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ActionAid Ireland's submission to the Department of Finance on Ireland's Tax Treaty Policy Consultation:

ActionAid Ireland welcomes the opportunity to contribute to the consultation by the Department of Finance on the issue of Ireland's future tax treaty policy. ActionAid has been campaigning on tax justice since 2011, having identified tax avoidance and harmful tax practices as a structural cause of poverty and a key inhibitor to the realisation of human rights.

This submission focuses on questions relating to **Section 2) Policy on Developing countries.** The Sustainable Development Goals (SDGs) of which Ireland was a key player in their formation, highlight the importance of domestic resource mobilisation (DRM) in SDG 17 and sub-goal 17.1: "DRM must be strengthened, i.e., through international support to developing countries, to improve the capacity for tax and other revenue collection".[1]

Despite Ireland being recognised as a leader in the field of human rights and sitting on the United Nations Security Council, its international tax policy has attracted significant criticism for its role in enabling cross-border tax abuse. This relates to practices that reduce or avoid tax payments, for instance, by shifting corporate profits to low-tax jurisdictions. This is particularly damaging for developing countries' economies which are more dependent on tax income than developed countries and undermines their ability to pay for essential public services.

2. Policy on Developing Countries

a) Are there any specific areas of Ireland's treaty policy which should be modified or tailored, in relation to developing countries?

Double Tax Treaties (DTTs)

DTTs aim to resolve tax issues for companies and citizens living and working between two countries, or investing in one country's economy from another, by allocating taxing rights between income 'source' (e.g. a developing country where the sale takes place) and 'residence' (e.g. Ireland).

[1] Sustainable Development Goals, available here.

However, the effect of many DTTs is that 'capital flows from developing to developed nations'[2]. DTTs can contribute to the loss of a country's tax base and facilitate tax avoidance through the abuse of treaty networks using shell companies[3]. An African country can lose 15-25% of their entire corporate income tax revenue when they sign tax treaties with 'investment hubs' like Ireland[4].

Ireland has signed Double Taxation Agreements (DTAs) with 74 countries with 73 in effect. 20 are with lower-income and middle-income countries with eight of these signed between 2016 and 2021[5]. 85% of these treaties have been given a score >.50 for their overall source taxing rights - meaning they are more restrictive for the developing country[6]. Currently, none of Ireland's treaties with developing countries contain any anti-abuse provisions. Recent treaties with Botswana, Ethiopia and Pakistan have all been agreed despite a recommendation in a 2011 report from the UN, World Bank, IMF, and OECD that all treaties with developing countries must include an anti-abuse clause.

ActionAid is particularly concerned by Ireland's restrictive treaties for developing countries, many of which are more restrictive than the norm and limit a developing country's right to tax. As well as depriving developing countries of vital tax revenue, DTTs can create new loopholes for profit-shifting and cross-border tax abuse. Ireland is a particularly risky trading partner: its low corporate tax rate means that tax treaties with Ireland can act as a global 'leaky bathtub' – allowing taxpayers to shift income and gains both to a low-tax environment in Ireland and onto other low-tax jurisdictions.[7]

Recommendations:

- Take a pro-development approach to the negotiation of tax treaties by adopting the UN Model Double Taxation Convention between Developed and Developing Countries (the UN Model) as the minimum standard, from which negotiations can begin. [8]

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[2] Prepared by the Africa Section of Ireland's Department of Foreign Affairs and Trade in November 2012 for the implementation committee of the Africa Strategy (obtained by Christian Aid Ireland).
[3] S. Beer and J. Loeprick (2018) 'The Costs and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa', IMF Working Paper.
[4] *Ibid*
[5] The Tax Treaties Explorer, International Centre for Tax and Development, available here.
[6] *ibid*
[7] Brumby, J and Keen, M (2016) 'Tax treaties are like a bathtub: a single leaky one is a drain on a country's revenues', IMF blog, available here.
[8] Hearson, M (2016) 'The ActionAid Tax Treaties Dataset'. Brighton: Institute of Development Studies, available here

- Introduce greater transparency by subjecting treaty negotiation, ratification, and impact assessments to greater scrutiny, including subject to parliamentary scrutiny in the Oireachtas in advance of signature, as well as public scrutiny. [9]

- Carry out substantial impact analysis on tax treaty and its potential impact on public services and human rights in developing countries. These should be published and widely available. [10]

- Review tax treaties across governmental departments to ensure objectives and potential impacts are in line with *A Better World: Ireland's Policy for International Development* and Ireland's policy coherence for development framework.

