Implementing a (Modern) Progressive Consumption Tax

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Progressively taxing consumption has much normative appeal, but previous legal scholarship has incorrectly assumed that directly accounting for the expenditures of individual taxpayers is administratively infeasible. Changes in consumer spending and advances in technology require revisiting this assumption. This article proposes a novel framework through which an individual accounting progressive consumption tax (IAPCT) can be implemented and establishes the IAPCT's superiority to previously proposed forms of progressive consumption taxation. IAPCT advantages include a significant reduction in tax filing costs, improved enforcement, and the immediate deployment of place-based tax policy.

TABLE OF CONTENTS

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I. INTRODUCTION

Progressively taxing consumption has much normative appeal, but previous legal scholarship has incorrectly assumed that directly accounting for the expenditures of individual taxpayers is administratively infeasible.[1] This article raises a novel challenge to the traditional

[1] Michael J. Graetz, *Implementing a Progressive Consumption Tax*, 92 HARV. L. REV. 1575, 1580 (1979) ("[N]o one suggests direct accounting for consumption expenditures of individuals as a practical approach to a progressive tax on consumption."); *see also* John K. McNulty, *Flat Tax, Consumption Tax, Consumption-Type Income Tax Proposals in the United States: A Tax Policy Discussion of Fundamental Tax Reform*, 88 CALIF. L. REV. 2095, 2114 (2000) ("[A consumption tax] is not, and could not easily be made, progressive with respect to the amount of consumption by each particular taxpayer or consumer."); George K. Yin, *Accommodating the "Low-Income" in a Cash-Flow or Consumed Income Tax World*, 2 FLA. TAX REV. 445, 450 (1995) ("The infeasibility of individualizing a transactions-based consumption tax is a significant design flaw."); Mitchell L.

wisdom, and demonstrates that modern technology and changes to consumer behavior establish the necessary infrastructure to successfully implement an individual accounting progressive consumption tax (IAPCT). This article makes the original claim that not only is an IAPCT possible, but that it has many advantages relative to previous progressive consumption tax proposals and is therefore superior.

Consumption as a tax base is frequently discussed as normatively preferable to taxing income.[2] Because an income tax (in theory) taxes accretions of wealth regardless of if they are consumed or saved, present-day consumers have greater spending power than savers, whose taxed investment earnings burden future consumption.[3] Because of this burden, a consumption tax is often considered more efficient than an income tax. Despite the improved efficiency, consumption taxes are often criticized for being regressive since taxpayers with less income generally spend more of this income on consumption. Satisfying these normative expectations of consumption taxation thus requires progressivity: that is, imposing increasing tax rates on taxpayers with greater consumption.

This article is the first to demonstrate that taxing consumption directly and progressively is indeed possible.[4] Because consumer spending is increasingly reliant on electronic payment systems, a revised information reporting regime imposing obligations on these third-party payment processors would permit the IRS to receive, in real-time, taxpayers' consumption information.[5] With this information, retailers would obtain and then apply the proper marginal tax rate on consumer transactions. The IAPCT could also easily accommodate cash transactions by incentivizing cash payors to self-report in order to obtain their true (and typically lower) marginal tax rate.[6] Current technology makes this real-time self-reporting straightforward and could, for instance, be affected via a smartphone-based IRS app.

A tax system in which individual consumption is reported to the IRS understandably raises concerns about taxpayer privacy.[7] But the consumption information that would be sent to the IRS under the

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Engler, *A Progressive Consumption Tax for Individuals: An Alternative Hybrid Approach*, 54 ALA. L. REV. 1205, 1219 (2003) ("Administrative concerns preclude tracking each individual's aggregate spending so that the tax could be collected at varying rates (based on each individual's overall spending).").

[2] See generally infra, Part I.

[3] *See infra*, Part I.B.

[4] See generally *infra*, Part II.

[5] *See infra*, Part II.A.

[6] *See infra*, Part II.B.

[7] *See infra*, Part II.C.

IAPCT represents a subset of the information that for-profit electronic payment systems and retailers already collect (and sell on private markets) from consumers. The IRS would only receive *amounts* of consumption, and not details about *what* was purchased. This is in contrast to the information retained by retailers, many of whom track all elements of their customers' spending. Moreover, the information the IRS would receive under the IAPCT would be more limited than the information the IRS currently obtains from taxpayers. The IRS already knows when and from whom taxpayers receive wages, interest payments, dividends, unemployment payments, gambling winnings, stock transactions, and canceled debt, to name a few pieces of information.[8]

In addition to establishing its administrative feasibility, this article also argues that the IAPCT would be normatively and functionally superior to other approaches to progressively taxing consumption.[9] Previous approaches generally determine consumption by proxy — by subtracting savings from income, or by equating a tax on labor to a tax on consumption.[10] Because consumption is determined indirectly, taxpayers have an incentive to understate income (as with an income tax) and/or overstate savings.[11] If consumption is, as a normative matter, the correct base to tax, imposing escalating marginal tax rates on taxpayers on a transaction-by-transaction basis is the most accurate way to tax consumption. Additionally, point-of-sale tax collection and remittance precludes the need for taxpayers to file additional tax returns or keep additional records. The IAPCT would, like existing sales taxes, operate with transparency, but with minimal compliance costs.

The IAPCT, in conjunction with data analytics, also has the potential to dramatically alter how tax policy is enacted.[12] Rather than waiting years for income tax data, the instantaneous nature of the IAPCT would allow Congress and the IRS to make swifter tax policy assessments and enact changes as needed. The real-time administration of an IAPCT would also permit the immediate deployment of tax relief programs. Rather than requiring taxpayers to file tax returns to obtain any potential benefits deployed through the tax code, relief programs implemented via the IAPCT could be both immediate and locationally tailored. Tax relief efforts, such as the economic stimulus efforts associated with COVID-19, would be well-served by this flexibility.

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[8] *See infra,* Part II.C.

[9] See generally *infra,* Part III.

[10] *See infra,* Part I.B.

[11] *See infra,* Part III.A.

[12] *See infra,* Part III.D.

This article also considers several elements of IAPCT design, and describes the choices that policymakers have with respect to implementation.[13] The IAPCT is not bound to follow static answers to these tax policy questions. There are important tradeoffs in design choices such as using tax-inclusive or tax-exclusive rates, choosing how to classify consumer durables, and allowing for various taxpaying units, for instance. This article demonstrates that the IAPCT's flexibility permits a wide range of normative preferences with respect to these design questions.

Certain other elements of implementing an IAPCT are beyond the scope of this article. There is no discussion, for instance, of the political wrangling necessary to enact a broad federal consumption tax, nor of constitutional arguments that could possibly be made against it. These are worthy questions, but beyond this article's reach.

Part I of this article provides an overview of the normative justifications for using consumption as a taxable base, discusses existing proposals of how to impose a progressive consumption tax, and considers the burdens of imposing a point-of-sale progressive consumption tax. Part II describes how a progressive consumption tax based on individual accounting can be effectively implemented and addresses both the administrative challenges and privacy considerations inherent in such an approach. Part III details the many advantages an IAPCT would have with simplicity, enforcement, transitions, tax policy, and administration relative to existing progressive consumption tax proposals. Part IV considers elements of IAPCT design such as rates, the taxable base, and the tax filing unit.

II. AN OVERVIEW OF CONSUMPTION TAXES

A. *The Normative Appeal of Progressive Consumption Taxes*

Much has been written on the merits of a federal consumption tax relative to the income tax.[14] It has frequently been suggested that an

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[13] *See infra*, Part IV.

[14] *See, e.g.*, Deborah H. Schenk, Forward, *Symposium on Thomas Piketty's Capital in the Twenty-First Century*, 68 TAX L. REV. 443, 452 n.10 (2015) ("There is something of a consensus that a consumption tax (which does not burden the return to capital) is superior to an income tax (which theoretically does)"); Joseph Bankman & David A. Weisbach, *The Superiority of an Ideal Consumption Tax over an Ideal Income Tax*, 58 STAN. L. REV. 1413 (2006) ("a properly designed consumption tax is Pareto superior to an income tax: it is either more efficient, more redistributive, or both"); Edward J. McCaffery, *The Uneasy Case for Wealth Transfer Taxation*, 104 YALE L.J. 283, 289 (1994)

ideal consumption tax is both more efficient and has more redistributive potential than an ideal income tax.[15] Similarly, there is a rich literature discussing the superiority of *progressive* consumption taxes to better accomplish tax policy goals.[16] It is not necessary (for our present purposes) to detail the many arguments in favor of (and the few against) the progressive taxation of consumption. Although this article is premised on the assumption that a progressive consumption tax is normatively desirable, a brief overview of the various approaches to taxing consumption and their normative underpinnings is still useful since these general concepts inform elements of design and implementation, which this article considers in some detail.

In general, a consumption tax taxes amounts spent in furtherance of personal consumption, but exempts amounts saved.[17] Over the course of a taxable year, a taxpayer earning $100,000 in wages and saving $30,000, for example, will have $70,000 in consumption. In contrast, both consumption and savings are included in the taxable base

("In particular, both normative and interpretive reasoning support the reform proposal for a progressive consumption-without-estate tax."). *But see* David Gamage, *The Case for Taxing (All of) Labor Income, Consumption, Capital Income, and Wealth*, 68 TAX L. REV. 355, 358 (2015) ("This Article's conclusions thus contrast with an influential set of arguments in the law-and-economics literature for why governments should primarily rely on only either a labor income tax or a progressive consumption tax.").

[15] *See* Daniel Shaviro, *Beyond the Pro-Consumption Tax Consensus*, 60 STAN. L. REV. 745 (2007) ("[T]he dominant norm in fundamental tax reform has shifted from income taxation to consumption taxation, among academics no less than policymakers"); Joseph Bankman & David A. Weisbach, *The Superiority of an Ideal Consumption Tax over an Ideal Income Tax*, 58 STAN. L. REV. 1413, 1415 (2006) ("Everyone is equally well off or better off under a properly designed consumption tax. It is either more efficient, more redistributive, or both.").

[16] *See, e.g.*, Joseph Bankman and Daniel Shaviro, *Piketty in America: A Tale of Two Literatures*, 68 TAX L. REV. 453, 507 (2015) ("[T]he present system might be replaced or supplemented by a progressive consumption tax. The merits of that tax have been exhaustively discussed."); Mitchell L. Engler, *Progressive Consumption Taxes*, 57 HASTINGS L.J. 55 (2005) (comparing two different progressive consumption tax regimes); Edward J. McCaffery, *The Uneasy Case for Wealth Transfer Taxation*, 104 YALE L.J. 283, 289 (1994) ("both normative and interpretive reasoning support the reform proposal for a progressive consumption-without-estate tax."); Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 812 (2005) ("A progressive postpaid consumption tax emerges as the fairest and least arbitrary of all comprehensive tax systems.").

[17] Lawrence Zelenak, *Debt-Financed Consumption and a Hybrid Income-Consumption Tax*, 64 TAX L. REV. 1 (2010) ("Thus, an income tax includes saved (unconsumed) income in the tax base, whereas a consumption tax does not."). Under a progressive consumption tax, the yield on savings could be subjected to a nonzero rate. *See infra* note 27 and accompanying text.

of an income tax.[18] Under an income tax, our taxpayer will pay taxes on the full $100,000, regardless of the taxpayer's allocation between savings and consumption.[19] This additional burden that an income tax places on savings can be conceptualized as biasing against future consumption in favor of present consumption.[20] Assuming an income tax rate of 20 percent, $100,000 of income permits $80,000 of consumption this year.[21] If this $80,000 is instead saved for one year at the prevailing interest/inflation rate of, say, 10 percent, $1,600 in income taxes are owed in year 2 on the $8,000 of interest income, resulting in $86,400 of available consumption in year 2. This is less purchasing power than the $88,000 required to purchase what last year cost only $80,000. As such, an income tax imposes a burden on savings that a consumption tax does not, with this burden generally considered inefficient.[22]

Efficiency benefits aside, consumption taxes as currently levied are considered to impose a disproportionate burden on the poor.[23] In the U.S., consumption taxes generally take the form of retail sales taxes imposed at subnational levels, with these sales taxes typically imposing a flat rate on purchases.[24] Since taxpayers with less income

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[18] Joseph Bankman Thomas Griffith, Is the Debate Between an Income Tax and a Consumption Tax a Debate About Risk? Does It Matter?, 47 TAX L. REV. 377, 378 (1992).

[19] Income is equal to consumption plus savings. *See infra* note 29 and accompanying text.

[20] *See, e.g.*, Lawrence Zelenak, *Debt-Financed Consumption and a Hybrid Income-Consumption Tax*, 64 TAX L. REV. 1, 11 (2010) (describing discounted future consumption under an income tax).

[21] For simplicity, this example assumes that marginal and average tax rates are equivalent.

