The fiscal social contract and the human rights economy

In response to call for input by the Independent Expert on the effects of foreign debt

April 2024

TAX JUSTICE NETWORK

Contents

Question 1: Please explain what role taxation plays in the fiscal social contract.

The social contract is a widely used concept rarely defined concretely.[1] A traditional understanding of the social contract in relation to governance describes an implied or 'soft' contractual arrangement whereby citizens agree to submit to the rule of law in exchange for the establishment of a society in which governments have obligations to their citizens.[2] In this arrangement, both citizens and governments cede some powers or abilities for the greater good and accept duties and responsibilities to the other parties of the contract in order for the society they have created to function. Social contract theory has evolved over time to include not just governments and citizens but also collective actors[3] such as international organisations and even corporations.[4] A social contract requires all parties to accept their duties and obligations and to be held accountable when they renege on them.

The fiscal social contract represents an implied agreement by which citizens contribute personal assets to a common pot with the expectation that the government will deliver public goods for the collective benefit of society.[5]

Tax is the glue in this social contract. Tax can fund public services. Tax can help to eliminate the inequalities that burden our societies. It can promote public goods and curb public bads, such as tobacco consumption and carbon emissions. Tax connects people and government in the most direct way and drives more inclusive political representation while reducing corruption.[6]

In our complex and globalised modern world, this relationship becomes somewhat complex and convoluted. Multinational corporations take advantage of their operations across multiple borders to undermine the social contract and take the most advantageous route for themselves at

---

[1] Diane F. Frey and others, 'Crises as Catalyst: A New Social Contract Grounded in Worker Rights', *Health and Human Rights*, 23/2 (2021), 153–66 <https://www.jstor.org/stable/48636262> [accessed 11 April 2024].
[2] Trudo Lemmens and others, '3 Social Contract Theory: Rights and Responsibilities', in *The Social Contract and Human Rights Bases for Promoting Access to Effective, Novel, High-Priced Medicines [Internet]* (2022) <https://www.ncbi.nlm.nih.gov/books/NBK587891/> [accessed 11 April 2024].
[3] Frey and others, 'Crises as Catalyst', 153–66.
[4] John Douglas Bishop, 'For-Profit Corporations in a Just Society: A Social Contract Argument Concerning the Rights and Responsibilities of Corporations', *Business Ethics Quarterly*, 18/2 (2008), 191–212 <https://www.jstor.org/stable/27673228> [accessed 11 April 2024].
[5] 'The Fiscal Social Contract – Looking Beyond the Theory', *Afronomicslaw.Org* <https://www.afronomicslaw.org/2020/07/17/the-fiscal-social-contract-looking-beyond-the-theory> [accessed 11 April 2024].
[6] Tax Justice Network, *Beyond20* (5 December 2023) <https://taxjustice.net/wp-content/uploads/2023/05/Tax-Justice-Network-beyond20-Strategic-Framework-May-2023.pdf> [accessed 7 July 2023].

the expense of both governments and citizens. Wealthy individuals also use their excess of resources to place their wealth out of reach in a complex web transcending national borders. The traditional notion of tax policy as a domestic matter to be settled by sovereign nations is not consistent with the global economic reality.[7]

Tax abuse is detrimental to the fiscal social contract. When these actors choose to opt out of the contract and there are no consequences, the agreement collapses. For the social contract to function, every actor must be held accountable to their duties and responsibilities.

The absence of tax justice robs us all of an inclusive fiscal social contract. There is no country free from tax abuse, no society that enjoys the kind of progressive and fair tax system necessary for a just and sustainable world in which the human rights of all are guaranteed. In order to achieve a functional fiscal social contract, we will need to reform our tax systems to work for all.

Question 2: What is your understanding of a human rights economy?

