SUBMISSION:
IRELAND’S TAX TREATY POLICY CONSULTATION

INTRODUCTION

Oxfam Ireland welcomes this consultation process. Oxfam works in some of the poorest countries in the world and seeks to develop long term solutions to global poverty and inequality. We believe this is impossible to achieve as long as the current scale of corporate tax avoidance continues to drain essential financial resources from developing countries. To this end this submission prioritises reforms to tax practices that negatively impact developing countries

IRELAND'S CURRENT APPROACH TO DOUBLE TAX TREATIES

Double tax treaties seek to resolve tax dilemmas 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' (Ireland). However, double tax treaties can deprive developing countries of tax revenue that is vital for realising the economic, social and cultural rights of children. They can also create new loopholes for profit-shifting and other forms of cross-border tax abuse. In 2014, the IMF advised that 'developing countries… would be well advised to sign treaties *only with considerable caution*.'[1] A recent IMF policy paper suggests that African countries may lose between 15% and 25% of their entire corporate income tax revenues when they sign tax treaties with 'investment hubs' like Ireland.[2]

From Ireland's perspective, double tax treaties can reduce tax burdens on Irish outward investment and make Ireland a more attractive location for multinationals to base their investments and assets. From the perspective of a developing country, however, Ireland is a particularly risky trade partner: its large network of seventy-three tax treaties,[3] its low corporate tax rate, and its generous tax regime mean 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 on to other low-tax jurisdictions.[4]

Ireland is nonetheless expanding its network of double tax treaties, with a focus on developing economies: of the eight treaties currently awaiting final signature and/or ratification, five are with middle-income countries.[5] This focus is explicit government policy.[6] In September 2011, the Irish government launched a new 'Africa Strategy', which committed to supporting Irish trade and Irish

---

[1] International Monetary Fund, 'IMF Policy Paper: Spillovers in International Corporate Taxation' (9 May 2014) p. 24. Emphasis added.
[2] S. Beer and J. Loeprick, 'The Costs and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa', IMF Working Paper WP/18/227 (24 October 2018). The paper classifies investment hubs as those economies where the sum of FDI in-stocks and out-stocks is more than double its GDP.
[3] An additional treaty with Ghana (see below) is still awaiting Ghanaian ratification.
[4] The analogy is from Michael Keen of the IMF's Fiscal Affairs Division: 'Tax treaties are like a bathtub; a single leaky one is a drain on a country's revenues.' Jim Brumby and Michael Keen, 'Tax Treaties: Boost or Bane for Development?' IMF Blog (16 November 2016) <https://blogs.imf.org/2016/11/16/tax-treaties-boost-or-bane-for-development/> (last accessed 30 June 2020).
[5] Azerbaijan, Ghana, Kazakhstan, Kenya, Kosovo and Turkmenistan. See Revenue Commissioners, 'Double taxation treaties' (2020) <https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/index.aspx> (last accessed 30 June 2020)
[6] See Government of Ireland, 'Global Ireland: Ireland's Strategy for Africa to 2025' (2018) p. 11 <https://www.dfa.ie/media/dfa/publications/Global-Ireland---Irelands-Strategy-for-Africa-to-2025.pdf> (last accessed 22 June 2020): '[we will…] [e]xpand and enhance Ireland's network of Double Taxation Agreements in Africa…'

businesses operating on the continent.[7] Nigeria, Ghana, Mozambique and Botswana were all identified as targets for new tax treaties. As Ireland grants relief in its domestic tax law for most foreign taxes suffered by Irish companies, these treaties reduce the tax take in these countries without a commensurate increase in Irish tax take.

Ireland's most recent tax treaty was agreed with Ghana in 2018.[8] Ireland has been Ghana's largest source of foreign direct investment (FDI) since 2012.[9] This treaty demonstrates how Ireland approaches tax treaties with developing countries.

Ireland's treaty with Ghana will have a detrimental effect on Ghana's ability to raise tax revenues. The treaty provisions run contrary to the recommendations of both the IMF and the UN Tax Committee,[10] and the treaty lacks any of the protections against tax abuse which the OECD member states agreed in 2015 were necessary to provide 'the minimum level of protection against treaty abuse'.[11] The Irish government carried out no impact analysis on the tax treaty or its potential impact on rights in Ghana. [12]

RECOMMENDATIONS FOR CHANGE

One way in which countries can protect their tax revenues is to impose Withholding Taxes (WHT) on those payments most likely to be used in artificial tax structures; royalties, interest, dividends and management charges. Ireland has made some important steps to improve DTAs with developing countries –for example, working with Zambia and Pakistan to renegotiate their treaties. Ireland's Revenue Commissioners have worked with the Rwanda Revenue Authority toimprove capacity, have been involved in the OECD Tax Inspectors Without Borders initiative, and contribute to both the OECD Tax and Development Fund and the African Tax Administration Forum. Yet despite this progress, none of Ireland's treaties with developing countries contain any anti-abuse provisions, even those treaties with Botswana, Ethiopia and Pakistan which have all been concluded after a recommendation in a 2011 report prepared by the UN, World Bank, IMF and OECD that all treaties with developing countries should include an anti-abuse clause. Anti-abuse provisions are aimed at preventing tax avoidance. For example, Ireland's a recent DTA with Zambia didn't allow for any withholding taxes on management fees, the maximum rate of withholding tax on royalties is 10 percent and there are no anti-abuse provisions. The Irish Government needs to 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.

