



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

RESPONSE TO CONSULTATION ON DEVOLVING CORPORATION TAX TO NORTHERN IRELAND

1. The Northern Ireland Human Rights Commission (the Commission) is the national human rights institution (NHRI) for Northern Ireland. It was created in 1999 under the Northern Ireland Act 1998, pursuant to the Belfast (Good Friday) Agreement of 1998.¹ The Commission is accredited with 'A' status by the UN International Co-ordinating Committee of NHRIs.² It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,³ and advising on whether a Bill is compatible with human rights.⁴ In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to respond to the consultation by the UK Treasury in relation to devolving corporation tax powers to Northern Ireland, as proposed in the consultation document, "Rebalancing the Northern Ireland Economy", March 2011.

¹ The Commission's powers were modified by the Justice and Security (Northern Ireland) Act 2007.

² The UK has two other accredited NHRIs: the Equality and Human Rights Commission for Great Britain, except in respect of matters devolved to Scotland, which has established the Scottish Human Rights Commission. The present submission is solely on behalf of the Northern Ireland Human Rights Commission.

³ Northern Ireland Act 1998, s69(1).

⁴ As above, s69(4).

Human rights framework and fiscal policy

3. Human rights instruments are mostly framed in terms of the rights of the individual person in relation to 'the state' (broadly defined, that is, any public authority). Most formulations of such rights fall into two categories: the rights of the person not to have wrongs done to him/her by the state (for example, the rights not to be tortured, arbitrarily arrested or deprived of life) and the rights of the person to have certain needs secured for him/her by the state (for example, the rights to food, access to health care, access to employment). In respect of this latter category of 'positive duties', the UK has accepted a number of obligations in relation to economic and social rights under United Nations and Council of Europe instruments.
4. In particular, the Commission would draw attention to the nature of the obligations the UK has accepted under the International Covenant on Economic Social and Cultural Rights (ICESCR). This includes the progressive realisation to the "maximum of available resources" (Article 2(1)) of rights recognised in ICESCR. These rights include the enjoyment of the highest attainable standard of physical and mental health, taking appropriate steps to ensure the realisation of adequate housing and taking appropriate steps to ensure the right to work through initiatives, including policies and techniques to achieve steady economic, social and cultural development and full and productive employment.
5. Within the Council of Europe system the UK has entered into commitments under the 1961 European Social Charter, which include accepting as a primary aim and responsibility the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment (Article 1(1)), rights to social and medical assistance (Article 13) and rights to benefit from social welfare services (Articles 14).
6. The overall commitment in relation to economic and social rights is to ensure minimum standards and to secure progressive improvements in the living conditions of, in particular, the most economically vulnerable in society.
7. As set out in the Treasury's own guidance on appraisal and analysis in central government ("The Green Book"), international treaties and conventions to which the UK is party should inform the development of policy. This guidance

makes specific reference to ICESCR and other instruments in the context of the analysis of distributional impacts of policy.⁵

8. The framework of ICESCR, in particular, can be harnessed to analyse the likely positive or negative impact of budgetary policy proposals (in relation to both revenue and spending) on commitments to realise the Covenant rights for the most vulnerable in society. Inherent in this analysis is an examination of how the revenue burden is distributed among the corporate sector, better off individuals and those who are more economically vulnerable. Similarly, there is the question of whether the destination of public spending benefits the better or worse off and hence the realisation of Covenant rights through the redistributive effect of public expenditure, including public services, tax relief and welfare payments.

The devolution of Corporation Tax

9. Corporation Tax is the tax paid by businesses on their profits. As set out in the consultation document, the main rate of Corporation Tax is currently 26 per cent across the UK and will be decreased slightly in coming years.⁶ The proposal is to devolve Corporation Tax powers to the Northern Ireland Assembly with a view to enabling reduction of the rate. This could involve a reduction down to 12.5 per cent, matching the Corporation Tax rate on trading profits in the Republic of Ireland. As the Treasury sets out, such a move would lead to a consequent reduction in the Northern Ireland block grant of around £200-300 million per annum.⁷ There is also the possibility the Assembly would opt for a lesser reduction of the rate, or incrementally phase in any cut to Corporation Tax. In this instance, a proportionally lower sum would be removed from the block grant.
10. The Treasury outlines that the UK could not fund the cut, as this would conflict with European Union law accepted by the

⁵ *The Green Book: Appraisal and Analysis in Central Government* (HM Treasury, London: TSO), p95.

⁶ As set out in para 4.2 of the consultation document, in the June 2010 Budget the UK Government announced four annual one per cent reductions in the main rate of corporation tax (which will therefore reduce to 23 per cent by 2014), along with a decrease in the rate applicable to small profits from 21 per cent to 20 per cent.

⁷ See consultation document, paras 4.35-8. The Treasury stresses that the outcome is difficult to assess, hence the estimates are for illustrative purposes and are subject to a range of caveats.

UK whereby regional differences in national taxation should not amount to state aid.⁸

11. A reduction to 12.5 per cent has been advocated by representatives from within the business sector.⁹ While it is self evident that businesses would wish to, and would, benefit from paying less tax, a human rights approach would involve assessing the likely impacts on people in Northern Ireland in relation to the realisation of the rights listed above.
12. If there were no secondary benefits in human rights terms, clearly such a cut in Corporation Tax would, on the face of it, be significantly negative and retrogressive in its impact. There would be a significant shift (of £200+ million) in the revenue burden away from the profits of corporations, which would have to be recovered through either imposing additional charges or taxes on people in Northern Ireland and/or by significant cuts to public spending with consequent job losses and cuts to local public services.
13. However, the case for a Corporation Tax cut is predicated on the secondary impacts it may bring, including the generation of additional employment and the consequent raising of living standards, and of tax revenues to support public services. Should this be the outcome, such a cut would have the potential to positively impact on the realisation of rights.
14. **It is the view of the Commission that given the significant risk involved to economic and social rights, the Northern Ireland administration should satisfy itself that there is an evidence base providing a compelling case before any such cut in Corporation Tax is implemented.**

Indicators of impact of a Corporation Tax cut

15. In relation to the evidence base to date, the Commission notes the cautious approach of the Treasury in relation to quantifying potential benefits and costs of a cut and that Government is presently engaged in an evidence gathering process on the matter. The consultation document outlines that the estimates presented are “necessarily uncertain” and notes that, whilst a cut should lead to additional investment,

⁸ See consultation document, para 4.29.

