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ActionAid Ireland submission to Department of Foreign Affairs and Trade in relation to the development of Ireland's National Action Plan on Business and Human Rights:

ActionAid is a global movement of people working together to further human rights and defeat poverty for all. ActionAid Ireland was established in 1983, our sole objective is to support poor and vulnerable people in their fight for a better life. ActionAid uses the Human Rights Based Approach to development, challenging the structural causes of poverty, through campaigning, advocacy and programme work. ActionAid Ireland directly funds programmes in six countries, Kenya, Uganda and Malawi in Africa and Nepal, Vietnam and Cambodia in Asia, and has two active campaigns in Ireland – Tax Power and Safe Cities for Women. ActionAid Ireland is a member of the ActionAid International Federation, one of the world's most respected development organisations, with offices in 45 countries around the globe. Our particular focus is on women's rights and education, which we see as key drivers of change around the world.

ActionAid Ireland welcomes this opportunity to contribute to the consultation by the Department of Foreign Affairs and Trade on its development of a National Action Plan on business and human rights. Ireland's leadership and commitment in the field of human rights and legacy of nurturing business provides an opportunity for Ireland to become a global leader in the area of business and human rights. The development of a National Action Plan on business and human rights presents a significant opportunity for ensuring that respect for human rights is fully integrated in the activities of Irish and Irish domiciled businesses at home and internationally and for the State to outline how it meets its obligations under international law to protect human rights from being infringed by third parties, including business enterprises.

The primary focus of ActionAid's submission is on multinational tax avoidance and other harmful tax practices, which leads to loss of revenue for many developing and developed states, undermining a state's ability to finance human rights and state duty to protect human rights, as set out in Pillar 1 of the Guiding Principles, and the obligation to ensure adequate remedies in the event of breaches of human rights, as addressed in Pillar 3 of the Guiding Principles.

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Taxation, human rights obligations and Guiding Principles on Business and Human Rights:

Tax justice has been increasingly on the global agenda and despite Ireland's role as an international leader in the field of human rights, Ireland's tax regime has attracted significant criticism for enabling aggressive tax minimisation and avoidance, potentially depriving developing countries of much-needed revenue to finance human rights.

Former UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, devoted her final annual report as Special Rapporteur to examining tax and fiscal policy as a major determinant of the enjoyment of human rights, noting that the state duty to protect under the Guiding Principles requires regulation of business enterprise, including legal and accounting firms, so that they do not participate in or facilitate tax abuse[1]. Equally, Sepúlveda highlighted that state policy facilitating tax avoidance undermines responsibilities of international assistance and cooperation, because it impairs another state's ability to mobilize the maximum available resources for the progressive realisation of rights required by Article 2.1 of the International Covenant on Economic, Social and Cultural Rights, and Article 4 of the United Nations Convention on the Rights of the Child. [2]

Case study: *Sweet Nothings - The human cost of a British sugar giant avoiding taxes in southern Africa*

ActionAid' *Sweet Nothings*[3] report showed three ways in which Zambia Sugar, a subsidiary of the Associated British Foods (ABF) group, was able to legally avoid tax in Zambia by routing transactions through Ireland, as follows:

Zambia Sugar paid large "purchasing and management" fees to an Irish sister company that seems to have had no physical presence in Ireland at the time. Every year between 2006 and 2010, this company's audited Irish accounts repeatedly stated that the company had no employees, while providing Zambia Sugar with nearly $2.6 million worth of management services each year. (ABF has since stated that the Irish company "employs some 20 individuals", though the latter's accounts failed to reflect this).

Zambia Sugar financed the expansion of its estate and sugar mill in Zambia with loans from South African and U.S. banks which were routed through Ireland, despite being borrowed in Zambian currency and repaid via a bank account held by the Irish company at a bank in Zambia. This

[1] *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, A/HRC/26/28

[2] *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, A/HRC/26/28

[3] [3] ActionAid, *Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa*, London: ActionAid UK, 2013, http://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf

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Our report found that Zambia Sugar has been able to avoid significant tax on its dividend payments to its parent company, Illovo Sugar Ltd, by routing its ownership through a string of holding companies in Ireland, Mauritius and the Netherlands, taking advantage of tax regimes in these countries.

"The problem is not the 12.5% tax rate….The problem is that for many years now Ireland has supplemented that rate…with a range of schemes that look to all the world to be designed to facilitate tax avoidance by huge multinationals in return for a pittance of a reward to Ireland. But…the costs to other countries, including developing countries, have been immense."

Philip Alston, UN Special Rapporteur for extreme poverty and human rights, Christian Aid conference, Dublin, February 2015

Recommendations:

- Ireland's National Action Plan should explicitly recognise the role of taxation and taxation policy in corporate's ability to respect human rights as well as the state's duty to protect human rights.
- We welcome the recent publication of Ireland's Spillover Analysis[4] which addresses key issues around the impact of Ireland's fiscal policies on developing countries. The assessment notes the positive development Ireland has made in relation to treaty renegotiations, capacity building and corporate transparency, but equally highlights a concerning lack of data and notes the case study above. We also welcome Ireland's introduction of country by country reporting, as a first step towards meaningful transparency. Ireland's National Action Plan on Business and Human Rights should recognise both financial and non-financial reporting as key tools to transparency, facilitating the state's duty to protect human rights, incentivising corporate actor's respect for human rights and facilitating and informing access to remedy.

[4] IBFD Spillover Analysis; Possible Effects of the Irish Tax System on Developing Economies, Department of Finance, October 2015.
http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf