Tax policy is rarely assessed from a human rights perspective. But there is growing recognition that tax policy is a human rights issue, and has implications for the citizens enjoyments of these rights, both in Ireland and in developing countries.

Christian Aid has worked on tax as a development issue since 2017, increasingly framing the tax justice argument in the context of our obligations under various international human rights agreements. We have argued that Irish tax policy may be undermining government efforts to ensure compliance with the International Covenant on Economic Social and Cultural Rights, and other international Covenants. [1]

This short submission to the aims to (i) highlight tax as a key human rights issue, (ii) point to the Conventions under which these obligations are articulated (iii) look at international cooperation in tax matters as a guiding principle, and finally (iv) make recommendations

1. Tax revenue is the most important, the most reliable and the most sustainable instrument to resource human rights in sufficient, equitable and accountable ways. The realization of all human rights, likewise, is a core *raison d'être* of government. It is through respecting, protecting and fulfilling civil, political, economic, social, cultural and environmental rights that the state earns its legitimacy to tax. Taxation also plays a fundamental role in redistributing resources in ways that can prevent and redress gender, economic and other inequalities and reduce the disparities in human rights enjoyment that flow from them. Moreover, a just system of taxation can cement the bonds of accountability between the state and its people, fostering governments to be more responsive to the rights and claims of those to whom they are answerable. Tax policies can likewise counteract glaring market failures and protect global common goods – not least a healthy environment within planetary boundaries.
2. Article 2.1 of the International Covenant on Economic Social and cultural rights (ICESCR) states that states must devote the maximum available resources to ensure the progressive realization of all economic, social and cultural rights as expeditiously and effectively as possible, even during times of severe resource constraints, whether caused by a process of adjustment, economic recession or other factors[2]. The UN Convention on the Rights of Persons with Disabilities(Article 4.2) and the UN Convention on the Rights of the Child(Article 4) are both explicit about state parties obligations to take steps to use the maximum available resources to ensure economic social and cultural rights**,** while the

[1] http://www.christianaid.ie/images/christian-aid-tax-and-human-rights-conference-paper-july2015.pdf
[2] Official Records of the Economic and Social Council, 1991, Supplement No. 3 (E/1991/23), annex III, Committee on Economic, Social and Cultural Rights, general comment No. 3

Maasricht Guidelines on violations of economic social ad cultural right clarifies that a state is in violation of the Covenant if it fails to allocate the maximum of its available resources to realizing human rights**.**

In 2014, the UN Special Rapporteur (UNSR)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[3]. Her report noted 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.

3. Placing this obligation in an Irish context, Sepulveda's successor as UNSR Professor Philip Alston speaking in Ireland in 2015[4], described CSO figures of one in every eight children living in poverty in Ireland, and the existence of other pockets of poverty in Ireland as 'a negation of all human rights'. The pockets of poverty he said, are the result of a series of deliberate and conscious decisions by key actors who have chosen to prioritize other goals….the sanctity of tax policy is too often invoked as though there are no choices to be made'.

   There are therefore questions as to whether Irish tax policy in undermining Ireland's obligation to mobilise maximum available resources for the fulfilment of Irish citizen's economic social and cultural rights. Similarly the existence of deep pockets of poverty across the country, and rising levels of child homelessness[5], raises serious questions as to whether measures of austerity which resulted in the retrogression in the fulfilment of rights, were only taken after all possible alternatives were explored. Without any apparent assessment of austerity against our human rights obligations it is unclear as to whether alternative policies could have prevented this retrogression under international human rights law.

4. Tax is also an important feature of international cooperation on human rights and there is a clear international human rights dimension to Irish tax policy. Sepúlveda made this point strongly in her 2103 report: 'Providing an avenue for high-net-worth individuals and

[3] A/HRC/26/28
[4] http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx
[5] http://www.irishtimes.com/news/social-affairs/all-regions-of-state-bar-one-see-rise-in-child-homelessness-1.2311331

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'[6]. Article 21 of the Maastricht principles says that Sates much refrain from engaging in activity that impairs the ability of other states to comply with its own human rights commitments.

The impact of Irish tax policy on developing countries ability to raise revenue to fulfil citizens rights has been the subject of Christian Aid reports -Death and taxes in 2008[7], and Tax of Life in 2010[8]. In 2013 international NGO Action Aid also examined one particular aspect of Irish tax policy damaging the Zambian economy[9]. In 2015, the UNECA published a report[10] documenting the extent of the loss of revenue to the African country to illicit capital flight including tax avoidance, in which the Double Irish tax avoidance scheme features prominently.

Clearly then, there are questions to be answered about the impact of Irish tax policy on developing countries ability to raise revenue in pursuit of the fulfilment of citizens rights, and whether Irish tax policy contravenes our obligation to respect and protect the enjoyment of human rights everywhere, which involves avoiding conduct that would foreseeably risk impairing the enjoyment of human rights by persons beyond their borders, and conducting assessments of the extraterritorial impact of laws, policies and practices.[11]

Recommendations:

The development of tax and fiscal policy must be grounded in the principles of human rights. Greater coherence across government departments is need to ensure fiscal policies comply with our human rights obligations under international law do not promote inequitable growth, or contributes to further marginalization of people and communities or to creating greater inequality between men and women.

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. This

[6]A/HRC/26/28
[7] http://www.christianaid.org.uk/images/deathandtaxes.pdf
[8] http://www.christianaid.org.uk/Images/Tax_of_Life_Report.pdf
[9] http://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf
[10] http://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf
[11] Guiding principles on extreme poverty and human rights (A/HRC/21/39), para. 92.

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.

Fiscal policy should be subject to review for its human rights impact after an agreed period eg 4 years.

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, 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.