Corporate Tax Haven Index (CTHI) 2019

Methodology

Tax Justice Network[1]

Abstract: *This paper explains the construction of the qualitative and quantitative components of the Corporate Tax Haven Index (CTHI) 2019. The qualitative component is composed of 20 Key Corporate Tax Haven Indicators. The paper explains what each indicator measures, the underlying data sources and the calculation of the overall haven scores. With respect to the quantitative component, the underlying data sources and methods for data extrapolation are explained. The combination of the qualitative and quantitative components is then explained. Finally, the Annex provides the quantitative datasets used.*

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1. Background and Concept

The ability to raise corporate income taxes from multinational companies is central for domestic resource mobilisation in the context of the Sustainable Development Goals (SDGs).[2] The issues of tax avoidance by multinational companies and the race to the bottom in corporate taxation has risen fast on the international policy agenda since the global financial crises 2007/2008. While everyone asserts that tax havens are to blame, both state and non-state actors (including civil society organisations and academia) have so far failed to provide a comprehensive and empirically robust definition of what constitutes a (corporate) tax haven.

As regards global financial secrecy driving illicit financial flows, the Financial Secrecy Index is now firmly established as a comparative analytical tool for monitoring and ranking. Yet, neither tax avoidance by multinational companies nor the contribution to the race to the bottom have been fully captured by the FSI, as its indicators focus more on secrecy than on corporate tax, and on portfolio financial flows rather than on FDI or corporate profits. The Corporate Tax Haven Index (CTHI) fills this gap by measuring *how intensely a jurisdiction abuses its autonomy over corporate income tax (CIT) rules to enable and incite tax spillovers that affect other jurisdictions' rule setting and tax mix autonomy; and how "successful" a jurisdiction is, in pursuing this corporate tax haven strategy.*

We define corporate tax haven as a jurisdiction that seeks to attract multinational companies by offering facilities that enable them to escape or undermine the tax laws, rules and regulations of other jurisdictions, reducing their tax payments in these jurisdictions. This tax payment reduction results from tax base spillovers (shifting profits, tax avoidance) and/or strategic spillovers (race to the bottom effects which prompt jurisdictions to lower their tax rates or tax base in response).

In 2014, an IMF report established how a country's corporate tax system may generate macro-relevant effects on other countries via two channels: "base spillovers" and "strategic spillovers".[3] The "base spillover" concept includes

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[2] The IMF summarised the increasing role of inward FDI (hence, tax revenues from multinationals): "Since the early 1980s, the stock of inward FDI in developing countries relative to their GDP has roughly tripled, to about 30 percent — making its tax treatment increasingly germane to these countries' wider fiscal performance" (International Monetary Fund, 2014, p.6).

[3] Ernesto Crivelli, Ruud De Mooij and Michael Keen, 'Base Erosion, Profit Shifting and Developing Countries', *IMF* <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Base-Erosion-Profit-Shifting-and-Developing-Countries-42973> [accessed 21 May 2019]; Alex Cobham and Petr Janský, 'Global Distribution of Revenue Loss from Tax Avoidance: Re-Estimation and Country Results', *UNU-WIDER Working Paper 2017/55*, 2017

changes in taxable profits "in reflection of both real responses (through investment and the like) and profit-shifting responses (affecting, loosely speaking, only where profits are booked for tax purposes)".[4] The "strategic spillover" effect refers to "tax competition" in its broadest sense—most obviously in the potential form of a "race to the bottom", as countries respond to lower CIT rates elsewhere by reducing their own rates".[5]

By having lower statutory corporate tax rates than other states, restricting the scope of or inserting gaps and loopholes into corporate tax rules, pushing down withholding rates in double tax treaties, and dispensing with anti-avoidance and transparency policies, jurisdictions unwillingly enable or wittingly incite tax spillovers from other countries. In each of these policy areas, jurisdictions can choose to engage in more or less aggressive tax poaching policies. As a result, each jurisdiction's policies can be placed on a spectrum of corrosiveness of its corporate tax rules, resulting in a more nuanced picture than the established binary "blacklists" of corporate tax havens. By placing each jurisdiction's corporate tax policies, the index takes into account that "virtually any country might be a "haven" in relation to another", as Sol Picciotto famously put it.[6]

Tax spillovers not only lead to an erosion of the tax base in other countries, but also affect countries' democratic choices over the tax mix. Confronted with the exit threat of corporate players, tax policy makers tend to respond by increasing the share of more regressive indirect taxes in the tax mix, and to steer the total tax mix away from progressive direct taxes. Over the last 20 years, the tax mix has shifted with corporate income taxes contributing less.[7]

<https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf> [accessed 21 May 2019].

[4] IMF, *Spillovers in International Corporate Taxation* (Washington DC, USA, 2014) <http://www.imf.org/external/np/pp/eng/2014/050914.pdf>.

[5] Ibid.

[6] Sol Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation* (London, 1992), 132.

[7] According to Oxfam, between 2007 and 2015 in an unweighted sample of 35 OECD countries and 43 non-OECD countries, corporate income taxes decreased by an average of 0.4 percentage points of GDP, while payroll taxes and taxes on goods and services increased by 0.6 and 0.3 percentage points of GDP, respectively (Lawson et al., *Public Good or Private Wealth?, 2019,* p. 22). VAT and other consumption taxes represent currently 39% of tax revenues in the group of 78 countries while corporate income taxes represent 11% (Ibid., p.13).

2. The Index Structure

The CTHI focuses only on the corporate income tax rules and practices applicable to (large) multinational enterprises' profits (including capital gains). Capital gains are included because in some countries, they are included in the ordinary CIT base, and are thus susceptible to base spillovers.

The Index is a combination of two components: the Haven Score (HS), which is a qualitative component derived from data collected for 20 indicators based on laws, regulations and documented administrative practices in the jurisdictions; and the Global Scale Weight (GSW), which measures the relevance of each jurisdiction for cross-border direct corporate investment. The Haven Score is cubed and the weighting is cube-rooted before being multiplied to produce the Corporate Tax Haven Index value, which determines the ranking.

The Haven Score measures the **potential risk** for a jurisdiction to become a profit shifting destination, eroding tax bases elsewhere, and to create spillovers effects into other jurisdictions' tax base and policies; thereby leading a race to the bottom in corporate taxation. The combination of the Haven Score with the Global Scale Weight results in the **actual risk** (or what social scientists label "impact propensity") for a jurisdiction to have these effects. The difference between potential and actual risk can be compared to gun laws and the risks they create for mass shootings. The potential risk for mass shootings is determined by lenient gun laws which make it easy to purchase weapons with high fire power. The actual risk for mass shootings results from the actual number of guns sold in the jurisdiction under these lenient rules. In a similar way, the leniency of the CIT regime - the potential risk – is reflected in the haven score, while the GSW serves as a proxy for the volume of users of that regime.

By combining the two components, we aim to capture the actual risk, in a ranking of the jurisdictions that contribute most to: (i) the global race to the bottom in corporate taxation; (ii) the erosion of corporate income taxes globally; and (iii) constraining the tax policy space elsewhere.

2.1 The Qualitative Component: Haven Scores (HS)

The HS is the equivalent to the secrecy score in the Financial Secrecy Index. The HS measures the intensity of a jurisdiction's potential to poach the tax base of others, as enshrined in its laws, regulations and documented administrative practices. The HS is constructed as the average of five category values, which are driven by a total of 20 indicators. Each indicator is given a score between 0 (no harmful impact, zero corporate tax haven attributes) and 100 (full corporate tax haven attributes).

Jurisdictions with no CIT regime or with zero statutory corporate income tax rate[8] are defined, by default as having the highest haven scores for four of the five categories, except for "transparency", where an analysis was still carried out to determine the level of secrecy/transparency.

The Haven Score for each country i is the average of the five group/category scores, as follows:

$$Haven\ Score_i = \frac{[LACIT]_i + [Loopholes\ \&\ Gaps]_i + [Transparency]_i + [Anti - Avoidance]_i + [DTTA]_i}{5}$$

The first category, comprised of one indicator, is the "Lowest Available Corporate Income Tax rate". We take the widely used "highest statutory CIT rate" only as a starting point for our legal analysis to derive the lowest rate for active business income available to subsidiaries of large multinationals. The score for LACIT is calculated by scaling the lowest available corporate income tax rate of each jurisdiction against a Spillover Risk Reference Rate (SRRR), which is the highest observable CIT rate of a democracy. The rationale for using the SRRR and the method used for deriving this rate is detailed in section 3.1.

The second category "Loopholes and Gaps" comprises seven indicators, analyzing whether preferential tax regimes are available, or if there are important carve outs of the CIT base or rate concessions, including for specific sectors, or through tax holidays or economic zones. The LG score is the arithmetic average of the 7 indicators.

The third category "Transparency" consists of 6 indicators and considers if the jurisdiction implements robust transparency mechanisms to allow not only for public accountability of multinational companies' financial and tax affairs, but also of tax administrations and tax courts. The TP score is the arithmetic average of the 6 indicators.

The fourth category "Anti-Avoidance" includes 5 indicators and analyses the extent to which jurisdictions enact robust rules constraining tax avoidance and profit shifting, e.g. by CFC rules or constraining the deductibility of intra-group outward payments (royalties, interest, certain service payments). The AA score is the arithmetic average of the 5 indicators.

[8] According to OECD Stats data, retrieved from: https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1; 09.04.2019. For jurisdictions not covered by OECD data, we relied on KPMG (https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; 5.4.2019), or IBFD (IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2018-2019, 2018 <https://research.ibfd.org/> [accessed 9 May 2019]).

The fifth category, "Double Tax Treaties Aggressiveness" (DTTA), comprises one indicator which considers impact of a jurisdiction's network of Double Taxation Agreements on the Withholding Tax (WHT) rates in interest, dividend and royalties in treaty partner jurisdictions. It measures how aggressive a jurisdiction treaty network is on average in pushing down WHT rates in partner jurisdictions (by comparing the analysed jurisdiction's WHT rates with each treaty partner's total treaty network average WHT rates).

Table 1, below, provides an overview of the five category scores.

Table 2.1: Groups or Categories of Haven Indicators

Category	No.	Indicator	IDs
LACIT	1	Lowest Available Corporate Income Tax	IDs 505, 506, 507,541, 542, 543, 544 and 545
Loopholes and Gaps	2	Foreign Investment Income Treatment	IDs 552, 553, 554 and 555
Loopholes and Gaps	3	Loss Utilisation	IDs 509 and 510
Loopholes and Gaps	4	Capital gains tax rate	IDs 513 and 514
Loopholes and Gaps	5	Broad Exemptions	IDs 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537 and 538
Loopholes and Gaps	6	Tax Holidays and Economic Zones	IDs 501, 502, 503, 504, 539 and 540
Loopholes and Gaps	7	Patent Boxes	ID 515
Loopholes and Gaps	8	Fictional Interest Deduction	ID 516
Transparency	9	Public Company Accounts	IDs 188, 189 and 201
Transparency	10	Public CBCR	ID 318
Transparency	11	Robust local filing of CBCR	ID 419
Transparency	12	Unilateral cross-border tax rulings	ID 363, 421, 561, 562, 563 and 564
Transparency	13	Reporting of tax avoidance schemes	IDs 403, 404, 405 and 406
Transparency	14	Tax Court Secrecy	Ids 407, 408, 409 and 410
Anti-Avoidance	15	Outbound intra-group payments Deduction-Limitation Interests	IDs 517, 518 and 519
Anti-Avoidance	16	Outbound intra-group payments - Deduction-Limitation – Royalties	ID 520
Anti-Avoidance	17	Outbound intra-group payments - Deduction-Limitation - Services	ID 521
Anti-Avoidance	18	Outbound payments - Withholding Taxes - Dividends	ID 508
Anti-Avoidance	19	CFC Rules	ID 522
Double Tax Treaty Aggressiveness	20	Double Tax Treaty Aggressiveness	ID 571

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The themes of most indicators partially overlap either with the OECD's 15 BEPS actions, in particular action 5 on harmful tax practices, with the IMF spillover approach, with EU initiatives (on state aid or specific directives), or with a combination of those (see Table 2 below).

Table 2: Haven Indicators Overlaps with OECD, IMF and EU Initiatives

Haven Indicator #	Haven Indicator Short Code	Haven Indicator	OECD BEPS	OECD AP 5	IMF Spillover	EU / State Aid
1	LACIT	Lowest Available Corporate Income Tax			X	X
2	Loopholes and gaps	Foreign Investment Income Treatment			X	
3		Loss Utilisation				
4		Capital Gains Taxation			X	
5		Sectoral Exemptions	X	X		
6		Tax Holidays and Economic Zones	X	X		
7		Patent Boxes	X	X		
8		Fictional Interest Deduction				
9	Transparency	Public Company Accounts				
10		Country by Country Reporting				X
11		Local Filing of Country by Country Reporting	X			
12		Tax Rulings and Extractive Contracts	X	X		X
13		Reporting of Tax Avoidance Schemes				X
14		Tax Court Secrecy				
15	Anti-avoidance	Deduction Limitation for Interest	X		X	X
16		Deduction Limitation for Royalties				
17		Deduction Limitation for Service Payments			X	
18		Dividend Withholding Taxes				
19		Controlled Foreign Company Rules	X		X	X
20	Double Tax Treaty Aggressiveness	Double Tax Treaty Aggressiveness			X	

The 20 haven indicators are chosen and designed in order to:

- measure the risk for tax avoidance, base erosion and profit shifting, profit misalignment, and race to the bottom in corporate income taxation;

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- reflect impact on the policy space over the domestic tax mix[9] of jurisdictions elsewhere;
- protect source country taxation rights;
- allow robust and valid comparative research findings with the limited resources and data available;
- ensure in-principle-compatibility with unitary taxation and formulary apportionment.

Section 3 discusses each haven indicator in full detail.

[9] Including on the tax mix of those democracies with the highest CIT, CGT and WHT rates. See next subsection for a discussion of the reference rate we are employing for the scoring of some rate related indicators.

3. The 20 Haven Indicators (HIs) 2019

3.1 HI 1 – Lowest Available Corporate Income Tax (LACIT)

3.1.1 What is measured?

The indicator measures the lowest available corporate income tax rate (LACIT) for any large for-profit company that is tax resident in the political subdivision or subnational authority with the lowest Corporate Income Tax (CIT) rate, and which can be a subsidiary of a multinational corporation. The scoring of Haven Indicator 1 is computed by scaling that LACIT rate against the spillover risk reference rate of 35%, explained in detail in Part 2 below.

Part 1: Assessing a jurisdiction's LACIT

LACIT in a nutshell: 3 steps away from statutory rates

A jurisdiction's LACIT is calculated differently from existing datasets of statutory CIT rates because these tend to take the top statutory rate reported by jurisdictions at face value. In contrast, LACIT is determined in three steps, only the first of which relies on (top) statutory CIT rates as reported in the Organisation for Economic Co-operation and Development (OECD) tax database.[10]

The first step consists of simply compiling the statutory rates for all reviewed jurisdictions. In the second step, we review the statutory rates and correct these if necessary. Corrections are made if there are different CIT rates available depending on the size of business, on the economic sector in which the business operates, or on the subnational regions where the business is tax resident. In the third step, we analyse, and adjust if necessary, the tax rates if tax treatment differs upon distribution or retention of profits, upon selection of a particular type of company, upon sourcing profits from inside or outside the jurisdiction (territorial tax regimes), or upon issuance of unilateral tax rulings. Each of the steps is explained in more detail below and presented in Figure 1.1. Each of the steps is made fully transparent and entirely documented (access the Excel file with all the steps in one sheet here).[11]

[10] See "Table II.1. Statutory corporate income tax rate", in: https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1; [accessed 23 May 2019].

[11] https://www.corporatetaxhavenindex.org/EXCEL/LACIT.xlsx

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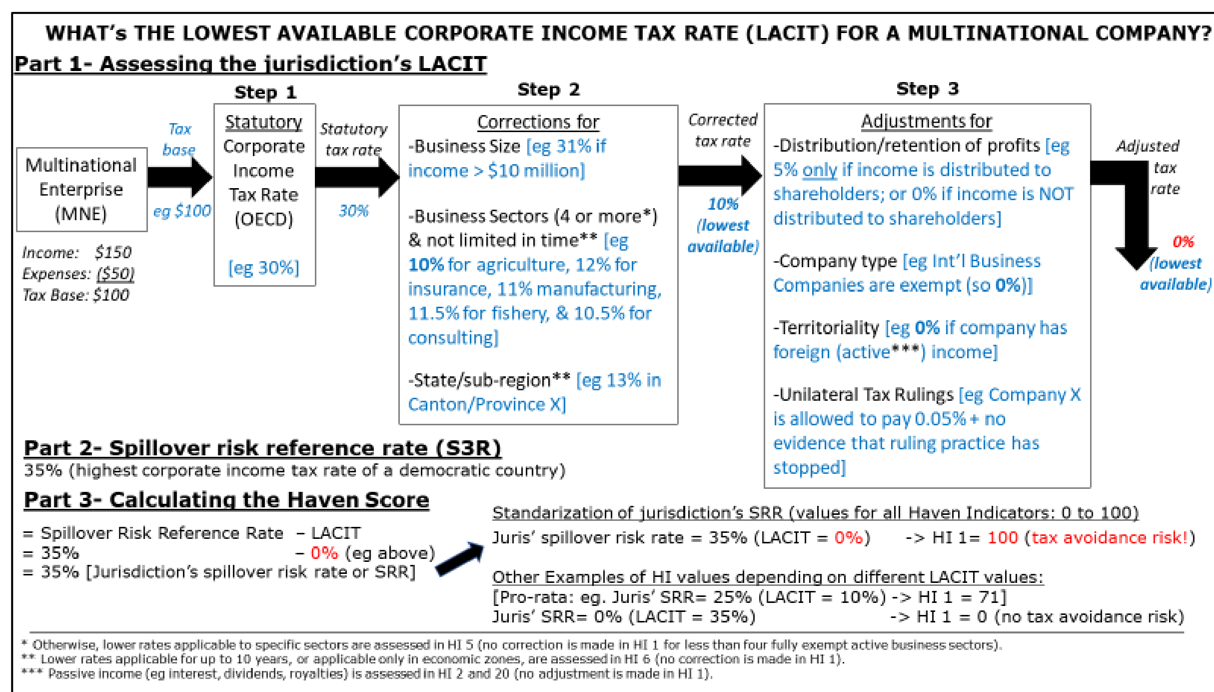
Figure 1.1: Overview of Haven Indicator 1 - LACIT



Step 1: statutory rates as a point of departure

To rank jurisdictions according to their tax rate, we relied on the OECD statutory corporate income tax rates table,[12] which covers OECD and non-OECD jurisdictions. For jurisdictions not covered by the OECD, we used the KPMG Corporate Tax Rates Table[13] or IBFD data[14]. IBFD data is used only when the other sources are not available or when the IBFD data is more up to date.

Step 2: review of and corrections to statutory rates

The reported statutory rates are checked alongside three main dimensions and corrected if deviating rates apply. We ask, are different rates available depending on the size of businesses, on the economic sector in which the business operates, or on subnational regions where the business is tax resident?[15] The corrections are made as follows.

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[12] https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1; [accessed 23 May 2019].

[13] https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [accessed 23 May 2019].

[14] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[15] As part of Step 2, different tax rates applicable to for-profit and non-profit businesses are reviewed. However, these differences are not included as a key dimension in checking or correcting the rate for Step 2 in determining the LACIT. Therefore, in cases where the CIT rates is different for different entities (i.e. charitable, non-profit, or for-

1. Correction – the size of business

CIT rates may differ depending on the size of the business. If this is the case, the CIT applicable for the highest level of corporate turnover or profit is analysed and chosen in this indicator. For example, the CIT rate in France is sometimes reported as 33.33%, yet given that a social surcharge of 3.3% applies to companies with a corporate income tax liability exceeding €763,000, we consider the CIT rate to be 34.43%.[16]

2. Correction – the sector in which the business operates

Sometimes CIT rates differ depending on the sector in which the business operates. For this indicator, first, the CIT rates applicable to unspecified sectors were considered. If the CIT rate is lower for only a few specific economic sectors or activities, or if lower rates are applied for not more than 10 years, these rates are not considered here as they are picked up in other indicators as described below. For example, in Ghana, full or partial tax exemptions apply to the agriculture and farming sector (income from cocoa is exempt from income tax), the distribution sector (export of non-traditional goods is taxed at a reduced rate of 8% from the statutory 25%) and the accommodation, food and recreation sector (hotels have a reduced CIT rate of 22%).[17] Sectoral exemptions are analysed in Haven Indicator 5. Similarly, tax holidays (exemptions granted for a limited time) and economic zones are covered under Haven Indicator 6 and are not considered for LACIT. For example, in China, enterprises in certain areas (e.g. Xinjiang) receive a two-year tax holiday (full exemption) followed by a three-year partial exemption (i.e. 50% reduction of CIT).[18]

However, if a jurisdiction exempts fully four or more active economic sectors, and/or partially exempts eight or more active economic sectors, the lowest rate

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profit), only the CIT applicable to for-profit companies is considered, given the focus of the Corporate Tax Haven Index.

[16] The OECD dataset we use in Step 1 already incorporates this analysis for the 64 countries in the CTHI. Therefore, at the moment no country's CIT is corrected through our analysis compared to the baseline dataset from the OECD. However, other data sources (such as KPMG's corporate tax rates table) do not always include this correction, and it is uncertain if the dataset of the OECD includes this analysis for all countries in its sample. See for example, https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [accessed 6 April 2018]. Like France, there's a similar example in Portugal. The general corporate tax rate in Portugal is 21%, yet it may be increased by a state surcharge of 9% on income exceeding €35m. Given this indicator focuses on large for-profit corporations, we consider the corporate income tax to be 30% (21% + 9%).

[17] J. Amos, Ghana - Corporate Taxation sec. 1., Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_gh_s_1. [accessed 23 May 2019].

[18] PricewaterhouseCoopers (PWC), 'Worldwide Tax Summaries Online' <http://taxsummaries.pwc.com/ID/tax-summaries-home> [accessed 8 March 2019].

applicable to these economic sectors will determine LACIT. One full exemption is considered as equivalent to two partial exemptions. These economic sector exemptions will still be accounted for in Haven Indicator 5 on sectoral exemptions.[19]

For example, entities engaged in qualifying activities in Aruba can benefit from imputation payment company status to access a lower 10% profit tax rate, which is usually 25%. Among the qualifying activities are hotels, oil refineries, green energy projects, shipping companies, captive insurance, financial activities and more.[20] Given the tax rate for imputation payment companies applies to more than eight sectors, we consider the 10% tax rate applicable for imputation payment companies as the lowest available in Aruba under the LACIT.

3. Correction – tax resident in a political subdivision or subnational authority with lowest CIT rate

Sometimes CIT rates are in fact compound rates combining federal and subnational CIT rates. Subnational CIT rates may vary across the territory of a jurisdiction. Therefore, the lowest available compound CIT rate in a jurisdiction may differ depending on the subnational region chosen for analysis (at state/cantonal level). For the computation of the compound CIT rate of the jurisdiction, we assessed and chose the lowest rate available in any of the subnational divisions (states/cantons/communes). However, differing CIT regimes with lower rates which are available in a specifically designated economic zone or in a subnational region are disregarded for this indicator as these will be analysed and assessed in another haven indicator (Haven Indicator 6).

Companies that are not considered tax resident even when they take on domestic legal forms lie outside the scope of this indicator.[21] Therefore, the potential abuse of the gap between tax residency rules of different countries is not assessed. The Irish rules which enabled abuses for example in the

[19] We classify active business income into 13 active business sectors, derived from established sectorial classifications by the United Nations (Rev. 4) and Eurostat (Rev.2). Full details of the sectorial classifications are available in Haven Indicator 5.

[20] S. van Thol, Aruba - Corporate Taxation sec. 1., Country Surveys IBFD, 2018, https://research.ibfd.org/#/doc?url=/document/gtha_aw_s_1. [accessed 23 May 2019].

[21] For further information see: https://www.ft.com/content/f7a2b958-4fc8-11e4-908e-00144feab7de; and https://medium.com/@icoservices/asset-protection-strategy-double-irish-dutch-sandwich-f89fdfb0cca; https://www.forbes.com/sites/robertwood/2014/10/14/ireland-corks-double-irish-tax-deal-closing-time-for-apple-google-twitter-facebook/; [accessed 23 May 2019].

(in)famous cases of Apple's tax avoidance structure[22] and the Double Irish tax scheme[23] have been amended.

We have excluded permanent establishments from the scope of this indicator for two main reasons. First, definitions of permanent establishment differ across domestic tax rules and not all countries provide a definition. Second, there are varying definitions of permanent establishment in tax treaties and even in cases where the definitions are similar, often different interpretations are adopted by local tax authorities. As a result, there is no harmonisation in the treatment of permanent establishment and no comparable rules can be assessed. Due to limited resources, we could not assess the treatment of permanent establishment for each country separately and decided to exclude it from the scope of this indicator.

Step 3: adjustments to CIT rates

After thorough, in-depth analysis of four main CIT policy dimensions in each jurisdiction, we further adjust the CIT rates where necessary in order to achieve

[22] United States Senate - Permanent Subcommittee on Investigations, *Offshore Profit Shifting and the U.S. Tax Code - Part 2 (Apple Inc.)*, May 21, 2013 (Washington, DC, 2013), 3–4, 172–76, 201 <http://www.gpo.gov/fdsys/pkg/CHRG-113shrg81657/pdf/CHRG-113shrg81657.pdf> [accessed 6 December 2014].

[23] The gap in the definitions of tax residency resulted from the following mismatch of tax rules: Ireland had taxed companies only if they are managed and controlled in Ireland, while the USA's definition of tax residency was and continues to be based on the jurisdiction of incorporation of the company. As part of the Double Irish, the US parent company formed a subsidiary under Irish law and put its intellectual property into the Irish-registered company ('Irish company A') that was controlled from a tax haven, such as Bermuda or the Cayman Islands. A second Irish company was formed ('Irish company B') which was used for sales to European and other customers and could send its profit from royalty payments to Irish company A that was controlled from a zero tax jurisdiction. Given the gap in the definition of tax residencies, Ireland did not consider Irish company A as resident for tax purposes whereas the USA considered the company to be tax resident in Ireland. As a result, royalty payments that were sent to Irish company A remained untaxed. In October 2014, Ireland amended its tax law to determine that every company which is registered in Ireland would be considered tax resident in Ireland. Nonetheless, there is a long grandfathering provision allowing companies that have already used the scheme to continue doing so for additional five years (until 31 December 2020).For information on the grandfathering provision see: https://www.internationaltaxreview.com/Article/3430276/Looking-to-the-future-Life-after-the-Double-Irish.html?ArticleId=3430276; ;[accessed 23 May 2019], and here: https://www.ey.com/Publication/vwLUAssets/Ireland_announces_improvements_to_IP_regime_and_phasing_out_of_double_Irish/$FILE/2014G_CM4787_Ireland%20announces%20improvements%20to%20IP%20regime%20and%20phasing%20out%20of%20double%20Irish.pdf; ; [accessed 23 May 2019].

the aim of the Corporate Tax Haven Index of indicating tax spillover risks. We apply four main adjustments, as explained below.

1. Adjustment – a lower rate upon distribution or retention of profits

Whenever a jurisdiction has an imputation system which enables shareholders to claim a partial or full refund of the tax paid by the distributing company, the LACIT for this indicator would be derived by calculating the CIT rate after the imputation was made.

For example, Malta, with a statutory CIT ordinarily reported at 35%[24] operates a full imputation system. This system ensures that almost all tax paid is refunded upon distribution of profits and thus a much lower CIT rate applies. KPMG notes on Malta:

> Malta operates a full imputation system of taxation for both residents and non-residents[…]. On the distribution of taxed profits, the shareholders may opt to claim a partial/full refund of the tax paid by the distributing company. As a general rule, the tax refund amounts to six-sevenths of the tax paid. […] The Malta tax suffered on distributed profits hence ranges between 0% and 10%.[25]

As a result of Malta's imputation system, we set Malta's LACIT at 5% and not at the often reported statutory rate of 35%.

A similar result can be achieved when the tax is imposed only upon distribution. For example, in both Latvia[26] and Estonia,[27] the profits of resident companies are taxed only upon distribution. Thus, given that a company which chooses not to distribute its profits does not pay any CIT, we assess Latvia's and Estonia's LACIT at zero.[28]

2. Adjustment – tax exempt specific types of companies

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[24] See, for example, C. Cassar Torregiani, Malta - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_mt_s_1; 23.5.2019; https://home.kpmg/bm/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [accessed 23 May 2019].

[25] https://tpguidelines.com/pop-pages/malta/; [accessed 23 May 2019].

[26] Z.G. Kronbergs, Latvia - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_lv_s_1. [accessed 23 May 2019]

[27] M. Herm, Estonia - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_ee_s_1. [accessed 23 May 2019].

[28] The accumulation of largely untaxed, undistributed profits offshore by US multinational companies prior to the US tax reform enacted end of 2017 has been a consequence of the US deferral rules. That has meant that the profits of US multinational companies from overseas operations remained untaxed as long as they were not distributed to US parent companies.

In cases where the tax system exempts a certain type of corporation from tax, the indicator assesses the CIT rate for the whole jurisdiction according to the provided tax exemption.

For example, Mauritius is reported as levying a 15% CIT rate.[29] Yet the jurisdiction provides for the establishment of a variety of tax-exempt companies. With Global Business License companies in the process of being amended[30], Mauritius now allows so-called authorised companies to be effectively tax exempt.[31] While authorised companies are not technically tax exempt, they are considered non-resident for tax purposes.[32] Thus, as long as these Mauritius-incorporated companies are only engaged in foreign operations, they are fully exempt from tax. These companies are barred from undertaking certain economic activity,[33] but can otherwise operate in any economic sector.[34] Hence, the indicator would record Mauritius' CIT rate at 0%.[35]

3. Adjustment – territorial tax system for active business income

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[29] R. Hamzaoui, Mauritius - Corporate Taxation sec. 1.6, Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_mu_s_1.#gtha_mu_s_1.6. [accessed 23 May 2019]. Also, see KPMG Corporate Tax Rates Table.

[30] While the Global Business Companies (GBC2) regime was abolished in 2018, GBC2 issued on or before 16 October 2017 will be valid until 30 June 2021. See OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, 2019 <https://doi.org/10.1787/9789264311480-en> [accessed 20 May 2019].

[31] PricewaterhouseCoopers (PWC), 'Mauritius - Corporate Tax Credits and Incentives', *PWC Worldwide Tax Summaries*, 2018 <http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Mauritius-Corporate-Tax-credits-and-incentives> [accessed 21 May 2019].

[32] Ernst & Young, *Mauritius Enacts Changes to Tax Regime for Corporations with Global Business Licenses*, Global Tax Alert, 17 August 2018 <https://www.ey.com/Publication/vwLUAssets/Mauritius_enacts_changes_to_tax_regime_for_corporations_with_global_business_licenses/$FILE/2018G_010429-18Gbl_Mauritius%20-%20Changes%20to%20tax%20regime%20for%20corps%20with%20global%20business%20licenses.pdf> [accessed 1 April 2019].

[33] Mauritius' Authorised Companies cannot engage in financial services, collective investment or business services.

[34] PricewaterhouseCoopers (PWC), 'Mauritius - Corporate Tax Credits and Incentives'.

[35] The full implications of tax exempt type of legal entities are covered through a number of additional indicators: Haven Indicator 1 captures exemptions applicable to active business income from domestic sources and from foreign sources (see third adjustment); Haven Indicator 5 covers exemptions that apply to passive investment income from domestic sources (and sectorial domestic active business income exemptions – see third correction); Haven Indicator 2 covers exemptions applying to passive investment income from foreign sources. Limited Liability Partnerships are out of scope of this indicator because they are not considered to be a company.

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In jurisdictions with a territorial CIT regime where some significant portions of active business income are taxed only on a territorial basis, regardless of a specific economic activity, the indicator assesses the CIT rate for the whole jurisdiction at zero per cent. This is because if a multinational company structures its corporate network appropriately, it may reap huge profits through exclusive sales/turnover with foreign customers only, and thus pay nil tax. For example, in Panama,[36] Hong Kong[37] and Gibraltar[38] foreign income received by companies is not taxed.

Similarly, countries which exclusively exempt the companies' domestic-source income are also considered to have a territorial corporate income tax regime for the purpose of this indicator. For example, Monaco's CIT rules determine that companies are only taxable if they derive more than 25% of their profits outside of Monaco. Otherwise, companies are not taxable in Monaco. As a result, Monaco operates a sort of inverse territorial corporate income tax base, and although 33% is the rate usually reported as Monaco's statutory tax rate,[39] Monaco's CIT rate would accordingly be considered as zero for LACIT.[40]

4. Adjustment – documented unilateral tax rulings

Unilateral tax rulings issued by tax administrations in some jurisdictions result in a fundamentally different and often much lower tax rate than the statutory corporate tax rate. As evidenced through the LuxLeaks revelations,[41] multinational corporate groups often gain access to tax administrations through specialist tax advisers. The subsequent European Union investigation into state

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[36] A.Y. Rodriguez, Panama - Corporate Taxation sec. 1., Country Analyses IBFD, 2018, https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_pa_s_1.#cta_pa_s_1.2. [accessed 23 May 2019]

[37] Y. (Ying) Zhang, Hong Kong - Corporate Taxation sec. 7., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_hk_s_7. [accessed 23 May 2019].

[38] BDO, 'Doing Business in Gibraltar 2017', 14 <http://www.bdo.ie/getmedia/f6f9009e-aaa5-401f-a4b9-00f891c014d0/DBI-Gibraltar-2017.pdf.aspx> [accessed 28 November 2018].; BDO, 'Doing Business in Gibraltar 2017', 14.

[39] See, for example, P. Burg, Monaco - Corporate Taxation sec. 1., Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_mc_s_1. [accessed 23 May 2019] and https://home.kpmg/bm/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [23 May 2019].

[40] https://www.healyconsultants.com/monaco-company-registration/; http://gardetto-monaco-lawyers.com/taxation-monaco.html; [accessed 28 November 2018].

[41] https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/; [accessed 20 January 2019].

aid has revealed that tax rulings have been used for large-scale tax avoidance in at least Belgium, Ireland, Luxembourg and the Netherlands.[42]

Where details of cases have been thoroughly investigated and published, allowing for an analysis of the tax outcomes of the rulings, including the deviating CIT rate, the deviating CIT rate has been used in this indicator. Because the ruling is a binding legal instrument, any rate offered through a ruling has legal backing by the administration and ultimately legislature of the assessed jurisdiction. Considerations, such as whether the available CIT rate results from a (discretionary) narrowing of the tax base, an express alternative rate or method for computing the base or rate, were ignored for this indicator. Rather, the adjustment identifies the lowest rates offered through a documented tax ruling to a tax resident company which can be supported by ample evidence available in the public domain. Only [official state aid investigations by the European Commission](http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html)[43] into such rulings currently provide sufficiently ample and in-depth evidence to determine a deviating LACIT based on unilateral tax rulings.

These tax rulings result in tax avoidance risks in European Union member states. Yet they are only the tip of the iceberg. Hundreds and thousands of companies may never be investigated because of the sheer size and growing number of rulings along with the incommensurate slow pace of state aid investigations due to their resource-intense nature.[44] As was documented in Apple's case, unilateral tax rulings made in the European Union also affect countries outside the region.[45] Tax rulings that imply tax avoidance risks only or mainly for non-European Union members are unlikely ever to be investigated by the European Commission because of a lack of mandate.[46]

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[42] http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html; [accessed 28 November 2018].

[43] http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html; [accessed 28 November 2018].

[44] In the case of LuxLeaks, the hundreds of tax rulings exposed in 2014 were only those designed by PricewaterhouseCoopers and it was clear that many others were granted by the tax authority through other accounting firms as well. For more details, see: https://www.icij.org/investigations/luxembourg-leaks/leaked-documents-expose-global-companies-secret-tax-deals-luxembourg/; [accessed 20 January 2019].

[45] In the case of Apple, the European Commission has explicitly mentioned that countries in Africa, the Middle East and India – where Apple recorded its sales – may have been affected by Apple's tax scheme and thus could require Apple to pay more tax in their country. See: http://europa.eu/rapid/press-release_IP-16-2923_en.htm; [accessed 20 January 2019].

[46] Given that the European Commission's mandate to investigate a breach of state aid rulings is limited to selective tax advantage which distorts competition within the European Union's single market, there is no doubt there are many other tax rulings that

Unilateral tax rulings continue to be available and are not yet a problem of the past. While the tax rulings investigated by the European Commission and assessed in this indicator were issued in the past, there are no indications that the ruling practice has changed since then. Rather to the contrary; not only have none of the relevant European Union member states agreed that these unilateral tax rulings constituted a violation of state aid rules, but also governments are appealing the European Commission's decision that these rulings were illegal state aid.[47] Furthermore, the numbers of reported unilateral rulings is on the rise.[48] Jurisdictions that wish to challenge our assessment of the continuing availability of such low tax rates are welcome to publish any more recent tax rulings or to provide evidence of the cessation of previous tax rulings.

