Ireland's responsibility for the impact of international tax abuse on economic, social and cultural rights

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Fiscal policy and human rights

The obligation to generate and devote the 'maximum available resources' for the realisation of economic, social and cultural rights is a foundation stone of the relationship between human rights and fiscal policy. It is contained in three prominent, widely ratified human rights treaties: the International Covenant on Economic, Social, and Cultural Rights (Art. 2.1 ICESCR), the Convention on the Rights of the Child (Art. 4, CRC), and the Convention on the Rights of Persons with Disabilities (Art. 4.2, CRPD). Thus, nearly all states are bound by this obligation, as contained in these treaties.

For example, Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) - ratified by 171 countries - requires States parties to take steps individually and through international cooperation to generate "the maximum of available resources with a view to achieving progressively the full realisation of rights recognized in the present Covenant". Notably, the principle of maximum available resources requires consideration of both government expenditures and efforts to generate revenue through taxation.[1]

In recent years, human rights monitoring bodies have articulated the obligation to take steps and devote maximum available resources, as an obligation to mobilise resources. For example, the Committee on Economic, Social and Cultural Rights (CESCR), in its 2017 General Comment (General Comment No. 24 on business activities and human rights, 23 June 2017) addressed the issue directly. The Committee on the Rights of the Child (CRC Committee) has also increased attention to domestic resource mobilisation, as evident in its General Comment No. 19 (2016) on public budgeting for realising children's rights.[2] In it, the CRC Committee clarifies that "budgets" includes "public revenue mobilisation, budget allocation and expenditures of States."[3]

The obligation to seek and provide international assistance and cooperation

[1] Committee on Economic, Social and Cultural Rights, (CESCR), (2007), An Evaluation of the Obligation to Take Steps to the "Maximum of Available Resources" under an Optional Protocol to the Covenant. See also: Radhika Balakrishnan et al., (2011), 'Maximum Available Resources & Human Rights: Analytical Report', accessed 23 February 2023, https://www.cwgl.rutgers.edu/ economic-a-social-rights/380-maximum-available-resources-a-human-rights-analytical-report-.

[2] Committee on the Rights of the Child, (2016), General comment No. 19 on public budgeting for the realisation of children's rights (art. 4) (2016) UN Doc CRC/C/GC/19 of 20 July 2016

[3] Committee on the Rights of the Child, (2016), General comment No. 19 on public budgeting for the realisation of children's rights (art. 4) (2016) UN Doc CRC/C/GC/19 of 20 July 2016

The United Nations Charter (Arts. 55 and 56) establishes the principle of international cooperation among States and has been subject to many subsequent developments, such as ICESCR Arts. 2(1) and 11(2);[4] Art. 4 CRC; and Art. 32 CRPD. International assistance and cooperation obligations are the legal basis for considering that "available resources" are not limited to those available within a state but include those available from the international community via international cooperation and assistance. The work of treaty monitoring bodies such as the CESCR,[5] the CRC Committee[6] and several UN Special Procedures has further confirmed this.[7]

Regarding international cooperation, human rights bodies have made several recommendations. For example, that "a contemporary interpretation of existing obligations of international cooperation and assistance" necessitates a move from an "outdated emphasis on tax sovereignty to a more modern conception of international tax cooperation in a globalised and interdependent world economy."[8] It has also been noted that States should take concerted and coordinated measures against tax evasion globally as part of their domestic and extraterritorial human rights obligations as well as their duty to protect people from third-party human rights violations, including by transnational corporations and other business enterprises.[9]

In the context of international tax negotiations, these principles of maximum available resources and the obligation of international cooperation,[10] impose duties on States to

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[4] The International Covenant on Economic, Social and Cultural Rights refers to "international assistance and cooperation," or similar formulations, also in articles 15.4, 22 and 23.