The human rights economy is one of several alternative economic models that has emerged in response to the utter failures of the current dominant economic system. Discussion about alternative economic models became even more prevalent and urgent during the COVID-19 pandemic. In 2019 the Office of the High Commissioner for Human Rights established the Surge Initiative, a campaign to promote the realisation of economic, social, and cultural rights and to strengthen the link between human rights and economics.[8] The human rights economy has emerged as a central component of the Surge Initiative, with the UN High Commissioner for Human Rights, Volker Türk, calling for a human rights economy that "seeks to redress root causes and structural barriers to equality, justice, and sustainability, by prioritising investment in economic, social and cultural rights."[9]

The care economy, the human rights or rights-based economy, and the "just transition" are all terms to describe these different economic models that seek to be fair, just and centred around human rights. However, when seeking to establish a human rights centred economy, it

---

[7] Allison Christians, 'Sovereignty, Taxation and Social Contract', *Minnesota Journal of International Law*, 18, 99 <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1244&context=mjil> [accessed 11 April 2024].
[8] Sylvain Aubry and others, 'Human Rights in the New Eco-Social Contract: Exploring a Just Transition through Public Services and Social Security', 2023 <https://cdn.unrisd.org/assets/library/papers/pdf-files/2023/dcp-aubry-et-al-draft-paper-ready-for-web.pdf> [accessed 17 April 2024].
[9] 'Türk Calls for a Human Rights Economy', *OHCHR* <https://www.ohchr.org/en/statements-and-speeches/2023/02/turk-calls-human-rights-economy> [accessed 17 April 2024].

becomes impossible and unhelpful to spend effort differentiating between these concepts. The main difference lies mostly in what each concept emphasises, or more precisely, the problem of the current economy on which each model is mainly focused. Our human rights are interdependent and indivisible; we cannot safeguard them by focus on unpaid care work without addressing climate change, for example. The human rights economy brings together the idea of all these alternative models into one concept which places people's rights and wellbeing as well as the health of the planet at the heart of policymaking.

Tax justice is crucial to the achievement of a human rights economy. Fiscal policy should reflect the fundamental core principles of transparency, accountability, social justice, equality, and non-retrogression.[10] Tax justice is the true underpinning of the fiscal social contract, and a functioning fiscal social contract is necessary for a human rights economy to be possible.

Question 3: How does the tax system and policies impact the strength and effectiveness of the fiscal social contract? What are the potential consequences of tax evasion or avoidance on the fiscal social contract and society as a whole?

The tax system is the foundation upon which a fiscal social contract stands. A regressive tax system that benefits corporate and elite interests is an unsustainable foundation, while a progressive tax system founded on principles of tax justice and human rights can create a firm and stable foundation for the fiscal social contract.

This is clearly evident in the 4th R, representation, in the 5 Rs of taxation and human rights. Research shows that the source of government revenue affects the strength of the relationship between the citizen and the state. A higher proportion of tax as part of total government revenue is strongly linked to a higher quality of governance and political representation.[11] Tax forms a crucial component of the fiscal social contract by ensuring that states are accountable to the public for delivering on their obligations.

In its most simple iteration, tax is a tool to create revenue, which in turn allows states to redistribute funds through social programmes. Tax is also the main means of redistribution to eliminate harmful inequalities. In contrast, tax abuse and the revenue lost to tax abuse

---

[10] Dayana Blanco and others, 'Principles for Human Rights in Fiscal Policy', *CESR*, 2021 <https://www.cesr.org/principles-human-rights-fiscal-policy> [accessed 20 June 2021].
[11] Liz Nelson, *Tax Justice & Human Rights: The 4 Rs and the Realisation of Rights* (6 July 2021) <https://taxjustice.net/reports/tax-justice-human-rights-the-4-rs-and-the-realisation-of-rights/> [accessed 8 September 2021].

exacerbate and reinforce inequalities. In the absence of a robust social safety network, women – and especially black and brown women – subsidise the economy by taking on unpaid care work.[12] In this form of "extraction" governments renege on their responsibilities, failing to provide the expected social benefits of the fiscal social contract while simultaneously shifting the burden onto vulnerable members of society. This is a blatant violation of the terms of the fiscal social contract.

Question 4: What are the main factors that influence the population's perceptions and expectations regarding their tax obligations and the government's role in providing public goods and services? How can governments effectively assess, communicate and engage with citizens on fiscal policies to strengthen the fiscal social contract?

