HUMAN RIGHTS & CROSS-BORDER TAX ABUSE
Illicit financial flows, human rights and the post-2015 agenda

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WHY HUMAN RIGHTS IN INT’L TAX POLICY?

HUMAN RIGHTS OBLIGATIONS ON TAX COOPERATION

FROM OBLIGATION TO IMPLEMENTATION
Why human rights in tax policy?

(Un)sufficiency of resources?

Tax Evasion vs. Budget Cuts in Spain (2012)

Source: Ministry of Finance and Public Administrations of Spain, 2012 and GESTHA, 2011
Why human rights in tax policy?

(In)equality of resources?
Why human rights in tax policy?

Accountability of resources?

Insufficient, inequitable and unaccountable public resourcing **materially worsened by cross-border tax abuse.**
Why human rights in international tax policy?

With very real human impacts…

**Econ. soc. environ.**
- Health
- Education
- Social protection
- Water
- Sanitation
- Occupational safety
- Healthy environment

**Civil & political**
- Info & participation
- Access to justice
- Free and fair elections
- Freedom of expression
- Personal security
- Prison conditions
- Rule of law
- Equality before the law

**Non-discrimination and equality**
- Income/wealth, gender, ethnicity, geography, disability, migration…

Tax policy crystallizes and reinforces power in society.
13. For the maintenance of the public force and for the expenses of administration a common tax is indispensable; it must be assessed equally on all citizens in proportion to their means.

14. Citizens have the right to ascertain by themselves or through their representatives the necessity of the public tax, to consent to it freely, to supervise its use, and to determine its quota, assessment, payment, and duration.
TAX & HUMAN RIGHTS: New frontiers

Guiding Principles on Extreme Poverty and Human Rights

Tax Abuses, Poverty and Human Rights

HUMAN RIGHTS IN TAX POLICY

Fiscal and tax policy (2014)


Fiscal and tax policies (Revenue-raising and expenditure) are an essential tool for States to meet their human rights commitments and combat poverty. As stipulated by the International Covenant on Economic, Social and Cultural Rights (art. 2), States must make use of their maximum available resources to realize economic, social and cultural rights. Low levels of domestic taxation revenue, in particular, can be a major obstacle to a State’s ability to meet these obligations.

A human rights-based assessment of fiscal policy is particularly necessary due to the ongoing repercussions of the global financial and economic crises and their impact on the enjoyment of human rights worldwide. The impacts of revenue shortfalls and increased public debt are primarily felt by the poorest and most vulnerable both domestically and abroad. Human rights-based approaches to budgeting for development and social protection are a key element of the human rights-based approach to fiscal policy.
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Human rights duties to combat cross-border tax abuse

SDG target (16.4): “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.”

Who is accountable? To whom? And for what?

Responsibilities

Answerability

Enforcement/Incentives
Human rights duties to combat cross-border tax abuse

Essential then to delineate respective (and concurrent) duties and responsibilities to cooperate to combat cross-border tax abuse.

- Public actors, esp. enabling countries
- Private actors, esp. MNCs, market-makers: accts, tax lawyers, banks, wealth managers

Sources of extraterritorial human rights obligations (ETOs)

- UN Charter (Art. 55, 56)
- ICESCR (Art. 2.1)
- Other treaty and case law
- Authoritative interpretation

From guiding principle of int’l tax competition to int’l tax cooperation with goal of sufficient, equitable and accountable public resourcing.
Human rights duties to combat cross-border tax abuse

Maastricht Principles – Extraterritorial state duties to:

• **Respect**: “Do No Harm” *directly* or *indirectly* by impairing the ability of another State to comply with its obligations or assisting another to breach them

• **Protect**: take necessary measures to prevent abuses by business and other third parties which the territorial State is in a position to regulate; ensure comps respect human rights

• **Help fulfill**: create an international enabling environment, and cooperate to mobilize the maximum of available resources, (including int'l assistance) commensurate with capacity and available resources for the universal fulfillment of rights

• **Remedy**: ensure availability of effective remedy for human rights abuse extraterritorially
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HUMAN RIGHTS DUTIES ON TAX COOPERATION

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Applying human rights duties to cross-border tax abuse

Duty to respect

i. **Express:** Implement international tax transparency and universal participation in reform of int’l tax regime

ii. **Assess:** Systematic human rights impact assessments of tax policies and practices by all G-20 countries on all others (not same as spillover analyses)

iii. **Address:** Information and assessments must trigger action

Duty to protect

i. **Mandatory integrated reporting guidelines for large companies (and their tax planners),** including on the human rights impacts of tax and financial arrangements.