For each jurisdiction where the CIT was adjusted to the lowest rate offered by a unilateral tax ruling, an explanation is provided in the notes for the way the corresponding tax rate was calculated.

Part 2: Deriving the spillover risk reference rate

Cross-jurisdiction differentials in tax rates on corporate profits drive profit shifting, and a race to the bottom in taxation. Without an internationally agreed or harmonised CIT rate, the spillover risk reference rate was determined by filtering a) all jurisdictions for democracies, and b) sorting for the highest corporate income tax rates observed. A hallmark of a functioning democracy is the right of citizens and the electorate of a jurisdiction to determine the tax mix of that jurisdiction. A jurisdiction's decision for a high share of CIT in the tax mix and a high CIT rate is particularly vulnerable to being undermined by any other jurisdiction that implements lower rates. This is because under the current conditions of free investment flows and the arm's length principle, profit shifting from high tax to low tax jurisdictions cannot be prevented.

Therefore, all CIT rates applied by jurisdictions are scaled against that highest observable CIT rate of a democracy in order to determine the extent of tax

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tax authorities have granted, and which are not subject to the European Commission's investigation

[47] https://mnetax.com/luxembourg-fight-amazon-state-aid-case-eu-court-25180; [accessed 23 May 2019]

[48] Note for example the high and even growing numbers of unilateral tax rulings in use in the European Union, and the absence of any meaningful data in countries such as the Netherlands. See, European Commission, *EU Joint Transfer Pricing Forum: Statistics on APAs in the EU at the End of 2016*, 8 March 2018 <https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf> [accessed 23 May 2019]. See also, OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, January 2019 <https://www.oecd-ilibrary.org/docserver/9789264311480-en.pdf?expires=1552638135&id=id&accname=guest&checksum=C4EEE3F55F4E6C17D62674F36049D20F> [accessed 15 March 2019].

avoidance risks which undermine democratic choices elsewhere. Determining this spillover risk reference rate is a one-off process to be carried out afresh every two years with each edition of Corporate Tax Haven Index. The reference rate establishes the highest CIT rates observable where the electorate can be assumed to have exerted influence over the outcome of the tax mix and CIT rate, i.e. where democratic principles are adhered to.

To determine the spillover risk reference rate, we thus rely on two different data sources. For identification of democracies, we rely on the Polity Index and more specifically, the most commonly used Polity2 measure of 2017.[49] With a few exceptions for small population jurisdictions,[50] this measure considers any jurisdiction on a spectrum between full autocracy (-10) and full democracy (+10). In line with widespread practice, we filter all jurisdictions for a Polity2 value of 7 or more[51] to arrive at a sample of jurisdictions where the electorate can be assumed to influence the CIT rate.

Second, to rank jurisdictions according to their tax rate, we relied on the OECD Stats table for statutory corporate income tax rates[52] and the KPMG Corporate Tax Rates Table.[53] In general, we derived statutory CIT rates from OECD Stats database. When data from OECD was not available, we used KPMG Corporate Tax Rates Online. Only in the case of India[54] we used more detailed information from the International Bureau of Fiscal Documentation (IBFD) database.[55]

[49] We downloaded the dataset on 09 April 2019 from: http://www.systemicpeace.org/inscrdata.html.

[50] Only jurisdictions with populations of above 500,000 are included in the Polity Index.

[51] https://ourworldindata.org/democracy; [accessed 9 April 2019].

[52] https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1; [accessed 9 April 2019].

[53] https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [accessed 9 April 2019].

[54] In India, the rate given by OECD includes, besides the main rate, a surcharge, an education cess and a tax on dividends distributed by companies, which resulted in a rate of 48.3%. In India, companies are taxed upon the distribution of dividends and these dividends are exempt for shareholders. However, taxes on the distribution of dividends were not included in the statutory CIT rate of the other countries accessed. Using information provided by IBFD, we calculated a CIT rate of 34.94%, including the surcharge and the educational cess. This rate is similar to the ones given by other sources, such as PWC Tax summaries (http://taxsummaries.pwc.com/ID/India-Corporate-Taxes-on-corporate-income), KPMG and Trading economics (https://tradingeconomics.com/country-list/corporate-tax-rate); [accessed 9 April 2019].

[55] S. Shah, India - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_in_s_1 [accessed 9 April 2019].

As a result of this analysis, the spillover risk reference rate is set at 35%. In France,[56] India,[57] and Brazil,[58] capital gains are included in the corporate income and are thus taxed equally at a rate of approximately 35%. The full results of the filtering and sorting exercise are shown in Table 1.1 below.

Table 1.1: Spillover Risk Reference Rate

Jurisdiction	Maximum CIT Rate 2018 (%)	Democracy? (PolityIV Index 7 or above, green)
India	35	9
Suriname	36	5
Zambia	35	6
France	34.43	9
Venezuela	34	-3
Brazil	34	8
Colombia	33	7
Cameroon	33	-4
Mozambique	32	5
Namibia	32	6
Portugal	31.5	10
Gambia	31	4
Morocco	31	-4
Sources	OECD Stats: Statutory Corporate Income Tax Rates, 2018, https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1 [9 April 2019] KPMG Corporate Tax Rates Online 2019, https://home.kpmg/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html [9 April 2019] S. Shah, India - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_in_s_1 [9 April 2019].	Polity2 Score in Polity (IV) Index, 2017, http://www.systemicpeace.org/inscrdata.html [9 April 2019]

[56] P. Burg, France - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_fr_s_1 [accessed 23 May 2019].

[57] S. Shah, India - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_in_s_1 [accessed 9 April 2019].

[58] V. Arruda Ferreira, Brazil - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_br_s_1 [accessed 23 May 2019].

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Part 3: Calculating the haven score

A CIT rate of 35% results in a zero haven score while a zero tax rate resolves to a haven score of 100. The following steps are taken to calculate the haven score. First, we determine the jurisdiction's lowest available corporate income tax rate (LACIT) according to the corrections and adjustments explained above. Second, we subtract the LACIT from the spillover risk reference rate of 35%. Finally, we scale that differential on values between 0 and 100 by dividing the differential by 35.

The data for this indicator was collected primarily from the following source:1) OECD database[59] which is updated to 2018;2) KPMG database;[60] 3) the International Bureau of Fiscal Documentation (IBFD) database (country analyses and country surveys);[61] 4) In some instances, we have also consulted additional websites and reports of accountancy firms and other local websites.

Table 1.2: Scoring Matrix Haven Indicator 1

Regulation [Haven Score: 100 = maximum risk; 0 = minimum risk]	**Haven Score Assessment**
Lowest available corporate income tax (LACIT) (100)	
<u>The corporate income tax imposed by the jurisdiction is scaled between zero and 35%</u> The jurisdiction's zero CIT is equal to a haven score of 100 while a 35% CIT is equal to a haven score of zero. The jurisdiction's LACIT is subtracted from the CIT of 35% and the haven score is then calculated by placing it on a scale of 0-100.	0-100

All underlying data can be accessed freely in the CTHI database.[62] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 505-507 and 541-545) in the database report of the respective jurisdiction.

3.1.2 Why is this important?

Corporate tax revenues make up about ten per cent of total tax revenues in OECD countries, but in developing countries, conservatively measured, they

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[59] https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1; [accessed 5 April 2019].

[60] https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html; [accessed 23 December 2018].

[61] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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

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amount to around 15 per cent.[63] The CIT rates multinational corporations end up paying, however, have been pushed downwards, allowing multinationals increasingly to freeride on the public services that everyone else pays for. In the last few decades, corporate tax rates have been falling around the world, from an average of 50 per cent in OECD countries in 1980 to an average of about half that.[64]

Revenue losses due to rate cuts have at times been claimed to be (partially) compensated by a broadening of the tax base. Yet when the profit share of GDP is increasing, or when the share of domestically operating and/or of small and medium enterprises in total corporate tax revenue is increasing and the share of large multinational companies decreasing, the tax rate cuts are contributing to rising inequalities even if the share of corporate tax revenues in GDP is constant. Since smaller domestic businesses tend to account for a disproportionate share of employment, an unlevel tax playing field that disadvantages them not only gives rise to undue industry concentration and the associated problems of monopoly power, it is likely also to undermine inclusive economic development.

Lowering CIT rates has negative impacts on society. The CIT is one of the best ways to tax capital, and it can powerfully curb political and economic inequalities. It helps to boost economic growth by, among other things, raising trillions in revenue, which governments use as a basis for providing essential public services. It also protects developing countries by boosting their self-reliance and curbing their dependence on foreign aid.[65]

Lowering CIT rates significantly or even abolishing the CIT entirely are likely to result in decreasing personal income tax revenues. This is because people would rather leave their earnings inside a company and defer paying personal income tax on them indefinitely by handing out fake loans instead of distributing profits, or until the corporation pays out a dividend at a later stage, and taxing that dividend only at lower rates, for example, in cross-border situations. Furthermore, given that most corporate wealth is owned by wealthy people, in every country, CIT is ultimately paid by them. Therefore, it is one of the most

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[63] The Tax Justice Network, 'Ten Reasons to Defend the Corporation Tax', 2015 <https://www.taxjustice.net/wp-content/uploads/2013/04/Ten_Reasons_Full_Report.pdf> [accessed 29 November 2018]. And also International Monetary Fund, *Spillovers in International Corporate Taxation*, IMF Policy Paper (Washington, DC, 2014), 7 <http://www.imf.org/external/np/pp/eng/2014/050914.pdf> [accessed 26 June 2014].

[64] See, for instance, OECD, Corporate and Capital Income Taxes, as of January 2018, Table II.1, and Historical Table II.1 (1981) which produces an unweighted average 25.3% corporate tax rate for OECD countries in 2014, versus 50.0 percent in 1981, available at: http://www.oecd.org/tax/tax-policy/tax-database.htm#C_CorporateCapital; [accessed 23 May 2019].

[65] See The Tax Justice Network, 'Ten Reasons to Defend the Corporation Tax'.

progressive taxes a state can levy and a tool to reduce inequality within and between countries.[66] As it is usually easier to tax large companies than chasing after large numbers of individuals or microbusinesses, CIT makes up a much bigger share of taxes in developing countries (where tax administrations lack funding and human resources the most)[67] than in rich countries. Hence, lowering CIT rates would be more harmful for developing countries than for rich countries and would lead to a transfer of wealth from poor countries to multinational corporations and their shareholders in rich countries.

Furthermore, when a country cuts its CIT rate, it may lead countries to a race to the bottom or to enter tax wars because other countries tend to follow suit. By having lower statutory CIT rates than other states, jurisdictions unwillingly enable or wittingly incite tax spillovers from other countries. These spillovers are leading to an erosion of not only the tax base in those other countries, but also the trust in democratic decision-making in those countries, as their tax policies adjust by shifting the tax mix onto less mobile factors, hitting more vulnerable people harder.

Equality before the law is a fundamental principle in democracies, one which unilateral tax rulings may undermine, especially if they are not transparent. Any democratic society is entitled to know how their tax administration deals with taxpayers and whether tax laws are abused. Secrecy in unilateral tax rulings may also bypass the democratic rule where the law should be decided by representatives of people for the common good.[68] Finally, fiscal equity – which is also perceived as a democratic rule[69] – is one of the most important attributes of any responsible tax system.[70]

One key shortcoming of the OECD’s Base Erosion and Profit Shifting project is the lack of focus on corporate income tax rates. In the wording of the project’s objectives, the goal of aligning “rights to tax” does not require actual taxation – a jurisdiction’s choice not to tax or to tax at zero percent is treated mostly as equivalent to full taxation. This implies an endorsement, or at least condoning of, a continuous race to the bottom in CIT rates as long as the base attracting zero tax would be aligned to genuine economic activity or substantial activities. The decisive challenge thus becomes defining and quantifying “genuine economic

[66] The Tax Justice Network, ‘Ten Reasons to Defend the Corporation Tax’.

[67] Id.

[68] Jean-François Rougé, ‘The Globar War: The EU’s Apple Tax Case’, *ECONOMICS*, 5/1 (2017), 27.

[69] Rougé, ‘The Globar War’, 19.

[70] Diana Scolaro, ‘Tax Rulings : Opinion or Law? The Need for an Independent “Rule-Maker”’, *Revenue Law Journal*, 2006.

activities" or substance.[71] This is a highly contested endeavour currently underway in OECD and European Union, with some European jurisdictions proposing to legislate "substance tests" that require as little as €100,000 payroll cost to be treated as acceptable substance for certain tax rules.[72] The indirect consequence of implicitly endorsing a race to the bottom in CIT rates is an acceptance of related spillover effects on the CIT rates of other jurisdictions elsewhere, and ultimately on their democratic choices over the tax mix (the IMF calls this strategic rate spillovers: "the impact on a country's policy choices of tax changes abroad: tax competition, in its broadest sense"[73]).

Another reason why it is important to establish a more credible alternative to the statutory CIT rates through LACIT is related to the integrity and robustness of research findings. The choice of data sources to determine the CIT rate is relevant for studies on the magnitude of tax avoidance. Broadly speaking, either statutory (nominal) corporate tax rates can be used or some variant of effective tax rates, and both are problematic. Between statutory and effective tax rates, there is often a substantial gap, which, by some measures, is shown as significantly larger on average for 28 European Union member states than for other jurisdictions.[74]

Statutory tax rates can be far removed from reality as they usually take the jurisdiction's "flat or top marginal"[75] CIT rates at face value. For example, for Malta, OECD corporate tax statistics report a 35% CIT rate. Yet the note explains that for distributed profits, the rate may be as low as 5%.[76] A recent IMF meta

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[71] The lack of guidance in OECD's 2017 progress report on preferential regimes is notable in Annex D OECD, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD/G20 Base Erosion and Profit Shifting Project (2017) <http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-2017-progress-report-on-preferential-regimes_9789264283954-en> [accessed 12 April 2018]..

[72] See page 2 at: https://www.ey.com/Publication/vwLUAssets/Dutch_Government_releases_fiscal_policy_agenda/$FILE/2018G_01091-181Gbl_Dutch%20Government%20releases%20fiscal%20policy%20agenda.pdf; [accessed 23 May 2019].

[73]Ernesto Crivelli, Ruud De Mooij and Michael Keen, *IMF Working Paper- Base Erosion, Profit Shifting and Developing Countries*, WP/15/118, 2015, 4 <https://www.imf.org/external/pubs/ft/wp/2015/wp15118.pdf> [accessed 24 May 2019].

[74] Petr Janský, *Effective Tax Rates of Multinational Enterprises in the EU*, 2019, 3 <https://www.greens-efa.eu/files/doc/docs/356b0cd66f625b24e7407b50432bf54d.pdf> [accessed 5 March 2019].

[75]https://stats.oecd.org/OecdStat_Metadata/ShowMetadata.ashx?Dataset=CTS_CIT&Coords=&Lang=en; [5 March 2019].

[76] "In Malta there is one central rate that is 35%. However, Malta operates a full imputation system. Upon a distribution of profits by a company registered in Malta, its shareholders may claim a partial tax refund. Both resident and non-resident shareholders

study on tax avoidance confirmed that researchers usually rely on statutory corporate tax rates when estimating the extent of base erosion and profit shifting.[77] Their estimates may well be compromised by this reliance.

For economic studies researching (in their dependent variable) race to the bottom dynamics or the magnitude of tax avoidance, *effective* tax rates measures are not suitable as independent or explanatory variables. Jansky (2019) discusses thoroughly the various methodologies and data sources used to derive effective tax rates.[78] He differentiates between law-based (or *ex ante*/forward looking) and data-based (*ex post*, backward looking) approaches. As de Beer et al. (2016) note: "low levels of reported profits after shifting imply a low [data-based] effective tax rate, generating a spurious positive correlation between the two variables".[79] LACIT is a novel contribution, deriving law-based CIT rates *ex post* based on the transparent legal analysis of the CIT framework.

are entitled to tax refunds in respect of the underlying tax on distributed company profits. The amount of the tax refund varies depending on the type of profits that is taxed at the level of the company (e.g. in certain cases no refund is possible while in others 5/7ths or 6/7ths of the tax paid by the company may be claimed).", in: http://stats.oecd.org/OecdStat_Metadata/ShowMetadata.ashx?Dataset=CTS_CIT&Coords=&Lang=en; [accessed 5 March 2019].

[77] Sebastian Beer, Ruud A. de Mooij and Li Liu, *International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots*, IMF Working Paper No. 18/168, 2018, 16 <http://www.imf.org/~/media/Files/Publications/WP/2018/wp18168.ashx> [accessed 9 August 2018].

[78] Janský, *Effective Tax Rates of Multinational Enterprises in the EU*, 30–41.

[79] Sebastian Beer, Ruud A. de Mooij and Li Liu, *International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots*, IMF Working Paper No. 18/168, 2018, 16 <http://www.imf.org/~/media/Files/Publications/WP/2018/wp18168.ashx> [accessed 9 August 2018], 16.

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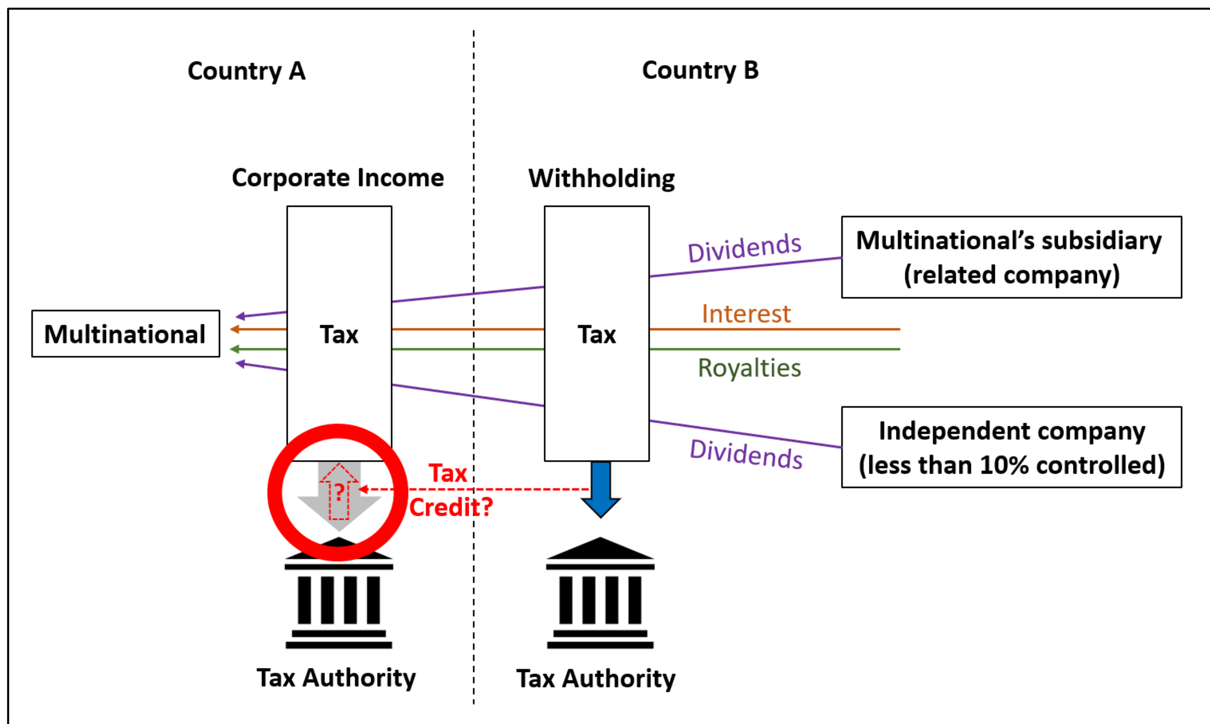
3.2 HI 2 – Foreign Investment Income Treatment

3.2.1 What is measured?

This indicator assesses whether a jurisdiction includes worldwide capital income in its corporate income tax base and if its domestic law grants unilateral tax credits for foreign tax paid on certain foreign capital income. The types of capital income included are interest, royalty and dividend payments. This indicator examines domestic law provisions, and not provisions available in double tax agreements, which are assessed under HI 20.

Figure 2.1. Tax credit for payment of foreign taxes on capital income



In the case of dividends, two different payment scenarios are considered.

(1) Dividends received by a multinational from an independent legal person located abroad (a company held at less than 10%).

(2) Dividends received by a multinational from a related legal person located abroad.

For interests (3) and royalties[80] (4), no distinction is made between independent and related companies (because no differences were found in regulations for these types of capital income payments).

[80] Haven Indicator 7 (on Patent Boxes) also examines royalties. However, the difference to Indicator 2's treatment of royalty income is mainly that Indicator 7 only examines if

The scoring matrix for this indicator is shown in Table 2.1, with full details of the assessment logic presented in Annex B.

Table 2.1: Scoring Matrix Haven Indicator 2

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
In the assessed jurisdiction, unilateral tax credit is available to domestic companies for foreign (withholding) tax paid on all types of investment income (Dividends, Interest and Royalties) from abroad.	0
Dividends (from an independent company) No (local) unilateral tax credit is available for foreign taxes paid by multinational when receiving dividends from a foreign independent company (less than 10% controlled by the payee). **OR** Foreign portfolio dividend income is effectively tax-exempt.	+25
Dividends (from a related company) No (local) unilateral tax credit is available for foreign taxes paid by multinational when receiving dividends from a foreign related company (+10% controlled by the payee). **OR** Foreign dividends from substantial holdings are effectively exempt.	+25
Interests (from either related or independent company) No (local) unilateral tax credit is available for foreign taxes paid by multinational when receiving interests from a foreign company (either related or independent). **OR** Foreign interest income is effectively exempt.	+25
Royalties (from either related or independent company) No (local) unilateral tax credit is available for foreign taxes paid by multinational when receiving royalties from a foreign company (either related or independent). **OR** Foreign royalty income is effectively exempt.	+25

royalties are taxed lower than the statutory tax rate applicable in the jurisdiction (as defined in Haven Indicator 1). In contrast, Indicator 2 requires a unilateral credit system for incoming royalty payments, and a high risk score is given in cases where no unilateral relief or where only application of deduction method is available. Where royalties and/or other payments for the exploitation of intellectual property are exempt under a Patent Box regime (Haven Indicator 7), we consider that royalties are generally exempt in HI 2.

All underlying data can be accessed freely in the CTHI database.[81] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 552-555) in the database report of the respective jurisdiction.

The data for this indicator has been collected primarily through the International Bureau for Fiscal Documentation's (IBFD) database (country analyses and country surveys).[82] In some instances, additional websites and reports of the Big 4 accountant firms have also been consulted.

A zero haven score applies to jurisdictions which grant unilateral tax credits for all payment scenarios (independent and related party, if applicable) for all types of capital income payments (dividend, interest or royalty). For each payment scenario and type of capital income payment, a haven score of 25 is added if a unilateral tax credit is not available.

Thus, where no unilateral relief is available at all, or if the jurisdiction only provides for deduction of foreign taxes paid (but not a tax credit), we retain a haven score of 25 for that payment scenario or type of capital income payment.

Also, regardless of the unilateral relief available in a jurisdiction, we retain the maximum haven score (+25) for a payment scenario (e.g. interests) or type of capital income payment (e.g. dividends from independent party) if the jurisdiction effectively exempts foreign income from domestic taxation, be it through:

a) a pure territorial tax system;

b) or through exemptions for

i. specific payments (such as dividends or royalty[83] income) or

ii. specific legal entities (such as International Business Companies)[84];

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

[82] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2018-2019, 2018 <https://research.ibfd.org/> [accessed 28 April 2019].

[83] Where royalties and/or other payments for the exploitation of IP are excluded from the tax base under a Patent Box regime (Haven Indicator 7), we consider that royalties are generally exempt in this Haven Indicator 2. If, however, the Patent Box regime is designed as a partial exemption where less than 50% of the income is exempt; then, such regime is only accounted for in Haven Indicator 7.

[84] The availability of exempt legal entities is only considered in this indicator if a wide range of economic activity can be undertaken tax free. This is usually the case for International Business Companies (e.g. Mauritius, Montserrat). Where foreign investment

c) deferral rules which disable taxation unless income is remitted; or

d) zero or near zero tax rates (e.g. on corporate income).

It is worth noting that in this indicator, we not only score badly instances that may result in double non-taxation (effective exemption of foreign investment income), but we also attribute the maximum risk score to regulations that create double taxation (no unilateral relief, deduction treatment).

3.2.2 Why is this important?

In a world of integrated international economic activity and cross-border financial flows, the question about who taxes what portion of income has become increasingly complex. A conflict exists between the emphasis on taxing the income where it arises (i.e. at source), or taxing it where its recipient resides.[85] A mixture of both principles is implemented in practice.

However, this may lead to instances of so-called double taxation, when both countries claim the right to tax the same income (tax base). While the concept of "double taxation" is theoretically plausible, evidence for real life occurrence is exceptionally rare,[86] especially since many countries have adopted unilateral relief provisions to avoid double taxation. In addition, countries also negotiate bilateral treaties to avoid double taxation, so-called double taxation avoidance agreements.

A potential third option to ensure single taxation would be a multilateral agreement on the definition of the formula for apportioning transnational corporations' global income.[87] Even though the G20 declared that "Profits should be taxed where economic activities deriving the profits are performed and where value is created,"[88] which could be interpreted as a mandate to treat the corporate group of multinational enterprise as a single firm and ensure that its

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income is only exempt because companies exclusively engaged in certain economic activity are tax exempt (i.e. investment funds, management companies), we consider such broad exemption regimes in Haven Indicator 5, but not in this indicator.

[85] Tax Justice Network, *Source and Residence Taxation*, Tax Justice Briefing, 2005 <http://weave.nine.ch/domains/taxjustice.net/cms/upload/pdf/Sourceresidence.pdf> [accessed 28 April 2019].

[86] Sol Picciotto, 'Unitary Taxation: Our Responses to the Critics' (2013) <www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf>.

[87] Avi-Yonah, Reuven S., 'Proposal for Unitary Taxation and Formulary Apportionment (UT+FA) to Tax Multinational Enterprises', in *Global Tax Governance: What Is Wrong with It and How to Fix It*, edited by Peter Dietsch and Thomas Rixen, 2016 <http://umil.iii.com/record=b2001352>.

[88] G20, *Communiqué. G20 Meeting of Finance Ministers and Central Bank Governors Washington DC, April 19, 2013* (London, 2013) <http://www.g20.utoronto.ca/2013/2013-0419-finance.html> [accessed 28 April 2019].

tax base is attributed according to its activities in each country[89], the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project[90] has continued to follow the independent entity principle and refused to consider unitary taxation and formulary apportionment to tax transnational corporations. Only recently has the OECD and United Nations moved to consider this reform option.[91]

Assuming that cross-border trade and investment can be mutually beneficial, the problem of overlapping tax claims (double taxation) needs to be addressed in one or both ways because it hinders cross-border economic activity. Bilateral treaties are expensive to negotiate, and often impose a cost on the weaker negotiating partner which is frequently required to concede lower tax rates in return for the prospect of more investment.[92,93,94,95,96,97]

Home countries of investors or multinational companies usually offer unilateral relief from double taxation because they want to support outward investment.

They do this primarily through two different mechanisms:

a) By exempting all foreign income from tax liability at home (exemption);

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[89] https://bepsmonitoringgroup.files.wordpress.com/2015/10/general-evaluation.pdf; [accessed 28 April 2019].

[90] http://www.oecd.org/ctp/BEPSActionPlan.pdf; [accessed 28 April 2019]

[91] Markus Meinzer, 'Adapt or Step aside: Pressure on OECD to Reform Pre-World War II Tax Rules as UN Convenes Historic Tax Meeting', 2019 <https://www.taxjustice.net/2019/04/24/adapt-or-step-aside-pressure-on-oecd-to-reform-pre-world-war-ii-tax-rules-as-united-nations-convenes-historic-tax-meeting/> [accessed 28 April 2019].

[92] Martin Hearson, *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*, ICTD Working Paper 47 (Brighton, 2016) <www.ictd.ac/ju-download/file/88-ictd-wp47-pdf/latest/download?2951319cb2220550f30e41fe8d5e70c7=1&return=aHR0cCUzQSUyRiUyRnd3dy5pY3RkLmFjJTJGanUtZG93bmxvYWQlMkYyLXdvcmtpbmctcGFwZXJzJTJGOTktbWVhc3VyaW5nLXRheC10cmVhdHktbmVnb3RpYXRpb24tb3V0Y29tZXMtdGhlLWFjdGlvbmFpZC10YXgtdHJlYXRpZXMtZGF0YXNldA==> [accessed 28 April 2019].

[93] Katrin McGauran, *Should the Netherlands Sign Tax Treaties with Developing Countries?* (Amsterdam, 2013) <somo.nl/publications-en/Publication_3958/at_download/fullfile> [accessed 28 April 2019].

[94] Markus Meinzer, 'The Creeping Futility of the Global Forum's Peer Reviews', *Tax Justice Briefing*, 2012 <www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf>.

[95] https://www.alliancesud.ch/de/publikationen/downloads/dokument-24-2013.pdf; [accessed 28 April 2019].

[96] Eric Neumayer, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?', *Journal of Development Studies*, 43/8 (2007), 1501–1519.

[97] Tsilly Dagan, 'The Tax Treaty Myth', *New York University Journal of International Law and Politics*, 32/939 (2000).

b) By offering a credit for the taxes paid abroad on the taxes due at home (credit).

As the graphs below indicate, in most cases it is a myth that bilateral treaties are necessary to provide relief from double taxation. Countries that are home to investors and transnationals typically offer provisions in their own laws to prevent or reduce double taxation.[98,99]

There is a third mechanism called "deduction" which is sometimes used to offer relief from double taxation. However, the deduction method does not offer full relief from double taxation. It allows the deduction of any taxes paid abroad from foreign income (e.g. as a business expense) before including this income in the domestic tax base. Therefore, we consider deduction to be similar to offering no mechanism for double taxation relief, since the incentives to conclude double taxation avoidance agreements remain largely in place.

Where countries, especially capital exporting ones, refrain from providing unilateral relief or only provide deduction of foreign taxes from the domestic tax base, they contribute to the problem of double taxation and thus indirectly exert

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[98] It must be conceded, however, that unilateral provisions to avoid double taxation are not as effective at preventing double taxation as double tax treaties. For instance, there may be cases in which the rules determining the residency of taxpayers conflict between countries, leading to both claiming residence and full tax liability of one legal entity or taxpayer. However, for a number of reasons this argument is of limited relevance: a) these cases are the exception rather than the rule; b) pure economic "single taxation" is a theoretical concept derived from economic modelling that is only of limited value in real life. In many countries different types of taxes are levied on the same economic activity, for instance VAT is levied on the turnover of a company, then the profits stemming from the turnover are taxed through federal and state corporate income taxes, and in a third stage the investment income in form of dividends is again taxed in the hands of the shareholders. Nobody would reasonably speak about "triple taxation" in such a case. In a similar way, it is dubious to speak about double taxation in a crossborder context. To paraphrase Professor Sol Picciotto: "But double taxation is a dubious concept. First, it does not mean companies' tax bills doubling: it means that there may (rarely) be some overlap between states' taxing claims (think of this in terms of the overlap in a Venn diagram). Any overlap may result in a modestly higher overall effective tax rate, not a "double" rate." (See page 3, here: www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf; [accessed 12 Mary 2015]. This "modestly higher overall effective tax rate" could be higher than the corporate tax rate of one particular country, but it may still be lower than another country's corporate tax rate. If one called this situation double taxation, then this implies speaking about double taxation also in situations in which two unrelated companies operate in two different countries, with one country levying twice as high a corporate tax rate as the other country. This, of course, is non-sense and reveals the dubious and theoretically flawed nature of the concept of double taxation.

[99] Martin Hearson, 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion' (The London School of Economics and Political Science, 2016) <http://etheses.lse.ac.uk/3529/1/Hearson_Bargaining_away_the_tax_base.pdf> [accessed 28 April 2019].

pressure on capital importing countries to conclude bilateral treaties with the other country. In turn, these treaties can expose capital importing countries to risks and disadvantages.[100]

In addition, with more than 3,000 double tax treaties currently in operation, the system has become overly complex and permissive, encouraging corporations to engage in profit shifting, treaty shopping and other practices at the margins of tax evasion (see here[101] for ways to address these issues and the various reports of the various reports of the BEPS Monitoring Group[102]). This is the context in which we review unilateral mechanisms to avoid double taxation in the first place. However, not all such mechanisms are equally useful.[103]

When using a unilateral exemption mechanism to exempt all foreign income from liability to tax at home, the residence country may be forcing other jurisdictions to compete for inward investment by lowering their tax rates. Because investors or corporations will not need to pay any tax back home on the profit they declare in the foreign jurisdiction (source), they will look more seriously at the tax rates offered. This encourages countries to reduce tax rates on capital income paid to non-residents, such as withholding taxes on payments of dividends and interest.

Many countries provide tax exemption on capital income payable to non-residents, especially on interest payments on bank deposits and government debt obligations, or dividends. If a specific income is exempt from tax, there is likely no requirement to report that income, so no authority would have data on it. If we consider that information sharing between states is weak, taxpayers can easily evade the taxes due at home on their foreign income because it may be very difficult for local tax authorities to find out about that income. As a consequence, a country offering no taxes to non-residents promotes tax evasion in the rest of the world.

[100] https://bepsmonitoringgroup.files.wordpress.com/2015/10/general-evaluation.pdf; [accessed 28 April 2019].

[101] www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf; [accessed 28 April 2019].

[102] https://bepsmonitoringgroup.wordpress.com/tag/bmg/; [accessed 28 April 2019].

[103] We are not looking at deduction in more detail because deduction of foreign taxes from domestic tax bases only provides partial relief from double taxation whereas the credit and exemption method both have in principle the capacity to completely avoid double taxation (see endnote 11 above for details). For details about the exemption and credit method, see for instance pages 19-22 in: United Nations Department of Economic & Social Affairs 2003: Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries (ST/ESA/PAD/SER.E/37), New York, in: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan008579.pdf; [accessed 28 April 2019].

To summarise the logic: First, unilateral tax exemption on foreign income puts pressure on source countries to reduce tax rates on investments by non-residents in a process of tax war (or competition).[104] Second, citizens and corporations from other countries make use of the low tax rates by shifting assets into these low-tax countries for the purpose of committing tax evasion. Third, in the medium term, the tax exemption of foreign income acts as an incentive for ruinous tax wars that will eventually lead to the non-taxation of capital income.

In contrast, a unilateral tax credit system does not promote tax evasion and does not incentivise the host countries of investments to lower their tax rates. A tax credit system requires that income earned abroad must be taxed at home as if it was earned at home, unless it has already been taxed abroad. In the latter case, the effective amount of tax paid abroad on the income will be subtracted from the corresponding amount of tax due at home.

Therefore, for an investor the tax rate in a host country is no longer relevant to her investment decisions. Countries wishing to attract foreign investment will not feel compelled to lower the tax rates in the hope of increasing their stock of foreign investment. As a result, the tax evading opportunities of investors are reduced because fewer countries offer zero or very low taxation on capital income. Reuven Avi-Yonah describes how the USA's adoption of a unilateral tax credit in 1918 has "led to a cooperative outcome that prevents double taxation and maximizes world welfare".[105]

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[104] For a background on the terminology around tax competition and tax wars, see: http://foolsgold.international/fools-gold-rethinking-competition/; [accessed 28 April 2019].

[105] Reuven S Avi-Yonah, 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State', *Harvard Law Review*, 113/7 (2000), 1608 <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1049&context=articles> [accessed 28 April 2019].

3.3 HI 3 – Loss Utilisation

3.3.1 What is measured?

This indicator measures whether a jurisdiction provides unrestricted loss carry backward and/or loss carry forward for ordinary and trading losses. Capital losses fall outside the scope of this indicator. Accordingly, we have split this indicator into two components.

1. **Loss carry backward**: we assess whether a jurisdiction provides loss carry backward provisions in its rules determining the corporate income tax base.

2. **Loss carry forward**: we assess whether a jurisdiction offers unrestricted loss carry forward (independent of change of ownership rules) in its rules determining the corporate income tax base.

The overall haven score for this indicator is calculated by the simple addition of the haven scores of each of these two components. The scoring matrix is shown in Table 3.1 and full details of the assessment logic are presented in Annex B.

