



EQUALIZING GIFT TAXATION FOR SAME-SEX COUPLES: EXAMINING THE CHALLENGES AND IMPLICATIONS IN VIETNAM

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Abstract: This paper examines extending gift tax equity to Vietnamese same-sex couples. Findings reveal legal narrow “family” definitions and partnership rights gaps currently impose excessive financial burdens on LGBTQ couples seeking exemptions, breaching rights. Meanwhile sociocultural biases risk uneven implementation. Assessing America’s recent trajectory achieving federal reform post-2015 same-sex marriage recognition offers lessons. Swift administrative upgrades integrating eligibility upheld welfare. Despite state complexities, synchronized legal and bureaucratic efforts enabled progress. At stake are both material security and the deeper inheritance of dignity for diverse families. Gift taxes constitute societal ledgers of sanctioned bonds - belonging must be defended regardless of form. While layered policy and social change remain vital, humanity concerns outweigh transitional costs. Leadership means accelerating coordinated legal-administrative reforms replacing discrimination with dignity. Equal status honors and fuels pluralism’s promise: equitable participation strengthens prosperity. America’s milestones summon Vietnam’s courage to champion long-overdue justice. Pursuing parity signals faith diverse loving families nourish national life. From punitive constraints, gift tax equity sustains marginalized groups now denied equal contribution.

Keywords: *Gift taxation, same – sex couples, Viet Nam, equal.*

1. Introduction

Vietnam's gift tax regulations aim to balance government revenue goals against broader objectives of promoting social welfare and fueling economic growth.¹ Under the current legal framework, recipients must generally pay personal income tax on gifts exceeding 10 million VND in value if those gifts involve assets like securities, shares in companies or businesses, real estate, or other property requiring ownership registration. The tax rate levied on taxable gifts is 10%.² However, certain types of gifts are exempted from taxation, such as those exchanged between spouses, parents and children, adoptive family members, in-laws, grandparents and grandchildren, and siblings.³

However, same-sex couples are glaringly omitted from such exemptions under current statutes. This unequal treatment places undue financial and administrative burdens on same-sex partners seeking to transfer assets between one another. The lack of tax exemptions also underscores broader limitations in legal rights and sociocultural recognition facing Vietnam's LGBTQ community. Achieving parity in gift tax exemptions for same-sex couples necessitates layered policy and social evolutions. On one level, amending existing tax laws to include same-sex partners within the definition of exempted family transfers is imperative. However doing so requires first legally recognizing same-sex partnerships and marriages - a policy change Vietnam has resisted despite growing calls for reform. Once legal acknowledgment is attained, integrating same-sex couples into gift tax exemptions follows more readily.

Yet truly equalizing the experience of same-sex couples further necessitates countering enduring social bias and stigma. Conservative cultural attitudes still prevail within segments of Vietnamese society, constraining mainstream acceptance of LGBTQ relationships. While legal parity is essential, genuine equity requires an accompanying shift in social mentalities over time. An inclusive evolution in both policy and public attitudes is crucial for upholding the dignity, welfare, and economic security of Vietnam's diverse populace.

2. Overview on the challenges of gift taxation for same – sex couples in Vietnam

¹ Nguyen Thi My Linh and Pham Thi Phuong Loan (2012), *Tax*, Ho Chi Minh City Economic Publishing House, Ho Chi Minh, p. 336.

² Article 18 of the Law on Personal Income Tax 2007 (amended and supplemented in 2012).

³ Article 4 of the Law on Personal Income Tax 2007 (amended and supplemented in 2012).

At present, Vietnam’s legal framework and prevailing social norms impose substantive barriers to extending gift tax equity to same-sex couples. Delineating these limitations provides vital context for envisioning necessary reforms. On a legal level, current tax statutes exclude same-sex partners from the definition of “family” eligible for exemptions—a constraint stemming from Vietnam’s lack of formal legal recognition and inadequate protections for LGBTQ relationships. Concurrently, persisting social stigma and conservative cultural values reinforce such unequal policy treatment. Addressing these multilayered barriers is key to progressing towards parity.

Fundamentally, Vietnam’s existing Tax Code provisions prevent equal access of same-sex couples to gift tax exceptions. Article 4 in Personal Income Tax Law 2007 (amended in 2012) delineates taxpayers exempted from gift tax liability, outlining allowances between spouses, blood-relatives, and adoptive family members. This narrow conception of family effectively excludes same-sex partners who remain barred from legal marriage or adoption privileges in Vietnam.⁴ Without avenues for constituting recognized kinship ties, same-sex couples cannot be readily integrated into gift tax exceptions reserved for family transfers.⁵

Beyond the Tax Code itself, prohibitive gaps in Vietnam’s legal treatment of LGBTQ relationships impose further constraints. Presently, Vietnamese law does not provide channels for legal registration or recognition of same-sex partnerships, either through marriage or other union structures.⁶ This legal vacuum regarding the status of same-sex couples precludes defining same-sex partners as family members warranting tax exceptions under current policy language. Addressing gift tax inequity thus hinges crucially on first reforming underlying partnership recognition frameworks.

