

A report on the Christian Aid seminar on the human rights implications of tax and fiscal policy

2016

Christian Aid Ireland — 2016



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This report was written by Hannah Grene on behalf of Christian Aid Ireland. Further enquiries should be addressed to Sorley McCaughey Head of Advocacy and Policy at Christian Aid Ireland, at smccaughey@christian-aid.org

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Christian Aid Ireland
Canal House, Canal Road
Dublin 6. Ireland.

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www.christianaid.ie

There will often be little to be gained by providing assistance unless the structures of the society can be encouraged to develop in directions that can make effective use of that aid.

**Philip Alston, UN
Special Rapporteur on
extreme poverty and
human rights**



Preface

Sorley McCaughey
Head of Policy and
Advocacy, Christian
Aid Ireland

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Fiscal and tax policy are major determinants of a state's ability to create the conditions in which citizens human rights are guaranteed. The Christian Aid conference on February 12th 2015 – The Human Rights Impact of Tax and Fiscal Policy – was intended as a contribution to the emerging body of thinking on the linkages between fiscal and tax policy, and the realisation of human rights.

By placing it squarely in the Irish context, it was able to bring together what Professor Philp Alston, UN Special Rapporteur on extreme poverty and human rights, described as the 'two greatest pre occupations' of post 2007 Ireland- the costs of austerity and its appropriate limits, especially in relation to the poor, on the one hand, and the role of tax policy in promoting economic development, on the other. I would also add that it brought in a third international element, that includes Ireland's aid programme, and the consequences of Irish tax policy on developing countries. Bringing these three issues together in the context of our human rights obligations provided the context in which participants could debate whether Irish fiscal and tax policy with its reliance on attracting US multinational companies is the appropriate basis on which to ensure that people's rights in Ireland are ensured, and whether our tax policy contravenes the fundamental principle of international cooperation by undermining the tax take of other less well-off countries.

For fiscal and tax policy is essentially about choices. It is a political choice to incentivise one group of society over another, or to use a tax break to incentivise one section of the economy over another. Professor Alston for instance pointed to the existence of pockets of poverty around Ireland as the consequence of a series of deliberate and conscious decisions by key actors who have chosen to prioritize other goals. Too often the sanctity of tax policy is invoked as if there were no other choices to be made.

But of course there are choices. But these choices need to be informed and assessed from a human rights perspective to ensure that decisions taken do not adversely impact on the most vulnerable people in Ireland, or those in some of the poorest countries in the world.

As we continue to consider the legacy and implications of the 1916 Rising, we are also afforded the opportunity to reflect on, and reaffirm what is important to us as a nation. Having human rights positioned at the heart of fiscal and tax policy would be an entirely appropriate place to begin.

—

Sorley McCaughey
Head of Advocacy and Policy
Christian Aid Ireland
2016.

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Introduction

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Public discourse in Ireland has always had a certain level of sophistication around development issues. It is time that this was broadened to look at tax justice.

—
Professor Donncha O’Connell, NUI Galway

Christian Aid Ireland’s conference, ‘The human rights impact of tax and fiscal policy’ on 12 February 2015 focused this debate squarely on Ireland. Conference participants spoke of ‘two Irelands’, contrasting the glossy image of ‘Ireland Inc.’ with the continued struggles of many Irish citizens with poverty and deprivation. We can also see two Irelands at play with respect to Ireland’s image on the international stage – on the one hand, Ireland is lauded globally as an upholder of human rights and a champion of development; on the other, Ireland markets itself abroad as a low tax regime, enabling aggressive tax avoidance and potentially depriving developing countries of much-needed revenue.

The Irish government have shown an increasing willingness to engage with such anomalies, as evidenced by their engagement in Christian Aid’s conference and the publication of the spillover analysis of the effects of Ireland’s tax policies on developing countries. It is only by deepening this engagement and grounding it firmly in our human rights obligations that Ireland can hope to resolve these contradictions, so that our reputation as a champion of development and human rights is strengthened, not undermined by, our reputation as a ‘great place’ to do business.

The following paper analyses the issues raised at the Christian Aid conference on tax and fiscal policy and

offers some recommendations as to how Ireland can practically address these issues. The first section draws on a keynote speech by Philip Alston, UN Special Rapporteur on extreme poverty and human rights, to explain why tax should be considered as a human rights issue. Next, Ireland’s national tax policies are examined, looking in particular beyond the low corporate tax rate to less well-known but arguably more harmful tax practices. It outlines key international developments on tax justice, and the role which Ireland can play in shaping these developments. Finally, the paper makes recommendations to the Irish government which would bring Ireland’s tax policies in line with its enlightened development policies and see Ireland’s two worlds merge into ‘One World, One Future’ envisaged by Ireland’s current policy on international development.¹



It is a very significant conference, especially in the light of the fact that all political parties and Independents are shaping their approaches to taxation and fiscal policies in the run-up to the next general election. I wonder how many of the manifestoes that will be drawn up shortly will include a section on human rights and the explicit links between human rights and taxation policy, as emphasised at length by Professor Alston.