There is a strong correlation between tax compliance and a government that supplies public goods such as education, healthcare, and security. When citizens perceive that public goods are provided by the government, they are more willing to comply with paying their taxes and even willing to accept higher rates for more extensive public services. When citizens must pay non-state actors for public goods, however, tax compliance is weak. Citizens who refuse to pay or file their taxes cite issues such as poor socio-economic living conditions, a government that doesn't engage its citizens, and a defective audit system.[13]

Governments must collect taxes fairly, ensuring that each individual and each company pays its fair share. Every year US$480 billion is lost to tax abuse worldwide. Multinational companies are responsible for US$311 billion lost to tax evasion while wealthy individuals are responsible for US$169 billion of lost tax revenue. If nothing changes, countries are set to lose US$4.8 trillion to tax abuse over the next 10 years, which is roughly equivalent to what is spent on public health worldwide in one year.[14]

Governments must also provide transparency about tax revenue collected and where it is being spent. Governments must hold accountable those who renege on their responsibilities. Governments must ensure that robust social programmes truly benefit the general population, and that tax revenue is sufficient to appropriately fund the social programmes required to meet the population's needs. The combination of fairness and transparency with perceivable and

---

[12] Nelson, *Tax Justice & Human Rights*.
[13] 'The Fiscal Social Contract – Looking Beyond the Theory'.
[14] Tax Justice Network, *State of Tax Justice 2023* (2023) <https://taxjustice.net/wp-content/uploads/2023/08/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf> [accessed 2 August 2023].

recognisable benefits connected to the paying of taxes can strengthen the fiscal social contract. However, if we can effectively address tax abuse and evasion, then governments can put those almost US$5 trillion towards important social services and programmes and achieving the Sustainable Development Goals. That kind of reinvestment in the fiscal social contract would go a long way to reinvigorating trust in governments and enabling states to fulfil their human rights obligations.

Question 5: What mechanisms and practices exist to ensure transparency, accountability, and citizen participation in the collection and allocation of public funds? How can citizens hold the government accountable? Please provide examples of successful practices and identify areas for improvement.

The A to G_3 of tax justice are key policy measures and institutional reforms at the domestic and international level that would provide the necessary transparency and accountability for a strong fiscal social contract.[15]

The A, automatic exchange of information on financial accounts, is a data sharing practice that prevents corporations and individuals from abusing bank secrecy to hide the real value of their wealth in order to avoid paying taxes. The ability for an individual or company to use resources to avoid their responsibilities under the fiscal social contract erodes the foundation, rendering the contract null and void.[16]

B, or beneficial ownership, refers to public registers of the beneficial owners of companies, trusts, foundations, and partnerships, ensuring that the real person who ultimately owns, controls, or profits from a company or legal vehicle is known.[17] In recent years major data leaks - from Lux leaks[18] to the Panama Papers[19], Luanda leaks[20], the Malta

---

[15] Tax Justice Network, *Beyond20*, 20.
[16] Tax Justice Network, 'Automatic Exchange of Information', *Tax Justice Network*, 2023 <https://taxjustice.net/topics/automatic-exchange-of-information/> [accessed 3 February 2023].
[17] 'Beneficial Ownership', *Tax Justice Network* <https://taxjustice.net/topics/beneficial-ownership/> [accessed 15 April 2024].
[18] ICIJ, 'Luxembourg Leaks: Global Companies' Secrets Exposed', *ICIJ*, 2014 <https://www.icij.org/investigations/luxembourg-leaks/> [accessed 3 May 2022].
[19] ICIJ, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry', 2018 <https://www.icij.org/investigations/panama-papers/> [accessed 3 May 2022].
[20] International Consortium of investigative Journalists, 'Luanda Leaks', *International Consortium of Investigative Journalists*, 2020 <https://www.icij.org/investigations/luanda-leaks/> [accessed 14 April 2020].

Files[21],Paradise Papers[22], the Pandora Papers[23] and most recently Swazi Secrets[24] – have revealed how politicians, public officials, and high net worth individuals abuse complex financial structures to pay less tax and have shattered the public's waning trust in the authorities and institutions that are supposed to protect their interests. Transparent and complete beneficial ownership registries can prevent the abuse of complex legal structures to hide wealth and assets and make it possible to hold tax abusers accountable, restoring faith in the basic tenets of the fiscal social contract.

