

Submission to the UN Special Rapporteur on Extreme Poverty and Human Rights

The failure to use 'maximum available resources' under an unbalanced and unfair 'Austerity' regime

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This submission is particularly directed to question 13 in the section headed '**Austerity**': *What alternatives to austerity might have been considered by governments in the last decade? Could any such alternatives have had a more positive impact on poverty (and inequality) levels in the United Kingdom?*

The International Covenant on Economic, Social and Cultural Rights (CESCR) sets out that governments are obligated to "take steps [...] **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant [...] without discrimination of any kind' (ICESCR, article 2 (1), emphasis added). 'Maximum available resources' (MAR) therefore should be drawn on to avoid cutting basic human rights. "The CESCR has said that the (MAR) obligation means that governments must give "due priority" to ESC rights in the use of their resources. For a government's budget this means that allocations and expenditures should be directed to ESC rights-related areas as a matter of priority' (Blyberg and Hofbauer, 2014, booklet, p 4).

The UK government's tax policies have not given 'due priority' to directing available resources to 'ESC rights-related areas'. One very clear example of their failure to do so is the marked inconsistency in the uprating of tax thresholds and most working-age benefits. Since 2012 the basic income tax allowance has been lifted by 46 per cent, but most working-age benefits have only gone up by 3 per cent and are currently frozen. The result has been to increase the post-tax income of taxpayers much more than is needed to protect them against inflation. At first, when the basic tax threshold was lifted above the rise in the cost of living, the higher-rate thresholds were brought down to prevent the better-off from gaining, but in recent years this has changed with higher-rate thresholds going up faster than the rest and well above inflation.

By contrast, most people on working-age benefits have fallen behind the increase in the cost of living, and this is a major reason for the continuing high level of poverty. The continued freezing of most working-age benefits at least until 2020 is one of the major reasons why poverty is increasing. The Institute for Fiscal Studies has reported that 'the official rate of relative after-tax poverty is projected to rise by 2.3ppts from 21.3% in 2014-15 to 23.6% in 2021-22' (Hood and Waters, 2017, p 6). Many social security beneficiaries are not employed so they do not gain from the lift in the tax allowance threshold, and many others in work do not earn enough to get much benefit from it.

'A state can't justify retrogressive measures simply by referring to resource scarcity, fiscal discipline or savings: it needs to show why the measures at issue were necessary for the protection of the totality of rights in the Covenant' (Nolan, 2018, video commenting on the views expressed by the Committee on Economic, Social and Cultural Rights, 1990). There has not, as far as I have been able to establish, any effort on the part of the government directed to showing why the markedly sharp differences in uprating income tax and most working-age benefits are 'necessary' by any criteria, let alone 'the protection of the totality of rights in the Covenant'.

This deserves special consideration by the Special Rapporteur and is particularly relevant to consideration of the 'maximum available resources'.

This however is not the only way in which the workings of the UK tax system merit particular attention. The Special Rapporteur should also take account of the very substantial amount of available resources shielded from view in tax reliefs and NI exemptions (Sinfield, 2018). Inclusion of them within the 'maximum available resources' a government can draw on to avoid increasing poverty and restricting human rights is essential.

In 2017-18 the income tax reliefs providing some form of social policy totalled £29 billion (listed in HMRC, 2018). This constituted over three-quarters of the published income tax reliefs excluding the basic personal allowances, and it was equivalent to some 17% of the income tax actually collected. Among other tax reliefs the capital gains tax exemption for any gains from selling one's home was outstanding, £27.8 billion.

These virtually hidden resources have been made more visible by the Office of Tax Simplification (OTS). By 2015 it had identified 1,156 reliefs, very many more than the annual listing of 400 by the UK tax authority, Her Majesty's Revenue and Customs (HMRC) (OTS, 2015; see also 2011). OTS classified only half of their list as 'structural', technical tax reliefs, defining the scope of a tax. Just as many were identified as special cases for special interest groups, targeted to influence behaviour and/or establishing thresholds for exemptions. How much all these cost in lost revenue is unknown as HMRC only provides cost estimates for 200, half of its own list of 400.

In 2014 the National Audit Office (NAO), the independent parliamentary body, produced two highly critical reports on the government's management of tax reliefs building on the OTS examination (NAO, 2014 a and b; also, 2016). The Public Accounts Committee was so concerned that it printed its second main conclusion in bold: **"Despite our repeated recommendations, HMRC still does not make tax reliefs sufficiently visible to support parliamentary scrutiny and public debate about areas where the UK chooses not to collect tax"** (PAC, 2016, second main conclusion, emphasis in original, see also paras 17-22). As a result of these and other criticisms I have since been told that HMRC has said that it will publish estimated costs for more reliefs but still far short of the OTS total.

