

BABIES AND INDIVIDUAL INCOME TAX: HOW TO BOOST CHINA'S FERTILITY

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ABSTRACT

China is facing a serious demographic crisis. The world's most populous country is witnessing plummeting fertility and birth rates while the society ages rapidly. Urgent measures are required to avert potential economic downturn and social unrest arising from labor shortages, reduced production and consumption, escalating health and social welfare costs, and numerous other consequences of this crisis. While scholars have offered wide-ranging recommendations, such as improving childcare and the working environment for women, this paper tackles the issue from a comparatively less-explored lens: a reform to China's Individual Income Tax system. Proposing to augment the tax expenditure by substituting some deductions with refundable tax credits, target lower-income families, expand filing status for married couples, and avoid rushing into a DINK tax, this paper aims to provide effective short-term solutions for China to quickly boost fertility in the next two decades, affording the country more time and a sufficient population of women of childbearing age to pursue long-term, systemic changes.

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1. INTRODUCTION

Population dynamics have far-reaching implications for a nation's economic and social prospects.¹ For the past four decades, China has benefited from a favorable demographic structure.² However, the world's most populous country is gradually losing this advantage,³ facing challenges due to a persistent decline in fertility and birth rates. For multifaced reasons, people have become less interested in having children.⁴ And it matters.

This paper outlines the reasons why the country's dropping fertility and birth rates should concern the Chinese government, examines the primary reason for reduced interest in childbearing, and offers policy recommendations to address the issue. Specifically, this paper proposes a less-explored solution, namely, assessing the possibility of leveraging China's rapidly developing Individual Income Tax system to incentivize childbearing.

Part 2. offers an in-depth analysis of several key population indexes and highlights the devastating effect of China's aging society and dwindling working-age population on the country's economic and social prospects. Part 3. elucidates the measures China's Central Government and local governments have taken to address the problem and argues that these current policies are

¹ Andrew Mason & Ronald Lee, *Six Ways Population Change Will Affect the Global Economy*, 48 *POPULATION & DEV. REV.* 51, 51 (2022).

² CHINA POPULATION & DEV. RSCH. CTR. ET AL., *THE ECONOMIC MIRACLES AND DEMOGRAPHIC DIVIDEND IN CHINA* ABSTRACT 4 (2018); Wenmeng Feng, *The Silver and White Economy: The Chinese Demographic Challenge*, in OECD, *FOSTERING RESILIENT ECONOMIES: DEMOGRAPHIC TRANSITION IN LOCAL LABOR MARKETS* 136, 139 (2014). For more discussion about China's demographic dividend, see *infra* Part 2.2.2. (discussing the shrinking working-age population).

³ Feng, *supra* note 2 at 139 (discussing population size effect on socioeconomics).

⁴ See *infra* Part 4.2. (discussing the key "pain point" – unaffordable cost of raising a child).

insufficient to resolve the problem. Part 4. outlines three important assumptions undergirding this paper. Next, Part 5. offers a concise overview of China's taxation system and its Individual Income Tax to provide context for policy recommendations, which will be expounded upon in Part 6. This paper advocates for four policies, namely, prioritizing lower-income families, replacing some deductions with refundable tax credits, allowing joint filing, and avoiding a childless tax. The paper concludes by discussing the feasibility and necessity of the proposed policies in Part 7.

2. THE SALIENT PROBLEM AND CONCERNING CONSEQUENCES

China is grappling with a demographic crisis as it observes a decline in both its population and fertility rate. The ongoing trend poses significant risk to China's future economic development and entails other impacts that could affect various sectors of the society. Therefore, government intervention is necessary and imperative.

2.1. Every Population-related Index Is Declining

2.1.1. Rapidly Declining Fertility and Birth Rates

In the 1970s, following extended deliberations within the Central Government regarding the advisability of implementing family planning policies,⁵ China took measures to address its rapidly growing population by adopting an overarching policy framework for family planning.⁶ To signal its unwavering commitment, the Chinese government incorporated family planning into the nation's constitution in 1982: "The State promotes family planning so that

⁵ Before the 1970s, the Chinese government had ambiguous and changing attitude towards family planning, mainly due to the changing minds of Mao Zedong, then Chairman of the Communist Party. See Quanbao Jiang, Shuzhuo Li, & Marcus W. Feldman, *China's Population Policy at the Crossroads: Social Impacts and Prospects*, 41 *ASIAN J. SOC. SCI.* 193, 194-95 (2013); Laura Fitzpatrick, *A Brief History of China's One-Child Policy*, *TIME* (July 27, 2009), <https://content.time.com/time/world/article/0,8599,1912861,00.html> [<https://perma.cc/N63H-VLF2>].

⁶ Tessa Berenson, *Here's How China's One-Child Policy Started in the First Place*, *TIME* (Oct. 29, 2015), <https://time.com/4092689/china-one-child-policy-history/> [<https://perma.cc/93VG-G42W>].

population growth may fit the plans for economic and social development,”⁷ and “both husband and wife have the duty to practice family planning.”⁸ The government launched a series of initiatives thereafter to advance this objective, with the One-Child Policy emerging as the most famous among them.⁹

The Chinese government might have done too good a job—almost every population-related index has declined significantly in the decades since. China’s Total Fertility Rate (“TFR”)¹⁰ exhibited a marked decline over the past few decades, falling from approximately six in the 1970s, to two in the 1990s, 1.5 in the 2010s, and 1.15 in 2021.¹¹ Notably, for over thirty years, China’s TFR remained below the 2.1 threshold suggested by the OECD for achieving population stability.¹² In other words, absent any changes, China will soon see a drop in its population. In fact, in

⁷ XIANFA art. 25 (1982) (China).

⁸ XIANFA art. 49(1982) (China).

⁹ Penny Kane & Ching Y Choi, *China’s One Child Family Policy*, 319 *BMJ* 992, 992–93 (1999); Russell Goldman, *From One Child to Three: How China’s Family Planning Policies Have Evolved*, *N.Y. TIMES* (May 21, 2021), <https://www.nytimes.com/2021/05/31/world/asia/china-child-policy.html> [<https://perma.cc/8FC7-JAFC>].

¹⁰ According to the World Health Organization, Total Fertility Rate is the average number of children a hypothetical cohort of women would have at the end of their reproductive period if they were subject during their whole lives to the fertility rates of a given period and if they were not subject to mortality. It is expressed as children per woman. *Total Fertility Rate (per Woman)*, WORLD HEALTH ORG., <https://www.who.int/data/gho/indicator-metadata-registry/indicator/123> [<https://perma.cc/KU2M-ULKZ>] (last visited Feb. 3, 2023).

¹¹ REN ZEPING (任泽平), *ZHONGGUO SHENGYU BAOGAO 2022 (中国生育报告 2022) [CHINA FERTILITY REPORT 2022]* (2022) [hereinafter *CHINA FERTILITY REPORT 2022*]; see also Yew Lun Tina & Martin Quin Pollard, *Xi Says China Will Seek to Lift Birth Rate in Face of Ageing Population*, *REUTERS* (Oct. 16, 2022), <https://www.reuters.com/world/china/xi-says-china-will-look-to-lift-birth-rate-face-ageing-population-2022-10-16/#:~:text=The%20authorities%20imposed%20a%20one,the%20lowest%20in%20the%20world> [<https://perma.cc/JPN2-KQBB>] (providing slightly different numbers); *Fertility Rate*, OECD DATA, <https://data.oecd.org/pop/fertility-rates.htm#:~:text=Assuming%20no%20net%20migration%20and,ensures%20a%20broadly%20stable%20population> [<https://perma.cc/P8N6-HC27>] (last visited Dec. 26, 2022) (providing slightly different numbers).

¹² *Fertility Rate*, OECD DATA, <https://data.oecd.org/pop/fertility-rates.htm#:~:text=Assuming%20no%20net%20migration%20and,ensures%20a%20broadly%20stable%20population> [<https://perma.cc/Q74K-QHNR>] (last visited Dec. 26, 2022) (“Assuming no net migration and unchanged mortality, a total fertility rate of 2.1 children per woman ensures a broadly stable population.”).

2023, which is sooner than expected,¹³ China's National Bureau of Statistics reported that the country's population had already decreased by 850,000 to 1.41175 billion, signifying the first population reduction since the Great Famine of 1961.¹⁴ This alarming news is hardly surprising, given the clear downward trajectory of China's Net Population Growth ("NPG") over the past five years. NPG in China was 5.3 million in 2018, 4.67 million in 2019, 2.04 million in 2020, and 480,000 in 2021.¹⁵ This decline can also be seen in the country's birth rate,¹⁶ which decreased from around 36 births per 1,000 people in 1970, to less than 11 births per 1,000 people in 2022.¹⁷

2.1.2. Marriage and Fertility Desires Remain Low

Accompanying the various declining population indexes are low marriage and fertility desires. Recent data from China's Ministry of Civil Affairs and National Bureau of Statistics reveal that only 7.6 million marriages were registered in China in 2021—a record low since 1986.¹⁸ Just ten years ago, in 2013, that number was 13.5 million.¹⁹ The crude marriage rate, calculated as the number of

¹³ See *id.* (stating that the United Nations projected China would see a population decline in 2032).

¹⁴ Albee Zhang & Farah Master, *China's First Population Drop in Six Decades Sounds Alarm on Demographic Crisis*, REUTERS (Jan. 17, 2023), <https://www.reuters.com/world/china/chinas-population-shrinks-first-time-since-1961-2023-01-17/> [<https://perma.cc/S66V-KW8J>].

¹⁵ C. Textor, *Population Growth in China 2000–2021*, STATISTA (Feb. 28, 2022), <https://www.statista.com/statistics/270129/population-growth-in-china/> [<https://perma.cc/TG7D-RLVX>].

¹⁶ The birth rate is different from Fertility Rate, and it's "the average annual number of births during a year per 1,000 persons in the population at midyear." See *Birth Rate, World* Factbook, <https://www.cia.gov/the-world-factbook/field/birth-rate/> (last visited Mar. 19, 2023).

¹⁷ *China Birth Rate 1950–2022*, MACROTRENDS, <https://www.macrotrends.net/countries/CHN/china/birth-rate> [<https://perma.cc/9TMF-Y7TC>] (last visited Dec. 26, 2022).

¹⁸ Chen Rong (陈榕), 2021 Nian Jiehun Dengji Chuang 36 Nian Xindi, Guangdong Henan Jiehun Renshu Zuiduo (2021年结婚登记创36年新低, 广东河南结婚人数最多) [Marriages Dive to Record Low in 2021, Guangdong and Henan Lead in Getting Married], *DIYI CAIJING* (第一财经) [YICAI] (Mar. 19, 2022), <https://www.yicai.com/news/101354157.html> [<https://perma.cc/X247-CRZD>].

¹⁹ *Id.*

marriages per 1,000 people, declined from 9.9 in 2013 to 5.4 in 2021.²⁰ Numerous factors have contributed to the public's reluctance to tie the knot: escalating cost of raising a family,²¹ spiking divorce rate,²² an imbalanced gender ratio,²³ a growing feminist movement

²⁰ *China Marriages Dive to Record Low as Population Pressures Mount*, BLOOMBERG (Sept. 1, 2022), <https://www.bloomberg.com/news/articles/2022-09-01/china-marriages-dive-to-record-low-as-population-pressures-mount?leadSource=uverify%20wall> [<https://perma.cc/4G76-TSW5>].

²¹ See David Stanway, *Bringing up A Child Costlier in China Than in U.S., Japan – Research*, REUTERS (Feb. 23, 2022), <https://www.reuters.com/world/china/chinas-child-rearing-costs-far-outstrip-us-japan-research-2022-02-23/> [<https://perma.cc/2XEK-DX9F>] (suggesting that China is the second most expensive country to raise a child among all countries studied); see also Joe McDonald & Huizhong Wu, *China Adds Few Babies, Loses Workers As Its 1.4B People Age*, AP NEWS (May 11, 2021), <https://apnews.com/article/china-technology-coronavirus-pandemic-health-government-and-politics-c049e681e1daef6f6d1dcf9816dec5b> [<https://perma.cc/QJU4-DTDP>] (“Child care is expensive and maternity leave short.”).

²² See Sheridan Prasso, *China's Divorce Spike Is A Warning to Rest of Locked-Down World*, BLOOMBERG (Mar. 31, 2020), <https://www.bloomberg.com/news/articles/2020-03-31/divorces-spike-in-china-after-coronavirus-quarantines#xj4y7vzkg> (discussing how China's lockdown during the pandemic stimulated the divorce rate).

²³ See Matthew Loh, *China's Millennials Are Shunning Marriage at Alarming Rates, and It's Creating A Nationwide Population Crisis That Beijing Can't Magically Fix*, INSIDER (Apr. 20, 2022), <https://www.insider.com/china-marriage-rate-millennials-drop-nationwide-crisis-women-affluence-economy-2022-4> [<https://perma.cc/8ATM-2MY9>] (“China also has a very real gender imbalance problem.”); *Young Chinese Don't Want Children Putting at Risk The Population And Economic Growth*, P.I.M.E. ASIA NEWS (May 12, 2021), <https://www.asianews.it/news-en/Young-Chinese-dont-want-children-putting-at-risk-the-population-and-economic-growth-53120.html> [<https://perma.cc/YLD9-U5Y9>] (“Another problem is that as a result of the one-child policy the male population is far larger than the female population. In the 15-19 age group, the ratio is 118.39 men per 100 women.”).

rebellious against the traditionally unfair marriage culture,²⁴ widening social inequality,²⁵ and many others.

This steady decrease, and the reasons behind the change, suggest that interest in marriage among young Chinese, especially Millennials and Gen Z, is only going to continue to decline, absent any significant social change. According to a Communist Youth League survey of 2,905 unmarried youth in 2021, 44% of urban women and 25% of men aged eighteen to twenty-six said they had no plans to get married.²⁶ Another study conducted jointly by several famous matchmaking companies in 2021 also suggested a similar result: about 25% of the single respondents identified themselves as “unmarriageists” – a group that has no intent to ever get married.²⁷ Even those who wish to get married would like to spend more time single first – the average age for a first marriage rose from 24.89 years old in 2010 to 28.67 years old in 2020.²⁸

The marriage rate is strongly correlated with the birth rate and therefore has a significant impact on population size in China.

²⁴ See Nectar Gan, *Chinese Millennials Aren't Getting Married, And The Government Is Worried*, CNN (Jan. 29, 2021), <https://www.cnn.com/2021/01/29/china/china-millennials-marriage-intl-hnk> [<https://perma.cc/V3AS-68F7>] (“With increased education, women gained economic independence, so marriage is no longer a necessity for women as it was in the past . . . [b]ut gender norms and patriarchal traditions have not caught up with these changes.”); Wang Xiaodong, *Birthrates Across Country Down Last Year*, CHINA DAILY (Mar. 22, 2019), <https://www.chinadaily.com.cn/a/201903/22/WS5c942802a3104842260b1e51.html> [<https://perma.cc/M894-M5LF>] (“Young people’s ideas of family and giving birth are changing, and traditional values such as sustaining family lineages through giving birth have been weakening.”).

²⁵ See Sharon Chen, *China Has a Huge Wealth-Gap Problem – and It’s Getting Worse*, BLOOMBERG (Dec. 24, 2020), <https://www.bloomberg.com/news/storythreads/2020-12-24/china-has-a-huge-wealth-gap-problem-and-it-s-getting-worse> [<https://perma.cc/3H3K-J2FR>] (“1% China’s top earners hold a greater share of wealth than the bottom 50%.”).

²⁶ See Loh, *supra* note 23 (“China also has a very real gender imbalance problem.”).

²⁷ AIRUI ZIXUN (艾瑞咨询) [iResearch Inc.], BUHUN MIANMIANGUAN: ZHONGGUO DANGDAI BUHUNZHUYI BAIPISHU 2021 (不婚面面观: 中国当代不婚主义白皮书 2021) [The White Paper on China’s Modern “Unmarriageism”] (2021), https://pdf.dfcfw.com/pdf/H3_AP202108161510343545_1.pdf?1629214903000.pdf [<https://perma.cc/552T-ZBJ7>].

²⁸ Li Jinlei (李金磊), Pingjun Chuhun Nianling 28.76 Sui, Zhongguoren Weisha Jiehun Yuelaiyuewan? (平均初婚年龄 28.67 岁, 中国人为啥结婚越来越晚?) [The Average First Marriage Age of The Chinese Is 28.67 Years Old, Why Are The Chinese Are Delaying Their Marriages?], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS] (June 24, 2022), <https://www.chinanews.com.cn/cj/2022/06-24/9787289.shtml> [<https://perma.cc/JS9G-ZC3F>].

Chinese culture holds a low tolerance for out-of-wedlock births due to the influence of traditional Confucianism. In 2016, less than 1% of newborns in China were born out of wedlock,²⁹ compared to 40% in the United States and 15% globally.³⁰ Thus, fewer marriages effectively mean fewer babies in China.

Meanwhile, people's fertility desire remains low. According to the National Bureau of Statistics, the average desired number of children for women of childbearing age (i.e., those aged fifteen to forty-four), was 1.8 in 2021.³¹ The number is even lower for younger populations. According to a 2022 Renmin University-led study of Chinese college students, their average ideal number of children was 1.85, while the average number of desired children was only 1.36.³² The researchers argued that the difference between the two numbers shows that many youth are concerned with the practicality of having children, even if they are willing to become parents.³³

²⁹ *Out-of-Wedlock Births Rise Worldwide*, YALEGLOBAL ONLINE (Mar. 16, 2017), <https://archive-yaleglobal.yale.edu/content/out-wedlock-births-rise-worldwide> [<https://perma.cc/93K8-LDZM>] (last visited Jan. 6, 2023).

³⁰ *Id.*

³¹ Xinhua News Agency (新华社), Chushenglü Zoudi, Ruhe Cujin Renkou Changqi Junheng Fazhan (出生率走低, 如何促进人口长期均衡发展) [Birth Rate Keeps Dropping, How to promote a sustainable long-term population growth], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY] (Nov. 20, 2021), <https://wap.peopleapp.com/article/6366609/6254504> [<https://perma.cc/V93S-QKUE>].

³² Li Ting (李婷), Director, Zhongguo Renmin Daxue Jiating yu Xingbie Yanjiu Zhongxin (中国人民大学家庭与性别研究中心) [Renmin Univ. Fam. & Gender Stud. Ctr.], Zhongguo Daxuesheng Hunyu Yantaohui Shunli Juban Guanzhu Xinshidai Qiannian Zhuti Hunyu YiYuan (中国大学生婚育研讨会顺利举办 关注新时代青年主体婚育意愿) [Keynote Address at the Renmin University Symposium: Chinese College Students' Fertility Desire] (Apr. 14, 2022), (explaining that the average ideal number of children refers to number of children one would like to have without considering the practical situation, while the average desired number of children refers to the number of children one practically plans to have in the future).