[22] Joseph Bankman Thomas Griffith, *Is the Debate Between an Income Tax and a Consumption Tax a Debate About Risk? Does It Matter?*, 47 TAX L. REV. 377, 380 (1992). The consumption tax's exemption of savings, applied via a postpaid approach, generally extends only to the risk-free rate of return on savings, whereas a prepaid approach exempts all savings. Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 836 (2005).

[23] Joseph Bankman & Barbara H. Fried, *Winners and Losers in the Shift to a Consumption Tax*, 86 GEO. L.J. 539, 568 (1998) ("In the legal literature and political discourse, a consumption tax is generally assumed to be significantly more regressive than an income tax.").

[24] Most developed countries other than the U.S. impose consumption taxes through a value-added tax. Harley Duncan, *Administrative Mechanisms to Aid in the Coordination of State and Local Retail Sales Taxes with a Federal Value-Added Tax*, 63 TAX L. REV. 713, 716 (2010) ("The lack of a broad-based consumption tax, of course, causes the United States to stand apart from the rest of the world in terms of its revenue mix."). *See also* Mildred Wigfall Robinson, *"Skin in the Tax Game": Invisible Taxpayers? Invisible Citizens?*, 59 VILL. L. REV. 729, 739 (2014) ("[S]tructurally, the [sales tax] levy

generally spend a greater proportion of their income on consumption, the consumption taxes paid by low-income taxpayers tend to represent an increasingly larger share of their income. Assuming income is an appropriate base from which to assess the distributional effects of taxation, flat-rate consumption taxes can thus be described as regressive.[25] If federal tax revenue was generated primarily from a flat-rate consumption tax rather than a progressive income tax (as is currently the case), the shift would result in a significant tax benefit for the wealthy.[26]

The burden that consumption taxes place on the poor can be mitigated by levying consumption tax rates that are progressive rather than flat. Although progressive rates on consumption might tax the yield on savings at a nonzero rate,[27] the efficiency cost might, as a normative matter, be worth the distributional benefit.[28] But existing proposals to progressively tax consumption, by relying on definitions of income to calculate consumption, retain many of the same administrative challenges that stymie effectively implementing an income tax.

B. *Existing Approaches to Progressive Consumption Taxation*

Existing approaches to progressively taxing consumption generally determine consumption by proxy—by subtracting savings from income or equating a tax on labor to a tax on consumption, or impose progressivity via fixed demogrants. These indirect approaches to progressive consumption taxation have, as discussed below, normative

is a single fixed rate imposed on a targeted transaction."). It is common, however, for certain purchases, such as prescription drugs, to be exempted from sales tax. *See, e.g.*, Michele E. Hendrix & George R. Zodrow, *Sales Taxation of Services: An Economic Perspective*, 30 FLA. ST. U. L. REV. 411, 420 (2003) (describing rationale for exemption of prescription drug purchases from sales tax).

[25] "Regressive," as used here, refers to declining average tax rates as income increases, where tax rate is defined as consumption tax paid divided by taxpayer income. Taxpayer income correlates with taxpayer wealth.

[26] Michael J. Graetz, 100 Million Unnecessary Returns: A Fresh Start for the U.S. Tax System, 112 YALE L.J. 261, 282 (2002).

[27] Anne L. Alstott, *The Uneasy Liberal Case Against Income and Wealth Transfer Taxation: A Response to Professor McCaffery*, 51 TAX L. REV. 363, 365 n.11 (1996) ("[Yield exemption of savings]...holds only if tax rates are constant, however, and under a progressive consumption tax, the exclusion may save tax at a rate that is higher or lower than the subsequent tax rate paid on consumption."). *See infra* notes 50–55 and accompanying text.

[28] *See* Joseph Bankman & David A. Weisbach, *The Superiority of an Ideal Consumption Tax over an Ideal Income Tax*, 58 STAN. L. REV. 1413, 1455 (2006) (describing both distributional benefits and efficiency gains of consumption taxes relative to income taxes).

shortcomings. If consumption is, as a normative matter, the correct base to tax, imposing escalating marginal tax rates on taxpayers on a transaction-by-transaction basis, as done by the IAPCT, is the most accurate way to progressively tax consumption.

1. Cash-Flow Approach (Postpaid Tax)

Proposals to progressively tax consumption are frequently premised on the Haig-Simons definition of income, in which economic income equals savings plus consumption.29 Effective administration requires that these abstract quantities be concretized and measurable, thus limiting the theoretical range they might otherwise encompass.30 By first accounting for items of income, as done with our current system of income taxation, and then deducting items of savings, consumption can be indirectly measured and (in theory) subjected to progressive rates. From this cash-flow framework, proposals to measure and progressively tax consumption abound in both the literature and in policy proposals.31 Although the nuances of these proposals differ, they all require defining income and savings to determine consumption by proxy.

Despite our current reliance on income as both a taxable base and distributional yardstick, true economic income (that is, the sum of all net accretions of wealth), is difficult to measure.32 The result of these calculational challenges is that economic income differs significantly from the taxable income actually subject to income taxes. For instance,

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[29] Edward J. McCaffery, *Tax's Empire*, 85 GEO. L.J. 71, 79 (1996) ("By simply and consistently subtracting savings from income . . . we could have a broad-based, progressive consumption tax.").

[30] William D. Andrews, *A Consumption-Type or Cash Flow Personal Income Tax*, 87 HARV. L. REV. 1113, 1120–21 (1974) ("For a consumption-type tax, accounting should be on a pure and simple cash flow basis."). The exclusion from taxable income of imputed income and leisure sets taxable income apart from economic income. Joseph Isenbergh, *The End of Income Taxation*, 45 TAX L. REV. 283, 288 (1990).

[31] *See, e.g.*, ROBERT E. HALL & ALVIN RABUSHKA, LOW TAX, SIMPLE TAX, FLAT TAX (1983) (implementing progressive consumption taxation by exempting nonwage income, and exemption amount, and flat rates); David Bradford, *The X Tax in the World Economy* (Nat'l Bureau of Econ. Research, Working Paper No. W10676, 2004), *available at* http://www.nber.org/papers/w10676.pdf (implementing progressive consumption taxation by exempting savings and also using graduated rates); William D. Andrews, *supra* note 30 (calculating consumption by first calculating income and deducting savings).

[32] *See* Charles E. McLure, Jr., *The Budget Process and Tax Simplification/Complication*, 45 TAX L. REV. 25, 44 (1989) (describing tax rules moving from economic income to taxable income as a source of complexity).

imputed income, the noncash economic benefit obtained from engaging in leisure activities, is typically omitted from the taxable base despite its obvious value.[33] Similarly, unrealized gains, while clearly economic income, are generally not included in the "income" on which taxpayers are taxed.[34] Line drawing problems plague many areas of income measurement, such as distinguishing between debt and equity, capitalizable and deductible expenses, and personal and business expenditures.[35] The Internal Revenue Code itself employs several definitions of income, tailoring what "income" is for the specific purpose needed.[36]

After an adequate measure of income is determined, cash-flow methods of calculating consumption then deduct savings. "Savings" for this purpose refers to savings over the taxable period, or the change in value of a taxpayer's assets, rather than absolute dollars saved. A taxpayer whose total assets on both January 1 and December 31 are $10,000 has savings of zero, regardless of what her income over the year might have been.[37] Determining what specific instruments qualify as savings is generally more straightforward than determining income, since savings are typically a subset of income, and most savings instruments have, at point of investment, readily ascertainable values.[38] Assets such as stocks, bonds, bank accounts, and business interests would qualify for the savings deduction.[39]

The cash-flow method for determining consumption is "postpaid," in that the tax on consumption is levied only when the taxpayer spends her savings on consumption. In the absence of taxpayer expenditures, a taxpayer's income is entirely saved, with the Haig-

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[33] Edward J. McCaffery, *Tax's Empire*, 85 GEO. L.J. 71, 78 (1996).

[34] Ilan Benshalom & Kendra Stead, *Realization and Progressivity*, 3 COLUM. J. TAX. L. 43, 45 (2011). Some exceptions to the realization requirement exist. *See, e.g.*, I.R.C. § 1256 (concerning regulated futures contracts).

[35] Some, but not all, of these line-drawing issues also exist with the IAPCT. *See infra*, Part IV.B.1 (discussing hybrid expenditures).

[36] John R. Brooks, *The Definitions of Income*, 71 TAX L. REV. 253 (2018).

[37] For this taxpayer, income equals consumption since savings equals zero.

[38] Line-drawing issues associated with determining the savings deduction, though less prevalent than the issues associated with determining income, do still exist (categorizing the purchase of a personal residence as savings or consumption, e.g.).

[39] Paul H. O'Neill & Robert A. Lutz, 66 TAX NOTES 1482, 1507 (Mar. 10, 1995) (describing "savings" under the Unlimited Savings Allowance ("USA") proposal). The USA tax was a cash-flow based progressive consumption tax proposed by Senators Sam Nunn and Pete Dominici in 1995.

Simons identity of income minus savings equaling zero.[40] When taxpayers spend (i.e., consume), savings decrease, turning more income into taxable consumption.[41] Postpaid cash-flow taxation operates similarly to a traditional IRA, wherein tax liability is triggered only when funds are withdrawn.[42]

For example, a taxpayer with $100,000 of wages in year 1 who immediately invests her entire earnings would owe no taxes in year 1 since her income equals her savings, and thus her consumption would equal zero. If this $100,000 is invested at an interest rate of 10 percent, in year 2 the taxpayer would have $110,000 (pre-tax) available for consumption. Assuming a tax rate of 20 percent, liquidating the entire investment would permit the taxpayer $88,000 of consumption in year 2 since her $110,000 portfolio would be subject to $22,000 (20 percent of $110,000) in taxes.[43]

2. Wage Tax / Yield Exemption Approach (Prepaid Tax)

In contrast, "prepaid" approaches to progressively taxing consumption rely on a consumption tax's equivalence, under certain conditions, to a tax on wages.[44] A wage tax includes only income allocable to labor in the taxable base, with yields from all investments excluded. If all wages are either consumed or saved, the portion consumed is subject to taxes in the period the wages are earned. For the portion saved, the return on investment is exempt from taxes, functioning similarly to a Roth IRA.[45]

If our taxpayer from the previous example was instead subjected to a 20 percent wage tax rather than a postpaid consumption tax, her $100,000 of

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[40] This assumes the taxpayer is able to place all unspent income in qualifying savings instruments. *See infra*, Part II.D (discussing additional burdens certain vulnerable populations might face under a consumption tax).

[41] If income is zero, savings is necessarily negative as the taxpayer spends, and the Haig-Simons identify of consumption equaling income minus savings still results in increased taxpayer consumption.

[42] Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 824 (2005).

[43] This assumes the 20% rate is an inclusive tax rate; i.e., the tax to be paid is part of the taxable base.

[44] Daniel N. Shaviro, *Replacing the Income Tax with A Progressive Consumption Tax*, 103 TAX NOTES 91, 96 (Apr. 5, 2004) ("A wage tax, in an economist's definition of "wages" as all returns to work effort, is equivalent to a consumption tax, apart from [certain transition effects.]").

[45] Contributions to a Roth IRA are not tax-deductible, but investment earnings accumulate tax-free, and qualified distributions are nontaxable. Karen C. Burke & Grayson M.P. McCouch, *Lipstick, Light Beer, and Back-Loaded Savings Accounts*, 25 VA. TAX REV. 1101, 1108 (2006).

wages in year 1 would result in $80,000 to either consume or save.[46] Assuming after-tax wages are fully saved and the same interest rate of 10 percent, in year 2 the taxpayer has $88,000 available for consumption in year 2 since the $8,000 of earnings are exempt from tax. In terms of consumption available to the taxpayer in year 2, this is equivalent to the postpaid, cash-flow consumption tax.[47]

3. Equivalence (or Lack Thereof) between Postpaid/Prepaid Approaches

The prepaid and postpaid approaches obtain similar results given certain assumptions: namely, constant tax rates and constant rates of return.[48] In both the postpaid and prepaid examples discussed earlier, the taxpayer's interest rate on savings is independent of the amount the taxpayer saves ($100,000 and $80,000, respectively). If instead the rate of return between the differently-sized investments vary, the postpaid/prepaid equivalence disappears and the taxpayer will obtain less consumption from the investment with the smaller return.[49]

Relatedly, if the taxpayers' tax rate schedule is progressive rather than fixed, equivalence between the postpaid and prepaid approaches is not assured. In the postpaid and prepaid examples, the taxpayer's taxable base was $110,000 and $100,000, from the prepaid/wage tax and postpaid/cash-flow methods, respectively. If a progressive rate schedule subjects the taxpayer to more than one tax bracket, the prepaid approach under taxes relative to the postpaid approach.[50] If the taxpayer is subjected to a progressive rate schedule in which her first

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[46] $100,000 of wages subject to a 20% tax on wages results in $20,000 of tax liability and an after-tax amount of $80,000 ($100,000 minus $20,000).