[5] See for example, Committee on Economic, Social and Cultural Rights (CESCR), (1990), General comment No. 3: The nature of State parties' obligations (Art. 2, par. 1), UN Doc E/1991/23, para 14. See also CESCR's general comments on food and health which specify that "State parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required" and "Depending on the availability of resources, States (in particular States in a position to assist developing countries in fulfilling their core and other obligations under the Covenant) should facilitate access to essential health facilities, goods and services in other countries, wherever possible and provide the necessary aid when required. CESCR, (1999), General comment No. 12: the right to adequate food (Art. 11), UN Doc E/C.12/1999/5, paras 36-37. See for example CESCR, (2000), General comment No. 14: the right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, para 45; CESCR, (2002), General comment No. 15: the right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), (2003). See also the CESCR's Statement on Evaluation of the Obligation to Take Steps to the 'Maximum of Available Resources' Under an Optional Protocol to the Covenant 2007.

[6] Committee on the Rights of the Child, Day of general discussion on resources for the rights of the child – responsibility of States. Recommendations from the Committee on the Rights of the Child, (21 September 2007), 46th session of the CRC, para 5. The CRC's General Comment on public budgeting for children's rights refers mainly to financial resources and clearly asserts that resources include those existing within a State as well as those available from the international community.

[7] Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque (Mission to Tuvalu) (2012); Report of the Special Rapporteur on the right to education, Kishore Singh (financing education and update on education in emergencies) (2011) UN Doc A/66/269, para 16; Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona (Taxation and human rights) (2014) UN Doc A/HRC/26/28, para 30 and UN Doc A/HRC/24/44/Add.2, Report of the Working Group on Arbitrary Detention (2010) UN Doc A/HRC/13/30/Add.2.

[8] Report of the Special Rapporteur on extreme poverty and human rights Magdalena Sepúlveda Carmona (Taxation and human rights), (2014), UN Doc A/HRC/26/28, para 35.

[9] See for example CESCR General Comment 24: State obligations in the context of business activities, (2017); Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona (Taxation and human rights), (2014), UN Doc A/HRC/26/28 and Report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas (Preliminary views on the conceptual and legal framework of the mandate), (2012), UN Doc A/HRC/21/4

[10] This obligation is core to the entire United Nations Human Rights Framework, and is detailed, inter alia, in the Charter of the United Nations, Articles. 1(3), 55, 56; the International Covenant on Economic, Social and Cultural Rights, Articles 2(1), 11, 22, 23; and the Committee on Economic, Social and Cultural Rights' General Comment No. 3: The Nature of States Parties' Obligations, UN Doc. E/1991/23 (1990), See also, ETO COnsortium, (2013), Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 13.

collaborate regionally and internationally to facilitate the generation of resources for the progressive realisation of economic, social and cultural rights in all countries. The extra-territorial dimensions of these obligations meanwhile make it clear that States parties´ responsibilities do not stop at their national frontiers, and also apply to human rights outcomes in third countries which they are in a position to influence.[11] This can involve issues such as facilitating tax evasion or encouraging aggressive tax competition, which can lead to a "race to the bottom" in taxation of multinational corporations.[12] To avoid restricting other States' fiscal space, States should evaluate the potential impact of their laws, policies, and practices beyond their borders.[13]

Tax haven Ireland

Ireland imposes tax revenue losses of almost US $20 billion on other countries each year thanks to its facilitation of crossborder tax abuse.[14] Representing 4.08% of overall global revenue losses to international tax abuse, this is comprised of US $10.95 billion due to tax abuse by multinational corporations and a further US $8.6 billion through offshoring of wealth by private individuals.[15]

These revenue losses have pervasive impacts on human rights outcomes. Modelling by the Government Revenue and Development Estimations (GRADE) initiative at the Universities of St Andrews and Leicester shows that were it not for the revenue losses imposed on other countries by Ireland,

- 1,248 under-five deaths and 141 maternal deaths would be averted each year.
- An additional 122,161 children would attend school every day.
- Some 1.1 million would access basic sanitation, 212,798 more would enjoy safe sanitation, and 94,364 would have access to safe drinking water.[16]

Furthermore, when governments are deprived of revenue, the quality of governance deteriorates. By attracting corporate profits from other countries, Irish policies deprive the citizens of these countries of their right to good governance.[17]