³³ *Id.*

2.2. An Aging Society with A Shrinking Working-Age Population

2.2.1. An Aging Society

The declining fertility rate, in conjunction with an increasing average life expectancy,³⁴ has inevitably led to an aging society. In fact, China's population is aging faster than almost all other countries.³⁵ In 2021, over 14% of the Chinese population was above sixty-five years old,³⁶ signaling China's accelerating transition from an aging society to an aged society.³⁷ This trend is set to intensify in the next decade. China experienced a baby boom from 1962 to 1965—about 122 million babies were born during those six years.³⁸ Experts project that after this cohort reaches the age of sixty-five in 2030, 20% of China's population will be comprised of the elderly,³⁹

³⁴ China's life expectancy has increased from 55.47 in 1970 to 76.62 in 2020. Aaron O'Neill, *Life Expectancy (from Birth) in China from 1850 to 2020*, STATISTA (June 21, 2022), <https://www.statista.com/statistics/1041350/life-expectancy-china-all-time/> [<https://perma.cc/Z5BT-9DU8>].

³⁵ See *Does China Have an Aging Problem?*, CHINAPOWER (Mar. 19, 2020), <https://chinapower.csis.org/aging-problem/> [<https://web.archive.org/web/20200321195620/https://chinapower.csis.org/aging-problem/>] ("China is aging at a rate that few countries have matched historically.").

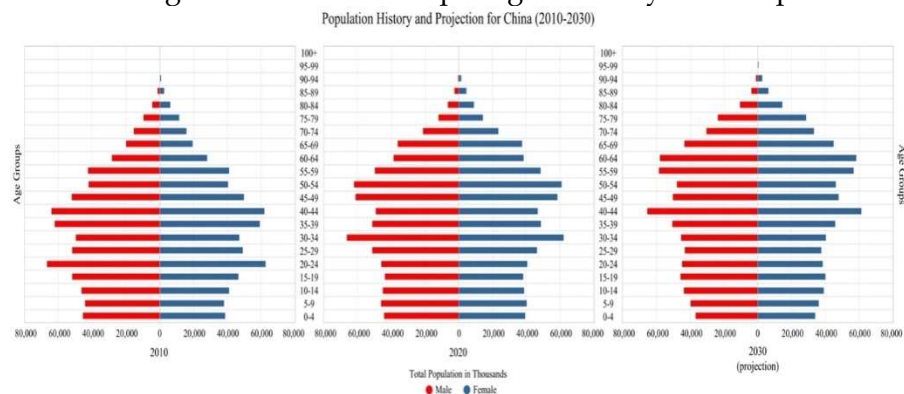
³⁶ Li Xunlei (李迅雷), *Zhongguo Laolinhua Jincheng Laishi Xiongmeng*, Xu Yinqi *Zugou Zhongshi* (中国老龄化进程来势凶猛, 需引起足够重视) [Attention: China Is Aging Fast], *DIYI CAIJING* (第一财经) [YICAI] (Nov. 22, 2022), <https://www.yicai.com/news/101602217.html> [<https://perma.cc/2LRX-QL99>] [hereinafter Yicai: China Aging]; see also Hongman Wang & Hong Chen, *Aging in China: Challenges and Opportunities*, 4 *CHINESE CTR. DISEASE CONTROL & PREVENTION WKLY.* 601, 601 (2022) (suggesting that 13.5% of the Chinese population was above sixty-five years old in 2020).

³⁷ See *Ageing*, OECDiLibrary, <https://www.oecd-ilibrary.org/sites/1ad1c42a-en/index.html?itemId=/content/component/1ad1c42a-en> [<https://perma.cc/B222-K5HG>] (last visited Jan. 28, 2023) ("[OECD] qualif[ies] a country as 'ageing society' if the share of people aged 65 years or more is between 7% and 14[%] of the total population, as 'aged society' if this share is between 15% and 20% and as 'super-aged society' if this share is 21% or higher."). But see U.N. DEPT OF ECON. & SOC. AFFS., *THE AGING OF POPULATIONS AND ITS ECONOMIC AND SOCIAL IMPLICATIONS*, U.N. Doc ST/SOA/Ser. A/26, at 7 (1956) (adopting a different standard for aging society, aged society, and super-aged society).

³⁸ A. J. Jowett, *The Growth of China's Population, 1949-1982 (With Special Reference to the Demographic Disaster of 1960-61)*, 150 *GEOGRAPHICAL J.* 155, 155 (1984).

³⁹ Yicai: China Aging, *supra* note 36.

transforming China into a “super-aged society.”⁴⁰ Population



distribution by age group is quite different now from ten years ago, and the change is going to be more pronounced in just another ten years. Figure 1 depicts how the older generations are becoming a more prominent demographic, while the younger cohorts, especially those aged between twenty to forty, are experiencing a marked decline in size. This transformation of the population pyramid's shape is indicative of the change taking place in China's population structure.

Figure 1 (Source: United Nations World Population Prospects)⁴¹

2.2.2. Shrinking Working-Age Population

Accompanying the aging society is the shrinking size of the working-age population. Based on the 2020 Chinese Census, the working-age population (i.e., those aged between sixteen and fifty-nine), declined by 40 million, compared to ten years ago.⁴² While China is not the only country facing this issue, the problem is

⁴⁰ See OECDiLibrary, *supra* note 37 (“[W]e qualify a country as . . . “super-aged society” if this share [of people aged 65 years or more] is 21% or higher.”).

⁴¹ World Population Prospects 2022, U.N. DEP'T ECON. & SOC. AFFS., <https://population.un.org/wpp/Graphs/DemographicProfiles/Pyramid/156> [<https://perma.cc/H4FV-CPXX>] (last visited Feb. 26, 2023).

⁴² Wei Yukun (魏玉坤) & Zou Duowei (邹多为), Laodong Nianling Renkou Xiajiang, Renkouhongli Hui Xiaoshi Ma (劳动年龄人口下降, 人口红利会消失吗) [Working-Age Population is dropping – Will the End of Demographic Dividend Come], RENMIN WANG (人民网) [PEOPLE.CN] (May 13, 2021), <http://finance.people.com.cn/n1/2021/0513/c1004-32101715.html> [<https://perma.cc/GLE5-2K62>].

particularly concerning for the ‘world’s factory.’ For decades, labor-intensive manufacturing industries have significantly contributed to China’s economic miracles.⁴³ The “demographic dividend” is often celebrated as a key factor behind the prosperous economy:⁴⁴ the vast majority of the population was in their prime of life, generating wealth for the country, while the burden of those who are dependent (i.e., children and the elderly who don’t work), was at its lowest.⁴⁵ Yet, with a shrinking working-age population and an aging society, this demographic benefit is coming to an end.⁴⁶ While China has begun implementing its plans to “upgrade industrial structure” to shift its dependence on low-end labor-intensive manufacturing work and pursue technology and innovation-driven growth, such is still an ongoing process that is far from completion.⁴⁷ Cheap labor is still required for China to keep its economic growth going. However, the brutal reality is that China has an estimated annual labor force gap of around 11.8 million.⁴⁸

⁴³ See Charlie Campbell, *China’s Aging Population Is a Major Threat to Its Future*, TIMES (Feb. 7, 2019), <https://time.com/5523805/china-aging-population-working-age/> [<https://perma.cc/S4K3-XJN3>] (“China, whose extraordinary economic heft has been built on labor-intensive manufacturing and which has no social safety net to protect the aged, is uniquely ill-prepared for the societal changes this gray wave will bring.”); Emmanuel Olusegun Stober, *The Influence of Labor Intensive Export on China’s Economy Growth 3* (Dep’t Int’l Econ. & Bus. Bucharest Univ. Econ. Stud., Working Paper No. 3, 2014) (“Revealed comparative advantage results reported that labor intensive export exerts a major impact on China’s development . . . Thus, a drop in export arising from decrease in labor intensive export will cause a gap in China’s gross domestic product.”).

⁴⁴ CHINA POPULATION & DEV. RSCH. CTR. ET AL., *supra* note 2, at 4; Feng, *supra* note 2, at 139.

⁴⁵ CHINA POPULATION & DEV. RSCH. CTR. ET AL., *supra* note 2, at 2.

⁴⁶ Ryan Woo & Liangping Gao, *China’s Demographic Dividends to End Soon, Expert Warns*, REUTERS (Jan. 19, 2022), <https://www.reuters.com/world/china/chinas-demographic-dividends-end-soon-expert-warns-2022-01-20/> [<https://perma.cc/VF5Q-DTMB>].

⁴⁷ See Xiao Wen, Pan Jia-Dong & Liu Li-Yun, *China’s Industrial Structure Upgrade in the “New Normal”: Empirical Test and Determinants*, 63 SING. ECON. REV. 1037, 1055 (2018) (“[T]he empirical results show that the impact of the New Normal on industrial structure upgrade is not significant mainly because fundamentally the economic is still growing despite the economic slowdown in the New Normal, so the industrial structure is still escalating and upgrading . . .”).

⁴⁸ Meng Ke & Yuke Li, *China Needs 11.8m Workers. Here’s How to Close Its Labour Gap*, WORLD ECON. FORUM (July 16, 2021), <https://www.weforum.org/agenda/2021/07/how-to-fix-china-labour-shortage/> [<https://perma.cc/M8CZ-YUJF>].

While the global COVID-19 pandemic has worsened the situation,⁴⁹ it's not the cause of the labor shortages; as shown in Figure 2, China's total labor force has been stagnating since 2015. A full recovery from the pandemic will not bring back enough labor to fill the gap. The labor force shortage is systematic and persistent – according to China's Ministry of Education, there will be a shortage of nearly 30 million workers in the manufacturing sector by 2025.⁵⁰ The unmet demand, based on the basic economic demand-supply principle, naturally drives up the labor cost, causing China to lose its competitive advantage. As a result, companies and investors are leaving China to pursue cheaper labor in India, Mexico, and Vietnam.⁵¹ Additionally, a shrinking working-age population would also lead to less production and consumption, thus “rapidly slowing economic growth.”⁵² The outlook of China's future economy is certainly concerning under the current trend.

⁴⁹ Dominic Pino, *Business Exit from China Accelerating*, NAT'L REV. (July 6, 2022), <https://www.nationalreview.com/corner/business-exit-from-china-accelerating/> [<https://perma.cc/CK6F-P3QB>].

⁵⁰ Mia Nulimaimaiti, *China's Factories Are Wrestling with Labour Shortages. Age-Old Prejudice Partly Explains Why*, S. CHINA MORNING POST (Jan. 13, 2022), <https://www.scmp.com/economy/china-economy/article/3163097/chinas-factories-are-wrestling-labour-shortages-age-old>.

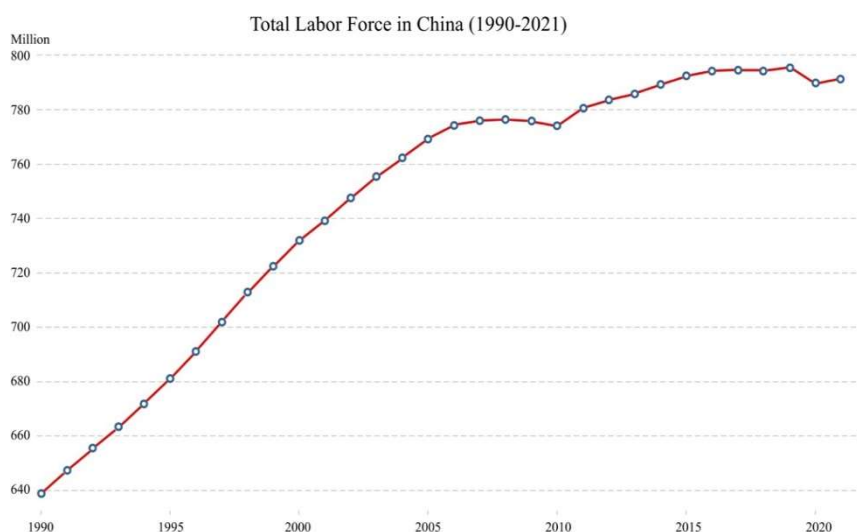
⁵¹ Global Labor Rates Comparison Shows China is no Longer the Low-Cost Labor Market, SUPPLYCHAINBRAIN (Oct. 18, 2022), <https://www.supplychainbrain.com/articles/35898-global-labor-rates-comparison-shows-china-is-no-longer-the-low-cost-labor-market> [<https://perma.cc/6CAZ-NH3J>].

⁵² Campbell, *supra* note 43.

Figure 2 (Source: The World Bank)⁵³

2.2.3. Consequences: Beyond Economic Downturn

The decline in economic growth, caused by the labor shortages, is just one direct consequence of the declining birth rate. An aging



society and a shrinking working-age population have more profound implications that risk dragging China into an endless abyss, both economically and socially.

The spiking elderly population will generate soaring health and welfare costs that are unaffordable for the Chinese government, especially with a slowing economy. China's Minister of Human Resources and Social Securities and the Chinese Academy for Social Sciences have warned that the pension fund for urban workers would start running deficits in 2028 and become insolvent by 2035.⁵⁴ The changing demographic structure is the major cause—in 2015,

⁵³ *Labor Force, Total – China*, WORLD BANK DATA, <https://data.worldbank.org/indicator/SL.TLF.TOTL.IN?locations=CN> [<https://perma.cc/87JK-ZYS3>] (last visited Feb. 26, 2023).

⁵⁴ Michael Lelyveld, *China's Pension Funds Face Rising Risk*, RADIO FREE ASIA (Mar. 12, 2021), https://www.rfa.org/english/commentaries/energy_watch/pension-03122021104127.html [<https://perma.cc/X4A6-VM3T>].

the ratio of people who contributed to and withdrew from the pension fund was 3.04:1, and that ratio will drop to 1.3:1 in 2050.⁵⁵ Even though more people are retiring and withdrawing from their pension fund, the number of younger workers contributing to the fund is decreasing. Scholars have reached a consensus that China's pension fund system is under huge risk of default in the short run.⁵⁶ In the long term, Victoria University's Center of Policy Studies suggested that, should the status quo persist, China's pension fund expenditure would increase five times, rising to 20% of China's GDP in 2100.⁵⁷ China plans to delay the retirement age to ease the pressure, but that is merely a stalling tactic and faces massive public resistance.⁵⁸

China's health care system is also endangered by the demographic trends. Many are worried about the financial health of the health insurance fund,⁵⁹ as the system, currently covering 96.8% of the population, is under immense pressure due to the

⁵⁵ Li Tangning (李唐宁) & Yang Ye (杨烨), Renshebu Niannei Wancheng Yanchituixiu Fangan Zhuanjia Jianyi Ying Tanxing Jizhi (人社部年内完成延迟退休方案 专家建议引弹性机制) [Ministry of Human Resources and Social Security Plan to Complete Proposal for the Retirement Delay Plan by the End of the Year, Experts Advocate for a Gradual and Flexible Change], RENMIN WANG (人民网) [PEOPLE.CN] (May 11, 2015), <http://finance.people.com.cn/n/2015/0311/c1004-26672548.html> [<https://perma.cc/YPJ3-UGBV>].

⁵⁶ See, e.g., Yang Yue (杨悦), Renkou Laolinghua Dui Yanglao Baoxian Jijin Yingxiang Ji Duiceyanjiu (人口老龄化对养老保险基金影响及对策研究) [[Research on the Influence of Population Aging on Endowment Insurance Fund and Countermeasures],],11 Yingyong Shuxue Jinzhan (应用数学进展) [ADVANCES IN APPLIED MATHEMATICS], 3688, 3688, 3690 (2022) (proposing that China's pension fund will run deficit in 2048); Yi Zeng, Effects of Demographic and Retirement-Age Policies on Future Pension Deficits, with an Application to China, 37 POPULATION & DEV. REV. 553, 560-62 (calculating the projected deficit rate of China's pension fund under different policy scenarios).

⁵⁷ Xiujian Peng, *Could China's Population Start Falling?*, BBC (June 5, 2022), <https://www.bbc.com/future/article/20220531-why-chinas-population-is-shrinking>.

⁵⁸ See China's Long-Delayed Plans to Hike Retirement Age Go Viral, BLOOMBERG (FEB. 3, 2023), <https://www.bloomberg.com/news/articles/2023-02-03/china-s-long-delayed-plans-to-hike-retirement-age-go-viral#xj4y7vzkg> ("Talk of China's long-delayed plans to hike the retirement age went viral Friday, with a flood of negative comments underscoring how sensitive and unpopular the proposal is.").

⁵⁹ Yang Daowei (杨道威), Renkou Langlinghua dui Yiliaobaoxian Tongchoujijin Zhichu de Yingxiang Yanjiu (人口老龄化对医疗保险统筹基金支出的影响研究) [Research on the Influence of Population Aging on the Expense of the Health Insurance Fund's Collective Pool] (2008) (Masters Thesis, Huazhong University of Science & Technology) (on file with the author).

growing number of elderly citizens,⁶⁰ 80% of whom suffer from at least one chronic disease.⁶¹ In fact, the Chinese government was compelled to encourage an expansion of commercial insurance to help spread the risk,⁶² and to promote the privatization of health care industries to lighten the heavy financial burden of the public health care system. A market-oriented system is emerging in China, which has led to rising out-of-pocket medical costs and therefore disparities in health care access.⁶³ Additionally, to relieve financial pressure on local governments, China recently introduced a reform to its urban resident health insurance system.⁶⁴ The health insurance fund was restructured, which led to a reduction of the amount of money deposited into the personal accounts of each beneficiary. Despite both the government and experts reassuring the public that the total amount available for health insurance remains unchanged, and that the reduction in personal accounts is merely an effect of the increase in the collective fund,⁶⁵ the policy change was widely unpopular and triggered a protest in Wuhan led by the elderly.⁶⁶ This angry reaction of the elderly in Wuhan highlights the

⁶⁰ Mia Nulimaimaiti, *Can China's Creaky Health Insurance Scheme Withstand Its Ageing Population and Coronavirus?*, S. CHINA MORNING POST (Jan. 1, 2022), <https://www.scmp.com/economy/china-economy/article/3161718/can-chinas-creaky-health-insurance-scheme-withstand-its> [https://perma.cc/VG8L-BS2P].

⁶¹ *Id.*

⁶² *Id.*

⁶³ Toshiko Kaneda, *China's Concern over Population Aging and Health*, RPB (June 1, 2006), <https://www.prb.org/resources/chinas-concern-over-population-aging-and-health/> [https://perma.cc/V8TM-CA9F].

⁶⁴ Wayne Chang & Simone McCarthy, *Elderly Protest Health Insurance Cuts in China's Wuhan*, CNN (Feb. 15, 2023), <https://www.cnn.com/2023/02/15/economy/wuhan-protests-elderly-health-insurance-china-intl-hnk/index.html> [https://perma.cc/M4EN-RDES].