---

[7] Government of Ireland, 'Ireland and Africa: Our Partnership with a Changing Continent, An Africa Strategy for the Department of Foreign Affairs and Trade' (September 2011) paras 2.5-2.6 <https://www.dfa.ie/media/irishaid/allwebsitemedia/20newsandpublications/publicationpdfsenglish/africa-strategy.pdf> (last accessed 22 June 2020).

[8] Convention Between Ireland and the Republic of Ghana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains (7 February 2018) <https://www.revenue.ie/en/tax-professionals/documents/double-taxation-treaties/g/ghana.pdf> (last accessed 29 June 2020).

[9] Mike Lewis, 'Irish double tax agreement threatens revenue losses in Ghana' in *Trapped in Illicit Finance: How abusive tax and trade practices harm human rights* (Christian Aid et al., September 2019) p. 24 <https://www.christianaid.ie/sites/default/files/2019-09/trapped-in-illicit-finance-report-sep2019.pdf> (last accessed 29 June 2020).

[10]. Mike Lewis (n 9) p. 25. See International Monetary Fund (n 1); United Nations Department of Economic & Social Affairs, *Model Double Taxation Convention between Developed and Developing Countries (2017 Update)* ST/ESA/PAD/SER.E/213.

[11] Mike Lewis (n 9) p. 25.

[12] Dáil Éireann debate - 3 Oct 2018, Vol. 972 No. 8 (Taxation Orders 2018: Motion) <https://www.oireachtas.ie/en/debates/debate/dail/2018-10-03/41/>

While both parties to a tax treaty give up taxing rights, the dominant OECD model treaty limits the tax rights of the capital-importing (lower-income) country more than the capital-exporting (wealthier) country. It is important that Ireland ensures that all DTAs concluded by Ireland contain anti-abuse provisions. While the OECD's Multilateral Instrument (MLI) ensures that anti-abuse provisions apply to certain arrangements with wealthier nations, many developing countries still fall outside this scope. It is of note that Ireland, unlike other developed countries like the Netherlands, did not adopt the provision on permanent establishment (taxable presence) when signing the MLI. The permanent establishment provisions –if implemented rigorously –can make it more difficult for multinational companies to claim that they don't have a permanent establishment when using a third party to conclude contracts on the company's behalf.

- Ireland should undertake 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.
- Ensure all DTA include appropriate anti-abuse provisions aimed at preventing tax avoidance
- Adopt the provision on permanent establishment (taxable presence) when as part of the MLI

- 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. [13]
- 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. [14]
- 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.
- 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.

[13] ActionAid (2016) 'Mistreated, Irish chapter: Ireland's tax treaties', available online
[14] *ibid*

- Adopt a strong monitoring framework for the ATI Declaration 2025, enabling tracking objectives.
- Follow up 'Spillover Analysis' as recommended in Commitment 3 of the ATI Declaration 2025.
- Actively support and promote the creation of a transparent and inclusive UN intergovernmental tax commission.

OXFAM IRELAND

Oxfam is a global development and humanitarian organisation that mobilises the power of people against poverty. Around the globe, Oxfam works to find practical, innovative ways for people to lift themselves out of poverty. We save lives and help rebuild livelihoods when crisis strikes, and we campaign so that the voices of the poor influence the local and global decisions that affect them.

Last year, Oxfam Ireland, in partnership with Irish Aid, worked in over ten countries and reached 8.05 million people through our development and humanitarian programmes.

In Ireland, we advocate nationally and globally on a variety of issues, including financing for development, inequality, tax justice, women's rights and human rights in humanitarian crises. At EU level, Oxfam challenges EU policies to make them work for people in poverty. In Brussels, we work to influence key decision-makers in the EU institutions to ensure that EU policies affecting poor countries have a far reaching, positive impact on the lives of those most in need.

CONTACT

Policy and Advocacy Team at:
IRL-campaigns@oxfam.org

Oxfam Ireland
2nd Floor Portview House
Thorncastle Street
Ringsend
Dublin 4
t: +353 1 635 0461

w: www.oxfamireland.org

f: www.facebook.com/oxfamireland