be required to cede tax revenue on remitted funds. Although perhaps politically challenging, such a concession is justified based on first principles of family transfer taxation as well as inter-nation equity considerations, as described above.[215]

Inter-nation tax generosity is not unprecedented. Even as far back as the 1960s, U.S. President John F. Kennedy proposed ceding source-based corporate tax revenue to developing nations in the spirit of equity.[216] In seeking tax generosity towards developing economies, President Kennedy argued that, "The free world has a strong obligation to assist in the development of these economies, and private investment has an important contribution to make."[217] In the context of labor migration, this kind of tax policy can be presented as a

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revenue where they combined consumption taxation with improved income tax collection. FISCAL AFFAIRS DEP'T, IMF, DEALING WITH THE REVENUE CONSEQUENCES OF TRADE REFORM 22 (2005).

215. *See* discussion *supra* Parts II(A)–(B).

216. JOHN F. KENNEDY, MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO OUR FEDERAL TAX SYSTEM, H.R. DOC. NO. 87-140., at 6–8 (1961).

217. *Id*.

trade-off whereby the benefiting host nation[218] cedes tax revenue in return for the home country allowing unfettered emigration of labor. As Desai et al. argue, this mutual dependency between high-income labor consumers and low-income labor providers makes such bilateral cooperation increasingly likely in today's world.[219] A country such as India would be a prime candidate for this policy, given the combination of its relatively weak tax capacity[220] and relatively strong bargaining power due to its size and the desirability of high-skilled Indian labor to host economies.[221]

In addition to political feasibility, there are various important logistical considerations in determining how the tax revenue will be tabulated by the sending country and collected in the recipient country. Calculation in the host country could occur either at the individual level or in the aggregate for each recipient country. If calculated at the individual level, individual remittance senders would deduct remittance payments from their gross income when they file taxes, perhaps providing receipts or other proof to verify the reported transfers. In the United States, this proof would be facilitated by the Electronic Fund Transfers Act, which requires that all remittance services in the United States provide receipts to customers.[222] This remittance payment would subsequently be taxed to the recipient household by the home country government. If done at the aggregate level, host country governments would send tax revenue associated with remittances to each home country to approximate the revenue collected from remitted funds. The following subsections explore both of these options in greater detail.

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218. Although perpetually controversial, abundant empirical research generally finds that migration, even unskilled migration, benefits host countries' economies in certain ways. *See* Patricia Cortes, *The Effect of Low-Skilled Immigration on U.S. Prices: Evidence from CPI Data*, 116 J. POL. ECON. 381, 401 (2008) (finding that a 10% increase in unskilled labor in the United States results in a 2% decrease in prices of immigrant-intensive services); George J. Borjas & Lawrence F. Katz, *The Evolution of the Mexican-Born Workforce in the United States* 42–43 (Nat'l Bureau of Econ. Research, Working Paper No. 11281, 2005) (finding that the influx of immigrants from Mexico between 1990–2000 improved earnings of college graduates and lowered prices of goods and services that rely on low-skill labor). Further research suggests that an increase in unskilled migrant labor increases the labor market participation of high-skilled women. *See* Patricia Cortés & José Tessada, *Low-Skilled Immigration and the Labor Supply of Highly Skilled Women*, 3 AM. ECON. J.: APPLIED ECON. 88 (2011) (finding that low-skilled immigration increases average hours of market work and the probability of working long hours for women at the top quartile of the wage distribution).

219. Desai et al., *supra* note 1, at 684.

220. *See supra* Table 3.

221. *See* Ayelet Shachar, *Highly Skilled Immigration: The New Frontier of International Labor Migration*, 105 AM. SOC'Y INT'L LAW: PROC. ANN. MEETING 415, 416 (2011) (exploring increased international competition for high-skilled immigration, in particular from China and India, "the major sending countries for highly skilled migrants in the fields of science and technology").

222. Electronic Fund Transfers (Regulation E), 12 C.F.R. § 1005.31(b)(2)(i) (2011).

1. *Aggregate Transfer of Tax Revenue*

If calculated in the aggregate, the migrant worker would remit money to his family back home, and that remittance would end the individual households' transaction and their role in the transfer policy. The host country government would then transfer associated tax revenue to the recipient country based on information received from transfer companies about the total quantity of remittances sent to that country and likely a prior agreed-upon assumed average tax rate. This aggregate calculation method may be preferable to individualized deductions and subsequent taxation for a number of reasons. For one, the administrative costs of an aggregate policy are much lower than an individualized approach, as neither the host nor the home country needs to invest resources in educating the public and monitoring a new national tax program. The policy still entails certain administrative costs, especially for the host country, which would need to calculate the share of tax revenue to transfer to each home country. Such a policy also essentially eliminates the risk of taxpayer error and tax gaming, both of which are significant problems plaguing the individualized approach. Finally, the success of the policy would be independent of the income tax capacity in developing home countries, which, as explained above, is often limited.