⁶⁵ China's health insurance system for urban resident consists of two parts: a collective pool of funds and each individual's account. It is generally accurate to state that money in one's individual's account is for her benefits only while the amount one could benefit from the collective pool would largely depend on the reimbursement policy set by the government. See Nie Chenjing (聂晨静), Xinhua Shidian: Quanwei Zhuanjia Jiedu Zhigong Yibaogaige Redian (新华视点: 权威专家解读职工医保改革热点) [Opinion of the Xinhua News Agency: Experts Explaining Key Provisions of the New Health Insurance Reform], Xinhua (新华网) [XINHUA NET] (Feb. 15, 2023), http://www.news.cn/politics/2023-02/15/c_1129368503.htm [https://perma.cc/W9U4-Y6ME].

⁶⁶ Helen Davidson, *Wuhan Welfare Protests Escalate as Hundreds Voice Anger over Health Insurance Cuts*, GUARDIAN (Feb. 16, 2023), <https://www.theguardian.com/world/2023/feb/16/wuhan-welfare-protests-escalate-as-hundreds-voice-anger-over-health-insurance-cuts> [https://perma.cc/7SHM-MNMF].

importance of public trust in the health insurance system. As Liu Tingfang, the founder of the institute for Hospital Management at Tsinghua University, persuasively commented: “[The stability of the health insurance system] is not only a health care issue, but also an issue of social stability and even regime stability.”⁶⁷

Additionally, the prevalence of chronic disease and disability has created a greater need for long-term care, which is currently a scarce resource in China.⁶⁸ Public funding for long-term care is minimal and largely limited to supporting welfare recipients and subsidizing the construction of residential care beds and operating costs.⁶⁹ Beyond the shortage itself, far from enough long-term care workers are sufficiently trained.⁷⁰

2.3. *A Fight for the Future*

As discussed in Part 2.2., an aging society and a shrinking working-age population not only put China’s future economic growth in jeopardy but pose many other threats across almost every aspect of the society. Failure to boost China’s fertility in the short term, and the long term, would be dangerous and devastating for both the Chinese government and the Chinese people. Governmental interference and action are required to cope with this demographic crisis. It is not an exaggeration to posit that this is going to be a fight for the future.

3. THE GOVERNMENT’S REACTION AND THE NEED TO MAKE FURTHER CHANGES

The Chinese Central and local governments, recognizing the risk of a demographic crisis, have already taken responsive measures. Yet, the still-declining fertility rate suggests that the current measures are not effective enough and that more actions are required.

⁶⁷ Nulimaimaiti, *supra* note 60.

⁶⁸ Kaneda, *supra* note 63.

⁶⁹ Zhanlian Feng et al., *Long-Term Care System for Older Adults in China: Policy Landscape, Challenges, And Future Prospects*, 396 LANCET 1362, 1362 (2020).

⁷⁰ *Id.*

3.1. The Government's Reaction and Current Policies

3.1.1. The Central Government's Policy Changes

Luckily, the Chinese government had noticed the crisis and has taken actions. Alarmed by the detrimental consequences of an aging society with a shrinking working-age population, the Chinese government relaxed its One-Child Policy nationwide in 2011, allowing couples who were both the only child of their respective parents to have two children.⁷¹ Two years later, the policy was further loosened so that a couple could have two children, as long as just one of the parents was an only child.⁷² In 2016, the One-Child Policy was fully abandoned and replaced by a Two-Child Policy.⁷³ In 2021, the Chinese government updated the law again – now, each couple could have three children in their family.⁷⁴ The quick change of policies not only shows the Chinese government's high degree of concern, but also hints at the ineffectiveness of those policies. Times have changed. Today, people are choosing not to have more than one child not because they are not allowed to, but because they are no longer interested. As shown in the previous section, the new enabling policies failed to stimulate an upsurge in births. Despite

⁷¹ Certain provinces had allowed couples who were both the only child to have two children since the late 1990s. Henan Province was the final province to pass such legislation, doing so in 2011. See Tian Yuan (田园), Zheng Songbo (郑松波) & Wang Lei (王磊), *Quanguo 31 Shengfen Jun Yi Kaifang Shuangdu Jiating Sheng Ertai Zhengce* (全国31省份均已放开双独家庭生二胎政策) [All 31 Provinces of China Allow Couples Who Were Both The Only Child to Have Two Children], *Xinlang Caijing* (新浪财经) [SINA FINANCE] (Nov. 26, 2011), <http://finance.sina.com.cn/china/hgjj/20111126/145410887156.shtml>; see also Tania Branigan, *China Considers Relaxing One-Child Policy*, *GUARDIAN* (Mar. 8, 2011), <https://www.theguardian.com/world/2011/mar/08/china-relaxing-one-child-policy> (“The government has been gradually relaxing regulations, for example by allowing two only children to each have two offspring.”).

⁷² Dai Qing, *Relaxing China's One-Child Policy*, *N.Y. TIMES* (June 12, 2015), <https://www.nytimes.com/2015/06/13/opinion/relaxing-chinas-one-child-policy.html#:~:text=After%20more%20than%2030%20years,parent%20is%20an%20only%20child> [<https://perma.cc/2M4C-KH6W>].

⁷³ *China Allows Three Children in Major Policy Shift*, *BBC* (May 31, 2021), <https://www.bbc.com/news/world-asia-china-57303592> [<https://perma.cc/N2RY-K5XT>].

⁷⁴ Yunxu “Sanhai”: Zhongguo Renkou Zhengce zai Fangkai (允许“三孩”: 中国人口政策再放开) [Enabling the Third Child, China Further Loosens Its Demographic Policy], *DEUTSCHE WELLE* (May 31, 2021), <https://p.dw.com/p/3uDsJ> [<https://perma.cc/7W6A-YLVV>].

the government's new measures, China's fertility and birth rates in the past ten years have continued decreasing.

The worrisome and persistent decline of the fertility and birth rates drew the attention of China's top leadership. In October 2022, in a speech opening Communist Party Congress, which occurs every five years, President Xi Jinping announced that the Chinese government "will establish a policy system to boost birth rates and pursue a proactive national strategy in response to population aging."⁷⁵ About a year earlier, the country issued a document titled *Decision of the Chinese Communist Party Central Committee and the State Council on Issues Concerning the Optimization of the Birth Policy and the Boost of the Long-Term Population Growth* (the "*Decision₁*"), listing a wide array of potential policy changes to encourage childbearing.⁷⁶ The language of the *Decision₁* is broad, speaking to the general direction of future reforms, instead of enumerating specific policy changes. It talks about how the Chinese government aims to "advertise and promote the Three-Child policy," "improve medical support for pregnant women and newborns," "build more child-care institutes and develop better social support for parents," and "lower the cost of giving birth, raising a family, and educating children."⁷⁷ While the *Decision₁* did not directly outline specific policies that will be implemented in the near future, it provides a green light for the local governments to come up with their own solutions. More importantly, a high-level decision by the Central Government is often a precursor to a much larger policy campaign. It also publicly signals that the Chinese government is exploring solutions.

⁷⁵ Yew Lun Tian & Martin Quin Pollard, *Xi Says China Will Seek to Lift Birth Rate in Face of Ageing Population*, REUTERS (Oct. 16, 2022), <https://www.reuters.com/world/china/xi-says-china-will-see-lift-birth-rate-face-ageing-population-2022-10-16/#:~:text=The%20authorities%20imposed%20a%20one,the%20lowest%20in%20the%20world>.

⁷⁶ Xinhuashe (新华社) [Xinhua News Agency], *Zhonggongzhongyang Guowuyuan Guanyu Youhua Shengyu Zhengce Cujin Renkou Changqi Junheng Fazhan de Jueding*, (中共中央 国务院关于优化生育政策促进人口长期均衡发展的决定) [Decision of the Chinese Communist Party Central Committee and the State Council on Issues Concerning the Optimization of the Birth Policy and the Boost of the Long Term Population Growth], *Zhonghua Renmin Gongheguo Zhongyang Renmin Zhengfu* (中华人民共和国中央人民政府) [THE STATE COUNCIL, CHINA] (July 20, 2021), http://www.gov.cn/zhengce/2021-07/20/content_5626190.htm [<https://perma.cc/7V5M-2468>].

⁷⁷ *Id.*

3.1.2. Local Governments Have Responded

The signal from the top has triggered changes locally, with most provinces now pursuing specific pro-natalist policies.⁷⁸

More than twenty provinces have extended the maternity leave, most adding an additional sixty days to the previously allowed ninety-eight days.⁷⁹ Meanwhile, some have also extended the paternity leave.⁸⁰ Tianjin changed it from seven to fifteen days.⁸¹ Liaoning Province added another five days to the previously defined fifteen days.⁸² Some provinces enacted “childcare leave” – parents with children aged below three could each take five to fifteen days off every year.⁸³

Some provinces have instructed state-owned banks to provide low-interest loans to married couples who are planning to have more children. In Jilin Province, each couple could borrow up to 200,000 yuan (\$29,062) for marriage and childcare-related expenses from local banks.⁸⁴ The interest rate of the loan decreases as the number of children in a household increases.⁸⁵ Jiangxi Province has announced a similar policy – each married couple can apply for a

⁷⁸ See Why China Is Struggling to Boost Its Birthrate, BLOOMBERG (Jan. 17, 2022), <https://www.bloomberg.com/news/articles/2022-01-17/why-china-is-struggling-to-boost-its-birthrate-quicktake#xj4y7vzkg> [https://perma.cc/5HKZ-R5N5] (“At least 20 provinces had their own measures to boost fertility.”).

⁷⁹ 20 Duo Ge Shengfen Yanchang Chanjia Zengjia Yuerjia Jiaqi Chengben Shui Lai Dan? (20 多个省份延长产假增加育儿假 假期成本谁来担?) [More than 20 Provinces Extend maternity leave and Allow Parental Leave, Who is Going to Pay for the Additional Cost?], Xinhuashe (新华社) [XINHUA NEWS AGENCY] (Dec. 14, 2021), http://www.news.cn/fortune/2021-12/14/c_1128160430.htm [https://perma.cc/GA7N-88QY].

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ This paper will not provide U.S. dollar equivalents for all Chinese yuan figures. For some sections where the figures are hypothetical in nature or are used to prove a point such as in Part 6.1.3., the exchange will not be made. For readers who are interested in making the exchange, the exchange rate between Chinese yuan and U.S. dollar is 1: 0.145 in this paper.

⁸⁵ Ye Maisui (叶麦穗), “Sanhaidai” Lai le! Duodi Wei Zhichi Shengyu Zhengce Fang Dazhao (“三孩贷”来了! 多地为支持生育政策放大招) [Check out the “Three-Child Loan!” Multiple Areas Provide New Measures Supporting Fertility], 21 Caijing (21 财经) [21 FINANCE] (Dec. 24, 2021), <https://baby.sina.com.cn/news/2021-12-24/doc-ikyammrz0760668.shtml> [https://perma.cc/HD6F-SF2D].

low-interest loan of 100,000 yuan (\$14,531) for each child they give birth to.⁸⁶

Some places have announced direct subsidies for families with two or three children.⁸⁷ Hunan Province, Anhui Province, Jilin Province, Zhejiang Province, Heilongjiang Province, and many others have issued high-level documents announcing their intent to provide childcare subsidies.⁸⁸ Some cities have already come up with more detailed plans. In 2021, Panzhihua City of Sichuan Province announced that all families with two or three children could receive 500 yuan (\$73) every month for each child under three years old.⁸⁹ Zhangye City of Gansu Province, similarly, provided 5,000 yuan (\$726) every year for families with two children, and 10,000 yuan (\$1,453) for families with three children until the youngest reaches the age of three.⁹⁰

Housing policy is another area where provinces have vowed to provide benefits to families with more children.⁹¹ In 2021, at least six provinces announced plans to help families with more children to obtain cheaper housing either via direct subsidy or priority access to public rental housing.⁹²

3.1.3. Policy Direction Is Pro-Natalist

The full list of pro-natalist policies extends far beyond what can be listed here. The examples provided, however, illustrate the rapid

⁸⁶ *Id.*

⁸⁷ Chen Xi (陈曦), Duodi Wei Sanhai Zhengce Tigong Peitao Zhichi, Yuer Butie Neng Tigao Shengyu Yiyuan Ma? (多地为三孩政策提供配套支持 育儿补贴能提高生育意愿吗?) [Various Support Provided by Local Governments in Coordination with the Three-Child Policy, Can Subsidy Increase Fertility Desire?], Gongren Ribao, (工人日报) [WORKERS DAILY] (Apr. 27, 2022), <https://www.chinanews.com.cn/sh/2022/04-27/9740442.shtml> [<https://perma.cc/2MXV-5WNB>].

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Peng Yanqiu (彭艳秋), Goufang Youhui, Peizongyu Deng Yuer Zhengce Luxu Chutai, Neng Dadong Nianqingren Ma (购房优惠、配租等育儿政策陆续出台, 能打动年轻人吗) [Would the Youth be Tempted by the New Pro Natalist Policies Like Housing Purchase Discount and Public Rental Housing], Pengpai Xinwei (澎湃新闻) [THE PAPER] (Dec. 10, 2021), https://m.thepaper.cn/kuaibao_detail.jsp?contid=15768036&from=kuaibao [<https://perma.cc/M6WJ-VT9Y>].

⁹² *Id.*

policy changes over the past three years and the eagerness of governments at all levels to adopt new policies to boost declining fertility and birth rates. This priority faces little opposition.

3.2. *The Necessity for and Urgency of Further Actions*

“It’s unlikely our measures would have an obvious effect in the short term,” admitted Yang Jingrui, a National Health Commission official, in 2022.⁹³ Currently, the scattered efforts of local governments, and limited measures adopted by the Central Government, have failed to systematically increase people’s interest in childbearing. As the data shows, even though the Two-Child Policy and the Three-Child Policy have stimulated certain demographics’ enthusiasm for raising more children, general fertility and birth rates have continued declining.⁹⁴

Covid-19 and the worldwide economic recession have worsened the situation. Tens of thousands of companies have gone bankrupt.⁹⁵ The youth unemployment rate in 2022 hit a record 20%.⁹⁶ Many struggled to keep their jobs. With a slowing-down economy,⁹⁷ the Chinese are less willing to increase the financial burden on themselves by welcoming another member to their families.

⁹³ Xin Ying (辛颖) & Zhao Tianyu (赵天宇), Guli Shengyu Duohai Zhengce, Nage Difang Zui Qiang? (鼓励生育多孩政策, 哪个地方最强?) [Which Province Has the Most Attractive Pro Natalist Policies?], Huxiu (虎嗅) [HUXIU] (Jan. 25, 2021), <https://m.huxiu.com/article/493633.html> [<https://perma.cc/LUL4-K434>].

⁹⁴ See *infra* Part 2.1.

⁹⁵ See Stella Yifan Xie, *For China’s Small Businesses, Life Is Still Far from Normal*, WALL ST. J. (May 5, 2022), <https://cn.wsj.com/articles/%E4%B8%AD%E5%9B%BD%E4%B8%AD%E5%B0%8F%E4%BC%81%E4%B8%9A%E4%BB%8D%E9%9A%BE%E4%BB%A5%E5%AE%8C%E5%85%A8%E8%B5%B0%E5%87%BA%E7%96%AB%E6%83%85%E6%B3%A5%E6%BD%AD-11620022810> [<https://perma.cc/2JSQ-4PMP>] (discussing the struggling small businesses in China as a result of Covid-19).

⁹⁶ Eduardo Baptista, *Analysis: As Economy Stutters, China’s Youth Seek Safety of Civil Service*, REUTERS (Dec. 2, 2022), <https://www.reuters.com/world/china/economy-stutters-chinas-youth-seek-safety-civil-service-2022-12-01/> [<https://perma.cc/C6P8-ZM8X>].

⁹⁷ Marius Zaharia & Kevin Yao, *Analysis: Xi Faces Painful Gear Shift as China’s Investment-Led Growth Sputters*, REUTERS (Oct. 13, 2022), <https://www.reuters.com/markets/asia/xi-faces-painful-gear-shift-chinas-investment-led-growth-sputters-2022-10-14/> [<https://perma.cc/YJ3T-A7WD>].

Therefore, stronger national policy incentives are needed to better the situation.

4. THE FOCUS OF THIS PAPER

To lay down the foundation for further discussion, three important assumptions taken by the paper will be addressed in this section: (1) the paper only aims to provide short-term solutions to quickly boost fertility; (2) the paper identifies that the primary reason preventing people from having babies is the spiking cost of raising a child, and plans to address the issue accordingly; and (3) the paper focuses on providing tax policy recommendations to achieve the goal.

4.1. Long-Term Systematic Changes v. A Short-Term Approach

Before proposing any specific policy recommendations, it is important to acknowledge that boosting the fertility and birth rates of a nation is a difficult task that requires efforts across every aspect of society and nationwide mobilization.

Countless measures need to be adopted to permanently increase the fertility and birth rates. In the long term, a country needs to address multiple underlying issues. It needs to address the increasing cost of raising a child through making healthcare, childcare, housing, and education more affordable. It needs to provide more daycare and other social support for families so that parents can stay employed. It needs to provide better paternity and maternity leave policies, enabling parents to spend more time with their children. It needs to ensure women are not discriminated against in the workplace and receive equal pay and equal promotion opportunities as their male peers, especially after they give birth. It also needs to address wealth inequality, while also facilitating continued economic growth.

Yet, Rome wasn't built in a day. The rapidly declining NPG has not left China much time to structure its grand policy addressing everything all at once. It is also impractical and risky for China to advance too many social reforms within a short period of time for the sole purpose of boosting the fertility and birth rates. Currently, the Chinese government needs to find solutions to first stop the

ongoing population decline and address demographic shifts to ensure it maintains a large enough population of women of childbearing age to prevent falling into a vicious cycle. It also needs to find the key “pain point” of the problem and try to solve that issue first as the first step toward solving this complex issue.

This paper aims to provide tax policy recommendations for China to quickly address its key pain point to boost its fertility in the short term (twenty years).

4.2. The Key “Pain Point” – Unaffordable Cost of Raising a Child

Based on a survey conducted by the National Health and Family Planning Commission, the top three reasons preventing women of childbearing age from having children are “the heavy financial burden of raising a child” (77.4% of respondents picked it as a reason), “feeling too old to have a child” (45.6%), and “couldn’t find anyone to take care of the child” (33.2%).⁹⁸ Multiple studies and surveys have also concluded that the rising cost of raising a child is the primary reason youth do not have children.⁹⁹ In fact, China is the second-most expensive country to raise a child in across the globe – marginally cheaper than in South Korea, which has the lowest birth rate in the world.¹⁰⁰ More discussion about the exact cost will be provided in Part 6.1.2.

