Key Corporate Tax Haven Indicators

Haven Indicator 4:

Capital Gains Taxation

What is measured?

This indicator measures the extent to which a jurisdiction taxes corporate capital gains arising from the disposal of domestic and/or foreign securities (i.e. shares and bonds). As such, it assesses the lowest available tax levied on corporate capital gains, applicable for large for-profit corporations which are tax resident in the jurisdiction, irrespective of whether the capital gains are taxed as part of corporate income tax or as part of another type of tax, such as wealth tax or an independent capital gains tax.

This indicator has two components which are equally weighted:

a) the lowest available tax levied on corporate capital gains arising from the disposal of domestic securities; and

b) the lowest available tax levied on capital gains arising from the disposal of foreign securities.

The lowest available corporate capital gains tax rate in each of the two components is then assessed against 35% in line with Haven Indicator 1 on the lowest available corporate income tax rate ("spillover risk reference rate"). A zero capital gains tax rate or an exemption from capital gains tax in each of the components equals a haven score of 50 in each of the components. If both types of securities are exempt from capital gains tax or are taxed at 0%, the combined resulting haven score is thus 100. If the lowest available capital gains tax rate is 35% in each of the components, the haven score is zero. Any rate in between is linearly scaled against 35%.

In cases where different tax rates applies, the haven score is calculated in the following way: 1) determining the jurisdiction's lowest available tax levied for each of the components; 2) subtracting this tax from the spillover risk reference rate of 35%; 3) scaling this rate in proportion to a haven score between 0 and 50 for each of the components; and 4) calculating the total haven score by a simple addition of the two components.

The data for this indicator was collected primarily from country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD) database.[1] In some instances, we have also consulted additional websites and reports of accountancy firms.

The scoring matrix is shown in Table 4.1, with full details of the assessment logic presented in Table 4.3 below.

Table 4.1. Scoring Matrix Haven Indicator 4

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
Component 1: Taxation of corporate capital gains from domestic securities (50)	
A zero capital gains tax or an exemption from capital gains tax is equal to a haven score of 50.	50
Where the capital gains tax rate is higher than 0% and smaller than 35%, it is subtracted from 35% and then linearly scaled in proportion to determine a haven score between 0 and 50.	0> and <50
Capital gains tax which is set at 35% (or above) is equal to a haven score of zero.	0
Component: Taxation of corporate capital gains from foreign securities (50)	
A zero capital gains tax or an exemption from capital gains tax is equal to a haven score of 50.	50
Where the capital gains tax rate is higher than 0% and smaller than 35%, it is subtracted from 35% and then linearly scaled in proportion to a haven score between 0 and 50.	0> and <50
Capital gains tax which is set on 35% (or above) is equal to a haven score of zero.	0

All underlying data can be accessed freely in the CTHI database.[2] To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 4.3 and search for the corresponding info IDs (IDs 513 and 514) in the database report of the respective jurisdiction.

Why is this important?

By purchasing and holding assets through intermediary companies in jurisdictions with no or low capital gains taxation, the corporate income tax and capital gains tax systems of any jurisdiction can be easily circumvented. Therefore, the availability of jurisdictions with low or no capital gains taxation jeopardises the tax base of other jurisdictions and creates tax spillover effects.

In a response to these profit shifting techniques regarding highly mobile financial and other service activities, countries often choose to enter the race to the bottom by providing lower taxes for holding passive investments. As a result, nowadays many countries in practice apply very low or no taxes on the income from shareholdings (a term jointly used to refer to dividend income and capital gains).[3]

One of the ways to do this is through the application of special rules of a holding company regime.[4] For example, in Dominica, International Business Companies are exempt from corporate tax and capital gains and can be used as holding companies.[5] Otherwise, capital gains are often exempt through what is known as a participation exemption system.[6] Participation exemption is widely used by European Union member states, countries in the European Economic Area[7] and many other countries as well. The legislation which regulates participation exemption regimes may either establish no conditions for granting the exemption or alternatively may require a minimum threshold and/or business activity test and/or holding period.[8]

The extent of participation exemption varies among jurisdictions. Some jurisdictions, such as Malta[9] and Aruba[10] exempt from tax all capital gains on domestic and foreign shares derived from a participating holding or from the disposal of such holding. Other jurisdictions, such as Germany[11], France[12] and Italy[13], may only partially exempt from tax capital gains by adding back to the taxable income a lump sum of a certain percentage of the capital gains.