However, an aggregate high- to low-income country revenue transfer is not without its drawbacks. Importantly, such a policy would be largely divorced from direct contact with citizens, which reduces public oversight.[223] Indeed, in practice this type of transfer feels more like development aid than tax revenue. Additionally, home countries would be largely unable to utilize the tax revenue transfer to promote progressive redistribution through the tax system since individual households would essentially be removed from the tax revenue transaction. One possible progressivity-enhancing remedy would be for recipient countries to allow very low-income remittance recipients—those that fall below home country income-tax thresholds—to file for a refund of withheld tax revenue. These households could do so by providing proof of remittances received and household income. A rebate policy of this kind might even encourage increased use of formal remittance services, as the use of formal services would be a necessary prerequisite for the tax recognition of the flows.

In all, an aggregate inter-nation revenue transfer would be less costly and present fewer risks than an individual deduction and subsequent taxation. However, despite the inherent complexities—or perhaps because of them—an

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223. There is some evidence that a government's fiscal dependence on its citizens is positively correlated with governance quality. *See* Mick Moore, *Revenues, State Formation, and the Quality of Governance in Developing Countries*, 25 INT'L POL. SCI. REV. 297 (2004) (investigating whether the quality of governance in developing countries would improve if States were more dependent for their financial resources on domestic taxpayers, cautioning against firm conclusions).

individualized approach offers numerous advantages that may counsel a remittance-receiving nation to favor such a policy.

2. *Individual Deductions and Subsequent Taxation in Home Countries*

Collection at the individual level entails higher administrative costs compared with an aggregate transfer, as well as increased risk of error, tax gaming, and behavioral distortions. Notwithstanding these drawbacks, however, such a policy also allows for greater progressive tailoring and creates the possibility of improving home country income tax capacity, among other advantages. If calculated individually, the migrant remittance sender would reduce his gross income on his tax return by the amount remitted annually.[224] The recipient country would then separately tax the recipient household on the income received, presuming that the household receives income above the minimum income tax threshold. Bilateral tax treaties could be used to ensure that only migrant workers from certain nations—i.e., those that agree to tax recipient households on received funds—would be allowed to deduct the remitted income. In this way, host countries can cede the right to tax remitted income to the recipient nation while still ensuring that the income exclusion is not used to avoid taxation altogether.

Because this policy is a tax subsidy in the host nation, it is worthwhile to consider its possible effects on remittance activity. In all, the total behavioral effect of the deduction and subsequent taxation will depend on the interaction of various factors, including the difference between home- and host-country tax rates, the elasticity of remittances to taxation, and the role of remittances in the lives of senders and recipients.[225] A tax deduction in the host country may incentivize increased remittance activity to some extent. However, subsequent taxation by the home country may ameliorate this incentive. Thus, overall behavioral changes should be minimal as long as the tax rates of the home- and host-countries do not diverge greatly. Consider, for example, a situation where the remittance sender provides his home-country relatives with a fixed amount of regular income for basic consumption. In this case, the sender will increase the overall payment to account for the subsequent tax, resulting in a similar post-tax, post-remittance income compared to the case if there were no deduction. The same result occurs where the sender provides himself a certain fixed income in the host country. In such a case, the tax deduction allows the sender to increase the remittance payment and remain left with the same net income. This increased remittance payment would again be reduced by a subsequent tax in the

224. Another interesting, albeit, initially more complex option is for migrant workers' employers to contract with workers to remit a certain amount of income pre-tax, much like employer-provided health insurance premiums or healthcare spending accounts. Of course, an employer-centered policy would omit self-employed migrant workers and those working in the informal sector.

225. For a discussion of remittance elasticity and taxation, see *supra* Part II(B) and *infra* Part V(A).

home country. The end result, as with the aggregate transfer described above, is a net transfer of tax revenue from the host country government to the home country government. Individual participants are left with roughly the same income after taxes. Keep in mind, however, that where host- and home-country tax rates diverge greatly, there is higher risk of behavioral distortions as remittance senders may either shift income to lower-tax locales or avoid increased taxation by reducing remittance payments.[226] Thus, where countries want to avoid changes in remittance-sending behavior, the bilateral tax treaties that create such a system should seek to ensure that average tax rates are roughly the same between host- and home-countries.

The individualized policy's success requires relatively high income tax capacity in the home country, such as in Vietnam or Mexico.[227] Even in nations with a robust income tax system, reliance on self-reporting creates significant opportunities for evasion by taxpayers—a persistent problem confronting income taxation in developing countries. However, hope is not lost merely because income taxation in developing countries is complicated. Indeed, remittances might actually prove easier to tax than other forms of income in developing countries. This is because the hard-to-tax nature of income in the developing world arises in part out of the pervasive informality of low-income economies.[228] Unlike other forms of income, remittance transfers are often formal, offering a rare and ready third-party to enforce a remittance tax policy. Financial transfer companies could either report the transfers to the national tax agency or provide direct withholding of tax upon receipt in the home country. Where withholding is used, households could apply for an income tax refund to ensure the progressivity of the policy. Such third-party reporting might even offer tax administrators a unique opportunity to bring income into the tax net, capturing households that otherwise escape the reach of taxing authorities.[229]

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226. Note, however, that increasing a tax on remittances need not reduce overall payments and some evidence suggests that it may even increase payments. *See* discussion *infra* Part V(A).