The establishment of C, public Country-by-country reporting, refers to the accounting practice that requires multinationals to report their profits and costs in each country they operate in. Country-by-country reporting is the best and most effective way to combat profit shifting, where companies shift profits into tax havens in order to pay less tax than they should. The level of transparency that can be afforded by Country-by-country data shifts power away from corporate and elite interests and towards the general population, which is crucial for an effective fiscal social contract.[25]

D, Disclosure, refers to providing the population with sufficient publicly accessible data including consistent, aggregate performance measures of the tax authority, a full accounting of tax incentives and subsidies provided, as well as online publication of company financial accounts and related information. Disclosure is a crucial component in ensuring that taxes are fairly applied and the public perceives them as fair. This in turn boosts tax morale and tax compliance, which are building blocks for the fiscal social contract.

E, Enforcement, deals with the effectiveness of the tax authority and their ability to enforce policy, especially in terms of the funding of tax authorities and regulatory agencies. When funding for enforcement is cut, the effects are not felt evenly across the board. Instead, systematic biases are introduced into the system creating special categories as audit rates and legal enforcement plummets for large companies and

---

[21] 'Malta Files | EIC' <https://eic.network/projects/malta-files> [accessed 8 March 2023].
[22] ICIJ, 'Paradise Papers: Secrets of the Global Elite', 2017 <https://www.icij.org/investigations/paradise-papers/> [accessed 20 May 2020].
[23] ICIJ, 'Pandora Papers: An Offshore Data Tsunami - ICIJ', 2021 'Country by Country Reporting', Tax Justice Network <https://taxjustice.net/topics/country-by-country-reporting/> [accessed 15 April 2024<https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/> [accessed 14 April 2022].
[24] 'About the Swazi Secrets Investigation - ICIJ', 2024 <https://www.icij.org/investigations/swazi-secrets/about-swazi-secrets-investigation/> [accessed 18 April 2024].
[25] 'Country by Country Reporting', *Tax Justice Network* <https://taxjustice.net/topics/country-by-country-reporting/> [accessed 15 April 2024].

the wealthiest households.[26] States are unable to meet the duty to protect against abuses, thus upholding their end of the fiscal social contract, without fair and effective enforcement.

F, Formulary Appointment, describes the taxation approach in which taxable profits are assessed at the global level for a multinational company as a whole, rather than at the level of each separate entity, and then to apportion those worldwide profits as the company's tax base among the countries where the company operates according to their share of the multinational's real economic activity.[27]

G_1, Global governance, recognises that tax in the modern world requires international cooperation and thus an inclusive and representative United Nations tax body must replace the OECD in international tax governance.[28] Without a truly inclusive and representative governing body on tax, the promises of the fiscal social contract ring hollow.

G_2, a Global Asset Registry, is a proposal to combine national beneficial ownership registries into a central registry and to include the owners of high-value assets such as properties, art works, or aircraft for example. This registry, often referred to as the GAR for short, would be the basis for enforcing wealth taxes as well as enabling a fully informed political discourse about wealth inequality and the wealth and poverty levels that we are willing to tolerate, either at the national level or globally.[29]

G_3, Good taxes, are the taxes that can contribute most significantly to the fiscal social contract. This means that the tax system would be based on progressive and effective taxes that strengthen the state-citizen relationship, such as progressive income taxes, wealth taxes[30], and minimum effective corporate tax rates[31]. These are the taxes that make citizens feel that they are contributing to something worthwhile, and that every other member of the social contract is contributing fairly as well.