Table 3.1. Scoring Matrix Haven Indicator 3

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
Component 1: Loss carry backward (50)	
Loss carry backward is available Corporates are allowed to transfer losses accrued in the current (or a later) tax year to a previous tax year, and thereby to obtain a tax reduction of corporate income taxes assessed and/or paid in the previous tax year (so as to obtain a reimbursement).	50
Loss carry backward is not available Losses accrued in the current tax year cannot be transferred back to previous tax years.	0
Component 2: Loss carry forward (50)	
Unrestricted loss carry forward Losses accrued in the current tax year can be carried forward to reduce taxable income in future tax years without any restrictions.	50

Loss carry forward is restricted to a maximum of more than five years Losses accrued in the current tax year can be carried forward only for a certain number of years, but this number is higher than five. **Or** **Loss carry forward is restricted by an annual ceiling ("minimum tax")** Losses accrued in past tax years can be carried forward for an unlimited number of years, but the extent to which these losses can be used to reduce income taxes is restricted in each current tax year.	37.5
Loss carry forward is restricted to a maximum of more than five years, and by an annual ceiling Losses accrued in the current tax year can be carried forward only for a certain number of years, but this number is higher than five, and there is an annual ceiling. **Or** **Loss carry forward is restricted to a maximum of five years or less** Losses accrued in the current tax year can be carried forward only for up to five subsequent years.	12.5
Loss carry forward is restricted to a maximum of five years or less, and by an annual ceiling Losses accrued in the current tax year can be carried forward only for up to five subsequent years and there is an annual ceiling. **Or** **No loss carry forward is available**	0

Ordinary companies generate revenue by selling goods or providing services and expenses, such as for paying salaries and buying intermediate goods and services. When company revenues exceed expenses in a given tax year, the company makes a taxable profit. If, however, the expenses exceed revenue, the company makes a loss. Normally, if a company is loss making, no corporate income taxes are due in that tax year. In addition, most jurisdictions allow this loss to be carried forward. Carrying forward losses allows a company to use the losses of the past to offset or reduce taxes due in future years when the company may be making a profit.

Carrying losses backward allows a company to go back in time to whenever it made a loss to reduce, retroactively, the profits booked in an earlier tax year in which it made a profit. Thus, tax due on profits in earlier years is reassessed and

adjusted accordingly. Assuming a company will have paid more tax in the past than what it owes after carrying back losses, the company would expect to receive a corresponding reimbursement.

Most jurisdictions do not allow loss carry backward, or they allow it only for a limited time.[106] According to the Organisation for Economic Co-operation and Development (OECD), loss carry backward provisions have a more severe impact on reducing government budgets and are more difficult to administer than carry forward provisions.[107]

To avoid abuse of such provisions by multinational companies,[108] jurisdictions generally place limits on the time and value of loss carry forward rules. The strictest time limitation for loss carry forward we have found in the literature is five years (such limitation is found in Argentina, China, Poland, Portugal, Turkey).[109]

This time limit threshold refers to the period within which revenue administrations are permitted to reopen tax assessments.[110] For reopening an assessment, tax administrations must rely on company records. According to the OECD Global Forum Joint Ad Hoc Group on Accounts, the necessary accounting record retention period and the accessibility to accounting records are as follows:

> Accounting records need to be kept for a minimum period that should be equal to the period established in this area by the Financial Action Task Force. This period is currently five years. A five-year period represents a minimum period and longer periods are, of course, also acceptable.[111]

Thus, we have chosen a five-year threshold in assessing the haven risk of loss carry forward provisions.

The data for this indicator was collected primarily from the country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD)

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[106] OECD, *Corporate Loss Utilisation through Aggressive Tax Planning* (2011), 26 <http://www.oecd-ilibrary.org/taxation/corporate-loss-utilisation-through-aggressive-tax-planning_9789264119222-en> [accessed 15 August 2018].

[107] OECD, *Corporate Loss Utilisation through Aggressive Tax Planning*, 26–27.

[108] OECD, *Corporate Loss Utilisation through Aggressive Tax Planning*, 27.

[109] https://www.dlapiperintelligence.com/goingglobal/tax/index.html?t=11-loss-utilization; [accessed 3 July 2018].

[110] Dominic de Cogan, *Building Incoherence into the Law: A Review of Relief for Tax Losses in the Early Twentieth Century* (Rochester, NY, 20 August 2013), 661, Footnote 34 <https://papers.ssrn.com/abstract=2312950> [accessed 16 May 2019].

[111] OECD, *Tax Co-Operation: Towards a Level Playing Field - 2006 Assessment by the Global Forum on Taxation, Annex III*, 2006, para. 14 <https://www.oecd.org/ctp/harmful/42179473.pdf> [accessed 16 May 2019].

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database.[112] In some instances, we have also consulted additional local websites and reports.

All underlying data can be accessed freely in the CTHI database.[113] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 509 and 510) in the database report of the respective jurisdiction.

3.3.2 Why is this important?

By carrying forward billions in losses to future tax years, global businesses have gamed the system with loss to generate colossal deductions and pay no or very little tax. The use of artificial losses to minimise tax has been a core element of Apple's tax strategy in Ireland. In 2015, the artificial inflation of debt and a multibillion-dollar purchase of Apple's own intellectual property generated billions in recognised losses for Apple's subsidiary in Ireland.[114] In other words, Apple Ireland borrowed heavily to purchase Apple's intellectual property from an Apple subsidiary tax-resident in Jersey (which applies nearly zero tax). As a result, Apple Ireland had billions in deductible interest payments, billions in deductible intellectual property purchase expenses, and billions in capital allowances; enough to write off all profits from European sales for years. Similarly, Apple's offshore entity in Jersey earned billions from the sale of intellectual property and interest repayments which went untaxed.[115]

The Apple case illustrates the damage that multinational corporate practice has on public revenues. While Apple's business in Europe is thriving and its sales continue to rise worldwide,[116] Apple declares losses. While piles of cash continue to accumulate in Jersey, Ireland's subsidiary is heavily in debt.

These tax avoidance games would not have been possible if comprehensive limitations were in place. Both this indicator (Haven Indicator 3) and our indicators on intra-group payments deductibility (Haven Indicators 15, 16 and

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

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

[114] Seamus, 'Economic Incentives: What Apple Did Next', *Economic Incentives*, 2018 <http://economic-incentives.blogspot.com/2018/01/what-apple-did-next.html> [accessed 21 May 2019].

[115] Martin Brehm Christensen and Emma Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?* (Brussels, 21 June 2018) <https://www.guengl.eu/content/uploads/2018/06/Apple_report_final.pdf>.

[116] https://www.macrotrends.net/stocks/charts/AAPL/apple/revenue; [accessed 16 May 2019].

17) present measurements and alternatives towards a financially consistent and fiscally responsible environment for multinational corporations.

Annual tax accounting systems are a basic feature of modern income taxation. Income tax is calculated and charged on the income earned in the preceding fiscal year, which consists of 12 consecutive months. However, this system involves an intrinsic unfairness: "taxpayers whose incomes fluctuate from year to year should receive tax treatment equivalent to those with stable incomes".[117] To eliminate this intrinsic unfairness, countries provide tax relief on profits to reflect losses. Losses may be carried forward and set off against future profits and/or carried backward and relieved against profits in earlier or subsequent years. The basic rationale behind the loss carry-over rules is income averaging.

However, companies might use losses as an aggressive tax planning tool by increasing or accelerating tax relief on their losses. Unrestricted loss carry forward and loss carry backward are in effect a profit-based tax incentive because they only take effect once a company declares profits. It increases those profits further by showering taxpayer's money onto those private sector profits. Unrestricted loss carry forward and backward thus enables profit shifting, investment round tripping and corporate (re)structuring for tax avoidance purposes.[118]

Countries may deny or restrict the use of losses for tax purposes to eliminate or reduce tax compliance risks. Countries should consider introducing or revising carry-over limitations, especially those countries that have introduced or are planning to introduce a fixed-ratio rule or a group ratio rule, which are other anti-base erosion and profit shifting measures for limiting interest deductibility. These rules establish a limit on the ability of an entity to deduct net interest expenses that in turn result in an entity either incurring an interest disallowance (i.e., where its net interest expense exceeds the maximum permitted), or having unused interest capacity (i.e., where its net interest expense is below the maximum permitted).[119]

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[117] Roberta Romano and Mark Campisano, 'Recouping Losses: The Case for Full Loss Offsets', *Northwestern University Law Review*, Faculty Scholarship Series., 76/5 (1981), 710.

[118] OECD, *Corporate Loss Utilisation through Aggressive Tax Planning*, 30.

[119] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report* (Paris, 2015), 69, para. 164 <https://www.oecd-ilibrary.org/docserver/9789264241176-en.pdf?expires=1557996390&id=id&accname=guest&checksum=4C61C67D7652BE5C0ABF0421567F6774> [accessed 16 May 2019].

Several kinds of limitation on loss relief exist. The OECD has captured some of these based on country practice[120]:

- The number of years for which disallowed interest expense or unused interest capacity may be carried forward, or disallowed interest expense may be carried back, could be limited.
- The value of carry forwards could reduce over time, such as by 10% each year.
- The value of a carry forward or carry back could be capped at a fixed monetary amount.
- The amount of a carry forward or carry back that may be used in a single year could be limited. For example, providing that no more than 50% of current net interest expense may be set against unused interest capacity carried forward from previous years.
- Carry forwards should be reset to zero in certain circumstances, following normal practice applied to loss carry forwards, such as where a company changes ownership and also changes the nature of its economic activity. Countries impose this kind of limitation especially to ensure that the loss relief is granted exclusively to the person that economically incurred the losses.

Nonetheless, a study showed a growing tendency of relaxing the loss offset provisions before the 2008 financial and economic crisis by comparing 41 country practices. According to the study, 31 countries restricted the loss carry forward in 1996 while only 25 countries restricted the loss carry forward in 2007.[121] In light of the magnitude of global corporate losses and growing tax compliance risks associated with loss-making corporations since the 2008 crisis, this indicator evaluates the current state of play.

[120] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project (2016), 73 <https://www.oecd-ilibrary.org/taxation/limiting-base-erosion-involving-interest-deductions-and-other-financial-payments-action-4-2016-update_9789264268333-en> [accessed 22 August 2018].

[121] Daniel Dreßler and Michael Overesch, 'Investment Impact of Tax Loss Treatment—Empirical Insights from a Panel of Multinationals', *International Tax and Public Finance*, 20/3 (2013), 513–43.

3.4 HI 4 – Capital Gains Taxation

3.4.1 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.[122] 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 Annex B.

[122] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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.[123] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 513 and 514) in the database report of the respective jurisdiction.

3.4.2 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,

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

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).[124]

One of the ways to do this is through the application of special rules of a holding company regime.[125] For example, in Dominica, International Business Companies are exempt from corporate tax and capital gains and can be used as holding companies.[126] Otherwise, capital gains are often exempt through what is known as a participation exemption system.[127] Participation exemption is widely used by European Union member states, countries in the European Economic Area[128] 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.[129]

The extent of participation exemption varies among jurisdictions. Some jurisdictions, such as Malta[130] and Aruba[131] exempt from tax all capital gains on domestic and foreign shares derived from a participating holding or from the

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[124] 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].

[125] 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].

[126] 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].

[127] 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".

[128] 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].

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

[130] 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.

[131] 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.

disposal of such holding. Other jurisdictions, such as Germany[132], France[133] and Italy[134], 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.[135] 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.[136] 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.[137] 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.[138]

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[132] 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.

[133] 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.

[134] 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.

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

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

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

[138] 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

According to the OECD's approach – which was further developed in its Base Erosion and Profit Shifting Action 5 report[139] – 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'".[140]

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.[141] 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".[142] 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.

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.

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

[140] 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].

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

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

3.5 HI 5 – Sectoral Exemptions

3.5.1 What is measured?

This indicator measures the availability of broad exemptions from corporate income tax (CIT). It covers exemptions applicable to companies[143] engaged in specific activities or sectors. The indicator is divided into two sub-indicators:

1. **Investment Sector:** we measure tax exemptions for companies engaged in financial and real estate investment. In this context, we analyse economic undertakings with passive income streams (capital gains, dividends and interest/rents).

2. **Active Income Sectors:** we assess tax exemptions applicable to all other economic sectors, including natural resource extraction, manufacturing, transportation and storage, and business services. We analyse situations where companies which are engaged in a specific activity, are subject to lower CIT rates.

For this indicator, only tax exemptions for corporations are considered. As such, we do not asses any exemption extended to shareholders on income received from a corporation.

The assessment includes only exemptions that are considered "broadly available" to tax residents provided they engage in a specific activity. These tax exemptions are permanent (i.e. not limited in time) and generally available to companies established in any part of the jurisdiction's territory (i.e. not limited to a specific area or zone).[144]

Importantly, only "profit-based" are penalised by this indicator. Profit-based exemptions are applicable to a tax resident company merely because the company is engaged in a specific for-profit activity. In contrast, "cost-based" exemptions are tax reductions available on the condition that the company has

[143] Consistent with current coverage in the Corporate Tax Haven Index, the term "company" or "corporation" refers to business undertakings organised in the form of a legal entity that is distinct from its owners. The index covers for-profit corporate entities that offer limited liability to all shareholders/members but are a separate legal entity for business purposes. In contrast, transparent or pass-through entities (eg trusts and partnerships) are generally not considered "corporations" and thus are not covered in the corporate income tax. Although the tax regimes associated to for-profit transparent entities may be used for tax evasion, these entities are excluded from assessment for the Corporate Tax Haven Index.

[144] In contrast, exemptions that are limited to a specific territory (economic zones) and/or time (tax holidays) are measured in Haven Indicator 6. In addition, this Haven Indicator 5 excludes cases of exemptions resulting from a patent box regime or exclusively relating to capital gains. These are covered in Haven Indicators 7 and 4, respectively.

additional expenses. This may include hiring additional employees or investing in fixed assets or research and development.

Tax exemptions that are received by companies for added expenditures in the economy (cost-based) are not penalised. However, if a nominal amount of additional invested funds triggers a tax exemption, and there is no actual requirement for the company to expense these funds in fixed assets or to incur specific costs, then the exemption is considered profit-based (i.e. not cost-based) and is penalised both in this indicator as well as in Haven Indicator 6.Why is this important?

In other words, we analyse situations where companies engaging in a specific activity are accorded a tax rate that is lower than the headline rate[145] usually applicable by default to any economic activity, without being subject to cost or expenditure requirements.

If the lower rate is zero, we consider the exemption "full", and otherwise, the lower rate will constitute a "partial" exemption. The score is computed as follows in Table 5.1 below.

Table 5.1. Scoring Matrix Haven Indicator 5

Regulation [0 = minimum risk; 50 maximum risk. Each jurisdiction's score starts at 0, and for each exemption found, a specific credit is added (either 25, 12.5 or 6.25) according to the type of exemption applicable, up to a maximum of 50.]		**Haven Score** [0 = minimum risk; 100 maximum risk] Tax Exemption Type	
		Full	Partial
1. Investment Sector (passive income)	Financial investment	+ 25	+ 12.5
	Real Estate investment	+ 25	+ 12.5
2. Active Income Sectors (13 sectors)		+ 12.5	+ 6.25

The maximum score for each of the two sub-indicators is 50. Therefore, if a jurisdiction fully exempts four or more economic sectors, it will have a 50 haven score in the second component of the indicator (active income sectors).

[145] By "headline rate" we refer to the lowest available CIT rate applicable to any sector or activity that is not subject to a special rate under the law. This rate is taken into account in Haven Indicator 1, usually using the rate provided by the OECD, and in some cases applying technical corrections and adjustments when the tax rate that is broadly applicable to large corporate taxpayers is different than the one published by the OECD.

Furthermore, in cases where four or more economic sectors are fully exempt, then in Haven Indicator 1 we consider the lowest available corporate income tax rate applicable to any of such exempt sectors. The threshold of four exempt sectors may be reached through any combination of four fully exempt and/or eight partially exempt economic active income sectors.

Similarly, if a jurisdiction presents a tax exemption under a special entity regime; such regime will be accounted for in this indicator, insofar as the entity is allowed to undertake activities included in any of the reviewed sectors. When the number of economic sectors covered under this exempt entity regime reaches the above-mentioned threshold (i.e. four fully exempt and/or 8 partially exempt), then the exempt entity regime will be accounted for in Haven Indicator 1 as the lowest deviating CIT rate applicable to specific types of companies.

In addition, for this indicator, we do not take into account cases where a jurisdiction exempts foreign-source active income from the corporate tax base (Haven Indicator 1 lowest available corporate income tax Step 3.3). If, however, there are legal provisions that effectively exempt income in specific sectors by reclassifying domestic income as foreign income (deemed or treated by case law as foreign source income), we will consider such exemptions in this indicator.

For consistency purposes, we consider the following as equivalent: (a) a business entity is taxable under the CIT law, but if the entity is exclusively engaged in a specific activity, it is subject to lower or no tax; and (b) an entity is taxable under CIT law, but income derived from a specific activity is subject to lower or no tax.

Accordingly, this indicator covers broad activity exemptions as described above. The methodology presented below describes in further detail the coverage logic for each of the two sub-indicators: (1) Investment Sector and (2) Active Income Sectors.

(1) Investment Sector: The first sub-indicator assesses the income tax rate applicable to investment activities for entities engaged in investment that are organised as limited liability corporate entities. Tax exemptions in this sector may be given based on the special status of companies exclusively engaging in investment activities; or alternatively, tax exemptions may result from the non-taxation of principal income streams. Table 5.2 below highlights the focus of the analysis.

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Table 5.2. Investment Companies Overview

Companies (legal entities, not partnerships) **engaged in:**	**Products**	**Income streams**	**Usual entity designations**
Financial investment	Securities, bonds, financial products (derivatives)	Capital gains, interest, dividends	Investment fund, investment company, collective investment vehicles, Société d'investissement à Capital Variable (SICAV), Société d'Investissement à Capital Fixe (SICAF)
Real estate investment	Immovable property	Capital gains, rent	Real Estate Investment Trust (REIT), Real Estate Investment Company

In line with the aforementioned principle of equivalence, if an investment entity is exempt or investment income streams are untaxed, or both, we consider that a tax exemption has been provided by a jurisdiction for investment activities.

The terminology used to refer to entities engaged in investment activities varies significantly under the laws of each jurisdiction. Depending on the jurisdiction, these entities or collective investment vehicles (CIV) may or may not be organised as separate legal entities:[146]

> Although a consistent goal of domestic [Collective Investment Vehicle (CIV)] regimes is to ensure that there is only one level of tax, at either the CIV or the investor level, there are a number of different ways in which

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[146] According to the OECD: "The determination of whether a CIV should be treated as a 'person' begins with the legal form of the CIV, which differs substantially from country to country and between the various types of vehicles. In many countries, most CIVs take the form of a company. In others, the CIV typically would be a trust. In still others, many CIVs are simple contractual arrangements or a form of joint ownership" (The Organisation for Economic Co-operation and Development (OECD), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, 18 December 2017, 63 <https://www.oecd.org/tax/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm> [accessed 27 May 2019]).

> States achieve that goal. (Organisation for Economic Co-operation and Development (OECD) 2017)[147]

We consider that eliminating tax at the entity-level in order to achieve only one level of tax is a harmful tax policy goal. Thus, while investor-level exemptions are excluded from this indicator, entity-level exemptions are covered as explained below.

As mentioned above, for purposes of consistent assessment, we only assess the tax regime applicable to investment entities with legal personality that are not organised as partnerships or trusts under the law (i.e. "corporations" or "companies"). Thus, we do not cover an investment entity exemption if non-taxation derives from partnership legal form (tax-transparent) or from the merely contractual nature of the investment. We consider these contractual funds as largely equivalent to a direct investment by the investor into a portfolio.

Table 5.3. Scoring Matrix for Sub-Indicator – 1. Investment Sector

Sub-indicator Regulation [0 = minimum risk; 50 maximum risk. Each jurisdiction's score starts at 0, and for each exemption found, a specific credit is added (either 25 or 12.5) according to the type of exemption applicable, up to a maximum of 50.]	**Full Exemption**	**Partial Exemption**
Financial products: Companies engaged in investment activities with regards to shares, bonds, and/or derivatives are subject to a lower CIT rate and/or one or more of the main income streams are tax-exempt.	+ 25	+ 12.5
Real Estate: companies engaged in real estate investment are subject to a lower CIT rate and/or rents or real estate capital gains are tax-exempt.	+ 25	+ 12.5

If a jurisdiction allows various investment fund regimes and entities in its domestic law, the lowest tax rate available among those funds that may be organised as separate legal entities (or generally "companies") will be used in the assessment of this sub-indicator.

[147] The Organisation for Economic Co-operation and Development (OECD), *Model Tax Convention on Income and on Capital*, 64.)

For example, in Spain, investment funds are considered taxable legal entities, and these are taxed at a rate of 1%.[148] Furthermore, companies investing in real estate (Sociedades de Inversión en el Mercado Inmobiliario, or SOCIMIs) are subject to a special regime, where the entity is exempt from income tax if shareholders – holding more than 5% of the capital stock – are subject to tax at a 10% rate or more.[149] In these cases, we therefore consider that "financial investment" is partially exempt, while "real estate investment" is fully exempt. The measurement is thus 12.5 + 25 = 37.5, out of a haven score of 50 maximum score.

Where investment activities are tax-exempt, usually both financial and real estate investments are covered under a single regime. When the sources we use provide no indication that real estate investment is taxed under an alternative regime, we consider that real estate investment activities are taxed under the same regime as financial investment. However, if our sources indicate restrictions or exclusions for real estate from the financial investment regime, we consider that the investment exemption covers financial investment only.

Our data sources for the assessment of investment sector tax exemptions are mainly from the International Bureau of Fiscal Documentation (IBFD) (country analyses, surveys and reports),[150] Deloitte (International Tax Highlights),[151] PricewaterhouseCoopers (Worldwide Tax Summaries)[152] and Invest Europe (Tax Benchmark Study 2018, in association with KPMG).[153]

(2) Active Income Sectors: In this sub-indicator, we measure the incidence of broad tax exemptions in specific economic sectors. We only cover exemptions that are broadly available to companies that are tax residents of the assessed jurisdiction. That is, where such exemptions are permanent and generally available to companies established in any part of the jurisdiction's territory.

[148] Á. de la Cueva González-Cotera & D. Jiménez Real, Spain - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_es_s_1. [accessed 7 April 2019].

[149] Á. de la Cueva González-Cotera & D. Jiménez Real, Spain - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_es_s_1. [accessed 7 April 2019].

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

[151] https://dits.deloitte.com/#TaxGuides; [accessed 9 May 2019]

[152] https://www.pwc.com/gx/en/asset-management/assets/pdf/worldwide-reit-regimes-2017.pdf; [accessed 12 March 2019].

[153] https://www.investeurope.eu/media/722513/ie_tax-benchmark-study-2018.pdf; [accessed 8 March 2019].

For consistency purposes, we distinguish in this sub-indicator between "activities"(**A** = {a, b, c, d, …}) and "sectors"(**S** = { S_1, S_2, S_3, …}). We consider that a sector contains various activities (**S_1** = {a, b, c}; **S_2**={d, e, f}; **S_3**={g, h, …}..), which may or may not be tax-exempt under the laws of a jurisdiction. In order to achieve comparable measurements, we refer to a fixed list of economic sectors and activities, derived from the United Nations Statistics Division classification,[154] and Eurostat.[155]

The aim of using this framework is to avoid assessing two or more exemptions applicable to closely related activities as separate sectoral exemptions. Instead, we consider the lowest tax rate among the activities included in an economic sector as the tax exemption rate attributable to that sector.

Jurisdictions often offer alternative tax regimes under the same CIT law or a special law applicable to specific entities or activities. This is usually the case for holding companies as well as for banking or insurance sectors when these are not completely exempt. Where companies carrying out specific activities benefit from a tax base that excludes certain items of income, or that the tax is not assessed on the companies' income (eg the tax is determined in accordance with the extent of the company's expenditures), we consider that such activities are partially exempt.[156] The assessment does not cover situations where the alternative tax base is reduced because of additional deductions for business expenditures (such tax incentives are considered cost-based).

A notable exception to the above assessment of alternative regimes is retained for transportation activities (shipping), acknowledging existing international tax standards. Indeed, most jurisdictions have adopted "tonnage regimes" to determine tax for shipping activities. Under such alternative regimes, boat-owning companies must register their ships and account for their tonnage capacity. Then, a nominal tax base is determined based on registered ships' carrying capacity (tonnage). It is common for tonnage tax regimes to be

[154] *International Standard Industrial Classification of All Economic Activities (ISIC)* (New York, 2008) <https://unstats.un.org/unsd/publication/SeriesM/seriesm_4rev4e.pdf>.

[155] EUROSTAT, *Statistical Classification of Economic Activities in the European Community*, NACE Rev. 2 (Luxembourg, 2008) <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF>.

[156] In some cases, it would take a team of accountants and tax lawyers to ascertain whether the alternative regime is 'preferable' to the regular CIT regime for a specific company. However, it is reasonable to assume that if an alternative regime is not structured as a minimum tax, payable in the absence of a CIT tax liability, then such a regime is likely to lower the tax liability of covered activities, in comparison to the statutory CIT rate.

regressive; that is, the higher the total tonnage of a shipping company, the lower the marginal tax will be for each additional tonne (e.g. Cyprus[157] or Latvia[158]).

Although the above "tonnage tax" is not a tax that is determined based on the company's income, we disregard such alternative regimes from assessment insofar as they cover shipping activities only. Where the tonnage regime is applicable to activities other than shipping and necessarily related activities (storage, loading, unloading), we consider that such other activities are partially exempt. For instance, in Latvia, income from accommodation, catering and casino activities on ships are covered under the tonnage regime.[159] Therefore, we consider that the "accommodation, food and recreation" sector is partially exempt.[160]

Finally, given that preferential tax regimes relating to the exploitation of intellectual property are covered under Haven Indicator 7 on patent boxes, we exclude such regimes from assessment in this Haven indicator 5.

3.5.2 Why is this important?

The most classical (or neoclassical) argument against tax incentives is that they create economic "distortions" that affect the "natural" allocation of capital and promote economic activity that would otherwise not have resulted from "the market".[161] For example, if investment in fossil fuels is profitable at 5% when taxed under the regular regime, and a country provides a tax incentive that makes the investment profitable at 20%, then "rational" economic actors are likely to increase their investment over and above what would have resulted if "market forces" applied equally to every type of business. However, jurisdictions

[157] PricewaterhouseCoopers (PWC), *Cyprus Shipping: A Sea of Opportunities*, April 2018 <https://www.pwc.com.cy/en/publications/assets/cyprus-shipping-a-sea-of-opportunities-april-2018.pdf> [accessed 5 April 2019].

[158] Z.G. Kronbergs, *Latvia - Corporate Taxation* sec. 1.9.4.2., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_lv_s_1.9.4.2.#cta_lv_s_1.9.4.2. [accessed 5 April 2019].

[159] Z.G. Kronbergs, *Latvia - Corporate Taxation* sec. 1.9.4.2., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_lv_s_1.9.4.2.#cta_lv_s_1.9.4.2. [accessed 5 April 2019].

[160] The harmfulness of such uncomprehensive coverage is apparent from the following example. A Latvian company owns a fleet of casino boats, where customers spend their gambling money over the year. At the end of the tax year, the company pays tax in proportion of the tonnage of its casino boats. However, the income from gambling operations is completely unrelated to the tonnage of the ship. Thus, a large portion of the gambling income potentially remains untaxed.

[161] Council of Economic Advisors, *Economic Report of the President (2007)* (2007), 18, 63–70 <https://www.govinfo.gov/app/details/ERP-2007> [accessed 27 May 2019].

are sovereign and thus can incentivise specific sectors for purposes they deem legitimate, such as for promoting green energy over fossil fuels.

The data collected in this indicator allows a comparison between existing permanent tax incentives in different economic sectors. We assess every sector under the same harmfulness standard even though the promotion of certain activities can be clearly more harmful for environmental or social reasons. This is because we consider that all profit-based incentives are harmful. We focus on tax reductions that are available to corporations that merely engage in a specific economic activity or are licensed or registered under a specific regime. These incentives are particularly harmful because it is much easier for multinational corporations to allocate profits to a tax-exempt company if the exemption regime does not ensure that the exemption applies to income resulting from domestic economic activity. By contrast, cost-based incentives are meant to ensure that the tax incentive applies only to companies effectively engaged in the domestic economy, by investing in fixed assets, hiring employees, or supporting research and development.

Indeed, the International Monetary Fund (IMF) differentiates between these two types of incentives and indicates the harmfulness of profit-based incentives compared with cost-based incentives. In its 2014 report, the IMF emphasises that cost based incentives "[…] may generate investments that would not otherwise have been made […]" whereas profit based incentives tend to "[…] make even more profitable investment projects that would be profitable, and hence undertaken, even without the incentive".[162] Thus, while cost based tax incentives may also be harmful, particularly in cases where the expenditure requirement is not properly enforced, this indicator focuses only on profit-based incentives.

Although the OECD started to monitor the harmfulness of special tax regimes more than 20 years ago, tax competition and lobbyists managed to block attempts at progress. In its 1998 report, the OECD established the "Guidelines on Harmful Preferential Tax Regimes". This report highlighted two key criteria to identify harmful tax regimes: "no or low effective tax rates" and "ring-fencing".[163] In addition, the report focuses on tax regimes that are "usually targeted specifically to attract those economic activities which can be most easily

[162] International Monetary Fund, *Spillovers in International Corporate Taxation*, 9 May 2014, 20 <https://www.imf.org/external/np/pp/eng/2014/050914.pdf> [accessed 23 May 2019].

[163] Organisation for Economic Co-operation and Development, *Harmful Tax Competition: An Emerging Global Issue* (1998), 25 <https://www.oecd-ilibrary.org/taxation/harmful-tax-competition_9789264162945-en> [accessed 27 May 2019].

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shifted […], generally financial and other services activities", even though this was not considered as a criteria of harmfulness .[164]

However, by the time of the 2008 financial crisis, harmful tax regimes had increased in number and intensity. In 2012, an IMF study found evidence that "[f]or special regimes, […] the 'race to the bottom' has long taken place, with effective tax rates close to zero".[165] The authors also make the following remark:

> [S]pecial regimes which reduce effective tax rates to close to zero remain widespread. In countries where these are present, the normal relationships break down. Increasing tax rates does not boost revenues, not even in the short term. The most likely explanation is that profits then shift to the special regimes, either because investment takes place there, or through some profit transfer scheme. In those countries investment cannot be encouraged through lowering tax rates either. This is because any tax-sensitive investment probably already takes place only under the special regime, so that the standard tax rate becomes irrelevant.[166]

Where exemptions are widespread, the standard tax rate becomes irrelevant. In this regard, the findings of this Haven Indicator 5 are astonishing. In our sample of 64 jurisdictions, which includes all European Union member states and dependent territories, 10 jurisdictions apply no or zero corporate tax, 5 others present permanent exemptions in all economic sectors, and a further 4 jurisdictions apply a wide range of harmful exemptions covering several economic sectors. Together, nearly 30% of the jurisdictions we assessed present widespread profit-based tax exemptions in all or nearly all economic sectors. Among these 19 jurisdictions, more than 70% are European Union member states or European Union-dependent jurisdictions.[167]

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[164] Organisation for Economic Co-operation and Development, *Harmful Tax Competition: An Emerging Global Issue*, 25.

[165] Junhyung Park and others, *A Partial Race to the Bottom : Corporate Tax Developments in Emerging and Developing Economies* (January 2012), 22 <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/A-Partial-Race-to-the-Bottom-Corporate-Tax-Developments-in-Emerging-and-Developing-Economies-25675> [accessed 25 May 2019].

[166] Junhyung Park and others, *A Partial Race to the Bottom : Corporate Tax Developments in Emerging and Developing Economies* (January 2012), 21 <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/A-Partial-Race-to-the-Bottom-Corporate-Tax-Developments-in-Emerging-and-Developing-Economies-25675> [accessed 25 May 2019].

[167] The jurisdictions that apply no or zero corporate tax are the following: Anguilla (UK), Bahamas (UK), Bermuda (UK), British Virgin Islands (UK), Cayman Islands (UK), Guernsey (UK), Isle of Man (UK), Jersey (UK), Turks and Caicos Islands (UK), and United Arab Emirates. Jurisdictions effectively applying permanent exemptions in all economic

The OECD has been monitoring the abolishment of harmful tax practices. Today, it considers that providing tax exemptions to "geographically mobile financial and other services activities" is a "key factor" in identifying a harmful regime.[168] Yet, curiously, neither the absence of all corporate income taxation nor the non-taxation of particularly mobile activities is consistently considered to be "harmful" by the OECD.[169] As a result, a number of regimes fall through the cracks. In particular, the OECD 2019 monitoring report on harmful tax practices does not recognise the harmfulness of the most common exemptions available: that is, those applicable to investment activities, banking and insurance and business services.[170] Indeed, we found that profit-based exemptions applied to financial investment in 86% of the jurisdictions we assessed and 64% applied full exemptions. In addition, about 30% of our sample jurisdictions imposed no tax on certain banking and insurance activities or business services activities.[171]

Precisely because these activities are "geographically mobile services activities", which can be carried out cross-border, a policy decision has to be made internationally. Either policymakers openly accept that multinationals engaging in such activities should remain untaxed, or we ensure that jurisdictions abolish all profit-based exemptions. In our view, it would be wise for the OECD's Forum on Harmful Tax Practices to consistently abolish all zero or near zero tax regimes applicable to mobile activities and to adopt the profit-based criteria of harmfulness, as emphasised by the IMF in its 2014 report.[172] Furthermore, the Forum needs to pay particular attention to jurisdictions that replace one harmful tax practice for another.[173] Such loophole-building intentions may eventually render the process largely ineffective.

sectors: Estonia (European Union member state), Latvia (European Union member state), Monaco (FR), Mauritius, and Montserrat (UK). Jurisdictions applying a very wide range of harmful permanent exemptions, covering several economic sectors are: Aruba (NL), Lebanon, Panama, and Singapore.

[168] OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, 2019, 13 <https://doi.org/10.1787/9789264311480-en> [accessed 20 May 2019].

[169]OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, 38.

[170] OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*.

[171] It is worth noting that incentives providing full tax exemptions often create an additional risk factor, in cases where non-taxable companies are not required to submit tax returns or other regulatory filings.

[172] International Monetary Fund, *Spillovers in International Corporate Taxation*.

[173] 'Letters Seeking Commitment on the Replacement by Some Jurisdictions of Harmful Preferential Tax Regimes with Measures of Similar Effect' (2019) <https://data.consilium.europa.eu/doc/document/ST-5981-2019-INIT/en/pdf>.

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Finally, constituencies and lawmakers should require governments to publish estimates of tax losses caused by each exemption regime and to ensure that tax incentives in the extractives sector are abolished as soon as possible.[174]

[174] China, for example, provides full tax exemption to companies engaged in ocean fishing and natural forest logging (see https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-chinahighlights-2019.pdf; [accessed 9 May 2019], and http://taxsummaries.pwc.com/ID/Peoples-Republic-of-China-Corporate-Tax-credits-and-incentives; [accessed 9 May 2019]. The Netherlands and Greece cover oil rig and floating drills under a "special" tax regime, where these activities are subject to regressive tax rates under a nominal "tonnage tax" regime. (see H-J. van Duijn & K. Sinnige, Netherlands - Corporate Taxation sec. 12., Country Analyses IBFD [accessed 9 May 2019], URL: https://research.ibfd.org/#/doc?url=/document/cta_nl_s_12.; and : S. Papademetriou & G. Kerameus, Greece - Corporate Taxation sec. 12., Country Analyses IBFD [accessed 9 May 2019], URL: https://research.ibfd.org/#/doc?url=/document/cta_gr_s_12.

3.6 HI 6 – Tax Holidays and Economic Zones

3.6.1 What is measured?

This indicator measures whether and to what extent time-bound or geographically confined tax incentives are available in a jurisdiction. This includes temporary tax holidays, partial exemptions on corporate income tax (CIT) and capital gains tax (CGT), and special tax incentives (temporary or permanent) given to companies located in designated economic zones.

An economic zone is commonly defined as a delimited area that is physically secured and has a single administration, separate customs area and streamlined procedures[175]. The term 'zone' in this indicator includes free trade zones, economic development zones, export-processing zones, free ports, international trade zones, enterprise zones, high-tech zones, specified economically-depressed urban and suburban zones, regionally assisted areas, industrial, science and innovation parks, and others.

A key distinction must be drawn between different types of geographical delimitation for income tax reduction within a jurisdiction:

a) On the one hand, certain jurisdictions maintain a local component of corporate taxation. In those cases, the income tax liability of a corporation is determined at both central and regional levels.[176] These regimes are assessed in Haven Indicator 1 on the lowest available corporate income tax (CIT) where the "weakest link" principle is followed.
b) On the other hand, some jurisdictions determine a different CIT regime for specific territories, regions, or zones. In these cases, the territory or region may have a varying degree of authority to unilaterally change its fiscal regime. Central authorities can allow a certain degree of fiscal autonomy, always within the legal framework mandated by central

[175] Kishore Rao et al., 'Special Economic Zones Performance, Lessons Learned, and Implications for Zone Development' (2008) <http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf> [accessed 9 May 2018].

