Key Corporate Tax Haven Indicators

Haven Indicator 13:
Reporting of Tax Avoidance Schemes

What is measured?

The indicator assesses two components of mandatory reporting to tackle tax avoidance schemes.

1. **Regarding the reporting of tax avoidance schemes:** we assess whether a jurisdiction requires taxpayers to report tax avoidance schemes they have used; and tax advisers to report any tax avoidance schemes they have sold or marketed in the course of assisting companies and individuals prepare tax returns.
2. **Regarding the reporting of uncertain tax positions:** we assess whether a jurisdiction requires taxpayers and tax advisers to report uncertain tax positions for which reserves have been created in annual corporate accounts.

Each component contributes half of the haven score. A jurisdiction receives a zero haven score where both tax advisers and taxpayers have to report tax avoidance schemes and uncertain tax positions. In cases where only either taxpayers or tax advisers must report tax avoidance schemes, the haven score is reduced by only 20. Similarly, in cases where only either taxpayers or tax advisers have to report on uncertain tax positions, the haven score is reduced but only by 20. Where there are no reporting requirements of tax avoidance schemes for taxpayers and tax advisers, the jurisdiction receives a full haven score of 50, as it poses a maximum risk for tax avoidance schemes to go unnoticed. The same applies where there are no reporting requirements of uncertain tax positions for taxpayers and tax advisers. Thus, a jurisdiction receives a 100 haven score if there are no reporting requirements in a jurisdiction for taxpayers and for tax advisers neither with regard to tax avoidance schemes nor with regard to uncertain tax positions.

The data for this indicator is based on several sources: a) Tax Justice Network Survey of 2017;[1] b) the International Bureau of Fiscal Documentation (IBFD) database; [2] c) local websites of jurisdictions' tax authorities; d) local tax legislation of jurisdictions; e) the Organisation for Economic Co-operation and Development (OECD) publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report".[3]

The haven scoring matrix is shown in Table 13.1, with full details of the assessment logic presented in Table 13.3 below.

Table 13.1. Scoring Matrix Haven Indicator 13

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
Component 1: Reporting on tax avoidance schemes (50)	
Taxpayers reporting schemes Taxpayers are required to report at least annually on certain tax avoidance schemes they have used.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 30
Tax advisers reporting schemes Tax advisers (who help companies and individuals to prepare tax returns) are required to report at least annually on certain tax avoidance schemes they have sold/marketed.	
No reporting by taxpayers or tax advisers	50
Component 2: Reporting on uncertain tax positions (50)	
Taxpayers reporting uncertain tax positions Taxpayers are required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 30
Tax advisers reporting uncertain tax positions Tax advisers are required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts of the companies they advised.	
No reporting by taxpayers or tax advisers	50

All underlying data can be accessed freely in the CTHI database.[4] To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 13.3 and search for the corresponding info IDs (IDs 403, 404, 405 and 406) in the database report of the respective jurisdiction.

Why is this important?

Component 1: Reporting of tax avoidance schemes

Mandatory disclosure rules require taxpayers to report to the tax administration on aggressive tax planning schemes they have used and intermediaries (e.g. tax advisors, accountants and lawyers) to report on the schemes they have sold to their client.[5]

There are several reasons to support the imposition of mandatory reporting of tax avoidance schemes. First, the reporting requirements help tax administrations to identify areas of uncertainty in the tax law that may need clarification or legislative improvements, regulatory guidance, or further research.[6] Second, providing the tax administration with early information about tax avoidance schemes allows it to assess the risks schemes pose before the tax assessment is made and to focus audits more efficiently. This is significant mainly because, in many jurisdictions, tax administrations do not have sufficient capacity to fully audit a large number of the tax files. Thus, flagging certain files that carry a greater risk of tax avoidance is likely to increase the efficiency of tax administrations and their ability to increase tax revenues. Third, requiring mandatory reporting of tax schemes is likely to deter taxpayers from using these tax schemes because they know there are higher chances that files will be flagged, exposed and assessed accordingly. Fourth, such mandatory reporting may reduce the supply of these schemes by altering the economics of tax avoidance of their providers because a) they will be more exposed to claims of promoting aggressive tax schemes, increasing the risk of reputational damage, and b) their profits and rate of return on the promotion of these schemes is likely to be reduced because schemes are closed down more quickly. This is all the more true if contingency fees are part of contracts.

