

Tax policy and the Budget - a Framework for Tax

October 2021

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Introduction

The Commission welcomes the opportunity to respond to the Government's consultation on Tax policy and the Budget - a Framework for Tax.

The Scottish Government has human rights obligations to respect, protect and fulfil human rights. These obligations apply to all government activity, including decisions around resource generation, in particular the obligation to 'Maximise Available Resources' in order to progressively realise rights. The Commission will therefore focus on the need for these obligations to be reflected within the Framework for Tax in answer to Question 1. Our response will also provide a brief commentary regarding some of the devolved and local tax options that the Scottish Government should consider exploring during this parliamentary term in answer to Question 2.

Previous submissions and publications by the Commission provide further detail on a range of areas relevant to this call for views and we suggest that these should be considered alongside this submission, these can be found [here](#)¹.

1. What are your views on the draft Framework for Tax?

Overall the draft Framework for Tax does an effective job of presenting a wide range of information in sufficient detail to enable readers to have a good grasp of the key components of the Scottish Approach to Taxation. The document captures well the key elements that sit behind the overall approach and clearly sets out the principles, strategic objectives, decision making process, engagement plans and the planned programme of work for the government.

The Commission welcomes the addition of the two new principles:

- Undertaking and engagement with stakeholders
- Taking a firm approach to potential tax avoidance

Both of these principles are grounded in the government's human rights obligations regarding participation and the need to maximise available resources.

Undertaking and engagement with stakeholders

Meaningful engagement is critical to good decision making. Being afforded the opportunity to participate in decisions around national policy (including taxation and the budget) complement rights to vote, standing for and holding elected office. It also creates opportunities to develop policies which are more innovative, appropriate and tailored to people's needs, provided participation is representative and well-supported. Given Scotland's relatively low score for participative processes in the Open Budget Survey review in 2020², it is very encouraging to see a commitment to engagement as one of the six principles of the Scottish Approach to Taxation.

In due course, the Commission looks forward to seeing further details as to how this engagement will develop and offers the following advice with regards to good practice. Participation and empowerment (including access to information) are key foundations of a Human Rights Based Approach. There has been a growing recognition across government of the importance to engage and consult, something reflected in this year's

Programme for Government, which makes numerous references to the need to consult with people and with Chapter 6 focused on promoting democratic participation. In addition, there is growing emphasis placed on the need to consult with people with lived experience of various issues.

However, 'consultation' or 'engagement with stakeholders' does not automatically equate with good participative engagement. Quality participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood. The process must also be given the necessary time and resources to be meaningful. Historically, not all government consultative processes have provided sufficient time for meaningful engagement. Whilst there is a pressure to make timely decisions to respond to the impact of COVID, time and space must be made to get important decisions right first time. The participation of those whose voices are least often heard, often requires additional time and support.

Taking a firm approach to potential tax avoidance

The government has an obligation to maximise its available resources³ in order to fulfil its human rights commitments and progressively realise rights. The importance of this specific obligation is that developing a budget through a human rights lens is not just about ensuring that the government is using its existing resources efficiently, effectively and without discrimination. It is also about ensuring that the government is making the necessary effort to generate additional resources and whether those efforts are adequate and equitable.

A key area of focus when a government is exploring whether it has maximised its available resources, is the country's system of taxation. One aspect of ensuring that the budget is maximised is achieved through tackling tax evasion and avoidance. Given that tax evaders and avoiders end up paying less than taxpayers with the same or less capacity to pay, both tax evasion (illegal) and tax avoidance not only undermine the fiscal base, but the principles of equality and non-

discrimination. Therefore, a failure to tackle evasion and avoidance, is a failure to comply with this particular obligation on government⁴.

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'.⁵

We know for example from [2012 research](#) undertaken with tax inspections and the Centre for Economic and Social Rights in Spain, that a reduction of tax evasion and tax avoidance by 10% (in line with EU standards) would have resulted in the generation of 38 billion euros, exceeding the total austerity budget cuts for Spain in 2012.

Explicitly Reference Maximum Available Resources

Whilst the Commission welcomes the addition of a principled focus on tax avoidance, it is disappointing not to see the government's human rights obligations explicitly reflected within the framework and its strategic objectives. The obligation to use maximum available resources sits at the heart of the Scottish principles and should, therefore, be explicitly referenced.

Tax revenues (along with borrowing powers) are the main source of income for governments to facilitate the execution of their legal obligations to protect, respect and fulfil human rights and therefore the taxation policy plays a key role in the progressive realisation of rights. The obligation to maximise available resources means that the government must start by asking, has every effort been made to maximise the available budget?, rather than accepting a budget total as given. Is the taxation system raising the maximum available funds that it can? Has the government made use of all taxation options available to it? Further questions then include: are all of the government's current (and proposed) taxation options progressive?; who are resources generated from?; is this done fairly, or are particular groups impacted differently?; in addition to what is being done to tackle tax evasion and avoidance?⁶.