Senator Katherine Zappone, calling for a House debate on the human rights implications of tax and fiscal policy

Why are tax and fiscal policy human rights issues?

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There have been doubters along the way... Human rights actors who asked 'what's tax got to do with us?' Tax policy advisers who asked -'why should we worry about development issues in the global south?' At today's Christian Aid conference, the UN Special Rapporteur on Extreme Poverty and Human Rights Philip Alston unequivocally and emphatically affirmed tax as a human rights priority. And not only that, he highlighted how it concerns us all - citizens of Ireland and citizens of the global south.

Karol Balfe, Christian Aid Ireland, 12 February 2015.

Why should we consider tax and fiscal policy as human rights issues? In the first instance there are clear obligations under human rights law that fiscal policy generates the revenue necessary for poverty reduction and the realization of rights. Magdalena Sepúlveda, noted in her report on the subject in 2013 that while human rights obligations do not prescribe precise taxation policies, obligations under various international and regional treaties, as well as many constitutions do impose limits on the discretion of States in the formulation of fiscal policies. In order to ensure that States respect, protect and fulfil rights and to assist them in opening fiscal space towards the realization of human rights, fiscal policies must be guided by the obligations taken on by states under these treaties.

The conference highlighted five main characteristics of fiscal and tax policy that characterize it as a human rights issue. Firstly, and perhaps most obviously, it provides the State with sufficient resources to fulfil human rights – both civil and political, and economic and social.

Secondly, as put by Professor Alston ‘it reflects better than all of the ministerial statements and white papers the real priorities of a government. We can see clearly the activities that it chooses to incentivise, those that it opts to disincentivise, the groups that it decides to privilege, and the groups that it decides to ignore or even penalise.’² And, as Dr. Sheila Killian pointed out, tax is a significant instrument of government power, but tax rules are changed with relative ease.³ Both Professor Alston and subsequent speakers emphasised that a decision to forego revenue by introducing a tax incentive rather than spending it on alleviating policy is a political choice – and one which can privilege the wealthy over the very poor. It is particularly important to consider this in Ireland when balancing the need for new economic growth with the effects of austerity. John Mark McCafferty of St Vincent de Paul put this into perspective, outlining that, while recent years may have brought economic recovery, the lived experience of many of St Vincent de Paul’s clients has, if anything, worsened.

This brings us to a third point, that in order to ensure the realisation of human rights and to tackle inequality, it is necessary to redistribute societal resources, and a progressive tax system plays a central role here. Fergal O’Brien from IBEC noted that Ireland has one of the most highly progressive tax systems in the world. However, it is important to note that before tax and social transfers, Ireland has one of the highest levels of income inequality in the OECD and therefore our very progressive tax system does no more than bring us into line with the OECD average in terms of income equality.⁴

It is also worth noting that progressivity in the Irish tax system depends at which point you measure it. Irish progressivity flatlines at 70,000 euro (TASC, 2015). Real progressivity is also diluted by unequal access to tax reliefs.

Fourth, the way in which tax is designed, collected and spent is central to political accountability. This is particularly important- and difficult – in post-colonial societies, including Ireland and many developing countries – where there is historical resistance to the State to be overcome and where tax evasion is sometimes overlooked or even admired, rather than condemned as criminal. As Professor Alston pointed out, taxes can either reinforce the State’s accountability and strengthen democracy – or undermine democracy, by making decisions behind closed doors. Lidy Nacpil, of Tax Justice Asia, built on this point by emphasising the importance of addressing corruption in tandem with tax policy, because ‘why would we ask people to pay more when a common complaint is misuse of public funds?’⁵

The importance of tax in the social contract between government and people is widely accepted – but, as Sheila Killian has said, is often misconstrued as a version of ‘The person who pays the piper is entitled to call the tune’⁶ – that is, those who pay the most taxes should have the greatest role in shaping and benefiting from public policy. By taking a human rights lens, we acknowledge that public services should be provided equally to all. And, looking further afield, that Ireland’s tax policies help and do not hinder poor people in developing countries, in line with our international human rights obligations. Furthermore, tax systems should not disadvantage any one group. For example, Lidy Nacpil pointed out that tax policies are often

gender blind, and may perpetuate discrimination against women. Christian Aid for example, has been working to help civil society organisations carry out gender analyses of their national tax systems by providing an overview of gender implications of tax policies.⁷