(b) ***Are there international best practices which Ireland can draw on to further enhance our approach to the specific circumstances of developing countries?***

Addis Tax Initiative

Ireland joined the Addis Tax Initiative (ATI) in 2017. The ATI was revisited and renewed in November 2020. It is essential that Ireland follows the commitments as outlined in the ATI 2025. [11]

Recommendations:

- Ireland should increase development aid to support revenue mobilisation through taxes in developing countries, as committed under the ATI Declaration 2025.
- Aid for tax mobilisation should contribute to gender equality, reducing inequalities and target progressive tax reforms, as committed under ATI Declaration 2025.
- Ireland should cooperate to promote engagement and influence of developing countries in international tax negotiations, and to strengthen the international rules to combat tax dodging.
- Ireland should commit to building stronger capacity for accountability stakeholders, like NGOs and the media, to engage in policy dialogue, as outlined in Commitment 4 of the ATI Declaration 2025.
- Adopt a strong monitoring framework for the ATI Declaration 2025, enabling tracking objectives.

[9] ActionAid (2016) 'Mistreated, Irish chapter: Ireland's tax treaties', available here
[10] *ibid*
[11] The Addis Tax Initiative: Declaration 2025, available here

Follow-up 'Spillover Analysis'

In 2014, the Irish government commissioned an initial 'Spillover Analysis' of its international tax policy on developing countries. However, this analysis used incomplete data and ignored several important features. For instance, it examined just 13 developing countries, with 12 of these among the lowest developing country recipients of Irish FDI.[12] It also examined just two years – 4% of the available data and ignored indirect investment linkages.[13]

Recommendation:

- Follow up 'Spillover Analysis' as recommended in Commitment 3 of the ATI Declaration 2025.

UN tax-body

A UN tax body represents an important institutional commitment to tackle cross-border tax abuse. While it has been supported by the Group of 77, many developed countries – including Ireland – have refused to support its establishment. Instead, Ireland is insisting that reform takes place within the OECD where membership is strictly for developed nations. While we welcome the establishment of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS), the OECD's priorities continue to ignore developing countries.

Recommendation:

- Actively support and promote the creation of a transparent and inclusive UN intergovernmental tax commission.

c) When negotiating with developing countries, should more emphasis be placed on the UN Model Treaty? If so, please provide details.

Several international institutions, including the European Commission, the European Parliament, and the OECD, have recognised the unequal distribution of taxing rights created by tax treaties[14]. ActionAid recommends that to rebalance the unequal distribution of tax rights, Ireland should adopt

[12] Christian Aid Ireland (2017) ''Impossible' structures: tax outcomes overlooked by the 2015 tax Spillover analysis', available here

[13] *ibid*

[14] Hearson, M (2016) 'The ActionAid Tax Treaties Dataset'. Brighton: Institute of Development Studies, available here

the UN Model as the minimum standard in all future treaty negotiations – ensuring that lower and lower-middle-income countries have a fairer balance of tax rights.[15]

Recommendations:

- See Double Tax Treaties (DTTs) recommendations above.

d) Should any specific standard positions, e.g., on source taxation, be adopted for treaties with developing countries?

The European Commission has said that, given the importance of source-based taxation to low-income countries, European Member States should reconsider aspects of their tax treaties that restrict those taxing rights to ensure fair treatment of developing countries.

Recommendations:

- Demonstrate Ireland's commitment to sustainable development and human rights by respecting source taxation rights within tax treaties with low and middle-income countries and use the UN model as the minimum standard.

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[15] ActionAid (2016) 'Mistreated, Irish chapter: Ireland's tax treaties', available here.