The Organisation for Economic Co-operation and Development (OECD) does not perceive low or no effective tax rates imposed on income from shareholdings as harmful per se, given that these rates may be a result of a policy that seeks to mitigate double taxation.[14] However, these policies seeking to mitigate double taxation can result in double non-taxation as the transformation of regular income into capital gains is a key pillar of many tax avoidance strategies. As long ago as 1998, the OECD, in its Harmful Tax Competition Report ("1998 Report"), recommended countries not to exempt capital gains (from the disposal of securities) from tax in cases where the investee company is subject to a low-tax regime.[15] In addition, it specified low or no effective tax rates as a gateway criterion (one of the four key factors) in determining whether a preferential regime is considered potentially harmful.[16] Another of the factors is whether the jurisdiction excludes resident taxpayers from taking advantage of the preferential regime or if an entity that can benefit from the regime is prohibited from operating in the domestic market.[17]

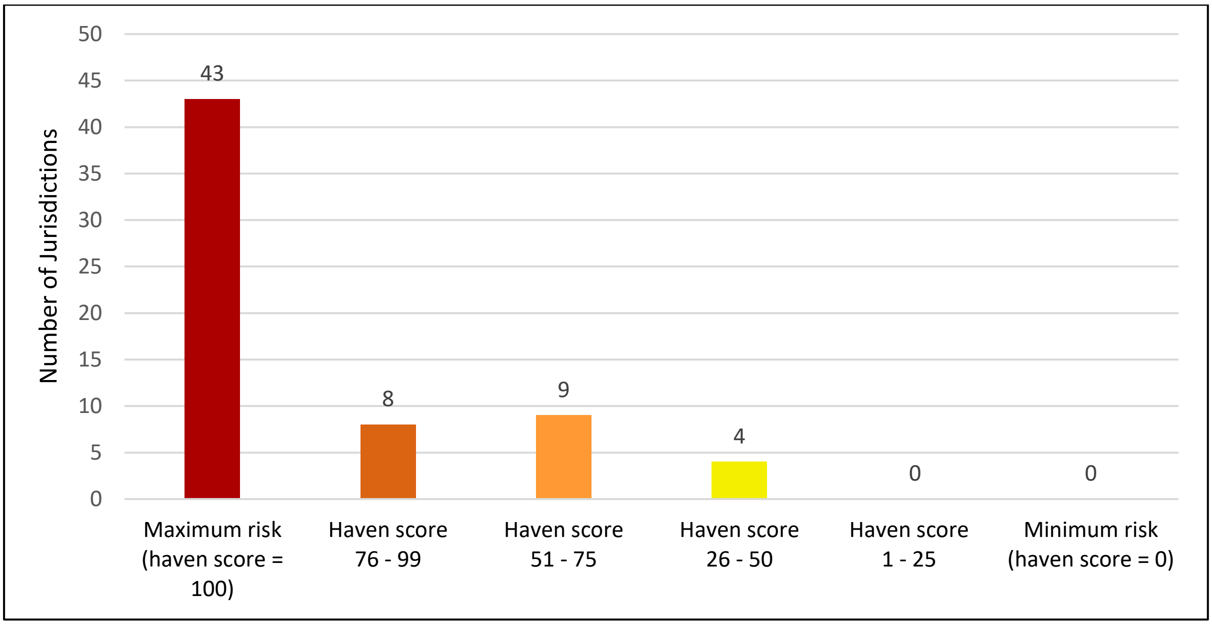
According to the OECD's approach – which was further developed in its Base Erosion and Profit Shifting Action 5 report[18] – where low or no effective taxation and one or more of the remaining three key factors apply, a regime will be characterised as potentially harmful. The meaning of a "potentially harmful" regime according to the OECD, is that "the features of the regime implicates one or more of the criteria, but that an assessment of the economic effects has not yet taken place to make a determination as to whether the regime is 'harmful'".[19]

The OECD also defines a two-step process for determining whether a preferential regime is "potentially harmful but not actually harmful". First, the review of the regime's legal framework leads to a decision on whether it is possible for the regime to negatively affect the tax base of other jurisdictions, for example by being designed as a low-tax and ring-fenced regime.