Finally, and running through all of the above, tax is an important feature of international cooperation on human rights. Magdalena Sepúlveda Carmona put the point strongly in her report: 'Providing an avenue for high-net-worth individuals and transnational corporations to evade tax liabilities...could be contrary to obligations of international assistance and cooperation, because it can directly undermine the ability of another State to mobilize the maximum available resources for the progressive realization of economic, social and cultural rights.' It is this which we will bear in mind most strongly as we turn to look at the potential human rights implications of Ireland's tax and fiscal policies in the following section.



**Tax is not a burden, it's
a contribution to society...
not just domestically, but
internationally as well. Is Ireland
doing everything it can to
make sure that its tax policy is
contributing to improving the
lives of people overseas?**

**Niko Lusiani, Center for
Economic and Social Rights**

The human rights implications of Ireland's tax policies

Christian Aid Ireland — 2016



The problem is not the 12.5% tax rate...The problem is that for many years now Ireland has supplemented that rate...with a range of schemes that look to all the world to be designed to facilitate tax avoidance by huge multinationals in return for a pittance of a reward to Ireland. But...the costs to other countries, including developing countries, have been immense.

Philip Alston, UN Special Rapporteur for extreme poverty and human rights

Throughout the conference proceedings, there was some defensiveness in evidence around Ireland's 12.5% corporate tax rate on the part of those most closely associated with the current status quo. However, other participants, including Professor Alston, emphasised that the low corporate tax rate is not necessarily the main concern. As another commentator has put it: 'The argument about the 12.5% isn't really that important because the 12.5% is just the sign on the door. It says come in and have a tax break.'⁸

The association of Ireland with the 12.5% rate of corporation tax is now well established. It has been stated many times that this is settled policy of the Government, and will not change.

Minister of State Simon Harris

The following section deals, therefore, not just with the 12.5% rate, but with other schemes and legislation which can be shown to have a detrimental effect on human rights, both at home and abroad. In commenting on the 12.5% rate, Professor Alston said: 'Policies of this type

can easily descend into mantras, and mantras are simply slogans that are repeated unthinkingly.'

Proponents of Ireland's low corporate tax rate employ two principal arguments. The first is that the low corporate tax rate has attracted large numbers of multinationals who might otherwise have taken their business elsewhere, and thus the total tax take is in fact greater than it would otherwise be with a higher corporate rate. The second is that while the headline rate of 12.5% is very low, it is in fact much closer to the effective rate of tax than in other European countries. We will look at each of these points in turn.

The first argument certainly has its merits. Ireland raised 2.8 billion euro in corporation tax in 2013, and the Irish Tax Institute estimates that corporation tax accounted for 11% of the total Irish tax take in 2014.⁹ However, such arguments overlook the international dimension. Despite vehement denial from Irish government on 'race-to-the-bottom' tactics, Ireland's low corporate tax rate has prompted emulators. The UK corporation tax rate will drop to 20% by April 2016, in a third successive cut from an initial starting point of 28%. Legislation currently under discussion in Westminster will devolve powers to the Stormont Assembly to allow Northern Ireland to set this rate even lower.¹⁰ Every drop in corporate tax rate puts more money in the hands of the wealthy, and makes less available for services for the very poor.

All countries need to be wary of supporting tax competition, for it's not a competition; these are tax wars that will cause significant damage.

—
John Christensen, Tax Justice Network

The second argument regarding the effective tax rate, has even greater caveats. While it is true that Ireland's effective corporation tax rate is very close to 12.5%, using this argument completely ignores the fact that many multinational companies registered in Ireland are not tax resident here or anywhere else, thereby sheltering huge profits from tax through schemes like the Double Irish. For companies like Apple, which paid no tax in Ireland at all for its first ten years in Ireland, or Google Ireland, where the Sunday Independent found in 2012 that it paid just 0.14% tax on turnover of 47 billion euro over seven years the headline rate has little or no bearing on reality.

If we reform our tax policy, we won't see a huge change in foreign direct investment (FDI). FDI will come to us, because of our skills, our English language, our strategic geographic position...What will be changed is the type of money that flows through Ireland so fast it barely even gets us wet.

—
Sheila Killian, University of Limerick

It is thus the more complex and much more unequivocally harmful practices which accompany the low tax rate which are the real issue at hand. Until Budget 2015, companies which were registered in Ireland did not have to be tax resident here, as long as they had substantial 'management and control' elsewhere. This provision combined with lax transfer pricing rules, allowed many US multinationals to establish Irish registered companies which were not tax resident anywhere. As was emphasised by the Minister of State at the Christian Aid Ireland conference, Budget 2015 closed the 'double Irish' loophole by changing

residency rules to require all companies registered in Ireland to also be tax resident. What was not highlighted was the fact that this will apply only to new registrants from 2015; companies which already availed of the scheme will continue to do so until 2020. This long lead-in time has been criticised by EU Commissioner for Competition Margerthe Vestager, who would like a 'deeper understanding of why such a long time frame is necessary.'¹¹

Also in Budget 2015, Minister Noonan announced the development of a 'Knowledge Development Box' which would allow for a lower rate of tax on 'knowledge based activities'. Given that Ireland already has a research and development tax credit in place - about which Christian Aid has already expressed its concerns as a potential vehicle for tax avoidance¹² - it is unclear why another knowledge-based tax incentive is needed. The Knowledge Development Box would be similar in design to a number of 'patent boxes' in other EU states - several of which are currently already being investigated by the EU for their compliance with state aid rules and by the OECD as potentially harmful tax practices. While the Irish government is employing a 'wait-and-see' tactic to establish what will be permissible, the perception that Ireland is replacing one dubious tax practice with another does further damage to Ireland's reputation. Confirmation of the introduction of the Knowledge Box was announced in October 2015, under Budget 2016.

The use of tax policies to attract capital, particularly where the tax policies aren't so much attracting and retaining foreign direct investment but helping companies to shift their profits to other tax havens beyond Ireland is now being challenged...Ireland

needs to consider a very different strategy, one which anchors (FDI) to this country through more investment into research and development, into training a more productive workforce...and does not rely so heavily on tax breaks.

—
John Christensen, Tax Justice Network, Morning Ireland, 12 February 2015.

How is all of this of concern for international development? On the same day on which the conference took place, the African Union published a new report on illicit financial flows out of Africa. It found that the amount of money lost to Africa every year is likely to exceed **50 billion dollars** by a significant amount.¹³ In terms of monies lost through commercial activities, the 'double Irish' features prominently in the report. Earlier research commissioned by Christian Aid estimated that between 2005 and 2007, **5.8 billion euro** capital flowed into Ireland arising from trade mispricing. **268 million euro** came from the poorest 49 countries in the world - equivalent to 20% of Ireland's total overseas development aid for the year 2008.¹⁴

In 2011, a report by the OECD, IMF, World Bank and the UN recommended that G20 countries conduct 'spillover analyses' of the impact of changes in their tax systems on the economies of developing countries. The decision by the Department of Finance to commission a spillover analysis of the effect of Irish tax policy on developing countries was welcomed by Christian Aid Ireland. While the full results of the analysis were not available by the time of the conference, Deirdre Donaghy from the Department of Finance shared some initial findings, however these findings tended to raise more questions

than they answered. The Spillover Analysis was announced along with the Budget 2016. It was unable to say conclusively that Ireland was not having a spillover effect on developing countries, pointing to the lack of data in key areas as a major obstacle to the objectives of the exercise. The concluding section of this report makes some recommendations to the Irish government on how they might build on the Spillover work.

The first initial finding, with regard to trade and capital flows between Ireland and developing countries, indicated that spillover was unlikely, due to low volume of transactions. It is true that there are relatively low levels of direct trade between Ireland and many developing countries. However, these statistics do not take into account the impact of the schemes which allow Ireland to play a key role in facilitating aggressive tax avoidance by multinationals globally, as outlined above. It has been acknowledged by the Department that they cannot track flows coming into Ireland from developing countries via a third country. Professor James Stewart of Trinity College Dublin has expressed his reservations with regard to the initial spillover analysis findings: 'Ireland is the EMEA (Europe Middle East Africa) headquarters for many multinationals with a presence here. Most of these profits are coming from Europe or the Middle East, but some from Africa. The department needs to ask the right questions and look in the right areas if they're serious about this.'¹⁵

A second initial finding, with regard to tax treaties with developing countries, was that there are relatively few such treaties and the analysis was 'broadly positive' with regard to those currently in place. Conference participants challenged this statement, pointing to