[47] Although the year 2 consumption available to the taxpayer ($88,000) is identical under the prepaid and postpaid approaches, the tax revenue collected is not. The former results in $20,000 collected in year 1; the latter $22,000 collected in year 2. Because the taxpayer's expected rate of return need not equal the risk-free return for the equivalence to hold for the taxpayer, consumptive equivalence for the taxpayer might not result in tax revenue equivalence. *See* Edward D. Kleinbard, *Capital Taxation in an Age of Inequality*, 90 S. CAL. L. REV. 593, 603 (2017) (describing "normal" returns as any return expected ex ante).

[48] Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 825 (2005).

[49] Either the smaller or larger investment could result in a higher return. If, for instance, the return is from a lucrative investment opportunity with a fixed maximum investment, the smaller investment will have the higher return. If instead the lucrative investment opportunity requires a minimum stake only satisfied by the larger investment, the larger investment will have the higher return.

[50] This assumes that the nominal amount subject to tax under the postpaid approach is greater than the amount of wages subject to tax under the prepaid approach.

$10,000 of wages/consumption is taxed at 10 percent, with all amounts greater taxed at 20 percent, the prepaid approach gives the taxpayer $89,100 of consumption in year 2.[51] The same rate schedule applied to the postpaid approach gives the taxpayer $89,000 of year 2 consumption.[52] The progressive rate schedule thus reduces the yield on savings of the postpaid/cash-flow method by $100 relative to the wage tax/yield exemption method.[53]

But this asymmetry between the postpaid/cash-flow and wage tax/yield exemption methods is not necessarily problematic. This article is premised on the normative assumption that consumption, as measured when taxpayers make personal expenditures, is the proper taxable base on which to apply progressive rates. This conception of consumption is most accurately captured by the postpaid approach, which imposes taxes when consumption actually occurs.[54] This postpaid formulation of a consumption tax differs from one defined by complete neutrality with respect to savings, and more accurately operationalizes the desire to tax consumption.[55]

A progressive tax on wages does not guarantee a correspondingly progressive tax on consumption, since return on investment can vary between taxpayers. Under a wage tax, a taxpayer earning $100 in wages and using the after-tax proceeds to purchase stock that miraculously increases in value to $100,000 only pays taxes on the $100 of wages, even if the stock is sold to finance $100,000 of consumption. If the goal of a progressive consumption tax is to impose increasing marginal tax rates on taxpayers with higher amounts of consumption, the prepaid, wage tax approach fails as a normative matter. Although the postpaid approach places an additional burden on the yield to savings when progressive rates are applied, it also allows for the taxation of gifts, windfalls, inheritances, and supranormal investment returns, all

[51] Under the prepaid approach, the taxpayer would owe (10%)($10,000) + (20%)($90,000) = $19,000 in taxes in year 1, leaving $81,000 to invest at a 10% ROI, resulting in $89,100 of tax-free consumption in year 2.

[52] Under the postpaid approach, the taxpayer would owe (10%)($10,000) + (20%)($100,000) = $21,000 in taxes on her taxable base of $110,000, leaving $89,000.

[53] The burden placed on savings by the postpaid approach is still smaller than the burden placed by an income tax with equivalent rate schedule. Under an income tax, the taxpayer would owe $19,000 in income taxes in year 1, leaving $81,000 to invest. The $8,100 year 2 return would be taxed at 10%, leaving $81,000 + $8,100 – $810 = $88,290 available for consumption in year 2.

[54] This assumes an equivalence between spending and consumption, which, for certain durable goods of consumption, might overtax relative to pure consumption.

[55] *See, e.g.*, Michael S. Knoll, *Designing A Hybrid Income-Consumption Tax*, 41 UCLA L. REV. 1791, 1792 (1994) ("Specifically, an income tax includes the yield on savings in the tax base whereas a consumption tax excludes it.").

of which escape taxation under the pure prepaid wage tax approach.[56] By imposing taxes when taxpayers use the benefits of their wealth, this result is a feature, rather than a bug, of the postpaid approach to progressively taxing consumption.

4. Flat Tax Plus Demogrant

The challenges of imposing a point-of-sale progressive consumption tax may seem like an unnecessary burden since a progressive tax system is mathematically possible without imposing graduated marginal rates by simply giving all taxpayers a fixed cash grant.[57] Taxing all consumption at a flat rate combined with a universal demogrant would result in increasing average tax rates for all taxpayers and would not require keeping track of total individual consumption.[58] If, for instance, a ten percent flat consumption tax was combined with a fixed $100 consumption tax credit for all taxpayers, taxpayers with $1,000, $5,000, and $10,000 of consumption would pay average tax rates of zero, eight percent, and nine percent, respectively.[59]

But such a system trades normative accuracy for administrative ease. If consumption is a true measure of ability to pay, and ability to pay (as a normative matter) motivates the desire for progressivity, such a system necessarily fails to impose true progressivity on higher-consumption taxpayers. Taxpayers for whom the cash grant is small relative to total taxes paid would have essentially the same tax rate as taxpayers with orders of magnitude more consumption. For example, a 10 percent flat tax on consumption combined with an annual cash grant of $100 would result in an average tax rate of 9% on a taxpayer with $10,000 of consumption, but a taxpayer with $1 million of consumption (one hundred times more) would pay an average tax rate of

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[56] Joseph M. Dodge, *Taxing Gratuitous Transfers Under a Consumption Tax*, 51 TAX L. REV. 529, 535 (1996) ("Gratuitous transfers of any kind of asset presumably would not be taxed under a wage tax.").

[57] *See* David A. Weisbach, *The (Non)taxation of Risk*, 58 TAX L. REV. 1, 39 (2004) ("It is possible to have progressivity with a flat rate by giving a uniform grant to each individual or family.").

[58] A flat-rate tax on consumption combined with a fixed exemption for all taxpayers would also result in progressive consumption taxation but this still requires keeping track of total individual consumption.

[59] 10% of $1,000, $5,000, and $10,000 is $100, $500, and $1,000, respectively. A $100 credit results in zero, $400, and $900 of taxes owed for taxpayers with $1,000, $5,000, and $10,000 of consumption, resulting in average tax rates of zero (0/$1,000), eight percent ($400/$5,000), and nine percent ($900/$10,000).

9.99%, an increase of less than one percent.[60] Progressivity been technically been achieved, but without any normative force.

This critique also applies to any method of creating a progressive rate structure with tax credits if the tax owed is much greater than the credit available. If, for instance, a flat consumption tax is combined with a payroll tax refund for workers' first $1,000 of payroll taxes, progressivity is most apparent for workers with smaller amounts of consumption.[61] Two workers receiving the full $1,000 payroll tax credit with $20,000 and $50,000 of consumption taxed at a flat ten percent will, post-credit, have tax rates of five and eight percent.[62] But this progressivity all but vanishes at higher levels of consumption, with the credit failing to impart high-end progressivity on consumers for whom the credit is small portion of the overall consumption tax paid.[63]

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This article argues that the individual accounting progressive consumption tax (IAPCT), a postpaid, direct spending tax that calculates the consumption tax owed at point of sale of each relevant purchase, is a viable alternative to the progressive consumption tax approaches previously considered. Although some administrative challenges remain, these hurdles are surmountable. Once these obstacles are overcome, imposing an IAPCT would yield many potential benefits.[64]

C. *Challenges of a Point-of-Sale Progressive Consumption Tax*

A progressive, point-of-sale consumption tax poses administrative challenges inapplicable to flat-rate taxation.65 A flat tax can be levied on a per occurrence basis; that is, each time the taxpayer is deemed to "have" the taxable base in question.66 Levying a fixed tax rate on consumption thus requires only identifying what counts as

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[60] $10,000 of consumption would result in $900 of taxes (10% of $10,000 minus $100), or 9% of $10,000. $1 million of consumption would result in $99,900 of taxes (10% of $1 million minus $100), or 9.99% of $1 million.

[61] *See* Graetz, *supra* note 26, at 290–92.

[62] (10% of $20,000 minus $1,000 of credit)/$20,000 = 5%; (10% of $50,000 minus $1,000 of credit)/$50,000 = 8%.

[63] *See supra* note 60 and accompanying text. If the tax credit was a function of consumption, progressivity could be tailored, but this requires, of course, measuring taxpayers' individual levels of consumption.

[64] *See infra*, Part III.

[65] Political challenges to implementing a progressive consumption tax are, of course, also relevant, but are beyond the scope of this Article.

[66] "Have" in this sense is taken to mean any relationship to a taxable base that triggers liability. Taxable bases that taxpayers can "have" include income, wealth, consumption, property value, and wages, among others.

"consumption."67 For a flat-rate consumption tax, the tax levied on a current transaction is therefore independent of previous transactions, since taxes collected via a flat rate are invariant to the distribution of consumption across consumers. As a result, the administrative burden of collecting flat consumption taxes is necessarily lower than that associated with a progressive consumption tax. For the latter, the tax collected depends on how consumption is distributed across consumers, with taxpayers paying increasingly higher marginal rates as their total consumption increases.

Imposing a progressive consumption tax requires knowing a taxpayer's total consumption over some defined taxable period.68 Once this quantity is known, increasingly higher marginal tax rates are imposed as aggregate consumption increases.69 Thus, similar to the current progressive federal income tax, accurately measuring the total amount of consumption and the distribution of consumption across all taxpayers over some fixed taxable period is a prerequisite for successful implementation of a progressive consumption tax. In contrast to the federal income tax, a point-of-sale progressive consumption tax requires that this aggregate consumption be known in real-time, and referenced when each taxpayer makes a consumptive transaction.

Although there are some challenges to implementing an individual accounting progressive consumption tax, improvements in technology and changes in consumer behavior render these administrative burdens surmountable. Specifics on how to implement an IAPCT are discussed in the following section.

III. Individually Accounting For a Progressive Consumption Tax

Successful implementation of an IAPCT requires allocating all expenditures to the individual taxpayer for whom the expenditure represents consumption. As described in this Part II, this accounting would occur through a secure database maintained by the IRS that is updated with information provided by electronic payment platforms and retailers. For electronic payments, this accounting is

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[67] *See, e.g.*, Yair Listokin, *Taxation and Liquidity*, 120 YALE L.J. 1682, 1724 n.97c (2011) ("Consumption taxes face... problems defining what is consumption versus investment.").

[68] *See* Shaviro *supra* note 15, at 749–50. "Progressive" as used here, denotes a tax system in which average tax rates increase as taxable base, however defined, increases. *Id.* at 753.

[69] Assuming the marginal rates increase as consumption increases, *average* tax rates will also increase as consumption increases.

technologically straightforward and requires only extending existing reporting obligations. By using modern technologies such as smart phones and QR codes, adequately accounting for cash transactions is also possible. Although these solutions seemingly implicate privacy concerns, these concerns are less problematic than they initially appear.

A. Electronic Payments

The majority of consumers making purchases electronically rely on some third-party to facilitate the transaction between them and the retailer. When paying via credit card, for example, the bank issuing the card pays the retailer on behalf of the consumer, with the consumer repaying the bank as per the credit card agreement.[70] Other electronic payment mechanisms (debit cards, bank wires, Venmo, PayPal, et cetera) similarly rely on some centralized entity to coordinate the payment between consumer and retailer.

These centralized entities can be used to maintain and update the record of taxpayer consumption. The electronic payment system used by the consumer would, at point of sale, transmit the purchase amount to a database maintained by the IRS. This database would, in real time, add the current purchase to the taxpayer's aggregate consumption for the taxable period and return the appropriate marginal tax rate to the retailer. Using this marginal rate, the total cost to the purchaser (inclusive of tax) would (again, in real-time) be determined and the sale thus completed.

Obligations must be imposed on the electronic payment systems used by the consumer to ensure that the necessary information is provided to the IRS. These new reporting obligations would, however, be straightforward extensions of the reporting obligations already imposed on many commercial payors.[71] Similar to the compensation information employers are required to submit via Form W-2, and the interest payment information banks are required to submit via Form 1099-INT, electronic payment systems can easily be required to notify the IRS when they facilitate a taxpayer's consumption.[72] Indeed, payment settlement entities (such as credit card companies) must already

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[70] *Preserving Consumer Defenses in Credit Card Transactions*, 81 YALE L.J. 287, 291–92 (1971).

[71] *See generally* I.R.C. § 6041 (obligating certain payors to submit information returns on qualifying payments).

[72] *See* Manoj Viswanathan, *Tax Compliance in A Decentralizing Economy*, 34 GA. STATE U. L. REV. 283, 300–04 (2018) (discussing Forms W-2 and 1099-INT).

report information to the IRS if certain thresholds are exceeded.[73] This additional obligation would be a straightforward extension of existing reporting requirements with minimal additional administrative cost.

Capturing the consumption effectuated via electronic payment systems would successfully monitor the overwhelming majority of individual consumption in the United States. Noncash transactions already constitute most transactions in the United States—in 2017, noncash payments represented 70 percent of all transactions by volume and 91 percent of all transactions by value.[74] Trends in consumer behavior indicate that the percentage of noncash transactions will continue to increase—the number of cash transactions has decreased from 40 percent in 2014 to 26 percent in 2019.[75] Thus, the lion's share of consumption occurring in the United States could easily be accounted for without imposing a significant administrative burden on taxpayers, retailers, or the IRS.