Indeed, the spiking costs of housing, education, and healthcare have constrained people’s ability to raise children, and, more importantly, reduced their desire to have a family in the long term.¹⁰¹ Recently, the heated discussion about unaffordable childcare went viral on social media platforms, with many complaining that their living conditions worsened sharply after giving birth.¹⁰² Therefore, while many have attributed this decline

⁹⁸ LIANG JIANZHANG (梁建章) ET AL., ZHONGGUO SHENGYU CHENGBEN BAOGAO 2022 (中国生育成本报告 2022) [REPORT ON COST OF CHILDBEARING AND CHILDBEARING IN CHINA 2022] (2022) [hereinafter COST REPORT].

⁹⁹ Hao Mingrui (郝明睿) et al., Shengyulü Bushengfanjiang Yuanyin Tanjiu – Jiyu Woguo Yuling Qingnian Shengyu Yiyuan de Shizheng Yanjiu (生育率不升反降原因探究 – 基于我国育龄青年生育意愿的实证研究) [Explore the Dropping Fertility Rate – An Empirical Study Based on the Fertility Desire of Our Country’s Youth of Childbearing Age], 3 ECON. 65, 67 (2020).

¹⁰⁰ COST REPORT, *supra* note 98, at 13.

¹⁰¹ CHINA FERTILITY REPORT 2022, *supra* note 11, at 15–16.

¹⁰² See Verna Yu, “The Last Generation”: The Young Chinese People Vowing Not to Have Children, GUARDIAN (Jan. 20, 2023),

in the desire to have children and in birth rate to the changing attitudes of the younger generation, they overlooked the possibility that such a change is caused by the practical difficulties of raising a child. Many youth vow not to have kids to protest the rising cost of living.¹⁰³ The subculture around “Double Incomes, No Kids” (“DINK”), which is partially an angry reaction to social and economic realities,¹⁰⁴ has itself become an independent deterrent to having children. At the root of this culture, however, is the spiking cost of raising a child.

4.3. Tax Expenditure’s Advantages over Direct Subsidies

Some scholars have advocated for direct subsidies,¹⁰⁵ which many provinces have adopted. Yet, this paper recommends utilizing tax expenditure to achieve the goal.¹⁰⁶ While the debate between the two approaches is longstanding, with advocates on each side,¹⁰⁷ this paper argues that there are four reasons why tax

<https://www.theguardian.com/world/2023/jan/20/the-last-generation-young-chinese-people-vow-not-to-have-children> [<https://perma.cc/M4VW-73T6>] (“The phrase became a popular online meme and the hashtag #thelastgeneration generated millions of comments before it was censored.”); Shigong Li, *Are We Slaves to Our Children?*, BEIJING REV. (Feb. 25, 2010), https://www.bjreview.com/print/txt/2010-02/21/content_247539.htm [<https://perma.cc/KY2M-SGJJ>] (presenting responses from some youth regarding their unwillingness to become a “child’s slave”).

¹⁰³ Yu, *supra* note 102.

¹⁰⁴ Yvonne Lau, *China’s Generation ‘DINK’ – Double Income, No Kids – Is Feeding a Demographic Time Bomb That Threatens to Upend Economic Stability*, FORTUNE (Sept. 17, 2022), <https://fortune.com/2022/09/17/china-generation-dink-double-income-no-kids-economic-stability/> [<https://perma.cc/63K9-E34Q>].

¹⁰⁵ See Lin Bao (林宝) & Xie Chuchu (谢楚楚), *Yingdui Di Shengyulv Wenti de Guoji Jinyan Ji Qishi (应对低生育率问题的国际经验及启示)* [Lessons of Other Countries in Dealing with Low Fertility Rate], 19 J. BEIJING UNIV. TECH. (SOC. SCIS. EDITION) 29, 35–36 (2019).

¹⁰⁶ For a discussion about tax policy recommendations, see *infra* Part 6.

¹⁰⁷ See, e.g., Eric Toder, *Tax Cuts or Spending – Does It Make a Difference?*, URB. INST. (June 8, 2000), <https://www.urban.org/sites/default/files/publication/63871/410261-Tax-Cuts-or-Spending-Does-it-Make-a-Difference-.pdf> [<https://perma.cc/65LS-KCFH>] (comparing the effects of tax expenditures and direct spending); *Scrutinizing Tax Expenditures*, CIR. AM. PROGRESS, (Apr. 20, 2010), <https://www.americanprogress.org/article/scrutinizing-tax-expenditures/> [<https://perma.cc/J2RJ-4SGF>] (“A tax expenditure offers both the advantages and disadvantages of having something really removed from effective public oversight . . .”); Len Burman et al., *Economic and Distributional Effects on Tax*

expenditure carried through the Central Government is a *better* tool for China compared to direct subsidies provided by local governments.

First, large-scale population mobility in China will create practical difficulties for provinces administering subsidy distribution. Taxes, however, are a universal requirement.¹⁰⁸ Today, it is quite common for the Chinese to choose to work in a bigger city or a wealthier province, while maintaining their permanent family homes where they originated. These “homeland feelings” create an inextricable connection between a Chinese person and their hometown, spurring them to travel regularly between their place of work and original home.¹⁰⁹ In addition, the household registration system (*hukou*) makes it objectively difficult for people to change their permanent residences—big cities have created many hurdles for outsiders, especially those who belong to the lower economic classes, to register as long-term residents.¹¹⁰ Therefore, hundreds of millions, voluntarily or not, migrate regularly every year from one place to another. The Spring Festival Travel Rush (*chunyun*) is a salient result of this scenario. In pre-pandemic 2019, 3 billion trips were made within the forty-day *chunyun* period.¹¹¹ Among all travelers, migrant workers, the backbone of China’s manufacturing and infrastructure industries, who by and large belong to the lower economic classes, move even more frequently.

Expenditure Limits, in THE ECONOMICS OF TAX POLICY 109 (Alan J. Auerbach & Kent Smetters eds., 2017) (discussing the tradeoffs of limiting tax expenditures).

¹⁰⁸ For a discussion of the statement that people already need to file taxes, see *infra* Part 6.3.3.

¹⁰⁹ See Cheng Bingji (成冰纪), *Zhongguoren de Xiangchou*, Zhang Shenme Yang? (中国人的乡愁, 长什么样?) [What are the Homeland Feelings for the Chinese?], *Xinlang* (新浪) [SINA] (Sept. 28, 2020), https://k.sina.com.cn/article_2210496261_v83c17f0501900uewl.html?from=travel [<https://perma.cc/7BKT-TB8U>] (discussing the tradition of having an attachment to one’s Homeland since the ancient time and the ubiquitous of such a feeling in the modern China).

¹¹⁰ See Peilin Li et al., *Effect of Hukou Accessibility on Migrants’ Long Term Settlement Intention in Destination*, 2022 *SUSTAINABILITY*, 7209, 7209 (“[H]igh difficulty in obtaining an urban *hukou* has been considered as an important factor that prevents migrants from moving to urban areas but also affects their daily life and consumption level.”).

¹¹¹ Karla Cripps & Serenitie Wang, *World’s Largest Annual Human Migration Now Underway in China*, CNN (Jan. 23, 2019), <https://www.cnn.com/travel/article/lunar-new-year-travel-rush-2019/index.html> [<https://perma.cc/B562-W2W9>].

In 2021, there were 292.51 million migrant workers in China, 58.7% of them worked outside their hometown.¹¹² Many, in fact, change work locations frequently, following work opportunities. For them, it would be difficult to determine where they should be receiving the subsidies. It is also costly for provinces to implement measures to avoid potential arbitrage—people might claim subsidies both at home and at their place of work. Collaboration between cities would be required, increasing the transaction cost. Such a problem does not exist with the tax expenditure option. Having the Central Government collect all the information and distribute the funds to all taxpayers would be much more efficient and trackable. More importantly, people are required to file taxes—instead of going to the local government and claiming a subsidy, they could just click a few more buttons on their phones when filing their tax returns remotely. The refund incentive could also encourage more lower-income individuals to file their tax returns, enabling the government to have more complete income data, which could benefit state decision-making more broadly.

Second, it is more reasonable to have the Central Government undertake the expense rather than local governments. Some might argue that by allowing each city to set its own subsidy amount, the incentive could be much more effective—the subsidy amount could be adjusted based on the living costs of different areas. This is indeed a benefit that cannot be overlooked. Yet, as discussed later in Part 6.1., such tailoring would divert the majority of available funds to areas with higher living costs, when those funds could instead boost fertility incentives much more in poorer areas. Furthermore, many local governments, especially in less developed areas, often face a deficit. Even if the Central Government specifically dedicated certain funds as fertility incentive funds when distributing them to local governments, there would still be a risk that a desperate local government would embezzle these funds for more ‘urgent’ needs. Additionally, with the Tax Sharing System (*fenshuizhi*) that China adopts,¹¹³ only the Central Government has

¹¹² 2021 Nian Nongminggong Jiancè Diaocha Baogao (2021 年农民工监测调查报告) [Report on Migrant Workers 2021], Guojia Tongji Ju (国家统计局) [NAT'L BUREAU STAT.] (Apr. 29, 2022), http://www.stats.gov.cn/tjsj/zxfb/202204/t20220429_1830126.html#:~:text=2021%E5%B9%B4%E5%85%A8%E5%9B%BD%E5%86%9C%E6%B0%91%E5%B7%A5,%E4%B8%87%E4%BA%BA%EF%BC%8C%E5%A2%9E%E9%95%BF1.6%25%E3%80%82 [https://perma.cc/2LNR-J5NE].

¹¹³ See *infra* Part 5.1.2.

the financial power to support such a program. Most provinces in China need financial support from the Central Government for their daily expenditures. Therefore, it is likely that if the subsidy becomes a nationwide program, the Central Government will need to fund it anyway. In that case, it would be more cost-efficient to have the Central Government directly distribute the funds to taxpayers through the tax system, rather than transferring them to the local governments and then to the people. Fewer intermediate links also reduce the possibility of corruption.

Third, having local governments make their own subsidy plans will widen the wealth gap. The wealthiest provinces and cities will likely attract more migrants with their larger subsidies, making it more difficult for the poorer regions to boost their fertility and birth rates, retain their population sizes, and foster economic growth. One of the fundamental purposes of spending more on increasing fertility is economic development—any policy adopted should help to further, not hinder, that goal.

Fourth, one common critique toward tax expenditure is that it moves public spending away from “effective public oversight,” as people might not understand the implication of promoting tax expenditures.¹¹⁴ Yet, in the context of China’s political system, this critique may be less relevant. The meritocratic system in China places major decision-making power in the hands of the Central Government, with limited political participation from the public.¹¹⁵ The accountability of the government in China relies less on public oversight and more on the capabilities of top leaders and the selection mechanism that promotes them.¹¹⁶ Therefore, given China’s political reality, the concern over reduced public oversight is less of an issue.

5. OVERVIEW OF CHINA’S TAXATION SYSTEM AND INDIVIDUAL INCOME TAX

Before presenting the tax policy recommendations, it is important to provide an overview of China’s taxation system and

¹¹⁴ CTR. AM. PROGRESS, *supra* note 107.

¹¹⁵ Daniel A. Bell, *Can Democracies Learn from China’s Meritocratic System?*, 116 CURRENT HIST. 315, 316 (2017).

¹¹⁶ *See id.* (“Top leaders must rack up decades of diverse administrative experience.”).

Individual Income Tax, specifically focusing on the components that are relevant to this paper's discussions.

5.1. Taxation System – Two Characteristics

Two characteristics of China's taxation system are particularly relevant to this discussion. First, the bulk of China's tax revenue is derived from corporate entities. Only a small fraction of the Chinese population pays Individual Income Tax, which accounts for less than one-tenth of the overall tax revenue. Second, owing to the Tax Sharing System (*fenshuizhi*) established in the 1990s, most of China's local governments are financially dependent on the Central Government. Therefore, only the Central Government has the financial capacity to afford large-scale expenditures. These observations lay the groundwork for subsequent discussions.

5.1.1. Heavy Reliance on Indirect Taxes

The current taxation system in China was established in the 1990s. After the Reform and Opening-Up (*gaigekaiifang*), the Central Government noticed the uneven development of the Chinese economy across different regions and wanted to develop a more market-oriented taxation system while increasing its power in collecting and allocating resources.¹¹⁷ In late 1993, China issued a document titled *Decision of the Chinese Communist Party Central Committee on Issues Concerning the Establishment of a Socialist Market Economic Structure* (the "*Decision₂*"), which identified the taxation system's reform as a significant goal. The *Decision₂* emphasized the importance of an efficient indirect tax system based on the Value-Added Tax (the "VAT").¹¹⁸ This led to the creation of a taxation system that relies heavily on indirect taxes. Unlike countries such as the United States, which collect most of their tax revenue from direct taxes like the Federal Income Tax,¹¹⁹ the vast majority of

¹¹⁷ Tsang Shu-ki & Cheng Yuk-shing, *China's Tax Reforms of 1994: Breakthrough or Compromise?*, 34 ASIAN SURV. 769, 769 (1994).

¹¹⁸ *Id.* at 770.

¹¹⁹ See *How Much Revenue Has the U.S. Government Collected This Year?*, FISCAL DATA, <https://fiscaldata.treasury.gov/americas-finance-guide/government-revenue/> [<https://perma.cc/4KEC-NBGH>] (last visited Feb. 12, 2023) (showing

Chinese tax revenue is generated from taxes levied on corporations such as the VAT (45.5%), the Corporate Income Tax (24.3%), and the Consumption Tax (8.1%).¹²⁰ In comparison, Individual Income Tax only contributed to 8.1% of the total tax revenue in 2022.¹²¹

5.1.2. Tax Sharing System (*fenshuizhi*)

Another major reform was introduced in 1994 when the Chinese government established the Tax Sharing System (*fenshuizhi*), which “fundamentally changed the way revenues are shared between the central and provincial government.”¹²² While the specifics of the reform are too intricate to explain here, the salient result of the reform was the significant increase in the Central Government’s financial power. Prior to the reform, the Central Government received only 22% of the total tax revenue in 1993, but afterward, it received approximately half of the total tax revenue, though that amount fluctuated over the years.¹²³ Therefore, a significant portion of tax revenue is first collected by the Central Government and then redistributed to local governments based on their needs. For instance, in 2019, the Central Government’s tax revenue accounted

that 52% of the U.S. tax revenue in Fiscal Year 2023 came from individual income taxes).

¹²⁰ Zhongguoshi Xiandaihua Beijing Xia de Shuizhijiegou Youhua (中国式现代化背景下的税制结构优化) [Optimization of the Tax Structure for Modernized China], Guangdongsheng Caizheng Ting (广东省财政厅) [DEP’T FIN. GUANGDONG PROVINCE] (Nov. 2, 2022), http://czt.gd.gov.cn/fssr/content/post_4039287.html#:~:text=%E4%BB%8E%E7%A8%8E%E7%A7%8D%E7%BB%93%E6%9E%84%E7%9C%8B%EF%BC%8C2021,%E6%98%AF%E5%90%8D%E5%89%AF%E5%85%B6%E5%AE%9E%E7%9A%84%E4%B8%BB%E4%BD%93%E7%A8%8E%E7%A7%8D%E3%80%82 [https://perma.cc/AA4P-8WTH]. See also LUO ZHIHENG (罗志恒), ZONGMEI SHUIZHI JI SHIUFU BIJIAO 2021 (中美税制及税负比较 2021) [COMPARING TAX SYSTEMS OF CHINA AND THE UNITED STATES 2021] 6–9 (2021), https://pdf.dcfw.com/pdf/H3_AP202103291477908714_1.pdf [https://perma.cc/S2KJ-UJMM] (comparing the composition of tax revenues in China and the United States).

¹²¹ DEP’T FIN. GUANGDONG PROVINCE, *supra* note 120.

¹²² Christine P.W. Wong, *Central-Local Relations Revisited: The 1994 Tax-Sharing Reform and Public Expenditure Management in China*, 31 CHINA PERSPS. 52, 55–56 (2000).

¹²³ Zhongyang Yu Difang Caizheng Guanxi: Zucheng Bufen yu Lishi Bianqian (中央与地方财政关系：组成部分与历史变迁) [Tax Revenue of the Central and Local Governments: Structure and History], Tengxun Xinwen (腾讯新闻) [TENCENT] (Nov. 6, 2021), <https://new.qq.com/omn/20211106/20211106A0A06Y00.html> [https://perma.cc/P8U9-K46X].

for 46.9% of the total revenue, but 67.9% of the Central Government's tax revenue was subsequently transferred to the local governments.¹²⁴ Therefore, only the Central Government has the capacity to afford large-scale expenditures like universal subsidies for childbirth.

5.2. *Individual Income Tax*¹²⁵

In 2018, China revised its Individual Income Tax Law (the "IIT Law").¹²⁶ Under the revised IIT Law, individual income has been classified into nine categories:

- (1) Wages and salary;
- (2) Income from remuneration for personal service;
- (3) Income from the author's remuneration;
- (4) Income from royalties;
- (5) Business income;
- (6) Income from interest, dividends, and profits distribution;
- (7) Income from rental;
- (8) Income from the transfer of property; and
- (9) Incidental income.

5.2.1. *Three Types of Individual Income Tax*

The nine categories can be grouped into three types.

Categories one to four are termed "comprehensive income." These are the incomes of the average working population who do not operate a business. A taxpayer's comprehensive income is

¹²⁴ Liukun (刘昆), Caizhengbu Buzhang (财政部部长) [Minister of Fin.], People's Republic of China, Shisanjie Quanguo Renda Changweihui Zhuanti Jiangzuo Di Shiba Jiang (十三届全国人大常委会专题讲座第十八) [the Thirteenth Standing Committee of the National People's Congress Series Lecture No. 18] (Aug. 13, 2020).

¹²⁵ Geren Suodeshui Fa (个人所得税法) [Individual Income Tax Law] (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 10, 1980, amended Aug. 31, 2018, effective Jan. 1, 2019), <http://www.chinatax.gov.cn/chinatax/n810219/n810744/n3752930/n3752974/c3970366/content.html> [<https://perma.cc/A2E3-PZ4M>] (China).

¹²⁶ Laney Zhang, *China: Individual Income Tax Law Revised*, LIBR. CONG. (Sept. 24, 2018), <https://www.loc.gov/item/global-legal-monitor/2018-09-24/china-individual-income-tax-law-revised-2/> [<https://perma.cc/5TZ9-BVMJ>].

subject to a set of progressive tax rates ranging from 3% to 45%, as shown below.