227. *See supra* Table 3.

228. *See* Burgess & Stern, *supra* note 36, at 776–77 (explaining why the personal income tax accounts for so little tax revenue in developing countries); Keen, *Taxation and Development*, *supra* note 36, at 10 (noting that effective progressive personal income taxation, which is often bolstered by withholding and third-party reporting, has eluded developing country officials).

229. Although beyond the scope of a remittance taxation policy proposal, remittance transfer companies could play a broader role in expanding income tax capacity by facilitating presumptive taxation of remittance recipients. For a brief explanation of presumptive taxation, see *supra* note 191. Many countries utilize presumptive taxes as a stopgap measure that allows them to capture mid-level taxpayers (e.g., small businesses), while at the same time sheltering taxpayers from tax complexities and allowing tax agencies to focus on the bigger fish. Bird, *supra* note 160, at 3–4. However, according to Bird these systems are usually poorly designed and poorly integrated into the regular tax system, making them a "dead end." *Id.* at 4. Presumptive taxation is not exactly on point here because most presumptive taxation systems are based on assessed income and thus distinct from comprehensive approaches that attempt to tax actual income. *See* Gandhi, *supra* note 191.

Although self-reporting would be administratively more difficult than the inter-nation aggregate transfer described above, an individualized policy has certain advantages. First, such a policy would allow the low-income home country to impose specific domestic tax rates, brackets, and thresholds. Allowing this kind of tailoring would enable the use of a progressive rate structure targeted to achieve domestic income redistribution goals. Of course, if increased progressivity entails lowering the tax rate on low-income households, this heightens the risk of behavioral distortions and tax gaming as described above. These concerns would need to be navigated by specific countries in the course of negotiating bilateral treaties. A second advantage of self-reporting is that it would strengthen the connection between the taxpayers and the State—a commonly cited strength of the personal income tax in general.[230] This increased connection may lead to better fiscal oversight and thus improved governance outcomes and more targeted public spending. Finally, relying on self-reporting and domestic collection of revenue would help develop tax capacity in the low-income home country. This is partly because, as explained above, requiring reporting of remittances received would bring more households into the income tax net. Thus, although self-reporting poses administrative challenges, the benefits of such an approach might outweigh the drawbacks in the long run and counsel low-income migrant countries to strengthen their income tax capacity in order to implement such a policy.

As a final consideration, high-income host countries may wish to improve the efficacy of the policy by limiting the remittance deduction to countries with a certain minimum level of income tax administration and enforcement capacity or to those with demonstrably low levels of corruption. Without such restrictions, allowing carte blanche deduction of all transfers to low-income countries would likely siphon off tax revenue without contributing to growth. However, host countries should avoid imposing too many restrictions beyond those that seek to ensure the general growth-enhancing utility of the policy. Imposing restrictions that require specific fiscal policies or governance structures, for example, would undermine national sovereignty of migrant-source countries and likely weaken support for an otherwise worthwhile program.

B. Policy 2: Tax Inflows to Recipients, Offsetting for Double Taxation

Where negotiating a pro-growth bilateral tax treaty is not politically feasible, developing home countries can instead tax remittance inflows to recipient households by utilizing a tax subsidy to prevent double taxation and offset taxes already paid. This policy option is politically more feasible than Policy 1, but it entails greater administrative complexities and results in less tax revenue for home country governments. These heightened complexities occur both because of basic collection difficulties in countries with weak personal

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230. *See, e.g.*, Barreix & Roca, *supra* note 164, at 138; Bird, *supra* note 160, at 1; *but see* Moore, *supra* note 223, at 300–04.

income tax regimes and also because of accounting complications necessary to offset taxes already paid in the host country. Vietnam would be a possible candidate for this second-best policy because of its relatively strong tax capacity.[231]

Before addressing the specific policy structure, it is worth digressing for a moment to address double taxation in the context of remittance payments. In general, taxing the same income twice is considered a major problem to be avoided in tax system design.[232] It is particularly salient in international taxation, where the country of income source and the country of taxpayer residence differ, yet both have tax claims to the same income.[233] Avoiding double taxation is one of the primary arguments against taxing remittance transfers in home countries;[234] nevertheless, such fears should not wholly preclude remittance taxation for two reasons. First, where a migrant remitter pays no income taxes in the work country, this income would be exempted from taxation entirely unless the home country taxes it.[235] This will occur where a migrant worker occupies a low-income group in the host country and thus falls below the standard deduction and personal exemption amount.[236] It may also occur because the worker's pay is not subject to employer withholding and the worker chooses not to satisfy his income tax obligations—perhaps because he does not feel a connection to the host country or is simply ignorant of tax filing laws. In the United States, for example, nonpayment of taxes often occurs because a worker's employer has misclassified him as an independent contractor whose pay does not require tax withholding.[237] Where the host country fails to tax workers' income, double taxation is not a concern.