Mandatory disclosure rules were first introduced by the USA in 1984 and several countries, including European Union member states (the United Kingdom, Ireland, Portugal, Canada, South Africa, South Korea and Israel),[7] have followed suit. The revelations of Lux Leaks[8] and Panama Papers scandals[9] and the European Union State Aid cases[10] have demonstrated the role of intermediaries in using tax planning schemes for tax avoidance and further pushed governments to take action. As a result, the European Council required all European Union member states to create mandatory disclosure rules no later than 31 December 2019, and even obliged the tax authorities of the states to automatically exchange reportable cross-border arrangements as of 1 July 2020 (Directive 2018/822/EU).[11]

The difficulty in imposing mandatory reporting rules for tax avoidance schemes is the potential for ambiguity of whether the scheme is considered a tax avoidance scheme within the mandatory disclosure rules. In order to mitigate against this risk, the reporting obligation should not apply only to the taxpayer who uses the tax scheme or only to the promoter (tax advisers) of the scheme, but rather to both. This kind of double obligation is imposed in the United States.[12] If both are obliged to report independently on the marketed/used tax avoidance schemes, the chances that tax administration will be able to detect hidden dubious schemes are significantly higher. Precisely because there are numerous and regular conflicts between the tax administration and taxpayers/advisers on the interpretation of tax laws, it should be expected that many tax schemes will be designed in grey areas which certain promoters might chose to interpret as not being subject to the remit of the reporting obligation. Third party reporting obligations increase the detection risk of these dubious schemes and thereby incentivises the reporting of a broader set of schemes.

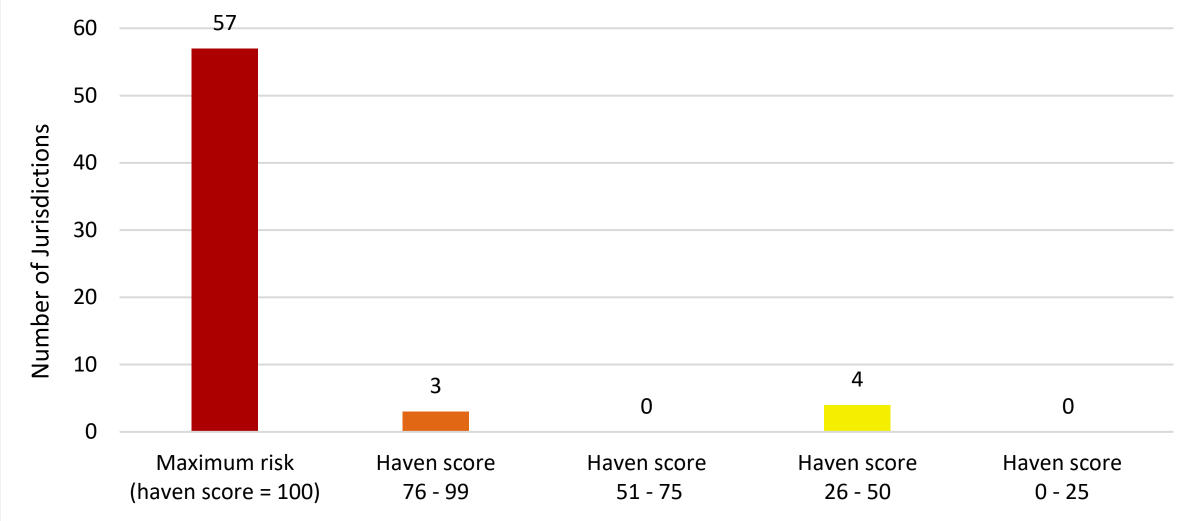
However, the European Union Directive 2018/822/EU imposes the disclosure obligation primarily on the intermediaries who design and sell the aggressive tax planning schemes whereas taxpayers are required to report on such schemes only in some limited instances. Nonetheless, European Union member states are still free to extend the scope and impose a similar disclosure obligation on taxpayers.[13]