[176] For example, in the United States, Switzerland, Portugal and Germany, corporate income tax has two components: central and local/regional. In Switzerland, for instance, a company's income tax liability is the combination of the federal tax liability and the income tax at the level of the Canton. The fact that corporate income tax is lower in one Canton in comparison to another Canton will not be treated as if the former was a tax-favoured economic zone. For further information, see OECD, 'Table II.3. Sub-Central Corporate Income Tax Rates' <https://stats.oecd.org/index.aspx?DataSetCode=TABLE_II3> [accessed 4 April 2019].

institutions. In this indicator, we consider such special tax regimes as applicable to "Economic Zones".[177]

Importantly, only tax exemptions considered "profits-based" are penalised by this indicator. Profit-based exemptions are applicable to a tax resident company merely because the company is engaged in a specific for-profit activity. Conversely, "cost-based" exemptions are tax reductions available on the condition that the company undertakes additional expenses, such as hiring additional employees, or investing in fixed assets or research and development.

Tax exemptions that are given to corporations for added expenditure in the economy (cost-based) are not penalised. However, if a nominal amount of additional invested funds triggers a tax exemption, and there is no actual requirement for the company to expense these funds in fixed assets or to incur specific costs, then the exemption is considered profits-based (i.e. not cost-based) and penalised in Haven Indicators 5 and 6.

In other words, we analyse situations where companies engaging in a specific activity are accorded a tax rate that is lower than the headline rate[178] (applicable by default to any economic activity), without being subject to cost/expenditure requirements. If the lower rate is zero, we consider the exemption "full", and otherwise, the lower rate will constitute a "partial" exemption.

For the assessment of tax holidays, which are tax exemptions that are limited in time, we use a 10-year threshold to establish a consistent distinction between regimes that are temporary, and regimes deemed permanent because of their very long application period. The basis for this distinction is that tax reductions that are awarded for more than 10 years may effectively apply during the entire

[177] In the UK, for instance, the Parliament devolved the power to set the corporate income tax rate to the Northern Ireland Assembly in 2015; regional authorities have decided that a reduced 12.5% rate will apply from April 2018, see: A.M. Bal, United Kingdom - Corporate Taxation sec. 1., Country Analyses IBFD (accessed 1.5.2019), URL: https://research.ibfd.org/#/doc?url=/document/cta_uk_s_1. In Spain, companies established in its African enclaves Ceuta and Melilla benefit from a 50% tax exemption on income from operations in these territories, see: Á. de la Cueva González-Cotera & D. Jiménez Real, Spain - Corporate Taxation sec. 1., Country Analyses IBFD, URL: https://research.ibfd.org/#/doc?url=/document/cta_es_s_1. Closer to the traditional understanding of an Economic Zone, companies licensed to operate in the Seychelles' "International Trade Zone" are considered tax exempt entities, see M. Jivan & L.G. Ogazón Juárez, Seychelles - Corporate Taxation sec. 1., Country Surveys IBFD, URL: https://research.ibfd.org/#/doc?url=/document/gtha_sc_s_1.

[178] By "headline rate" we refer to the lowest available CIT rate applicable to any sector or activity that is not subject to a special rate under the law. This rate is taken into account in Haven Indicator 1, usually taking the statutory rate provided by the OECD, and in some cases applying technical corrections and adjustments to reach the lowest available corporate income tax rate for any large for-profit company, as explained in the haven indicator.

period of economic engagement of a corporation, and thus be largely equivalent to a broad, permanent exemption accorded to companies engaging in a specific activity or zone.

Consequently, where a geographically delimited tax exemption applies for more than 10 years, we consider that it is a permanent tax exemption applicable in a specific economic zone.[179] Also, where a broadly applicable exemption applies for more than 10 years and over the jurisdiction's entire territory, we consider that the regime is a broad, permanent tax exemption, which is covered in Haven Indicator 5.[180]

In relation to a time limit for the applicability of a tax exemption, we only consider time limits as they are intended when the tax incentive is enacted. Thus, if a tax incentive is amended or abolished, but continues to be applicable through grandfathering provisions until 2021 or a later year, we consider that the tax incentive is still applicable. If such a tax incentive was intended to be applicable for 10 years or less, it will qualify as 'temporary'. If the tax incentive was intended to be permanent, it will be considered 'permanent', although its applicability might end in or after 2021. Any tax regimes effectively abolished or amended in 2021 will be considered for the Corporate Tax Haven Index 2021 assessments.

The haven score is computed as explained in Table 6.1 below. In cases where the haven score would have exceeded 100 because countries offer more tax holidays or economic zone exemptions, the score is cut at 100.

[179] For example, in Tanzania, "investors investing in Free Zones are granted […] exemption from payment of corporate income tax for the first 20 years." (Tanzania Revenue Authority, 'What are Tax Incentives under the Zanzibar Investment Promotion and Protection Act, 2004?' < http://www.tra.go.tz/index.php/103-tax-incentives/170-what-are-tax-incentives-under-the-zanzibar-investment-promotion-and-protection-act-2004 > [accessed 4 April 2019].)

[180] For example, Singapore's Pioneer regime accords full tax exemptions for qualifying companies engaged in a broad range of services activities, and the exemption may be granted for a period of up to 15 years, see T. Toryanik, Singapore - Corporate Taxation sec. 1., Country Analyses IBFD, URL: https://research.ibfd.org/#/doc?url=/document/cta_sg_s_1.

Table 6.1: Scoring Matrix Haven Indicator 6

Regulation [Each jurisdiction’s score starts at 0, and for each profits-based exemption found, a specific credit is added (either 25 or 12.5) according to the type of exemption applicable, up to a maximum of 100.]		**Haven Score** [100 = maximum risk; 0 = minimum risk]	
		Type of Exemption	
		Full	Partial
Temporary	**Non-Economic Zone** Income is exempt from CIT and/or CGT for a specific period, usually some years, but is not restricted to a particular geographical location.	+ 25	+ 12.5
	Economic Zone (EZ) Income generated by companies established in a specific geographical area is exempt from CIT and/or CGT for a limited number of years (up to 10).	+ 25	+ 12.5
Permanent	**Economic Zone (EZ)** Income generated by companies established in a specific geographical area is from CIT and/or CGT, and this exemption is either permanent, or applicable for more than 10 years.	+ 25	+ 12.5

All underlying data can be accessed freely in the CTHI database[181]. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 501-504, 539 and 540) in the database report of the respective jurisdiction.

The data for this indicator was sourced from the International Bureau of Fiscal Documentation (IBFD) database[182], websites of the big four accounting firms, government designated websites including those of the ministries of finance, the tax authorities and investment agencies.[183]

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

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

[183] For more details about robustness of the data and sources, see: Markus Meinzer and others, *Comparing Tax Incentives across Jurisdictions: A Pilot Study*, 2019, 43 <https://www.taxjustice.net/wp-content/uploads/2018/12/Comparing-tax-incentives-across-jurisdictions_Tax-Justice-Network_2019.pdf> [accessed 3 July 2019].

3.6.2 Why is this important?

Tax holidays and geographically-confined tax incentives are usually used to encourage foreign direct investment and to foster the creation of new activities and jobs in designated sectors. Yet, there is no assurance that such policy measures will meet governments' expectations. In fact, these incentives often generate large revenue losses and administrative and welfare costs for government.[184]

Tax expenditures are usually defined as a reduction in tax liability and may take different forms and include exemptions, allowances tax relief, tax deferral and credits.[185] Compared with outlay expenditures (ie direct costs made to support publicly financed institutions and services), tax expenditures are often subject to less public scrutiny and government control.[186] As a result, governments tend to use tax expenditures rather than outlay expenditures to implement policies in their interest. Countries may also prefer tax expenditures over direct spending to show a low tax-to-GDP ratio relative to their peers.[187] The International Monitory Fund (IMF) thus recommends governments to identify, measure and report on the cost of tax expenditures in a way that enables comparison with outlay expenditures and ensure accountability[188].

Time-bound tax incentives have the tendency to attract footloose investments, mostly profitable during the tax holiday period. Indeed, they can induce rent-seeking behaviour including tax avoidance with round-tripping when existing companies use sophisticated techniques to reinvest their capital in creating a new company just to benefit from the tax holiday.[189] For example, if tax incentives are only granted to new companies, foreign entities will attempt to register new companies for already established operations in order to take advantage of those incentives. In some sectors, eg mining, time-bound tax

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[184] Alexander Klemm and Prepared Alexander Klemm, *Causes, Benefits, and Risks of Business Tax Incentives*, 2009.

[185] Christopher Heady and Mario Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management: A Guide for Developing Economies* (2019), 7 <https://www.imf.org/en/Publications/Fiscal-Affairs-Department-How-To-Notes/Issues/2019/03/27/Tax-Expenditure-Reporting-and-Its-Use-in-Fiscal-Management-A-Guide-for-Developing-Economies-46676> [accessed 26 May 2019].

[186] Christopher Heady and Mario Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management*, 1.

[187] Christopher Heady and Mario Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management*, 2.

[188] Christopher Heady and Mario Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management*, 1.Ibid.

[189] OECD, *Implementing the Latest International Standards for Compiling Foreign Direct Investment Statistics. FDI Statistics by the Ultimate Investing Country*, 2015 <https://www.oecd.org/daf/inv/FDI-statistics-by-ultimate-investing-country.pdf> [accessed 6 June 2018].

incentives can be particularly harmful as they may cause a high grading of reserves.[190]

The objectives of geographically-confined tax incentives are usually to attract foreign direct investments, develop disfavoured/rural regions or certain sectors (eg manufacturing), increase government revenues, encourage skills upgrading, technology transfer, innovation and improve the productivity or domestic enterprises.[191] However, research shows that tax incentives are often ineffective in attracting foreign direct investment, especially in developing countries.[192] Investment climate surveys for low-income countries show that tax incentives are not as decisive for investors compared with good infrastructure, educated human resources, the rule of law, macroeconomic stability and other conditions. This may be one of the reasons why the IMF has recently been advising developing countries to phase out tax holidays as they open doors to leakages and corruption.[193] Evidence also suggests that providing geographically-confined tax incentives impose pressure on policymakers to provide the same benefits to other geographic areas, increasing revenue loss and social distortions.[194]

Furthermore, tax incentives confined in economic zones – e.g. free trade zones or freeports – can create opportunities for money laundering and tax evasion. This is because free trade zones tend to be vulnerable for abuse from illicit actors due to their weak enforcement of financial regulations, lack of transparency and inadequate customs control.[195] These zones are often used for the transhipment of goods without the adequate export control, to hide profits and reduce tax

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[190] High grading is when the best grade resources (which will bring the highest return to the company) are extracted first to take advantage of prices or tax incentives and where the remaining material may no longer be economic to extract.

[191] Douglas Zhihua Zeng, 'Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters' (2010) <https://openknowledge.worldbank.org/bitstream/handle/10986/2501/564470PUB0buil10Box349496B01PUBLIC1.pdf?sequence=1&isAllowed=y>.

[192] 'Empirical Evidence on the Effects of Tax Incentives', *IMF* <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Empirical-Evidenceon-the-Effects-of-Tax-Incentives-23053> [accessed 16 December 2018].

[193] The Punch, *IMF wants Nigeria to stop tax holidays* available at https://punchng.com/imf-wants-nigeria-to-stop-tax-holidays/ accessed 19/11/2018

[194] 'Revenue Mobilization in Sub-Saharan Africa : Challenges from Globalization', *IMF* <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Revenue-Mobilization-in-Sub-Saharan-Africa-Challenges-from-Globalization-23124> [accessed 16 December 2018].

[195] Financial Action Task Force (FATF), *Money Laundering Vulnerabilities of Free Trade Zones*, 2010 <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf> [accessed 23 May 2019].

payments, or for the creation of legal entities to launder illicit proceeds.[196] The Financial Action Task Force (FATF) reports cases where free trade zones are used for the laundering of drug trafficking proceeds, or to shift profit abroad while abusing transfer pricing strategies by multinational companies.[197]

However, despite the high risks and challenges mentioned above and the significant fall in corporate income taxes throughout the last decades, the use of tax holidays and "special" economic zones continues to rise.[198, 199]

[196] Financial Action Task Force (FATF), *Money Laundering Vulnerabilities of Free Trade Zones*; Financial Action Task Force (FATF), *Money Laundering and Terrorist Financing Though Trade in Diamonds*, 2013 <http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf> [accessed 23 May 2019].

[197] Financial Action Task Force (FATF), *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, 2013, 61 <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf> [accessed 11 December 2018].

[198] Saila Naomi Stausholm, 'Rise of Ineffective Incentives: New Empirical Evidence on Tax Holidays in Developing Countries', *SocArXiv*, 2017 <https://osf.io/preprints/socarxiv/4sn3k/> [accessed 10 October 2018].

[199] Patrick Neveling, 'Free Trade Zones, Export Processing Zones, Special Economic Zones and Global Imperial Formations 200 BCE to 2015 CE', 2015, 1006–17.

3.7 HI 7 – Patent Boxes

3.7.1 What is measured?

This indicator measures whether a jurisdiction offers preferential tax treatment for income related to intellectual property rights (e.g. patent boxes) and whether the Organisation for Economic Co-operation and Development (OECD) nexus approach constraints (as explained below) are applicable to the patent box. The term "patent box" is increasingly being used more widely than only for patent incentives alone to reflect a range of preferential tax treatments for intellectual property.[200] To explain the logic of this indicator, we hereafter define all tax regimes affecting the corporate income tax treatment for intellectual property related income as "patent box regimes".

A haven score of zero for this indicator is provided only if the jurisdiction has not introduced a patent box regime, either with or without the constraints determined by the OECD nexus approach. A haven score of 100 is given if the jurisdiction offers a patent box regime without OECD nexus constraints or if the patent box regime is not applicable for the jurisdiction given that it imposes no corporate income tax or a zero statutory tax rate. The haven score is reduced by 10 if the patent box regime offered by the jurisdiction is in line with the OECD nexus approach.

A preferential tax treatment for intellectual property rights usually takes the form of either special cost-based tax incentives or profit-based tax incentives (e.g. lower tax rates). The first step in our analysis was therefore to identify whether either the income or the expenses (or both) qualify for a patent box regime. For this indicator, we considered that a jurisdiction adopts a patent box regime only whenever the regime is characterised as a profit-based one. If the jurisdiction has more than one regime, we assessed it according to the weakest link principle. Once a patent box regime was identified in the jurisdiction, we checked whether that regime was available with or without the OECD nexus constraints.

The scoring matrix is shown in Table 7.1, with full details of the assessment logic presented in Annex B.

200 https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/; [accessed 1 Marcy 2019].

Table 7.1. Scoring Matrix Haven Indicator 7

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
Patent box regime is available without OECD nexus constraints The jurisdiction offers a patent box regime without the OECD nexus approach. **Or** The patent box regime is not applicable for the jurisdiction given it imposes no corporate income tax or a zero statutory corporate tax rate.	100
Patent box regime is available with OECD nexus constraints The jurisdiction offers a patent box regime which is in line with the OECD nexus approach.	90
Patent box regime is not available There is no evidence that the jurisdiction offers a patent box regime.	0

The final Action 5 report of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS), which focuses on tackling harmful tax practices[201] (hereinafter, "Action 5 report"), adopts the nexus approach as a way to identify whether a preferential tax regime is harmful. The first OECD report on Action 5 examined situations in which a preferential patent box regime is considered harmful. For example, an indication of a potentially harmful patent box regime is when the patent box regime is the primary motivation for the location of an activity. Action 5 report includes two parts, the first aims at identifying whether features of patent box regimes are harmful and the second aims at ensuring transparency through the compulsory exchange of related tax rulings. The Action 5 report is one of the four minimum BEPS standards, which all members of the Inclusive Framework on BEPS have committed to implement.

The nexus approach, as developed by the OECD and presented in 2014 in a preliminary Action 5 report,[202] was one among others that were suggested for

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

[202] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, OECD/G20 Base Erosion and Profit Shifting Project (2014) <http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-

requiring substantial activity for any preferential tax regime, such as patent boxes. The nexus approach requires a link between the income benefiting from the intellectual property and the underlying research and development activities that generate the intellectual property.[203] The approach allows taxpayers to benefit from an intellectual property regime only if they can link the income that stems from the intellectual property to the expenditures (such as research and development) it incurred (either by the taxpayer itself or by outsourcing it to a third party, i.e., qualified research and development activities).[204] Under research and development credits and similar "front-end" tax regimes, the expenditures are directly used to calculate the tax benefits. However, the nexus approach extends the principle of front-end tax regimes also to back-end tax regimes that apply to the income earned after the exploitation of the intellectual property. In other words, the expenditures act as a proxy for substantial activities. That is, the proportion of expenditures directly related to development activities acts as a proxy for how much substantial activity the taxpayer undertook.[205]

The other two main suggested approaches for requiring substantial activity were value creation and transfer pricing. Value creation means that tax benefits apply only if specific criteria for development activities taking place in the jurisdiction are met. Transfer pricing requires the assessment of functions, assets and risks.[206] Out of the several suggested approaches, a modified nexus approach was later endorsed by all OECD and G20 countries. The modified nexus approach includes the following main changes to the original nexus approach: 1) Up to 30% uplift of qualifying expenditures can be considered in determining the nexus ratio in limited circumstances. This means that if a company has, for example, an expenditure cost of US$1m, it can set US$1.3m against tax; b) 30 June 2016 was the last date to introduce new entrants to patent box regimes that were not consistent with the nexus approach; and c) 30 June 2021 was the last date for their elimination as well as some opportunities for "grandfathering" of existing provisions.[207] For this indicator, in cases where a jurisdiction introduced grandfathering rules that enable companies which entered the regime earlier to continue benefitting from the old patent box regime (without nexus constraints)

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effectively-taking-into-account-transparency-and-substance_9789264218970-en> [accessed 16 August 2018].

[203] https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/; [accessed 15 August 2018].

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

[205] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, 29.

[206] https://www.taxnotes.com/tax-notes-today/intangible-assets/news-analysis-patent-box-bad-idea-crosses-atlantic/2015/07/20/14938061; [accessed 16 August 2018].

[207] https://www.oecd.org/ctp/explanatory-paper-beps-action-5-agreement-on-modified-nexus-approach-for-ip-regimes.pdf; [accessed 1 March 2019].

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until 30 June 2021, we conclude that as of May 2019, the preferential regime is still available and relevant for the purposes of this indicator. We will, however, consider the changes for the next publication of the Corporate Tax Haven Index.

The data for this indicator has been collected primarily through the International Bureau of Fiscal Documentation (IBFD) database (country analyses and country surveys)[208] as well as from the OECD's latest peer reviews[209] of preferential regimes. In some instances, we have also consulted additional websites and reports of the Big Four accountancy firms and local tax authorities.

All underlying data can be accessed freely in the CTHI database.[210] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (ID 515) in the database report of the respective jurisdiction.

3.7.2 Why is this important?

A patent box regime provides tax privileges for highly profitable businesses and enables cross-border profit shifting into these tax regimes, undermining the tax bases of jurisdictions elsewhere.[211] Promises to spur innovation, tax revenues and growth through the introduction of patent boxes have failed to materialise in empirical data. In contrast, available evidence suggests that patent box regimes are effective only for raising multinationals' share prices. For example, research conducted by the Congressional Research Service in the USA and published in May 2017 concluded the following:

> There is no evidence that a patent box necessarily increases tax revenues in the host country; rather, countries that adopt a patent box may find that the added revenue from new patenting activity is eclipsed by the loss of revenue from the reduced tax rates for patent income. As more countries adopt a patent box, the risk grows of an inter-government tax competition triggering a race to the bottom of the ladder of effective tax rates on patent income. Patent boxes have had little impact on innovative

208 IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

209 OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, November 2018 <http://www.oecd.org/tax/beps/update-harmful-tax-practices-2017-progress-report-on-preferential-regimes.pdf> [accessed 5 December 2018].

210 http://www.corporatetaxhavenindex.org/database/menu.xml

211 https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].

activity in host countries in the absence of a local development requirement.[212]

Similarly, recent empirical research, published by the Max Planck Institute for Innovation and Competition, analysed the effects of the introduction of patent box regimes in 13 European countries between 2000 and 2014. According to the research, given that a patent box regime subsidises output rather than input, it benefits mainly companies that have already had success with their invention. And while it may encourage other companies to undertake such inventions, this can be done in a better and more efficient way.[213]

Another report, published in 2015 by the European Commission, concluded that patent boxes are not the most effective way to stimulate innovation and research and development.[214] In fact, it appears that jurisdictions without such patent box regimes have been more successful in attracting and fostering innovative businesses.[215] However, although the efficiency of patent box regimes in fostering research and the associated jobs has never been proven, jurisdictions continue to provide companies with huge tax incentives by introducing these regimes.

Furthermore, in cases where patent box regimes are adopted in addition to generous tax breaks for research that are already available through deductions of actual expenditures, such regimes may cause more damage than benefit to the host country.[216] For example, in 2015, the Dutch government found that its innovation box resulted in a tax loss of €361m to the Netherlands in 2010. In 2012, this sum was almost double, increasing to €743m.[217] Finally, a report published by the Centre for European Economic Research in 2013 claims that:

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[212] Gary Guenther, *Patent Boxes: A Primer* (May 2017), 19 <https://fas.org/sgp/crs/misc/R44829.pdf>.

[213] Fabian Gaessler, Bronwyn H Hall and Dietmar Harhoff, *Should There Be Lower Taxes on Patent Income?*, 2018, 44 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3216471>.

[214] Annette Alstadsa eter and others, 'Patent Boxes Design, Patents Location, and Local R&D', *Economic Policy*, 33/93 (2018), 131–177. <https://ec.europa.eu/jrc/sites/jrcsh/files/JRC96080_Patent_boxes.pdf > [accessed 16 August 2018].

[215] CPB Netherlands Bureau for Economic Policy Analysis, *A Study on R & D Tax Incentives: Final Report*, Working Paper n. 52 – 2014 (Luxembourg, 2014) <https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_52.pdf>.

[216] https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].

[217] Esmé Berkhout, *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax* (December 2016), 19 <https://www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf>.

> In the larger of the countries, that have significant innovation bases, it is more likely that IP [intellectual property] boxes will lead to significant revenue losses. Empirical evidence that simulates the Benelux and UK IP Boxes finds that the increase in IP income locating in the countries is insufficient to outweigh the lower tax rate.[218]

Importantly, patent box regimes confirm the futile notion of competition on tax, locking in a race to the bottom.[219] As a result, while patent boxes in theory could increase tax revenues, positive effects of an individual country's policy are likely to be eroded by the response of other governments, which respond by introducing even more aggressive and corrosive tax policies.[220] For many years, patent boxes have been used by multinational corporations to avoid taxation by shifting profits out of the countries where they do business and into a foreign country with a patent box regime, where the profits are taxed at very low levels or not at all. Researchers indicate that such profit shifting leads to misattribution of economic activities, resulting in productivity slowdown.[221] It also enables multinational companies to monopolise the market while companies that lack the scale of the multinational corporations will be disadvantaged simply because they do not have the resources available to establish global structures which can allow them to avoid tax.[222]

For all of the above reasons, patent box regimes are particularly damaging to developing countries. These countries may be used simply as manufacturing platforms, while their tax base may be drained by profit shifting, which in practice is legitimised by the patent box regime. Patent box regimes, therefore, cannot be justified as a viable fiscal incentive and should be eliminated.

While the OECD nexus approach is a step in the right direction, the constraints set out by the approach are not sufficient to prevent the abuse of patent boxes as tactics in profit shifting and base eroding tax wars. This is because profits from the use of patents are going to be taxed at a lower rate, and the size and

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[218] ZEW Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, November 2013, 38–39 <ftp://ftp.zew.de/pub/zew-docs/dp/dp13070.pdf>.

[219] https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/; [accessed 1 March 2019].

[220] Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, 39.

[221] Fatih Guvenen and others, *Offshore Profit Shifting and Domestic Productivity Measurement* (2017) <https://www.nber.org/papers/w23324.pdf>.

[222] Andrew Hwang, *Thinking Outside the (Patent) Box: An Intellectual Property Approach to Combating International Tax Avoidance* (2018), 28 <http://rooseveltinstitute.org/wp-content/uploads/2018/05/Thinking-Outside-the-Patent-Box-final.pdf>.

amount of qualifying profits may be unlimited.[223] Implementing and enforcing the nexus requirements are obstacles which are near impossible to overcome in order to prevent the abuse of patent boxes for inward profit shifting. Not only does the patent box jurisdiction have little incentive to reduce the attributable profits to the patent box, the criterion for demonstrating "substantial economic activities" as a condition for profit attribution is both complex and burdensome to apply for both companies and tax authorities, and relatively easy to meet.

Governments will need to make sure that national rules comply with the agreed standard and that tax authorities are able to trace which of the expenditures is considered as "qualifying expenditure".[224] This may be a recipe for sweetheart deals[225] as we have already seen with the LuxLeaks revelations[226] and the European Commission's decisions on illegal state aid from countries including Ireland, Luxemburg and the Netherlands.[227] Furthermore, as long as the thresholds required by any nexus rules have been taken, the amounts of profit to be attributed to the patents can be easily manipulated under the existing indeterminacy of transfer pricing rules. Therefore, the abuse of patent boxes with a nexus constraint can hardly be prevented. Nonetheless, we acknowledge that the nexus approach has so far only been implemented for a short period and there is not enough robust evidence and studies to confirm our arguments for its insufficiency. In acknowledging this lacking empirical validation of the nexus' rules inefficacy, we reduce the haven score by 10 for jurisdictions that offer patent box regimes in line with the OECD nexus approach.

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[223] https://www.taxjustice.net/2014/11/13/uk-patent-box-will-come-back-back-door-accompanied-germany/; [accessed 1 March 2019].

[224] https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].

[225] http://www.cgdev.org/blog/luxleaks-reality-tax-competition; [accessed 1 March 2019].

[226] https://www.icij.org/investigations/luxembourg-leaks/; [accessed 1 March 2019].

[227] http://ec.europa.eu/competition/state_aid/overview/index_en.html; [accessed 1 March 2019].

3.8 HI 8 – Fictional Interest Deduction

3.8.1 What is measured?

This indicator measures whether a jurisdiction offers fictional interest deduction to lower corporate income taxes. Because the deduction is given even though no actual interest was paid, the interest deduction is referred to as "fictional" or "nominal". Fictional interest deduction allows a company with a capital structure with high equity (i.e. mostly financed by issuing shares instead of borrowing money) to deduct a certain sum of fictitious financial costs from its tax base. These fictitious costs are calculated as hypothetical interest expenses the company would have paid had it been financed with debt (i.e. a loan) instead of equity.

The data for this indicator has been collected primarily through the International Bureau for Fiscal Documentation's database (country analyses and country surveys),[228] the Centre for European Economic Research's 2017 Report[229], the International Monetary Fund's 2018 report[230] and the European Union Code of Conduct 2018 report[231]. In some instances, additional websites and reports of the Big Four accountancy firms have also been consulted.

A jurisdiction receives a haven score of 100 for this indicator if it has a fictional interest deduction regime. If there is no fictional interest deduction regime, a jurisdiction receives a whereas a zero haven score. The scoring matrix is shown in Table 8.1, with full details of the assessment logic presented in Annex B.

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[228] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[229] Christoph Spengel and others, *Effective Tax Levels Using the Devereux/Grifith Methodology- Project for the EU Commission TAXUD/2013/CC/120, Final Report 2017.* (January 2018) <https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_effective_tax_levels_en.pdf> [accessed 27 December 2018].

[230] Shafik Hebous and Alexander Klemm, *IMF Working Paper- A Destination-Based Allowance for Corporate Equity*, WP/18/239, November 2018 <https://www.imf.org/en/Publications/WP/Issues/2018/11/08/A-Destination-Based-Allowance-for-Corporate-Equity-46314> [accessed 27 December 2018].

[231] Council of the European Union, *Code of Conduct Group (Business Taxation) – Overview of the Preferential Tax Regimes Examined by the Code of Conduct Group (Business Taxation) since Its Creation in March 1998* (Brussels, 3 December 2018) <http://data.consilium.europa.eu/doc/document/ST-9639-2018-REV-2/en/pdf> [accessed 24 February 2019].

Table 8.1. Scoring Matrix Haven Indicator 8

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
Fictional Interest Deduction regime is available The jurisdiction offers a fictional interest deduction regime.	100
Fictional Interest Deduction is not available There is no evidence that the jurisdiction has introduced a fictional interest deduction regime.	0

All underlying data can be accessed freely in the CTHI database.[232] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (ID 516) in the database report of the respective jurisdiction.

3.8.2 Why is this important?

The difference in the tax treatment of equity returns (i.e. dividends) and returns on debt (i.e. interest payments) is one of the key ways corporations and individuals can engage in tax avoidance. Companies can reduce tax liabilities by using hybrid financial instruments to restructure their finances internally, which often includes moving debt between affiliates from higher tax countries to tax havens.[233]

Many tax systems around the world offer tax advantages for corporations to finance their investments by debt. As opposed to dividends, which are not deductible and are paid to shareholders after tax has been paid, interest payments on loans are one of the many deductible costs a company can make for corporate tax purposes. The more debt a company takes on, the more interest it pays, which lowers its tax bill and leads to a debt bias, i.e., tax-induced bias toward debt finance. Evidence show that debt bias creates significant inequities, complexities, and economic distortions.[234] The 2008

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

[233] Ruud A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, International Monetary Fund Staff Discussion Note, May 3, 2011 (Washington, DC, 2011), 3 <https://www.imf.org/external/pubs/ft/sdn/2011/sdn1111.pdf> [accessed 16 August 2018].

[234] https://www.bis.org/review/r111215g.pdf; [accessed 31 March 2019].

economic crisis brought home the harmful economic effects of excessive levels of debt in the banking sector.[235]

To mitigate the different tax treatments of debt and equity financing and to reduce the level of debt bias, some countries have introduced a fictional interest deduction regime. The term "fictional interest deduction" refers to fictitious interest expenses that companies and sometimes also permanent establishments are entitled to calculate annually on the amount of their total equity and deduct for tax purposes, in the same way that interest on loans is tax deductible. The amount that can be deducted from the taxable base is equal to the fictitious interest cost on the adjusted equity capital.[236]

Belgium was one of the first countries to introduce a fictional interest deduction regime in 2005[237] and since then, other countries like Italy, Cyprus and recently Malta[238] have followed suit.

Given that excessive debt in financial firms creates negative spillover effects in the rest of the economy[239], countries should endeavour to prevent this bias towards debt. However, adopting a fictional interest deduction regime to neutralise the debt bias has significant drawbacks. First, the idea behind the fictional interest deduction regime is to apply an artificial interest deduction. Not surprisingly, such a fictitious vehicle may be vulnerable to tax abuse by multinational companies. And indeed, soon after the fictional interest deduction regime was introduced in Belgium, multinational companies used commonly applied techniques of abuse. Through double dipping, companies end up receiving two tax benefits: the tax deduction of interest paid on a loan and fictional interest deduction based on the capital increase with the funds made available by the loan. The latter includes artificially increasing equity through specific intra-group reorganisation.[240]

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[235] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 3.

[236] The fictional interest deduction calculates the allowable deduction by multiplying the interest rate with the amount of (qualifying) equity of the taxpayer [Fictional interest deduction = fictional interest rate x adjusted equity], thus reducing the tax base and resulting in a lower effective tax rate. For further information, see https://www.loyensloeff.com/en-us/news-events/newsletters/notional-interest-deduction; [accessed 15 May 2019].

[237] Articles 205 *bis* to 2015 *novies* in the Belgium Income Tax Code, introduced by the law of June 22nd, 2005.

[238] Shafik Hebous and Alexander Klemm, *IMF Working Paper- A Destination-Based Allowance for Corporate Equity*, 22.

[239] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 19.

[240] https://www.tiberghien.com/media/ACTL%20seminarie_Bernard&Thomas.pdf; [accessed 31 March 2019].

Second, since a company's tax base can be reduced through fictional interest deductions, the tax bills of multinational companies will shrink. As a result, in aggregate, this significantly reduces government revenues and thereby governments' ability to provide public services for the realisation of human rights, and/or it will lead to tax increases for other segments of society. Additionally, other countries may decide in response to fictional interest deduction to lower their tax rates in an attempt to lure more multinationals to invest. This accelerates the race to the bottom in corporate taxation. In terms of budgetary costs, some researchers suggest that narrowing the tax base through applying a fictional interest deduction regime or similar variants of allowances for corporate equity has a direct estimated revenue cost of approximately 15 per cent of corporate income tax revenue, or 0.5 per cent of GDP.[241] Research into Belgium's fictional interest deduction regime estimated that these allowances added up to approximately €6bn and reduced the corporate tax yield by slightly more than 10 per cent.[242] Indeed, as the regime turned out to be too costly for the Belgian government, the government has since decided to reduce the rate of fictional interest deductions in phases in subsequent years.[243] However, in similar cases, other governments have chosen to recoup the costs of a fictional interest deduction regime through raising value added taxes or other indirect taxes.[244] This worsens inequality in the distribution of the tax contributions and aggravates human rights deficits.

Therefore, rather than adopting the fictional interest deduction regime, alternative ways to mitigate excessive debt bias have been proposed by the International Monetary Fund, including "a partial denial of interest deductibility, only applied to intracompany interest [...]".[245] Denying the deduction of interest on cross-border intracompany loans[246] would force multinational companies either to borrow funds and share the risks among their local domestic subsidiaries or instead to borrow directly from the independent debt market. The effect of this would be to increase competition in countries where multinational companies operate. It would create a level playing field between multinational companies and other companies that solely operate domestically and thus do not have

[241] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 18.
[242] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 17.
[243] Madalina Cotrut, *International Tax Structures in the BEPS Era*, 2015. pp. 110-112.
[244] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 18.
[245] de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, 19.
[246] See Haven Indicator 15 on Outbound Intra-Group Interest Payment treatment for further details, available at: http://www.corporatetaxhavenindex.org/PDF/15-Deduction-Limitation-Interest.pdf; [accessed 15 May 2019].

access to the more advantageous conditions that multinational companies enjoy in the international capital markets.[247]

In other words, constraining the deductibility of intra-group interest or allowing a fictional interest deduction are two solutions to address the debt bias. Yet fictional interest deduction regimes incentivise tax abuse by multinational companies and accelerate the race to the bottom in corporate taxation. Instead, constraining deductibility of intra-group interest can assist host countries in protecting their tax base and facilitate fair market competition in domestic markets.

[247] George Turner, *Tax Justice Network Briefing- Shifting Profits and Dodging Taxes Using Debt* (November 2017), 4 <https://www.taxjustice.net/wp-content/uploads/2017/11/Dodging-taxes-with-debt-TJN-Briefing.pdf> [accessed 15 May 2019].

3.9 HI 9 – Public Company Accounts

3.9.1 What is measured?

This indicator considers whether a jurisdiction requires all available types of company with limited liability to file their annual accounts with a government authority or administration and makes them accessible online for free or at a maximum cost of US$10, €10 or £10.[248]

The haven scoring matrix is shown in Table 9.1, with full details of the assessment logic presented in Annex B.

Table 9.1. Scoring Matrix Haven Indicator 9

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
Not online (at a small cost) Not all types of companies publish their annual accounts online for a cost of up to €10/US$10/£10, or unknown.	100
Online at a small cost All types of companies publish their annual accounts and publish them online at a cost of up to €10/US$10/£10.	50
Online for free, but not in open data All types of companies file their annual accounts and publish them online for free, but not in open data format.	25
Online, free & in open data All types of companies file their annual accounts and publish them online for free and in open data format.	0

If not all types of companies publish their annual accounts online, then the haven score is 100. If the annual accounts are available online but there is a cost to access them, the haven score will be reduced to 50. In cases where the annual accounts are available online for free, the haven score will be further reduced to

[248] We believe online accessibility for free is a reasonable requirement given a) the prevalence of the internet in 2018 and b) the complete reliance of international financial flows on modern technology. It would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it. This requirement is informed by the open data movement according to which all available company registry information, including accounts, should be made available, for free, in open and machine-readable format. For more information about this see http://opencorporates.com/; [accessed 1 May 2019].

25. To obtain a zero haven score, this data needs to be accessible online for free and in open data format. Even if the cost per record is low, it can be prohibitively expensive to import this information into an open data environment which limits the uses of the data. Access costs create substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions, and for new creative data usages.[249] Complex payment or user-registration arrangements for accessing the data (e.g. registration of an account, requirement of a local identification number or sending a hard-copy request by post) should not be required.[250]

Other requirements from an open data perspective for obtaining a zero haven score relate to the type of license for data use, and if the data is fully downloadable from the internet. In cases where data was found to be freely available, we have consulted the corresponding jurisdiction at the Open Company Data Index published by Open Corporates.[251] Data is considered open only if there is an open license or no license required for the reuse of the data and if the data was freely available for download.

We performed a random search of each of the relevant corporate registries to ensure that the accounts are effectively available and that technical problems do not persistently block access. A precondition for a reduction of the haven score is that all available types of companies with limited liability are required to keep accounting records, including underlying documentation; and that they are required to submit accounts to a public authority. However, if there are exceptions for filing of company accounts for small companies, we disregard those exceptions for the purposes of the Corporate Tax Haven Index, because the focus of this index is on large multinational companies and not on small companies.

We have drawn this information from five principal sources.[252] First, the Global Forum peer reviews[253] have been used to find out whether a company's financial

[249] These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. For more information about this, see http://opencorporates.com/; [accessed 1 May 2019].

[250] We consider that for something to be truly "on public record" prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

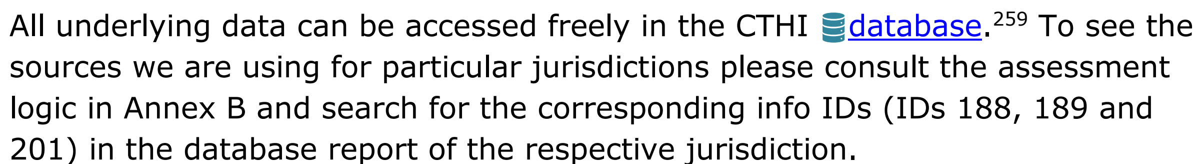
[251] http://registries.opencorporates.com/; [accessed 1 May 2019].

[252] To see the sources used for particular jurisdictions, please check the corresponding information in our database, available at http://www.corporatetaxhavenindex.org/database/menu.xml.

[253] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for

statements are required to be submitted to a government authority, and if reliable accounting records need to be kept by the company in the jurisdiction. The latter is important because if the accounts are kept outside the jurisdiction, it is much more difficult – and sometimes even impossible – to enforce this legal obligation. Second, private sector internet sources have been consulted, including Lowtax.net[254] and Ocra.com[255]. Third, results of the Tax Justice Network Survey of 2017 (or earlier) have been included.[256] Fourth, in cases where the previous sources indicated that annual accounts are submitted or available online, or both, the corresponding company registry websites have been consulted. Fifth, in that case, the Open Company Data Index published by Open Corporates has been consulted as well.[257]

Following the weakest link principle[258] for our Corporate Tax Haven Index research, a precondition for reducing the haven score in this component is that all available types of companies are required to publish the relevant information online and that the information is required to be updated at least annually. If any exceptions are allowed for certain types of companies, we assume that anyone intending to conceal information from public view will simply opt for establishing a company where these requirements to do not apply. In line with the Corporate Tax Haven Index's focus on large multinational companies, the only exception for account filings relates to small companies.



All underlying data can be accessed freely in the CTHI database.[259] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 188, 189 and 201) in the database report of the respective jurisdiction.

Tax Purposes. Section A.2. in the reports refers to, among others things, the requirement to keep underlying documentation and the retention period for keeping accounting records. The reports can be viewed at: http://www.eoi-tax.org/; [accessed 1 May 2019].

[254] https://www.lowtax.net/; [accessed 1 May 2019].

[255] https://www.ocra.com/jurisdictions/; [accessed 1 May 2019].

[256] The survey was conducted by the Tax Justice Network in early 2017. The questionnaire sent out to Ministries of Finance and National Audit Offices can be viewed here: http://www.financialsecrecyindex.com/PDF/FSI2017_Questionnaire.pdf; and the questionnaire sent to Financial Intelligence Units can be downloaded here: https://www.financialsecrecyindex.com/PDF/FSI2018-Questionnaire-FIU.pdf

[257] http://registries.opencorporates.com/; [accessed 1 May 2019].

[258] The "weakest link" research principle is used synonymously with the "lowest common denominator" approach. During the assessment of a jurisdiction's legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the haven score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator's haven score.

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

3.9.2 Why is this important?

Access to timely and accurate annual accounts is crucial for every company with limited liability in every country for a variety of reasons.

First, public accounts make it possible to assess the potential risks of trading with limited liability companies. Public accounts thus help to protect the legitimate interests of a wide range of actors. These actors include consumers and clients, and business partners and creditors, as well as public officials dealing with public procurement and public–private partnerships.

Second, in times of financial globalisation, financial regulators, tax authorities and anti-money laundering agencies need to be able to assess cross-border implications of the activities of companies. Unhindered access to the accounts of foreign companies and subsidiaries empowers regulators and authorities to double check the veracity and completeness of locally submitted information and to assess the macro-consequences of corporate undertakings without imposing excessive costs.

Third, no company can be considered accountable to the communities where it is licensed to operate (and where it enjoys the privilege of limited liability) unless it places its accounts on public record. Journalists and civil society groups have legitimate reasons for accessing company accounts to assess them on matters of fair trade, environmental protection, human rights protection and charitable purposes. This can be done only when accounts are available for public scrutiny.

Many multinational corporations structure their global network of subsidiaries and operations in ways that take advantage of the absence of any requirement to publish accounts on public record. Corporate tax havens or secrecy jurisdictions enable and encourage corporate secrecy in this respect. If annual accounts were required to be placed online in every jurisdiction where a company operates, the resultant transparency would severely inhibit transfer mispricing and other tax avoidance techniques. We do not, however, regard this requirement as a substitute for a full country-by-country reporting standard (see Haven Indicator 10).

3.10 HI 10 – Country by Country Reporting

3.10.1 What is measured?

This indicator measures whether the companies listed on the stock exchanges or incorporated in a given jurisdiction are required to publish publicly worldwide financial reporting data on a country-by-country reporting basis.[260]

A zero haven score can be achieved when public country-by-country reporting[261] (CBCR) is required by all companies (which is not yet the case in any jurisdiction). If a jurisdiction requires no public country-by-country reporting for any corporation in any sector, the haven score is 100. A slight reduction of 10 is available for jurisdictions requiring some narrow, one-off public country-by-country reporting for corporations active in the extractive industries. Partial reductions of the haven score can be achieved by requiring some annual public country-by-country reporting for corporations active in the extractive industries or banking sector, or both (a reduction of 25 for each sector). For an overview of all data fields included in various country-by-country reporting standards, please refer to Annex 1 below.

The scoring matrix is shown in table 10.1, with full details of the assessment logic presented in Annex B.

In principle, any jurisdiction could require all companies incorporated and operating under its laws (including subsidiaries, branches and holding companies) to publish financial information in their accounts on their global activity on a country-by-country basis. Appropriate reporting requirements can be implemented either through regulations issued by the stock exchange or by a legal or regulatory provision enacted by the competent regulatory or legislative body.

[260] This indicator applies the same methodology as the Key Financial Secrecy Indicator 8 of the Financial Secrecy Index.

[261] Tax Research UK and Tax Justice Network, *Country-by-Country Reporting*, October 2010 <http://www.taxresearch.org.uk/Documents/CBC.pdf> [accessed 17 May 2019].

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Table 10.1. Scoring Matrix Haven Indicator 10

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
No reporting No public country-by-country reporting required for any corporations in any sector.	100
One-off reporting Some one-off public country-by-country reporting required for corporations active in the extractive industries (Extractive Industries Transparency Initiative equivalent, at least for those listed).	-10
Some annual reporting Some annual public country-by-country reporting required for corporations active in the extractive industries or banking.	-25 (for each sector covered)
Full reporting Full annual public country-by-country reporting required for corporations of all sectors (at least for those listed or for all above €750m turnover).	0

The key difference between the kind of country-by-country reporting monitored in this indicator and Action 13[262] of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan, which introduced filing of country-by-country reports of large multinational companies, is that the latter does not require this information to be made public. Instead, information is only disclosed to the tax authorities in the headquarter jurisdiction of a multinational company. Tax authorities in jurisdictions where the company has subsidiaries can request information through a series of different mechanisms. This limited access has been shown to exacerbate global inequalities in taxing rights.[263] This is discussed in greater detail in Haven Indicator 11.[264]

[262] https://www.oecd.org/tax/beps/country-by-country-reporting.htm; [accessed 19 October 2017].

[263] Andres Knobel and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf> [accessed 9 February 2017].

[264] http://www.corporatetaxhavenindex.org/PDF/11-CBCR-Local-Filing.pdf

Public country-by-country reporting for financial institutions was introduced by European Union member states in 2014 and 2015 (Capital Requirements Directive IV).[265] These European Union rules for banks include annual disclosure of turnover, number of employees, profit or loss before tax, tax on profit or loss, and public subsidies received. On these grounds, a haven score reduction of 25 applies to all European Union member states that have fully transposed the measures.[266]

Another set of far narrower country-by-country reporting rules for the extractives industries has become law in the European Union, Ukraine, Canada and Norway. These complement the voluntary, nationally-implemented Extractive Industries Transparency Initiative (EITI)[267], which prescribes the annual publishing of all "material payments" to government made by companies active in the extractive sector of that particular EITI implementing country. The threshold for the materiality of payments, which companies and government must comply with for

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[265] The European Union *Capital Requirements Directive IV 2013/36/EU*, 2013, Article 89 <https://eur-lex.europa.eu/eli/dir/2013/36/oj> [accessed 17 May 2019] requires reporting. The only main item missing for full county-by-country reporting is capital assets. According to Article 89(1), the European Commission had to carry out an impact assessment of the envisaged publication of the data, and the Commission was empowered to defer or modify the disclosure through a so-called "delegated act" in case it identified "significant negative effects" consequences (Art. 89 (3)). In October 2014, the Commission adopted a report containing this assessment of the economic consequences of country-by-country reporting for banks and investment firms under CRD IV. The European Commission adopted the report's conclusion according to which: "the reporting obligation under CRD IV are not expected to have a significant negative economic impact, including on competitiveness, investment, credit availability or the stability of the financial system". For the press release, see: http://europa.eu/rapid/press-release_IP-14-1229_en.htm; [accessed 16 October 2017].

[266] EU member states were required to transpose the EU CRD IV by 31 December 2013. For transposition status, see: https://ec.europa.eu/info/publications/capital-requirements-directive-crd-iv-transposition-status_en; [accessed 24 January 2019]. As of January 2019, Spain faced infringement proceedings for the country's failures in transposition of Capital Requirements Directive IV, and as such public disclosure requirements in the banking sector are considered not implemented.

[267] The EITI Standard (2016) Requirement 4, requires "a comprehensive reconciliation of company payments and government revenues from the extractive industries. The EITI requirements related to revenue collection include: (4.1) comprehensive disclosure of taxes and revenues; (4.2) sale of the state's share of production or other revenues collected in-kind; (4.3) Infrastructure provisions and barter arrangements; (4.4) transportation revenues; (4.5) SOE [State-Owned Enterprise] transactions; (4.6) subnational payments; (4.7) level of disaggregation; (4.8) data timeliness; and (4.9) data quality". Revenue streams include the host government's production entitlement (e.g. profit oil), national state-owned enterprise's production entitlement, profit taxes, royalties, dividends, bonuses, licence and associated concession fees, and any other significant payments/material benefit to government. The EITI International Secretariat, 'The EITI Standard', 2016 <https://eiti.org/sites/default/files/migrated_files/english_eiti_standard_0.pdf> [accessed 17 May 2019].

a reporting year, is determined by a national multi-stakeholder group for each reporting cycle.

Compared to full country-by-country reporting and the European Directive on reporting in the banking sector, the EITI Standard (2016) is also far narrower in geographical scope because it requires disclosure of payments only in countries where the corporation actually has extractive operations and only for the countries that are part of the EITI. Payments to other country governments, for example, where holding, financing or intellectual property management subsidiaries of the same multinational group are located, are not required to be reported. This limits the data's usefulness for tackling corporate profit shifting. The standard's value for resource rich (developing) countries, however, is substantial. Yet in our assessment, it is not sufficient for a country merely to oblige or allow extractive companies operating within their territory to publish payments to this country's government agencies.

Instead, for a reduction of the haven score by 25 for country-by-country reporting in the extractives, a country must require either all companies incorporated in its territory or those listed on a stock exchange to disclose payments made worldwide in countries with extractive operations (including by its subsidiaries) and not merely in the same country. This is achieved, at present, in only the Ukraine, Canada and EU countries.[268]

- **European Union:** The European Parliament and Council passed the Accounting and Transparency Directive in 2013 (Directive 2013/34/EU),[269] obliging mining, oil and gas, and logging companies over a defined size to report payments to government. All 28-member states have transposed this directive.[270]

- **Ukraine:** On 18 September 2018,[271] Ukraine adopted a law to ensure transparency in the extractive industries (No. 2545-VIII) and this has been effective since 16 Nov 2018. The first reporting year is 2018 for

[268] Alex Cobham, Jonathan Gray and Murphy, Richard, *What Do They Pay?*, CIYPERC Working Paper Series 2017/01 (London, 2017) <www.city.ac.uk/__data/assets/pdf_file/0004/345469/CITYPERC-WPS-201701.pdf> [accessed 6 June 2017].

[269] European Parliament and Council of the European Union, *Accounting Directive 2013/34/EU*, 2013 <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0034> [accessed 17 May 2019].

[270] For Accounting Directive (2013/34/EU) transposition status (last updated 25 May 2018), see: https://ec.europa.eu/info/publications/accounting-directive-transposition-status_en; [accessed 5 October 2017].

[271] *Law of Ukraine on Ensuring Transparency in the Extractive Industries, No 2545-VIII*, 2018 <https://zakon.rada.gov.ua/go/2545-19> [accessed 17 May 2019] and http://eiti.org.ua/wp-content/uploads/2018/11/eng-pereklad-6229.pdf (translation)

companies, which means companies have to report in 2019 the data from 2018. According to the DiXi Group,[272] the law is fully compliant with the European Union Directive (2013/34/EU) and has received endorsements from the European Union's Delegation to Ukraine.[273]

- **Norway:** The scope of Norway's regulated country-by-country reporting for enterprises in the extractive industry and in logging of non-planted forestry,[274] effective as of 1 January 2014, is broader than similar rules in the European Union. Norway's rules additionally require the disclosure of sales income, production volume, costs, and number of employees in every subsidiary.[275] However, Norwegian companies are only required to report data for countries "where there is a physical withdrawal of natural resources"[276] and do not have report data for their activities in countries where payments to authorities exceeds NOK 800,000, which is usually not required in third countries, which the Norwegian Ministry of Finance calls "supportive functions".[277] The result is that companies in

[272] Email Communication with DiXi Group, 21 February 2019.

[273] The DiXi Group highlighted a number of differences: The law is applicable to all companies with rights to use subsoil, and all companies with licenses are obliged to report regardless of their size or classification. The law is also applicable to all minerals classified as being of national significance and to the transportation of hydrocarbons through pipelines. The definition of a project is restricted to license which does not allow for project aggregation. Furthermore, materiality levels are defined by the Ukrainian EITI multi-stakeholder group to cover more payments and reporting is compulsory for government entities that receive payments – such that both the reciprocity principle and fast reconciliation are in place. Compulsory EITI reporting has been introduced with options of online reporting and principles and procedures for MSG functioning and procedures for reporting have been set. Additionally, there is a mandatory disclosure of essential terms of contracts and licenses with subsoil use agreements. Lastly, the law is only applicable to companies operating in Ukraine only – it is not mandatory to disclose payments to other governments and the requirements for third country reporting are not applied.

[274] The regulations can be viewed here: Finansdepartementet, 'Forskrift om land-for-land rapportering', *Regjeringen.no*, 2013 <https://www.regjeringen.no/no/dokumenter/forskrift-om-land-for-land-rapportering/id748525/> [accessed 17 May 2019]. The announcement of the Norwegian Ministry of Finance can be viewed here: https://www.regjeringen.no/nb/aktuelt/forskrift-om-land-for-land-rapportering/id748537/; [accessed 21 June 2015].

[275] Publish What You Pay Norway, 'Briefing', 2014 <https://www.publishwhatyoupay.no/sites/all/files/PWYP_PolicyBriefing_Eng_Web_0.pdf> [accessed 17 May 2019].

[276] For an analysis of Norway's country-by-country reporting, see Publish What You Pay Norway, 'Briefing: What Statoil Reported and What Statoil Should Have Reported', 2016 <https://www.publishwhatyoupay.no/sites/all/files/PWYP_Briefing_As_Is_vs_Should_Have_Eng_Web.pdf> [accessed 17 May 2019].

[277] While the definition for the term 'Supportive functions' is missing in the Norwegian regulations, it is explained in the remarks for the Finance Committee's proposal, available here: https://www.stortinget.no/nn/Saker-og-

practice do not need to report key information on their activities in tax havens.[278] While as of 21 June 2015, the Norwegian parliament has decided the government should review the current country-by-country reporting regulations,[279] no implementation date has been set for the Parliament's decision. Although Norway is yet to be included in the current Corporate Tax Haven Index, we would consider the current exemption for "supportive functions" to be too material to award Norway a reduced haven score.

- **Canada:** On 16 December 2014, Canada legislated the Extractive Sector Transparency Measures Act,[280] which entered into force on 1 June 2015. According to the Extractive Sector Transparency Measures Act, extractive companies that engage in the commercial development of oil, gas or minerals are required to report on payments on a project basis, including taxes, royalties and fees to all levels of government in Canada and abroad. The reports are available to the public, with the first reports submitted in November 2016.[281] At this point, Canada is also not assessed under the current Corporate Tax Haven Index.

- **USA:** The USA's Securities Exchange Council resource extraction disclosure rule Section 13q to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act was affected in September 2016[282]. However, the rule was repealed by Congress in February 2017, at which point no company had yet been required to make disclosures under the rule, as the deadline for compliance was for years ending on or after 30 September 2018[283]. Section 1504 of Dodd-Frank remains intact but can

publikasjoner/Publikasjoner/Innstillingar/Stortinget/2013-2014/inns-201314-004/30/#a1; [accessed 17 October 2017].

[278] PWYP Norway, http://www.publishwhatyoupay.no/en/node/17140; [accessed 24 October 2017].

[279] https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Lose-forslag/?p=61783; [accessed 17 October 2017].

[280] See Government of Canada's FAQs on the Extractive Sector Transparency Measures Act: http://www.nrcan.gc.ca/mining-materials/estma/18802; [accessed 5 October 2017].

[281] All reports submitted under the Extractive Sector Transparency Measures Act are available online: https://www.nrcan.gc.ca/mining-materials/estma/18198; [accessed 5 October 2017].

[282] See Securities and Exchange Commission for final rule 13q applying to the disclosure of payments by resource extraction issuers, https://www.sec.gov/rules/final/2016/34-78167.pdf; [accessed 5 October 2017].

[283]http://www.mondaq.com/unitedstates/x/573904/Corporate+Governance/Repeal+Of+Resource+Extraction+Disclosure+Rule; [accessed 5 October 2017].

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only be implemented through a Securities Exchange Council rule. As a result, a reduced haven score remains out of reach for the USA.

- **Hong Kong:** An even weaker requirement applies in Hong Kong. The requirement to disclose details about "payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis"[284] is only triggered either at the time of the extractive company's initial listing on the stock exchange or on the occasion of the company issuing fresh shares. Because one-off disclosure is better than no disclosure, but nonetheless unlikely to deter bribery or tax evasion, we only reduce Hong Kong's haven score by 10.

A comparison of data included in various country-by-country reporting standards is provided in Annex 1.[285]

All underlying data can be accessed freely in the CTHI database[286]. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (ID 318) in the database report of the respective jurisdiction.

3.10.2 Why is this important?

Country-by-country reporting helps to remove the veil of secrecy from the operations of multinational companies. Current reporting requirements are so opaque that it is almost impossible to find even basic information, such as the countries where a corporation is operating. It is even more difficult to discover what multinational companies are doing or how much they are effectively paying in tax in any given country. This opacity helps corporations minimise their global tax rates without being successfully challenged anywhere.[287] Large-scale shifting

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[284] See chapter 18.05(6)(c), in: http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_18.pdf; [accessed 16 October 2017]. Neither the "Continuing Obligations" section in the same chapter (applicable to extractive companies) nor other HKSE regulations require disclosure of such payments (e.g. general disclosure regulations of financial information for all listed companies): http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/appendix_16.pdf; [accessed 17 October 2017].

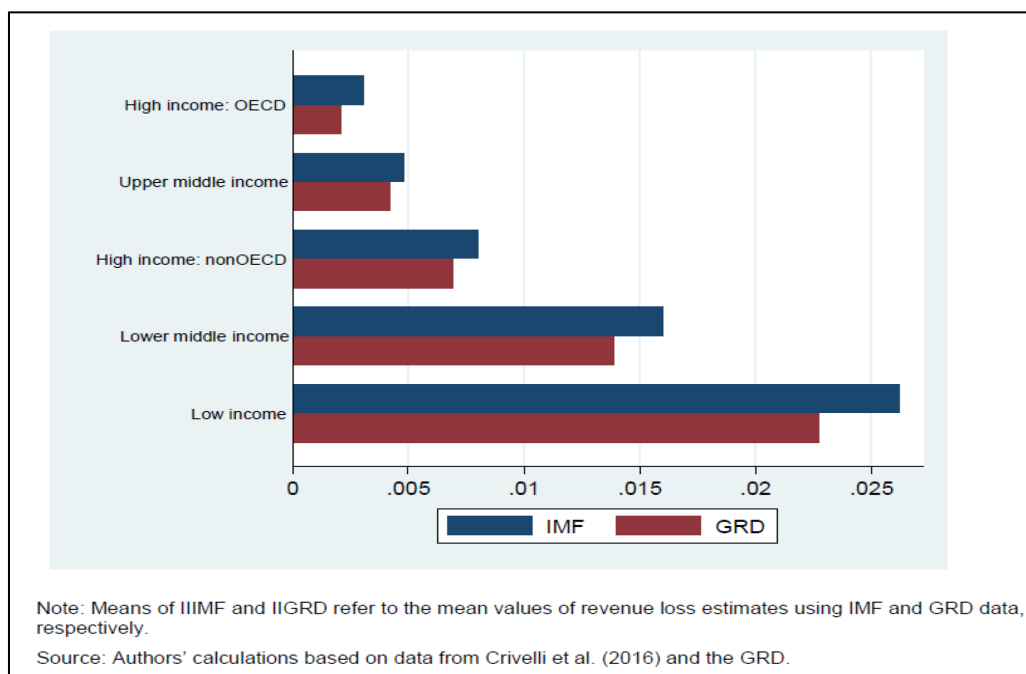
[285]Cobham, Gray and Murphy, Richard, *What Do They Pay?*

[286] http://www.corporatetaxhavenindex.org/database/menu.xml. The main data sources we used for this indicator were original sources from the EU, Canada, Norway, USA and Hong Kong and interviews and/or email-exchanges with various experts from, among others, www.resourcegovernance.org, www.eiti.org, www.publishwhatyoupay.org, www.oxfam.org.hk and www.foei.org/en.

[287] For instance: http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015; [accessed 17 October 2017] and http://www.reuters.com/article/2012/12/06/us-tax-amazon-idUSBRE8B50AR20121206; [accessed 17 October 2017] and http://www.bloomberg.com/news/2010-10-21/google-

of profits to low tax jurisdictions and of costs to high tax countries ensues from this lack of transparency. A recent re-estimation[288] of revenue loss from tax avoidance puts the annual figure at around US$500bn. Losses have the greatest impact in terms of proportion of gross domestic product for low and lower middle-income countries, as the graph below shows.[289]

Figure 10.1. Average losses of gross domestic product per region and income



Note: Means of IIIMF and IIGRD refer to the mean values of revenue loss estimates using IMF and GRD data, respectively.

Source: Authors' calculations based on data from Crivelli et al. (2016) and the GRD.

Profit shifting is largely done through transfer mispricing, internal debt financing (thin capitalisation) or reinsurance operations, or artificial relocation and licensing of intellectual property rights. These transactions take place within a multinational corporation, that is, between different parts of a group related of related companies. Today's financial reporting standards allow such intra-group transactions to be consolidated with normal third-party trade in the annual financial statements. Therefore, a corporation's international tax and financing affairs are effectively hidden from view.

2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html; [accessed 17 October 2017].

[288] Alex Cobham and Petr Janský, 'Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results', *Journal of International Development*, 30/2 (2018), 206–32.

[289] Alex Cobham and Petr Janskỳ, *Global Distribution of Revenue Loss from Tax Avoidance. Re-Estimation and Country Results*, WIDER Working Paper 2017/55, 2017, 19 <https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf> [accessed 29 May 2017].

Investors, trading partners, tax authorities, financial regulators, civil society organisations, and consumers would be able to make better informed decisions if information was available publicly. Civil society does not have access to reliable information about a company's tax compliance record in a given country in order to question a company's policies on tax and corporate social responsibility and to make enlightened consumer choices. When the charity Oxfam reviewed data published under country-by-country reporting rules for banks in the European Union in 2017, the extent of the use of tax havens by the 20 biggest European banks was revealed. One in four euros of their profits was registered in tax havens (approximately €25bn) and tax havens accounted for 26% of total profits. In contrast, the level of real economic activity was far lower, accounting for just 12% of banks' total turnover and 7% of employees.[290]

If public country-by-country information were available, investors would be better able to evaluate if a given corporation is exposed to reputational tax risks[291] by relying on complex networks of subsidiaries in secrecy jurisdictions, or whether it is heavily engaged in conflict-ridden countries. Tax authorities and supreme audit institutions would be better able to make risk assessments of particular sectors or companies to guide their audit activity by comparing profit levels or tax payments to sales, assets and labour employed.

At present, even tax authorities often hardly know where to start looking for suspicious activity because corporate tax returns reveal only a partial view of corporate activity.[292] Cases exposed in the LuxLeaks[293] have shown that it may not be enough for tax administrations to have access to such data, since tax administrations may enter into special and tailored tax arrangements with corporations. For example, in 2016, the European Commissioner for Competition ruled that Apple had to pay up to €13bn in taxes plus interest to Ireland after it found that two tax rulings by Irish tax authorities on the tax treatment of Apple's corporate profits constitute illegal state aid under EU law.[294] The European

[290] Manon Aubry and Dauphin, Thomas, *Opening the Vaults: The Use of Tax Havens by Europe's Biggest Banks* (2017) <https://www.oxfam.org/sites/www.oxfam.org/files/bp-opening-vaults-banks-tax-havens-270317-en.pdf> [accessed 6 February 2017].

[291]See Markus Meinzer, 'Why the German Government's Blockade of Corporate Transparency Is Harming All of Us', 2018 <https://www.taxjustice.net/2018/10/23/why-the-german-governments-blockade-of-corporate-transparency-is-harming-all-of-us/> [accessed 22 January 2019].

[292] For an explanation of why this is very likely to remain the case even after introduction of OECD's non-public country-by-country reporting at least for most developing countries, please read: Knobel and Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights'.

[293] The relevant articles are available at: http://www.icij.org/project/luxembourg-leaks; [accessed 17 October 2017]. See also: https://www.taxjustice.net/2017/03/15/luxleaks-appeal-verdict-tax-justice-heroes-convicted/; [accessed 17 October 2017].

[294] http://www.taxjustice.net/2016/08/30/apple/; [accessed 31 October 2017].

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Commission's findings on another sweetheart tax deal are similar: Amazon is required to pay about €250m in back taxes in Luxembourg on grounds the company benefited from illegal state aid.[295] These decisions are currently challenged by the respective EU member state governments.[296]

Evidence suggests that routine public scrutiny of country-by-country reports by researchers and media would result in a tangible deterrent effect as the extent of profit shifting and potential associated political interference in tax administrations could be uncovered. In 2018, economists at the University of Cologne published their research findings on the impact of introducing public country-by-country reporting in the banking sector on tax ratios by banks. Their findings spanning 2010 to 2016 suggest that banks affected by public country-by-country reporting significantly increased their tax payments compared to non-affected banks. This effect was stronger for banks with tax haven operations. [297] As part of their research design, they also controlled for tax ratios of non-bank multinational companies that are comparable in size and absolute profitability to the banks. For at least one of the analysed years (2016), the non-public OECD country-by-country reporting regulations (see Haven Indicator 11[298]) had already entered into force for many countries.[299] Thus, this study provides the first evidence supporting the hypothesis that public country-by-country reporting increases tax ratios over and above non-public reporting. This finding warrants further, more thorough research in future.[300]

The Tax Justice Network's proposal for public country-by-country reporting[301] would ensure comprehensive information on multinational corporate activities is in the public domain for different stakeholders. This proposal goes beyond all country-by-country reporting rules that currently exist. It requires multinational corporations of all sectors, listed and non-listed, to disclose key information in their annual financial statements for each country in which they operate. This information would comprise its financial performance, including:

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[295] https://www.ft.com/content/69ee1da6-a8ed-11e7-93c5-648314d2c72c; [accessed 31 October 2017].

[296] https://mnetax.com/luxembourg-fight-amazon-state-aid-case-eu-court-25180; [accessed 23 May 2019].

[297] Michael Overesch and Hubertus Wolff, *Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance? Evidence from the European Banking Sector* (Rochester, NY, 1 July 2018) <https://papers.ssrn.com/abstract=3075784> [accessed 25 September 2018].

[298] http://www.corporatetaxhavenindex.org/PDF/11-CBCR-Local-Filing.pdf

[299] http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm; [accessed 24 January 2019].

[300] Overesch and Wolff, *Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance?*

[301] Tax Research UK and Tax Justice Network, *Country-by-Country Reporting*.

a) Sales, split by intra-group and third party

b) Purchases, split the same way

c) Financing costs, split the same way

d) Pre-tax profit

e) Labour costs and number of employees.

In addition, the cost and net book value of its physical fixed assets, the gross and net assets, the tax charged, actual tax payments, tax liabilities and deferred tax liabilities would be published on a country-by-country basis. It is worth noting that small- and medium-sized enterprises that operate in only one country are required by the nature of their business activity to report information in their annual financial statements that is proposed for multinational companies. The present rules of the game therefore disadvantage smaller enterprises.

The Tax Justice Network along with partners in the movement for Open Data in Tax Justice[302] is working towards a public database to bring together all information disclosed under country-by-country reporting[303], ultimately to capture the full extent of profit misalignment. This database would provide an opportunity for companies to unilaterally publish their own disclosures and to resolve data consistency and quality issues in county-by-country reporting. Data would cover four main areas: 1) identity of a multinational group, 2) activity (scale of sales, assets, employment for each jurisdiction of operations, 3) intra-group transactions (sales, purchases, royalties and interest), and 4) key financial data (declared pre-tax profit or loss and tax accrued and paid). In comparison, OECD reporting rules include some significant variances: payroll costs and intragroup transactions for purchases, royalties and interest are omitted and a financial capital approximation is included instead of tangible asset investment.

The Global Reporting Initiative (the global standard setter for sustainability reporting) has built on this proposal and invited comments in December 2018[304] on its draft Standard on tax and payments to governments. This draft standard requires public disclosure of country-by-country reports and is also technically more robust than the OECD's approach.

In contrast to this and our original proposal, variations that have been presented by the European Union and OECD as well as the extractives related rules are less comprehensive and often not public. Under the Base Erosion and Profit Shifting project, all OECD and G20 countries committed to implement country-by-country

[302] http://datafortaxjustice.net/; [accessed 19 October 2017].

[303] Cobham, Gray and Murphy, Richard, *What Do They Pay?*

[304] https://www.taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/; [accessed 28 March 2019].

reporting for fiscal periods commencing 1 January 2016; many countries have implemented this.[305] This OECD's country-by-country reporting "requires multinational enterprises to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires multinational enterprises to report their total employment, capital, retained earnings and tangible assets in each tax jurisdiction" (Action 13: 2014 Deliverable).[306] However, these requirements do not include publication of any data and they are only applicable for multinational companies with an annual consolidated group revenue of at least €750m.[307] In addition, most developing countries, especially low-income countries, would be left out and existing inequalities in taxing rights are likely to be exacerbated to the detriment of low income countries. Recipients of confidential country-by-country reports are constrained by OECD regulations that rule out adjusting profit levels based on this data. This is discussed in greater detail in Haven Indicator 11.[308]

The European Union continues to take steps towards full public country-by-country reporting. In July 2017, the European Parliament adopted its draft report on public country-by-country reporting for multinational enterprises (amending Directive 2013/34/EU).[309] It is a vast improvement on the European

[305] For country-by-country reporting implementation status, see: https://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm; [accessed 17 October 2017].

[306] See, OECD, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project, 2014, 9 <https://www.oecd-ilibrary.org/docserver/9789264219236-en.pdf?expires=1558067924&id=id&accname=guest&checksum=5F5482CF687BE5CCC443E16E617590EE> [accessed 17 May 2019]. For more information see also: http://www.taxresearch.org.uk/Blog/2014/09/16/the-era-of-country-by-country-reporting-is-arriving/; [accessed 17 October 2017].

[307] According to the OECD, the threshold of €750m "will exclude approximately 85 to 90 percent of MNE [multinational enterprise] groups from the requirement to file the CbC [Country-by-Country] Report, but that the CbC Report will nevertheless be filed by MNE groups controlling 90 percent of corporate revenues", OECD, *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project, 2015, 4 <https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf> [accessed 17 May 2019]. See also, OECD, *Guidance on the Implementation of Country-by-Country Reporting: BEPS ACTION 13*, 2018 <https://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf> [accessed 17 May 2019].

[308] http://www.corporatetaxhavenindex.org/PDF/11-CBCR-Local-Filing.pdf

[309] European Parliament and Council of the European Union, *Amendments to 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches*, 2017 <http://www.europarl.europa.eu/doceo/document/TA-8-2017-0284_EN.html> [accessed 17 May 2019].

Commission's initial proposal in April 2016, but it still contains a significant loophole.[310] A provision allows multinational enterprises to avoid reporting so-called "commercially sensitive information".[311] This proposal has been negotiated over the course of 2018 during the so-called trialogue negotiations between the European Union's Council, the European Commission and the European Parliament.

As of March 2019, the Council was unlikely to reach an agreement before the European elections in May 2019.[312] Importantly, the proposal made by the Commission in 2016 was already a watered down version of a much more ambitious public country-by-country reporting provision that had been included as an amendment to the Shareholders' Rights Directive (Directive 2007/36/EC)[313] by the European Parliament in 2015. These provisions had been voted in plenary on 8 July 2015, where 404 members of parliament voted in support with only 127 against.[314] However, the new incoming European Commission soon stopped this legislative proposal by issuing its own much weaker proposal in April 2016.In 2018, the German Minister of Finance made it clear that Germany will not be pushing for a more transparent system. He favoured a procedural approach to country-by-country reporting which gives

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[310] European Public Service Union and others, 'From Tax Secrecy to Tax Transparency: Introducing Public Country-by-Country Reporting (CBCR) That Is Fit for Purpose', 2017 <https://www.epsu.org/sites/default/files/article/files/Joint%20Paper%20on%20CBCR%20post%20EP%20final.pdf> [accessed 17 May 2019].

[311] See amendments 82 and 83: European Parliament and Council of the European Union, *Amendments to 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches*.

[312] Council of the European Union, *Proposal for Directive of the European Parliament and the Council Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches (CBCR), 2016/0107 (COD)* <https://data.consilium.europa.eu/doc/document/ST-5134-2019-INIT/en/pdf> [accessed 18 May 2019].

[313] European Parliament and Council of the European Union, *Shareholders' Rights Directive 2007/36/EC*, 2007 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF> [accessed 17 May 2019].

[314] Email by Koen Roovers/FTC of 8 July 2015 and https://financialtransparency.org/european-parliament-sets-the-stage-for-europe-to-embrace-more-corporate-fiscal-transparency/; [accessed 23 October 2017]. For a version of the proposal as of 10 June 2015, see: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA8-2015-0158%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN; [accessed 23 October 2017]. For a more extended explanation on the planned revision, see: http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm; [accessed 23 October 2017].

multinational enterprises and tax havens the ability to veto[315] the reporting measures. This is harmful to the struggle for transparency in the European Union, especially with the influence of Germany in the region.

The struggle for corporate transparency started as early as 1970 at the United Nations. Advocates of transparency have faced intense lobbying by business sectors and schemes deployed by OECD governments. These processes are analysed in detail in an article published in the United Nations Conference on Trade and Development journal *Transnational Corporations*.[316]

While much narrower in scope than our proposal, the Extractive Industries Transparency Initiative (EITI)[317] has succeeded in raising awareness about the importance of transparency of payments made by companies to governments. If a country voluntarily commits to the initiative, it is required after a transitional period to annually publish details on the activities of extractive companies active in the country at the project level. For a reporting period, among other data collected, government entities submit records of payments received from extractive industry companies and companies submit records of payments made to government to an independent administrator, typically an audit firm. In the process of producing an report under the initiative, the independent administrator reconciles and investigates discrepancies between reported government receipts and company payments. The multi-stakeholder group, made up of government, industry and civil society, which governs the process, is "required to take steps to act upon lessons learned; to identify, investigate and address the causes of any discrepancies".[318] Mismatches can be, but are not necessarily, indicative of illicit activity, such as bribery or embezzlement.