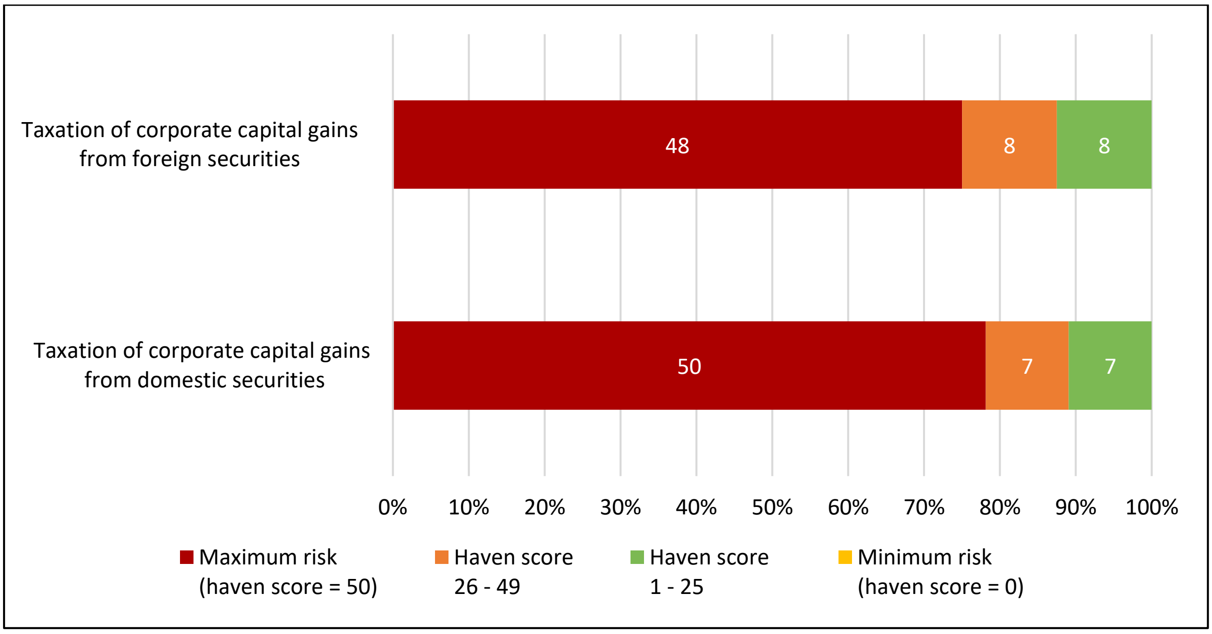
Second, the regime is assessed as to whether it has a negative impact in practice by reviewing the historical economic data about the operation of the regime. This can be done by analysing the number of taxpayers and the amount of income benefiting from the regime.[20] Given that the historical statistical data about the operation of the regime may subsequently change, this approach is hardly suitable for a reliable test of "harmfulness".[21] In any case, the existence of the gateway criterion of low or no capital gains tax may be abused in itself by investors that can avoid capital gains taxation in their country of residence by structuring their investment accordingly. Hence, jurisdictions exempt domestic or foreign capital gains from taxation contribute to base erosion and profit shifting in other countries.

Results Overview

Graph 4.1. Capital Gains Tax Overview



Graph 4.2. Taxation of Corporate Capital Gains from Foreign and Domestic Securities



Results Detail

Table 4.2. Capital Gains Taxation – Haven Indicator Scores

ISO	Country Name	Score	Capital Gains Tax From Domestic Securities	Capital Gains Tax From Foreign Securities
AD	Andorra	100	50.0	50.0
AI	Anguilla	100	50.0	50.0
AW	Aruba	100	50.0	50.0
AT	Austria	64	14.3	50.0
BS	Bahamas	100	50.0	50.0
BE	Belgium	100	50.0	50.0
BM	Bermuda	100	50.0	50.0
BW	Botswana	100	50.0	50.0
VG	British Virgin Islands	100	50.0	50.0
BG	Bulgaria	86	50.0	35.7
KY	Cayman Islands	100	50.0	50.0
CN	China	29	14.3	14.3
HR	Croatia	74	50.0	24.3
CW	Curacao	100	50.0	50.0
CY	Cyprus	100	50.0	50.0
CZ	Czech Republic	100	50.0	50.0
DK	Denmark	69	50.0	18.6
EE	Estonia	100	50.0	50.0
FI	Finland	100	50.0	50.0
FR	France	88	43.9	44.1
GM	Gambia	29	14.3	14.3
DE	Germany	97	48.4	48.4
GH	Ghana	64	50.0	14.3
GI	Gibraltar	86	35.7	50.0
GR	Greece	100	50.0	50.0
GG	Guernsey	100	50.0	50.0
HK	Hong Kong	100	50.0	50.0
HU	Hungary	87	50.0	37.1
IE	Ireland	100	50.0	50.0
IM	Isle of Man	100	50.0	50.0
IT	Italy	97	48.3	48.3
JE	Jersey	100	50.0	50.0
KE	Kenya	100	50.0	50.0
LV	Latvia	100	50.0	50.0
LB	Lebanon	100	50.0	50.0
LR	Liberia	64	14.3	50.0
LI	Liechtenstein	100	50.0	50.0