Action Aid's report 'Sweet Nothings' whereby Zambia Sugar, owned by Associated British Foods paid next to no taxes in Zambia, thanks in large part to their double taxation treaty with Ireland, allowing them to re-route profits through the IFSC. The gain to the Irish exchequer: just over 1 million euro. The loss to the Zambian exchequer: an estimated 25 million euro.¹⁶ Deirdre Donaghy noted that the spillover analysis would deal with this issue. A new double taxation agreement between Ireland and Zambia is to be signed shortly, and it is to be hoped that this will end this particular arrangement.¹⁷

Part of the problem, however, is that much of the information needed to conduct a true spillover analysis is not easily available in the public domain. It is only through investigative work by civil society organisations like Action Aid and Christian Aid that such cases are made public - and they are only illustrative of the wider problem. It is vital, therefore, that Ireland continue to engage with international processes, such as the OECD Base Erosion and Profit Shifting (BEPS) initiative, in order to bring greater transparency and accountability to the global tax system, and it is to this international dimension that we turn our attention in the following section.



So maybe that was the lesson
of the day for me, there are
many ways to link tax and
human rights, but the most
important one is conceptual,
stop seeing tax as money, start
seeing tax as enabling rights
and we'll have taken a vital first
step.

Joseph Stead, Christian Aid
Ireland, 12 February 2015

Ireland on the International stage



Christian Aid Ireland — 2016

As we have seen, it is impossible in a globalised world to set national tax policy without affecting revenue in other countries and equally, it is impossible to talk about national tax reform without reference to the international processes which influence it. This section, therefore, looks firstly at the OECD BEPS process and then at the significant development and human rights events which will take place in 2015, and how tax and fiscal policy can and should be addressed in these processes.

Much of the heightened scrutiny and resultant reform of Ireland's tax policy as outlined above has been prompted by external and international influences. The closing of the 'double Irish' loophole, for example, was prompted, on the one hand, by the European Commission's view that Ireland's arrangements with Apple constituted 'illegal state aid' and, on the other, by the ongoing reforms under the auspices of the OECD.

While the focus is welcome, the limits must not be forgotten. The EU is only concerned with the illegality of state aid vis á vis other member states. And despite recent efforts to involve developing nations in the BEPS process, the OECD remains a club of wealthier countries which will naturally put its members' interests first.

If you are not talking about human rights you should not be talking about tax.

—
Lidy Nacpil, Tax Justice

Several of the conference participants throughout the day, including the UN Special Rapporteur on extreme poverty and human rights, reminded us of Ireland's impressive reputation in the world for speaking out

for the rights of people in developing nations. The Irish government can use this reputation to lead by example in treating tax as a human rights concern, and encouraging other nations of the world to do likewise. As mentioned by Minister of State Simon Harris in his opening address, Ireland engages in ‘both direct and co-operative initiatives which aim to strengthen the capacity of developing countries to develop their tax administrations and tax policies.’¹⁸ In an interview in the margins of the conference, Director General of Irish Aid, Michael Gaffey, highlighted some of these initiatives and said that this is likely to become an ‘increasing’ part of their work.¹⁹

We need to be very cautious about looking to Ireland as a model in tax matters.

Ricardo Barrientos, Central American Institute of Fiscal Studies and former Deputy Finance Minister, Guatemala

Any future engagement by Ireland with developing countries should take two factors into consideration. Firstly, we must ensure that positive work on tax abroad is not undermined by strategies facilitating multinational tax avoidance at home. Secondly, we should be wary of promoting our own practices in engagement with developing countries. At the Christian Aid conference, Ben Dickinson of the OECD commented that ‘tax holidays and other incentives’ given by developing countries ‘are wasteful and often don’t affect a company’s decision to invest in a particular country, while diverting resources that could have been used for development.’²⁰ Unfortunate parallels can be drawn with the Irish experience.

Stated simply, BEPS arises because under the existing rules MNEs (Multinational Enterprises) are often able to artificially separate the allocation of their taxable profits from the jurisdictions in which these profits arise. This can result in income going untaxed anywhere, and significantly reduces the corporate income tax paid by MNEs in the jurisdictions where they operate.

Ben Dickinson, OECD

Ben Dickinson outlined the reasons why Base Erosion and Profit Shifting is a problem, particularly for developing countries, and the recent efforts which have been made to involve developing countries in the BEPS process. It is clear that many aspects of the BEPS process will benefit developing countries. In particular, the requirement for country-by-country reporting will make it much easier for governments to assess the risk of transfer mispricing and Ben Dickinson gave credit to civil society organisations, including Christian Aid, for putting this on the agenda.²¹ While this is a welcome validation of Christian Aid’s campaign on tax justice, it also left participants wondering: if developing countries had been involved from the start of the process, perhaps it would not have been necessary? Furthermore, as Sheila Killian observed, a seat at the table for developing nations is not the same as a vote.