Level	Annual Taxable Income (yuan)	In U.S. Dollars (\$)	Rate (%)
1	Less than 36,000	Less than 5,231	3
2	Between 36,000 and 144,000	Between 5,231 and 20,924	10
3	Between 144,000 and 300,000	Between 20,924 and 47,952	20
4	Between 300,000 and 420,000	Between 47,952 and 61,030	25
5	Between 420,000 and 660,000	Between 61,030 and 95,905	30
6	Between 660,000 and 960,000	Between 95,905 and 139,498	35
7	Over 960,000	Over 139,398	45

*Taxable income = (Total income) - 60,000 yuan (i.e., the exempted amount) - (Special Deduction) - (Cumulative Special Additional Deductions) - (Other Deductions)

Category five is its own type. The tax rate ranges from 5% to 35% for business income as shown below.

Level	Annual Taxable Income (yuan)	In U.S. Dollars (\$)	Rate (%)
1	Less than 30,000	Less than 4,359	3
2	Between 30,000 and 90,000	Between 4,359 and 13,078	10
3	Between 90,000 and 300,000	Between 13,078 and 43,593	20
4	Between 300,000 and 500,000	Between 43,593 and 72,655	30
5	Over 500,000	Over 72,655	35

Though referred to as “business,” the business income here must be earned by individuals, as opposed to corporations. A typical example of such income would be the profit of an individually

owned business, or the profit shared by a natural person in a partnership.¹²⁷

The classification of “individually owned business” is a legal entity created to cater to small-scale enterprises, such as family-run stores. China had 111 million registered individually owned businesses, official data showed in September 2022,¹²⁸ and 80% of those businesses had a monthly operation revenue of less than 10,000 yuan (\$1453).¹²⁹ Most who pay IIT for business income are middle- or low-income.¹³⁰

If an individual has no comprehensive income but only business income, the calculation of their taxable income would be identical to that of individuals with comprehensive income. They would be entitled to all applicable deductions, as though they were filing tax for their comprehensive income. Since taxpayers of business and comprehensive income receive similar tax treatment, all policy recommendations outlined in Part 6., though presented in the context of IIT for comprehensive incomes, would be equally applicable to both income types.

Categories six to nine are generally treated as a unit because they all have a fixed tax rate of 20%. They will not be discussed in this paper.

¹²⁷ Geren Suodeshui Fa Shishi Tiaoli (个人所得税法实施条例) [Provisions on Administration for Individual Income Tax] (promulgated by the State Council, Dec. 18, 2018, effective Jan. 1, 2019) St. Council Gaz., Dec. 22, 2018, http://www.gov.cn/gongbao/content/2019/content_5355464.htm [<https://perma.cc/S2Z4-MB8S>] (China).

¹²⁸ Cujin Getihu Fazhan Tiaoli Chutai Yiyi Juda (《促进个体工商户发展条例》出台意义巨大) [The Promulgation of Provisions on Promoting the Development of Individually Owned Business Is Meaningful], Guojia Shichang Jiandu Guanli Zongju (国家市场监督管理总局) [STATE ADMIN. MARKET REG.] (Oct. 25, 2022), https://gkml.samr.gov.cn/nsjg/xwxc/202210/t20221025_351009.html#:~:text=%E4%B8%AA%E4%BD%93%E5%B7%A5%E5%95%86%E6%88%B7%E6%98%AF%E6%88%91%E5%9B%BD,%E5%B0%B1%E4%B8%9A%E8%BF%913%E4%BA%BF%E4%BA%BA%E3%80%82 [<https://perma.cc/TJN8-4B8A>].

¹²⁹ *Id.*

¹³⁰ See Registered Individually-Owned Businesses Hit Record 103m in China, STATE COUNCIL P.R.C. (Jan. 27, 2022), http://english.www.gov.cn/statecouncil/ministries/202201/27/content_WS61f27eacc6d09c94e48a45db.html [<https://perma.cc/M68F-HQQ2>] (“Around 90 percent of these businesses are service providers, mainly engaged in retail, hospitality, catering, and resident services.”).

5.2.2. Deductions

Analogous to the taxation system in the United States, China also provides taxpayers with the opportunity to deduct certain expenses from their taxable income. These deductions are broadly classified into three categories. The first category is Special Deductions, which include only “Three Insurances and One Fund” (*sanxianyijin*).¹³¹ Taxpayers can deduct the expenses on basic health insurance, basic endowment insurance (pension fund), unemployment insurance, and housing funds from their total income before calculating their tax liabilities.

The second category is Cumulative Special Additional Deductions (the “Cumulative Deductions”), which were introduced to the taxation system for the first time in 2018. Under the revised IIT Law, taxpayers are entitled to deduct certain amounts for expenses associated with child education, continuing education, medical treatment for serious illness, housing mortgage interest, housing rentals, elderly support, and nursing expenses for a child under three years old, as shown below.¹³²

Deductible Item	Deductible Amount
Child’s Education	1,000 yuan (\$145) per child per month
Continuing Education	400 yuan (\$58) per month or 3,600 yuan (\$523) per year depending on the type of qualified continued education
Medical Treatment for Serious Illness	Qualified self-paid portion above 15,000 yuan (\$2,180) and capped at 80,000 yuan (\$11,625) per year for each eligible individual

¹³¹ “Three Insurances and One Fund” (*sanxianyijin*) is a common reference to the health insurance, endowment insurance, unemployment insurance, and housing fund. See *Yanglaojin Qian Ren Xin* (养老金牵人心) [People Care About Their Pension Fund], CHINA DAILY (Oct. 10, 2006), https://language.chinadaily.com.cn/news/2006-10/10/content_705194.htm [<https://perma.cc/CB3M-8TJA>].

¹³² *Guowuyuan Guanyu Sheli 3 Sui Yixia Yingyouer Zhaohu Geren Suodeshui Zhuanxianfujiakouchu de Tongzhi* (国务院关于设立3岁以下婴幼儿照护个人所得税专项附加扣除的通知) [Notice on Creation of the Nursing Expenses for A Child Under 3 Years Old Deduction] (promulgated by the State Council, Mar. 19, 2022, effective Jan. 1, 2022) St. Council Gaz., (Mar. 28, 2022), http://www.gov.cn/zhengce/content/2022-03/28/content_5682013.htm [<https://perma.cc/Q7SU-J9RY>] (China).

Mortgage Interest	1,000 yuan (\$145) per month
Housing Rentals	800 yuan (\$116), 1,100 yuan (\$160), or 1,500 yuan (\$218) per month depending on the location
Elderly Support	Up to 2,000 yuan (\$291) per month depending on the status of the taxpayer
Nursing Expenses for A Child Under Three Years Old	1,000 yuan (\$145) per month for each child

The third category is Other Deductions, which encompasses various expenses such as annuities, commercial health insurance, and tax-deferred pension insurance.

For Child's Education Deduction, Housing Rentals Deductions, Elderly Support Deductions, and Nursing Expenses for A Child Under Three Years Old Deductions, the deductible amounts listed above are allocated to a married couple. The government allows some flexibility in the allocation of the deductible amounts and therefore enables for some degree of income shifting between the spouses. For instance, a couple could opt to either each take 50% of the Child's Education Deduction or have only one spouse claim the entire amount.

6. POLICY RECOMMENDATIONS

This paper advocates for four policies, some of which are concrete, while others are principle-based. First, China should concentrate on enhancing the fertility incentives of the lower-income population in the short term because it is more cost-effective and efficient. Second, China should replace some deductions with refundable tax credits to broaden the population base eligible for tax incentives. Third, the government should create marriage bonuses to encourage marriage. Allowing couples to file jointly, and therefore take advantage of income shifting, would be a beneficial start. Fourth, this paper cautions against implementing a childless tax, citing it as a flawed policy.

6.1. Prioritizing the Lower-Income Population in the Short-Term

Before discussing specific tax policies, this section will articulate an underlying principle upon which all policy recommendations of this paper rely—while the long-term goal should be promoting fertility desire and birth rate across all income levels, China should tailor its current policies mainly for lower-income families. There are four reasons why.

6.1.1. Vast Income Inequality

6.1.1.1. A Significant Portion of the Chinese Population Resides in the Lower-Income Stratum

In 2020, China's average disposable income of residents was 32,189 yuan (\$4,677).¹³³ That number rose to around 35,128 yuan (\$5,104) a year later with a nominal increase of 9.1% and a real increase of 8.1%.¹³⁴ By contrast, China's median disposable income of residents was notably lower—27,540 yuan (\$4,002) in 2020 and 29,975 yuan (\$4,356) in 2021.¹³⁵ The disparity between these two figures suggests a rising income inequality within the Chinese population, as the rich have driven up the average income relative to median income. Thus, some have suggested that a large percentage of the Chinese population likely belongs to the lower middle class.¹³⁶

The estimate was corroborated by Chinese Premier Li Keqiang's unprecedented disclosure at an annual press conference: "There are over 600 million people whose monthly income is barely 1,000 yuan

¹³³ *Households' Income and Consumption Expenditure in 2021*, NAT'L BUREAU STAT. CHINA (Jan. 18, 2022), http://www.stats.gov.cn/english/PressRelease/202201/t20220118_1826649.html [<https://perma.cc/F7LA-TXRA>].

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *See How Well-off Is China's Middle Class?*, CHINAPOWER (Sept. 30, 2021), <https://chinapower.csis.org/china-middle-class/> [<https://perma.cc/TKL3-FKHP>] ("In China, 68 percent of the middle class falls into the lower-middle income category . . .").

(\$145), not enough to rent a room in the Chinese cities.”¹³⁷ This amounts to approximately 43% of the total population. Yet, the precise meaning of “monthly income” remains ambiguous, allowing for three different interpretations. First, 600 million workers received compensation of less than 1,000 yuan per month for their work. Second, among the poorest households in China, consisting of both employed and unemployed individuals, including children and the elderly, 600 million people earned a monthly average income of less than 1,000 yuan. Third, the average *disposable* income of individuals falling into the second interpretation was less than 1,000 yuan. Each of the three interpretations is increasingly optimistic about the income level of the 600 million Chinese people.

Prior research might help us make better sense of the data. A research group at Beijing Normal University suggested that 600 million people had a monthly disposable income of less than 1,090 yuan.¹³⁸ Meanwhile, Thomas Piketty predicted that the average annual income of the lower 50% of the working population in China (about 536 million people out of 1.07 billion) was 17,645 yuan (\$2,564) in 2015.¹³⁹ Despite discrepancies in the precise estimates, it is reasonable to conclude that around 40% of the Chinese population live in households with a monthly average disposable income below 1,000 yuan. The average household population is 2.62 per household in 2021.¹⁴⁰ Thus, even if we generously round up to 3—that means on average, a large portion of three-members families earn a monthly income less than 3,000 yuan (\$436).

¹³⁷ Qiaoyi Li, *600m with \$140 Monthly Income Worries Top*, GLOBAL TIMES (May 29, 2020), <https://www.globaltimes.cn/content/1189968.shtml> [https://perma.cc/P9LH-2EGS]; PTI, *China Has over 600 Million Poor with \$140 Monthly Income: Premier Li Keqiang*, CNBC (May 28, 2020), <https://www.cnbc.com/economy/china-has-over-600-million-poor-with-140-monthly-income-premier-li-keqiang-6024341.htm> [https://perma.cc/5XEB-QX42].

¹³⁸ Lu Jingliang (卢晶亮), *Guanyu Guoren de Shouru Qingkuang, Women Liaojie Duoshao* (关于国人的收入情况, 我们了解多少) [How Much Do We Know about the Income Level of the Chinese], INST. ECON. & SOC. RSCH., JINAN UNIV. (June 10, 2020), <https://iesr.jnu.edu.cn/2020/0610/c17144a490625/page.htm> [https://perma.cc/5LHR-DWR7].

¹³⁹ Thomas Piketty et al., *Capital Accumulation, Private Property, and Rising Inequality in China, 1978–2015*, 109 AM. ECON. REV. 2469, 2483–84 (2019).

¹⁴⁰ Sankou Zhi Jia Buzai! Jiating Hupingjun Renkou Diepo 3 Yiweizhe Shenme? (三口之家不再! 家庭户平均人口跌破 3 意味着什么?) [No More Three-Members Family! What Does It Mean to Have an Average Household Population Lower than 3?], Zhongguo Xinwen Wang (中国新闻网) [CHINA NEWS] (May 12, 2021), <https://www.chinanews.com.cn/gn/2021/05-12/9475206.shtml> [https://perma.cc/364K-WVES].

The increasing average income of the Chinese people and the emergence of the super-rich class to some extent mask the reality that the majority of the population remains far from affluent: the wealthiest 1% own more than one-third of the total national household wealth, while the poorest 25% own less than 2%.¹⁴¹ Notably, a large percentage of the Chinese belong to the lower-income stratum.

6.1.1.2. Some Areas are Much Wealthier Than Others¹⁴²

There is a large income disparity between different areas of China. The chart below highlights that merely eight geographic areas, which are inhabited by roughly a third of the population, have an annual average disposable income that surpasses the national average. In comparison, twenty-four regions' annual average disposable income is less than half of Beijing's and Shanghai's. And more than a billion people reside in those areas, representing the supermajority of the country's populace.

Annual Average Disposable Income of 31 Areas in 2021							
	Area	Annual Average Disposable Income	Population Size (in million)		Area	Annual Average Disposable Income	Population Size (in million)
1	Shanghai	78,027 yuan (\$11,338)	24.89	16	Hainan	30,457 yuan (\$4,426)	10.2

¹⁴¹ Yu Xie & Yongai Jin, *Household Wealth in China*, 47 CHINESE SOCIO. REV. 203, 203 (2015).

¹⁴² Xilan 31 Shengfen 2021 Renjunshouru: Shanghai Zai Duokui, Sidi Liangweishu Zengzhang (细览 31 省份 2021 人均收入: 上海再夺魁, 四地两位数增长) [Analysis of Annual Average Disposable Income of 31 Areas in 2021: Shanghai Leads the Nation Again, Four Areas Saw Double Digits Increase in Percentage], Zhongguo Xinwen Wang (中国新闻网) [CHINA NEWS] (Jan. 21, 2022), <http://www.chinanews.com.cn/cj/2022/01-21/9657874.shtml> [<https://perma.cc/ZR4C-MUQV>].

2	Beijing	75,002 yuan (\$10,899)	21.8 9	17	Hebei	29,383 yuan (\$4,270)	74.48
3	Zhejiang	57,541 yuan (\$8,361)	65.4	18	Sichuan	29,080 yuan (\$4,226)	83.72
4	Jiangsu	47,498 yuan (\$6,902)	85.0 5	19	Shaanxi	28,568 yuan (\$4,151)	39.54
5	Tianjin	47,449 yuan (\$6,895)	13.7 3	20	Ningxia	27,904 yuan (\$4,055)	7.25
6	Guangdong	44,993 yuan (\$6,538)	126. 84	21	Jilin	27,770 yuan (\$4,035)	23.75
7	Fujian	40,659 yuan (\$5,908)	41.8 7	22	Shanxi	27,426 yuan (\$3,985)	34.8
8	Shandong	35,705 yuan (\$5,188)	101. 7	23	Heilongjiang	27,159 yuan (\$3,947)	31.25
	National Average	35,128 yuan (\$5,104)	/	24	Henan	26,811 yuan (\$3,896)	98.83
9	Liaoning	35,112 yuan (\$5,102)	42.2 9	25	Guangxi	26,727 yuan (\$3,884)	50.37
10	Inner Mongolia	34,108 yuan (\$4,956)	24	26	Xinjiang	26,075 yuan (\$3,789)	25.89
11	Chongqing	33,803 yuan (\$4,911)	32.1 2	27	Qinghai	25,919 yuan (\$3,766)	5.94
12	Hunan	31,993 yuan (\$4,649)	66.2 2	28	Yunnan	25,666 yuan (\$3,730)	46.9
13	Anhui	30,904 yuan (\$4,491)	61.1 3	29	Tibet	24,950 yuan (\$3,626)	3.66

14	Hubei	30,829 yuan (\$4,480)	58.3	30	Guizhou	23,996 yuan (\$3,487)	38.52
15	Jiangxi	30,610 yuan (\$4,448)	45.1 7	31	Gansu	22,066 yuan (\$3,206)	24.9

6.1.2 “Rich Dad, Poor Dad”

According to a 2022 report released by a group of Chinese demographers, the average cost of raising a child from birth to age seventeen (the “Raising Cost₀₋₁₇”) in China is 485,000 yuan (\$70,476).¹⁴³ An additional expenditure of 142,000 yuan (\$20,634) is required if parents opt to support their child’s four-year college education, resulting in a total cost of 627,000 yuan (\$91,110).¹⁴⁴ This figure is quite substantial, particularly when compared to the average income. As revealed in Part 6.2., China has one of the highest costs of childrearing. Consequently, many young couples are discouraged from having children.

Yet, the cost of raising a child varies significantly based on geographic area, income level, and number of children in a family. The Raising Cost₀₋₁₇ for families in the bottom 20% income level is 116,000 yuan (\$16,856), while that figure increases to 1.2 million yuan (\$173,373) for the top 20% income level.¹⁴⁵ Similarly, the Raising Cost₀₋₁₇ in the rural area is 381,000 yuan (\$55,363) for a one-child family, 300,000 yuan (\$43,593) per child for a two-child family, and 228,000 yuan (\$33,131) per child for a three-child family, while these figures are 631,000 yuan (\$91,691), 497,000 yuan (\$72,219), and 377,000 yuan (\$54,782) per child for families living in urban areas.¹⁴⁶ Highly developed cities and provinces where the average income is significantly higher are also where it costs the most to raise a family. It costs 969,000 yuan (\$140,806) and 1,026,000 yuan (\$149,088) to raise a child in Beijing and Shanghai, respectively.¹⁴⁷ By contrast, a

¹⁴³ COST REPORT, *supra* note 98, at 8.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 1-2.

¹⁴⁷ *Id.* at 9.

less developed province like Guizhou has a Raising Cost₀₋₁₇ of only 333,000 yuan (\$48,389).¹⁴⁸

6.1.3. Subsidies Mean More to Families with Lower Income

Resources are scarce, as Economy 101 teaches. This principle applies equally to public finance. While it would be ideal for the government to provide sufficient subsidies to encourage fertility for all families, this is likely infeasible. Consequently, how to effectively spend a limited amount of money becomes a major policy issue. This paper recommends that the Chinese government spend more on incentivizing families with lower incomes.

The same subsidy would offer more incentives for lower-income families compared to middle- and high-income ones. Let's assume that the government provides a 1,000 yuan per child subsidy to all families every month. As discussed in Part 6.1.1.1., about 40% of the Chinese population earns a monthly income of less than 1,000 yuan. Even if we optimistically consider this income as the average disposable income, that means a one-child family could earn 3,000 yuan per month after tax. Thus, a 1,000-yuan subsidy could increase their family income by 33.3%. The increase would be larger if they choose to have two kids—their monthly income would increase from 4,000 yuan to 6,000 yuan, which is a 50% increase. By comparison, taking an average family in Shanghai as an example,¹⁴⁹ with an annual average disposable income of 78,027 yuan (about 6,502 yuan per month),¹⁵⁰ a one-child family's monthly income would increase from 19,506 yuan to 20,506 yuan after receiving the subsidy, which is only a 5% increase. It's far from attractive. Yet, to achieve the same level of incentive as a 1,000-yuan subsidy for a lower-income family, the government would need to pay the high-income family 6,437 yuan every month.