231. *See supra* Table 3.

232. For a discussion of exempting gifts from taxation and avoiding double taxation, see MICHAEL J. GRAETZ & DEBORAH H. SCHENK, FEDERAL INCOME TAXATION: PRINCIPLES AND POLICIES 141–42 (6th ed. 2009).

233. *See supra* note 133–135 and accompanying text.

234. *See* Mohapatra, *supra* note 3.

235. Note that this Article refers specifically to income taxation and not to other payroll taxes, such as Social Security or Medicare taxes.

236. *See* KRISHNASWAMI ET AL., *supra* note 62, at 12–13 (in a survey of Latin American immigrants to the United States, in which ninety percent of respondents sent regular remittances, that thirty-seven percent earn less than $1,200 monthly).

237. Employers often misclassify workers to avoid tax obligations, leading to complications for workers who are left with higher tax liabilities and lack of access to certain social services. *See, e.g.*, TREASURY INSPECTOR GEN. FOR TAX ADMIN., EMPLOYERS DO NOT ALWAYS FOLLOW INTERNAL REVENUE SERVICE WORKER DETERMINATION RULINGS 2 (2013), https://www.treasury.gov/tigta/auditreports/2013reports/201330058fr.pdf ("The IRS estimates that employers misclassify millions of workers as independent contractors instead of employees . . . ."); WORKERS DEF. PROJECT, BUILD A BETTER TEXAS ii (2013), http://www.workersdefense.org/Build%20a%20Better%20Texas_FINAL.pdf (finding that more than forty percent of construction workers in Texas are misclassified as independent contractors).

The second response to the double-taxation concern is that a well-crafted tax policy can largely ameliorate burdensome double taxation. In the absence of a bilateral treaty described above, a home country can mitigate double taxation in several ways. One option is to deduct the foreign source funds from income. In theory, this is how countries currently address this concern, ceding tax authority over remitted income to the high-income source country. Another option, detailed further below, is to provide a credit for foreign taxes paid. The United States does this through a foreign tax credit for income taxes paid abroad.[238] A third option is to tax remittances at a lower rate.[239] Although this would not eliminate all double taxation, if the rate is sufficiently low, it would mitigate concerns of overly burdensome taxation while avoiding the complexities inherent in the tax credit structure. The second and third options merit further discussion.

Under the second option, the recipient country could avoid double taxation by providing a tax credit equal to the amount of tax already paid on the remitted funds.[240] One element of complexity here is that the taxes are paid by the sender and then credited to the recipient. A useful policy model for this kind of credit is that utilized in I.R.C. Section 902. This section allows a credit for foreign income taxes attributable to a dividend that a foreign subsidiary pays to its U.S. parent corporation.[241] The foreign tax is deemed "paid" by the qualified domestic corporation claiming the credit, despite the fact that it was directly paid by the foreign subsidiary.[242] Box 1 provides details on how this would work in the remittance context. The noteworthy accounting trick to adopt from Section 902 is that the recipient taxpayer must "gross up" the repatriated remittance by the amount of foreign taxes paid, in order to avoid a double deduction. Where a worker has not paid taxes in the destination country, the remitted funds would simply be taxed at the full home-country rate.

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238. I.R.C. §§ 901, 902 (West 2010); Kirsch, *supra* note 152, at 504–05 (explaining how the United States' foreign tax credit addresses double taxation concerns for U.S. citizens residing abroad).

239. The reasoning behind a reduced remittance tax rate would be akin to that used to support the reduced capital gains tax rate in the United States. *See, e.g.*, Chris Edwards, *Six Reasons to Keep the Capital Gains Tax Rate Low*, CATO INST. (Dec. 2012), http://www.cato.org/publications/commentary/six-reasons-keep-capital-gains-tax-rates-low (arguing that the capital gains tax rate should remain low in order to mitigate burdens associated with double taxation of corporate profit at the corporate and shareholder dividend level).

240. The United States provides such a foreign tax credit to individuals and corporations. *See* I.R.C. §§ 901, 902 (West 2010). The goal of such a tax credit is not to eliminate U.S. taxation of the income entirely, but to allow the United States to impose its domestic tax rate without overburdening taxpayers that have already paid some amount of tax abroad. As a rough example, where the United States levies a twenty percent tax, and a U.S. taxpayer paid a fifteen percent tax abroad, the foreign tax credit ensures that the U.S. taxpayer will only be subject to an additional five percent tax on that income. *Id.*

241. I.R.C. § 902 (West 2010).

242. *Id.*

Box 1
Tax Credit / Gross Up Method:

- The worker pays a 20% average tax on his total income, withheld from his paycheck.
- The worker sends, and the recipient household receives, $100 in remitted funds.
- In the work country, pre-tax this was $125, taxed at a 20% rate to result in $100.
- The tax credit would equal the tax already paid = $25.
- Assume the home country applies a 25% tax rate for the household's income bracket.
- Apply the 25% rate to the pre-tax amount to get $31.25.
- Subtract the credit of $25. The tax imposed is $6.25.