It is here where Ireland has the potential to play a positive role. Ireland is a full member of the OECD, and Ireland’s recent OECD Development Assistance Committee Review found that Ireland is ‘outperforming many donors when it comes to directing its development aid towards the world’s neediest countries’.²²

By announcing the abolition of the 'double Irish' before the BEPS process required it, Ireland has shown that they can play a leading example in committing to reform (although there is also an argument that Ireland jumped before being pushed to do away with a scheme that had come to represent the most egregious of tax avoidance schemes). Ireland should build on this positive start by championing the needs of developing countries within the BEPS process.

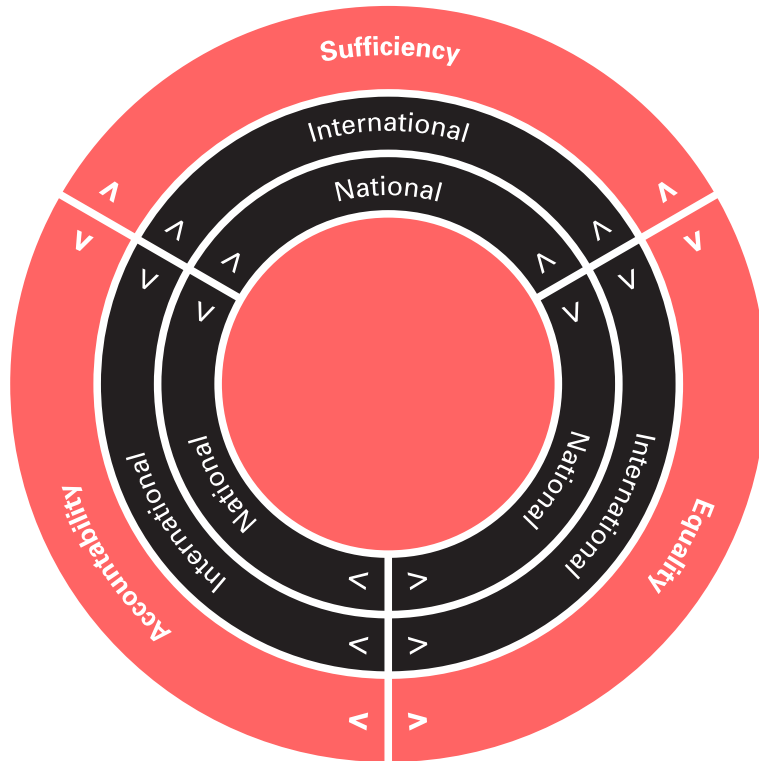
Ireland can also play a role in bringing tax and fiscal policy to the fore in wider debates on human rights and development. Ireland is currently developing a National Action Plan on business and human rights. Christian Aid's submission to that process drew on the conference proceedings to advocate strongly for the consideration of tax policy along with other matters concerning business and human rights.²³

Finally, as Michael Gaffey reminded us at the conference, 2015 is a crucial year for international development, with the objectives of three major summits – on Financing for Development in July, on finalizing the Sustainable Development Goals in September, and on Climate Change in December – standing or falling together. Niko Lusiani outlined a piece of work undertaken by his organization, the Center for Economic and Social Rights (CESR) in conjunction with Christian Aid on the need for a 'fiscal revolution' to provide the financing for development.²⁴ This work gives a very practical outline of how to apply human rights-based principles to fiscal policy for development, using three key pillars: sufficiency (of resources), equality and accountability

His presentation again reminded participants of the positive role played by Ireland in this respect. Ireland's appointment as co-facilitator (with Kenya) of the post-2015 development agenda gives us a particularly key position – although Head of Irish Aid Michael Gaffey reminded us that acting as chairs makes it in some respects more difficult to campaign for your priorities. Despite Ireland's urgings, however, the Special Rapporteur noted that human rights remain largely absent from the Sustainable Development Goals, pointing to the need for Ireland to redouble its efforts to ensure that any post-2015 framework is firmly grounded in human rights principles.

A Human Rights Centered Fiscal Revolution

Sufficiency, Equality and Accountability in Public Financing for Sustainable Development



Christian Aid Ireland — 2016

Sufficiency

International

Boost additional public financing whilst curbing illicit financial flows and harmful tax competition

National

Improve domestic resource mobilisation

Equality

International

Redress historic North-South inequalities by reversing capital outflows from developing countries

National

Tackle socio-economic inequalities through fiscal policy.