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[11] ETO Consortium, (2013), Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.
[12] Principles for Human Rights in Fiscal Policy, (2021), Principles 13.3. Available at: https://derechosypoliticafiscal.org/images/ASSETS/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf
[13] The principles of equality and non-discrimination are of the utmost importance in international law. Prohibitions of discrimination are contained in, for example, the UN Charter (Arts. 1(3), 13(1)(b), 55(c) and 76), the Universal Declaration of Human Rights (Articles 2 and 7), the International Covenant on Civil and Political Rights (Arts. 2(1) and 26), the Convention on the Rights of the Child (Article 2), and the International Covenant on Economic Social and Cultural Rights (Arts. 2(2) and 3). There are also instruments specifically aimed at addressing only specific prohibited grounds for discrimination, such as Convention on the Elimination of Racial Discrimination and Convention on the Elimination of All Forms of Discrimination Against Women. Other instruments seek to address the prohibition of discrimination within some UN agencies, such as International Labour Organisation Convention No. 111, which refers to discrimination in the exercise of the right to work (employment and occupation), and the UNESCO Convention against Discrimination in Education.
[14] Tax Justice Network, The State of Tax Justice 2023. Country Report for Ireland. Available at: https://taxjustice.net/country-profiles/ireland/
[15] Ibidem.
[16] Universities of St Andrew's and Leicester, the Government Revenue and Development Estimations, 2023, Irish tax policies and human rights overseas and at home. See: https://medicine.st-andrews.ac.uk/grade/**policy-briefs/** Importantly, the GRADE initiative's modelling presumes that lost tax revenue, were it recovered, would be distributed by states in the same proportional allocations as existing public revenue disbursements.
[17] A Model to Explain the Impact of Government Revenue on the Quality of Governance and the SDGs https://www.mdpi.com/2227-7099/11/4/108

It should also be noted that Ireland itself loses US $13.6 billion - US $12.98 billion through offshoring of wealth and $613 million due to international corporate tax abuse - each year.[18] To put this figure into context, the Irish government's voted expenditure (the expenditure that is approved by the Dáil during the budget process) in 2023 was €90.4 billion, with €9.63 billion allocated to education.[19]

Underpinning this reality is a fiscal regime enabling aggressive profit shifting by multinational corporations. Ireland's 'fiscal offering' to multinational companies enables financial structures through which these companies can book sales in an Irish entity and then shift the profits to low or no-tax jurisdictions through an Irish-registered but overseas resident company. Amid recurrent controversy over its facilitation of abusive international tax practices, a pattern has emerged in which Ireland purports to shut down tax avoidance structures but simultaneously opens new offerings to enable precisely the same behaviours.

The 'Double Irish', as it came to be known, was one of the world's most popular corporate tax avoidance structures and a source of repeated criticism from both European institutions and the US Senate.[20] It enabled multinational technology companies to keep intellectual property patents in subsidiaries that were based in Ireland but not domiciled there for tax purposes. In so doing, these companies could channel massive sums of profits through the country and onto other legal vehicles in low or no-tax jurisdictions such as the Cayman Islands. Indeed, a 2018 briefing by the National Bureau of Economic Research found that Ireland was the number one destination for profit shifting in the world, accounting for more than US $100 billion in shifted profits in 2015 alone.[21] When legislation was passed to end the Double Irish in 2014, it was effectively replaced by the 'Green Jersey', which provided tax breaks on intellectual property and thereby allowed companies to shield their profits from taxation without having to move the money to a third country.[22] While this 'onshore' approach proved attractive to many MNCs, others were offered a new offshore structure, the 'Single Malt', which allows multinational companies to shift their profits to other low-tax jurisdictions, such as Malta, with which Ireland has signed tax treaties.[23] Following repeated criticism from Irish civil society, the government announced in 2018 that it had reached an agreement with Malta to end aggressive tax planning,[24] but evidence shows that the structure is still in operation.[25]

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[18] Tax Justice Network, The State of Tax Justice 2023. Country Report for Ireland. Available at: https://taxjustice.net/country-profiles/ireland/