The third option to mitigate double taxation is to apply a reduced rate to remittance inflows. In this case, the recipient country could impose a reduced tax rate designed to capture the gap between the home country tax rate and the likely tax rate imposed in a common migrant host country. In the example in Box 1, the country would apply a five percent tax rate, as that is the difference between the average host country tax rate of twenty percent and the home country rate of twenty-five percent. Applying a reduced tax rate would raise comparable revenue to the tax credit method with much less accounting complexity. However, the reduction in complexity carries a risk of burdensome taxation if the host country already imposes a high rate of income tax.

Developing countries would need to decide whether to impose remittance taxation via self-reporting or withholding at the source, in this case through the transfer company. Source withholding would be more administratively feasible if the country chooses to utilize the reduced tax rate rather than a tax credit. However, the reduced rate method carries certain significant drawbacks. Namely, it risks becoming a de facto flat tax on remittance transfers, which would eliminate the progressivity that makes income taxation of remittance inflows more attractive than other methods of taxation. Remittance recipients who fall below the income tax threshold would theoretically be able to apply for a rebate of withheld taxes, which would mitigate this danger somewhat. However, absent some additional benefit or financial incentive, such as the tax deduction senders receive under Policy 1, the additional burden of applying for a tax rebate may drive remittance flows to informal channels to avoid the additional tax.

C. Policy 3: Indirect Remittance Taxation

Where bilateral treaties, source withholding, and income taxation are simply impossible, countries still need not ignore remittance flows as potential sources of revenue. In these cases, policymakers in remittance-receiving nations would do well to consider how best to capture remittance inflows indirectly. While consumption taxation may be insufficient to capture the maximum possible gains from remittance inflows,[243] migrant-source countries seeking to harness inflows indirectly can at least improve their revenue outcomes by plugging holes in consumption taxation and strengthening (or instituting) property taxation. Although this indirect taxation would not raise as much revenue as the above-described income tax policies, it would nonetheless be an improvement on the current tax policies that fail to specifically target remittance inflows. These indirect remittance tax reforms could also be implemented alongside the above-described policies, further maximizing the public revenue gains from remittance inflows.

1. Property Taxation

Recipient country policymakers should consider capturing gains through remittance-conscious property taxation. Remittance recipients often invest transferred funds in property through purchasing real estate, building new structures, or improving existing structures.[244] In fact, the frequency with which remitted funds are used on real estate is often cited as a reason why remittances fail to contribute to long-term economic growth[245]—compared with, for example, if the transfers were more often invested in business enterprises. Despite this practice, as explained above, the unpopularity of the property tax means it is infrequently used in developing countries.[246] Migrant-source countries or localities that do not utilize property taxation should implement such a tax in order to capture the remittance gains that are currently slipping through tax cracks. Those that already do utilize property taxation should ensure that the tax captures not only purchases but improvements as well, since migrant households often save remittances through real estate improvements.[247]

This kind of policy could be implemented at either the central or the local level. Central governments seeking to harness remittance transfers may wish to define the policy centrally, then work with localities to ensure a properly targeted remittance taxation policy. For example, central governments can ascertain regions and villages with a large proportion of migrant households and offer technical assistance and other incentives to encourage those local governments to institute property taxation. Likewise, a local government whose

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243. *See* discussion *supra* Part III(B)(i).

244. *See, e.g.*, KRISHNASWAMI ET AL., *supra* note 62, at 13 (finding that thirty-six percent of remitters in New Haven reported that remitted funds were used for home maintenance); Debra Roberts, Presentation at the 8th Annual Conference of the Sir Arthur Lewis Institute of Social and Economic Studies, The Developmental Impact of Remittances on Caribbean Economies: The Case of Guyana 13 (Mar. 26–28, 2007) (finding that sixteen percent of surveyed Guyanans saved remitted funds in the form of real estate).

245. *See, e.g.*, Ralph Chami & Connel Fullenkamp, *Beyond the Household*, FIN. & DEV., Sept. 2013, at 48, 50, http://www.imf.org/external/pubs/ft/fandd/2013/09/Chami.htm (explaining that the common use of remittances to purchase assets such as real estate does not increase capital stocks, and thus is counterproductive to growth enhancing capital accumulation).

246. *See supra* Part III(A)(iii).

247. KRISHNASWAMI ET AL., *supra* note 62, at 13.

region hosts a sizable population of remittance recipients could unilaterally undertake special efforts to ensure an effective property tax system.[248]

Wielding the property tax in this way has several possible upshots. One advantage is that it would not reduce incentives to remit funds or drive remittances underground. Additionally, because the property tax is often administered at the local level,[249] tax revenue would more likely be used for local programs rather than national programs. This can be a positive or a negative, depending on the capacity and quality of local institutions compared with national institutions. Because the property tax would only capture revenue from remittance gains invested in property, expansion of the property tax should be coupled with improved consumption taxation as well. As explained in the following section, these two polices together would cast a wider net, ensuring more effective capture of remittance gains.