The information provided under the Extractive Industries Transparency Initiative requirements is of special interest because it may reveal for the first time in a given country information on tax payments made by companies to the respective government. It may help trigger further questions that could result in greater transparency, such as full country-by-country reporting. Without such information, citizens, civil society and consumers cannot make informed choices and bribe paying and transfer mispricing remains largely unchallenged. The cost

[315] See https://www.taxjustice.net/2018/07/13/why-is-germany-siding-with-the-tax-havens-against-corporate-transparency/; [accessed 25 January 2019] and see also: https://www.taxjustice.net/2018/09/05/is-germanys-finance-minister-the-puppet-of-big-finance/; [accessed 25 January 2019].

[316] Alex Cobham, Petr Janský and Markus Meinzer, 'A Half-Century of Resistance to Corporate Disclosure', *Transnational Corporations - Investment and Development*, Special Issue on Investment and International Taxation. Part 2, 25/3 (2018), 160.

[317] For the current EITI Standard (2016) governing EITI implementation, see, The EITI International Secretariat, 'The EITI Standard'.

[318] See EITI Standard Requirement 7.3 'Discrepancies and recommendations from EITI Reports': https://eiti.org/document/standard#r7-3; [accessed 17 October 2017].

is borne by the most vulnerable people in society. It is against this backdrop that public country-by-country reporting is included as an important indicator in the Corporate Tax Haven Index.

3.11 HI 11 – Local Filing of Country by Country Reporting

3.11.1 What is measured?

This indicator assesses whether a jurisdiction ensures its own access to the country-by-country reports of any relevant[319] foreign multinational enterprises with domestic operations. This is set within the context of country-by-country reporting related to Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project Action 13.[320] Access is ensured if the jurisdiction requires country-by-country reports to be filed locally by the local subsidiary or branch of a foreign multinational enterprise whenever the jurisdiction cannot obtain these reports through the automatic exchange of information. This goes beyond the legal framework proposed by the OECD in the model domestic legislation for country-by-country reporting. The OECD's framework allows a jurisdiction to require local filing only in specific circumstances.

Table 11.1. Scoring Matrix Haven Indicator 11

Regulation	**Haven Score Assessment** [Haven Score: 100 = maximum risk; 0 = minimum risk]
Access to country-by-country reports is not ensured The jurisdiction abides by the OECD's legal framework and requires local filing of country-by-country reports only when authorised by the OECD, if local filing is required at all; or unknown.	100
Access to country-by-country reports is ensured (comprehensive local filing) The jurisdiction goes beyond the legal framework proposed by the OECD and requires local filing of the country-by-country report (by the local subsidiary or branch of a foreign multinational enterprise) whenever the jurisdiction cannot obtain it through the automatic exchange of information.	0

[319] Here "relevant" refers to multinational enterprises with over EUR 750m global consolidated turnover that are required to produce and file the country-by-country reports according to BEPS Action 13.

[320] OECD, *BEPS Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, 2015 <https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf> [accessed 26 February 2019].

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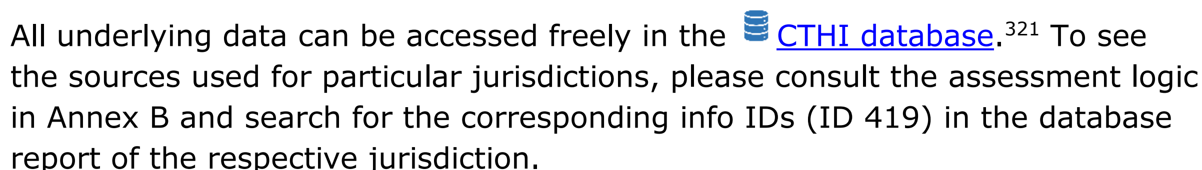

All underlying data can be accessed freely in the CTHI database.[321] To see the sources used for particular jurisdictions, please consult the assessment logic in Annex B and search for the corresponding info IDs (ID 419) in the database report of the respective jurisdiction.

This indicator focuses on the local filing of country-by-country reports. A haven score of zero is given if all relevant foreign multinational enterprises with domestic operations are required to file a local country-by-country report whenever the jurisdiction cannot obtain the country by country report through the automatic exchange of information. A 100 haven score is given if the jurisdiction abides by the OECD's legal framework or if the country-by-country report is not required to be filed in every circumstance, or if the domestic legal framework is unknown.

The main source for this indicator is the report "Country-by-Country Reporting – Compilation of Peer Review Reports"[322] published by the OECD on 24 May 2018. The domestic legal framework of 95 jurisdictions is reviewed in the report. Part A (Section c) of the report refers to the "Limitation on local filing obligation". If the peer review report describes that a jurisdiction's domestic law goes beyond the OECD model legislation (i.e., requiring local filing in more cases than those authorised by the OECD) but the report confirms that the jurisdiction will respect the OECD restrictions,[323] then a jurisdiction is rated in this indicator as abiding by the OECD model legislation.

In cases where a jurisdiction's domestic laws have not been reviewed by the OECD, then the domestic law has been analysed or an external assessment of domestic law, such as by one of the big four, may have been used as a source.

3.11.2 Why is this important?

Country-by-country reporting requires multinational corporations to provide a jurisdiction-level breakdown of activities, profits declared and tax paid. The practice clarifies where corporations are conducting real business activity and where they are reporting their profits, making it easier to identify risks of profit shifting for tax avoidance. It also helps to identify the jurisdictions that are

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

[322] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 2018 <http://www.oecd.org/tax/beps/country by country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm> [accessed 26 February 2019].

[323] Even though, as assessed by the Financial Secrecy Index in 2018, some jurisdictions had legislation that required local filing under more circumstances than those authorised by the OECD model legislation, upon being reviewed by the OECD, some jurisdictions adopted the guidance or additional regulation, or stated that they would ensure their laws are consistent with the OECD regulations.

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attracting profit shifting at the expense of other countries.[324] While the first draft international accounting standard for country-by-country reporting was created in 2003 by Richard Murphy, the recent OECD's BEPS Action 13 has established a less ambitious template[325] to report multinational's country-by-country information.

As assessed and explained by Haven Indicator 10[326], country-by-country reports should be public to ensure that all foreign authorities, as well as civil society organisations and investigative journalists, can access this basic accounting information that is key to revealing tax avoidance schemes. One of the reasons why OECD members claim that its country-by-country report data cannot be made public is because the underlying data is designated as tax data. An article published in 2018 traces[327] nearly 50 years of international political manoeuvres by business lobbyists and captured states in successful efforts to requalify country-by-country report as tax data rather than accounting data.

However, a second-best scenario to public reporting is assessed by this indicator. It assesses whether country-by-country reports are at least locally filed so that authorities of all countries where a multinational has operations can access reports in cases where these reports cannot be obtained through automatic exchanges, regardless of the reason. Local filing ensures authorities can use the country-by-country report as they see fit to tackle tax avoidance.

Rather than promoting this approach, the OECD has, among other concerns[328], established a complex scheme for accessing country-by-country reports[329] through the automatic exchange of information. This is illustrated in Figure 11.1 below. The OECD's approach hinders access by developing countries that cannot implement automatic exchanges. By promoting the access of country-by-country

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[324] https://www.taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/; [accessed 4 January 2019].

[325] OECD, *Transfer Pricing Documentation and Country by country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 29–31 <http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country by country-reporting-action-13-2015-final-report_9789264241480-en> [accessed 12 June 2017].

[326] http://www.corporatetaxhavenindex.org/PDF/10-C-b-C-Reporting.pdf; [accessed 2 January 2019].

[327] Alex Cobham, Petr Janský and Markus Meinzer, 'A Half-Century of Resistance to Corporate Disclosure', *Transnational Corporations - Investment and development*, Special Issue on Investment and International Taxation. Part 2, 25/3 (2018), 160.

[328] Andres Knobel and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf> [accessed 9 February 2017].

[329] To see more details about country-by-country reporting and its uses, please refer to Haven Indicator 10.

reports through the exchange of information and not through local filing requirements, the OECD has also imposed restrictions on the use of reports. This means that any authority using the received country-by-country report for additional purposes could be penalised by preventing it from receiving any other report from foreign authorities. That is, exchange of information with that jurisdiction would be suspended.

Specifically, the OECD restricts the use of the country-by-country report as follows:

> Appropriate use is restricted to: high level transfer pricing risk assessment, assessment of other base erosion and profit shifting related risks, economic and statistical analysis, where appropriate (…). The information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report.[330]

The OECD approach, in essence, requires each multinational enterprise's headquarters to produce and file the country-by-country report with their local authority. The local authority is then supposed to automatically exchange this country-by-country report with authorities of all countries where the multinational enterprise has operations. In other words, all other jurisdictions where a multinational enterprise has operations should receive the country-by-country report from the country where the multinational enterprise is headquartered through the automatic exchange of information.

However, the automatic exchange of information requires countries willing to receive the country-by-country report from the headquarters' jurisdiction to have the necessary legal framework. This includes international agreements with the headquarters' jurisdiction that allow the automatic exchange of information as well as compliance with confidentiality provisions and the appropriate use of the

[330] OECD, *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*, 2017 <http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf> [accessed 1 April 2019].

received country-by-country report. For example, as of January 2019, only 77[331] jurisdictions had signed the Multilateral Competent Authority Agreement (MCAA) required to automatically exchange country-by-country reports.[332] The first exchanges started in 2018[333], but some jurisdictions will start later. Indeed, as of February 2019, the highest number of activated relationships[334] was 67 jurisdictions for some European countries, meaning that out of the 77 current signatories, a country may be exchanging country-by-country reports with 67 jurisdictions at most.

While the framework and its alternatives are complex (see Figure 11.1), the key condition imposed by the OECD framework to access the country-by-country report is to have an international agreement[335] between the country where the multinational enterprise has operations (O) and where it is headquartered (HQ). If this condition is met, there are three possible ways to access the country-by-country report for O under the OECD framework: (i) automatic exchange of information with HQ, (ii) automatic exchange of information with another country, called "Surrogate" (S); or if neither (i) or (ii) apply, then (iii) by local filing (a subsidiary of the multinational enterprise resident in O would file the country-by-country report directly with O's authorities).

Countries that comply with the OECD legal framework for country-by-country reporting do not ensure access to the country-by-country report. Instead, they first need to have an international agreement with HQ, subject to HQ's discretion to sign one or not. Countries that go beyond the OECD proposed legislation will ensure access in all cases because, if they cannot obtain the country-by-country report through the automatic exchange of information (for example, because they lack an international agreement with HQ), they will require the local subsidiary of an multinational enterprise to file the report with local authorities ("local filing"). Local filing also means that countries can use the country-by-country report as they see fit (to tackle tax avoidance) without the threat of preventing access in the future if the automatic exchange of information with foreign countries is suspended.

[331] https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf; [accessed 29 March 2019].

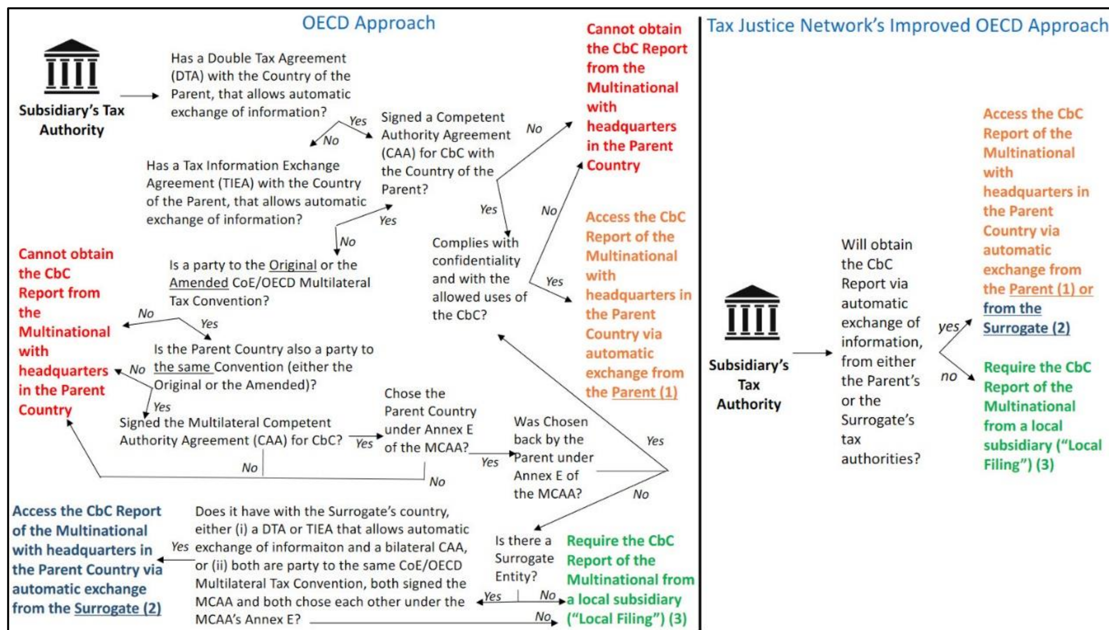
[332] OECD, *Multilateral Competent Authority Agreement on the Exchange of for Country by country Reports*, 2016 <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf> [accessed 29 March 2019].

[333] http://www.oecd.org/tax/beps/country by country-reporting-update-on-exchange-relationships-and-implementation.htm; 29.3.2019.

[334] http://www.oecd.org/ctp/beps/country by country-exchange-relationships.htm; [accessed 29 March 2019].

[335] There are three possible international agreements: 1) The Multilateral Convention on Administrative Assistance in Tax Matters, 2) Double Tax Agreements, and 3) Tax Information Exchange Agreements.

Figure 21.1. A comparison of approaches to accessing country-by-country report



Source: https://www.taxjustice.net/wp-content/uploads/2013/04/access-to-Country by country report-comic-march-1.pdf; http://www.taxjustice.net/2017/03/07/19628/; [accessed 1 September 2018].

While some countries had implemented legislation that requires local filing beyond the situations allowed by the OECD (as described by the Financial Secrecy Index published in January 2018[336]), the OECD peer reviews published in 2018 started to mark these countries as requiring amendments to their laws.

For example, Spain was one of the few countries that kept its regulations requiring local filing of the country-by-country beyond the OECD model legislation. It received a "recommendation for improvement" from the OECD:

> It is recommended that Spain amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.[337]

This approach taken by the OECD appears to restrict a country's tax sovereignty by imposing a monopolistic ambition of the OECD. A jurisdiction should be free to go beyond OECD rules to use domestic legislation without the OECD's interference to require the filing of any data it wishes by the entire corporate group doing business within its territory.

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336 https://financialsecrecyindex.com/; [accessed 1 April 2019].

337 OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 682.

3.12 HI 12 – Tax Rulings and Extractive Contracts

3.12.1 What is measured?

This indicator measures whether a jurisdiction publishes online and for free unilateral tax rulings; and for jurisdictions with extractive industries, whether extractive industries contracts are published. Accordingly, we have split this indicator into two components:

1. **Regarding unilateral cross-border tax rulings:** we assess whether a jurisdiction dispenses with issuing unilateral cross-border tax rulings; or failing that, if at least all unilateral cross-border tax rulings are published online for free, or if some are made available upon payment of a fee.
2. **Regarding extractive industries contracts:** we assess whether a jurisdiction publishes extractive industries (mining and petroleum) contracts online for free.

Depending if the jurisdiction has a substantial extractive industry (as defined by the Natural Resource Governance Institute[338]), we either evaluate only

[338] The Natural Resource Governance Institute's (https://resourcegovernance.org) Contract Disclosure Practice and Policy Tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>, updated 30 April 2019) includes 147 entries for 101 jurisdictions (this includes 3 sub-national regions). For 23 jurisdictions, there are two entries, one for petroleum and one for mining. For all the others, there is a single entry either for petroleum or for mining contract disclosure.

The countries included in the tracker are a) those included in Natural Resource Governance Institute's most recent Resource Governance Index 2017, b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including those that have withdrawn membership (for example, Azerbaijan, Niger and the United States of America) and those that have since joined (for example, Armenia, Guyana, Suriname). Finally, c) several other countries are included in the tracker that are added on an ad hoc basis, including new and upcoming producers or countries that the Natural Resource Governance Index is working in (for example Lebanon; email communication with Rob Pitman, Natural Resource Governance Institute, 28 January 2019).

In terms of coverage under a), i.e. countries included in the Resource Governance Index 2017, 81 resource-producing countries are included. According to the Method Paper (2017), this is based on 58 countries assessed in the 2013 index, and "countries in the top-80 earners for natural resource rents, measured as a percentage of GDP averaged over 2009-2014 where 'natural resource' includes oil, natural gas and minerals but excluded coal and forestry" and "with a population of more than one million" (4). The Natural Resource Governance Institute made some exceptions to these criteria due to the future resource potential of certain countries and their priorities as an organisation. Ethiopia and Madagascar were included even though they did not meet these criteria and Albania, Armenia, Macedonia FYR, Pakistan and Thailand met the criteria but were removed. In addition, for federal countries with decentralised resource governance, the index assessed the largest resource-producing regions: the Gulf of Mexico in the United States of America, Alberta in Canada and Western Australia in Australia. In India, the federally-managed gas sector was assessed. The World Bank's World Development

component 1 or jointly assess components 1 and 2 above on an equal basis. Table 12.1 below summarises the applicable assessment components.

Table 12.1. Applicable Scoring Logic

Substantial extractive sector?[339]	**Components for Assessment (each with max 50 haven score)**
No	Component 1 only is considered, and the haven score is duplicated.
Yes	Component 1 and 2 are considered and the haven score is based on the simple addition of both.

The scoring matrix is shown in Table 12.2, with full details of the assessment logic presented in Annex B.

Indicators were used to determine the contribution of the extractive industries and sectors to gross domestic product.

In the Contract Disclosure Practice and Policy tracker, information is provided for either mining or petroleum contract disclosure in 78 of the 101 jurisdictions. For countries taken from the Resource Governance Index, this is because the index typically looks at only one sector (see following paragraph). For Extractive Industries Transparency Initiative countries, this is because the Extractive Industries Transparency Initiative reporting might only cover one sector. For remaining countries, it is because the tracker is filled out on an ad hoc basis (email communication with Rob Pitman, Natural Resource Governance Institute, 30 January 2019).

Of the 89 assessed countries in the Resource Governance Index of 2017, mining or petroleum was assessed in 73 countries (the petroleum sector in 47 countries and the mining sector in 26 countries) and both sectors were measured in eight countries. For new countries included in the 2017 edition of the index, the sector was chosen based on which sector was more significant in terms of earnings from natural resource rents between 2009 and 2014. Exceptions were made based on future resource potential and priorities set by the Natural Resource Governance Institute.

As a result, in the Corporate Tax Haven Index of 2019, eight countries have been assessed: Botswana, Germany, Ghana, Liberia, South Africa, Tanzania, the United Kingdom and the USA.

For further information, see Natural Resource Governance Institute, 'Resource Governance Index 2017: Method Paper', 2017, 4–6 <https://www.resourcegovernanceindex.org/system/documents/documents/000/000/074/original/2017_Resource_Governance_Index_method_paper.pdf?1498601280> [accessed 1 March 2019].

[339] See Note 338.

Table 12.2. Scoring Matrix Haven Indicator 12

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
Component 1 (default): Unilateral cross-border tax rulings	
Tax rulings are issued but not published online Unilateral cross-border tax rulings cannot be accessed online, or unknown	50
Tax rulings published online against a cost Unilateral cross-border tax rulings are available online only against a cost (irrespective of whether all or only some are available) Or **Only some tax rulings are published online for free** While some unilateral cross-border tax rulings are available online free of cost, not all are available online	37.5
All tax rulings are published online for free, but anonymised All unilateral cross-border tax rulings are published online free of cost, but without the name of the company concerned	25
All tax rulings published online for free with the company's name All unilateral cross-border tax rulings are published online free of cost, including the name of the company concerned	12.5
No tax rulings issued No unilateral cross-border tax rulings are available in the jurisdiction	0

Component 2: Extractive industries contract disclosure		
	Contract disclosure not required by law No legal requirement exists that requires contract disclosure	**Contract disclosure required by law** A legal requirement exists that requires contract disclosure
No extractive industries contracts published Extractive industries contracts cannot be accessed online, or unknown	50	45
Only some[340] extractive industries contracts published While some extractive industries contracts are available online, not all or nearly all are available online	30	20
All or nearly all[341] extractive industries contracts published All or nearly all extractive industries contracts as available publicly online	10	0

[340] "Some" is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0; updated 30 April 2019). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019).

[341] "All or nearly all" is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0; updated 30 April 2019) as not every contract online has been checked (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019). This would also require countries to publish a comprehensive list of all contracts and licences issued.

All underlying data can be accessed freely in the CTHI database.[342] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 363, 421, 561-564) in the database report of the respective jurisdiction.

Component 1: Unilateral Cross Border Tax Rulings

A tax ruling is understood broadly in line with the OECD's definition, which includes "any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely".[343] The tax rulings covered by the scope of this

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

[343] 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), 47 <https://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 26 March 2019].

The definition of cross-border tax rulings is similar to, but not entirely the same as the European Union's definition in its directive on administrative assistance. This directive provides for the automatic information exchange of advance cross-border rulings and advance pricing arrangements. For a comparison with the actual text in the directive amending the relevant directive on administrative cooperation (EC 2011/16/EU), see Art. 1(1)(b)(14 and 16), *Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation*, 2015 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN> [accessed 22 May 2019].

(b) The following points are added:

14. "advance cross-border ruling" means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;

(b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;

(c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;

(d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place. The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use

indicator are a subset of these rulings, as they only comprise those with a cross-border element and those issued to specific taxpayers (rather than to the public at large). The scope of our indicator covers the six categories of rulings included under the spontaneous information exchange framework of the OECD's Base Erosion and Profit Shifting Project Action 5.[344]

Unilateral cross-border tax rulings refer to private rulings applicable to individual taxpayers and singular cases. These are not the same as generally applicable decisions, guidance notes or other types of binding interpretation of tax law issued publicly by the tax administration through circulars, regulations or similar administrative acts.

It is important to differentiate unilateral cross-border tax rulings from bi- or multi-lateral advance pricing arrangements. Bi- or multi-lateral advance pricing arrangements involve a priori agreement by all tax administrations of all jurisdictions involved in a cross-border transaction for which the agreement is sought.[345] In contrast, unilateral cross-border tax rulings do not require, per se,

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> of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling; […]
>
> 16. For the purpose of point 14 "cross-border transaction" means a transaction or series of transactions where:
>
> (a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;
>
> (b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;
>
> (c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or
>
> (d) such transactions or series of transactions have a cross border impact.

[344] "These six categories are (i) rulings relating to preferential regimes; (ii) unilateral advance pricing agreements (APAs) or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; (v) related party conduit rulings; and (vi) any other type of ruling agreed by the FHTP [Forum on Harmful Tax Practices] that in the absence of spontaneous information exchange gives rise to BEPS concerns." OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*, OECD/G20 Base Erosion and Profit Shifting Project (2017), 9 <http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-peer-review-reports-on-the-exchange-of-information-on-tax-rulings_9789264285675-en> [accessed 12 April 2018].

[345] Advance pricing arrangements have their roots in international tax norms for the avoidance of double taxation. Here, we define an advance pricing arrangement as always involving all affected jurisdictions. That is, advance pricing arrangements always involve bi- or multi-lateral negotiation. This definition is similar, but not identical to the definition

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used by the OECD in its Transfer Pricing Guidelines as updated in 2010 OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (Paris, 2010), 169–72 <http://www.oecd.org/ctp/transferpricing/transferpricingguidelinesformultinationalenterprisesandtaxadministrations.htm> [accessed 27 February 2013]..

While no explicit reference to advance pricing arrangements is made in the OECD Model Convention of 2008 (including the commentary), the Commentary to the UN Model Convention of 2011 refers to advance pricing arrangements with respect to information exchange United Nations Department of Economic & Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)* (New York, 2011), 447 <https://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf> [accessed 17 April 2014]. The relevant article in the UN Model Tax Convention allowing for Advance pricing arrangements is Art. 25.3:

> The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. United Nations Department of Economic & Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)*, 31..

Art. 25 (3) of the OECD Model Tax Convention of 2008 contains exactly the same wording OECD, *OECD Model Tax Convention on Income and on Capital - an Overview of Available Products* (Paris, 2008), 37 <http://www.oecd.org/tax/treaties/oecdmtcavailableproducts.htm> [accessed 28 July 2013]. This "permits countries to enter into Advance Pricing Agreements (Hereafter APAs)" European Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU*, COM(2007) 71 Final (Brussels, 26 February 2007), 9.

The definition we use is also fully in line with the definition used by the Joint Transfer Pricing Forum of the European Commission in 2007:

> An APA is an agreement between tax administrations over the way in which certain transfer pricing transactions between taxpayers will be taxed in the future." European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 5.
>
> An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time." European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 9.
>
> An APA application should typically have four distinct stages: (a) Pre-filing stage/Informal application (b) Formal application (c) Evaluation and negotiation of the APA (d) Formal agreement." European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic

prior agreement. Consequently, only unilateral cross-border tax rulings are considered, as these represent the highest risk for abusive tax practices.

Whenever there is no formal system available for the issuance of unilateral cross-border tax rulings, we consider that these are not available, unless we found more evidence that issuance of rulings is an established practice. The documented possibility to engage in informal discussions with tax administrations with non-binding outcomes is not considered to qualify as unilateral cross-border tax rulings for the purposes of this indicator. Jurisdictions that do not issue unilateral cross-border tax rulings receive the lowest haven score of zero.

Jurisdictions that issue unilateral cross-border tax rulings, but do not make these available online, receive the highest haven score of 50. If only some are accessible online or are accessible only for a fee, jurisdictions are scored 37.5. Where all tax rulings are available online for free but are anonymised, that is, companies involved are redacted, then the score is 25. In cases where tax rulings that include company information are available for free online, jurisdictions get a lower haven score of 12.5.

The data for this component was collected from several sources including country analyses and country surveys in the International Bureau of Fiscal Documentation's (IBFD) database,[346] the OECD's peer review on harmful tax practices[347] and studies commissioned by the European Union.[348] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

Component 2: Extractive Industries Contract Disclosure

Extractive industries contracts include contracts for both mining and petroleum. The focus of this indicator is on the contracts that are signed between governments or state-owned companies for publicly held natural resources and companies (individual companies or those working in consortium). Sometimes referred to as 'primary contracts', these contracts can take several forms or a

and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 11.

[346] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[347] OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*.

[348] European Commission, 'State Aid - Tax Rulings', 2018 <http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html> [accessed 8 August 2018]; Elly Van de Velde, *'Tax Rulings' in the EU Member States*, ECON Committee EU Parliament (Brussels, 2015) <http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf> [accessed 20 October 2017].

combination: concession, licence, production sharing and service agreements, along with shareholders' agreements where government has an equity stake.[349] This indicator is not concerned with the contracts that are signed between private parties, such as between the oil company and a company providing transport services.

Contract disclosure is assessed for either mining or petroleum as per the Natural Resource Governance Institutes' contract disclosure tracker.[350] This includes 147 entries for 101 jurisdictions. For 23 jurisdictions there are two entries, one for petroleum and one for mining. The tracker has information for a) countries included in the Natural Resource Governance Institute's most recent Resource Governance Index of 2017,[351] b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including those that have withdrawn membership (for example, Azerbaijan, Niger and the United States of America) and those that have since joined (for example, Armenia, Guyana, Suriname), and c) several other countries that were added on an ad hoc basis, including new and upcoming producers or countries that the Natural Resource Governance Index is working in.[352] The inclusion of information for either petroleum or mining or both for jurisdictions is also based on the information included in the Resource Governance Index and reports from the Extractive Industries Transparency Initiative. For further information, see Endnote 338.

Jurisdictions that disclose all or nearly all contracts[353] online and for free with a requirement for disclosure in law are considered to be fully transparent and to pose a minimum tax spillover risk. They receive the lowest haven score of 0. It is important for contract disclosure to be backed up by a legal requirement for disclosure; this can take the form of a clause in legislation or regulations, or a ministerial decree. To reflect this, where all or nearly all contracts are disclosed

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[349] Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (New York, NY, 2009), 19.

[350] The Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0; updated 30 April 2019)

[351] Resource Governance Index, https://resourcegovernanceindex.org/.

[352] Email communication with Rob Pitman, Natural Resource Governance Institute, 28 January 2019.

[353] 'All or nearly all' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0; updated 30 April 2019) as not every contract online has been checked (email communication with Rob Pitman, Natural Resource Governance Institute, 25.01.2019). This would also require countries to publish a comprehensive list of all contracts and licences issued.

in practice but there is no requirement in the law to disclose contracts, jurisdiction get a slightly higher haven score of 10.

At the other end of the spectrum, jurisdictions pose the greatest tax avoidance risk where contracts are not available for free online and there is no legal requirement for disclosure. These jurisdictions receive the highest haven score of 50. Jurisdictions that have a legal requirement for contract disclosure but in practice do not disclose any contracts online receive a slightly lower haven score of 45.

Jurisdictions that disclose only some contracts[354] receive a reduced haven score of 20 if disclosure is required by law and 30 if there is no legal requirement for contract disclosure.

Where the assessment is made for both mining and petroleum, the weakest practice is recorded. For example, if a country discloses all or nearly all petroleum contracts in practice and this is required by law but does not disclose mining contracts or require this by law, the country is assessed as having no extractive industries contracts disclosed in practice or policy and therefore would receive a haven score of 50.

3.12.2 Why is this important?

Component 1: Unilateral Cross Border Tax Rulings

The inherently problematic nature of unilateral cross-border tax rulings was exposed widely during the Lux Leaks scandal in 2014. During the subsequent investigations by the European Commissioner for Competition, it was determined that some of these rulings conflicted with the European Union's state aid rules and therefore were illegal.[355] These decisions are currently being appealed by European Union member states, such as Ireland which was ordered by the European Commission to collect additional taxes.[356]

This episode has revealed that tax authorities, which are often sanctioned if not mandated by their respective finance ministers, help companies to avoid tax if not illegally, then at least questionably. This is on top of the profit-shifting tricks

[354] 'Some' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker. (https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0; updated 30 April 2019). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019).

[355] http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html; [accessed 15 May 2019].

[356] https://www.irishtimes.com/business/technology/state-recovers-14-3bn-from-apple-over-alleged-state-aid-1.3633191; [accessed 15 May 2019].

used by multinational corporations such as Google, FIAT, Starbucks, BASF, SAP or Amazon to reduce their tax bill. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13bn in taxes due through a complex tax manoeuvre agreed with the Irish tax agency.[357] Estimates put global tax avoidance by multinationals at around US$500bn per year.[358]

As the Lux Leaks scandal has made amply clear, the practice of unilaterally issuing binding tax rulings for individual taxpayers distorts the market by benefiting specific large companies over other often smaller competitors who neither can obtain nor know about the possibility of obtaining similar treatment. Beyond concerns around fair market competition, a core tenet for the rule of law is jeopardised if there is an exit option from equal treatment before the (tax) law. Tax rulings also reduce the applicable corporate income tax rate in jurisdictions (see Haven Indicator 1 Lowest Available Corporate Income Tax for more information).

The discussion around the publicity of tax rulings has a historical precedent. Similar to tax rulings, so-called private letter rulings issued by the US tax administration were (and continues to be) made public in 1977 after the non-government organisation Tax Analysts took the Internal Revenue Service to court over this practice in 1972. Private letter rulings gained traction in the 1940s and were criticised for facilitating favouritism. A few privileged law firms were effectively guardians of this kind of privatised law, which allowed them to build libraries of privatised tax law and interpretation, giving them an edge over smaller firms.[359] However, since 1991, the US has provided the option of so-called "unilateral advance pricing arrangements" which may include cross-border

[357] http://www.zeit.de/wirtschaft/unternehmen/2016-09/apple-steuern-eu-kommission-transparenz; [accessed 12 October 2016].

[358] https://www.wider.unu.edu/publication/global-distribution-revenue-loss-tax-avoidance; [accessed 4 November 2017].

[359] See Markus Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen* (Munich, 2015), 184–85. See also, Thomas R. III Reid, 'Public Access to Internal Revenue Service Rulings', *George Washington Law Review*, 41 (1972), 23 and Yehonatan Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings* (Rochester, NY, 30 June 2009) <https://papers.ssrn.com/abstract=1433473> [accessed 22 May 2019]. In the USA, there are also so-called unilateral APAs.

transfer pricing issues and are not public.[360] In contrast, in Belgium, all unilateral cross-border tax rulings are published in anonymised form.[361]

Furthermore, attracting profits on paper shrinks the tax base accordingly in jurisdictions elsewhere. These unilateral rulings usually negatively impact the tax base of other nations at least to the extent that they go unnoticed or unchallenged by the tax administration. Therefore, developing countries are likely to be hardest hit by the tax base poaching impact of unilateral tax rulings.

While the European Union has subsequently introduced automatic information exchange on these rulings,[362] this does not necessarily guarantee access to rulings by affected third party countries. The OECD has introduced a broader framework for mandatory spontaneous information exchange of tax rulings.[363] Yet, even if all countries participated, exchange mechanisms can only capture the tip of the iceberg. This is because it is difficult to define a unilateral cross-border tax ruling, and it is even more difficult, if not outright impossible, to monitor compliance with any obligation to report and exchange those rulings without making them public.

Various examples document the failure of reporting and exchange mechanisms around tax rulings. First, the inconsistent and misleading reporting practice of unilateral rulings by Luxembourg within the European Commission's Joint Transfer Pricing Forum prior to the Lux Leaks scandal[364] bears witness to the

[360] Although the IRS states a "Preference for Bilateral and Multilateral APAs" over unilateral ones (Rev. Proc. 2015-41, Section 2.4.d, https://www.irs.gov/pub/irs-drop/rp-15-41.pdf), the latter may nonetheless be available under certain conditions. After a lawsuit brought by BNA for disclosure of APAs, legislative action in December 1999 led to preventing disclosure of APAs. See Diane Ring, 'On the Frontier of Procedural Innovation: Advance Pricing Agreements and the Struggle to Allocate Income for Cross Border Taxation', *Michigan Journal of International Law*, 21/2 (2000), 160, footnote 52 and Givati, *Resolving Legal Uncertainty*, 174, footnote 130. In our classification (see above), these so-called "unilateral APAs" would be considered to be unilateral tax rulings despite the name suggesting that it is an APA and thence involving at least two tax administrations.

[361] Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, 185.

[362] *Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation*.

[363] OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*.

[364] Luxembourg had reported only 2 unilateral APAs to be in force in 2012, while reporting 119 in 2013. In contrast, more than 500 unilateral tax rulings were disclosed through LuxLeaks which were reported to have been agreed mainly between 2002 and 2010. These appear not to have been captured by the EU Joint Transfer Pricing Forum statistic which builds on information submitted by member states such as Luxembourg. See Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern*

unreliability of confidential data. This data is only reported by the tax administration without any way to verify the content of the data more publicly. Second, the TAXE Committee, the European Parliament's Special Committee on Tax Rulings, explains decades of non-compliance with requirements under the EU directives on reporting of tax rulings:

> The European Parliament […] Concludes […] Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not and continue not to spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups,[…]. (Para. 86)[365]

Ultimately, even if all tax rulings were exchanged without exception with all relevant jurisdictions, the lack of capacity in tax administrations especially in lower income countries, the complex nature of multinational's cross-border transactions, and weak international transfer pricing regulations add further constraints on affected governments to counteract tax avoidance embedded in aggressive unilateral tax rulings.

Component 2: Extractive Industries Contract Disclosure

Nigeria gave away nearly $6 billion in future oil revenues to Shell and Eni in a very generous, veiled deal that Global Witness analysed in 2018.[366] Corporate executives are currently on trial in Milan accused of bribery in relation to this deal:

> The case brought by the Milan Public Prosecutor alleges that $520 million from the deal was converted into cash and intended to be paid to then Nigerian President Goodluck Jonathan and other Nigerian government officials. The prosecutors further allege that money was also channelled to Eni and Shell executives as kickbacks.[367]

Zahlen, 178–79. Within the context of the OECD transparency regime on tax rulings under BEPS Action 5, Luxembourg reportedly issued 1,922 rulings between 1 April 2016 and 31 December 2016, published annually in a summarised and anonymised form in the tax administration's annual report (OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, 289).