Component 2: Reporting of uncertain tax positions

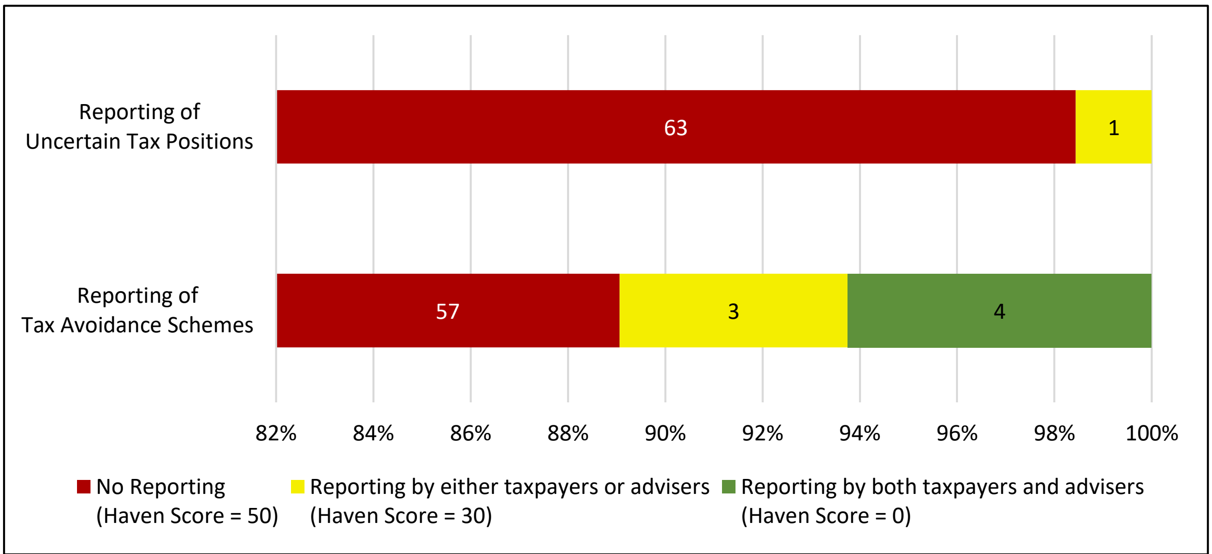
To further mitigate the risk of a taxpayer or tax adviser's failure to define and report properly all relevant tax avoidance schemes, mandatory rules should require uncertain tax positions to be reported in annual financial accounts. The International Financial Reporting Standards, which most multinational companies adhere to in their annual financial reporting, require the reporting of uncertain tax positions. Whenever a tax payment related to a tax risk is "probable", these positions need to be included in their financial accounts.[14] Under these International Financial Reporting Standards, prudence[15] is an important principle for the preparation of accounts. In fact, shareholders may hold management accountable for prudential reporting. Therefore, it is likely that even more tax avoidance schemes would be reported to tax administrations if there was a consistent requirement to report details on uncertain tax positions. Similarly, if both tax advisers and taxpayers are obliged to annually report on any uncertain tax positions of accounts they prepared or submitted, the detection risks of errors in reporting or failures to report increases.

Results Overview

Graph 13.1. Reporting of Tax Avoidance Schemes Overview



Graph 13.2. Reporting of Tax Avoidance Schemes and Uncertain Tax Positions



Results Detail

Table 13.2. Reporting of Tax Avoidance Schemes – Haven Indicator Scores

ISO	Country Name	Final Score	Tax Avoidance Schemes	Uncertain Tax Positions
AD	Andorra	100.0	50.0	50.0
AI	Anguilla	100.0	50.0	50.0
AW	Aruba	100.0	50.0	50.0
AT	Austria	100.0	50.0	50.0
BS	Bahamas	100.0	50.0	50.0