[19] Government of Ireland the Budget in Brief - Your Guide to Budget 2023 https://www.gov.ie/pdf/?file=https://assets.gov.ie/235888/93392ecd-ec40-4a8e-b39a-6d3e5ffa385b.pdf#page=null

[20] The Irish Times, 'Google used 'double-Irish' to shift $75.4bn in profits out of Ireland', 17 April 2021, https://www.irishtimes.com/business/technology/google-used-double-irish-to-shift-75-4bn-in-profits-out-of-ireland-1.4540519. See also European Commission, *Decision of 30.8.2016 on State Aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple*, https://ec.europa.eu/competition/state_aid/cases/253200/253200_1851004_674_2.pdf ; US Senate Permament Subcommittee on Investigations, *Hearing on Offshore Profit Shifting and the US Tax Code* (20 September 2012), https://www.govinfo.gov/content/pkg/CHRG-113shrg81657/pdf/CHRG-113shrg81657.pd

[21] Zucman, Torsolv, Weir, 2018, The Missing Profits of Nations. National Bureau of Economic Research. Available at: https://gabriel-zucman.eu/files/TWZ2018.pdf

[22] E. Clancy and M. B. Christensen, *Exposed: Apple's Golden Delicious Tax Deals* (report for the GUE/NGL group in European Parliament), June 2018: https://left.eu/content/uploads/2018/06/Apple_report_final.pdf

[23] Christian Aid Ireland, 'Impossible structures: tax outcomes overlooked by the 2015 Spillover Analysis', November 2017: https://www.christianaid.ie/resources/campaigns/impossible-structures-2017-tax-report

[24] Statement from Minister P. Donohoe, December 2018: https://www.gov.ie/en/press-release/723aff-minister-donohoe-welcomes-agreement-between-revenue-commissioners-ma/; Competent Authority Agreement under the Ireland-Malta Double Taxation Convention 2008 (November 2018), https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-01- 10.pdf ; Barry O'Halloran, 'Revenue to close 'single malt' tax loophole', Irish Times, 27 November 2018, https://www.irishtimes.com/business/economy/revenue-to-close-single-malt-tax-loophole-1.3712238

[25] Christian Aid Ireland, Abbott Laboratories Single Malt Tax Structure, September 2021, https://www.christianaid.ie/resources/campaigns/abbott-laboratories-single-malt-tax-shelter-christian-aid-ireland

When it has been challenged over its facilitation of crossborder tax abuse, the Irish government has generally pointed to a 2015 spillover analysis which found that Ireland's fiscal regime did not negatively affect revenue collection in developing countries.[26] However, this analysis only addressed 13 countries, 12 of which were among the lowest recipients of direct foreign investment from Ireland, and examined investment data for just two years.[27] Furthermore, it ignored indirect investment through other financial hubs, along with commissions and service fees, and failed to look at sales income reported in Irish sales hubs from customers in other countries, despite the fact this is a key mechanism of tax avoidance channelled through Ireland.[28] As such, the 2015 analysis is fundamentally flawed and incomplete, not to mention being out of date given the evolution of Ireland's 'fiscal offering' in recent years.

Ireland's participation in international negotiations

As explained above, Ireland's human rights obligations require it to ensure its positioning and comportment in international fora do not impede the ability of other states to raise the maximum of available resources for the progressive realisation of human rights.

It is well-documented that Ireland played an instrumental role in lowering the ambition of the OECD proposals for global minimum corporate tax rate, however.[29] While the Biden administration in the US had originally tabled proposals for a minimum rate of 21%, which was backed by major European economies including France and Germany, negotiations at the OECD subsequently saw this lowered to 15% thanks to the positioning of a small number of tax haven countries including Ireland.[30] The only other EU countries not to back the agreement were Hungary (corporate tax rate 9%) and Estonia (whose corporate tax rate ranges from 14 to 20%, but only targets 'distributed profits, i.e. shareholder dividends). [31] Thanks to the requirement of unanimity in tax policy changes at the EU level, this meant three countries that together represent 4% of European GDP effectively thwarted the European Union's ability to present a unified position.