Under the IAPCT, the sticker price displayed by the seller could, for example, list the tax-inclusive price using the top marginal tax rate but consumers would obtain their true (and typically lower) marginal tax rate upon completing the electronic transaction.[76] If, for example, the top marginal IAPCT tax rate is 25 percent, an item with a pre-tax price of $80 would be listed at $100.[77] As the consumer completes her purchase (with a credit card, say) the credit card company, in real-time, queries the IRS database and returns the true marginal tax rate for the consumer. A consumer in the 10 percent IAPCT bracket, for example, would be charged only $88 for the item listed at $100.[78] The obligation to obtain the consumer's true marginal tax rate would simply be an obligation imposed on the electronic payment systems. Cash payments, in contrast, require another means to incentivize the reporting of transactions to the IRS.

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[73] I.R.C. § 6050W. Form 1099-K must be sent to payees only if the total number of transactions to a given payee is greater than 200 and the total dollar amount of all transactions exceeds $20,000. *Id.*

[74] RAYNIL KUMAR ET AL., FEDERAL RESERVE SYSTEM, CASH PRODUCT OFFICE, 2018 FINDINGS FROM THE DIARY OF CONSUMER PAYMENT CHOICE 5–6 (2018).

[75] *Id.*; KIM ET AL., FEDERAL RESERVE SYSTEM, CASH PRODUCT OFFICE, 2020 FINDINGS FROM THE DIARY OF CONSUMER PAYMENT CHOICE 3 (2020).

[76] Tax-inclusive prices include tax; tax-exclusive prices do not. *See* Sean Raft, *Imagining A Progressive and Comprehensive Consumption Tax*, 86 OR. L. REV. 161, 177 n.73 (2007). *See also* Hayes Holderness, *Price Includes Tax: Protecting Consumers from Tax-Exclusive Pricing*, 66 N.Y.U. ANN. SURV. AM. L. 783, 818 (2011); *infra*, Part IV.B (discussing IAPCT use of inclusive or exclusive rates).

[77] 25% of $80 is $20, for a (tax inclusive) listed price of $20 + $80 = $100.

[78] 10% of $80 is $8, for a (tax inclusive) price of $8 + $80 = $88.

B. Cash Transactions

The inherent anonymity of cash transactions requires a different approach to ensure accurate tracking of taxpayers' aggregate consumption. Whereas noncash transactions can be reported by the financial institution responsible for the electronic payment (the bank, credit card company, or payment app, e.g.), consumers engaging in cash transactions do not rely on a third-party to facilitate their transactions. As a result, the IRS cannot impose reporting obligations to obtain the desired information, and another method of incentivization is needed to accurately track cash transactions.

Levying by default the top marginal rate on cash purchases would incentivize consumers to "self-report" (as described below) to obtain their true, potentially lower marginal tax rate. "Self-reporting" for IAPCT purposes means voluntarily attributing consumption for inclusion in the database. To be sure, confirming one's identity would be a straightforward way to self-report. Consumers could easily verify their cash transactions via government-issued identification or a credit card that would then allocate the consumption to the database as described above.[79] But current technology allows for several other ways to self-report—all that is needed is a mechanism for the retailer to accurately allocate the transaction amount to a specific taxpayer.[80]

An IRS app on a taxpayer's smartphone could confirm the taxpayer's identity via a QR code.[81] To complete cash transactions, consumers would simply present the retailer with their app-generated, taxpayer-specific QR code to obtain the correct marginal tax rate, with the IRS consumption database updated concurrently.[82] The retailer scanning the QR code need not know anything about the purchaser's actual identity, since the identity confirmation would occur via the IRS app. Although consumption information would be sent to the IRS and added to the database, which would then return to the retailer the correct tax rate, the taxpayer would retain the anonymity of cash at the retailer level.

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79 Richard Thompson Ainsworth, *Biometrics: Solving The Regressivity of VATs and RSTs With "Smart Card" Technology*, 7 FLA. TAX REV. 651, 666–69, 672 (2006) (discussing use of identity cards to exempt specific purchases from consumption taxes, but not to track individual aggregate consumption).

80 *See* discussion *infra* in Part III.B.

81 Stephanie Rosenbloom, *Want More Information? Just Scan Me*, N.Y. TIMES, Sep. 21, 2011. A QR code is a scannable code similar to a supermarket bar code. *Id.*

82 Approximately 97% of U.S. adults own cell phones, with approximately 85% owning smartphones. MOBILE FACT SHEET, PEW RESEARCH CENTER (Jun. 12, 2019), https://www.pewresearch.org/internet/fact-sheet/mobile/.

C. *Privacy Concerns*

Tracking taxpayer consumption might seem, at first glance, to infringe on expectations of privacy. But for electronic purchases, the information sent to the IRS represents a subset of the information that electronic payment systems already collect from consumers. Under the IAPCT information reporting regime, less information would be provided to the IRS than what is already known to the for-profit companies that process electronic payments. For a credit card transaction, the amount a consumer pays a retailer is known by the bank issuing the card (Chase, e.g.) and the network facilitating the transaction (Visa and Mastercard, e.g.), with these companies frequently selling and sharing this information to other businesses.[83] Retailers also track consumption information and customer spending habits via rewards programs, and often share this data with other companies.[84] Additionally, the IAPCT does not require *what* was purchased to be tracked, only the *amount* of the purchase.

The information the IRS would receive under the IAPCT would be more limited than the current information about taxpayer behavior the IRS already receives. Most items of taxpayer income must be reported to the IRS via third-party information reporting. The IRS knows when and from whom taxpayers receive wages (W-2), interest payments (1099-INT), dividends (1099-DIV), unemployment payments (1099-G), gambling winnings (W-2G), stock transactions (1099-B), and canceled debt (1099-C), among other things.[85] Rather than collecting information on every taxpayer's form of income or precise spending habits, under the IAPCT the IRS would only obtain information on a taxpayer's aggregate consumption. Although this information would necessarily include the retailers from which the taxpayer consumed, it would not include the specific items or services purchased by the taxpayer.

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[83] *See* Geoffrey A. Fowler, *The Spy in Your Wallet: Credit Cards Have a Privacy Problem*, WASHINGTON POST (Aug. 26, 2019), https://perma.cc/Z72G-JTK3; Jay Stanley, AMERICAN CIVIL LIBERTIES UNION, *Why Don't We Have More Privacy When We Use A Credit Card?* (Aug. 13, 2019), https://www.aclu.org/blog/privacy-technology/consumer-privacy/why-dont-we-have-more-privacy-when-we-use-credit-card.

[84] Tiffany Hsu, N.Y. Times, *Why Rewards for Loyal Spenders Are 'a Honey Pot for Hackers'* (May 11, 2019), https://perma.cc/TA9C-9N3Z (security company hired by stores "has access to troves of data its clients collect on loyalty programs and can track the individual customers' behavioral patterns across multiple accounts.").

[85] I.R.S., GENERAL INSTRUCTIONS FOR CERTAIN INFORMATION RETURNS (2020); I.R.S., GENERAL INSTRUCTIONS FOR FORMS W-2 AND W-3 (2020).

The IAPCT database can be queried (with the taxpayer's permission) to return the correct marginal tax rate, but the specific contents of the database would *not* be publicly available. Meaning, though this database would keep a record of all taxpayers' consumption, this specific information would not, similar to existing taxpayer data, be accessible to the general public. The database's sole function for retailers and consumers would be to return a marginal tax rate when presented with some amount of consumption attributed to some specific taxpayer. Retailers would transmit consumption information for aggregation into the database, but the aggregate amount of consumption for each taxpayer would not be accessible by the retailer or any other private entity. This database would be centrally maintained by the IRS, similar to the information reports the IRS currently collects to obtain information on taxpayers' other tax-triggering activities.[86] In many respects, the IAPCT infringes on taxpayer privacy less than the current federal income tax, in which the IRS monitors taxpayer income at a fairly granular level.

The IRS already maintains privacy protections for the sensitive taxpayer data it receives, with taxpayer information presumed to be confidential and exempt from public disclosure.[87] These protections prevent disclosure of nearly all taxpayer information, even for public figures.[88] If IAPCT data was protected by the same safeguards currently used for existing taxpayer information, taxpayers would enjoy robust privacy protections preventing disclosure to third parties.

The IAPCT would also allow fewer opportunities for inadvertent data leaks compared to the federal information reporting mechanisms currently in use. As described above, taxpayers receiving various forms of income must provide sensitive taxpayer information to each of the payor institutions making payments.[89] Each of the information returns sent to taxpayers include taxpayer data such as social security number and address, and are often sent to taxpayers through the mail. In contrast, implementing the IAPCT requires only the electronic transmission of the consumer's current transaction amount (sent from retailer to the IRS) and the applicable marginal tax rate (sent from the IRS to the retailer).

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[86] *See generally* I.R.C. § 6041 (setting forth information reporting requirements).

[87] I.R.C. § 6103(a); Cornish Hitchcock, GUIDEBOOK TO THE FREEDOM OF INFORMATION AND PRIVACY ACTS § 8:7 (2021) (describing exclusion of taxpayer information from freedom of information act requests).

[88] *See, e.g.* Ann E. Marimow, *House Democrats Cannot Immediately Access President Trump's Tax and Financial Records*, WASHINGTON POST, Dec. 30, 2020 (describing difficulty in obtaining President Trump's tax returns).

[89] *See supra* 85 and accompanying text.

Consumers that insist on remaining completely anonymous for their cash transactions would be able to pay a price, up to a limit, for their anonymity.[90] By conducting transactions fully in cash and declining to self-identify, these taxpayers would simply pay the top marginal rate on all their transactions. For taxpayers already in the top marginal rate, this would be equal to the rate that would have been otherwise levied. Unlike the income tax, where cash transactions often go untaxed, these cash transactions would still result in the collection and remittance of tax.[91]

D. Non-U.S. Citizens

Certain populations might have greater difficulty with self-identifying, making it challenging for them to pay anything other than the top marginal rate. Undocumented immigrants, the homeless, the underbanked, and other cash-reliant groups would likely require additional safeguards to ensure they are not unfairly penalized by the progressive nature of the IAPCT. Although noncitizens are eligible to receive Individual Taxpayer Identification Numbers to pay federal taxes, fears over immigration enforcement might preclude volunteering information to the database.[92] Similarly, the homeless and the underbanked might lack the ability to obtain the identification cards or the minimum technologies necessary to avail themselves of the lower rate. For members of these groups, state and local governments should enact policies to ensure access to these taxpayers' true, lower rates.

The IAPCT casts a wider net than the current federal income tax in that any spender in the U.S. would theoretically be subject to the IAPCT. Visitors to the United States, such as tourists, who are not currently required to file federal income taxes, will, absent an exception, pay taxes on their U.S.-based consumption. These spenders generally suffer no technological impediment to self-identifying, but their lack of U.S. taxpayer status requires a different method for allocating their consumption. For all noncash spenders that are not U.S. taxpayers, the

[90] This anonymity is only available for cash transactions up to $10,000, which must be reported to the IRS and the Financial Crimes Enforcement Network. *See* I.R.S., *IRS Form 8300 Reference Guide*.

[91] Fraud analogous to garden-variety tax fraud could still occur, though. *See infra* Part III.B and accompanying text.

[92] Increased immigration enforcement often results in less civic participation amongst undocumented communities. *See, e.g.*, Zolan Kanno-Youngs, *Trump's Immigration Crackdown Has Blunted Police Efforts to Be Tough on Crime*, N.Y. TIMES (May 14, 2019), https://www.nytimes.com/2019/05/14/us/politics/trumps-immigration-visa-crime.html (noting immigrants' wariness of helping police and prosecutors).

IAPCT could impose a rate schedule separate from the rate schedule applicable to permanent U.S residents. This rate schedule could be the same for all visitors, but need not be since the IAPCT could in theory adjust rates based on attributes of the visitor, including country of residence.[93] The IAPCT on these noncash purchases could, for instance, be adjusted to resemble the value added tax that Americans pay when visiting other countries.[94] To the extent tax policy goals preclude requiring tourists to pay the IAPCT, a zero rate for these spenders could also easily be implemented.

IV. IAPCT ADVANTAGES

The IAPCT offers several advantages relative to previously suggested methods of progressive consumption taxation.[95] This Part III discusses how the IAPCT would be easier to administer and implement than these existing proposals, and with minimal compliance costs. Since postpaid, cash-flow methods of taxing consumption stand on firmer normative ground that prepaid, wage tax methods, this section focuses on benefits of the IAPCT relative to the former, though many IAPCT advantages are applicable to both.