Haven Indicator 13: Reporting of Tax Avoidance Schemes

ISO	Country Name	Final Score	Tax Avoidance Schemes	Uncertain Tax Positions
BE	Belgium	100.0	50.0	50.0
BM	Bermuda	100.0	50.0	50.0
BW	Botswana	100.0	50.0	50.0
VG	British Virgin Islands	100.0	50.0	50.0
BG	Bulgaria	100.0	50.0	50.0
KY	Cayman Islands	100.0	50.0	50.0
CN	China	100.0	50.0	50.0
HR	Croatia	100.0	50.0	50.0
CW	Curacao	100.0	50.0	50.0
CY	Cyprus	100.0	50.0	50.0
CZ	Czech Republic	100.0	50.0	50.0
DK	Denmark	100.0	50.0	50.0
EE	Estonia	100.0	50.0	50.0
FI	Finland	100.0	50.0	50.0
FR	France	100.0	50.0	50.0
GM	Gambia	100.0	50.0	50.0
DE	Germany	100.0	50.0	50.0
GH	Ghana	100.0	50.0	50.0
GI	Gibraltar	80.0	30.0	50.0
GR	Greece	100.0	50.0	50.0
GG	Guernsey	100.0	50.0	50.0
HK	Hong Kong	100.0	50.0	50.0
HU	Hungary	100.0	50.0	50.0
IE	Ireland	80.0	30.0	50.0
IM	Isle of Man	100.0	50.0	50.0
IT	Italy	100.0	50.0	50.0
JE	Jersey	100.0	50.0	50.0
KE	Kenya	100.0	50.0	50.0
LV	Latvia	100.0	50.0	50.0
LB	Lebanon	100.0	50.0	50.0
LR	Liberia	100.0	50.0	50.0
LI	Liechtenstein	100.0	50.0	50.0
LT	Lithuania	100.0	50.0	50.0
LU	Luxembourg	100.0	50.0	50.0
MO	Macao	100.0	50.0	50.0
MT	Malta	100.0	50.0	50.0
MU	Mauritius	100.0	50.0	50.0
MC	Monaco	100.0	50.0	50.0
MS	Montserrat	100.0	50.0	50.0
NL	Netherlands	100.0	50.0	50.0
PA	Panama	100.0	50.0	50.0
PL	Poland	80.0	30.0	50.0

ISO	Country Name	Final Score	Tax Avoidance Schemes	Uncertain Tax Positions
PT	Portugal (Madeira)	50.0	0.0	50.0
RO	Romania	100.0	50.0	50.0
SM	San Marino	100.0	50.0	50.0
SC	Seychelles	100.0	50.0	50.0
SG	Singapore	100.0	50.0	50.0
SK	Slovakia	100.0	50.0	50.0
SI	Slovenia	100.0	50.0	50.0
ZA	South Africa	50.0	0.0	50.0
ES	Spain	100.0	50.0	50.0
SE	Sweden	100.0	50.0	50.0
CH	Switzerland	100.0	50.0	50.0
TW	Taiwan	100.0	50.0	50.0
TZ	Tanzania	100.0	50.0	50.0
TC	Turks and Caicos Islands	100.0	50.0	50.0
AE	United Arab Emirates (Dubai)	100.0	50.0	50.0
GB	United Kingdom	50.0	0.0	50.0
US	USA	30.0	0.0	30.0

Final Score					
Maximum Risk (Haven Score 100)	Haven Score 76 - 99	Haven Score 51 - 75	Haven Score 26 - 50	Haven Score 1 - 25	Minimum Risk (Haven Score 0)
Component score					
Maximum Risk (Haven Score 50)	Haven score 26-49		Haven Score 1-25		Minimum Risk (Haven Score 0)

Table 13.3. Assessment Logic

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
403	Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?	0: No; 1: Yes, but the schemes are only reported to the tax administration, and are not published; 2: Yes, and the schemes are made publicly available.	Both 0: 50 One 1 Or 2 (i.e >=1) and the other one 0: 30
404	Tax advisers reporting schemes: Are tax advisers (who help companies and individuals to prepare tax returns)	0: No; 1: Yes, but the schemes are only reported to the tax administration (they are not published); 2:	

	required to report at least annually on certain tax avoidance schemes they have sold/marketed (if applicable)?	Yes, and the schemes are made publicly available.	Both 1 or 2 (i.e>=1): 0
405	Taxpayers reporting uncertain tax positions: Are taxpayers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts?	0: No; 1: Yes, but the details are only reported to the tax administration (they are not published); 2: Yes, and the details are made publicly available.	Both 0: 50 One 1 Or 2 (i.e >=1) and the other one 0: 30 Both 1 or 2 (i.e>=1): 0
406	Tax advisers reporting uncertain tax positions: Are tax advisers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts of the companies they advised?	0: No; 1: Yes, but the details are only reported to the tax administration (they are not published); 2: Yes, and the details are made publicly available.	