Ireland eventually agreed to sign on to the deal after winning a commitment that multinationals with annual revenue of less than €750 million would not face the new rate.[32] It also insisted that the words "at least" be removed from the OECD position to ensure the rate could not be increased in the future.[33] In so doing, Ireland played a significant role in gutting the OECD

[26] Department of Finance, IBFD Spillover Analysis. Possible Effects of the Irish Tax System on Developing Economies (July 2015): https://assets.gov.ie/181168/10d97d7e-cf59-4b85-88ae-de377997d069.pdf

[27] Christian Aid Ireland, Global Linkages: re-examining the empirical basis of the 2015 Spillover Analysis (November 2017): https://www.christianaid.ie/sites/default/files/2018-02/global-linkages-tax-report.pdf

[28] Ibidem.

[29] International Tax Review, 22 April 2021, Ireland pushes back on US proposal for 21% global minimum tax. https://www.internationaltaxreview.com/article/2a6a8gff5n2hu8m8gg2dc/ireland-pushes-back-on-us-proposal-for-21-global-minimum-tax ; TASC, The real reasons Ireland is against a 15% minimum corporate tax rate, 23 July 2021. https://www.tasc.ie/blog/2021/07/23/the-real-reasons-ireland-is-against-a-15-minimum-c/ ; The New York Times, 8 October 2021, Global Deal to End Tax Havens Moves Ahead as Nations Back 15% Rate. https://www.nytimes.com/2021/10/08/business/oecd-global-minimum-tax.html

[30] Reuters, 20 May 2021, U.S. Treasury floats global corporate tax of at least 15%. https://www.reuters.com/business/finance/us-treasury-backs-off-21-global-minimum-corporate-tax-rate-wants-least-15-2021-05-20/

[31] Euronews, 2 July 2021, Ireland, Hungary and Estonia opt out of OECD tax deal and cast shadow over EU's unified position. https://www.euronews.com/my-europe/2021/07/02/ireland-hungary-and-estonia-opt-out-of-oecd-tax-deal-and-cast-shadow-over-eu-s-unified-pos

[32] The New York Times, 8 October 2021, Global Deal to End Tax Havens Moves Ahead as Nations Back 15% Rate. https://www.nytimes.com/2021/10/08/business/oecd-global-minimum-tax.html

[33] Ibidem.

minimum tax rate agreement of the potential to have a meaningful impact in halting the 'race to the bottom' in corporate taxation.

More recently, amid growing frustration over the OECD's failure to deliver a global tax agreement that would fairly consider the needs of developing nations, the Africa Group brought forward proposals to begin the process of establishing a framework convention on tax at the United Nations.[34] The historic move would effectively shift international negotiations on tax from the OECD, which represents the interests of the world's most advanced economies, to the UN, where all countries can have an equal voice. It is widely documented that the OECD's Inclusive Framework, which was ostensibly designed to facilitate the participation of developing countries in its talks, failed to meaningfully consider the input and needs of poorer nations.[35]

Indeed the United Nations Secretary General, in his 2023 report 'Promotion of inclusive and effective international tax cooperation at the United Nations' noted that the OECD process "would not address fully a broader discontent rooted in the long-standing conviction held by many countries and stakeholders that the existing tax treaty rules do not reserve sufficient taxing rights to countries hosting multinational enterprises and constituting markets for their products".[36] Disappointingly, Ireland has also emerged as a blocker to the UN process, seeking instead to maintain the OECD's failed leadership of global tax negotiations.[37]

The country's corporate tax rate of 12.5 percent has long been the source of controversy in its international relationships. As explained above, Ireland is one of the world's most significant conduit jurisdictions for corporate tax avoidance, enabling many multinationals to reduce their tax payments to close to zero. Most notably, in 2016 the European Commission ordered Apple to repay €13 billion in unpaid taxes and found Ireland culpable of providing illegal state aid to the tech giant.[38] The country refused to accept the money and appealed the ruling, resulting in it being struck down by the European General Court in 2020.[39] At the time of writing, the European Commission is appealing that ruling before the European Court of Justice, arguing that the General Court's ruling included several legal errors.