A. Simplicity

Previous proposals of progressive consumption taxation offer simplifications relative to the current federal income tax. Since the federal income tax (as a general matter) includes in its tax base amounts saved but excludes business-related costs, complex rules are required to categorize business expenditures as deductible expenses or capitalizable expenses.[96] By excluding savings from the tax base, both postpaid cash-flow and prepaid wage tax approaches eliminate the need to track basis, calculate depreciation deductions, or distinguish between repairs and improvements.[97]

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[93] These attributes would be obligatorily provided by the service facilitating the electronic payment (the bank or credit card, e.g.).

[94] *See infra* note 150 and accompanying text.

[95] The advantages and disadvantages of progressive consumption taxation relative to other tax *bases* has been discussed at length by other scholars. *See supra* notes 14–28 and accompanying text. This section focuses instead on the superiority of the IAPCT relative to other approaches to progressively taxing consumption.

[96] *See generally* I.R.C. § 263 and associated regulations (detailing capitalization rules for a variety of specific situations).

[97] Mitchell L. Engler, *A Progressive Consumption Tax for Individuals: An Alternative Hybrid Approach*, 54 ALA. L. REV. 1205, 1244 (2003).

The IAPCT also excludes savings and retains this simplification, but unlike cash-flow proposals, also eliminates the need to precisely define income. For cash-flow approaches, consumption is measured by first measuring income and then deducting savings; taxpayers thus have an incentive to understate the former and overstate the latter.[98] Similar to current income tax administration, these cash-flow regimes require significant self-reporting. The same types of income which suffer from chronic underreporting for federal income tax purposes would stymie effective implementation of a progressive consumption tax based on cash flows.[99] For instance, the $500 in gambling winnings spent on a celebratory dinner would likely be omitted from a taxpayer's self-reported income and thus escape taxation via either an income tax or a cash-flow-based consumption tax.

Implementing a progressive consumption tax via a prepaid wage tax is also administratively problematic.[100] Wage tax approaches to taxing consumption rely on taxing wages (i.e., returns from labor), and taxing wages requires delineation between wage and investment income, which poses challenging line-drawing challenges.[101] The successful day trader, for example, often expends effort in assessing potential purchases, but this labor does not guarantee that the resulting profit will be treated as wage income.[102] Similarly, because of the preferential tax rate on long-term capital gains, there is already ample evidence of taxpayers characterizing what should be wages as

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[98] Daniel S. Goldberg, *E-Tax: Fundamental Tax Reform and the Transition to A Currency-Free Economy*, 20 VA. TAX REV. 1, 64 (2000) ("[A cash flow consumption tax] requires individuals to go through the annual ritual of completing a tax return and tracking receipts and expenditures.").

[99] Effective income tax administration is heavily reliant on tax returns such as Form W-2 and 1099. Sources of income with little income reporting, such as income from sales of business property, proprietor income, farm income, and rents and royalties, approximately 63% of actual income is unreported. I.R.S., U.S. DEP'T OF TREASURY, PUB. NO. 1415 (5-2016), FEDERAL TAX COMPLIANCE RESEARCH: TAX GAP ESTIMATES FOR TAX YEARS 2008-2010, at 20–21 (2016), https://www.irs.gov/pub/irs-soi/p1415.pdf.

[100] Prepaid consumption taxes also have normative shortcomings. *See supra* notes 54–56 and accompanying text, discussing the normative benefits to postpaid consumption tax approaches relative to prepaid approaches.

[101] Daniel N. Shaviro, *Replacing the Income Tax with A Progressive Consumption Tax*, 103 TAX NOTES 91, 96 (Apr. 5, 2004) ("In practice...it is hard to enforce a sufficiently broad definition of 'wages.'").

[102] *See* I.R.S., TOPIC NO. 429 TRADERS IN SECURITIES (describing the distinction between traders and investors).

investment income.[103] There is no straightforward approach to tax, say, Mark Zuckerberg's gain from appreciated Facebook stock as a return to labor, though his labor clearly plays some role in its outsized valuation.

Unlike previous methods for levying progressive consumption taxes, the IAPCT taxes consumption directly as incurred, eliminating the games taxpayers can play to avoid taxes under cash-flow and wage tax approaches. Because the IAPCT taxes transactions, taxpayers obtain no benefit from disguising salary as excludable gifts or characterizing wages as investment income. There is similarly no incentive, under the IAPCT, for taxpayers to underreport income since the receipt of funds triggers no tax liability.

Instead, the IAPCT must define what expenditures qualify as consumption, with taxpayers desiring their expenditures be classified as investments if at all possible. This distinction between investment and consumption is equivalent to the line-drawing necessary for implementing a cash-flow consumption tax, which provides a deduction for the former but not the latter.[104] Rules for assets such as jewelry, real estate, and other mixed-use consumption/investment property must be devised, but these rules (plus rules defining income) are also required for cash-flow consumption tax methods. Thus, the rules required for administering the IAPCT are a subset of what would be required under a cash-flow consumption tax or the current income tax.[105]

B. *Enforcement*

The IAPCT uses taxpayer self-identification to track individual aggregate consumption during the taxable period. Taxpayers are incentivized to do so since they then obtain their true, possibly lower tax rate on their current purchase. Incentivizing the taxpayer to self-identify also promotes tax compliance from retailers. For electronic purchases, the consumption tax calculation and tax collection are automatic. Assume a product's listed price is $100, with prices listed

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[103] *See, e.g.*, Victor Fleischer, *Two and Twenty: Taxing Partnership Profits in Private Equity Funds*, 83 N.Y.U. L. REV. 1 (2008) ("[S]ome of the richest workers in the country... pay tax on their labor income at a low [capital gains] rate."); Mark P. Gergen, *How to Tax Capital*, 70 TAX L. REV. 1, 40 (2016) ("Undervaluing equity compensation in a private firm makes it possible to convert labor income into capital income.").

[104] William D. Andrews, *A Consumption-Type or Cash Flow Personal Income Tax*, 87 HARV. L. REV. 1113, 1157–61 (1974) (discussing treatment of houses, jewelry, and artwork under a cash-flow consumption tax).

[105] IAPCT treatment for specific assets are described in Part IV.B.

inclusive of the IAPCT where the top marginal rate is 25 percent.[106] At point of sale, a purchaser in the 10 percent marginal tax bracket would receive a $12 discount relative to the posted price, and pay only $88 for the product.[107] The credit card company (or other electronic payment processor) would automatically collect the $8 of tax owed and remit the $8 of tax to the IRS. If instead the taxpayer paid in cash, this taxpayer would obtain the same $12 discount from self-identifying.[108] Self-identifying also alerts the IRS that the retailer who confirmed the transaction via the QR code has $8 in tax that needs to be remitted. Aligning the interests of the purchaser (who desires the lower tax rate) and the IRS (who desires the tax revenue) promotes compliance by the retailer.

Taxpayers in the top marginal tax bracket paying cash for purchases have no financial incentive to self-identify. As such, retailers processing these transactions would have greater ability to engage in the garden-variety sales tax fraud currently available for retail cash transactions.[109] To combat this, the IAPCT could require retailers to report, in real-time, all cash transactions. Instead of scanning the customers QR code (since the customer has declined that option) the retailer would scan a QR code indicating the customer's declination to self-identify. The top marginal rate is levied, the transaction is reported to the IRS, and the retailer is thus obligated to remit the taxes. Another possible solution would be to set the highest IAPCT rate at a consumption level obtained for relatively few taxpayers, thereby increasing the incentive for most consumers to self-identify. Though bilateral fraud (meaning, consumer and retailer working in concert) will always be possible, unilateral fraud by the retailer would be made more challenging.

The IAPCT would also promote improved compliance relative to the retail sales tax (RST) to which most U.S. consumption is currently subjected.[110] RSTs are evaded by retailers simply underreporting sales, especially cash

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[106] Given these assumptions, the $100 purchase price would, for taxpayers in the top marginal rate, consist of $80 of taxable base and $20 (25% of $80) consumption tax, for a total price of $100.

[107] A taxpayer in a 10% marginal tax bracket would pay $8 (10% of $80) consumption tax, for a total price of $88.

[108] Similar to existing sales tax requirements, retailers would be required to remit cash payments of the consumption tax at regular intervals. *See* CAL.DEP'T OF TAX & FREE ADMIN., FILING DATES OF SALES & USE TAX RETURNS (requiring quarterly payments of sales and use taxes).

[109] *See* Steven A. Solieri et al., *Sales Suppression Technology; Skimming Cash in the 21st Century*, J. MULTISTATE TAX'N 20, 22 (2014) (describing small-business "skimming," or understating of taxable income to avoid sales tax obligations).

[110] *See also supra* note 24 and accompanying text.

sales.[111] Although the customer typically pays the RST owed, this tax is pocketed by the retailer. Since the IAPCT motivates most consumers to self-identify, it will generally be more difficult for retailers to remove the record of cash transactions since the IRS is notified (in real-time) that the retailer has made a sale.

C. *Transitions*

Transitioning from the current income tax regime to a cash-flow consumption tax requires a relatively straightforward change in law; that is, unlimited deductions for savings, but presents various issues of transition.[112] The central transitional concern is how to treat money accumulated and previously taxed under an income tax since these funds will again be subject to the cash-flow consumption tax when eventually spent.[113] A taxpayer with $100,000 of year 1 wages subject to a twenty percent income tax could have $80,000 of consumption in year 1, or have $80,000 to save for consumption in year 2. If a cash-flow consumption tax is enacted for year 2 and the $80,000 entirely spent, consumption taxes would be owed on this $80,000.[114] If the tax

[111] Richard Thompson Ainsworth, *Automated Sales Suppression (Zappers): A Real Threat to Pennsylvania's Sales and Use Tax*, 8 PITT. TAX REV. 29, 33 (2010) ("Remote skimming of cash transactions is now possible without the knowing participation of the cashier who physically rings up the sale.").

[112] These issues have been discussed at length by scholars, with a range of proposals suggested. *See, e.g.*, Mitchell L. Engler, *Progressive Consumption Taxes*, 57 HASTINGS L.J. 55, 72 (2005); Joseph Bankman & Barbara H. Fried, *Winners and Losers in the Shift to a Consumption Tax*, 86 GEO. L.J. 539, 547 (1998); Michael J. Graetz, *Retroactivity Revisited*, 98 HARV. L. REV. 1820 (1985); Daniel S. Goldberg, *The Aches and Pains of Transition to A Consumption Tax: Can We Get There from Here?*, 26 VA. TAX REV. 447, 448 (2007).

[113] Joseph Bankman, *The Engler-Knoll Consumption Tax Proposal: What Transition Rule Does Fairness (or Politics) Require?*, 56 SMU L. REV. 83, 84 (2003). Proposals to address this concern are varied. *See* Daniel S. Goldberg, *The Aches and Pains of Transition to A Consumption Tax: Can We Get There from Here?*, 26 VA. TAX REV. 447, 473 (2007) (describing approaches to transitioning to a consumption tax and associated problems); Mitchell L. Engler & Michael S. Knoll, *Simplifying the Transition to A (Progressive) Consumption Tax*, 56 SMU L. Rev. 53, 65 (2003); Joseph Bankman, *The Engler-Knoll Consumption Tax Proposal: What Transition Rule Does Fairness (or Politics) Require?*, 56 SMU L. REV. 83, 84 (2003) (proposing transition relief to net dissavers only). Not all scholars agree that transition relief is necessary. *See, e.g.*, Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 932–33 (2005) (arguing that current income tax's similarity to a consumption tax precludes need for significant transition relief).

[114] Under a cash-flow tax, consumption equals income minus savings, or zero minus negative $80,000, or $80,000.

on consumption was also twenty percent, the taxpayer would only have $64,000 of after-tax consumption.

Implementing a progressive consumption tax gradually over a period of years during which the federal income tax is also still operative would mitigate the need for transition relief (regardless of the transition relief preferred) since previously taxed income could, over time, be replaced with earnings exempt from income tax that are then taxed by the consumption tax. But this requires subjecting taxpayers, for some period of time, to the complexity of two taxation regimes, a prospect that is much more challenging for a cash-flow tax than the IAPCT. Transitioning to a cash-flow tax requires calculating consumption indirectly by totaling income and then deducting all savings.[115] Although the infrastructure for determining income exists from the existing income tax, a true measurement of "income" for cash-flow consumption tax purposes necessarily encompasses a broader range of items than what currently qualifies under federal income tax definitions.[116] The $500,000 of gain from the sale of a home that is currently excluded from the income tax, for instance, must be included in a cash-flow definition of income to accurately measure consumption.[117]

The IAPCT, in contrast, is amenable to a phased-in implementation, making the sting of transition more tolerable compared to a cash-flow approach. Even if the initial rates for the cash-flow consumption tax started low and increased gradually over time, taxpayers would still need to file both an income tax return and cash-flow consumption tax return, each with their own definitions of income and associated complexities. Although the IAPCT does require that rules be established to define precisely which taxpayer expenditures qualify as consumption, establishing this initial structure is largely a one-time cost.[118] Whereas a cash-flow consumption tax requires the filing of annual returns and significant complexity, taxpayers' interaction with the IAPCT would be no more burdensome than paying existing sales taxes.