---

[26] Tax Justice Network, *Beyond20*.
[27] 'Unitary Taxation', *Tax Justice Network* <https://taxjustice.net/topics/unitary-taxation/> [accessed 15 April 2024].
[28] '"No" Voters on UN Tax Reform Enable 75% of Global Tax Abuse - Tax Justice Network' <https://taxjustice.net/press/no-voters-on-un-tax-reform-enable-75-of-global-tax-abuse/> [accessed 18 April 2024].
[29] 'Global Asset Register', *Tax Justice Network* <https://taxjustice.net/topics/global-asset-register/> [accessed 18 April 2024].
[30] Emmanuel Saez and Gabriel Zucman, 'Wealth Taxation: Lessons from History and Recent Developments', *AEA Papers and Proceedings*, 112 (2022), 58–62 <https://www.aeaweb.org/articles?id=10.1257/pandp.20221055> [accessed 28 June 2023].
[31] Tax Justice Network, *Haven Indicator 1: Lowest Available Corporate Income Tax Rate (LACIT)*, Corporate Tax Haven Index 2019 (2019) <http://cthi.taxjustice.net/cthi2021/HI-1.pdf> [accessed 5 June 2019].

The Tax Justice Network has developed a Tax Justice Policy Tracker to follow worldwide progress in adopting these important policies where citizens can check their country's progress in these areas.

Question 7: What challenges and opportunities exist for strengthening the fiscal social contract in the context of globalization and technological advancements? How can governments adapt their fiscal policies and practices to ensure the continued relevance and effectiveness of the fiscal social contract in a changing world?

The global economy in many ways has outgrown the traditional tax system. While tax is still generally considered and treated as being confined to national borders – a transaction between the state and its residents – globalisation has complicated the relationship. Large multinational conglomerates operate in more than one country, their influence surpassing national borders. They, and their professional enablers, turn this into an unfair advantage by shopping around for the tax rates and incentives that will give the lowest effective tax rate and even a zero rate.

The wealth of high net worth individuals allows them to do much the same. Golden visa schemes even allow them to purchase citizenship or residency in a country where they can pay the least amount in tax. The very idea of tax as a cost that can be saved, as an undue burden, is antithetical to the fiscal social contract.

Multinational corporations use their resources and their influence to ensure that the tax system doesn't catch up to the global reality and put an end to their unjust advantages. Corporate capture can be defined as "undue influence that corporations exercise over national and international public institutions to manoeuvre in accordance with their interests and against the general public interest and the duty to respect, protect, and guarantee human rights".[32] Any group, entity, or individual seeking their own interests above those of the general population acts outside of the fiscal social contract, pursuing a parallel contract of purely personal gain. When the state not only allows this to happen, but in many cases actively provides for and invites these kinds of activities, the fiscal social contract is torn to shreds.

The United Nations Framework Convention on International Tax Cooperation is an opportunity to combat corporate capture and update the tax system for modern times by creating a regulatory system for tax that transcends borders and can therefore operate on the same plane as

---

[32] 'Civil Society Answers to Corporate Capture', *Dejusticia* <https://www.dejusticia.org/en/column/civil-society-answers-to-corporate-capture/> [accessed 18 April 2024].

multinationals. However, the international community must ensure that the framework convention itself does not fall to corporate influence and that the new global tax body under the auspices of the United Nations addresses global taxation issues effectively and fairly, keeping tax behaviours in check so they remain within the fiscal social contract without undue advantage for specific groups or individuals.

New and emerging technologies also present unique challenges for governments and regulatory bodies.[33] The new and fast developing digital frontiers of artificial intelligence, blockchain, and cryptocurrency pose challenges to the fiscal social contract. While unregulated or poorly regulated with weak enforcement, technologies such as cryptocurrencies and blockchain present new opportunities for corporate and elite capture and abuse, including tax abuse. The European Commission estimates that there are over 9,000 different crypto-assets and currencies available on the market today and yet so far this market has been mostly unregulated, operating outside of the traditional banking system completely.[34]

Digital technologies have some potential to enable greater government-to-resident consultation and participation when used in ways that bolster the fiscal social contract. Ultimately it is up to states to safeguard the fiscal social contract by centring human rights and the interests of the general population when it comes to effective regulation of digital technologies and their fair use to prevent private and corporate domination and, as with shaping tax policy, disproportionate influence. So far, regulators are running years behind fast moving developments with the growth of 'blockchain havens' which present a set of economically and societally destabilising challenges as they provide additional, complex ways to undermine the tax base as well as facilitating other abuses.[35] This needs to be addressed urgently.