In many respects, Vietnamese social values and cultural norms continue to disregard same-sex relationships and preclude mainstream acceptance.⁷ Traditional expectations

⁴ Nguyen, T. T. H., & Doan, L. D. (2022). The prospects for the legalization of same sex marriages in vietnam. *International Journal of Discrimination and the Law*, 22(4), 347-370. <https://doi.org/10.1177/13582291221111290>

⁵ Samantha Schmid, *Income Tax Treatment of Same-Sex Couples: Windsorvs State Marriage Bans*, 98 Marq. L. Rev. 1805 (2015). Available at: <http://scholarship.law.marquette.edu/mulr/vol98/iss4/10>

⁶ UNDP, USAID (2014). *Being LGBT in Asia: Viet Nam Country Report*. Bangkok.

⁷ Linh NTM, Khanh DV and Giang PTT, ‘Homosexual Rights and Same-Sex Marriage in Vietnam - Russian Law Journal’ (*russian law journal*) <<https://www.russianlawjournal.org/index.php/journal/article/download/1053/606/1228>> accessed 11 November 2023.

of heterosexual family structures and patriarchal gender roles still dominate, creating an environment where discrimination persists.⁸ Such sociocultural barriers increase the likelihood that even if gift tax codes are amended to support formal equality, uneven application and unfair scrutiny of same-sex couples' tax returns could continue absent wider attitudinal shifts.

In summary, achieving gift tax equity obliges surmounting legal obstacles embedded in family definitions under current Tax Code as well as insufficient partnership recognition frameworks in Vietnam's broader statutory landscape. Meanwhile, entrenched social biases and limited public awareness pose enforcement barriers that could undermine translation of legal reforms into lived equality for LGBTQ taxpayers. Progress requires concurrent policy and sociocultural change. Having delineated these challenges, this analysis will next explore requisite reforms to advance gift tax fairness for same-sex couples in Vietnam.

2. Overview on gift tax regulations in the United States

Pursuing gift tax equity for Vietnam's same-sex couples holds important and multifaceted implications worth examining systematically to inform integration. Modeling likely effects across fiscal, administrative, and social dimensions - while evaluating comparative country cases - provides vital insights into opportunities and considerations when equalizing policy. As shown through recent experience in the United States, realizing non-discrimination in intricate domains like gift taxation requires coordinated legal reforms and bureaucratic initiatives. Yet despite complexities, the inherent justice and symbolic value of financial recognition for diverse families renders this imperative.

To begin with, the taxation regulations for same-sex couples have undergone significant changes in recent years. Prior to the legalization of same-sex marriage, same-sex couples were not eligible for many of the tax benefits and protections that were available to different-sex married couples. This is because that the income tax rules in the United States are based on the notion that the individual is the appropriate tax unit. However, Congress has recognized that this notion is unworkable for husbands and

⁸ Phuong PQ (2021), 'From "Social Evils" to "Human Beings": Vietnam's LGBT Movement and the Politics of Recognition', *Journal of Current Southeast Asian Affairs* 41.

wives who share a household and support each other. As a result, Congress has made adjustments for husbands and wives over the years, such as the joint return, which allows spouses to share income and make wealth transfers at no tax cost. These adjustments have established the husband and wife (and in some cases, their dependent children) as the tax unit.

Unfortunately, the tax laws ignore other real households in which couples share income and property, including same-sex couples, who are harmed by tax laws that limit tax benefits to married couples. Full parity between married couples and same-sex couples could be obtained if Congress would recognize some form of "tax marriage." In the absence of such recognition, Patricia argues that same-sex couples who consider themselves just as committed as married couples and whose household is just as much a single economic unit should be entitled to joint returns and the ability to acquire joint wealth without paying gift and estate taxes.⁹

It is important to note that the federal tax laws do not always bestow benefits on married couples. In addition to the "marriage penalty," other tax detriments that married couples experience are joint and several tax liability on a joint return, the inability to recognize losses on sales between spouses, and numerous tax attribution rules that treat spouses as a unitary taxpayer. Nonetheless, married couples do receive considerable tax benefits. Husband and wife can transfer wealth to each other free of income, estate, and gift taxes. Employers often provide important fringe benefits to the spouses of their employees. The federal tax law exempts the receipt of these benefits from income taxation. When married couples divorce, income tax rules are structured to allow the couple to unwind their property entanglements tax-free. Finally, for some married couples, the availability of the joint return does produce a tax savings.