2. *Consumption Taxation*

As mentioned above, consumption taxation is already a mainstay of tax policy throughout the developing world.[250] Thus, for developing countries aiming to utilize consumption taxation to capture gains from remittance transfers, the trick will be ensuring that the tax specifically captures remittance-related gains. Given the proliferation of consumption taxation in developing countries, certainly some amount of remittance capture is already happening. Indeed, Christian Ebeke finds evidence that remittances significantly increase both the level and stability of government tax revenue in remittance-receiving countries that have adopted the VAT.[251]

The primary way that policymakers can ensure that their country's VAT captures remittance gains is to implement the tax on a broader base, encompassing the types of items on which remittances are commonly spent. For

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248. The issue of what an effective property tax entails is quite another question that requires more detail and attention than this Article can provide here. For an excellent discussion of property taxation in developing countries from varying perspectives, see MAKING THE PROPERTY TAX WORK: EXPERIENCES IN DEVELOPING AND TRANSITIONAL COUNTRIES (Roy Bahl, Jorge Martinez-Vazquez & Joan Youngman eds., 2008) *See also* John Norregaard, *Taxing Immovable Property: Revenue Potential and Implementation Challenges* (IMF Fiscal Affairs Dep't, Working Paper No. WP/13/129, 2013).

249. *See* Bird & Slack, *supra* note 183, at 103–04.

250. *See* Keen & Lockwood, *supra* note 168, at 138 (describing the VAT as the centerpiece of many developing country tax reform efforts); *see also* Vito Tanzi & Howell H. Zee, *Tax Policy for Emerging Markets: Developing Countries* 21 (IMF Fiscal Affairs Dep't, Working Paper, No. WP/00/35, 2000) (although the "overwhelming majority of developing countries" have adopted a VAT, the VAT systems are largely incomplete for exempting major sectors of the economy like wholesale, retail, and services).

251. *See* Christian Hubert Ebeke, *Remittances, Value Added Tax and Tax Revenue in Developing Countries* 5 (Centre d'Etudes et de Recherches sur le Développement International (CERDI), Paper No. E 2010.30, 2010).

example, because a high proportion of remitted income is spent on food items and other basic consumption goods,[252] food consumption should not be exempted from taxation across the board.[253] Vietnam provides a useful model for a VAT that encompasses food, while still offering a reduced five percent rate on basic consumption goods.[254] Housing expenditures should likewise not be exempted from taxation, for the reasons explained in the previous section.[255]

One difficulty inherent in capturing remittance gains via an indirect consumption tax is that the link between remittance gains and tax mobilization will be unclear. Where remittances are not directly taxed, and where a government benefits indirectly from windfall gains, the risk that the gains will generate government corruption increases.[256] To mitigate this concern, policymakers could consider linking tax collections directly with remittances by offering sales tax credits or refunds to non-migrant households. However, this may raise legitimate equity concerns and perhaps engender resentment among remittance-receiving taxpayers. It would also reduce incentives to remitting and entail significant enforcement challenges as remitters turn to informal channels.

In all, indirect remittance taxation provides a less effective and less transparent method for harnessing remittance gains for public benefit. Both income taxation policies described above would raise more revenue, more efficiently, and with greater transparency—albeit at likely higher administrative cost. Despite the positives of a remittance income tax regime, developing country policymakers may be unable to negotiate bilateral treaties or institute a complex tax credit policy. This third policy option is more of a gap-filling measure than an actual cohesive policy, intended to highlight that policymakers may still account for remittances when considering tax policy reforms, despite practical limitations.

V.
ADMINISTRATIVE CONSIDERATIONS

Tax reform is a tricky business, particularly when a government is aiming to tax a much-celebrated financial phenomenon such as remittances. This section discusses additional administrative difficulties associated with the above-described policies.

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252. *See* IFAD, SENDING MONEY HOME, *supra* note 60, at 7.

253. *See supra* Table 4; LIAM P. EBRILL ET AL., THE MODERN VAT 84 (2001) (listing key nonstandard VAT exemptions in selected countries including flour, milk, agricultural products, rice, onions, etc.).

254. *See supra* Table 4.

255. *See, e.g.*, Roberts, *supra* note 244, and accompanying text; KRISHNASWAMI ET AL., *supra* note 62, at 13, and accompanying text.

256. *See* Abdih et al., *supra* note 75, at 657 (explaining that, where government officials benefit from remittance transfers through mechanisms other than direct taxation of flows, such as through indirect consumption taxation, corruption is more likely).