Accountability and Effective Remedy

i. Whistleblower and human rights defender protection

ii. Sanctions for non-compliance in int’l tax cooperation regime, taking into account capacity constraints of low-income countries

iii. Remedy and reparation for harms done
UN, IMF, WB, OECD, 2011: “It would be appropriate for G-20 countries to undertake ‘spillover analyses’ of any proposed changes to their tax systems that may have a significant impact on the fiscal circumstances of developing countries.”

IMF, 2014: “Spillover effects on corporate tax bases and rates are significant and sizable...especially marked and important for developing countries.”

Netherlands, 2014: The [spillover] study concludes that for some developing countries these effects are negative and material...Considering the other purposes of taxation beyond revenue generation, it can be concluded that tax avoidance strategies facilitated by Dutch corporate tax policy have further negative effects on ... the redistribution, representation, and re-pricing roles of taxation.

Addis Ababa Accord, 2015: 103... We recognize the importance of policy coherence for sustainable development and we call upon countries to assess the impact of their policies on sustainable development.
From ‘spillover’ analyses to human rights impact assessments of tax

Spillover analysis not a human rights impact assessment. Purpose, process & methodologies differ: Uncover, or to cover up wrongs?

Methods will differ, but impact assessments of tax policy should at least:

• Be **independent**
• Be **periodic** to lay out baseline and then monitor dynamic effects of policy over time
• Be **transparent, public** and **participatory** (affected communities and countries)
• Be **resourced** sufficiently to ensure inter-disciplinary expertise
• Methods based on **standing int’l cooperation duties**, rather than measuring against the norm of tax competition
• Assess impacts on revenue, but also on inequality and **governance**
• Assess respective impacts/risks on **people** in all relevant countries
• Require **corporate transparency** of tax practices and beneficial ownership
• Assess impact of facilitating **offshore private wealth** alongside impacts of tax treaties and profit-shifting
• Trigger policy and legislative **action, recs for remedy with clear timelines and responsible parties**
“Taxes formalize our obligations to each other. They define the inequalities we accept and those that we collectively seek to redress. They signify who is a member of our political community, how wide we draw the circle of ‘we.’”

- Isaac William Martin
UN Special Rapporteur Poverty

“Tax policies reflect 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 incentivize, those that it opts to dis-incentivize, the groups that it decides to privilege, and the groups that it decides to ignore or even penalize.

It makes no sense to say that human rights policies will be made by the human rights people, while tax policies will be made by the Finance Departments of the world, and the two will not interact.”
TAX & HUMAN RIGHTS: New frontiers

Lima Declaration on Tax & Human Rights, 2015

“Tax revenue is the most important, the most reliable and the most sustainable instrument to resource human rights... Taxation also plays a fundamental role in redistributing resources in ways that can prevent and redress gender, economic and other inequalities... Moreover, a just system of taxation can cement the bonds of accountability between the state and its people... tax policies can likewise counteract glaring market failures and protect global common goods – not least a healthy environment within planetary boundaries.”
Human rights relevant to all four “R”s of taxation

- Revenue mobilization
- Redistribution to combat poverty and inequality
- Representativeness and accountability
- Re-pricing and regulation (e.g. penalties against pollution, excise taxes on smoking, transaction tax on high-freq. trading, property speculation, etc.)
Sufficient financing for sustainable development

**Domestic** barriers:
- Weak tax collection
- Rampant tax evasion
- Secretive often regressive tax incentives
- Deficiencies in the enforcement of tax obligations
- Insufficient application of progressive income and capital taxes
- Low tax morale

**Global** barriers:
- Off-shore secrecy facilitating illicit financial flows, esp. corporate tax evasion and avoidance
- Under-resourced public revenue institutions with limited capacities to enforce the law and pursue those who conceal their funds through tax evasion.
- Tax competition, driving average statutory corporate tax rates worldwide down on average from 38% in 1993 to 24.9% in 2010. Effective CITs even lower.

*With significant costs of inaction...*
Applying human rights duties to cross-border tax abuse

Don’t neglect private wealth offshoring

Source: Financial Transparency Coalition & Christian Aid