However, following the Supreme Court's decision in *United States v. Windsor*, the federal government began recognizing same-sex marriages for tax purposes.¹⁰ This meant that same-sex couples who were legally married in their state of residence were eligible for the same federal tax benefits and protections as different-sex married couples. Prior to the Supreme Court's decision in *United States v. Windsor*, same-sex

⁹ Cain PA (2009), 'Same-Sex Couples and the Federal Tax Laws' (2009), *Critical Tax Theory*, 185.

¹⁰ Friedberg L and Isaac E (2023), 'Same-Sex Marriage Recognition and Taxes: New Evidence about the Impact of Household Taxation', *Review of Economics and Statistics* 1.

couples were not recognized as married for federal tax purposes. This meant that same-sex couples were not eligible for many of the tax benefits that were available to opposite-sex married couples, such as the ability to file joint tax returns, the ability to transfer property between spouses without incurring gift or estate taxes, and the ability to receive Social Security survivor benefits. However, following the Windsor decision, the federal government allowed same-sex married couples to file their federal tax returns under a married status, which includes gift tax returns. This recognition of same-sex marriage has also led to changes in state tax laws, with many states now recognizing same-sex marriages for state tax purposes as well.

The recognition of same-sex marriage has also had significant legal implications, particularly in the areas of family law and employment law. Same-sex couples who are legally married are now entitled to the same legal protections and benefits as opposite-sex married couples, including the ability to adopt children, the ability to make medical decisions for their spouses, and the ability to take family and medical leave to care for a spouse. This has provided important legal protections and benefits to same-sex couples, who previously faced discrimination and lack of recognition under the law.¹¹

However, the recognition of same-sex marriage has also faced opposition from some groups, who argue that it undermines traditional marriage and family values. Some religious groups have also opposed the recognition of same-sex marriage on religious grounds. This has led to ongoing debates and legal challenges in some states, with some states continuing to refuse to recognize same-sex marriages.

In conclusion, the income tax rules for married couples and same-sex couples differ in that the former are recognized as a tax unit, while the latter are not. While married couples receive considerable tax benefits, they also experience tax detriments. Same-sex couples, on the other hand, are not entitled to the same tax benefits as married couples, but they should be entitled to joint returns and the ability to acquire joint wealth without paying gift and estate taxes.

3. Lesson learnt from the United States on same-sex couples' gift taxation for Viet Nam

¹¹ Ibid (5).

The United States' recent evolution on gift tax equity for same-sex couples offers salient takeaways as Vietnam formulates its own tax policies concerning LGBTQ households. America's trajectory spotlighting past punitive environments, ensuing legal and administrative changes post-same-sex marriage recognition, and enduring gaps despite formal parity illustrates multilayered considerations. Fundamentally, the US case demonstrates that absent comprehensive relationship recognition frameworks, specialized tax provisions cannot practically defend same-sex couples' economic welfare. However, once core legal protections are codified, actualizing equality across intricate tax domains remains viable through coordinated bureaucratic and judicial efforts.

Prior to recognizing same-sex marriages, US tax laws concerning transfers between partners imposed excessive burdens on LGBTQ couples barred from exemptions benefitting different-sex married taxpayers. Without avenues for documenting recognized unions, same-sex couples incurred gift/estate tax bills up to 40% of assets' values when gifting them to one another – compared to unlimited spousal transfers.¹² Complex ownership workarounds through trusts sought mitigating costly liability. Such constraints compounded other denial of rights while heightening economic vulnerability.

Achieving federal same-sex marriage recognition in 2015 however initiated major tax policy realignments. Quick administrative guidance mandated gender-neutral application of marital gift and estate tax exclusions by IRS and Treasury, upholding same-sex couples' eligibility.¹³ These coordinated moves eased LGBTQ taxpayers' procedural access to reformed regulations, though variances emerged across states. The Supreme Court's finding a fundamental right to marry then cemented "law's transformation" via the case *Obergefell v Hodges* in 2015.¹⁴

Vietnam stands to draw several key lessons. Firstly, absent formal same-sex partnership rights, specialized tax equity remains implausible given definitional

¹² Swagel PL, 'Understanding Federal Estate and Gift Taxes' (*Congressional Budget Office*) <<https://www.cbo.gov/publication/57272>> accessed 22 November 2023

¹³ Internal Revenue Code, 'Estate and Gift Tax Faqs' (*Internal Revenue Service*) <<https://www.irs.gov/newsroom/estate-and-gift-tax-faqs>> accessed 22 November 2023

¹⁴ Justia Law, '*Obergefell v. Hodges*, 576 U.S. ____ (2015)' (*Justia Law*) <<https://supreme.justia.com/cases/federal/us/576/14-556/>> accessed 22 November 2023

constraints on perceived family structures and associated preferential treatment. As shown in pre-2015 America, cultural barriers curtail socioeconomic life absent legal footholds for visibility and rights assertions. Reforms must therefore synchronize movement across legislative spheres on relationships, familial rights and fiscal policy to mutually reinforce LGBTQ couples' recognition and welfare.