A. Distorting Remittance Behavior

As mentioned above, opponents of remittance taxation cite fears that increasing transfer costs will reduce flows overall.[257] If true, such fears would counsel policymakers to utilize less visible and less burdensome tax methods, such as the aggregate national transfer option under Policy 1 or indirect taxation of remittances through property and consumption taxes. Withholding taxes at transfer sites poses particular risks of distorting remittance behavior. However, the risk of reduced flow may be overstated. There is some evidence that remittance transfers are relatively cost inelastic, as workers send them for cost-independent reasons.[258] Dean Yang even finds evidence that a decrease in remittance costs in some cases reduces the total amount remitted, as senders find it easier to reach the specific target intended for families back home.[259] The inverse may be true of an increase in cost engendered by taxation—the cost increase might actually drive senders to remit more overall. Thus, a tax on remitted funds might not actually decrease total transfers.

Another concern is that senders will instead choose to remit funds through informal channels in an effort to avoid withholding or third-party verification. Driving remittance flows underground is another primary argument cited by opponents of remittance taxation.[260] Although estimates suggest that informal remittances are significant—anywhere between thirty-five percent and 250% of formal remittance flows[261]—the exact relationship between remittance cost and the incidence of informal flows is difficult to measure. Further, cost is just one factor for senders deciding whether to use formal or informal channels.[262] Other considerations include security, speed, accessibility for the sender and recipient, and convenience in terms of familiarity and language.[263] Thus, where policymakers fear driving remittances underground, they should work to increase the attractiveness of formal channels by enhancing speed, security, and accessibility of formal providers. They should also work to reduce the private costs of sending remittances, for example, by reducing unnecessary regulatory red tape and encouraging competition among remittance transfer providers.[264]

257. *See supra* Part I(B)(iii).

258. *See* Caroline Freund & Nikola Spatafora, *Remittances: Transaction Costs, Determinants, and Informal Flows* 9 (WBG, Policy Research Working Paper No. 3704, 2005) (citing evidence that "remittances [are] driven by the need to support migrant workers' families, rather than by investment considerations").

259. Yang, *supra* note 74, at 16 (finding that Philippine migrant workers remitted less money, measured in the foreign currency, in response to a favorable shift in the home country's exchange rate).

260. Mohapatra, *supra* note 3; *supra* Part I(B)(iii).

261. *See* Freund & Spatafora, *supra* note 258, at 1.

262. *Id.* at 4.

263. *Id.*

264. *See* Lenora Suki, *Competition and Remittances in Latin America: Lower Prices and More*

B. Political Will

Low-income countries collect relatively little tax revenue through income and property taxation in part because of a lack of political will to tax income and property.[265] Yet there is evidence that willingness to tax depends in part on perceptions of fairness.[266] Thus, a tax that is levied to promote fairness and progressivity may encounter less political resistance. Specifically, the public and policymakers may support a remittance tax in a country with significant human capital flight and where remittance recipients tend to belong to high-income groups. In these contexts, such a tax may be considered a response to an important domestic need.

Conversely, remittance tax policies could face resistance where they disproportionately burden elites in developing countries, as these citizens will have more power to block the reforms. However, taxing remittance payments via income taxes will affect a small sub-group of the population, which may limit the risk of political resistance among domestic elites. In all, while political feasibility is certainly a practical consideration, it need not be an insurmountable barrier where migration compensation is an important domestic policy goal.

C. Evasion

Evasion is always a serious concern when considering tax administration. Self-reported taxes, such as income taxes, suffer from greater risk of evasion compared to property and consumption taxes, which are more difficult to avoid. Third-party reporting by remittance transfer companies, as described above, should help reduce evasion by alerting tax officials to income received by migrant households.[267] Expanding the income tax to include remittance payments may even reduce income tax evasion more broadly by bringing additional households to the attention of domestic tax agencies. This expansion of the tax base could result in revenue increases beyond merely the transfers themselves.

Evasion may still occur through senders using informal transfer services. Policymakers can reduce this risk by ensuring the competitiveness and attractiveness of formal transfer methods, as described above.[268] Additionally,

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Efficient Markets 5 (Org. for Econ. Cooperation and Dev., Working Paper No. 2/2007, 2007) ("Increasing competition in remittances markets has been identified as a means of lowering transaction costs and improving the efficiency of the market.").

265. *See* Bahl et al., *supra* note 177, at 3–4; Bird & Zolt, *supra* note 36, at 1670–71 ("[L]ow levels of taxation are often interpreted as the result of the unwillingness of the richest to pay taxes to provide public services for the masses because the elite can generally provide their own public services privately . . . .").

266. *See* Richard M. Bird et al., *Societal Institutions and Tax Effort in Developing Countries* 29 (Joseph L. Rotman Sch. of Mgmt., Univ. of Toronto, Int'l Tax Program Paper No. 04011, 2004); Bird & Zolt, *supra* note 36, at 1670–71.

267. *See* discussion *supra* Part IV(A)(ii).