⁹ See, for example, Northern Ireland Economic Reform Group (2010) *The Case for a Reduced Rate of Corporation Tax in NI*.

which may lead to increased growth and employment, it is not possible to calculate the expected benefits of a Corporation Tax cut accurately in advance.¹⁰

16. In 2007 under the previous UK government, the Treasury commissioned and published the "Review of Tax Policy in Northern Ireland" ("the Varney Review") which advocated against a such reduction, due to the likely impact on the UK as a whole and Northern Ireland specifically:

The assessment of the Review is that in considering the costs and benefits for Northern Ireland in isolation, a clear and unambiguous case for a 12.5 per cent rate of corporation tax cannot be made. It is clear from this initial assessment that there would be an up-front cost of near £300 million per annum in lost corporation tax receipts, with no cost recovery in terms of tax receipts in a reasonable period of time.

From a UK-wide perspective, the overall case against a reduction in the corporation tax rate in Northern Ireland is more marked. The likely displacement of both capital and profits from the rest of the UK, and the fact that this would be subject to a lower rate of corporation tax, mean that a reduced rate of corporation tax for Northern Ireland would certainly come at a long-term cost in reduced resources to be shared by the UK regions or in the financing of public services. The policy would result in a net cost of about £2.2 billion over ten years, with no prospect of full cost recovery over the long run.¹¹

17. The Commission is also conscious that there are mixed views and estimates of impact from other sources. For example, the Northern Ireland Economic Reform Group¹² argues that there will be significant employment and revenue benefits:

Estimates of new job creation, skewed towards the higher end of the value chain, are of the order of 90,000 over 20 years...

...to the extent that there were any costs arising for the UK, there would be offsets in the shape of the boost to revenues generated by a more buoyant Northern Ireland tax base and accruing to the UK Exchequer. Moreover, the UK generally

¹⁰ Para 4.12-17.

¹¹ *Review of Tax Policy in Northern Ireland*, HMSO, December 2007, p4.

¹² The Group describes itself as "an independent group consisting of economists, accountants and businessmen based in Northern Ireland who wish to see a more successful and competitive NI economy, less dependent on a public sector subvention from taxpayers in GB": <http://ergni.org>.

would benefit from a significant reduction over time in the support needed by Northern Ireland because of the structural imbalance within its economy.¹³

18. By contrast, the Northern Ireland Research Team of the Poverty and Social Exclusion in the UK Project (academics funded by and the Economic and Social Research Council) states:

PwC (PricewaterhouseCoopers) estimate that a reduction of the rate of Corporation tax to 12.5 per cent would now cost £278 million p.a. in lost revenue... Whatever can be said about the long-term prospects of benefits to the N. Ireland economy from a reduction in Corporation Tax, in the short-term a significant resource would be removed from the public sector to the benefit of shareholders in the few public companies registered in N. Ireland that pay the full rate of Corporation Tax. N. Ireland's economy can ill-afford to lose this resource and the 8,000 jobs that are likely to be lost initially.

... a Corporation Tax rate of 12.5 per cent for N. Ireland would appear to be a poor use of £280 million per annum. In the short-term jobs would be lost and there is no certainty of job creation.¹⁴

19. **It is the Commission's view that at present there is an insufficient evidence base to assess accurately the short and long-term impacts of a cut in Corporation Tax on the realisation of economic and social rights.**

Further consultation

20. It is welcome that the Treasury is seeking further evidence on the potential impacts of a policy change through this public consultation. The Commission notes that, in addition, the UK Government plans to consider with the Northern Ireland Executive "establishing a high-level consultation group", which would be made up of "representatives of the private sector" and "others" in Northern Ireland.¹⁵
21. In the context of matters where there are competing interests and therefore diverging views between representatives of business and the workforce, the Commission would draw

¹³ NI Economic Reform Group (February 2011) *12 Key Points on Corporation Tax Reduction*, paras 4 and 8.

¹⁴ Northern Ireland Research Team, Poverty and Social Exclusion in the UK Project (January 2011) *Response to Northern Ireland's Draft Budget*, pp16-17.

¹⁵ Consultation document, para 1.21.

attention to the social partnership model underlying the European Social Charter. In addition to the appointment of independent experts by member states, the supervisory mechanisms of the Charter also involve equal representation of employers' organisations and trade unions.

22. **Drawing attention to the model provided by the European Social Charter, the Commission urges that any future high-level consultation mechanism affords equal opportunity for representation from key stakeholders.**

Monitoring impact

23. The Treasury outlines that, as "estimates of costs and benefits are necessarily uncertain" if the policy is pursued further "it will be necessary to reassess these costs by monitoring Northern Ireland corporation tax receipts in future years".¹⁶ The Commission concurs with the Treasury as regards the importance of monitoring the impact of any cut to Corporation Tax pursued.
24. **The Commission urges that monitoring of any future policy changes should include human rights indicators from the frameworks provided by the international human rights instruments.**

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¹⁶ Consultation Document, para 4.3.