Reference List

Ates, Leyla, 'More Transparency Rules, Less Tax Avoidance', *The Progressive Post*, 2018 <https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/%20> [accessed 24 May 2019]

OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report* (Paris, 2015) <https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1558684255&id=id&accname=guest&checksum=AD69BFF7976DA14EC68E1CD7708DB17B> [accessed 24 May 2019]

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[1] Survey Conducted by the International Secretariat of the Tax Justice Network in early 2017. The questionnaire sent out to the Ministries of Finance and National Audit Offices can be viewed here (pdf): http://www.financialsecrecyindex.com/PDF/FSI2018-Questionnaire-MoF.pdf; and the questionnaire sent to the Financial Intelligence Units can be downloaded here: https://www.financialsecrecyindex.com/PDF/FSI2018-Questionnaire-FIU.pdf

[2] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2018-2019, 2018 <https://research.ibfd.org/> [accessed 9 May 2019].

[3] OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report* (Paris, 2015) <https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1558684255&id=id&accname=guest&checksum=AD69BFF7976DA14EC68E1CD7708DB17B> [accessed 24 May 2019].

[4] http://www.corporatetaxhavenindex.org/database/menu.xml

[5] Leyla Ates, 'More Transparency Rules, Less Tax Avoidance', *The Progressive Post*, 2018 <https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/%20> [accessed 24 May 2019].

[6] https://www.ato.gov.au/Business/Large-business/Compliance-and-governance/Reportable-tax-positions/Reportable-tax-position-schedule/; [accessed 22 December 2018].

[7] OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*, 23.

[8] https://www.icij.org/investigations/luxembourg-leaks/; [accessed 24 May 2019].

[9] https://www.icij.org/investigations/panama-papers/; [accessed 24 May 2019].

[10] http://ec.europa.eu/competition/state_aid/register/;[accessed 24 May 2019].

[11] Council Directive 2018/822/EU (Official Journal of European Union, L 139, 5 June 2018). According to Article 3, the Directive came into force on the twentieth day following its publication in the European Union Official Journal, i.e. 25 June 2018. The new directive requires the automatic exchange of information among other EU members through a central directory. As opposed to a similar database within the OECD called the "aggressive tax planning depository" which is only available to the members of the

Aggressive Tax Planning Expert Group that is a sub-group of OECD Working Party No. 11, the new directive is likely to will create a level playing field for all EU member countries in terms of access to such relevant information." For further information see: http://www.oecd.org/ctp/aggressive/co-operation-and-exchange-of-information-on-atp.htm; [accessed 24 May 2019] and Ates, 'More Transparency Rules, Less Tax Avoidance'.

[12] J.G. Rienstra, United States - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_ec_s_1 [accessed 24 May 2019].

[13]For example, Portugal obliges both intermediaries and taxpayers to report on certain tax avoidance schemes. Moreover, the Portugese Decree Law No. 29/2008 provides in its Article 15 that the Portuguese fiscal authority shall publicly disclose the reported schemes which are considered abusive by Portuguese authorities. However, as of March 2019, only a list of 13 tax avoidance schemes was published by the Portuguese fiscal authority particularly in 2010. For more information see http://info.portaldasfinancas.gov.pt/pt/Pages/homepage.aspx [accessed 24 May 2019]; A. Valente Vieira, Portugal - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_ec_s_1 [accessed 24 May 2019].

[14] https://blogs.pwc.de/accounting-aktuell/ifrs/bewertung-einer-steuerrisikoposition-uncertain-tax-position/685/; [accessed 24 May 2019].

[15] http://www.accaglobal.com/content/dam/acca/global/PDF-technical/financial-reporting/tech-tp-prudence.pdf; [accessed 24 May 2019].