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[115] *See supra*, Part I.B.1.

[116] John K. McNulty, *Flat Tax, Consumption Tax, Consumption-Type Income Tax Proposals in the United States: A Tax Policy Discussion of Fundamental Tax Reform*, 88 CAL. L. REV. 2095, 2141–42 (2000).

[117] *See* I.R.C. § 121 (allowing married filers $500,000 of capital gain exclusion for the sale of a home).

[118] *See infra*, Part IV.B.1 and accompanying text, describing possible treatment of hybrid assets.

Proponents of a federal progressive consumption tax often endorse it as a replacement for the individual federal income tax.[119] This stance is informed by the significant compliance burden associated with filing taxes.[120] Since requiring taxpayers to file an additional return dampens enthusiasm for any new tax proposal, a federal consumption tax is often discussed as a tax "in lieu of" the existing federal income tax. The IAPCT does not, however, impose significant compliance burdens on taxpayers. The IAPCT could, therefore, in contrast to other proposals to progressively tax consumption, easily be adopted either "in lieu of" or "in addition to" the federal income tax.

This article is agnostic about the extent to which the IAPCT (or any progressive consumption tax) should replace or instead simply complement existing federal taxes. This choice would be driven by many factors, including, but not limited to, revenue goals, desired redistribution, and political considerations, all of which would have implications for the rate structure ultimately chosen. But regardless of the preferred modality, the IAPCT could operate comfortably in conjunction with, or as a replacement to, the federal income tax.

D. *Empirical Efficacy and Tax Policy*

When Congress adopted the first permanent income tax in 1913, it did so without the benefit of the advanced technology and computing power currently at its disposal.[121] Although more efficient methods of administering our current tax code undoubtedly exist, the evolution of U.S. tax administration over the past century has been more responsive to political interests than intelligent fiscal policy.[122]

Adopting an IAPCT presents a unique opportunity to use empirical data to continually improve the tax system. Data from the IAPCT, by the nature of its continuous stream of tax collection and remittance, will be available in real-time. Adjustments to the IAPCT could be

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[119] *See, e.g.*, Edward J. McCaffery, *A New Understanding of Tax*, 103 MICH. L. REV. 807, 817 (2005) ("The real and pressingly practical question for tax is not whether to have an income or a consumption tax, but what form of consumption tax to have."). *But see* Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 5 (2006) (advocating for a federal consumption tax to be levied in addition to a federal income tax).

[120] *See generally infra* notes 131-135 and accompanying text.

[121] *See* U.S. CONST. amend. XVI ("The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.").

[122] *See, e.g.*, Justin Elliot & Paul Kiel, *The Turbotax Trap: Inside TurboTax's 20-Year Fight to Stop Americans From Filing Their Taxes for Free*, PROPUBLICA (Oct. 17, 2019) (describing IRS capture by group of for-profit tax preparation companies).

made to taxable period, rates applied on certain items and in certain geographical locations, or any one of a number of other factors in order to accomplish certain tax policy goals. Regardless of the specific goals desired, the real-time data analysis provided by the IAPCT would allow for more timely changes in tax laws to better effect these objectives.

Finalized income tax data typically lags tax collection by several years. Income tax returns are due months after the close of the taxable year, with automatic six-month extensions granted to requesting individuals.[123] Additionally, taxpayers generally may file amended income tax returns until three years after the due date of the original return.[124] Since tax returns are filed in a cluster (generally between February and April), even analyzing timely filed returns takes over a year.[125] The result is an inability of the IRS to gather final data about tax collection until far after the taxable period has ended, hindering the ability to make timely legislative and administrative adjustments. Because the IAPCT collects and remits taxes as transactions occur, it would provide a real-time stream of data to the IRS, policy analysts, and the general public. In addition to improving transparency in the tax collection process, this data stream would also allow for the immediate adjustment of certain elements of the tax code.[126]

Attempts to enact real-time federal income tax policy can suffer from the same temporal issues plaguing income tax data collection. The disaster relief enacted in 2017 in response to hurricanes Harvey, Irma, and Maria included an enhanced casualty loss deduction and certain favorable computational adjustments to the earned income tax credit and the child tax credit.[127] Taxpayers attempting to take advantage of these changes obtained benefits only after filing their 2017 tax returns in early 2018 and waiting for their return to be processed. The taxpayers in Houston, who were affected in August 2017 by Hurricane Harvey, waited until at least March 2018 to receive any financial

[123] Treas. Reg. § 1.6081-4(a) (2008) ("An individual who is required to file an individual income tax return will be allowed an automatic 6-month extension of time to file the return...").

[124] I.R.S., INSTRUCTIONS TO FORM 1040X at 5 (2020).

[125] *See* I.R.S., STATISTICS ON INCOME TAX STATS – UPCOMING DATA RELEASES, https://www.irs.gov/statistics/soi-tax-stats-upcoming-data-releases (the anticipated release of 2018 tax year data is February 2020).

[126] Michael Hatfield, *Professionally Responsible Artificial Intelligence*, 51 ARIZ. ST. L.J. 1057, 1086 (2019) ("What seems most likely are advances in data gathering and reporting that may make real-time reporting of transactions commonplace.").

[127] Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63, 131 Stat. 1168 (2017).

benefit. Additionally, to the extent these taxpayers are low-income and have little taxable income, increased deductions are of little value.

In contrast, an IAPCT would allow Congress to implement real-time tax policy in response to sudden need. In response to Hurricane Harvey, under an IAPCT the marginal tax rate for all sales in Houston could have been quickly reduced to zero (or even lower[128]) providing affected taxpayers with immediate financial benefits. The tax relief provided could take many forms, such as reducing the tax rate on some products (bottled water, generators, et cetera) or limiting the relief to specific localities. In addition to quick implementation, the real-time data provided by the IAPCT would allow for analysis to help ensure that the tax relief chosen would truly benefit the intended beneficiaries.

The IAPCT is also well-suited to provide pandemic-related tax relief. In response to COVID-19, individual taxpayers with under $75,000 of adjusted gross income were entitled to receive at least $1,200 in the form of a refundable tax credit.[129] Although these economic impact payments were intended to be sent quickly, they often took months to reach taxpayers, with some payments not obtained until tax returns were filed.[130] Relief provided through the IAPCT, in contrast, could provide taxpayers with immediate credits against consumption. These relief payments could be tailored to reduce the costs of essential consumption, with higher-end consumption precluded from relief if so desired.

E. *Tax Administration*

The real-time nature and data analysis potential of the IAPCT would not just permit tax policy adjustments to be made with greater speed. It would also allow for fundamental structural changes to tax administration and collection. By taking advantage of advances in technology, these changes have the potential to address many vexing issues currently associated with the federal income tax.

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[128] A negative marginal tax rate would reduce the price of the good to below its fair-market value. Anti-price gouging measures would need to be present to prevent capture of the benefit by retailers. *See, e.g.*, CAL. PENAL CODE § 396 (Deering 2017) (preventing price increases of more than ten percent during states of emergency).

[129] *See* I.R.C. §§ 6428, 6428A. Taxpayers filing joint returns, or having children, were entitled to larger payments.

[130] Tara Siegel Bernard, *Where Is My Second Stimulus Check? Why Payments Are Delayed for Some*, N.Y. TIMES (Jan. 6, 2021).

1. Tax Filing

The annual cost of filing income tax returns has been estimated to be over one percent of gross domestic product, or over $200 billion, and has steadily increased since the 1980s.[131] To the extent the IAPCT is implemented as a substitute for the federal income tax, it would eliminate the need for taxpayers to file returns since tax collection and remittance would occur in real-time, without the end-of-year reconciliation required by the current federal income tax.[132] By measuring consumption as it is incurred, and not by reference to income and savings, the IAPCT eliminates much of the need for recordkeeping—taxpayers would no longer need to report income, document IRA contributions, or calculate depreciation, among other things. Even if the distributive benefits of moving to a progressive consumption tax via an IAPCT are minimal, the magnitude of the compliance costs saved favor its adoption.

That the IAPCT eliminates tax returns does not mean that the IAPCT lacks granularity, or somehow limits taxpayer optionality. To be sure, Congress and/or the IRS must make decisions about precisely what taxpayer spending constitutes consumption if the spending can also be characterized as saving.[133] But this fixed, one-time cost is imposed on the government, not taxpayers. Relatedly, although taxpayers will no longer file returns, they will not lack choice regarding the taxes they pay. Under the IAPCT, this optionality will be in respect to taxpayers' consumption decisions, not income or savings.

Eliminating the requirement of tax filing would also eliminate the approximately $450 billion of income tax refunds that the IRS issues to taxpayers.[134] These refunds are, in essence, interest-free loans made by taxpayers to the federal government. Eliminating the need for refunds would increase taxpayers' cash flows during the year. But to the extent taxpayers prefer the forced savings inherent in the over withholding regime of the federal income tax,[135] the IAPCT can easily

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[131] Youssef Benzarti, *Estimating the Costs of Filing Tax Returns and the Potential Savings from Policies Aimed at Reducing These Costs* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27946, 2020).

[132] The IAPCT need not be enacted in lieu of the federal income tax to effectively implemented. *See supra* Part III.C.

[133] *See infra* Part IV (discussing IAPCT tax design issues).

[134] I.R.S., 2019 IRS DATA BOOK at V ("[In fiscal year 2019, the] IRS issued more than $452 billion in refunds[.]").

[135] Jeremy R. Polk, *Compensation for the Fruit of the Fund's Use: The Takings Clause and Tax Refunds*, 98 NW. U. L. REV. 657, 666 fn.52 (2004) ("Perhaps surprisingly, some

accommodate these goals. Under the IAPCT taxpayers could simply opt into paying more tax than they actually owe, resulting in the same end-of-year refund they currently enjoy under the federal income tax.

2. Taxable Periods

The individual income tax is assessed on the basis of a calendar-year taxable period. After year's end, items of income and loss are accounted for, tax liability is determined, and the tax return is filed. Though there are strong theoretical justifications for using taxable periods other than the calendar year,[136] the administrative burden of longer taxable periods has raised concern.[137] The result is a tax filing season that is cyclical, with the bulk of tax return administration concentrated in the first four months of the calendar year.[138] Cash-flow and wage tax methods of implementing a progressive consumption tax suffer from similar administrative burdens, since they too involve cyclical taxpayer filing.

An IAPCT, in contrast, would not require uniformity with regard to taxable year. To be sure, imposing progressive rates on consumption requires defining some taxable period over which a taxpayer's consumption is measured.[139] But this taxable year need not be congruent across taxpayers. If instead a taxpayer's taxable year began and ended on, say, each taxpayer's birthday, the IAPCT would both yield consistent tax revenues and eliminate the notion of a "tax filing season." Additionally, the IAPCT need not be bound by a 12-month tax period. If analyses of taxpayer consumption revealed that longer (or

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taxpayers intentionally cause excessive income to be withheld from their paychecks.").

[136] Daniel Shaviro, *Beyond the Pro-Consumption Tax Consensus*, 60 STAN. L. REV. 745, 761 (2007) ("the theoretical case for a lifetime rather than an annual approach would be straightforward if markets were complete, people engaged in consistent rational choice based on their lifetime budget lines, and aggregate lifetime earnings data captured all of the available information that is relevant to making distributional judgments.").

[137] Sheldon S. Cohen, *Administrative Aspects of a Negative Income Tax*, 117 U. PA. L. REV. 678, 695 (1969) ("If [income] averaging were required... determining who should average and calculating the averages would add tremendously to the administrative burden.").

[138] U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-55, 2019 TAX FILING: IRS SUCCESSFULLY IMPLEMENTED TAX LAW CHANGES BUT NEEDS TO IMPROVE SERVICE FOR TAXPAYERS WITH LIMITED-ENGLISH PROFICIENCY (2020) (describing seasonal work force of IRS during hiring season).

[139] *Cf.* I.R.C. § 441.

shorter) taxable periods would better accomplish tax policy goals, those changes would be administratively simple to implement.

3. Place-Based Adjustments

If a given taxable base is a proper measure of ability to pay, a progressive rate structure penalizes taxpayers in high-cost areas that have nominally greater amounts of the taxable base but no real economic advantage over taxpayers in low-cost areas with less of the taxable base.[140] With respect to income, taxpayers using after-tax income for consumption in high cost-of-living areas have less buying power. Similarly, if consumption's suitability as a taxable base subject to progressive rates is conditioned on ability-to-pay concerns, not taking into account variations in cost-of-living unfairly penalizes those living in high-cost areas.[141]

Variations in cost-of-living are directly related to the consumptive power available in a given location. In contrast, a taxpayer's return on savings is generally unaffected by regional cost-of-living differences since capital is mobile. If income is equal to consumption plus savings, only a portion of a taxpayer's income should be affected by regional variations in cost-of-living.[142] Properly taking into account cost-of-living in an income tax system is, therefore, necessarily more challenging than in a consumption tax system. Even if all income is used to fund consumption, there is no assurance that where the income is earned is where the income will be spent.