Additionally, once legal recognition is achieved, administratively upholding intricate derivative equity across taxation remains complex yet viable through coordinated action by revenue authorities, finance ministries and courts. Laser approaches targeting applicable bureaucratic tax guidelines offer relatively expedient equalization avenues based on US experience.

In essence, holistic legal frameworks and administrative rigor enabling marginalized group participation undergird lasting justice and dignity. Longer-term cultural shifts may organically accelerate through early guarantees of visibility and security afforded by initial opening of pathways to equity. While multi-dimensional challenges persist in fully equalizing same-sex couples' lives even under reform, extending substantive freedoms and protections from punitive constraints represents vital progress. Vietnam possesses opportunities to learn from America's pivot to remedy past discrimination across all facets of law and policy concerning LGBTQ relationships and families. But it must apply US lessons in catalysts for accelerating coherent reform across legislative, administrative and judicial channels according justice long overdue.

In conclusion, Vietnam stands at a pivotal juncture to integrate historic global shifts towards recognition of diverse families within legal and policy frameworks upholding human dignity. As seen through America's multi-dimensional trajectory codifying gift tax equity for same-sex couples, genuinely inclusive progress requires coordinated reform across legislative channels, administrative procedures and judicial affirmations of rights.

While nuanced in application, core lessons for Vietnam involve acknowledging that absent formal relationship rights, specialized tax provisions cannot meaningfully equalize same-sex couples' welfare. However holistic legal reforms enabling LGBTQ family definitions, aligned with meticulous bureaucratic upgrades in tax guidelines, allow extending non-discrimination into complex derivative realms of policy. Such

comprehensive efforts cement protections, catalyzing wider cultural openings through the visibility afforded by early policy footholds.

At stake is whether Vietnam will replicate or reject punitive past realities that long denied same-sex couples' basic recognitions across society. Its statutes currently impose excessive gift tax burdens stemming from legal erasure of LGBTQ identity and bonds. But momentum towards parity is attainable if Vietnam applies coordinated reform lessons from the US in addressing gaps. Elevating judicial precedence and constitutional rights arguments can consolidate social and economic freedoms.

Policy choices carry consequences across generations. By determining whether same-sex couples can equally nurture Vietnamese society with assured welfare, gift tax laws symbolize the inheritance of dignity within families. Removing discrimination requires multilayered legal and administrative efforts enabling equity to replace enduring stigma. The journey remains complex but deeply necessary to accord LGBTQ citizens their rightful place as equitably contributing members within Vietnam's national community.

4. Conclusion

This examination of extending gift tax rights to same-sex couples in Vietnam generates pivotal insights across legal, social, comparative, and ethical spheres - while underscoring the profound justice and welfare implications of policy choices concerning diverse families.

Core findings confirm Vietnam's current statutes impose excessive financial burdens on same-sex couples seeking recognized family transfers, stemming from narrow familial definitions in tax codes and gaps in legal partnership rights frameworks. Meanwhile, entrenched sociocultural biases further risk uneven implementation even if formal reforms occur. However, assessing the United States' recent trajectory in achieving federal gift tax equity post-same-sex marriage recognition highlights viable pathways through synchronized legal and meticulous bureaucratic upgrades. Despite ongoing state-level complexities, federal reforms upheld economic welfare and dignity for couples previously denied equality.

Fundamentally, analyses reveal that absent comprehensive relationship verifications, specialized tax parity remains constrained. Holistic legal definitions and administrative rigor allow equity to permeate intricate policy realms. Rights-grounded judicial

affirmations also consolidate cultural openings, as visible security amassed through initial footholds seeds organic normalization. At stake in Vietnam's policy choices are both substantive material welfare protection across generations and the deeper inheritance of dignity within families - regardless of form. Gift tax laws, as societal ledgers of sanctioned kin bonds, must defend belonging for all consensual, caring Vietnamese households.

Progress demands layered policy and social change. But the government should recognize that where questions of humanity persist, principles outweigh projections of transition costs. Leadership lies in accelerating coordinated reforms to replace discrimination with dignity. In essence, pursuing parity honors the reality of diverse loving families nurturing Vietnamese communities. Equal gift tax status signals faith in pluralism's promise - that equitable participation by all fuels prosperity. From America's milestones, Vietnam can gain the courage to champion long-overdue justice.

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