Accountability

International

Democratise decision making on global trade, aid and tax processes and make more responsive to community needs

National

Enhance transparent participatory and accountable fiscal and budget processes.

Ensure effective remedy for fiscal injustices



Ireland's exceptionally positive image in the world, manifest in so many contexts, should not be spoiled by tax policies that are absolutely marginal to its basic economic and fiscal strategy.

Philip Alston, UN Special Rapporteur on extreme poverty and human rights

Conclusions and Recommendations

Christian Aid Ireland — 2015



In some ways, the recommendations listed can be seen as contradictory: on the one hand, we are calling on the Irish government to leverage their considerable influence to champion human rights-based tax and fiscal policies in support of international development; on the other, we are urging them to end demonstrably harmful practices in our own tax codes.

But these recommendations are reflective of current practice: the 'two Irelands' mentioned in the introduction to this paper. As the links between tax, human rights and development continue to make clearer, and as national tax policy comes under increasing international scrutiny, it is only by addressing and resolving such anomalies that Ireland can continue to maintain its reputation both as an attractive location for investment, and a powerful force for international development and human rights.

Recommendations to the Irish government on national policy.

01

As stated by Professor Alston, tax policy most clearly reveals a government's true priorities. The development of tax and fiscal policy must be grounded in the principles of human rights. Greater coherence across government departments is needed to ensure fiscal policies comply with our human rights obligations under international law do not promote inequitable growth, or contribute to further marginalization of people and communities or to creating greater inequality between men and women. This should mean explicit human rights and equality proofing of government tax decisions.

02

A human rights impact assessment be carried out on all aspects of the budget measures. This was a recommendation contained in the official report by former UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepúlveda Carmona after her visit to Ireland in 2014. It was also a recommendation to Ireland from the UN Committee on Economic Social and Cultural Rights after their 2015 review of Ireland's compliance under the International Covenant on Economic Social and Cultural Rights (ICESCR). This analysis should be published together with the other budget

documents (e.g. financial costing of measures) on the Department of Finance website at budget time to allow for the greatest possible level of public engagement.

03

As recommended by the UN Committee on Economic Social and Cultural Rights as part of Ireland's 2015 review under ICESCR, the government should review, based on human rights standards, all the measures that have been taken in response to the economic and financial crisis and are still in place with a view to ensuring the enjoyment of economic, social and cultural rights.

04

Tax reliefs should be systematically reviewed within a 3–5 year period of them being granted, while a rolling process of reviewing existing reliefs should also be initiated.

05

Given the rapid rate of global economic change, there is little certainty that FDI to Ireland can be guaranteed. The Irish government should explore how to move away from reliance on tax incentives to attract foreign direct investment, investing instead in genuine measures to develop research and development and knowledge-based skills, and are subject to thorough economic cost benefit analysis.

06

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The results of the government's spillover analysis highlighted a lack of data around conduit FDI, Special Purpose Entities, as obstacles to determining the extent of Ireland's spillover impact on developing countries. As a next step, the government should move to accessing the necessary data to allow a more informed understanding of Ireland's spillover impact.

07

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All major changes to the Irish tax code should always include an assessment of potential spillover impact on developing countries. These should be well-resourced, conducted independently, have addressed the weaknesses of the spillover analysis of 2015 and should assess the revenue, distributive and governance consequences of Irish tax policy in developing countries. The impact assessments should consult with affected people and trigger concrete policy actions to remedy any negative impacts discovered.

08

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Ireland should lead by example in explicitly addressing the link between tax, business and human rights in a meaningful way in their forthcoming National Action Plan on Business and Human Rights.

09

—

Draw up disclosure criteria for MNCs with Europe Middle East and Africa (EMEA) headquarters in Ireland: Many US multinational in Ireland have their EMEA operations headquartered here. Ireland is uniquely placed to request information on the tax planning strategies of these companies with operations in the EMEA region. Ireland should establish developing country relevant criteria relevant to guide MNCs on which data should be shared with Irish tax authorities. This information could be subsequently shared with the relevant developing country.

Recommendations to the Irish government on international policy.

10

Ireland should advocate for the establishment of an intergovernmental body on tax, which would be truly globally representative and inclusive. This could be done through the upgrading of the current UN Committee of Experts on International Cooperation in Tax.

11

Ireland should take the lead in advocating for an EU wide spillover analysis to be conducted. Build on the recently published Spillover Analysis by examining how Ireland's tax system interacts with other country's systems, particularly within the EU. Looking at Ireland's tax system in isolation from how it interacts with other countries such as Luxembourg or the Netherlands is a significant omission in the published analysis.