[365] http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//EN&language=EN; [accessed 19 December 2017].

[366] Global Witness, *Take The Future: Shell's Scandalous Deal for Nigeria's Oil* (November 2018) <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/> [accessed 1 April 2019].

[367] 'Shell and Eni on Trial', *Global Witness*, 2019, para. 11 <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-eni-trial/> [accessed 1 April 2019].

The citizens of many other countries with some of the largest deposits of precious minerals worldwide are ripped off in a similar way. Government coffers and citizens often lose out because of hidden agreements, weak laws and aggressive corporate tax practices. In most jurisdictions, non-renewable mineral resources are managed by the state on behalf of the public. States typically extend the right to corporate entities to explore, extract and often sell mineral resources in exchange for revenue or a share of the mineral. The contract outlines the rights, duties and obligations of the parties, including fiscal terms and provisions. These contracts can span decades and have far-reaching and long-lasting impacts. Everything from taxes and infrastructure arrangements to environmental performance, social obligations and employment rules may be set out in contracts. Where contracts are used by jurisdictions, they form part of the legal framework; they are "essentially the law of a public resource project, and a basic tenet of the rule of law is that laws shall be publicly available".[368]

Contracts vary greatly between and within jurisdictions in terms of complexity, length and the degree of deviation from general legislation or a model contract. Contracts may be standard for every company with the only difference found in the name of companies involved and the area of land granted by the state through a formal legal title. Some contracts may just make one or few changes to general legislation or a model contract while in other contracts everything may be up for negotiation. In cases where many terms can be negotiated, contracts can establish new provisions on tax, environmental, social and other investment obligations, such as local procurement and employment, and so-called "stabilisation periods". None, any or all of these provisions in a contract may be confidential as well as the information that flows from them (such as revenue payments made by a company to government).[369]

Governments stand to gain from ensuring all contracts are public. Contract disclosure helps governments compare their own contracts with contracts in other jurisdictions, enables improved intra-governmental coordination in the enforcement of contracts, and can positively influence the trust of citizen's in the

[368] Rosenblum and Maples, *Contracts Confidential*, 16.

[369] In one of the earliest surveys of contracts, Rosenblum and Maples (2009) observed that confidentiality clauses in 150 mining and oil contracts were largely uniform with confidentiality applying to all information, with some exceptions for public disclosure of certain information by law, such as to the stock exchange, or information in the public interest. The similarity in clauses across different extractive contracts seems to be an exception when compared to other commercial contracts. According to Rosenblum and Maples, this general confidentiality clauses does not actually prevent contracts from being disclosed: "If the government and the company, or consortium of companies, agree to disclose the contract, the confidentiality clause poses no impediment, except possibly a procedural one—written consent of the parties. […] On the other hand, procedural requirements may serve as a pretext to mask the unwillingness of one or both parties to disclose" (2009: 27).

state.[370] There are already great asymmetries in information that put governments at a disadvantage in negotiations with companies. In turn, citizens can use the contracts to hold government and companies accountable on their obligations. Disclosure may be an additional incentive for governments to ensure as many constituents as possible are satisfied, contributing to more durable contracts that are less likely to be renegotiated or subject to corrupt influence for special deviations that ultimately undervalue the resource.[371] In Oxfam's 2018 Contract Disclosure Survey, secrecy is described as being short-lived because where companies have negotiated windfall deals by exploiting secrecy or through bribery, subsequent government administrations have grounds and choose to renegotiate contracts.[372]

Those who defend contract secrecy often claim it protects so-called commercially sensitive information. There is no consensus technical definition of this type of information, but being generous with the term, even if information is deemed to be commercially sensitive, this "is only one consideration among many when determining whether information should be made publicly available".[373] Under freedom of information principles, information that is likely to cause harm to a company's competitive position, such as trade secrets or information about future transactions, would be redacted. However, this information is unlikely to be found in contracts. As a study of publicly available contracts in Mongolia shows, trade secrets are not included, often because they are signed by a consortium of companies that may change over time: "it is highly unlikely that any company would risk writing trade secrets into any contract".[374] Financial terms that are always found in deals are often already known within the industry or released on stock exchanges for the shareholders of listed companies. Most countries disclose contracts without redaction.[375]

To date, there is no evidence to suggest public disclosure of contracts has harmed companies. For companies, disclosure can help dispel suspicion, build trust and "temper unrealistic expectations and correct misconceptions that may skew communities' perceptions" especially when the signing of contracts is often

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[370] Rosenblum and Maples, *Contracts Confidential*.

[371] Rosenblum and Maples, *Contracts Confidential*.

[372] Isabel Munilla and Kathleen Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, Oxfam Briefing Paper (2018), 64.

[373] Rosenblum and Maples, *Contracts Confidential*, 36.

[374] Robert Pitman, *Mongolia's Missing Oil, Gas and Mining Contracts* (January 2019), 6 <https://resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf> [accessed 2 April 2019].

[375] Don Hubert and Rob Pitman, *Past the Tipping Point? Contract Disclosure within EITI* (March 2017), 48.

associated with great celebration by governments and companies.[376] In fact, some companies have taken a lead in disclosing contracts signed with governments in countries where contracts are not typically disclosed. In Oxfam's survey, 18 of the 40 assessed companies had made statements supporting contract disclosure. Kosmos Energy[377] and Tullow Oil[378] go further. They have public contract disclosure policies and disclose contracts on their websites or stock exchanges.

Publication of contracts along with the project-level disclosure of revenues "are now established as international norms", according to an International Monetary Fund briefing at the end of 2018.[379] Indeed, significant progress has been made in recent years.[380]

Civil society movements, especially through the convening network Publish What You Pay, have demanded that governments and companies commit to contract disclosure. From 2013, the Extractive Industries Transparency Initiative (EITI) has "encouraged" implementing countries to publish contracts and has required countries to publish their government's position and practice on contract transparency.[381] In February 2019, the EITI Board agreed on changes to the EITI Standard. From 1 January 2021, all implementing countries will be required to make public contracts signed going forward. In the meantime, they must develop a plan to ensure compliance with the new contract disclosure requirement.[382]

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[376] Munilla and Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, 14.

[377] Sophie Durham, 'Contract Transparency Builds Trust and Mitigates Risk Says Kosmos', *Extractive Industries Transparency Initiative*, 11 December 2018 <https://eiti.org/blog/contract-transparency-builds-trust-mitigates-risk-says-kosmos> [accessed 5 March 2019].

[378] Tullow Oil PlC, 'Transparency', 2019 <https://www.tullowoil.com/sustainability/shared-prosperity/transparency> [accessed 5 March 2019].

[379] *Fiscal Transparency Initiative: Integration of Natural Resource Management Issues* (28 December 2018), 7 <https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues> [accessed 18 February 2019].

[380] Rob Pitman and Isabel Munilla, 'It's Time for EITI to Require Contract Transparency. Here Are Four Reasons Why.', *Natural Resource Governance Institute*, 22 February 2019 <https://resourcegovernance.org/blog/its-time-eiti-require-contract-transparency-here-are-four-reasons-why> [accessed 1 March 2019].

[381] Dyveke Rogan and Gisela Granado, *Contract Transparency in EITI Countries: A Review on How Countries Report on Government's Contract Transparency Policy* (August 2015), 36.

[382] Extractive Industries Transparency Initiative International Secretariat, 'The Board Agreed in Principle to the Proposals Made on Clarifications and Changes to the EITI Requirements.', *Extractive Industries Transparency Initiative*, 2019 <https://eiti.org/BD/2019-25> [accessed 5 March 2019].

In practice, 29 EITI implementing countries, just over half of EITI countries (including one subnational region), already have disclosed some agreements and three-quarters of countries globally that have disclosed contracts are part of the EITI.[383] According to this 2017 study published by the Natural Resource Governance Institute, there is, however, discrepancy between policy and practice in some jurisdictions. For example, the Central African Republic, Ivory Coast and Tanzania require disclosure by law but have not followed through in practice.[384] Further, in only 16 EITI countries, all or nearly all contracts have been disclosed in at least one sector (mining or petroleum). Without a comprehensive list of what contracts actually exist in a jurisdiction it is often difficult to assess the extent of disclosure.

Yet disclosing contracts is just part of necessary transparency throughout the contracting process, from planning and assessment of applications to the award, negotiation, implementation and monitoring of contracts.[385] Lessons from transparency in public procurement illustrate the potential of open contracting. A 2017 World Bank study using data from 88 countries on almost 34,000 firms shows that countries with more transparent public procurement systems have fewer and smaller kickbacks and creates a more level playing field for smaller companies.[386]

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[383] Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 48.

[384] Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 18.

[385] Rob Pitman and others, *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice* (26 June 2018) <https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf> [accessed 12 February 2019]; Open Contracting Partnership, 'Global Principles', *Open Contracting Partnership* <https://www.open-contracting.org/implement/global-principles/> [accessed 5 March 2019].

[386] Stephen Knack, Nataliya Biletska and Kanishka Kacker, *Deterring Kickbacks and Encouraging Entry in Public Procurement Markets: Evidence from Firm Surveys in 88 Developing Countries*, Policy Research Working Papers (2017) <http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-8078> [accessed 5 March 2019].

3.13 HI 13 – Reporting of Tax Avoidance Schemes

3.13.1 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;[387] b) the International Bureau of Fiscal Documentation (IBFD) database; [388] c) local websites of jurisdictions' tax authorities; d) local tax legislation of jurisdictions; e) the Organisation for Economic Co-operation and

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[387] 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

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

Development (OECD) publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report".[389]

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

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

[389] 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].

All underlying data can be accessed freely in the CTHI database.[390] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 403, 404, 405 and 406) in the database report of the respective jurisdiction.

3.13.2 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.[391]

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.[392] 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,

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

[391] 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].

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

Portugal, Canada, South Africa, South Korea and Israel),[393] have followed suit. The revelations of Lux Leaks[394] and Panama Papers scandals[395] and the European Union State Aid cases[396] 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).[397]

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.[398] 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.

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

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

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

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

[397] 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 s**imilar 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'.

[398] 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].

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.[399]

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.[400] Under these International Financial Reporting Standards, prudence[401] 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.

[399]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].

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

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

3.14 HI 14 – Tax Court Secrecy

3.14.1 What is measured?

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing two relevant aspects.

1. **Regarding the openness of court proceedings/lawsuits/trials:** we assess for a) criminal and b) civil/administrative tax matters,[402] whether the public always has the right to attend the full proceedings and cannot be ordered to leave the court room even if a party invokes tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. –
   - Acceptable justifications for exceptions for the principle of public access may include (subject to contextual analysis): against moral, involvement of a minor, public order, national security, administration of justice, business or trade secrets or exceptional circumstances.
   - Unacceptable exceptions include: discretion by the judge, the taxpayer requesting privacy or the involvement of, for example, a trustee.
   - When exceptions to the principle of public access include: personal privacy or the protection of private or family life, we consider the answer as "unknown" because it is not clear if these provisions are used in extraordinary circumstances or if they can be abused to exclude the public from proceedings on tax matters.[403]

2. **Regarding the public online availability of verdicts/judgements/ sentences:** it assesses for a) criminal and b) civil/administrative tax matters, whether all written judgments are published online for free or at a cost of no more than €/£/US$10. For a judgement to be considered published, only personal details which are not relevant for assessing the tax matter in question, such as personal addresses and account numbers, could be redacted. Tax Secrecy, bank secrecy, professional secrecy or comparable confidentiality rules are not acceptable as the basis for exceptions from public disclosure. This component also assesses if the names of the parties are anonymised.[404]

[402] Civil and administrative tax matters are treated synonymously throughout this document. They refer to any dispute between a taxpayer and the tax administration which is not governed by criminal law/procedures.

[403] This indicator has been refined since our last assessment (Financial Secrecy Index 2018) to consider cases where privacy or family life were mentioned as reasons to prevent public access.

[404] This indicator has been refined since our last assessment (Financial Secrecy Index 2018) to consider cases where the name of the parties was removed or anonymised in some or all cases.

If court proceedings are openly accessible, this indicator's haven score is reduced by 25 for each criminal and civil tax matters. By the same token, the haven score will be reduced by 25 if all judgments in criminal tax matters are published online for free; and likewise, by another 25 for judgements in civil tax matters. However, the score is reduced only by 12.5 (instead of 25) if judgments are available online only against a cost of no more than €/£/US$10 or if judgments are published online for free in anonymised form.

Thus, for instance, a jurisdiction with public and comprehensively accessible criminal and civil tax proceedings, will have a haven score of 0 if all the judgements/verdicts resulting from those proceedings are published online for free. The jurisdiction would have a 25 haven score if the judgements resulting from both criminal and civil tax proceedings are available online against a cost of up to €/£/US$10 each or if judgements are available online for free, but at least some of them in an anonymised form.

The information for this indicator has been drawn from the following sources: a) results of the Tax Justice Network Survey 2017; b) Thomson Reuters Practical Law Tax Litigation Global Guide[405] or similar online sources; c) in certain cases, we searched for and analysed the local legislation of jurisdictions to find out whether there are any limitations to public access embedded in the laws; and d) in cases where the above sources indicated that written judgments of both criminal and civil tax court cases are published online, the corresponding local court website or other government agencies' websites were consulted to ensure that both criminal and civil tax judgments are effectively available and that technical problems do not prevent access to information.

If we were unable to find supporting evidence (either any academic article or source, such as Thomson Reuters Practical Law Tax Litigation Global Guide, or a Law plus Section/Article/Paragraph), we concluded the answer to be "unknown", and described the situation in a note (e.g. "while the Ministry of Finance said X, we could not verify this").

For practical purposes, we consider court judgments to be publicly available online when it is not necessary to establish complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number, or sending a request by post). Accordingly, we have split this indicator into two components. The overall haven score for this indicator is calculated by simply addition of the haven scores of each of these components. The haven scoring matrix is shown in Table 14.1 (on

[405] Thomson Reuters Practical Law, 'Tax Litigation | Global Guide | Practical Law' <https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=(sc.Default)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk&firstPage=true&bhcp=1> [accessed 13 March 2019].

the following page), with full details of the assessment logic presented in Annex B.

Table 14.1. Scoring Matrix Haven Indicator 14

<table>
<tr><th colspan="2">Regulation</th><th>Haven Score
[100 = maximum risk;
0 = minimum risk]</th></tr>
<tr><td colspan="3">Component 1: Public access to tax court proceedings (50)</td></tr>
<tr><td colspan="2"><u>No or restricted access to both criminal and civil tax proceedings</u>
For both criminal and civil tax proceedings, the public cannot always access the courtroom or it may be ordered to leave by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules.</td><td>50</td></tr>
<tr><td colspan="2"><u>No or restricted access to either criminal or civil tax proceedings</u>
While criminal (or civil) tax proceedings are generally public; civil (or criminal) tax proceedings are not public, or the audience may be ordered to leave by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules.</td><td>25</td></tr>
<tr><td colspan="2"><u>Public access to both criminal and civil tax proceedings</u>
Criminal and civil tax proceedings are always public, and the audience may not be ordered to leave by invoking tax secrecy, professional secrecy, or comparable confidentiality rules.</td><td>0</td></tr>
<tr><td colspan="3">Component 2: Online publication of tax judgements/verdicts (50)</td></tr>
<tr><td rowspan="3"><u>Criminal tax judgements/verdicts</u></td><td>Not available online</td><td>25</td></tr>
<tr><td>Always available up to €/£/US$10 or available for free but in anonymised form</td><td>12.5</td></tr>
<tr><td>Always available online for free</td><td>0</td></tr>
<tr><td rowspan="3"><u>Civil tax judgments/verdicts</u></td><td>Not available online</td><td>25</td></tr>
<tr><td>Always available up to €/£/US$10, or available for free but in anonymised form</td><td>12.5</td></tr>
<tr><td>Always available online for free</td><td>0</td></tr>
</table>

All underlying data can be accessed freely in the CTHI database.[406] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 407-410) in the database report of the respective jurisdiction.

3.14.2 Why is it important?

The public's right to open courts is well established in most countries, regardless of whether the legal system is rooted in common law or civil law.[407] Open court proceedings and public availability of verdicts are often considered to be important pillars of a modern democratic state, directly derived from a jurisdiction's constitution and/or the principle of the rule of law, on which the legitimacy of the entire judicial process hinges.

The "Rule of Law Department" of the Organisation for Security and Co-operation in Europe (OSCE) makes a direct connection between the Universal Declaration of Human Rights and public access to court judgements:

> The obligation of states to 'make public' the decisions of their courts is found within the provisions on 'the right to a fair trial'. This right stems from Article 10 of the Universal Declaration of Human Rights (1948) and has been elaborated and set down in binding form in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR).[408]

Governments and private actors alike abide by court decisions at least in part because the openness of the process allows the public to monitor if it meets requirements of procedural justice. These requirements include the transparency of the process, thereby building confidence in the non-arbitrary application of the law. The transparency of the process safeguards the independence and impartiality of courts.

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

[407] Randall S. Bocock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers' (presented at the 5th International Assembly of Tax Judges, Washington, D.C, 2014), 6 <http://www.iatj.net/congresses/documents/Protection_Bocock.pdf> [accessed 13 March 2019].

[408] Organisation for Security and Co-operation in Europe, 'Access to Court Decisions: A Legal Analysis of Relevant International and National Provisions', 2008, 5 <https://www.right2info.org/resources/publications/publications/OSCE_AnalysisAccesstoCourtDecisions17092008.pdf> [accessed 13 March 2019].

Closely linked to the fundamental human rights of the freedom of expression and freedom of the press,[409] open courts not only allow the scrutiny of judicial decisions, but also are a prerequisite for the accountability of governments (in the form of the public prosecutor and/or tax administration).[410] Furthermore, open courts are essential in ensuring compliance with both the letter of the law and its spirit.[411] Thus, open courts are an important element in protecting the integrity of the entire judicial system and of the administration.

If any exceptions are allowed for certain types of civil and/or criminal tax matters, governments and private sector actors may misuse these exceptions for sweetheart deals, questionable out of court settlements or political vendettas. Generally speaking, the possibility of allowing exceptions to public access to proceedings may invite powerful lobbyists and/or defendants to exert pressure on judges not to grant access to court proceedings or verdicts in order to avoid public scrutiny.

While specific exceptions to this open court principle are widely seen to be legitimate with respect to "the protection of children or victims of sexual crimes",[412] the holding of closed sessions of a court (in camera) should be restricted to such specific situations.

Nonetheless, in practice, in some countries tax proceedings are typically conducted behind closed doors and/or tax judgements are not published. Privacy arguments or official "tax secrecy" legislation, which may have the power to override the open court principle, are sometimes used as justification for the exclusion of the public or non-disclosure of verdicts.

This practice creates fundamental conflicts with the rule of law. While all tax proceedings should be public, to address data protection concerns, specific personal data of taxpayers (dates of birth, addresses, names of children, bank

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[409] United Nations, 'Universal Declaration of Human Rights', 1948 <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> [accessed 13 March 2019].

[410] An example of relevant research being enabled through tax court transparency is the study of "Corporate Shams": Joshua D. Blank and Nancy Staudt, 'Corporate Shams', *New York Unversity Law Review*, 87/6 (2012), 1641–1712.. Another example for the potential impact of open tax court judgements on policy decisions and public trust in government are the changes at the US tax administration IRS in response to large scale tax avoidance cases, as reported here: Forbes, 'IRS Brings "A Team" To Crush Transfer Pricing Abuse', *Forbes*, 2012 <https://www.forbes.com/sites/kellyphillipserb/2012/03/27/irs-brings-a-team-to-crush-transfer-pricing-abuse/> [accessed 13 March 2019].

[411] Cecelia Burgman and others, *Our Rights Our Information: Empowering People to Demand Rights through Knowledge* (2007).

[412] Randall S. Bocock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers', 7.

account numbers, etc) could be redacted from verdicts, and their reporting could be restricted. These details are not required for judicial decision making and hence removing them does not conflict with the open court principle.[413] This approach balances the taxpayer's right to privacy over their personal affairs and to informational self-determination, and the public's right to transparent judicial proceedings. However, we consider that public availability of the names of the parties (plaintiff, defendant) is relevant for contextual research and media purposes, to ensure accountability. While anonymisation in exceptional circumstances, such as to protect victims' lives or minors, is acceptable, anonymisation of all or most decisions may create obstacles for the process of researching and analysing decisions.

Preventing public access to tax court judgments may result in important court decisions that have an impact on the public's revenue, being made without the public's knowledge. This denies the public the information required to exercise the right to protest or criticise decisions, to determine the need for a policy change, or to engage the court through an amicus curiae process. In some jurisdictions, all "important" or "relevant" court verdicts are said to be chosen by judges or others to be made public. However, this selection process of relevant cases for the public is inevitably subjective and thus rife with risk that cases considered to be relevant by some parts of the public remain out of reach of legitimate scrutiny.

Furthermore, court adjudications usually provide an essential part of the application of the laws by setting precedent and therefore provide clarity among citizens about the right way to interpret the law. They are also often an important driver of policy changes and legislative action by exposing gaps and loopholes in, or unintended consequences of, laws and regulations. Not disclosing judgements therefore cuts off an important feedback loop for policy- and law-makers. It may lead over time to flawed legislation as well as to a low deterrence effect and impaired law enforcement by prosecutorial authorities and tax administration's failure to collect taxes as intended by parliament. Without public access to all tax verdicts, meaningful empirical research about the outcomes of tax trials, especially with respect to large taxpayers, is near impossible. Consequently, sweetheart deals at court and undue political interference in the administration can neither be detected nor ruled out.

The secrecy emanating from a lack of open tax court proceedings and verdicts shields both domestic and non-resident actors involved in domestic economic activity and seek to aggressively minimise their tax payments from public scrutiny. For example, any non-resident individual or multinational company

[413] Sujoy Chatterjee, 'Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonimity?', *Dalhousie Journal of Legal Studies*, 23 (2014), 91.

fearing spontaneous tax information exchange with home jurisdiction authorities may feel reassured to invest in jurisdictions with strict tax secrecy provisions that allow them to intervene to postpone or even frustrate that exchange at court in silence.

Similarly, in the context of tax wars (or "tax competition"), non-resident individuals and companies may be given special tax deals by local administrations in the race to the bottom which may not withstand legal or public scrutiny. While limited access to information about special tax deals brokered between taxpayers and the tax administration is a different problem to tax court secrecy (and is dealt with in Haven Indicator 12),[414] the latter can act as an important backstop for the former in case for some reason a non-resident is taken to court.

Therefore, without public scrutiny, the risk of (undetected) biases by tax administrations and courts in favour of non-resident investors increases.

The reason why we place emphasis on open, unpaid data access lies in the enhanced utility in open data environments when data is available free of cost. If relevant data can only be accessed by paying a fee, it can be prohibitively expensive to import this data into an open data environment or to access sufficient cases for research/media purposes, even when the cost per record is low. This creates substantial hurdles for making comparisons between jurisdictions and new creative data usages.[415]

[414] http://www.corporatetaxhavenindex.org/PDF/12-Tax-Rulings-Extractive-Contracts.pdf

[415] For more information about this see http://opencorporates.com/ [accessed 28 November 2016].

3.15 HI 15 – Deduction Limitation for Interest

3.15.1 What is measured?

This indicator focuses on the limitation of interest expenses by using a fixed ratio rule. It measures whether or to what extent a jurisdiction applies a fixed ratio rule to limit the deduction of interest paid to non-resident group affiliates ("intra-group interest payments") from the corporate income tax base.

Jurisdictions may use various measures to limit the deduction of intra-group interest payments.[416] The leading model used by the Organisation for Economic Co-operation and Development (OECD) is the fixed ratio rule based on the entity's net interest-to-Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) ratio.[417] This has been inspired by a rule that was first introduced in Germany in 2008. In Action 4 of the Base Erosion and Profit Shifting (BEPS) project, the OECD recommends the adoption of a fixed ratio rule based on the net interest-to-EBITDA ratio and set a corridor of 10%-30% EBITDA as the best practice measure to tackle base erosion and profit shifting involving interest payments ("best practice measure").[418] Later, in 2016, the European Union employed the best practice measure limitation rule suggested by the OECD, and included it in its Anti-Tax Avoidance Directive.[419]

In practice, the EBITDA-based interest limitation rule means that companies are not able to deduct intra-group interest payments from the pre-tax profit of a company if they exceed the aforementioned fixed corridor. For example, if a company has €100 of earnings (EBITDA), from which it pays €40 in intra-group interest payments, and is required to apply the best practice measure of 30% EBITDA, the allowable deduction will be limited to €30. This means that €10 of the €40 intra-group interest payments could not be deducted according to the

[416] These are: arm's length test, withholding tax on interest payments, disallowance of interest expense with a specified percentage, limitation of interest expense with a fixed ratio, limitation of interest expense with a group ratio, and disallowance of interest expense on specific transactions. For further details, see, OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 19, para 11. <http://www.oecd-ilibrary.org/taxation/limiting-base-erosion-involving-interest-deductions-and-other-financial-payments-action-4-2015-final-report_9789264241176-en> [accessed 21 August 2018].

[417] Richard Collier and others, *Dissecting the EU's Recent Anti-Tax Avoidance Measures: Merits and Problems*, EconPol Policy Report (August 2018), 5 <https://www.cesifo-group.de/DocDL/EconPol_Policy_Report_08_2018.pdf> [accessed 21 August 2018].

[418] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 11, 25.

[419] Council of the European Union and Council of the European Union, 'Council Directive (EU) 2016/1164 of 12 July 2016 Laying down Rules against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market', 2016 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN> [accessed 29 April 2019].

rule. As a consequence, these €10 would be included in the taxable profit in the jurisdiction.

The scoring matrix is shown in Table 15.1, with full details of the assessment logic presented in Annex B.

Table 15.1. Scoring Matrix Haven Indicator 15

Regulation	**Haven Score** [100% = maximum risk; 0% = minimum risk]
No limits are applied on the deduction No limits are applied on the deduction of intra-group interest payments.	100
Either the group ratio rule or the global debt-to-equity ratio opt-in is applied (regardless of whether the applied restrictions on the deductions are lax or not) Restrictions are applied in combination with a group ratio rule or global debt-to-equity ratio opt-in.	90
Lax restrictions are applied on the deduction (but no group ratio rule or global debt-to-equity ratio opt-in) A deduction is allowed either for intra-group interest payments worth 30% EBITDA (or above) and/or for other interest deduction limitation method using a fixed ratio rule (e.g., automatic application of thin capitalisation rules). The haven score increases by 5 if an exclusion provision for financial undertakings is applied.	75 80 if financial undertaking exclusion is applied
Restrictions are applied on the deduction (but no group ratio rule or global debt-to-equity ratio opt-in) A deduction is allowed for intra-group interest payments worth between 10% EBITDA and below 30% EBITDA. The haven score increases in 5 if an exclusion provision for financial undertakings is applied.	50 55 if financial undertaking exclusion is applied
No deduction of intra-group interest payments is permitted	0

A 100 haven score is given if a jurisdiction applies no limits on the deduction of intra-group interest payments. The haven score of a jurisdiction is reduced to 75 in two cases which we consider as lax restrictions on interest deductions:

a) a jurisdiction allows an interest deduction limitation only for payments worth 30% EBITDA or above; or

b) the jurisdiction allows any other interest deduction limitation method using a fixed ratio rule, such as thin capitalisation rules based on a debt-to-equity test, unless their application is discretionary rather than automatic.[420]

This is because when a country applies thin capitalisation rules based on comparisons with corporate indebtedness in arm's length situations,[421] the impact of thin capitalisation rules on total leverage is reduced to about half.[422] We treat jurisdictions as if no interest deduction limitation method is applied in cases where thin capitalisation is discretionary, like in Switzerland. This is based on the weakest link principle used in the Corporate Tax Haven Index.[423]

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[420] See, Jennifer Blouin and others, 'Thin Capitalization Rules and Multinational Firm Capital Structure', *IMF Working Paper WP/14/12*, 2014 <https://www.imf.org/external/pubs/ft/wp/2014/wp1412.pdf> [accessed 28 March 2019].

[421] An OECD report explains the inadequateness of an arm's length approach for developing countries as follows: "the disadvantage of utilising an arm's length approach is its large resource and skill requirements. In order to apply the arm's length approach, the tax auditor needs to understand the processes third party lenders uses to determine the maximum amount they would lend to a specific taxpayer. Tax authorities need to have expertise to step into the role of the third party lender and establish the specific characteristics of the group affiliate to determine an appropriate amount of debt. In practice this means that, in implementing a pure arm's length approach: iii. tax auditors need to gain significant understanding of third party lending practices iv. …and need to investigate the application of those criteria with regards to specific taxpayers, v. And, inevitably, this will require a degree of judgment to determine the proper treatment for each factual situation." OECD, 'Thin Capitalisation Legislation A Background Paper For Country Tax Administrations (Pilot Version for Comments)', 2012 <http://www.oecd.org/ctp/tax-global/5.%20thin_capitalization_background.pdf> [accessed 15 May 2019].

[422] Jennifer Blouin and others, 'Thin Capitalization Rules and Multinational Firm Capital Structure', *IMF Working Paper WP/14/12*, 2014, 5 <https://www.imf.org/external/pubs/ft/wp/2014/wp1412.pdf> [accessed 28 March 2019].

[423] The weakest link research principle is used synonymously with the "lowest common denominator" approach. During the assessment of a jurisdiction's legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the haven score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator's haven score.

The haven score is further reduced to 50 if a jurisdiction applies the best practice measure and allows a deduction limitation for payments worth between 10% EBITDA and below 30% EBITDA.

Alongside the best practice measure, the OECD recommends the introduction of a group ratio opt-in rule, which weakens the deduction limitation by allowing an entity to exceed the 30% limit in certain circumstances based on a relevant financial ratio of its worldwide group.[424] This group ratio rule opt-in rule allows a company with net interest expenses above the jurisdiction's fixed ratio to deduct interest up to the level of its group's net third party interest-to-EBITDA ratio or a benchmark fixed ratio based on relevant financial ratio of its group, such as equity-to-total assets. In other words, it enables a company to deduct a higher level of interest expense. Therefore, we consider this group ratio opt-in rule an escape clause from the interest deduction ceiling, undermining the application of the best practice measure.[425] The same holds true for applying a safe-harbour debt-to-equity ratio for thin capitalisation rules given that this allows a company to fully deduct the interest as loss as the fixed proportion is not exceeded.[426] Thus, in cases where either the group ratio rule or the global debt-to-equity ratio rule opt-in is enabled, then regardless of whether the restrictions applied on the deduction are lax or not, we consider it as an exception to the best practice measure and the haven score is reduced only to 90 (rather than to 75 in the case of lax restrictions or to 50 in the case of stronger restrictions) .

In addition, the OECD indicates a problem in applying the EBITDA-based interest limitation rule on entities operating in banking and insurance groups, as well as on regulated banks and insurance companies in non-financial groups.[427] This is because, according to the OECD, fixed ratio rules will either have no impact on these sectors or are not a suitable measure for economic activity across them.

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[424] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 57–58, paras 115, 118.

[425] Wolfgang Tischbirek, 'Germany: Interest Barrier, Loss of Losses and Other Delicacies', *Euromoney Handbooks*, 2008 <https://m.pplaw.com/sites/default/files/publications/2008/11/wt-2008-germany-interest-barrier.pdf> [accessed 15 May 2019]. See also: https://www.deloitte-tax-news.de/german-tax-legal-news/lower-tax-court-clarifies-application-of-escape-clause-in-harmful-shareholder-financing.html; [accessed 2 December 2018].

[426] See, Ernst & Young, 'Thin Capitalization Regimes in Selected Countries-Report Prepared for the Advisory Panel on Canada's System of International Taxation', 2008 <https://www.fin.gc.ca/access/tt-it/apcsit-gcrcfi/pdf/RR6%20-%20Ernst%20&%20Young%20-%20en%20-%20final%20-%20090617.pdf> [accessed 15 May 2019]. See also, Valeria Merlo and Georg Wamser, *Debt Shifting and Thin-Capitalization Rules*, CESifo DICE Report 4/2014, December 2014, 5 <https://www.cesifo-group.de/DocDL/dicereport414-forum5.pdf>.

[427] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 75–76.

Nonetheless, the OECD emphasised that its recommendation does not imply complete exclusion of these sectors from the best practice rule but rather specific fixed ratio rules should be applied that are designed to address the risks these sectors pose. The OECD also mentioned that further work is required to identify these specific rules.[428] However, following public consultations on interest limitation rules in the banking and insurance sectors[429] and receiving comments,[430] the OECD has not produced any specific limitation rules for the banking and insurance sectors in its latest update of Action 4.[431] In a similar way, the EU Anti-Tax Avoidance Directive introduced a carve out provision in Article 4 (paragraph 7) while declaring in its preface that "the discussions in this field are not yet sufficiently conclusive [...] to provide specific rules".[432] Given that these kinds of specific rules are yet to be designed, we consider that applying the exclusion provision for financial undertakings without providing specific limitation rules is a loophole in the tax system. For this reason, in cases where a country applies the exclusion provision for financial undertakings but does not provide a corresponding specific limitation rule for these sectors, we increase the haven score by 5.

A zero haven score is granted if a jurisdiction does not permit any deductions of intra-group interest payments at all.

The data for this indicator was collected primarily from country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD)

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[428] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project (2016), 80 <https://www.oecd-ilibrary.org/taxation/limiting-base-erosion-involving-interest-deductions-and-other-financial-payments-action-4-2016-update_9789264268333-en> [accessed 22 August 2018].

[429]OECD, *Public Discussion Draft- BEPS Action 4 Approaches to Address BEPS Involving Interest in the Banking and Insurance Sectors*, 28 July 2016 <https://www.oecd.org/tax/aggressive/discussion-draft-beps-action-4-banking-and-insurance-sector.pdf> [accessed 26 December 2018].

[430]OECD, *Comments Received on Public Discussion Draft- BEPS Action 4 Approaches to Address BEPS Involving Interest in the Banking and Insurance Sectors*, 15 September 2016 <https://www.oecd.org/ctp/aggressive/comments-received-Discussion-draft-Banking-Insurance-sectors.pdf> [accessed 26 December 2018].

[431] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update*, 80.

[432] Council of the European Union and Council of the European Union, 'Council Directive (EU) 2016/1164 of 12 July 2016 Laying down Rules against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market'. para. 9.

database.[433] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

All underlying data can be accessed freely in the CTHI database.[434] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 517, 518 and 519) in the database report of the respective jurisdiction.

3.15.2 Why is this important?

In most countries, interest on debt is considered a deductible cost, which reduces the tax base. In contrast, dividend, or other equity returns, are generally not deductible. The difference in the tax treatment of debt and equity in the cross-border context creates a tax-induced bias towards debt financing because the more debt a company takes on, the more interest it pays. This in turn reduces its tax bill. The opportunities surrounding outbound investment potentially create competitive distortions between multinational companies and entities operating in the domestic market. Such distortions sets up tax preferences for assets to be held by multinational companies rather than domestic companies, and thus undermine capital ownership neutrality.[435]

The distortion is also used by many multinational companies to avoid taxes.[436] Multinational companies can easily shift profits to tax havens by heavily loading subsidiaries operating in high-tax jurisdictions with debt and then use excessive deductions and make interest payments to low tax jurisdictions. The difference in the tax treatment of debt and equity can also lead to other forms of base erosion and profit shifting. This includes using hybrid instruments that give rise to deductible interest payments with no corresponding taxable income and using loans to invest in assets resulting in returns that are not taxed or taxed at a reduced rate.[437] These forms of base erosion and profit shifting lead countries to engage in the race to the bottom in taxation, while reducing governments' revenues needed to protect the human rights of their citizens.

For all these reasons, cross-border intra-group financing makes intra-group interest payments one of the most important concerns for tax base erosion for both developed and developing countries. Developing countries are even more

[433] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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

[435] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 15.

[436] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update*, 19.

[437] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 16.

prone to the erosion of their tax base through outbound intra-group interest payments because of their dependence on foreign direct investment, which is mostly financed by loans.[438]

To prevent base erosion and profit shifting arising from the excessive deduction of intra-group interest payments, some jurisdictions adopt limitation rules, but many of these rules have not been very successful so far. The OECD explains the reason for this:

> the fungibility of money and the flexibility of financial instruments have made it possible for groups to bypass the effect of rules and replicate similar benefits using different tools. This has led to countries repeatedly introducing new rules, or amending existing ones, creating layers of complexity without addressing the key underlying issues.[439]

To address this problem, the OECD in Action 4 recommends countries adopt the best practice measure of a fixed ratio rule based on a net interest-to-EBITDA ratio within 10%-30%, as explained above. This current best practice measure represents a very soft approach and it may not even address the targeted problem. This is because setting the top margin of the fixed ratio on 30% of EBITDA is very high. It comes as no surprise that the highest margin of 30% has been chosen by many countries that have adopted the new best practice measure.[440] This high ratio will probably impact only a small number of highly indebted companies[441].