Ireland's provision of tax haven services is underpinned by its very extensive network of 76 double tax agreements (DTAs).[40] DTAs are designed to allocate taxing rights over income and capital between two countries so as to prevent 'double taxation' - the risk that income streams are taxed twice - and in so doing to facilitate trade between the two jurisdictions.

Depending on the provisions agreed, however, DTAs can have a detrimental impact on the revenue of one or other of the countries. This is especially true in the case of DTAs signed between developing countries and developed countries, and even more so when the wealthier

[34] Tax Justice Network, 22 November 2023. UN adopts plans for historic tax reform. https://taxjustice.net/press/un-adopts-plans-for-historic-tax-reform/
[35] Tax Justice Network, 2023, The State of Tax Justice 2023. https://taxjustice.net/wp-content/uploads/SOTJ/SOTJ23/English/State%20of%20Tax%20Justice%202023%20-%20Tax%20Justice%20Network%20-%20English.pdf
[36] UN General Assembly, 8 August 2023. Report of the Secretary-General: Promotion of inclusive and effective international tax cooperation at the United Nations https://financing.desa.un.org/sites/default/files/2023-08/A-78-235_advance%20unedited%20version_0.pdf
[37] Houses of the Oireachtas, Dáil Éireann Debate, Wednesday, 25 October 2023. https://www.oireachtas.ie/en/debates/question/2023-10-25/67/; https://policytracker.taxjustice.net/policy/un-tax-convention
[38] The Financial Times, 30 August 2016, Apple's EU tax dispute explained. https://www.ft.com/content/3e0172a0-6e1b-11e6-9ac1-1055824ca907
[39] Ibidem.
[40] Department of Revenue, Double Tax Agreements. https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/index.aspx

nation is a tax haven.[41] Indeed, the IMF has stated that African countries may lose up to 25% of corporate tax revenue when they sign DTAs with 'investment hubs'[42] and advised that "developing countries... would be well advised to sign treaties only with considerable caution".[43]

Ireland's DTA with Ghana, which was signed n 2018, contains several provisions which are likely to harm revenue collection in the African country. These include provisions to halve withholding taxes on royalties and technical services in Ghana, despite the recommendation of a Ministerial briefing that reducing withholding taxes should not be encouraged in DTAs with developing nations.[44] The agreement also lacks protections agreed by OECD member states to prevent treaty abuse, and, in contradiction of the recommendations of the UN Tax Committee, prevents Ghana from taxing capital gains from assets in its territory (other than immovable property) where the sales are channeled through an Irish holding company.[45]

More recently, Ireland has signed a new DTA with Kenya, which likewise contains several elements that are likely to be harmful to the African country's revenue collection. Of particular note is the agreement's failure to include an expanded agency definition of permanent establishment, which might have afforded Kenya greater scope to tax, for example, the profits of technology companies operating there which form part of multinationals hosted in Ireland. Furthermore, the rate of withholding tax on dividends is set at 8%, which is extremely low. Given that Kenyan domestic law sets a general rate of 15%, this represents a major concession to Ireland. In DTAs with other OECD countries, the withholding tax on dividends is generally higher (United Kingdom, 15%; France, 10%; Germany, 15%). Similarly, in the case of royalties, the agreed rate of 10% - half Kenya's domestic rate of 20% - represents a further concession on the part of Kenya. Given that large flows of intellectual property royalty payments are channeled to Ireland, which is host to many of the world's major technology companies, this represents a further 'win' for the European country and will lead to significant revenue being lost from Kenyan state coffers.

From a human rights perspective, it must also be emphasized that it is not just the content of the DTA, but also the process through which it was negotiated that must be considered. In accordance with the duty to international cooperation and extra-territorial human rights obligations set out in previous sections, the parties involved in negotiating a DTA should ensure participation and transparency in such processes and deliver an agreement conducive to the generation of the maximum of available resources for the realisation of human rights.