Haven Indicator 4: Capital Gains Taxation

ISO	Country Name	Score	Capital Gains Tax From Domestic Securities	Capital Gains Tax From Foreign Securities
LT	Lithuania	100	50.0	50.0
LU	Luxembourg	100	50.0	50.0
MO	Macao	83	50.0	32.9
MT	Malta	100	50.0	50.0
MU	Mauritius	100	50.0	50.0
MC	Monaco	100	50.0	50.0
MS	Montserrat	100	50.0	50.0
NL	Netherlands	100	50.0	50.0
PA	Panama	86	35.7	50.0
PL	Poland	46	22.9	22.9
PT	Portugal (Madeira)	100	50.0	50.0
RO	Romania	100	50.0	50.0
SM	San Marino	51	25.7	25.7
SC	Seychelles	100	50.0	50.0
SG	Singapore	100	50.0	50.0
SK	Slovakia	100	50.0	50.0
SI	Slovenia	73	36.4	36.4
ZA	South Africa	68	18.0	50.0
ES	Spain	100	50.0	50.0
SE	Sweden	100	50.0	50.0
CH	Switzerland	100	50.0	50.0
TW	Taiwan	100	50.0	50.0
TZ	Tanzania	57	50.0	7.1
TC	Turks and Caicos Islands	100	50.0	50.0
AE	United Arab Emirates (Dubai)	100	50.0	50.0
GB	United Kingdom	100	50.0	50.0
US	USA	40	20.0	20.0

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 4.3. Assessment Logic

Info_ID	**Text_Info_ID**	**Answers** **(Codes applicable for all questions: -2: Unknown; -3: Not Applicable)**	**Valuation Haven Score**
513	Domestic Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of domestic securities applicable for large "for profit" companies which are tax resident in the jurisdiction?	Capital gains tax rate (between 0 and 35)	Score = ((35 – answer)/35)*50
514	Foreign Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of foreign securities applicable for large "for profit" companies which are tax resident in the jurisdiction?	Capital gains tax rate (between 0 and 35)	Score = ((35 – answer)/35)*50

Reference List

Davis Tax Committee, *Addressing Base Erosion and Profit Shifting in South Africa - Interim Report.* <http://www.taxcom.org.za/docs/New_Folder/4%20DTC%20BEPS%20Interim%20Report%20on%20Action%20Plan%205%20-%20Harmful%20Tax%20Practices,%202014%20deliverable.pdf> [accessed 1 January 2019]

Guglielmo Maisto, and Jacques Malherbe, *Trends in the Taxation of Capital Gains on Shares under Domestic Law -Part One.* <https://www.ibfd.org/sites/ibfd.org/files/content/pdf/Taxation-of-Companies-on-Capital-Gains-sample.pdf> [accessed 1 January 2019]

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

OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015) <http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en> [accessed 16 August 2018]

———, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project (2017) <https://www.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en> [accessed 16 August 2018]

OECD Centre for Tax Policy and Administration, *Consolidated Application Note-Guidance in Applying the 1998 Report to Preferential Tax Regimes.*, 2004 <https://www.oecd.org/tax/transparency/about-the-global-forum/publications/1998-consolidated-application-note.pdf> [accessed 31 December 2018]

Organisation for Economic Co-Operation and Development, *Harmful Tax Competition. An Emerging Global Issue* (Paris, 1998) <http://www.oecd.org/dataoecd/33/0/1904176.pdf (accessed 11 Jan 2006)>

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

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

[3] Organisation for Economic Co-Operation and Development, *Harmful Tax Competition. An Emerging Global Issue* (Paris, 1998), 25 <http://www.oecd.org/dataoecd/33/0/1904176.pdf> [accessed 11 Jan 2006].