Participants

Professor Philip Alston, UN Special Rapporteur on Extreme Poverty and Human Rights

Simon Harris, TD, Minister for Health and former Minister of State at the Department of Finance

John Mark McCafferty, Head of Social Justice, St Vincent de Paul

Sorley McCaughey, Head of Advocacy and Policy, Christian Aid Ireland

Professor Donncha O'Connell, Head of the School of Law, NUI Galway

Joe Stead, Senior Economic Adviser, Christian Aid (GB)

Lorna Gold, Head of Advocacy and Policy, Trócaire

Áine Lawlor, Journalist, RTÉ

Sheila Killian, Assistant Dean, Kemmy Business School, University of Limerick

Ricardo Barrientos, Senior Economist, Central American Institute of Fiscal Studies and former Deputy Finance Minister, Guatemala

Cora O'Brien, Tax Policy Director, the Irish Tax Institute

Lidy Nacpil, Coordinator, Tax Justice Asia, the Philippines

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Deirdre Donaghy, Fiscal Policy Division, Department of Finance

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Michael Gaffey, Director General, Irish Aid, Department of Foreign Affairs and Trade

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Niko Lusiani, Director, Human Rights in Economic Policy, Centre for Economic and Social Rights

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Ben Dickinson, Head of the Tax and Development Unit, OECD

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Shane Darcy, Irish Centre for Human Rights, NUI Galway

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John Christensen, Director, Tax Justice Network

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Fergal O'Brien, Chief Economist, Ibec

Endnotes

- 1 One World, One Future.
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- 2 Philip Alston, Keynote Address, Christian Aid Ireland conference, 12 February 2015.
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- 3 Sheila Killian, Christian Aid Ireland conference, 12 February 2015.
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- 4 See Department of Finance Staff Working Paper, The Structure of Ireland's Tax System and Options of Growth Enhancing Reform, June 2013, p11.
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- 8 Richard Murphy, Tax Research UK, in 'Ireland's corporate tax rate revealed' the Guardian business blog, Lisa O'Carroll, 22 February 2011.
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- 9 Cora O'Brien, Christian Aid Ireland conference, 12 February 2015.
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- 10 In November, 2015, it was confirmed that from April 2018 Northern Ireland's rate of corporation tax will be 12.5%- exactly matching the rate in the Republic of Ireland.

- 11 <http://www.rte.ie/news/business/2014/1211/666193-apple-ireland-tax/>.
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- 12 http://www.christianaid.ie/Images/1%20March%202013%20Christian%20Aid%20Ireland%20submission%20%20FINAL_tcm19-82506.pdf.
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- 14 Christian Aid, 'False Profits: robbing the poor to keep the rich tax free', March 2009, p8.
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- 16 Action Aid, 'Sweet Nothings: The human impact of a British sugar giant avoiding taxes in Southern Africa', February 2013.
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- 17 An updated and amended Ireland Zambia tax treaty is now in force. While the particular issue identified by the Action Aid report has been done away with, and the overall treaty is an improvement, there are still aspects of it that are less advantageous to Zambia.
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- 18 Minister of State Simon Harris, Address to Christian Aid conference, 12 February 2015.
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- 19 Interview with Michael Gaffey, 12 February 2015, at: <http://christianaid.typepad.com/learningexchange/taxandhumanrights.html>.

- 20 Ben Dickinson, Christian Aid conference 12 February 2015.
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- 21 Regrettably, under the BEPS proposals, the country by country reports will only be shared with the country in which the multinational company is headquartered. The information will then be shared by the head quarter country with countries who host subsidiaries of that company through existing tax treaties. As most developing countries do not have extensive tax treaties with relevant other countries, they are unlikely to be able to access the information contained in the country by country reports.
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- 22 OECD Development Assistance Committee: Review of Ireland, 2014.
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Christian Aid Ireland is a development organisation, working globally in over 40 countries. We work for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are part of a wider movement for social justice. We provide urgent, practical and effective assistance where need is great, tackling the effects of poverty as well as its root causes.

For many years, tax – perceived as complex, technical and remote - was rarely regarded as a development issue, much less a human rights one. In 2008, Christian Aid became the first leading development NGO to make tax justice a major campaign priority, making the direct link between tax avoidance and poverty. Since then, the importance of ensuring tax justice has been increasingly on the global agenda. In 2014, the UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, devoted her final annual report to examining tax and fiscal policy as a major determinant of the enjoyment of human rights.