Particularly relevant to the Special Rapporteur's visit is the fact that the very great majority of these personal tax reliefs and related subsidies do not provide benefit to those on low incomes because they provide regressive or 'upside-down' benefits at

the individual's marginal rate of income tax. This means that they help those with higher income and so higher marginal tax rates more. They are thus 'means-enhancing', reinforcing inequalities, in marked contrast to the very many public spending benefits which are means-tested and so limited to those on lower incomes. A tax allowance of £1,000 saves the basic rate taxpayer £200, the higher rate £400 and the additional rate £450 (slightly different rates apply in Scotland from this year). These allowances are phased out for those with incomes over £100,000 net of private pension contributions and donations.

These reliefs have not been subject to the same 'austerity' regime that, we are told, continues to require considerable cuts to public spending and particular reductions in the social security benefits that are needed by those on very low incomes. There have been very few reductions in the tax reliefs, mostly on private and occupational pensions. Yet even the Treasury and HMRC still estimate the costs at £24 billion net with another £16 billion resulting from National Insurance contribution exemptions for payments into these private pensions. Nevertheless those on what HMRC terms 'adjusted' incomes above £210,000 a year are still entitled to claim income tax relief up to £4,500. This works out at £86.50 a week, £11.40 more a week than the basic state benefit of £73.10 for someone out of work and claiming the frozen jobseeker's allowance. One form of that is financed by the National Insurance Fund. Were the £16 billion of National Insurance exemptions going to support private pensions slightly reduced in some way, then this public benefit would not have to be frozen. After all, National Insurance is a basic pillar of the welfare state intended to meet need, not to benefit indirectly those with incomes above £210,000 to the detriment of unemployed people invariably on very much lower incomes.

The failure to take account of those with the greatest financial needs is shown by the annual Office for National Statistics report, *The effects of taxes and benefits on household income* (ONS, 2018). Contrary to general perceptions this survey reveals that the total tax system, direct and indirect, has long been at best basically proportionate, not progressive, with a continuing higher incidence of total taxes on the household quintile with the least money. By 2016/17 the bottom quintile's total taxes had risen to 38.6 per cent of gross income from 35 per cent the previous year, not only clearly above the average (34.2 per cent) but also above the top quintile (34.4 per cent) (ONS, 2018, table 8 in the accompanying dataset).

The importance of tax expenditures has been receiving increasing recognition by international agencies because of concern at the extent to which they are contributing to inequalities. The World Bank has acknowledged that tax expenditure 'violates' both vertical and horizontal equity (World Bank, 2003, p 2). A 2016 OECD working paper, *Tax Design for Inclusive Economic Growth*, has argued that 'scaling back tax expenditures that are not well-targeted at redistributive objectives may help achieve both greater efficiency and a narrower distribution of disposable income' (Brys et al, 2016, p 51).

To conclude, I would urge the Special Rapporteur to investigate the operation of the tax system that is one of the reasons that the UK government is failing to "take steps [...] **to the maximum of its available resources**, with a view to achieving progressively the full realization of the rights recognized in the present Covenant [...] without discrimination of any kind' (ICESCR, article 2 (1), emphasis added). Fairer

treatment of tax reliefs alongside benefits would have saved the need to cut back support for those on the lowest incomes and most in or at risk of poverty.

References

- Ann Blyberg and Helena Hofbauer (2014) *The Use of Maximum Available Resources: Article 2 & Governments' Budgets*, booklet, International Budget Partnership.
- Brys, B. et al. (2016) *Tax Design for Inclusive Economic Growth*, OECD Taxation Working Papers 26, Paris: OECD.
- HMRC (2018a) *Tax relief statistics*, KAI Data Policy and Co-ordination, HMRC.
<https://www.gov.uk/government/collections/tax-relief-statistics>
- Hood, Andrew and Waters, Tom (2017) 'Living standards, poverty and inequality in the UK: 2016-17 to 2021-22', York: Joseph Rowntree Foundation
<https://www.ifs.org.uk/uploads/publications/comms/R127.pdf>
- NAO – National Audit Office (2014a) *Tax reliefs*, HC 1256, SESSION 2013-14, 7 April 2014.
- NAO (2014b) *The effective management of tax reliefs*, HC 785, SESSION 2014-15, 7 November 2014.
- NAO (2016) *Report by the Comptroller and Auditor General*, in HMRC, *Annual Report and Accounts 2015-2016*, London: HMRC, pp R1-90.
- Nolan, Aoife (2018) *Making Economic and Social Rights Real*, University of Nottingham video.
- ONS - Office for National Statistics (2018) *The effects of taxes and benefits on household income*, London: Office for National Statistics, June.
- OTS - Office of Tax Simplification (2011) *Review of tax reliefs: final report*, London: OTS.
- OTS (2015) *Finance Act 2015: new tax reliefs*
<https://taxsimplificationblog.wordpress.com/category/tax-reliefs-2/>
- PAC - Public Accounts Committee (2016), *HMRC's performance in 2015-16*, HC 712, December.
- Sinfield, Adrian (2018) 'Fiscal welfare and its contribution to inequality', *Social Policy Review* 30, pp 91-110.
- World Bank (2003) 'Why worry about tax expenditures?' *PREMnotes Economic Policy*, no 77, January.

Please note that I am happy for this to appear on the website of the Special Rapporteur.