The same logic stands if we compare the cost of raising a child across different income levels. As shown in Part 6.1.2., the Raising Cost₀₋₁₇ is 116,000 yuan for the poorest 20% families, 1.2 million yuan for the top 20% families, and 485,000 yuan on average nationwide.

¹⁴⁸ *Id.* at 10.

¹⁴⁹ Though it might be ideal to compare with the top 20% income bracket families, it is practical to compare with an average Shanghai family, as this helps prove why it might be harder to incentivize city residents.

¹⁵⁰ See *infra* Part 6.1.1.2.

Let's simplify the situation without considering factors like inflation and varying costs for different ages. The monthly cost of raising a child for the three groups are 569 yuan, 5,882 yuan, and 2,377 yuan, respectively. A 1,000-yuan monthly subsidy would compensate for 176%, 17%, and 42% of the cost.

Thus, while a 1,000-yuan subsidy would be sufficient to stimulate lower-income families to seriously consider having another child, it is far too little for families with high income or living in areas where living expenses and the Raising Cost₀₋₁₇ are much higher.

6.1.4. Killing Three Birds with One Stone

Policies advantaging lower-income families would serve a threefold purpose in China's social policy landscape. First, they are the most cost-efficient and effective way to provide incentives to the most individuals. Second, a subsidy tailored to lower-income families would align with the Chinese government's flagship policy of eradicating extreme poverty.¹⁵¹ Third, because of the overlapping missions, the Chinese government could consolidate certain poverty reduction programs with the fertility promotion program, achieving two goals with one source of funding.

6.2. Replace Some Deductions with Tax Credits

China should replace child-related deductions with refundable tax credits to broaden the population base eligible for tax incentives. This section will first articulate the limited effect and negative implications of the current deductions and then propose two new tax credits to be created.

¹⁵¹ President Xi announced in 2021 that the "arduous task . . . has been fulfilled . . . [as] 98.99 million poor rural population have been taken out of poverty." However, the standard for extreme poverty in China is quite low – the threshold set to define extreme poverty amounts to 4,000 yuan per year. See *China's Xi Declares Victory in Ending Extreme Poverty*, BBC (Feb. 25, 2021), <https://www.bbc.com/news/world-asia-china-56194622> [https://perma.cc/V2NE-CRBU].

6.2.1. *The Rationale for Abolishing Certain Deductions*

6.2.1.1. *Limited Reach of Individual Income Tax*

In China, only a small fraction of the population pays Individual Income Tax. While official data on the exact number of taxpayers is not available, estimates suggest that the figure is quite small. In 2015, Jiang Kang, a former Minister of Finance official, stated that only 28 million people—about 2% of the population, paid IIT.¹⁵² Some experts have come up with a slightly different number, estimating that about 83 million people, or about 6% of the population, paid taxes in 2018 after the tax reform.¹⁵³ Another source placed the number at 65 million in 2019.¹⁵⁴ Regardless of which is more accurate, it is safe to estimate that at least 90% of the populace is exempt from IIT obligations. Consequently, the effectiveness of deductions, regardless of their perceived value, is inherently limited. After all, a deduction could at most decrease one's tax liability to zero. No matter how much effort is taken to optimize deduction-related policies, at most, only about 10% of the population will be impacted. More importantly, the group that should be prioritized (i.e., lower-income families), as discussed in Part 6.1., is completely excluded from the benefits conferred by deductions since they are likely exempted from the IIT.

6.2.1.2. *The Current Arrangement is Regressive and Inefficient*

The current arrangement disproportionately favors high-income individuals. The deductions are determined by taxpayers' tax

¹⁵² *Why Only 2% of Chinese Pay Any Income Tax*, ECONOMIST (Dec. 1, 2018), <https://www.economist.com/china/2018/12/01/why-only-2-of-chinese-pay-any-income-tax> [https://perma.cc/MB8U-QK33].

¹⁵³ Qin Shuo (秦朔) & Liu Yuanju (刘远举), *Geshi Qizhengdian Youmeiyou Tiaozheng de Biyao?* (个税起征点有没有调整的必要性?) [Would It Be Necessary to Adjust the IIT Exemption Amount?], *Diyi Caijing* (第一财经) [YICAI] (Mar. 22, 2021), <https://www.yicai.com/news/100994128.html> [https://perma.cc/E8V4-7EN6].

¹⁵⁴ *Shuzi Caijing Zhiku* (数字财经智库) [Digital Finance], *Zhongguo 14 Yi Renkou, Zhiyou 6500 Duo Wan Ren Jiaoshui, Zhe 3 Da Renqun Bu Jiaoshui?* (中国 14 亿人口, 只有 6500 多万人交税, 这 3 大群体不交税?) [Only 65 million Pays Taxes? Three Groups Don't Pay Taxes], Wangyi (网易) [NETEASE], <https://www.163.com/dy/article/FSMLAPBE0519TG73.html> [https://perma.cc/6Q36-BK6G].

bracket, meaning that the same 1,000-yuan-per-month deduction will result in varying tax reductions depending on an individual's tax rate. Corporate executives with an annual taxable income exceeding 960,000 yuan could save 5,400 yuan every year for every child they raise. Yet, those with an annual taxable income of less than 36,000 yuan would only receive a tax reduction of 360 yuan, while individuals exempted from IIT obligations would receive nothing.

This arrangement presents several issues. First, it creates a regressive system that goes against the objectives of the 2018 tax reform¹⁵⁵ and contributes to a widening wealth gap, which, in turn, may further reduce fertility desire. In addition, it is inefficient, distributing a large proportion of tax expenditures to the group that is less responsive to the incentive, as the amount is virtually negligible in comparison to their income level and childcare expenses. As elaborated in Part 6.1., the policy should target incentives to lower-income families to ensure maximum return on the limited funds.

6.2.2. Two Proposed Tax Credits

Thus, the Chinese government should replace some deductions with refundable tax credits. Tax credits are common incentives that allow eligible taxpayers to subtract the amount of the credits they have accrued from the total they owe. The new tax credits should be refundable, meaning individuals qualifying for the credits would receive a refund for any excess amount beyond their tax obligation.

6.2.2.1. The Nursing Tax Credit

First, the Nursing Expenses for A Child under Three Years Old Deduction should be replaced by a Nursing Tax Credit, which would range from partially to fully refundable based on the number of children in the household. Rather than a fixed deduction of 1,000

¹⁵⁵ Zeng Jinhua (曾金华), *Shenghua Geshui Gaige Zhongzai Fenhao Dangao* (深化个税改革重在分好“蛋糕”) [Equitable Distribution Is the Key Issue for the IIT Reform], *CHINA DAILY* (Oct. 15, 2021), <https://china.chinadaily.com.cn/a/202110/15/WS61696c4da3107be4979f2dd3.html> [https://perma.cc/9WAP-9GXL].

yuan per month, eligible taxpayers would be able to claim an 800-yuan-per-month credit for each child under three years old in their households. The credit would be 60% refundable for the first child (480 yuan per month), 80% for the second child (640 yuan per month), and 100% for the third child, with no required proof of expenses. The Nursing Tax Credit would be available to taxpayers of all income levels.

6.2.2.2. *The Childcare Tax Credit*

Second, the Child's Education Deduction should be replaced by a Childcare Tax Credit which, like the Nursing Tax Credits, would range from partially to fully refundable based on the number of children in the household. Eligible taxpayers would receive a 300-yuan-per-month credit for each child they raise until the child reaches the age of seventeen. The credit would be partially refundable at a rate of one-third for the first child (100 yuan per month), two-thirds for the second child (200 yuan per month), and fully refundable for the third child. No proof of expenses should be required to receive the credits, and taxpayers of all income levels should be eligible to claim the credit.

6.3. *Allow Married Couples to File Taxes Jointly*

In contrast to the United States, where taxpayers may select from five different filing statuses when filing their taxes, China has a single-status filing system, mandating the IIT be calculated and collected on an individual basis.¹⁵⁶ Even those who are married have their tax liabilities assessed separately based on their individual incomes. The rationale behind this single-status filing system is not entirely unreasonable – it keeps the transactional cost of tax collection lower, makes it more difficult for taxpayers to conceal their income, and simplifies the tax filing process.¹⁵⁷

¹⁵⁶ *China, Individual – Tax Administration*, PWC, <https://taxsummaries.pwc.com/peoples-republic-of-china/individual/tax-administration> [<https://perma.cc/5XTJ-S9HE>] (last visited Dec. 30, 2022) (“There is no joint tax return in China. Husbands and wives are assessed and taxed separately.”).

¹⁵⁷ See Geshui An Jiating Jizheng Buwei Haishi Bu Kexing (个税按家庭计征不为还是不可行) [Joint Filing: Inapplicable or Inaction], *Xinlang Caijing* (新浪财经)

Despite these reasons against expanding filing status, an expansion of filing status to at least allow married couples to file taxes jointly would help to promote both the desire to marry and to raise children. This section will first explain why the benefits of such an expansion outweigh any potential drawbacks, and then provide specific recommendations outlining how to make the change.

6.3.1. The Current System Discourages Childbearing

As illustrated in the chart below, the existing tax system favors families where the incomes of spouses are relatively similar. For three families with the same annual income (i.e., 140,000), the greater the difference in income between the spouses, the higher the amount of tax the couple would have to pay as a joint unit. The “penalization” reaches its zenith when one spouse chooses not to work, such as when a spouse decides to become a stay-at-home parent after having a child.

		Annual Income	Individual Income Tax	Family After-Tax Income
Family A	Spouse 1	140,000	5,480	134,520
	Spouse 2	0	0	
Family B	Spouse 1	70,000	300	139,400
	Spouse 2	70,000	300	
Family C	Spouse 1	100,000	1,480	138,520

[SINA FIN.], <http://finance.sina.com.cn/focus/gsjtjzy/> [https://perma.cc/X5UL-3ZL3] (last visited Apr. 12, 2023) (stating that the transactional cost would be too high for both taxpayers and regulators if families are allowed to file jointly); Hu Chunyan (胡春艳), “Yi Jiating Wei Danwei” Jiaoshui Xingbuxing (“以家庭为单位”缴税行不行) [Should People Be Allowed to File Tax Jointly as A Family], Renmin Wang (人民网) [PEOPLE.CN] (Apr. 10, 2020), <http://finance.people.com.cn/n1/2020/0410/c1004-31668603.html> [https://perma.cc/4YCF-V4ZT] (stating that allowing joint filing would make it more complicated for taxpayers to calculate their tax liabilities and make it more difficult to enforce tax). For more discussion, see *infra* Part 6.3.3.

	Spouse 2	40,000	0	
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*140,000 yuan is the average family annual income in Shanghai.¹⁵⁸

This system discourages childbearing. Social scientists have observed the “Motherhood Penalty”¹⁵⁹ in major economies, where women’s earnings suffer a decrease after giving birth.¹⁶⁰ As one study described, “[t]he costs of children for women’s careers and lifetime earnings may be substantial.”¹⁶¹ In Denmark, there is a 20% long-term gap between the earnings of mothers and fathers.¹⁶² China is no exception. Scholars have predicted that the careers of professional women are negatively impacted after giving birth—some will quit their jobs while many others will experience a long-term decrease in income.¹⁶³ In addition to the shrinkage of a woman’s income after giving birth, the lack of option to file jointly would further worsen the situation for families where the wife earned less than the husband even prior to having children.¹⁶⁴ Should the couple have the option to file jointly, a portion of the

¹⁵⁸ “Shisiwu” Guihua Toulou Gehsui Xin Fangxiang: Zonghe Suodeshui Kuoda, 45% Shuilü Huo Youhua (“十四五”规划透露个税新方向：综合所得扩大，45%税率或优化) [The 14th Five-year Plan Reveals New Direction of Reform: Expansion of Tax Base, May Adjust the 45% Bracket], Fujian Sheng Tushuguan (福建省图书馆) [FUJIAN PROVINCE LIBR.] (Mar. 24, 2021), http://fjlib.net/zt/fjstsgjcx/msgc/202103/t20210324_448573.htm [<https://perma.cc/M9PS-FQN2>].

¹⁵⁹ Some scholars refer to it as the “child penalties.” See Henrik Kleven et al., *Children and Gender Inequality: Evidence from Denmark*, 11 AM. ECON. J.: APPLIED ECON. 181, 181 (2019) (describing impact raising children have on the gender-gap in earnings).

¹⁶⁰ See *The Motherhood Penalty*, AAUW, <https://www.aauw.org/issues/equity/motherhood/> [<https://perma.cc/32AC-GPFX>] (last visited Feb. 4, 2023) (“[W]omen are financially penalized for having children.”).

¹⁶¹ Jérôme Adda et al., *The Career Costs of Children*, 125 J. POL. ECON. 293, 294 (2017).

¹⁶² Kleven et al., *supra* note 159.

¹⁶³ See Guangye He & Xiaogang Wu, *Family Status and Women’s Career Mobility During Urban China’s Economic Transition*, 44 DEMOGRAPHIC RSCH. 189, 189 (2021) (“Chinese women in the workforce are adversely affected by marriage and having dependent children. They are more likely than men to experience (involuntary, in particular) job exit to fulfill their roles as wives and mothers and less likely to move up in the career ladder. This pattern is more prominent as the economic reform proceeds.”).

¹⁶⁴ Families where the wives’ pre-fertility income was higher than the husbands’ would not be impacted by the lack of jointly filing option.

husband's income that would be subject to higher tax rate would be "shifted" to the wife. As a result, allowing the couple to file jointly and therefore income-shift could partially compensate for the loss of income due to the "Motherhood Penalty," by lowering the family's effective tax rate and thus its tax liabilities.

Additionally, even disregarding the "Motherhood Penalty," it is likely that more families who decide to have more than one child will choose to have one spouse leave the workplace temporarily or permanently. Single-income families would be more common if the fertility stimulation policies took effect. Even if both spouses continued to work after having a child, many women would likely encounter a temporary drop in income due to reduced bonuses and other attendance-related salaries.¹⁶⁵ Thus, the option of filing jointly would alleviate at least some financial pressure on the couples.

6.3.2. *The Proposed Change Could Potentially Encourage Marriages*

Marriage is often a prerequisite to wanting to have children. That is especially true in China, given the extremely low tolerance for out-of-wedlock births, as discussed in Part 2.1.2. Therefore, incentivizing marriage through introducing marriage bonuses could serve as a catalyst for increasing fertility.

In the United States and certain European Union countries, it is not uncommon for couples to accelerate or delay their marriages for tax purposes.¹⁶⁶ While the tax incentives may impact couples differently, they nonetheless have been an important factor in people's decision-making regarding marriages. As such, when formulating the IIT Law, China should consider potential marriage bonuses and penalties, ensuring the tax policy incentivizes

¹⁶⁵ See Eric Lindberg, *Women's Salaries Plummet after Giving Birth. Here's One Way to Restore Their Earning Power*, USC NEWS (June 24, 2020), <https://news.usc.edu/171888/women-giving-birth-child-penalty-salary-gap-usc-research/> [https://perma.cc/H7NA-N5AZ] ("Not only does their income drop significantly after women give birth – by about 40% in the United States – but this so-called 'child penalty' lingers for years.").

¹⁶⁶ See Alexander Fink, *German Income Taxation and the Timing of Marriage*, 52 APPLIED ECON. 475, 475 (2019) ("The results provide support for the hypothesis that pecuniary gains from joint taxation incentivize couples to prepone their marriages to the last quarter of a year, especially to December."); David L. Sjoquist & Mary Beth Walker, *The Marriage Tax and the Rate and Timing of Marriage*, 48 NAT'L TAX J. 547, 556 (1995) ("We do, however, find some evidence that the marriage tax causes individuals to postpone marriage for short periods of time.").

marriages. For example, allowing joint filing status for married couples would, in many cases, provide a strong impetus to get married (Part 6.3.4. will delve further into the need to prudently adjust the tax brackets for joint filing to ensure it indeed is a bonus, not a penalty).

As discussed in the preceding section, allowing married couples to file taxes jointly would likely reduce their tax liabilities, especially for couples with significant income disparities, providing an additional reason for people to consider marriage. For those who prefer to file separately even after getting married, the additional option would not prevent them from doing so, as they could elect between the two filing statuses.

6.3.3. Drawbacks Are Minimal

Opponents of the change point to the practical challenges of implementing the change.¹⁶⁷ First, they raise concerns about the potential for increased complexity in taxpayers' filing processes,¹⁶⁸ given that the majority of IIT were calculated, filed, and withheld by taxpayers' employers. Yet, after the 2018 tax reform, all taxpayers are required to file a tax return annually if they wish to receive a refund.¹⁶⁹ Were the tax credits proposal to be adopted, an even larger population would file tax returns in the future. Filing a tax return is no longer a novel concept for many taxpayers, and it might be more efficient to allow one family member to file for the entire family.

A second concern relates to the potential for joint filing to enable individuals to conceal income more easily, given that the government may lack access to all available data.¹⁷⁰ However, the 2018 tax reform helped to address the concern. In that reform, the Chinese government demanded multiple agencies improve data-

¹⁶⁷ Hu Chunyan, *supra* note 157.

¹⁶⁸ *Id.*

¹⁶⁹ Dong Gang (董刚) et al., *Geshui Gaige Quan Jiexi (个税改革全解析)* [Analysis on IIT Reform], KING & WOOD MALLESONS (Dec. 27, 2018), <https://www.chinalawinsight.com/2018/12/articles/tax/%E3%80%90%E5%9B%BE%E8%AF%B4%E4%B8%AA%E7%A8%8E%E3%80%91%E4%B8%AA%E7%A8%8E%E6%94%B9%E9%9D%A9%E5%85%A8%E8%A7%A3%E6%9E%90/> [https://perma.cc/JC69-KQER].

¹⁷⁰ Hu Chunyan, *supra* note 157.

sharing among themselves.¹⁷¹ It also improved the social credit system and imposed various penalties for those who illegally evaded tax liabilities.¹⁷²

6.3.4. How to Make the Change?

To make sure that the change would lead only to marriage bonuses, the government should adopt several safeguards. First, filing statuses should be optional, with even married individuals allowed to elect to file separately. Second, the corresponding taxable income for each tax bracket for joint filing should be at least doubled, if not more. That means if a taxable income of less than 36,000 yuan requires a 3% tax rate for someone who filed separately, that income should be at least 72,000 yuan for a married couple. The government could increase the threshold for each tax bracket further to make marriages even more attractive (e.g., a married couple would only need to pay 3% tax for taxable income less than 80,000 yuan per year). Third, as mentioned in Part 5.2.2., the current system requires a married couple to elect whether one spouse takes the entire deduction, or each takes 50% when filing separately. This arrangement could be maintained for those who are married but choose to file separately. For joint filing, there is no need to make this election.