[4] OECD Centre for Tax Policy and Administration, *Consolidated Application Note-Guidance in Applying the 1998 Report to Preferential Tax Regimes.*, 2004, 63–64 <https://www.oecd.org/tax/transparency/about-the-global-forum/publications/1998-consolidated-application-note.pdf> [accessed 31 December 2018].

[5] https://www.offshorecompany.com/company/dominica-ibc/; [accessed 15 May 2019]; and also: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-dominicahighlights-2018.pdf; [accessed 15 May 2019].

[6] OECD Centre for Tax Policy and Administration, *Consolidated Application Note-Guidance in Applying the 1998 Report to Preferential Tax Regimes.*, 63–64. Participation exemption was adopted after the repeal of the imputation system, often as a way to mitigate against what was called "double taxation".

[7] Guglielmo Maisto and Jacques Malherbe, *Trends in the Taxation of Capital Gains on Shares under Domestic Law -Part One.*, 9 <https://www.ibfd.org/sites/ibfd.org/files/content/pdf/Taxation-of-Companies-on-Capital-Gains-sample.pdf> [accessed 1 January 2019].

[8] Guglielmo Maisto and Jacques Malherbe, *Trends in the Taxation of Capital Gains on Shares under Domestic Law -Part One.*, 14.

[9] In Malta, capital gains derived from a participating holding or from the disposal of such holding are exempt from tax. For further details, see: C. Cassar Torregiani, Malta - Corporate Taxation sec. 1., Country Analyses IBFD [accessed 22 May 2019]. URL: https://research.ibfd.org/#/doc?url=/document/cta_mt_s_1.

[10] In Aruba, capital gains received by an Aruban resident company from domestic or foreign company are exempt under the participation exemption, provided that several conditions are met. For further details, see: S. van Thol, Aruba - Corporate Taxation sec. 2., Country Surveys IBFD [accessed 22 May 2019]. URL: https://research.ibfd.org/#/doc?url=/document/gtha_aw_s_2.

[11] For example, in Germany, a lump sum of 5% of the gains is added back to taxable income representing non-deductible business expenses (section 8b (3) of the KStG). For further details, see: A. Perdelwitz, Germany - Corporate Taxation sec. 2., Country Analyses IBFD [accessed 5 April 2019]. URL: https://research.ibfd.org/#/doc?url=/document/cta_de_s_2.

[12] In France, the disposal of shares is exempt from capital gains tax but a lump sum of 12% of the gains is added back to taxable income. For further details, see: P. Burg, France - Corporate Taxation sec. 1., Country Analyses IBFD [accessed 5 April 2019]. URL: https://research.ibfd.org/#/doc?url=/document/cta_fr_s_1.

[13] Italy applies the 95% participation exemption for gains from shares and the remaining 5% of the gains are added back to taxable income. For further details, see: C. (Cesare) Silvani, Italy - Corporate Taxation sec. 1., Country Analyses IBFD [accessed 5 April 2019]. URL: https://research.ibfd.org/#/doc?url=/document/cta_it_s_1.

[14] OECD Centre for Tax Policy and Administration, *Consolidated Application Note-Guidance in Applying the 1998 Report to Preferential Tax Regimes.*, 67.

[15] Guglielmo Maisto and Jacques Malherbe, *Trends in the Taxation of Capital Gains on Shares under Domestic Law -Part One.*, 14.

[16] Organisation for Economic Co-Operation and Development, *Harmful Tax Competition. An Emerging Global Issue*, 6.

[17] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 69 <http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en> [accessed 16 August 2018]. For example, the "headquarter regime" in South Africa-which grants preferential tax treatment to taxpayers was considered potentially harmful by the OECD, among others, because it ring-fences the tax benefits from resident taxpayers while enabling foreign MNEs to use South Africa as a conduit for passive income flows. For further details, see: Davis Tax Committee, *Addressing Base Erosion and Profit Shifting in South Africa - Interim Report.*, 17 <http://www.taxcom.org.za/docs/New_Folder/4%20DTC%20BEPS%20Interim%20Report%20on%20Action%20Plan%205%20-%20Harmful%20Tax%20Practices,%202014%20deliverable.pdf> [accessed 1 January 2019]. See also OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, 64.

[18] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, 20.

[19]OECD, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project (2017), 15 <https://www.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en> [accessed 16 August 2018].

[20] OECD, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, 33.

[21] OECD, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, 33.