In the Ghana case, however, it was found that Ireland's ambassador to the country had gone over the heads of Ghana's Revenue Authority and Finance Ministry, to lobby the Deputy Minister of Finance directly.[46] In the case of the new Kenya DTA, meanwhile, the African country put the

[41] Beer and J. Loeprick, 'The Costs and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa', IMF Working Paper WP/18/227 (24 October 2018)

[42] S. Beer and J. Loeprick, 'The Costs and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa', IMF Working Paper WP/18/227 (24 October 2018)

[43] IMF Policy Paper: Spillovers in International Corporate Taxation' (2014) p. 7
https://www.imf.org/external/np/pp/eng/2014/050914.pdf

[44] This briefing by Ireland's Department of Foreign Affairs and Trade was obtained by Christian Aid Ireland. See: 2020, Ireland's Responsibility for the Impacts of Crossborder Tax Abuse
https://www.christianaid.ie/resources/our-work/irelands-responsibility-impacts-crossborder-tax-abuse.

[45] Christian Aid Ireland, 2019, Trapped in Illicit Finance: How abusive tax and trade practices harm human rights.
https://www.christianaid.ie/sites/default/files/2022-11/trapped-in-illicit-finance-report-sep2019.pdf

[46] Christian Aid Ireland, 2019, Trapped in Illicit Finance: How abusive tax and trade practices harm human rights.
https://www.christianaid.ie/sites/default/files/2019-09/trapped-in-illicit-finance-report- sep2019.pdf

agreement out to public consultation following the negotiations. By contrast, Ireland's Department of Revenue responded to a Freedom of Information request submitted by Tax Justice Network by stating that the Kenyan consultation process meant the agreement was still under deliberation and therefore relevant records would not be released on the grounds that they might impact the international relations of the state. With these facts in mind, it can be argued that Ireland has not appeared fully committed to the principles of transparency and participation in its conduct of DTA negotiations.

Ireland's implementation of the United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) represent the world's most authoritative normative framework for addressing human rights abuses in business operations and global supply chains. In the years since the UNGPs were unanimously endorsed by the Human Rights Council in 2011, the issues of just taxation and financial transparency have risen up the human rights agenda amidst growing recognition of the determinative impact taxation - at both domestic and international levels - has on the full spectrum of human rights outcomes.

In General comment No. 24 on the nature of State obligations in the context of business activities, the Committee on Economic, Social and Cultural Rights has clarified that, as part of the extraterritorial obligation to fulfil human rights, states should combat abusive tax practices by transnational corporations and deepen international tax cooperation.[47]

Recognition of the human rights impacts of crossborder tax abuse led the United Nations Working Group on Business and Human Rights to highlight taxation as a crucial concern in its 2021 stocktaking of the first 10 years of the UNGPs: "Coherence challenges remain at all levels, however… this includes need for UNGPs' integration in... other global policy agendas where responsible business conduct is or should be considered a key issue, including anti-corruption, finance, trade and investment, and taxation." [48] The pressing need to address corporate tax abuse as a core human rights concern was reiterated by the High Commissioner for Human Rights in his 2023 address to the Human Rights Council.[49]

Countries which have committed to the UNGPs are strongly encouraged to develop National Action Plans on Business and Human Rights (NAPs) – policy documents through which they articulate priorities and actions that will be undertaken to ensure implementation of the Principles.[50] In developing its first NAP,[51] the Irish government commissioned an independent baseline study of its legal and regulatory framework, which cited the Committee on Economic, Social and Cultural Rights recommendations to Ireland regarding its taxation regime.[52] Civil

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[47] Committee on Economic, Social and Cultural Rights, 2017, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2017-state-obligations-context

[48] UN Working Group on Business and Human Rights, Raising the Ambition - Increasing the Pace: UNGPs 10+. Available at: https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf

[49] UN High Commissioner for Human Rights, 2023, Address to the 54th Session of the Human Rights Council. Transcription available at: https://www.ohchr.org/en/statements/2023/09/turk-human-rights-are-antidote-prevailing-politics-distraction-deception

[50] For more on National Action Plans on Business and Human Rights, see: Global NAPs at: https://globalnaps.org/about/

[51] Department of Foreign Affairs, National Plan on Business and Human Rights (2017- 2020).https://www.dfa.ie/our-role-policies/international-priorities/human-rights/business-and-human-rights/nationalplanonbusinessandhumanrights2017-2020/

