

## A Scottish Approach to Taxation

### Scottish Human Rights Commission Submission to the Finance Committee - Call for evidence Scottish Parliament

September 2016

#### 1. Introduction

Taxation is a crucial contributing component of the realisation of human rights. Tax revenues are the main source of income for governments to facilitate the execution of their legal obligations to protect, respect and fulfil human rights - ranging from the right to housing, the right to health, the right to a fair trial, the right to education and social security, and the principle of transparency and accountability.

Tax policy is not only important for ensuring sufficient resources, but it also plays a fundamental role in redressing inequalities and in shaping the accountability of government to the people they represent. While human rights dimensions have often been lacking from debates on taxation, fiscal policy have a major impact on the human rights situation in any given country. A human rights analysis strengthens the model of democratic governance and contributes towards a more equitable and sustainable approach to taxation. Hence it is essential to put human rights at the centre of fiscal policy.

As set out in the Scottish Government proposal, there are four principles that underpin its approach to taxation policy – proportionality, certainty, convenience and efficiency. Looking at taxation through the lens of human rights can enhance the current fiscal framework in a number of ways as explained further below.

The Scottish Human Rights Commission (the Commission) welcomes the opportunity to submit comments to the Finance Committee on its inquiry on a Scottish approach to taxation.

The Commission **recommends** the Scottish Government adopts a human rights based approach to taxation. In this submission, the Commission explains what a human rights based approach in this context means and highlights the international human rights standards, which are relevant to fiscal policy.

#### 2. Human rights based approach to taxation

Human rights obligations do not prescribe precise taxation policies. Scotland like any other devolved administration can formulate the policies most appropriate to their circumstances within their devolved competence. However, a wide range of international human rights treaties and standards, such as the International

Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child, provide guidance and impose parameters on the discretion of States in the formulation of fiscal policies. In Scotland, the Scottish Parliament and Ministers have a responsibility to observe and implement international obligations, including international human rights treaties within the areas of its devolved competence.

A rights-based approach to taxation would therefore require fiscal policymakers to take into account those standards and a number of practical elements when designing and implementing taxation. These include the right to participation and principle of transparency, the right to equality and non-discrimination and the principle of accountability.

- Right to participation and transparency

Political and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development. The right to directly and indirectly participate in public life is important in empowering individuals and groups, and is one of the core elements of human rights based approaches aimed at eliminating marginalisation. Many human rights treaties emphasise the right to participation. Article 25 of the International Covenant on Civil and Political Rights includes the right of all people to take part in the conduct of public affairs, including people living in poverty. Other international human rights instruments contain similar provisions.<sup>i</sup> Meaningful participation, and not only information, must be implemented throughout the policy cycle, from design of budgets and tax codes, allocation of expenditure, implementation and evaluation.

Human rights principles are essential components of effective and democratic government.<sup>ii</sup> Transparency and accountability are key principles of a human rights based approach to development that are also integral to government programmes and strategies. Some of the measures that can enhance transparency are: the adoption of laws ensuring the public's access to information on governmental processes, decisions and policies as well as institutional reforms on operating procedures and decision-making processes. Transparency is an important human rights principle that supports efficiency, especially in relation to both the design and greater disclosure of information over tax incentives. Accessible mechanisms for complaints and redress should also be put in place as part of both transparency and accountability principles.

- Right to equality and non-discrimination

It is a key principle that the enjoyment of economic, social, cultural, civil and political rights should be secured without discrimination on any ground. Revenue collection is a vital tool for States in redressing discrimination and ensuring equal access to human rights. The way in which revenue is raised plays an important role regarding human rights. It is crucial that taxes are raised and collected in human rights-compliant ways, where those who can least afford it are not asked to pay more. Regressive tax systems indirectly discriminate or disproportionately negatively impact the most vulnerable in society, increasing inequality.

The concept of progressive realisation (in ICESCR) implies that any retrogressive measures, including on taxation, would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the ICESCR.<sup>iii</sup> States should evaluate the differential impact of existing and proposed fiscal policies on different groups, in particular those whom historically have experienced from discrimination, marginalisation or inequalities.

In addition, Scottish and UK Government efforts to promote human rights are meaningless without an adequate effort to collect the necessary funds to provide for basic public services. A State or devolved administration that does not take strong measures to combat tax abuse is not allocating the maximum available resources to the realisation of economic, social and cultural rights. Such allocation is required by international human rights law.

Given that evaders end up paying less than taxpayers with the same or less capacity to pay, both tax evasion (illegal) and tax avoidance<sup>iv</sup> do not only undermine the fiscal base, but the principles of equality and non-discrimination.

The former UN Independent Expert on Extreme Poverty and Human Rights noted that tax abuse is:

*'not a victimless practice; it limits resources that could be spent on reducing poverty and realizing human rights, and perpetuates vast income inequality'.<sup>v</sup>*

Moreover, human rights is clear that even in times of severe resource constraints – whether caused by a process of economic adjustment or recession – the vulnerable members of society must be protected. Therefore, a fiscal policy should ensure equality, through being progressive and assisting the most disadvantaged individuals and groups in society.

- Principle of accountability

The promotion of accountability for meeting obligations is continuous in a human rights based approach. Accountability means monitoring, review and oversight of what is actually going on. A human rights complaint fiscal framework requires accountability mechanisms that are both proactive and reactive. Proactive mechanisms allow participation at the point of design and reactive measure enables aggrieved parties to raise their concerns regarding tax law and policy. Accountability also means judicial and non-judicial remedies and these are only useful if people know they can use them, and have effective access to them.