6.4. Be Careful About the DINK Tax

6.4.1. What's A DINK Tax?

The phenomenon of DINK, an acronym for “Double Incomes, No Kids,” refers to the decision by certain families to deliberately remain childless.¹⁷³ As this lifestyle becomes increasingly prevalent

¹⁷¹ Dong Gang, *supra* note 169.

¹⁷² Zhongda Shuishou Weifa Shixin Zhuti Xinxi Gongbu Guanli Banfa (重大税收违法失信主体信息公布管理办法) [Measures for the Disclosure of Information on Parties with Serious Tax-Related Illegal and Dishonest Acts] (promulgated by the State Taxation Administration, Dec. 31, 2021, effective Feb. 1, 2022), CLI.4.5113078 (Lawinfochina).

¹⁷³ Lau, *supra* note 104.

in China,¹⁷⁴ some scholars, worried about the declining birth rate, have proposed to levy taxes on those families, as well as individuals who are not married and are childless.¹⁷⁵ They advocated for this tax to generate more revenue subsidizing families with children and to deter people from making this decision.

The DINK tax is not a Chinese invention. Demographers and politicians in other countries have suggested similar measures.¹⁷⁶ The Soviet Union imposed a Bachelor Tax to increase fertility rates. In the 1940s, the Communist government introduced a new tax requiring “all persons with non-agricultural income pay 6 per cent of their income if they have no child, 1 per cent of their income if they have one child, and [0.5] per cent if they have two children.”¹⁷⁷ Even though all taxes imposed on people with one and two children were later revoked in 1957, the tax on childless couples remained intact until the collapse of the Soviet Union.¹⁷⁸

¹⁷⁴ *Id.*

¹⁷⁵ Jiao Shengyu Jijin? Dui Dingke Zhengshui? Wangyou: Bu Sheng Wa Youzui? (交生育基金? 对丁克征税? 网友: 不生娃有罪?) [Contribute to Fertility Fund? Tax the DINKs? People: Not Having Kids Is a Crime Now?], Zhongguo Xinwen Wang (中国新闻网) [CHINANEWS] (Aug. 17, 2018), <https://www.chinanews.com.cn/sh/2018/08-17/8603567.shtml> [<https://perma.cc/7BJW-Q7YW>].

¹⁷⁶ See, e.g., Zoe Williams, Tax the Childless! Encourage ‘Our Own’ to Breed! What an Asinine, Inhumane Way to Tackle a Population Crisis, *GUARDIAN* (July 4, 2022), <https://www.theguardian.com/commentisfree/2022/jul/04/population-crisis-britain-paul-morland> [<https://perma.cc/ZCU6-RYQJ>] (criticizing the proposal of a demographer, Paul Morland, to tax the childless to boost fertility); Dmitry Sudakov, Childless Russian Families to Pay Taxes for Their Social Inaction, *PRAVDA.RU* (Sept. 15, 2006), <https://english.pravda.ru/russia/84467-childless/> [<https://perma.cc/28P4-D8FY>] (“Deputy Chairman of the State Duma Committee for Health Protection, Nikolai Gerasimenko, suggested the introduction of childlessness tax to improve the demographic situation in Russia.”); Paul Morland, *Taxing The Childless? A Demographer’s Response to Unjust Criticism*, *ARTICLE* (July 18, 2022), <https://www.thearticle.com/taxing-the-childless-a-demographers-response-to-unjust-criticism> [<https://perma.cc/7FKX-DKG6>] (“The state . . . should tax those without children more than those with them.”); Anthony Zurcher, *Forget the Rich, Tax the Childless*, *BBC* (Apr. 3, 2014), <https://www.bbc.com/news/blogs-echochambers-26861960> [<https://perma.cc/6XQX-KRGN>] (“His solution is raise taxes on everyone earning more than \$51,000 (£30,700) a year. Parents would still wind up owing less to the government, but childless singles and couples would take a hit.”).

¹⁷⁷ Franklyn D. Holzman, *Income Taxation in the Soviet Union: A Comparative View*, 11 *NAT’L TAX J.* 99, 103 (1958). See also Lauren Kaminsky, *Utopian Visions of Family Life in the Stalin-Era Soviet Union*, 44 *CENT. EUR. HIST.* 63, 84 (2011) (“[T]he 1944 law also instituted ‘Taxes on Bachelors, Single Citizens, and Citizens of the U.S.S.R. with Small Families.’”).

¹⁷⁸ Holzman, *supra* note 177, at 103 n.13; see also Victoria Ryabikova, *Taxes on Beards, Murders and Discos: Five Oddest Taxes in Russian History*, *RUSSIA BEYOND* (Mar.

6.4.2. Only Adopt A DINK Tax If It Is Absolutely Necessary

The primary benefit of a DINK tax is the potential increase in tax revenue. In 2020, more than 125 million households in China had only one member, and about 146 million were two-member households.¹⁷⁹ The combined number constituted more than half of the total households in China. Thus, there is a large tax base for a DINK tax, which could potentially generate large revenues that could be applied to programs incentivizing childbearing. Additionally, a DINK tax could by itself serve as an incentive for people to have kids. After the Bachelor Tax took effect in late 1944, along with the effect of other pro-natalist policies, the Soviet Union's fertility rate increased from 2.58 to 2.85 and stayed at a relatively high level for about two decades.¹⁸⁰

Yet, the policy is fraught with drawbacks. While the large tax base might be an upside for tax revenue collection, the public resistance to the policy would likely be substantial. One British columnist criticized the proposal as “an asinine, inhumane way to tackle a population crisis.”¹⁸¹ Chinese youth posted angrily on various social media platforms, attacking the “ridiculousness” of the “stupid recommendation.”¹⁸² Additionally, the increase in the Soviet Union's fertility rate was temporary – twenty years after the imposition of the tax, the fertility rate dropped to two and remained

21, 2021), <https://www.rbth.com/history/333558-five-oddest-taxes-in-russian-history> [<https://perma.cc/9W5K-85S5>] (“The tax on childlessness was abolished only in 1992 after the collapse of the USSR.”).

¹⁷⁹ Li Jinlei (李金磊), *Zhongguo Yirenhu Shuliang Chao 1.25 Yi! Dujuzhe Weihe Yuelai Yueduo?* (中国一人户数量超 1.25 亿! 独居者为何越来越多?) [More than 125 Million Chinese Live by Themselves! Why?], *Zhongguo Xinwen Wang* (中国新闻网) [CHINANEWS] (Jan. 14, 2022), <https://www.chinanews.com.cn/cj/2022/01-14/9652147.shtml> [<https://perma.cc/97KL-BBCP>].

¹⁸⁰ Aaron O'Neill, *Total Fertility Rate in Russia from 1840 to 2020*, STATISTA (June 21, 2022), <https://www.statista.com/statistics/1033851/fertility-rate-russia-1840-2020/> [<https://perma.cc/S7ZB-V7JH>].

¹⁸¹ Williams, *supra* note 176.

¹⁸² Zhuanjia Jiaoshou Yaoqiu “Shengyu Jijin,” “Zheng Dingkeshui,” Wangyou de Pinglun Naodong Dakai (专家教授要求“生育基金”、“征丁克税”，网友的评论脑洞大开!) [Experts Advocate for Fertility Fund and Dink Taxes, People Commented Sarcastically], Souhu (搜狐) [SOHU], https://www.sohu.com/a/248457040_100087653 [<https://perma.cc/RJ5P-KCCF>].

around that level for thirty years.¹⁸³ The incentive, therefore, is likely a short-term one.

There is also a practicality issue associated with a DINK tax. Policymakers need to consider if those with infertility could be exempted from the tax. If not, the tax might be discriminatory and could trigger larger public dissent. With this exemption, however, a system to prevent potential abuse of the exemption would need to be created, especially considering China's highly developed counterfeit document industry.¹⁸⁴

Thus, policymakers must exercise caution when considering a DINK tax. While it may appear to be a tempting solution, especially when the other proposals would require massive tax expenditures, a DINK tax could have serious repercussions for the government's public image and may ultimately backfire. An extreme policy may anger citizens who value their autonomy and freedom, resulting in their decision to not have a child to protest the policy.¹⁸⁵ Therefore, this paper advises against a DINK tax.

7. FEASIBILITY AND NECESSITY

This section assesses the recommended policy changes based on their feasibility and necessity. It appraises the expenses associated with the implementation of the proposed policies and the potential costs of inaction, all within the context of China's financial

¹⁸³ O'Neill, *supra* note 180.

¹⁸⁴ See Bai Jiali (白佳丽) et al., Siwang Zhengming, Bingwei Tongzhi Zai Wangshang Yi Liang Bai Yuan Jiu Neng Mai (死亡证明、病危通知 在网上 一两百元就能买) [Death Certificates, Notices of Critical Illness . . . Can Be Bought Online for Just a Couple of Hundred Yuan], Xinhua Meiri Dianxun (新华每日电讯) [XINHUA DAILY TEL.] (Jan. 6, 2022), http://www.news.cn/mrdx/2022-01/06/c_1310411684.htm (stating that seven out of nine online stores the journalist randomly contacted sold forged medical documents such as notice of critical illness and proof of diagnose with hospital's stamps for just a couple of hundred yuan).

¹⁸⁵ See Iris Zhao, *Zhongguo Kaifang Santai Zhengce, Nianqingren Que Zhixiang "Yangping,"* (中国开放三胎政策, 年轻人却只想"躺平") [China Allows the Third Child, the Youth Are Not Interested], ABC NEWS (June 7, 2021), <https://www.abc.net.au/chinese/2021-06-07/china-three-child-policy-younger-generation-lie-flat/100195502> [<https://perma.cc/HL2L-NUQA>] (showing that Chinese youth are reluctant to have kids as a response to social reality and government's policies); Yu, *supra* note 102 ("Frustrated by increasingly iron-fisted government policies during the Covid lockdowns, young Chinese people have adopted an apathetic 'lying flat' philosophy . . . [h]aving children is the last thing on their minds.").

capabilities. Additionally, it provides a concise introduction to China's legislative process and political landscape to explain why the proposed policy alterations would likely encounter minimal legal, political, or public opposition.

7.1. Financial Considerations

7.1.1. Painful yet Must-Pay Financial Burden

The creation of the two tax credits would inevitably increase the tax expenditure of the Chinese government. However, this is a painful price China must pay in the short term. The joint filing proposal could be optional, depending on China's financial capacity.

7.1.1.1. How Much Would the Tax Credits Cost?

To maintain its current population size, China must maintain a fertility rate of at least 2.1, corresponding to at least 15 million newborns every year.¹⁸⁶ Yet, in 2021, only 10.6 million were born.¹⁸⁷ Given the status quo, this paper assumes conservatively that the new policies would provide certain incentives and boost the newborn population to 13 million people per year on average for the next decade. Based on the current data, 44% of the newborns in 2021 were the first child of their families, 41% were the second child, and 15% were the third child.¹⁸⁸

¹⁸⁶ REN ZEPING (任泽平) ET AL, ZHONGGUO RENKOU YUCE BAOGAO 2021 BAN (中国人口预测报告 2021 版) [CHINA POPULATION PROJECTION REPORT 2021] 2 (2021).

¹⁸⁷ *China's Birth Rate Drops to Record Low in 2021*, REUTERS (Jan. 17, 2022), <https://www.reuters.com/world/china/birth-rate-mainland-china-2021-drops-record-low-2022-01-17/> [https://perma.cc/4UBR-M2GV].

¹⁸⁸ He Shuyao (何书瑶), 29 Shengfen Gongbu Zuixin Chusheng Shuju, Weihe Ertai Santai Zhengce Xia Chusheng Renkou Reng Zai Xiahua (29 省份公布最新出生数据, 为何二胎、三胎政策下出生人口仍在下滑) [29 Provinces Released Latest Newborns Data, Why Two-Child and Three-Child Policies Failed to Increase the Newborn Numbers], Shanggaun (上观) [SHANGHAI OBSERVER] (Aug. 1, 2022), <https://export.shobserver.com/toutiao/html/512620.html#> [https://perma.cc/R3KE-ZC3V].

$$\begin{aligned}
 & \text{Total Expenditure}_{\text{Nursing Tax Credit}} \text{ Per Year}^{189} \\
 & = 3 \times (\text{Refundable Nursing Tax Credit}_{\text{one-child}} + \text{Refundable} \\
 & \text{Nursing Tax Credit}_{\text{second child}} + \text{Refundable Nursing Tax Credit}_{\text{third}} \\
 & \text{child}) \\
 & = 3 \times [(480 \text{ yuan} \times 12 \times 13,000,000 \times 44\%) + (640 \text{ yuan} \\
 & \times 12 \times 13,000,000 \times 41\%) + (800 \text{ yuan} \times 12 \times 13,000,000 \times 15\%)] \\
 & = 277,804,800,000 \text{ yuan } (\$40,368,040,900)
 \end{aligned}$$

$$\begin{aligned}
 & \text{Total Expenditure}_{\text{Childcare Tax Credit}} \text{ Per Year}^{190} \\
 & = 17 \times (\text{Refundable Childcare Tax Credit}_{\text{one-child}} + \text{Refundable} \\
 & \text{Childcare Tax Credit}_{\text{second child}} + \text{Refundable Childcare Tax Credit}_{\text{third}} \\
 & \text{child}) \\
 & = 17 \times [(100 \text{ yuan} \times 12 \times 13,000,000 \times 44\%) + (200 \text{ yuan} \\
 & \times 12 \times 13,000,000 \times 41\%) + (300 \text{ yuan} \times 12 \times 13,000,000 \times 15\%)] \\
 & = 453,492,000,000 \text{ yuan } (\$65,897,289,850)
 \end{aligned}$$

As shown above, the two tax credits program would cost about 731 billion yuan (\$106.3 billion) annually, if the stated objective, i.e., an average of 13 million newborns every year in the next two decades, were to be achieved. While this is a hefty cost, it is one the Chinese government could afford. In 2021, the Chinese government's revenue was a little more than 20 trillion yuan (\$2.91 trillion).¹⁹¹ China's GDP in 2021 was 110 trillion yuan (\$16

¹⁸⁹ This is a simplified calculation based on assumptions that (1) the average number of newborns from ten years before the new policy is enacted and ten years after will be 13 million, and (2) the average percentages of first children, second children, and third children out of the total number of newborns each year from ten years before the new policy is enacted and twenty years after will be 44%, 41%, and 15%. Further, 480 yuan, 640 yuan, and 800 yuan represent the monthly refundable Nursing Tax Credit amounts for the first child, the second child, and the third child respectively, as proposed in Part 6.2.2.1. The multiplier in the equation is three because taxpayers would receive the Nursing Tax Credit for each of their children under the age of three.

¹⁹⁰ As with the equation for Total Expenditure_{Nursing Tax Credit} Per Year, the same two assumptions apply here. Further, 100 yuan, 200 yuan, and 300 yuan represent the monthly refundable Childcare Tax Credit amounts for the first child, the second child, and the third child respectively, as proposed in Part 6.2.2.2. The multiplier in the equation is seventeen because taxpayers would receive the Childcare Tax Credit for each of their children under the age of seventeen.

¹⁹¹ 2021 Nian Caizheng Shouzhi Zhuangkuang (2021 财政收支情况) [Government Revenue and Public Spending in 2021], Zhonghua Renmin Gongheguo Zhongyang Renmin Zhengfu (中华人民共和国中央人民政府) [THE STATE COUNCIL, CHINA] (Jan. 29, 2022), http://www.gov.cn/xinwen/2022-01/29/content_5671104.htm [https://perma.cc/25X8-5Q4H].

trillion).¹⁹² The projected expenditure of the tax credits program would amount to a mere 0.66% of the country's GDP.

7.1.1.2. Lessons of the OECD Countries' Public Spending on Family Benefits

China is not the only, nor the first, country facing a low fertility rate. Many countries, especially developed ones, are struggling to boost fertility.¹⁹³ Increasing public spending on family benefits has been a common practice of almost all OECD countries that are pro-natalist. In 2017, the OECD countries spent, on average, 2.29% of their GDPs on family benefits.¹⁹⁴ Experts have observed a correlation between public spending and the increase in fertility rate—every additional 1% of GDP spent on family benefits increases the fertility rate by 0.1.¹⁹⁵ Additionally, countries with higher cash benefits for families generally witnessed higher fertility rates.¹⁹⁶ Large-scale expansions of family policies often have considerable short-term effects on fertility, leading to temporary baby booms and giving a time-limited boost to period TFR.¹⁹⁷ Thus, the experience of the OECD countries supports public spending on pro-natalist policies.¹⁹⁸

¹⁹² 2021 Nian Zhongguo Guoneishengchanzongzhi Bi Shangnian Zengzhang 8.1% (2021 年中国国内生产总值比上年增长 8.1%) [China's GDP Increased by 8.1% in 2021], *Zhonghua Renmin Gongheguo Zhongyang Renmin Zhengfu* (中华人民共和国中央人民政府) [THE STATE COUNCIL, CHINA] (Jan. 17, 2022), http://www.gov.cn/xinwen/2022-01/17/content_5668972.htm [<https://perma.cc/4CVH-EB7Z>].

¹⁹³ See Claire Cain Miller, *Would Americans Have More Babies if the Government Paid Them?*, N.Y. TIMES: THE UPSHOT (Feb. 17, 2021), <https://www.nytimes.com/2021/02/17/upshot/americans-fertility-babies.html?referringSource=articleShare> [<https://perma.cc/87FY-HMZY>] (“Government benefits to encourage women to have children, known as pronatalist policies, are common in other rich countries[.]”).

¹⁹⁴ *Public Spending on Family Benefits*, OECD (Feb. 2023), https://www.oecd.org/els/soc/PF1_1_Public_spending_on_family_benefits.pdf [<https://perma.cc/3DYQ-3JWC>].

¹⁹⁵ COST REPORT, *supra* note 98, at 6 (“The level of public spending on families shows relatively close correlation with period fertility rates as well as with cohort family size.”).

¹⁹⁶ *Id.*

¹⁹⁷ Tomáš Sobotka et al., *Policy Responses to Low Fertility: How Effective Are They?* 6 (United Nations Population Fund, Working Paper No. 1, 2019).

¹⁹⁸ Notably, countries received different results from similar spending programs—tax breaks have been effective in certain countries but not others.