268. *See* discussion *supra* Part V(A).

studies show that tax evasion rates are significantly correlated with notions of tax fairness and government responsiveness.[269] For this reason, policymakers should ensure that any remittance tax policy is perceived as fair and transparent, and that mobilized revenue is used to provide needed public goods and services. Methods for improving the tax policy's fairness and transparency are discussed in the next section.

D. Corruption

Once the tax is implemented and collected, an optimal policy should ensure that the funds are utilized for beneficial, pro-growth public goods. There are several possible ways to defend tax revenues from corruption and misuse, largely through increased monitoring of agencies and government staff. For example, one method to ensure the beneficial use of remittance tax revenues is to earmark them for specific uses.[270] Environmental taxation provides an example of issue-specific earmarking, wherein local governments administer an environmental tax and are then required to spend the garnered revenue on environmental protection.[271] Remittance taxation could operate similarly. For example, governments could spend remittance tax revenue on scholarships that incentivize working domestically[272] or to improve the fiscal environment to encourage investment by emigrants.

There are various other oversight mechanisms used by developing country governments to combat misuse of public funds and to ensure accountable, holistic fiscal policies. In Turkey, for example, the Minister of Finance is required to seek input on tax and expenditure legislation from local authorities, universities, trade unions, public professional organizations, and civil society organizations.[273] Peru and Argentina also require public oversight of budgeting agencies and have enacted limits on their legislatures' ability to introduce new expenditures.[274] Participatory budgeting is another option for holding government accountable for expenditures.[275] The process entails citizens meeting in public assemblies to discuss the government budget.[276] This process has been tried in several cities including Buenos Aires, Montevideo, Caracas,

269. Bird & Zolt, *supra* note 36, at 1670; Josef Falkinger, *Tax Evasion, Consumption of Public Goods and Fairness*, 16 J. ECON. PSYCHOL. 63 (1995).

270. Victor Lledo, Aaron Schneider & Mick Moore, *Governance, Taxes, and Tax Reform in Latin America* 10–11 (Inst. of Dev. Studies, Working Paper No. 221, 2004).

271. *Id.* at 32.

272. *See* Desai et al., *supra* note 1, at 685.

273. Leyla Ates, *Domestic Political Legitimacy of Tax Reform in Developing Countries: A Case Study of Turkey*, 30 WIS. INT'L L.J. 706, 752 (2012).

274. Lledo et al., *supra* note 270, at 34.

275. *Id.*

276. *Id.*

San Denis, and Cordoba.[277] Finally, Bird et al. suggest that decentralization may help increase accountability,[278] which may counsel policymakers towards use of the property tax or local consumption taxation where misfeasance is a significant concern.

The main takeaway from this brief survey of administrative feasibility is that implementation difficulties need not overshadow the potential benefits of remittance taxation.

CONCLUSION

When crafting migration-related economic policies, developing country policymakers face an inherent policy tension in balancing individual welfare with broader domestic economic goals. Past proposals to compensate developing countries for migration losses often focus on maximizing the latter at the extent of the former, largely through discouraging migration or burdening emigrants living abroad. However, an ideal migration compensation policy should seek to regain lost tax revenue without distorting migration decision-making. Taxing remittance payments to recipient households is one way to solve this policy dilemma by compensating home economies for lost revenue without overburdening migrant workers abroad.

Migration and development advocates have remained staunchly opposed to taxation of remittances by recipient countries. This view ignores the fact, however, that remitted income is already taxed in high-income host countries via labor taxation of migrant workers. In contrast to the current arrangement, both normative and practical considerations support shifting the locus of taxation from high-income host countries to low-income recipient countries. This kind of tax arrangement would better comport with first principles of family taxation and inter-nation equity concerns and better serve domestic tax goals of home country governments. This Article has provided an ideal structure for such a remittance taxation policy, involving bilateral treaties between home and host countries, as well as alternative tax policies in the event that bilateral cooperation is infeasible.

The purpose here is not necessarily to advocate for one policy over another, but rather to highlight that migrant-source countries may not be well-served by the blanket stance against remittance taxation that has been adopted by the economic development community. Migrant-source countries face special constraints in constructing their tax systems, as they are forced to cede a significant portion of their tax base to higher-income host countries. Under the current regime host countries benefit both from cheaper labor and additional tax revenue, while the home country government suffers a net loss. For resource-poor governments, this loss can perpetuate their inability to provide necessary public goods and maintain reliable domestic institutions.

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277. *Id.*

278. Bird et al., *supra* note 266, at 15.

Low-income home country governments have both theoretical and practical arguments why they should not be forced to surrender remittance tax revenue to host countries. Although this battle is one that ultimately must be fought in political and diplomatic arenas, scholarship on the topic undoubtedly plays a role in shaping public perception. Scholars in the field who dogmatically oppose remittance taxation do a disservice to migrant-source countries by taking off the table a valid and feasible source of revenue. Adding remittance taxation to the developing country tax arsenal would better equip these nations to capture migration gains, and in so doing, to improve development outcomes and aggregate wellbeing. Improving wellbeing, after all, is the ultimate goal.