Fiscal policies are perceived to be inaccessible to most people, public participation contribute to a more open relationship between government and civil society and lead to both a more balanced distribution of public resources and greater accountability.

A human rights based approach to taxation requires governments to look at public finances in a new way. Taxation is an important tool that States can employ to comply with their international human rights obligations on both fulfilment and promotion sides.

### 3. Taxation and human rights standards

Human rights law and policy are neither static nor exclusively contained in the European Convention of Human Rights. The human rights framework includes seven UN international treaties ratified by the UK, the interpretation and clarification of official human rights bodies and mechanisms; and the evolution of the new standards via the positions, policies and practices of states and other actors.

A fiscal framework that incorporates a human rights perspective takes a particularly broad view of the rights concept to include a wider spectrum of rights implicated by the design and implementation of fiscal law and policy. This means that the human rights framework does not only protect rights but promote them.

Beginning with the International Covenant on Economic, Social and Cultural Rights (ICESCR), States have the obligation to take steps towards the goal of the full realisation of all economic, social and cultural rights. Therefore, States must devote the “maximum available resources” to ensure the progressive realisation of these rights as expeditiously and effectively as possible – this requires the effective use of available resources, including potential resources that could be raised through reasonable efforts, such as taxation.

The obligation to progressively realise economic, social and cultural rights entails a prohibition of deliberate retrogression, namely, of measures that directly or indirectly lead to backwards steps in the enjoyment of rights. State parties to the ICESCR have an immediate core obligation to ensure the minimum standards and to secure progressive improvements in the living conditions of, in particular, the most economically vulnerable in society.

Moreover, General Recommendation No 24 of the Committee on the Elimination of Discrimination against Women underlines the importance of budgetary measures for the fulfilment of economic, social and cultural rights.

The Committee on the Rights of the Child has also noted that the ‘widespread practices of tax evasion and corruption are believed to have a negative effect on the level of resources available for the implementation of the Convention.

In 1995, The Fourth World Conference on Women – and resulting in the Beijing Declaration and Platform for Action - identified taxation and macroeconomic policies as key tools for the eradication of poverty and achievement of sustainable development.

The UN Independent Expert on Extreme Poverty and Human Rights provides some additional guidance here:

*‘In several countries, the crises have demonstrated a clear need to maximize means of harnessing resources specifically for the realization of economic, social and cultural rights. States should identify additional sources of fiscal space to increase resources for social and economic recovery. From an array of options, States should particularly consider widening the tax base, improving the efficiency of tax collection and reprioritizing expenditures. These types of reforms could help*

*States to achieve a more progressive, equitable and sustainable taxation regime while complying with a human rights framework”*

The UN Independent Expert on Extreme Poverty and Human Rights further applies an analysis of tax matters in her report from a mission to Ireland. Her report recommends that:

*‘It is critically important that Ireland adopt taxation policies that adequately reflect the need to harness all available resources towards the fulfilment of its economic, social and cultural rights obligations, while avoiding measures that might further endanger the enjoyment of human rights by those most at risk. By increasing its tax take, Ireland would decrease the need for cuts to public services and social protection, and thereby help to protect the most vulnerable from further damage.*

*Taxation reform that comes in the form of cuts, exemptions and waivers may also disproportionately benefit the wealthier segments of society, and discriminate against those living in poverty”*

Finally, the recently developed UN Guiding Principles on Business and Human Rights clarify the obligations of states to ensure coherence among corporate law, tax policy and human rights. Furthermore, they set out the responsibilities of business enterprises to avoid any negative impacts on human rights throughout their operations and business relationships.

International human rights law sets obligations for States to respect, protect and fulfil human rights in all the ways that they exercise their functions, and the design, implementation and monitoring of revenue-raising policies is no exception.

## Summary

Human rights and taxation are unquestionably linked. Taxation has a fundamental role in the realisation of human rights, because of its value for raising revenue and its power to redress inequalities and increase accountability.

The human rights framework provides strong guidance for Scotland’s decisions and priorities in generating and allocating resources. Taxation should be looked at through the lens of human rights.

**The Commission recommends the Scottish Government adopt a human rights based approach to taxation. This means a taxation system that is compatible with Scotland’s human rights obligations, including:**

- + Access to information and meaningful participation on their design and decision making process,**
- + Using taxation and budgeting to further the realisation of rights and readdress inequality,**
- + Increasing transparency and greater disclosure of information over tax systems,**
- + Protecting the most vulnerable in society,**
- + Tackling tax abuse,**
- + Implementing human rights assessments of fiscal policy periodically, and**

## + Adopting accessible mechanisms for complaints and redress.

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### About the Commission

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of its functions. The Commission is the national human rights institution (NHRI) for Scotland with a mandate to promote and protect human rights for everyone in Scotland. The Commission is one of three NHRIs in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission. In 2015 the Commission was re-accredited with "A" status by the International Coordinating Committee of NHRIs.

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<sup>i</sup> These include the Universal Declaration of Human Rights (art. 21); the International Covenant on Economic, Social and Cultural Rights (art. 8); the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (c)); the Convention on the Elimination of All Forms of Discrimination Against Women (arts. 7 and 8); the Convention on the Rights of the Child (art. 15); the Convention on the Rights of Persons with Disabilities (arts. 4 (3), 29, 33 (3)); the International Convention on the Protection of All Migrant Workers and Members of Their Families (arts. 41 and 42);

<sup>ii</sup> Human Rights institutions are also key to democratic governments.

<sup>iii</sup> ICESCR General Comment No 1 (1989)

<sup>iv</sup> HMRC define tax avoidance as "exploiting the tax rules to gain a tax advantage that Parliament never intended".

<sup>v</sup> Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28