With the recent passing of the proposed UNCRC bill and the forthcoming Human Rights Bill, which will reassert Scotland's commitment to the UK's international human rights obligations⁷, it is important that it is well understood that these obligations apply to all government activity, including decisions around resource generation.

Impact assessments

The Commission welcomes the recognition that the policy development process should surface and consider potential impacts, including unintended consequences, and include applicable impact assessments, including human rights impact. The Commission recommends that the Scottish Government engage in an [Equality and Human Rights Impact Assessment](#) process, the value of which (and guidance to undertake) has already been developed collaboratively between the Scottish Human Rights Commission and the Equality and Human Rights Commission.

This work has been endorsed by the UN Independent Expert on foreign debt and human rights who explored this particular work when developing his recently published [Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies](#)⁸. The aim of these guiding principles is to provide effective and practical guidance and tools for assessing economic reform policies on the basis of existing human rights standards.

Based on the existing human rights obligations and responsibilities of States and other actors, the guiding principles underline the importance of systematically assessing the impact of economic reforms on the enjoyment of all human rights before decisions are taken to implement such reforms, as well as during and after their implementation. Economic policymaking must be anchored in and guided by substantive and procedural human rights standards, and human rights impact assessments are a crucial process that enables States and other actors to ensure that economic reforms advance, rather than hinder, the enjoyment of human rights by all.⁹

The Commission strongly advises that the Scottish Government review all of the [guiding principles](#)¹⁰ with a view to informing both the content and process of development of the devolved taxes policy framework.

Specifically in relation to the basis and purposes of a human rights impact assessment, the guiding principles (Principle 17) state:

States and creditors should carry out human rights impact assessments of economic reform policies considered and taken in response to acute economic and financial crises that are likely to cause adverse human rights impacts. States should also carry out regular and periodic human rights impact assessments of short-, medium- and long-term economic reform processes in less challenging economic times. A human rights impact assessment of economic reform policies should:

- (a) Prompt investigation of and analyse the extent to which the proposed measures, in combination with other economic measures and policies being or to be implemented, could contribute to fulfilling the State's human rights obligations or potentially undermine them;
- (b) Serve to demonstrate how proposed measures, jointly with other economic measures and policies being or to be implemented, could impact the human rights of the whole population, particularly the individuals and groups most disenfranchised or at risk;
- (c) Identify any prima facie retrogressive measure as well as alternative economic policy options that could be the least restrictive of human rights and avoid any impermissible retrogression;
- (d) Establish a (non-exhaustive) list of preventive and mitigating measures to ensure conformity of the economic reform policies considered with the State's human rights obligation¹¹.

Accountability

The Commission welcomes the recognition that the tax policy cycle must include a process of monitoring and evaluation. This is crucial for building accountability into tax policy development. It will be important that this evaluative process focuses not only on the analysis of the financial impact of Scotland's tax policy choices but also on the administrability of these options and the existence and effectiveness of recourse, should systems not work as intended.

2. What should the Scottish Government's priorities for devolved and local tax be over the course of this Parliament (2021-2026)?

COVID-19 has provided both the necessity and the renewed appetite to take the opportunity for truly transformational change. It has also reinforced the importance of taking a Scottish approach to taxation with a view to exploring how COVID-19 has impacted on the taxation system and considering options for a restructuring of the taxes which are devolved including taking a human rights based approach.

The Commission acknowledges that not all fiscal levers are within the Scottish Government's gift. Some measures that would generate progressive changes and substantial resources, would require a UK led approach¹². However, the Scottish Government must also exercise its own powers in relation to a number of progressive tax measures that it could choose in and of its own right, with which to approach COVID-19 economic and social recovery. For example, successive governments have repeatedly failed to take the opportunity to make substantial and progressive changes to certain aspects of taxation – such as local taxation¹³ - even when successive consultations and Commissions¹⁴, which have been set up to deliberate on this subject, have concluded that it is both recommended and necessary.

In exploring progressive tax measures to realise rights as countries recover from COVID-19, the Centre for Economic and Social Rights and the Tax Justice Network¹⁵ have highlighted that systems of taxation should be asking proportionately more from those most able to pay. They suggest the following:

- “Ending over-reliance on ‘indirect’ taxes like sales tax and VAT, which tend to take a larger proportion from the income of poorer people;
- Increasing rates of ‘direct’ taxes on high incomes and the most profitable businesses,

- Introducing or boosting taxes on assets like property, wealth, inheritance and income from investments,
- Cracking down on tax evasion and avoidance by wealthy individuals and powerful corporations...”¹⁶.