Question 9: From a policy and legal perspective, what are the financial responsibility of a state as regards human rights and tax allocation. In this context, how the state obligations to immediate and progressive realization of human rights can be assessed?

---

[33] Noam Noked, 'Ending the Crypto Tax Haven' (Rochester, NY, 2023) <https://papers.ssrn.com/abstract=4618310> [accessed 20 April 2024].
[34] Pieter Baert, *Tax Transparency Rules for Crypto-Asset Transactions (DAC8)* <https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739310/EPRS_BRI(2023)739310_EN.pdf> [accessed 20 April 2024].
[35] 'EU Ambition for DAC8 Transparency on Crypto Is Cut Short by Failure to Think Outside the OECD Box', *Tax Justice Network*, 2023, 8 <https://taxjustice.net/2023/05/25/eu-ambition-for-dac8-transparency-on-crypto-is-cut-short-by-failure-to-think-outside-the-oecd-box/> [accessed 20 April 2024].

The state is required to ensure that public services are backed by the appropriate tax revenues, redistribute that revenue to reverse inequalities, reprice to adjust for public harms such as fossil fuel extraction; and strengthen political representation by ensuring that states are accountable to the public for delivering on their obligations.[36] In addition, states must honour their extraterritorial human rights obligations by working towards reparations. Just as tax served as the vehicle for much of the extraction from former colonies, it should/must ultimately be the source of funds to make good on some of the damage inflicted.[37]

Question 11: From your perspective, does debt and international financial obligations impede or support the realization of human rights?

One of the most significant drains on public budgets today is the loss of tax revenue to cross-border tax abuse by corporations and individuals seeking to avoid or minimise their tax payments—a phenomenon that disproportionately affects developing countries.

Lower income countries lose the equivalent of 6.32 per cent of their collected tax revenue to corporate tax abuse a year, while higher income countries only lose the equivalent of 1.56 per cent of their collected tax revenue. At the same time, higher income countries are responsible for 99.3 per cent of all tax lost around the world a year to corporate tax abuse.

Those losses hit low income countries hardest, given their overall limited resources and greater reliance on corporate taxes as a share of their national revenue. Due to this and a myriad of other factors, these countries are forced to take on additional debt to make up for the lost revenue, the impact of which is generations burdened by unsustainable interest repayments and long term economic and social damage.

International financial debt obligations also reinforce colonial power imbalances. International tax rules are currently set by the OECD both by and for its member countries and in the absence of another global policy making body, also effectively for all non-member countries. OECD member states are dominated by global north countries, many of them former colonial powers. It is neither representative, properly inclusive, nor has a positive impact for low income countries in general, or low and middle income countries in the global south particularly.

In December 2022 the United Nations marked a historic moment for financial and tax transparency, and the full enjoyment and protection of

---

[36] Nelson, *Tax Justice & Human Rights*.
[37] 'Tax, Reparations and "Plan B" for the UK's Tax Haven Web', *Tax Justice Network*, 2020 <https://taxjustice.net/2020/06/11/tax-reparations-and-plan-b-for-the-uks-tax-haven-web/> [accessed 27 April 2023].

human rights for all. After years of advocacy, the world saw the unanimous adoption of the UN resolution on the "promotion of inclusive and effective international tax cooperation" by all UN member states at the General Assembly.[38] This was followed by a report by the UN Secretary General which concluded that existing international tax rules developed through this system are neither fair nor inclusive and that rules developed through OECD mechanisms "do not adequately address the needs and priorities of developing countries".[39]

Currently, an ad hoc committee has been tasked with drafting the terms of reference for a new United Nations Framework Convention on International Tax Cooperation. This represents a unique opportunity to reprogramme the international financial system to ensure that financial obligations and regulations are aligned with human rights and sustainable development goals.

[38] Tax Justice Network, '⚫ Live Blog: UN Vote on New Tax Leadership Role', *Tax Justice Network*, 2022 <https://taxjustice.net/2022/11/22/🔴-live-blog-un-vote-on-new-tax-leadership-role/> [accessed 3 February 2023].
[39] UN Secretary General, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*.