Cost-of-living adjustments with the IAPCT are relatively straightforward and could take several different forms. The rate brackets for high-cost regions could be larger, such that taxpayers in these areas need greater amounts of consumption to reach higher marginal rates compared to taxpayers in low-cost areas. More granular tweaks could also be made. Similar to adjusting prices for certain products to provide disaster relief,[143] areas where specific items of consumption have markedly different prices could be afforded relief for that specific

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[140] *See* Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Taxes for Regional Living Costs and Amenities*, 116 HARV. L. REV. 987, 989 (2003) ("the income tax needs to be adjusted for differences in regional living costs."); James M. Puckett, *Location, Location, Location: Using Cost of Living to Achieve Tax Equity*, 63 ALA. L. REV. 591, 592 (2012) ("All other things being equal, the federal income tax ignores whether the taxpayer lives in a relatively affordable or expensive location.").

[141] This assumes that the higher cost of living is not associated with other values of consumptive value, such as better social services.

[142] *See supra* note 29 and accompanying text.

[143] *See supra* notes 127-28 and accompanying text.

item. The IAPCT could, for instance, offer reduced tax rates on renting in high-cost areas, or on food where necessities are excessively expensive.[144]

These adjustments could, to be sure, result in undesired behavioral changes. If tax brackets are enlarged in high-cost areas in order to relieve existing consumptive burdens on residents, the change would likely induce more consumption in addition to conferring a benefit on existing consumers.[145] But the extent to which behavioral changes undercut the power of cost-of-living adjustments in the IAPCT is an empirical question that can be answered with the data generated. If the adjustments do not yield the intended results or have results that are unintended, it would be a relatively straightforward administrative fix. As discussed earlier, the readily available data stream provided by the IAPCT makes analysis and policy recommendations far simpler relative to an income tax.[146]

V. IAPCT Design

The preceding sections described the normative justifications for implementing the IAPCT and the potential benefits of doing so. Successfully deploying the IAPCT also requires, of course, choosing many details of tax design. An incomplete list of specifications needed includes the precise rate structure, the treatment of "hybrid" assets of savings/consumption, and the characterization of donative transfers. Though fully resolving these details are beyond the scope of this article, it is still useful to discuss the tax design parameters within which an IAPCT could operate.

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[144] *See* Michael Kolomatsky, *Rents Are Up? That Depends on Where You Live*, N.Y. Times (Feb. 21, 2019) (average monthly rent of a one-bedroom apartment in San Francisco, pre-pandemic, was approximately $3,600); *see also* Tariro Mzezewa, *Hawaii Is a Paradise, but Whose?*, N.Y. Times (Feb. 4, 2020) ("Groceries, for example, cost 60 percent more than the national average.").

[145] *See* Graham Bowley, *Art Collectors Find Safe Harbor in Delaware's Tax Laws*, N.Y. Times (Oct. 25, 2015) (discussing how Delaware's lack of sales tax motivates art collectors to do business there).

[146] *See supra* 122-28 and accompanying text.

A. IAPCT Tax Rates

1. Tax-Exclusive versus Tax-Inclusive Rates

It is possible for the IAPCT to be implemented using either tax-inclusive or tax-exclusive rates.[147] For tax-inclusive regimes, the price shown includes tax (as with a VAT); for tax-exclusive regimes, the tax is calculated and added to the displayed price (as with sales taxes). A product listed for $80 in a twenty-five percent tax-exclusive regime will cost $100, the same as a product listed for $100 in a twenty percent tax-inclusive regime.

Although economically equivalent, there are differences in how inclusive and exclusive rates are perceived by taxpayers. This difference in tax salience between inclusive and exclusive rates can lead to differing behavioral responses to otherwise identical taxes. Empirical studies show that unless the tax is prominent, consumers will make consumption decisions independent of the tax, even if the taxpayer is aware of and can easily calculate the tax to be paid.[148] Using tax-exclusive rates generally reduces consumption taxes' salience and therefore decreases deadweight efficiency costs but could result in misallocations of consumer spending since taxpayers will have less purchasing power than expected if the taxes owed are nonobvious. Absent empirical studies, the tradeoffs between these effects are ambiguous.[149]

Despite the theoretical efficiency gains from a tax-exclusive IAPCT, the potential magnitude of the IAPCT's top marginal rate might render it high-salience (and potentially less desirable) even though tax-exclusive pricing is considered low-salience. At some marginal tax rate even tax-exclusive pricing will be salient to consumers. A chocolate bar listed for $10 that rings up at the register for, say, $20 (a 100 percent tax-exclusive rate) would likely be comparably salient to a candy bar listed for $20 (at a 50 percent tax-inclusive rate). Given that the average VAT in the European Union is a flat, inclusive 21 percent, the top marginal IAPCT rate would likely be much higher if the

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[147] *See supra* note 76 and accompanying text. A twenty percent inclusive rate on an item listed at $100 is equivalent to a twenty-five percent exclusive rate on an item listed for $80.

[148] Deborah H. Schenk, *Exploiting the Salience Bias in Designing Taxes*, 28 YALE J. ON REG. 253, 266 (2011).

[149] *See id.* at 282 ("Thus, the efficiency effects of decreasing salience with respect of consumption taxes are ambiguous.").

IAPCT is intended to replace the federal income tax.[150] This top rate would likely be salient regardless if levied on an inclusive or exclusive basis.

Tax-inclusive pricing is said to promote transparency since prices would reflect the true cost of goods. This is certainly true for existing (that is, flat) consumption taxes since all consumers are subjected to the same tax rate.[151] But with the IAPCT's escalating marginal rates, transparency is arguably increased by tax-*exclusive* pricing since most taxpayers will not pay the IAPCT's top marginal rate. In other words, although stating prices without including taxes would understate cost, it would understate cost by less, on average, than tax-inclusive pricing would overstate prices. Relatedly, adopting a tax-inclusive IAPCT requires choosing which marginal tax rate to include. Using the top marginal rate would ensure that no consumer sees a price less than true cost of purchase, but would also grossly misstate the price for the majority of taxpayers who are not in the top marginal bracket.

Transitions to the IAPCT would be made easier via tax-exclusive pricing. If the IAPCT is phased in gradually, with the final rate schedule adopted over a period of years, tax-exclusive pricing would be far easier administratively. Retailers would not be required to change posted prices with every change to rates or change in exemption. As tax rates gradually increased during the transition period, the cost to the consumer would increase independently of the prices posted by the retailer.

The tradeoffs between inclusive and exclusive rates do not obviously favor one approach over another. The eventual choice between the two would depend not only on the factors described, but others not addressed, such as political feasibility and harmonization with existing state and local sales taxes. Regardless of the approach ultimately selected, the IAPCT could be adopted using either inclusive or exclusive pricing.

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150 *See*Elke Asen, *2021 VAT Rates in Europe*, TAX FOUND. (Jan. 7, 2021), https://taxfoundation.org/value-added-tax-2021-vat-rates-in-europe/#:~:text=VAT%20Rates%20in%20European%20Union%20Member%20States%20and,%20%2025%20%2025%20more%20rows%20. 21% inclusive is equivalent to approximately 27% exclusive.

151 *See* Hayes Holderness, *Price Includes Tax: Protecting Consumers from Tax-Exclusive Pricing*, 66 N.Y.U. ANN. SURV. AM. L. 783, 783 (2011) ("[Tax-inclusivity] is thought to protect consumers from becoming misled as to the total cost of the products they purchase.").

2. Rate Structure

To the extent the IAPCT is used to raise revenues comparable to the federal income tax, the rate structure required is dependent on the breadth of the consumption base selected—the broader the base, the lower the rates required to raise the equivalent revenue. Constructing a definitive rate schedule for the IAPCT is beyond the ambitions of this article, but rough tax brackets can be constructed by using data from the Bureaus of Labor Statistics and Economic Analysis, and by making certain simplifying assumptions.[152]

In 2019, the individual income tax raised approximately $1.7 trillion in revenue.[153] Table 1 below shows, on an inclusive basis, potential rate schedules for both a narrow and broad consumption tax base that would generate revenue comparable to that currently raised by the individual income tax. For both narrow and broad definitions of consumption, the marginal tax rate for each decile of consumption is shown, along with the average consumption for a taxpayer in that decile.

[152] The BLS and BEA employ different definitions of consumption, and use different measurement approaches. *See* William Passero et al., *Understanding the Relationship: CE Survey and PCE* 1-9 (Bureau of Labor Statistics, Working Paper No. 462, 2013) (describing differing methodologies between BLS and BEA consumption analyses). The assumptions made in constructing this rate schedule are described in Appendix A.

[153] Press Release, U.S. Department of Treasury, Mnuchin and Vought Release Joint Statement on Budget Results for Fiscal Year 2019 (Oct. 25, 2019) (available at https://perma.cc/KM4L-LTDK).

	Narrow Base		Broad Base	
Decile	**MTR**	**Avg. consumption**	**MTR**	**Avg. consumption**
10th	0%	$25,856	0%	$45,113
20th	0%	31,499	0%	54,959
30th	0%	37,131	0%	64,786
40th	0%	43,822	0%	76,460
50th	4%	49,367	4%	86,135
60th	10%	56,720	10%	98,965
70th	22%	66,435	10%	115,915
80th	35%	75,945	21%	132,508
90th	45%	96,913	33%	169,093
Above 90th	55%	145,967	43%	254,682

Table 1: Potential (inclusive) rate structure for an "in lieu of" IAPCT

The rates in Table 1 roughly approximate the distributive burden of the current individual income tax, where the bottom half of income earners pay little to no income tax.[154] Although the data from the Bureau of Labor Statistics lacks granularity beyond deciles, the rate structure could easily be adjusted to impose even higher marginal rates on taxpayers in higher consumption percentiles.

A taxpayer in the 55 percent tax bracket would pay $55 of tax on an item that costs $45 pre-tax. Although this level of taxation on consumption is significantly higher than that previously imposed, this rate schedule, as an "in lieu of" IAPCT, also comes with a zero tax rate on income. Unlike the current income tax, where trading income for leisure is often not an option (as many law firm associates can attest), a taxpayer generally has control over their consumption. A taxpayer desiring to pay less in consumption tax can simply consume less and save more.[155]

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[154] Philip Stallworth & Daniel Berger, *The TCJA Is Increasing The Share Of Households Paying No Federal Income Tax*, TAX POLICY CENTER (Sept. 5, 2018) (stating that post-TCJA, 44% of Americans pay no federal income taxes).

[155] To the extent high rates on consumption reduces spending by the wealthy, it has the potential to reduce inequality as measured by outward manifestations of wealth.

The precise rate schedule ultimately chosen must incorporate these behavioral changes in order to balance efficiency costs with revenue raising and distributional goals. Ideally, the rates applied would function as a form of price discrimination in which taxpayers in higher brackets would pay prices closer to the maximum they are willing to pay.[156] That a $15 (pre-tax) burrito might cost Mark Zuckerberg $25 post-tax is not likely to chill his burrito consumption.[157]

Relatedly, a broad consumption tax base is necessary to reduce the utility of forgoing consumption, thereby preventing taxpayers from substituting taxed consumption for untaxed uses of wealth. To the extent politicking results in IAPCT exemptions for some goods but not their functional substitutes, the tax base is eroded.[158] Although taxpayers could, under certain circumstances, have an incentive to defer consumption, a well-designed IAPCT should also consider how to tax (or not tax) uses of funds that fall outside of traditional definitions of consumption. This requires clearly defining the taxable base.

B. *Defining the Taxable Base*

In addition to establishing a rate structure, implementing the IAPCT also requires defining the taxpayer expenditures that qualify as consumption. For cash flow methods of taxing consumption, consumption is defined by exclusion by subtracting savings from income. The IAPCT, in contrast, defines consumption by direct reference to taxpayer transactions, thus requiring the Service to distinguish between taxable consumption and excludible saving.

The IAPCT taxes consumptive transactions, and defines savings by exclusion. Funds that are not consumed, including purchases of stock, cash in bank accounts, and money hidden under one's mattress would all be excluded from the IAPCT.[159] This distinction between consumption and savings is straightforward for the majority of taxpayer transactions, but certain taxpayer expenditures (hybrid

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[156] John Patrick Anderson, *Reciprocal Dealing*, 76 YALE L.J. 1020, 1028 n. 36 (1967).

[157] A $10 (pre-tax) burrito costing $25 after taxes would subject Zuckerberg to a 40% (inclusive) consumption tax.

[158] Chris William Sanchirico, *A Critical Look at the Economic Argument for Taxing Only Labor Income*, 63 TAX L. REV. 867, 893 (2010) ("The adjustments that the taxpayer makes, constituting the substitution effect, act to reduce the burden of the tax change to below the fixed-behavior revenue effect.").