[52] Regan Stein/Department of Foreign Affairs, 2019, National Action Plan on Business and Human Rights: Baseline Assessment of Legislative and Regulatory Framework. https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Baseline-Study-Business-and-Human-Rights-v2.pdf

society submissions to consultations on the country's first NAP likewise highlighted the pernicious extra-territorial impacts of Ireland's facilitation of abusive tax practices by multinational corporations.[53]

Despite these facts, Ireland's first NAP remained silent on the country's taxation regime. In keeping with best practice in implementation of the UNGPs, the government later developed guidance for business entities to support them in meeting the business responsibility to respect human rights, but this also ignored the issue of tax behaviour, save for referencing to the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct - which do call for businesses to comply with "both the letter and spirit of the tax laws".[54]

With the country now holding consultations on the development of its second NAP,[55] there is a pressing need for taxation to be addressed as a core human rights concern in the regulation of business activities. As detailed above, Ireland's facilitation of crossborder tax abuse dramatically undermines the capacity of other states to fulfil their human rights obligations. The torrent of lost revenue engendered by Ireland's 'fiscal offering' to multinational companies is arguably the greatest source of human rights harms linked to the activities of business entities resident in the country.

In this regard, it is also noteworthy that the Department of Foreign Affairs' official review of the first NAP[56] called for substantial consideration to be given to the recommendations of the aforementioned 'UNGPs+10' stocktaking report of the Working Group on Business and Human Rights.[57]

Proposed questions for Ireland

Does Ireland have plans to conduct independent, participatory, comprehensive and periodic impact assessments of its tax and financial policies to ensure that they do not contribute to abusive international tax practices by multinational corporations and wealthy individuals, which might negatively impact the availability of resources for the realisation of human rights in other countries?

How does Ireland plan to ensure its participation in international tax negotiations, both at the United Nations and other international fora, serves to facilitate the generation of the maximum of available resources for the realisation of human rights in developing countries? Will Ireland support the negotiations on a framework tax convention under the auspices of the

[53] Christian Aid Ireland, 2015, Christian Aid Ireland submission: Government of Ireland consultation on a National Action Plan for Business and Human Rights. https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/nationalplanonbizandhr/Christian-Aid-Ireland-1.pdf

[54] Department of Foreign Affairs, 2021, Implementation Group for the National Plan on Business and Human Rights 2017-2020, Business and Human Rights Guidance for Business Enterprises. https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Guidance_on_Business_and_Human_Rights.pdf

[55] For more on this, see: Department of Foreign Affairs, National Plan on Business and Human Rights: Public Consultation for new National Plan on Business and Human Rights. See: https://www.dfa.ie/our-role-policies/international-priorities/human-rights/business-and-human-rights/

[56] Department of Foreign Affairs, 2021, Review of implementation of National Plan on Business and Human Rights 2017-2020. https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Review-of-Implementation-of-National-Plan-on-Business-and-Human-Rights-2017-2020---for-website.docx.pdf

[57] UN Working Group on Business and Human Rights, 2021, UNGPs+10 Roadmap for the Next Decade of Business and Human Rights. https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf

United Nations as proposed by the Africa Group and agreed by a large majority of UN member states in November 2023?

How does Ireland plan to ensure its approach to the negotiation of double tax agreements is guided by human rights norms and standards and serves to facilitate the fair allocation of taxing rights according to actual economic activity in each jurisdiction, thereby enabling generation of the maximum of available resources for the realisation of human rights? How does Ireland intend to improve levels of transparency and public consultation on double tax treaties, particularly when they pertain to developing countries?

How does Ireland intend to address the problem of corporate profit shifting through its second National Action Plan on Business and Human Rights? Are there plans in place to include abusive corporate tax practices as a core human rights concern that should be addressed as part of both the state duty to protect human rights and the corporate responsibility to respect human rights in the new National Action Plan? In the guidelines provided to private sector entities regarding implementation of the corporate responsibility to respect human rights, does Ireland intend to appropriately address responsible tax conduct, both as an issue for businesses themselves and as a key concern of human rights due diligence on supply chains?