7.1.1.3. *Affordable Tax Credit Expenses Weighed against Unsustainable Pension Fund, Spiking Medical Expenses, and Stagnant Economy*

As explained in Part 7.1.1.1., the projected cost of the proposed tax credits, although substantial, would not surpass China's financial capacity. The Chinese government would have access to various funding resources to support the programs. For instance, in 2008, as an emergency response to global financial distress as well as the devastating 2008 Sichuan Earthquake, the Chinese government launched the Chinese Economic Stimulus Program, spending 4 trillion yuan (\$580 billion) to stabilize the economy.¹⁹⁹ China's GDP in 2008 was 31.4 trillion yuan (\$4.59 trillion), which is a mere 25.88% of its 2021 size.²⁰⁰ Chinese financiers have lent \$153 billion to African public sector borrowers between 2000 and 2019.²⁰¹ As the second-largest economy in the world, China could certainly bear the additional expenditure. More importantly, the expenses would be temporary—after China reverses the declining fertility rate, the Chinese government could, and should pursue a lower-cost, long-term plan to maintain the fertility rate.

Additionally, as detailed in Part 2.2., a failure to boost China's fertility rate could lead to devastating outcomes. Not only would the economy take a hit because of the shortages of labor and drop in production and consumption, but the country would face spiking

Scholars disagree with each other on the effects of public spending. The different outcomes for similar spending could be a result of careless policies. Money is not an elixir—the fertility rate would not grow magically just because a country has spent trillions of dollars. How to spend the money matters—various factors of the country need to be considered, e.g., its economic development, key deterrents of fertility, and so on. See, e.g., Adriaan Kalwij, *The Impact of Family Policy Expenditure on Fertility in Western Europe*, 47 *DEMOGRAPHY* 503, 514 (2010) (“I find that in contrast to previous empirical findings . . . family allowance has no significant effect on birth probabilities.”).

¹⁹⁹ Christine Wong, *The Fiscal Stimulus Programme and Public Governance Issues in China*, 11 *OECD J. BUDGETING* 1, 2 (2011).

²⁰⁰ GDP (current US\$)—China, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CN> [<https://perma.cc/226Q-K3XJ>] (last visited Feb. 12, 2023).

²⁰¹ Zainab Usman, *What Do We Know About Chinese Lending in Africa?*, CARNEGIE ENDOWMENT INT'L PEACE (June 2, 2021), <https://carnegieendowment.org/2021/06/02/what-do-we-know-about-chinese-lending-in-africa-pub-84648#:~:text=China's%20lending%20portfolio%20is%20large,borrowers%20between%202000%20and%202019> [<https://perma.cc/9WH4-V2C7>].

costs for health care, pension funds, and long-term care. Such financial burdens could lead to social unrest and therefore destabilize society, leading to extensive unwanted expenses.

7.1.1.4. Allowance of Joint Filing – An Option that Could be Deferred

Due to the lack of specific tax filing data, it is difficult to determine the precise magnitude of the potential lost tax revenue due to joint tax filing. Nevertheless, it is evident that such a change would primarily benefit the middle- and high-income families, as they are in greater need of the income-shifting mechanism as a means of lowering their tax brackets. Therefore, given this paper's other policy recommendations, which emphasize pro-natalist incentives among the lower-income strata in the short term,²⁰² this policy change could be deferred should it impose too great a financial burden on the Central Government.

7.2. Little Resistance Expected and Legal Challenges Unlikely

7.2.1. China's Legislation Amendment/Revision Process and Its Application

The National People's Congress (the "NPC"), "the supreme organ of state power," is vested with the responsibility of legislating in China.²⁰³ Comprised of around 3,000 elected deputies, the NPC meets annually for approximately two weeks in March to vote on important pieces of legislation and personnel assignments, among other things. The temporary nature of the plenary sessions made the Standing Committee of the National People's Congress (the "NPCSC") the primary institute that carries legislative power.²⁰⁴ Meeting in continuous, bi-monthly sessions when the NPC is not in session, the 167-member committee has the authority to directly

²⁰² See *infra* Part 6.1.

²⁰³ *State Structure of the People's Republic of China*, NAT'L PEOPLE'S CONG. CHINA, http://www.npc.gov.cn/zgrdw/englishnpc/stateStructure/node_3826.htm [<https://perma.cc/WEU3-2ACA>] (last visited Feb. 23, 2023).

²⁰⁴ *Id.*

pass and amend almost all basic laws except for amendments to the Constitution. Thus, any modification to the IIT law, whether through amendment or revision,²⁰⁵ would require the approval of either the NPC or the NPCSC.²⁰⁶ The IIT law has been amended seven times since its enactment, with the NPCSC directly approving all amendments without subjecting them to a vote in the NPC. Therefore, if the Chinese government were to amend the IIT again, it is most likely that the draft amendment would be submitted to the NPCSC for approval.

Four steps are required before passing an amendment to the IIT Law through the NPCSC.

First, a bill needs to be sponsored by an entity or certain individuals. Those who are qualified to submit a bill to the NPCSC are: the Chairperson Conference of the NPCSC (composed of the chairperson, vice chairpersons, and the general secretary of the NPCSC), the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate, each of all Special Committees of the NPC, and any group composed of at least ten members of the NPCSC.²⁰⁷

²⁰⁵ They are two distinct concepts in China's legislative system, along with a third one that does not apply to the discussion. See Xiuding, Xiugai Jueding, Xiuzhengan— Falü Xiugai de Sanzhong Xingshi (修订、修改决定、修正案—法律修改的三种形式) [Three Ways to Change Laws: Revision, Decision to Amend, and Amendment], Guojia Shichang Jiandu Guanli Zongju Fagui Si (国家市场监督管理总局法规司) [LEGAL DIV. STATE ADMIN. MARKET REG.] (Apr. 21, 2009), https://www.samr.gov.cn/fgs/dfzjs/200904/t20090421_295186.html [https://perma.cc/SKE7-AATW].

²⁰⁶ In 1985, the NPC issued a document named Decision of the National People's Congress on Authorizing the State Council to Formulate Interim Provisions or Regulations Concerning the Reform of the Economic Structure and the Open Policy (the "Decision₃"), allowing the State Council to adjust current tax policy and create new tax without involving the NPCSC. The Decision₃ is adopted to enable the State Council to "flexibly" run a trial test before having certain rules be written as a law by the NPC or the NPCSC. Wang Hanbin (王汉斌), Sec'y Gen., Sixth Nat'l People's Cong. Standing Comm., Guanyu "Shouquan Guowuyuan Zai Jinji Tizhi Gaige He Duiwai Kaifang Fangmian Keyi Zhiding Zanzing de Guiding Huo Tiaoli de Jueding (Caoan)" de Shuomin (关于"授权国务院在经济体制改革和对外开放方面可以制定暂行的规定或者条例的决定(草案)"的说明) [Explanation for Authorization to the State Council to Make Temporary Rules Regarding Economic Reform and Opening Up] (Apr. 3, 1985), <http://www.reformdata.org/1985/0403/21834.shtml> [https://perma.cc/S7DK-3WR3].

²⁰⁷ Woguo de Lifa Chengxu (我国的立法程序) [Legislative Process of Our Country], Quanguo Renmin Daibiao Dahui (全国人民代表大会) [NAT'L PEOPLE'S CONG.] (Oct. 26, 2020), <http://www.npc.gov.cn/npc/c12674/202010/2612d414d4b14540a1aab739cc1fd030.shtml> [https://perma.cc/4NUA-LLNY].

Second, the bill needs to be thoroughly reviewed and discussed by the NPCSC. All members of the NPCSC will receive a draft of the bill seven days before the meeting, during which the sponsors will present the bill and answer questions. Then, the NPCSC convenes in smaller groups to discuss the bill. When necessary, joint group meetings may be held. The Special Committee on the related topics also reviews the draft, proposes any changes, and then sends the draft to the Constitution and Law Committee for final review and discussion. In theory, all bills need to go through “three reviews”²⁰⁸ before they are ready for a vote. Yet, for bills that receive little dissent, the three reviews may be skipped; for those that are controversial, additional reviews and discussions are allowed. In instances where consensus about a bill is not reached within two years, the chairperson of the NPCSC may report the matter to the NPCSC and abort the review process.²⁰⁹

Third, the members of the NPCSC vote on the bill. A majority of votes is required for passing the bill.²¹⁰

Fourth, the President of the People’s Republic of China needs to sign the passed bills to bring them into effect.²¹¹

Yet, that is just a part of the story – the *de jure* law-making process. In reality, when a bill is sponsored and introduced to the NPCSC or the NPC, it is likely poised to become law. A bill is rarely blocked or rejected at this point.²¹² Even when this happens, the bill is likely to pass later after revisions if the Chinese government still believes the law is necessary (e.g., after being blocked in 2006, the Property Law eventually passed in 2007 after some revisions²¹³). As

²⁰⁸ See Li Zhengbin (李正斌), “Sandu” Bingfei “Sansheng” (“三读”并非“三审”) [“Three Reviews” Is Conceptually Different From Reading], <http://news.sina.com.cn/o/2006-07-24/09129549703s.shtml> [https://perma.cc/3EG5-CPN3] (introducing Three Reviews and differ it from reading, a legislative process commonly seen in the Western countries).

²⁰⁹ NAT’L PEOPLE’S CONG., *supra* note 207.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² See Tony Saich, *The National People’s Congress: Functions and Membership*, HARV. ASH. CENT. 1, 7 (2015), https://ash.harvard.edu/files/ash/files/the_national_peoples_congress.pdf [https://perma.cc/7VVE-R2EQ].

²¹³ See Zhang Jianfeng (章剑峰), Faxuejia Cheng Wuquanfa Buneng Daotui (法学家称制订物权法不能倒退) [Legal Scholar Argues that Property Law Enactment Shall Not Be Delayed], *Zhongguo Jinji Shibao* (中国经济时报) [ECON. DAILY] (Mar. 1, 2006), <http://finance.sina.com.cn/roll/20060301/0912573959.shtml> [https://perma.cc/8YTL-BQCL] (stating that the Property Law was blocked in 2006 because of the opposition of an influential expert); Laney Zhang, Chinese Law

such, the NPC is largely considered a “rubber stamp,” which has garnered the Chinese government criticism for its lack of democratic lawmaking.²¹⁴ However, while it is probably true that votes inside the Great Hall of the People are generally ceremonial, not all bills can easily become law.

Behind-the-scenes discussions are the real hurdle for a bill to pass. As a meritocratic system, the Chinese government often seeks to build inter-agency consensus and asks for scholars’ opinions when turning a policy idea into a bill, and eventually the law.²¹⁵ Normally, expert panels are formed to advise on the draft of a particular bill.²¹⁶ Additionally, the government tests the general public’s attitude toward certain bills before enacting them nationwide.²¹⁷ Of course, before the bill is sent for the NPCSC’s review, there is a leadership review stage in which the CCP leaders will decide whether to move forward with legislation. With such a

on Private Ownership of Real Property, LIBR. CONG.: IN CUSTODIA LEGIS (Mar. 10, 2015), <https://web.archive.org/web/20221128140729/https://blogs.loc.gov/law/2015/03/chinese-law-on-private-ownership-of-real-property/> (“The Property Rights Law [Wuquan Fa], promulgated by the National People’s Congress (NPC) on March 16, 2007, effective October 1, 2007 . . .”).

²¹⁴ See, e.g., Charles Riley, *China’s Rubber-Stamp Parliament: 3 Things You Need to Know*, CNN (Mar. 5, 2015), <https://money.cnn.com/2015/03/04/news/economy/china-national-peoples-congress/index.html> [<https://perma.cc/NW5Q-DXKW>] (referring to the NPC as a rubber-stamp).

²¹⁵ See *New Law Strengthens China’s Private Property Rights*, GUARDIAN (Mar. 16, 2007) <https://www.theguardian.com/world/2007/mar/16/china> [<https://perma.cc/8VQB-6PUU>] (showing that it took China 14 years to pass its property law because “it had been vigorously opposed by a small but influential group of scholars and retired officials”).

²¹⁶ See e.g., Yang Xueting (杨雪婷), *Fanlongduan Fa Qicao Xiaozu Zhuanjia: Ying She Duli Fanlongduan Jigou*, (《反垄断法》起草小组专家：应设独立反垄断机构) [Experts on Anti-Monopoly Law Drafting Group Suggests An Independent Anti-Monopoly Enforcement Agency], Zhejiang Zaixian (浙江在线) [ZHEJIANG ONLINE] (May 12, 2006), <https://china.zjol.com.cn/05china/system/2006/05/12/006615927.shtml> [<https://perma.cc/G4NQ-9YNJ>] (showing the involvement of experts in creation of laws).

²¹⁷ China often runs trial tests in certain areas before promoting a policy nationwide, to test both the effectiveness of the policy and the public opinion towards the policy. See *Conditions Not Right for China to Expand Property Tax Trial This Year* – *Xinhua*, REUTERS (Mar. 16, 2022), <https://www.reuters.com/world/china/conditions-not-right-china-expand-property-tax-trial-this-year-xinhua-2022-03-16/> [<https://perma.cc/HB2Y-5UMH>] (stating that the Chinese government decided to postpone its plan imposing property tax nationwide after witnessing unfavorable responses in areas where the tax pilot were launched from various sectors across the society).

system, many bills have been blocked or delayed for years. For instance, the Chinese government took approximately fifteen years to pass the State-Owned Assets Law and twenty-three years for the National Medals and National Honorary Titles Law.²¹⁸ Numerous legislative measures, such as the Telecommunications Law, have yet to be promulgated despite prolonged discourse spanning several decades.²¹⁹ The Chinese government is usually cautious about its legislative decisions. And, just like in any other country, legislation in China is a complicated process that involves the interests of different parties and requires compromises and deliberations.

Thus, in reality, the political viability of amending the IIT Law would depend on the opinions of scholars and the general population. Currently, there seems to be a consensus within academia that China needs to increase its spending on stimulating fertility.²²⁰ In fact, some scholars have proposed even more drastic plans than this paper's recommendations.²²¹ While scholars differ on where and how to spend the money, this paper tries to illustrate why it is better to increase the tax expenditure and stimulate fertility through the tax system. The general population has also responded positively to the government's tax-cut efforts and fertility subsidies. Therefore, once the bill is introduced to the NPCSC, it is likely to receive little resistance and be passed.

7.2.2. *The Lack of Legal Challenge to the Legislation*

In the United States, a commonly employed method to strike down legislation is to challenge its constitutionality.²²² The concept of an unconstitutional law is widely recognized in the American legal system. Yet, the Chinese legal system lacks a similar tool to challenge the state's legislation. In both theory and practice, it is

²¹⁸ Rory Truex, *Authoritarian Gridlock? Understanding Delay in the Chinese Legislative System*, 53 COMPAR. POL. STUD. 1455, 1466 (2020).

²¹⁹ *Id.*; see also Woguo "Dianxin Fa" de Lifa Guocheng (我国《电信法》的立法历程) [Legislative History of Telecommunication Law], Tongxin Ren Zaixian (通信人在线) [TXRZX.COM] (Nov. 18, 2017), <http://www.txrzx.com/i4520.html> (stating that China never passed its Telecommunication Law bill).

²²⁰ See, e.g., COST REPORT, *supra* note 98, at 19–20 (suggesting for direct subsidy to incentivize fertility); CHINA FERTILITY REPORT 2022, *supra* note 11 (advocating for direct subsidy); REN ZEPING, *supra* note 186, at 2 (proposing the same).

²²¹ REN ZEPING, *supra* note 186, at 2 (proposing to spend 5% of the GDP to incentivize childbearing).

²²² FED. R. CIV. P. 5.1.

exceedingly difficult, if not impossible, for a citizen to challenge legislation in court.

Legal scholars in China have varying opinions on the existence of a constitutional review system in China. Many contend that there is no such mechanism in place, arguing, "Litigation based on Constitution does not exist."²²³ Even for those who argue that the Constitution still plays a role in litigation, they admit the lack of constitutional cases in China in reality,²²⁴ let alone those that directly challenge legislation.

8. CONCLUSION

Declining birth and fertility rates have emerged as a global issue, especially for the developed world. China's experience with this issue, to some extent, reflects its economic success over the past four decades. Yet, changing individuals' preferences and attitudes is arguably much harder than developing an economy, and the Chinese government must be patient and acknowledge that no single policy can magically reverse this trend overnight. It is truly a long-term battle that requires well-planned policies as well as precise and efficient execution. Additionally, it cannot, and should not, rely on perpetual public subsidies. A permanent solution requires systematic changes in other areas that create a better social environment for raising a child, as briefly discussed in Part 4.1.

As this paper outlined, the ideal short-term policy solution is to reform the IIT system to incentivize fertility in China. This paper's recommendations include replacing certain tax deductions with

²²³ Xie Weiyuan (谢维雁), *Zhongguo Xianfa Susong Cunzai Lun* (中国宪法诉讼存在论) [Existence of Litigation Based on Constitution], *Xinadai Faxue* 2009 Nian Di 1 Qi (现代法学 2009 年第 1 期) [2009 MOD. L. ISSUE 1] 13; Zhang Qianfan (张千帆), *Zhongguo Xianzheng de Lujing yu Kunjing* (中国宪政的路径与困难) [The Paths and Difficulties of China's Constitutionalism], *Caijing Wang* (财经网) [FIN. NET] (Jan. 28, 2011), http://pt.csust.edu.cn/meol/common/script/preview/download_preview.jsp?fileid=131453&resid=443599&lid=42870&preview=preview [https://perma.cc/CH33-HSZ2].

²²⁴ See Keith Hand, *Resolving Constitutional Disputes in Contemporary China*, 7 U. PA. E. ASIA L. REV. 51, 51 (2011) ("In recent years, as the Party-state has strictly limited constitutional adjudication and moved aggressively to contain some citizen constitutional activism, this early speculation has turned to pessimism about China's constitutional trajectory Despite recent developments, Chinese citizens have continued to constitutionalize a broad range of political-legal disputes and advance constitutional arguments in a variety of forums.").

refundable tax credits to offer larger incentives, particularly among lower-income families; expanding the filing status and therefore allowing income shifting between spouses; and avoiding rushing into a DINK tax due to its potential to backfire. These policy proposals are tailored for China to cope with the quickly dropping population indexes over the next two decades. With temporary large-scale tax expenditures, China could potentially preserve its large population size and maintain the population base of women of childbearing age, or at least delay a demographic crisis and buy more time for longer-term efforts to take effect. The top priority now is to prevent the country from becoming locked in a population death spiral. Questions such as how many policies should be kept in the long-term or how they should be adjusted should be answered later, after there is better information about their possible effects.

While this paper focuses primarily on the reform of the IIT system, there is no reason for the country to limit its effort to this area only, even for the short-term. To achieve better results, China should act immediately in other areas while contemplating a long-term plan. The IIT system reform should only be a part, albeit a crucial one, of the short-term rescue bundle.