[159] To the extent savings is collateralized and used to fund consumption from borrowed funds, this consumption *would* be taxed. *See infra*, Part IV.B.3.

expenditures) involve assets that could plausibly be characterized as one or the other.[160]

1. Hybrid Expenditures

Taxpayer expenditures resulting in value beyond the taxable year can plausibly be characterized as having both savings and consumption components. These consumer durables, such as cars, homes, artwork, and jewelry, both provide consumptive value to the purchaser and retain some resale value.[161] In theory, a consumption tax would only include in the current year's tax base the value of using the asset (the imputed rental value) over the taxable period.[162]

Determining imputed rental values for all durables lasting beyond one year is administratively challenging.[163] In practice, allocating the consumptive component of these purchases for IAPCT purposes requires devising rules based on the type of asset purchased. Some portion of the asset's purchase price would be included in the taxpayer's current year consumption, with the balance included in future years as per a pre-determined schedule. Similar to the current rules for determining depreciation deductions, Congress would determine, for each relevant asset class, the consumption schedule.[164] Although the default presumption would be that purchases are entirely consumption, rules could be established for other common consumer durables, such as personal use real estate.

These rules might appear to hopelessly complicate the IAPCT since taxpayers would potentially be required to include in their aggregate consumption tranches of consumption from a variety of consumer durables. But these calculations only involve backend complexity; that is, complexity for Congress and the Service in determining the appropriate consumption schedules. Once these schedules are established, the IAPCT would operate in the background, and involve no additional complexity to the taxpayer. The allocation schedule for

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[160] *See infra*, Part IV.B.1.

[161] *See* William D. Andrews, *A Consumption-Type or Cash Flow Personal Income Tax*, 87 HARV. L. REV. 1113, 1150 (1974) ("A precise measure of current consumption would also seem to require separation of consumption from the investment element in the purchase of consumer durables.").

[162] Mitchell L. Engler & Michael S. Knoll, *Simplifying the Transition to A (Progressive) Consumption Tax*, 56 SMU L. REV. 53, 75 (2003).

[163] *See* Jerome Kurtz, *The Interest Deduction Under Our Hybrid Tax System: Muddling Toward Accommodation*, 50 TAX L. REV. 153, 186–87 (1995) (characterizing imputed rental calculations as impractical).

[164] *See* I.R.C. § 167 (allowing for depreciation deductions).

primary residences, for instance, could require that the home's purchase price be allocated to the taxpayer's aggregate consumption, for IAPCT purposes, pro rata over five tax years.

Most significant consumer durables of note are subject to existing recordkeeping—e.g., cars must be registered and real estate titles must be recorded—these requirements are equivalent to the self-identification used by the IAPCT to allocate garden-variety consumptive transactions. Moreover, the high-dollar value of these transactions generally precludes the use of cash.[165] As a result, imposing reporting obligations for IAPCT for consumer

durables would be relatively straightforward.

2. Donative Transfers

Gifts, bequests, and charitable contributions are similar to hybrid expenditures in that they often have, for the transferor, both consumptive and nonconsumptive components.[166] To the extent a gift gives the donor enjoyment, the gift confers value upon the donor and could arguably be characterized as consumption. In contrast to hybrid expenditures, though, there is no component of these donative transfers that represents savings. Any potential exclusion of donative transfers from a consumption tax base rests on a different premise—that the donative component of the transfer should, as a normative matter, be afforded tax-free treatment.

Current income tax rules exclude donative transfers from the recipients' income tax base, even though the recipient's theoretical income is clearly increased by the transfer.[167] The tax consequences to the transferor vary depending on whether the transfer is a gift or bequest.[168] No deduction is given to the transferor, but gain on gifts/bequests of appreciated property need not be recognized by the

[165] *See supra* note 90 (discussing reporting requirements for large cash transactions).

[166] *See* Mark G. Kelman, *Personal Deductions Revisited: Why They Fit Poorly in an "Ideal" Income Tax and Why They Fit Worse in A Far from Ideal World*, 31 STAN. L. REV. 831, 850 (1979) (discussing charitable contribution's partial inclusion (as consumption) in an income tax base).

[167] *See* I.R.C. § 102 (excluding gifts and bequests from gross income of the transferee).

[168] *See* I.R.C. §§ 2001 (estate taxes); 2501 (gift taxes).

transferee.[169] Contributions to qualifying tax-exempt organizations, in contrast, are deductible by donors.[170]

To the extent that these donative transfers are spent by transferees on consumption, the IAPCT would tax this consumption similarly to any other purchase made by the transferee. This treatment is consistent with having a broad base of consumption that is independent of the source of the funds consumed. Exempting these transfers from the IAPCT would be administratively problematic and subject to taxpayer abuse. Since money is fungible, preferencing consumption made from donative transfers received would encourage taxpayers to characterize consumption as coming first from these sources. Thus, as a practical matter, the IAPCT would need to include donative transfers in the recipients' consumption tax base.

The IAPCT has more latitude in how donative transfers are characterized for the transferor. It would be administratively straightforward for the IAPCT to treat, to the extent desired, donative transfers as taxable consumption. Although it would be difficult administratively to account for small inter vivos gifts, significant transfers could be accounted for similarly to how gifts are currently treated under the income tax—gifts under some threshold amount could be excluded from the IAPCT, with the excess treated as consumption and taxed.[171]

Bequests could easily be incorporated into the IAPCT since they already require some amount of recordkeeping. This recordkeeping would allow for the monitoring (and therefore taxing) of these transfers. Heirs receive ownership interests in bequests through the probate process, which is overseen by a court.[172] To the extent Congress wishes to tax estates on this transfer, it would be straightforward to implement.

Charitable contributions made in cash would, under current recordkeeping requirements, be difficult to monitor. Taxing contributions made electronically but not in cash would simply result in taxpayers choosing to donate in cash. To the extent that charitable

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[169] Bequests of appreciated property receive basis equal to the fair market value at the time of inheritance, whereas gifts generally receive a transferred basis. I.R.C. §§ 1014, 1015.

[170] I.R.C. §§ 170, 501(c)(3) (providing for deductibility of charitable contributions).

[171] *See* I.R.S., Instructions to Form 709 (2020) (stating annual gift tax exclusion of $15,000); I.R.C. § 2503.

[172] Grayson M. P. McCouch, *Probate Law Reform and Nonprobate Transfers*, 62 U. MIAMI L. REV. 757, 758 (2008) ("Control over testamentary transfers is lodged firmly with the local probate court: A will has no binding effect until it is allowed by the court . . . .").

contributions are treated as partial consumption by the donor, an exemption for contributions below some threshold (similar to the gift threshold described above) would be necessary to prevent taxpayer abuse.

How transferors should be taxed on their donative transfers under the IAPCT is ultimately a question for Congress to answer. But whatever that preference, the IAPCT has the flexibility to incorporate most reasonable normative preferences into its design.

3. Debt

Because borrowed funds can be used to finance consumption, a spending tax (like the IAPCT) must include borrowed funds in its base.[173] In contrast to cash-flow approaches of taxing consumption, which would require reporting borrowed funds as income (a departure from current income tax reporting requirements) the inclusion of borrowed funds in the IAPCT base would occur by default. For purposes of levying taxes under the IAPCT there are no distinctions between where the spent funds originated; that is, the good with a pretax price of $80 on which $20 of IAPCT tax is owed will cost the taxpayer $100 regardless of how the purchase is financed.

Interest payments on debt-financed consumption (and savings) are also easier under the IAPCT than under the cash-flow approach. Because the IAPCT is paid at point of sale, debt service obligations (both principal and interest) are excluded from the IAPCT base. In contrast to the cash-flow method, no additional reporting is required.[174] Similarly, because the IAPCT is not levied on purchases of assets used for savings, savings transactions are excluded from tax. Subsequent payments of interest and principal on the debt used to finance those purchases would also be excluded. Thus, accounting for borrowed funds is far simpler under the IAPCT than under any previously suggested form of progressive income taxation.

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[173] The Unlimited Savings Account Tax, proposed in 1995, notably excluded debt from its base. USA Tax Act of 1995, S. 722, 104th Cong. (1995); *see* Edward J. McCaffery, *Taxing Wealth Seriously*, 70 TAX L. REV. 305, 372 (2017) ("The [USA Tax] was fatally flawed by its noninclusion of debt . . . .").

[174] *See* Lawrence Zelenak, *Debt-Financed Consumption and A Hybrid Income-Consumption Tax*, 64 TAX L. REV. 1, 4 (2010) ("[T]he standard cash-flow consumption tax treatment of loans to finance current consumption is inclusion of the loan proceeds in the tax base for the year of borrowing (and consumption), with later deduction of both principal and interest payments on the loan.").

C. The Taxpayer Unit

The federal income tax has several different filing statuses based on the taxpayer's marital status.[175] The various filing statuses are meant to reflect both a more accurate rendering of the economic unit and to confer certain benefits on particular demographics.[176] To the extent that variations in tax filing status are desired, the IAPCT can easily accommodate them.

The IAPCT accounts for and aggregates individual consumption. For taxpayers other than single filers, this accounting and aggregating would simply be adjusted to reflect normative preferences with regard to filing status. Married filers, for instance, would share their aggregate consumption, with each spouse paying the same marginal tax rate on purchases. This linking of accounts would be a one-time step that would entitle, similar to the current income tax, married taxpayers to expanded brackets.[177] If giving current head-of-household filers preferential treatment is desired, that too would be straightforward under the IAPCT—a taxpayer would need only to certify that they satisfy the requirements for the alternative filing status (similar to what is currently done under the federal income tax) to obtain the preferential IAPCT rates.

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Many elements of IAPCT tax design have been omitted from the preceding discussion. The purpose of this Part is not to posit, as a normative matter, precisely how the IAPCT should operate, but to demonstrate that the IAPCT is robust enough to accommodate any reasonable normative preferences. Most elements of the existing income tax, such as variations in filing unit, donative transfers, and preferencing certain expenditures can be imported directly into the IAPCT if so desired.

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[175] Jonathan Barry Forman, *Simplification for Low-Income Taxpayers: Some Options*, 57 OHIO ST. L.J. 145, 190 (1996) (statuses include "married filing jointly, married filing separately, surviving spouse, head of household, or single.").

[176] *See* Amy C. Christian, *The Joint Return Rate Structure: Identifying and Addressing the Gendered Nature of the Tax Law*, 13 J. L. & POL. 241, 264 (1997) ("[T]he current tax system treats married couples who file jointly as one economic unit, as one taxpayer."); Jacob Goldin & Zachary Liscow, *Beyond Head of Household: Rethinking the Taxation of Single Parents*, 71 TAX L. REV. 367, 371 (2018) (describing head-of-household status as intended "to give approximately half of the income-splitting benefit gained by married taxpayers to single taxpayers who maintained a household for their dependents.").

[177] Current federal income tax brackets provide for expanded (but not double the size) brackets for married filers relative to single filers.

VI. CONCLUSION

Many structural elements of the IAPCT are left unaddressed by the preceding sections. The precise rate structure, constitutionality, treatment of business expenditures, and classification of expenditures with both consumptive and business elements, to name a few, are important considerations but are beyond the scope of this article. This article's goal is not to provide a blueprint for enacting the best possible IAPCT, but is instead to demonstrate that once suitable answers to the relevant questions are established, the IAPCT has potential to accommodate whatever design is ultimately chosen.

Previous legal scholarship has incorrectly dismissed the possibility of implementing a progressive consumption tax by directly accounting for individual expenditures. Although some obstacles remain, advances in technology and changes in consumer behavior are making the administrative difficulties of operating an IAPCT increasingly small. Once these challenges are overcome, the IAPCT offers a more effective and normatively sound approach to progressively taxing consumption.

APPENDIX A: IAPCT REVENUE CALCULATION METHODOLOGY

The Bureau of Labor Statistics and the Bureau of Economic Analysis independently measure U.S. consumption, but use differing methodologies with respect to both definitions and measurements. For example, the BEA, which uses a broader definition, includes third-party expenditures by government and employers, imputed expenditures for owner-occupied rents, and financial services and insurance including both direct and imputed expenditures.178

Data from both the BLS and BEA were used to estimate the IAPCT consumption base. For calendar year 2019, total personal consumption reported by the BLS and BEA is $8.3 trillion and $14.5 trillion. These two amounts were used to approximate a narrow IAPCT base, and a broad IAPCT base, respectively.

BEA data on the distribution of consumption by income decile were used to approximate the distribution of consumption-by-consumption decile, since consumption distribution was not directly available. Though this assumption is notably imprecise for taxpayers whose spending does not corelate with income (e.g., retirees and full-

[178] Passero, *supra* note 152, at 184.

time students) that average consumption levels increase by income decile demonstrate its utility as a first-order approximation.

Rates were then assigned to each consumption decile, with revenue calculated assuming no behavioral changes. While this assumption might appear problematic, especially for higher tax rates, it is more reasonable when considered in conjunction with the elimination of the individual income tax. The increased spending power created by the absence of income taxes would, to at least some degree, mitigate the reduced demand caused by the IAPCT.