Much domestic expertise has been developed on the taxation options available to Scotland in recent years by the likes of the Fraser of Allander Institute¹⁷, CPAG¹⁸ and the Institute for Public Policy Research¹⁹, amongst others. Proposals include exploring the potential offered by: further amendments to Income Tax; reforming Scottish property taxes; excluding tax avoiders from government bailouts; leveraging tax as a tool for behavioural change; and new taxes – including Local Wealth Taxes.

This is an area where policy needs to be more proactive. Taking the opportunity to explore these ideas with taxation experts through a human rights lens would afford the government the possibility for a timely multi-stakeholder learning opportunity focusing on both the benefits of taking a HRBA to taxation coupled with a thorough analysis of the taxation options that are fully within the remit of the Scottish Government.

Local Wealth Taxation

Of the options noted above, Local Wealth Taxation is not mentioned or suggested in the framework as it stands. With a fair tax system that aims to be progressive, the proportion of tax paid should reflect the relative income or wealth of the taxpayer. The taxation system has the ability to raise additional revenue for the government and the responsibility to do so in a way that does not negatively impact on those who can least afford to pay. The way taxes are levied has a strong redistributive potential.

Whilst in recent years the Scottish Government has taken the opportunity to change the way that income is taxed and in doing so introduce a more progressive system that is fairer to those on lower

incomes, wealth (unearned income) has not received the same treatment.

Increasing wealth inequality in Scotland and the UK as a whole is not a new feature of the Scottish or UK economies, however, the pandemic has accelerated this rapidly growing inequality. As the Resolution Foundation recently highlighted²⁰, whilst the inflation-adjusted value of household wealth has more than doubled since 1980, revenue from taxes on wealth has remained stagnant. This means that the rate of tax on wealth has effectively more than halved over the last 40 years. Reforming wealth taxes must therefore be given serious consideration as a means to raising revenue in a way that can help to reduce wealth inequality.

Examples worth exploring in the Scottish context include a net wealth tax modelled on that levied in Switzerland and taxing the imputed rents of owner occupiers (see Byrne 2021 for further details²¹).

End

¹ See [Human Rights Budgeting | Scottish Human Rights Commission](#)

² See [scotland-2019-obi-report-vfinal.pdf \(scottishhumanrights.com\)](#)

³ Explicitly identified in Article 2(1) of the International Convention on Economic, Social and Cultural Rights <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; Article 4(2) of the UN Convention of the Rights of People with Disabilities [Article 4 – General obligations | United Nations Enable](#) and Article 4 of the UN Convention on Rights of the Child [Layout 1 \(unicef.org.uk\)](#)

⁴ See <https://www.scottishhumanrights.com/media/1706/human-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc>

⁵ Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona. A/HRC/26/28

⁶ See <https://www.scottishhumanrights.com/media/1706/human-rights-budgeting-and-budget-analysis-oct-2015-vfinal.doc>

⁷ The obligation of Maximum Available Resources is explicitly identified in Article 2(1) of the International Convention on Economic, Social and Cultural Rights <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>; Article 4(2) of the UN Convention of the Rights of People with Disabilities [Article 4 – General obligations | United Nations Enable](#) and Article 4 of the UN Convention on Rights of the Child [Layout 1 \(unicef.org.uk\)](#)

⁸ See [Human Rights Documents \(ohchr.org\)](#)

⁹ <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactassessments.aspx>

¹⁰ See [Human Rights Documents \(ohchr.org\)](#)

¹¹ *ibid.*

¹² See [Let's Talk About Tax | CPAG](#) for a thorough overview of current and potential tax options in the UK, including a section focusing on Scotland by David Eiser.

¹³ See discussion by David Eiser “Devolved Taxation: Scotland” in Bradshaw, J. 2019, *Let’s Talk About Tax* [Let's Talk About Tax | CPAG](#)

¹⁴ For example, the *Burt Review* in 2006 and the *Commission on Local Tax* in 2015.

¹⁵ See CESR and the Tax Justice Network, 2020, Recovering Rights Series, Topic Three - https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax_.pdf

¹⁶ See CESR and the Tax Justice Network, 2020, Recovering Rights Series, Topic Three - https://www.cesr.org/sites/default/files/Brief%203%20Progressive%20Tax_.pdf

¹⁷ See [Fraser of Allander Institute - The Scottish and UK Economy](#) ;

¹⁸ See for example [Let's Talk About Tax | CPAG](#)

¹⁹ See for example [1568730565_local-tax-in-scotland-sept19.pdf \(ippr.org\)](#)

²⁰ See [\(Wealth\) gap year • Resolution Foundation](#)

²¹ Response by Professor David Byrne Ph.D., FAcSS to Consultation on Scotland’s first Framework for Tax and tax policy in relation to the Scottish Budget 2022-23.