In order to discourage companies from over-leveraging themselves, it would be more effective if jurisdictions adopt at least the lower margin of the best practice rule, that is, 10% of EBITDA. Unfortunately, some countries have moved from the lower to the upper margin or even replaced a more rigorous measures with the EBITDA-based limitation rule. For example, Romania first introduced 10% of EBITDA-based limitation rule for intra-group interest payments, effective as of 1

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[438] Hugh J Ault and Brian J Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, New York*, 2015. second Edition 2017 p.11. As we noted above, applying limitations on interest payments of standalone entities rather than at a group ratio level also carry base erosion and profit shifting risks, see OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report,* 19.

[439] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*.

[440] https://www.taxjustice.net/wp-content/uploads/2017/11/Dodging-taxes-with-debt-TJN-Briefing.pdf; [accessed 16 August 2018].

[441] https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-action-4-interest-deductions-implementation-matrix.pdf; [accessed 16 August 2018].

January 2018.[442] However, not long after, it raised the interest deduction limitation cap from 10% to 30% of EBITDA, effective as of 1 January 2019.[443] Similarly, Denmark has changed from an EBIT-based limitation to EBITDA-based limitation when it transposed the EU Anti-Tax Avoidance Directive into domestic law.[444] This represents a softening of the deduction limitation rules and facilitates more interest-driven profit shifting.

Some argue that applying a fixed ratio rule is a blunt tool as it does not take into account that groups operating in different sectors may require different amounts of leverage. According to their claim, even within a specific sector, some groups may be more highly leveraged for non-tax reasons and a fixed ratio rule could lead to double taxation for groups which are leveraged above this level.[445] However, if these highly leveraged groups existed in reality, the deduction limitation could incentivise a de-leveraging of these groups in order for them to avoid double taxation. Furthermore, in order to mitigate against the claimed risks of double taxation, the group ratio rule could be implemented. Yet, the implementation of this rule requires a jurisdiction to have detailed financial information about the specific worldwide group and in-depth analytical capacity at the tax administration. These conditions may often not be met, especially for developing countries. In addition, as explained above, the group ratio opt-in rule acts as an escape clause from the interest deduction ceiling, undermining the application of the best practice measure.[446] Applying a domestic cap on interest

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[442] O. Popa, *Romania - Corporate Taxation* sec. 1., Country Analyses IBFD, https://research.ibfd.org/#/doc?url=/document/cta_ro_s_1.; [accessed 7 February 2019].

[443] Romania - Tax amendments enacted (23 Jan. 2019), News IBFD.

[444] Denmark - Proposal transposing ATAD Directive presented to parliament (10 Oct. 2018), News IBFD, https://research.ibfd.org/#/doc?url=/document/tns_2018-10-10_dk_1; [accessed 27 May 2019]. The Action 4 Final Report suggests that "across all industry sectors, average gross interest/EBIT ratios based on information taken from consolidated financial statements are approximately 40% higher than average gross interest/EBITDA ratios, although there can be a significant variation between different industry sectors." See OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*. p. 48. In fact, in the preamble of the Anti-Tax Avoidance Directive, the EU Council indicated that it aimed to lay down minimum standards to enable member states to adopt a more rigorous measure for a taxpayer's EBIT. See, Council Directive (EU) 2016/1164, para. 6.

[445] Davis Tax Committee, 'Second Interim Report on Base Erosion And Profit Shifting (BEPS) in South Africa: Introduction-ANNEXURE 4: Summary of DTC Report On Action 4: Limit Base Erosion via Interest Deductions And Other Financial Payments', 2015 <https://www.taxcom.org.za/docs/New_Folder3/6%20BEPS%20Final%20Report%20-%20Action%204.pdf> [accessed 15 May 2019].

[446] See, Wolfgang Tischbirek, Germany: interest barrier, loss of losses and other delicacies, Euromoney Handbooks, p. 14, https://m.pplaw.com/sites/default/files/publications/2008/11/wt-2008-germany-interest-barrier.pdf. See also: https://www.deloitte-tax-news.de/german-tax-legal-news/lower-

payment deductions is essential to prevent corporate tax base erosion, even if the leverage of that company is at or below its group level.[447] In a similar vein, applying an exclusion provision for financial undertakings without providing a corresponding specific limitation rule for the banking and insurance sectors constitutes a loophole that undermines the best practice rule.

Therefore, the preferred approach would be to completely disallow any deductions for intra-group interest payments by treating all related party debt as equity for the purposes of corporate tax bills. From a practical point of view, one way to justify this is that there is little difference between a shareholder loan and a dividend, other than the fact that interest payments are usually paid at a fixed rate unlike dividends.[448] This distinction is further blurred when a company uses hybrid instruments, such as profit participating loans. In fact, the difference between a shareholder who lends money to a company and a shareholder who receives a dividend is that the interest paid on the loan is drawn from the company's profit before tax and the dividend is distributed from the profit after tax.[449]

Disallowing the deduction of intra-group interest payments would force companies to either borrow funds and share the risks among their local domestic subsidiaries (however, at a marginally higher cost than if it could be deducted)[450], or instead to borrow directly from the independent debt market. The effect of this would be to improve the fair market competition in the countries where multinational companies operate. It would help to create a level playing field between multinational companies and companies that solely operate domestically and thus do not have access to the more advantageous conditions that multinationals enjoy in the international capital markets.[451]

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tax-court-clarifies-application-of-escape-clause-in-harmful-shareholder-financing.html; [accessed in 2 December 2018].

[447] Peter Barnes, Limiting Interest Deductions, in *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries (Second Edition), Edited by Alexander Trepelkov, Harry Tonito and Dominika Halka.* (New York, 2017), 199 <https://www.un.org/esa/ffd/wp-content/uploads/2017/08/handbook-tax-base-second-edition.pdf> [accessed 23 December 2018].

[448] George Turner, *Tax Justice Network Briefing- Shifting Profits and Dodging Taxes Using Debt*.

[449] George Turner, *Tax Justice Network Briefing- Shifting Profits and Dodging Taxes Using Debt*.

[450] The advantage of passing the borrowing further down the chain is that each member of the corporate group gets to pool their risk and have access to a lower interest rate on their borrowing.

[451] George Turner, *Tax Justice Network Briefing- Shifting Profits and Dodging Taxes Using Debt*.

Therefore, while adopting the best practice measure may slightly improve the debt-bias problem (particularly if the lower margin of 10% is applied), only entirely disallowing the deductibility of intra-group interest payments is likely to help in protecting the tax base of host countries of multinationals, containing the race to the bottom and facilitating fair market competition in domestic markets.

An alternative way to limit intra-group interest was recently introduced by the USA as part of the US Tax Cuts and Jobs Act of 2017. The Act introduced a 30% EBITDA-based limitation rule for interest payments to both related and unrelated parties; this has already taken effect. From 1 January 2022, the USA will start implementing the 30% EBIT-based limitation rule. The Tax Cuts and Jobs Act has also created another fixed-ratio rule with the base erosion and anti-abuse tax to disallow excessive deductible payments (including interest, royalties and management fees), made by certain US firms to related non-US firms.[452] The base erosion and anti-abuse tax is a minimum tax that is imposed at a rate of 10%[453] to the taxpayer's modified taxable income,[454] which is calculated by adding back most categories of related-party deductible payments.[455] This tax applies to corporations with average annual gross receipts of US$500m for the preceding three-year period; and a base erosion percentage of at least 3% for a tax year, which in practice means a threshold of base erosion payments as a percentage of total deductions.[456]

[452] Susan C. Morse, 'International Cooperation and the 2017 Tax Act', *The Yale Law Journal Forum*, 2018 <https://www.yalelawjournal.org/pdf/Morse_ac1hex9k.pdf> [accessed 13 May 2019].

[453] Note that this will increase to 12.5% as of 2026 and was temporarily set to 5% for 2018.

[454] https://www.bakermckenzie.com/-/media/files/insight/publications/2018/02/nl_na_taxnewsdevelopmentv2_feb2018.pdf?la=en [accessed 14 May 2019], 17-18.

[455] Morse, 'International Cooperation and the 2017 Tax Act'.

[456] Rebecca M. Kysar, 'Critiquing (and Repairing) the New International Tax Regime', *The Yale Law Journal Forum*, 2018 <https://www.yalelawjournal.org/pdf/Kysar_su38oca6.pdf> [accessed 13 May 2019].

3.16 HI 16 – Deduction Limitation for Royalties

3.16.1 What is measured?

This indicator measures whether or to what extent a jurisdiction disallows or restricts the deduction of royalties paid to non-resident group affiliates ("intra-group royalty payments") from the corporate income tax base.

A haven score of 100 is given if a jurisdiction applies no limits on the deduction of intra-group royalty payments. The haven score of a jurisdiction is reduced to 75% if the jurisdiction applies a deduction limitation or disallows certain intra-group royalty payments for intangible and intellectual property only if they are not compliant with the OECD nexus rules ("restricted nexus"), as explained further below. The haven score is further reduced to 50 if a jurisdiction applies a deduction limitation or disallows certain intra-group royalty payments irrespective of whether the intellectual property regime complies with the OECD nexus approach ("restricted tight"). A zero haven score is granted if a jurisdiction does not permit any deductions of intra-group royalty payments whatsoever.

Table 16.1. Scoring Matrix Haven Indicator 16

Regulation	Haven Score [100 = maximum risk; 0 = minimum risk]
No limits are applied on the deduction No limits are applied on the deduction of intra-group royalty payments.	100
Restricted nexus Deduction limitation/disallowance applies only to certain intra-group royalty payments for intellectual property regimes that are not compliant with OECD nexus approach.	75
Restricted tight Deduction limitation/disallowance applies to certain intra-group royalty payments, irrespective of whether the intellectual property regime complies with the OECD nexus approach.	50
No deduction of intra-group royalty payments is permitted	0

The scoring matrix is shown in Table 16.1, with full details of the assessment logic presented in Annex B.

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The data for this indicator was collected primarily from country analyses and country surveys in the IBFD database.[457] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

All underlying data can be accessed freely in the CTHI database.[458] To see the sources we are using for particular jurisdictions, please consult the assessment logic in Annex B and search for the corresponding info ID (520) in the database report of the respective jurisdiction.

3.16.2 Why is this important?

Royalties are defined as payments for the right to a temporary use of intellectual property.[459] Similar to interest payments, royalties are normally considered deductible expenses for the taxpayer and are often abused by companies that engage in profit shifting to reduce their taxable profits. When a company that deducts royalties from its income is based in a high tax jurisdiction and its subsidiary that receives the royalties is in a low (or zero) tax jurisdiction, then the multinational company may end up paying very low or no tax. This is because the deduction of royalties lowers the tax base of the company in the high tax jurisdiction while very low or no tax is levied on the royalties' income in the low tax jurisdiction. Such cross-border royalty payments result in significant base erosion and profit shifting and have become increasingly prevalent given the large sums that multinational companies claim to derive from the exploitation of intellectual property.[460]

The risk that royalty deductions will erode the tax base is of primary concern in cases where a tax treaty limits the taxing rights on royalties in the payer's jurisdiction. The payer's country where royalties are deducted is more exposed to risks of base erosion and profit shifting than the payee's country. In addition, mismatches between the characterisation of a transaction involving royalty payments under the domestic law of two countries may enable taxpayers to structure hybrid transactions to exploit these mismatches.[461]

While the arm's length principle requires that royalties should be tax deductible only up to the arm's length price, in many cases this does not limit the scale of profit shifting. This is because no comparable transactions between unrelated

[457] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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

[459] Ault and Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', 44.

[460] HM Revenue & Customs, 'Deduction of Income Tax at Source: Royalties', 2016, 4 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532314/M1070_revised_TN_final.pdf> [accessed 14 May 2019].

[461] Ault and Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', 44.

parties exist for royalty payments given that these payments are usually related to intangible property which can be argued to be unique.[462]

While the OECD does not recommend a specific limitation rule for the deduction of outbound intra-group royalty payments, some countries have already adopted measures to limit the deduction of intra-group royalty payments related to intellectual property regimes. For example, in Germany, a new Act against Harmful Tax Practices with regard to Licensing of Rights of 2 June 2017 has resulted in the introduction of a new provision, Sec. 4j of the Income Tax Act[463]. This aims to anticipate the application of the nexus approach.[464] The restricted nexus approach allows taxpayers to benefit from an intellectual property regime only if they can link the income that stems from the intellectual property to expenditures incurred. Expenditure could by on research and development, for example, by either the taxpayer itself or outsourcing it to a third party, i.e. qualified research and development activities.[465] The provision partially limits the deductibility of royalty payments at the level of the licensee in case the corresponding royalty income is subject to low taxation in a preferential regime that is not in line with the nexus approach.

Another approach to limit the deduction of intra-group royalty payments was introduced by South Africa. South Africa allows the deduction of intra-group royalty payments for intellectual property in accordance with the withholding tax rate. As such, one-third of intra-group royalty payments can be deducted when the withholding tax rate is at least 10% while half of the intra-group royalty payments can be deducted when the withholding tax is 15%.[466] This approach follows the same logic of disallowing these payments when they do not comply with the nexus approach.

Several countries have gone further and introduced rules that limit the deductibility of intra-group royalty payments regardless of whether the intellectual property regime complies with the nexus approach. For example, Ecuador limits intra-group royalty payment deductions up to 20% of the taxable base and up to 10% of the asset value in cases where the company is in a pre-

[462] Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, 4–5.

[463] Xaver Ditz and Carsten Quilitzsch, 'Countering Harmful Tax Practices in Licensing of Rights: The New License Barrier Rule in Section 4j of the German Income Tax Act', *Intertax*, 45/12 (2017), 823.

[464] Friedrich Heinemann and others, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017), 40.

[465] Friedrich Heinemann and others, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017), 40.

[466] P.J. Hattingh, South Africa - Corporate Taxation, Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_za; [accessed 27 May 2019].

operational stage provided there is a taxable income.[467] In Rwanda, a new provision, which came into force in April 2018, limits the deduction of royalties paid by local companies to their related non-resident companies to 2% of their turnover.[468]

The USA has also recently introduced an alternative way to limit intra-group royalty payments regardless of the nexus approach. The US Tax Cuts and Jobs Act of 2017 introduced the base erosion and anti-abuse tax in order to disallow excessive deductible payments (including interest, royalties and management fees), made by certain US firms to related non-US firms.[469] The base erosion and anti-abuse tax is a minimum tax that is imposed at a rate of 10%[470] on the taxpayer's modified taxable income[471], calculated by adding back most categories of related-party deductible payments.[472] This tax applies to corporations with average annual gross receipts of US$500m for the preceding three-year period; and a base erosion percentage of at least 3% for the tax year, which in practice means a threshold of base erosion payments as a percentage of total deductions.[473]

While these measures are indeed a significant step in the right direction, they are still open to abuse by multinational companies for tax avoidance purposes. One difficulty in implementing these measures is that tax authorities require significant resources to examine whether there is sufficient evidence for the contribution of the related parties to intellectual property development. The evidence will often be submitted only upon request of tax administrations. As such, due to capacity constraints of tax administrations, it is likely there will be many cases where the deduction of intra-group royalty payments will not be prohibited by the tax administration only because they did not manage to assess the specific tax file.

Lastly, the question of whether the deduction of a specific royalty payment is in line with the nexus approach (or similar approaches), and hence justified, is

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[467] G. Guerra, Ecuador - Corporate Taxation, Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_ec; [accessed 27 May 2019].

[468] R. Niwenshuti, Rwanda - Corporate Taxation, Country Surveys IBFD, 2018, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_rw; [accessed 27 May 2019].

[469] Morse, 'International Cooperation and the 2017 Tax Act'.

[470] Note that the minimum tax will be increased to 12.5% as of 2026 and was temporarily set to 5% for 2018.

[471] Baker Mckenzie, 'Tax News and Developments- North America Tax Practice Group', *Volume XVIII, Issue 1*, 2018, 17–18 <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/02/nl_na_taxnewsdevelopmentv2_feb2018.pdf?la=en> [accessed 25 November 2018].

[472] Morse, 'International Cooperation and the 2017 Tax Act'.

[473] Kysar, 'Critiquing (and Repairing) the New International Tax Regime', 358.

often not clear. Thus, the decision may be subject to the arguments of the multinational companies' lawyers and accountants or to the discretion of a tax inspector, both of which may lead to an unfair, unlevel playing field. For all the above reasons and the high risk of base erosion and profit shifting as a result of a deduction of royalties paid to non-resident group affiliates, the ideal approach would be to completely disallow the deduction of these payments rather than to limit the deduction.

3.17 HI 17 – Deduction Limitation for Service Payments

3.17.1 What is measured?

This indicator measures whether or to what extent a jurisdiction restricts or disallows the deduction of intra-group services payments (management fees, technical fees, consulting services fees) paid to non-resident group affiliates from the corporate income tax base.

A haven score of 100 is given if a jurisdiction applies no limits on the deduction of intra-group services payments beyond transfer pricing rules, the arm's length principle or other generic rules. A zero haven score is granted in cases where the jurisdiction applies specific restrictions or deduction limitations on the intra-group services payments. This may include, for example, limiting the deduction to a certain percentage of the annual turnover or to a certain percentage of Earnings Before Interest, Taxes, Interest, Depreciation and Amortisation (EBITDA) in specific cases.

The data for this indicator was collected primarily from the country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD) database.[474] In some instances, we have also consulted additional websites and reports of accountancy firms and other local websites.

The scoring matrix is shown in Table 17.1, with full details of the assessment logic presented in Annex B.

Table 17.1. Scoring Matrix Haven Indicator 17

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
The jurisdiction does not apply restrictions on the deduction of intra-group services payments (beyond transfer pricing rules, the arm's length principle or other generic rules).	100
The jurisdiction applies specific restrictions or certain deduction limitations on intra-group services payments	0

[474] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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All underlying data can be accessed freely in the CTHI database.[475] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (521) in the database report of the respective jurisdiction.

3.17.2 Why is this important?

Intra-group services payments are usually considered deductible expenses and often abused by multinational companies to lower their tax base by shifting their profits from a profitable group company resident and operating in one jurisdiction to another group company resident in a low or no tax jurisdiction. In that respect, intra-group services are quite similar to intra-group interest payments (see Haven Indicator 15) as well as to intra-group royalty payments (see Haven Indicator 16). Intra-group services payments are usually deductible against a country's tax base in cases where the payer is a resident of the country or a non-resident with a permanent establishment or fixed base in the country. The deduction of intra-group services payments may thus create risks for eroding the tax base and particularly in cases where a tax treaty limits the taxing rights of the payer's jurisdiction in that respect. Especially in lower income countries which are usually considered to be large scale importers of such services, intra-group service payments can severely constrain domestic resource mobilisation efforts.[476]

In an attempt to address this problem, the United Nations has introduced the new Article 12A "Fees of technical services" in its latest model tax convention. Article 12A aims to allow source countries to tax technical service fees on a gross basis at a limited rate without any threshold requirement (and even in cases where the services are provided outside the country).[477] For countries that are party to the UN model tax convention but have yet to adopt the latest model tax convention, cross-border intra-group service payments are covered by Article 7 or 14 of the convention and are taxable in the source country only if the non-resident has a permanent establishment or a fixed base or spends a significant amount of time in the source country.[478] These provisions are often abused by

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

[476] Hugh J. Ault and Brian J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', in *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*, ed. by Alexander Trepelkov, Harry Tonito, and Dominika Halka, Second (New York, 2017), 42–43.

[477] United Nations *United Nations Model Double Taxation Convention between Developed and Developing Countries -between Developed and Developing Countries. 2017 Update.*, 2017, 23–24 <https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf> [accessed 27 December 2018].

[478] United Nations *United Nations Model Double Taxation Convention between Developed and Developing Countries -between Developed and Developing Countries. 2017 Update.*, 323.

multinational companies that are able to create a structure where they neither have a permanent establishment nor a fixed place of business.[479] The adoption of article 12A thus may indeed assist jurisdictions in preventing the erosion of their tax base by taxing the intra-group services payments to non-residents in the other jurisdiction.[480]

However, adopting article 12A is likely to impose a heavy financial and administrative burden on jurisdictions. They would need to re-negotiate this kind of new provision for their existing tax treaties, which will take time and is likely to be met with opposition.[481] The ability of developing countries to convince developed countries to include such a provision in tax treaties is in doubt.

The Organisation for Economic Co-operation and Development's (OECD) does not recommend any limitation rule for the deduction of intra-group service payments even though it does recommend imposing restrictions on the deduction of intra-group interest payments and to apply the nexus approach in the case of intra-group royalty payments. However, the OECD in its Base Erosion and Profit Shifting project has already acknowledged that countries are free to include safeguard provisions in their domestic rules against base erosion and profit shifting.[482]

As part of applying such safeguards, countries can, for example, choose to unilaterally limit the deduction of intra-group services payments by using a specific anti-avoidance measures that will allow them to tax these payments on a gross basis and prevent the erosion of their tax base. Several jurisdictions have already done this. For example, Ecuador applies a specific rule that limits the deductibility of technical, administrative and consulting service payments to intra-group companies up to 20% of the taxable base plus those expenses[483]

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[479] United Nations *United Nations Model Double Taxation Convention between Developed and Developing Countries -between Developed and Developing Countries. 2017 Update.*, 321.

[480] Ault and Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', 44.

[481] For example, while the United Kingdom has signed (though not yet ratified) a treaty with Botswana that permits Botswana to impose withholding taxes on intra-group services payments, it has been reluctant since then to conclude other tax treaties with such clauses. For further details, see: Martin Hearson, 'The UK - Colombia Tax Treaty: 80 Years in the Making', 2017 <http://eprints.lse.ac.uk/86396/1/Hearson_UK-Colombia_tax_treaty.pdf> [accessed 22 May 2019].

[482] OECD, *Addressing the Tax Challenges of the Digital Economy, Action 1 - 2015 Final Report* <https://read.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en> [accessed 27 December 2018].

[483] For an example of calculation see, EY, 'Ecuador Issues Regulations on Ruling Process for Requesting Increase in the Deduction Limit for Expenses Related to Royalties and Technical, Administrative and Advisory Services', *Global Tax Alert*

(and when companies are in pre-operational stage, it is further reduced to 10%).[484] In the Seychelles, intra-group services payments are deductible up to 3% of the annual turnover.[485] Poland limits the deduction of intra-group service payments up to 5% of EBITDA if the taxpayer that has rendered the services is resident in a country engaging in harmful tax competition.[486]

It may be argued that completely disallowing the deduction for intra-group service payments penalises the payer's legitimate income-earning expenses and thus may lead to undesired distortions and a loss of dynamics in the economy.[487] To constrain the deduction of intra-group services however may be the only effective way to protect the source country's tax base, given the potential for abusive intra-group service payments. The risks of such abuses are particularly high when the source countries are developing countries and especially in cases where the non-resident service provider is a resident of a tax haven jurisdiction.[488]

<https://www.ey.com/Publication/vwLUAssets/Ecuador_issues_regulations_on_ruling_process_for_requesting_increase_in_the_deduction_limit_for_expenses_related_to_royalties_and_technical,_administrative_and_advisory_services/$FILE/2015G_CM5794_EC%20issues%20regs%20on%20ruling%20for%20requesting%20increase%20in%20ded%20limit%20for%20expenses%20of%20certain%20tax%20services.pdf> [accessed 22 May 2019].

[484] G. Guerra, Ecuador - Corporate Taxation sec. 1., Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_ec_s_1 [accessed 24 May 2019].

[485] M. Jivan & L.G. Ogazón Juárez, Seychelles - Corporate Taxation sec. 1., Country Surveys IBFD, 2018, https://research.ibfd.org/#/doc?url=/document/gtha_sc_s_1 [accessed 24 May 2019].

[486] M. Olejnicka, Poland - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/cta_pl_s_1 [accessed 24 May 2019].

[487] Brian J. Arnold (2017), 'Taxation of Income from Services' in *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries (Second Edition), Edited by Alexander Trepelkov, Harry Tonito and Dominika Halka.*, 122.

[488] Ault and Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', 44.

3.18 HI 18 – Dividend Withholding Taxes

3.18.1 What is measured?

This indicator measures the extent to which a jurisdiction levies withholding taxes on outbound dividends. As such, it assesses the lowest available unilateral withholding tax rate on outbound dividend payments.

The lowest unilateral withholding tax rate on dividends 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 withholding tax rate or an absence of withholding taxes on outbound dividends results in a haven score of 100. If the lowest available unilateral withholding rate on dividends is 35%, the haven score is zero. Any rate in between is linearly scaled against 35%. In cases where different tax rates apply, the haven score is calculated by the following steps: 1) determining the jurisdiction's lowest available withholding tax levied; 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 100.

The scoring matrix is shown in Table 18.1, and full details of the assessment logic are presented in Annex B.

Table 18.1. Scoring Matrix Haven Indicator

Regulation	**Haven Score Assessment** [Haven Score: 100 = maximum risk; 0 = minimum risk]
Dividend Withholding Taxes	
The unilateral withholding tax rate on outbound dividend payments imposed by the jurisdiction is scaled between zero and 35% Jurisdictions with zero dividend withholding tax rate have a haven score of 100 while a 35% withholding tax rate is equal to a haven score of zero. The jurisdiction's withholding tax rate is subtracted from the rate of 35% and the haven score is then calculated by placing it on a scale of 0-100.	0-100

All underlying data can be accessed freely in the CTHI database.[489] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (ID 508) in the database report of the respective jurisdiction.

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

The data for this indicator was collected primarily from the International Bureau of Fiscal Documentation (IBFD) database (country analyses and country surveys).[490] In some instances, we have also consulted additional websites and reports of accountancy firms and other local websites.

To assess the lowest dividend withholding taxes available in the jurisdiction, we consider the lowest rate available for any specific sector or type of company. For example, although Liberia levies a 15% withholding tax on outbound dividends, a lower withholding tax rate (5%) is implemented when the resident subsidiary is a mining, petroleum or renewable resource company. We thus consider 5% as the rate for this indicator. We consider the rate is zero when there are exemptions for specific sectors or types of companies. Seychelles, for example, levies 15% dividends withholding tax, but exempts dividend payments by resident Special Licence Companies.[491]

Countries within the European Union that exempt dividend payments to other European Union member states, under the conditions laid down in the Parent-Subsidiary Directive (2011/96/EU),[492] are also considered to have a zero withholding tax rate. Furthermore, treaties between the European Union and Iceland, Liechtenstein, Norway and Switzerland provide benefits similar to those in the Parent-Subsidiary Directive, reducing withholding taxes to 0% on cross border dividend payments between related companies.[493] In cases where these exemptions apply, we consider the lowest available rate as zero.

3.18.2 Why is this important?

The level of withholding tax on dividends influences cross-border tax planning opportunities and plays an important role in countering tax avoidance strategies especially of lower income countries.[494] The level of withholding taxes, along with the level of corporate income taxation and double tax relief agreements, are used as parameters by multinational corporations to determine which countries are used as investment platforms in repatriation strategies, acting as conduit

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[490] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[491] M. Jivan & L.G. Ogazón Juárez, Seychelles - Corporate Taxation, Country Surveys IBFD, 2018, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_sc; [accessed 27 May 2019].

[492] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0096&from=EN; [accessed 2 May 2019].

[493] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*. See also https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-switzerlandhighlights-2019.pdf; [accessed 2 May 2019].

[494] Maarten van 't Riet and Arjan Lejour, 'Ranking the Stars: Network Analysis of Bilateral Tax Treaties' (2014) <https://www.cpb.nl/sites/default/files/publicaties/download/cpb-discussion-paper-290-ranking-stars_0.pdf> [accessed 1 May 2019].

countries.[495] The anti-avoidance role of withholding taxes was recognised by the Organisation for Economic Co-operation and Development (OECD) as early as 1998:

> As with the denial of deduction for certain payments, the imposition of withholding taxes at a substantial rate on certain payments to countries that engage in harmful tax competition, if associated with measures aimed at preventing the use of conduit arrangements, would act as a deterrent for countries to engage in harmful tax competition and for taxpayers to use entities located in these countries.[496]

Both the OECD[497] and the European Commission[498] include withholding taxes on dividends in their analysis of countries anti-avoidance rules or aggressive tax planning opportunities. According to a study on structures of aggressive tax planning produced by the European Commission in 2015, having withholding taxes in place may impede aggressive tax planning:

> (…) under certain circumstance, the absence of such withholding taxes may allow for ATP [aggressive tax planning] in the sense that had a withholding tax existed, it could have impeded an ATP structure. ATP structures, particularly those that rely on tax-free repatriation of funds up to the ultimate parent company (i.e. the MNE [multinational enterprise] Group in the model ATP structures) rely on the absence of withholding taxes. The absence of withholding tax could enable unwanted tax practices, and hence constitutes a passive ATP indicator.[499]

Withholding tax on dividends contributes to protecting the tax base particularly of capital-importing countries, that is, countries hosting subsidiaries of multinational corporations. Withholding tax on dividends can help to mitigate the unbalance in taxing rights between source countries (country B in the figure

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[495] Simon Loretz, Richard Sellner and Bianca Brandl, 'Aggressive Tax Planning Indicators' (2017), 33.

[496] OECD, *Harmful Tax Competition: An Emerging Global Issue* (1998) <https://www.oecd-ilibrary.org/taxation/harmful-tax-competition_9789264162945-en> [accessed 9 May 2019].

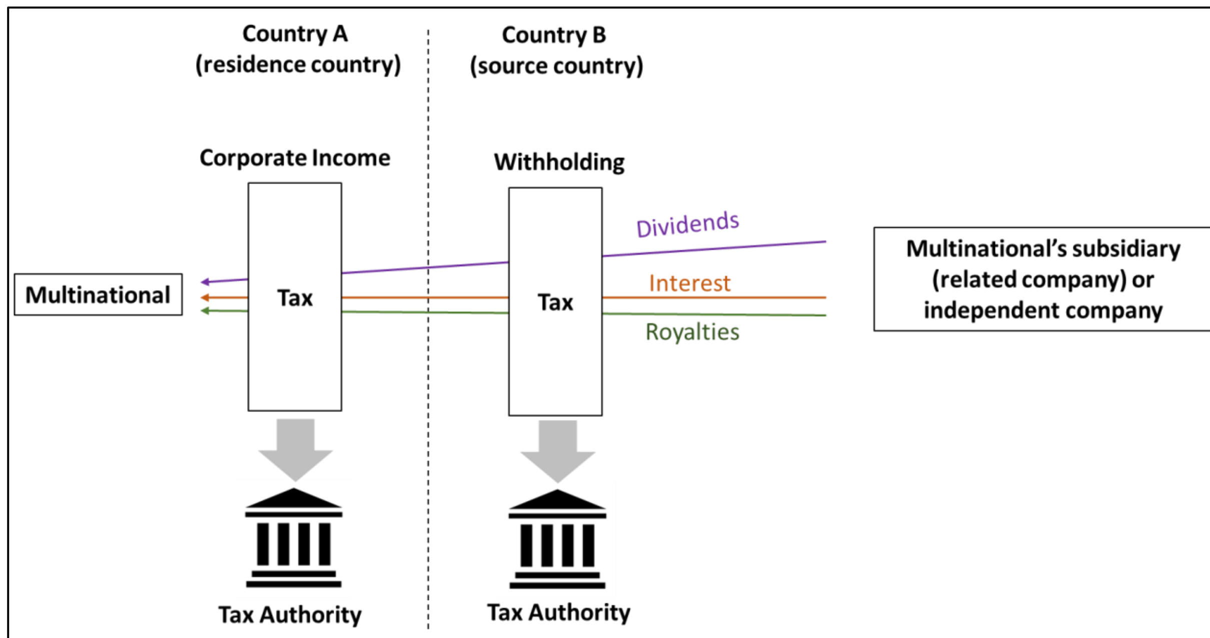
[497] Øystein Bieltvedt Skeie, Åsa Johansson and Stéphane Sorbe, 'Anti-Avoidance Rules against International Tax Planning: A Classification' (2016) <https://www.oecd.org/eco/Anti-avoidance-rules-against-international-tax-planning-A-classification.pdf> [accessed 29 April 2019].

[498] 'Study on Structures of Aggressive Tax Planning and Indicators: Final Report ; Specific Contract No. 13 under FWC TAXUD/2012/CC116' (Luxembourg, 2015), 58 <https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf>.

[499] 'Study on Structures of Aggressive Tax Planning and Indicators', 58.

below) and residence countries (country A in the figure below), in which headquarters of multinational companies are based.[500]

Figure 38.1. Use of withholding tax on multinationals to protect tax base



The use of multiple entities operating in different countries within a single group is a hallmark of globalisation and the modus operandi of any multinational corporate group. Source countries in which the subsidiaries of multinationals groups operate often have their taxable income reduced by deduction of payments, such as interests, royalties and service fees, to other companies of the group, limiting corporate income tax revenues.[501] Such a reduction is especially of concern in lower income countries which are often more dependent on corporate income tax. Deduction limitations or withholding taxes on royalties, interests, services and on dividends have the potential to compensate for these losses, protecting the taxing rights of the source countries.[502,503]

[500] Michael Durst, *Taxing Multinational Business in Lower Income Countries: Economics, Politics and Social Responsibility* (2019) <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/14336/Durst_Book_Final.pdf?sequence=1&isAllowed=y> [accessed 2 May 2019].

[501] Michael Durst, *Taxing Multinational Business in Lower Income Cuontries: Economics, Politics and Social Responsibility*, 31–32.

[502] Michael Durst, *Taxing Multinational Business in Lower Income Cuontries: Economics, Politics and Social Responsibility*, 31–32.

[503] While this indicator focuses on withholding taxes on dividends, the potential of revenue loss due to the deduction of expenses with interests, royalties and services are addressed by Haven Indicators 15, Haven Indicator 16 and Haven Indicator 17, respectively.

However, in an attempt to attract investments, many jurisdictions reduce tax rates, create exemptions or even eliminate withholding taxes on outbound dividends. By lowering their tax rates, jurisdictions not only erode their own and other country's tax bases through base spillovers, but also incite other countries to respond by further reducing their taxes[504] and engaging in a race to the bottom. According to the International Monetary Fund, average withholding tax rates on dividends, interests and royalties have declined in more than 30% of jurisdictions over the past decades as a result of these ruinous tax wars.[505] The race to the bottom in corporate taxes exacerbates income inequality between countries, since lower income countries are predominantly source countries.

One of the arguments for reducing or eliminating withholding taxes on dividends is the risk of double taxation in the source country and in the resident country. The European Union's Parent-Subsidiary Directive (2011/96/EU)[506] relies on this argument for exempting dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes.[507] However, the meaning of double taxation is an overlap between states' taxing claims which may result in a slightly higher effective tax rate rather than a rate twice as high, as the name misleadingly suggests. Furthermore, such cases of overlaps are rarely documented, while the more severe problem of double non-taxation is empirically observable.[508]

The extensive network of bilateral income tax treaties, which typically eliminate or reduce withholding tax rate to lower levels than the ones prescribed in domestic law, may lead to a situation of double-non taxation where income is not taxed neither at residence or at the source country.[509] [510] These bilateral agreements create the opportunity to divert investment and dividend flows through a third country (conduit country) to take advantage of treaty provisions for reducing or eliminating tax payments, a practice known as treaty shopping.[511]

[504] This process of race to the bottom can also apply to corporate income tax rates, which are assessed in Haven Indicator 1.

[505] International Monetary Fund (IMF), 'Spillovers in International Corporate Taxation', 2014, 68 <https://www.imf.org/external/np/pp/eng/2014/050914.pdf> [accessed 2 May 2019].

[506] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0096&from=EN; [accessed 2 May 2019].

[507] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0096&from=EN ; [accessed 2 May 2019].

[508] Sol Picciotto, *Unitary Taxation: Our Responses to the Critics*, 2013, 3 <www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf>.

[509] Sol Picciotto, *Unitary Taxation: Our Responses to the Critics*, 3.

[510] Michael Durst, *Taxing Multinational Business in Lower Income Countries: Economics, Politics and Social Responsibility*.

[511] For further details on the phenomenon of treaty shopping and the mechanism used to avoid taxation through conduit countries, see here: Michael Durst, *Taxing Multinational*

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The aggressiveness of the jurisdictions' bilateral treaties network is assessed in Haven Indicator 20.

Unilateral withholding taxes are an important tool for tackling inequality in taxing rights, assuring revenues for capital importing countries and limiting tax avoidance strategies.

Business in Lower Income Cuontries: Economics, Politics and Social Responsibility (2019) <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/14336/Durst_Book_Final.pdf?sequence=1&isAllowed=y> [accessed 2 May 2019]. And: Maarten van 't Riet and Arjan Lejour, 'Ranking the Stars: Network Analysis of Bilateral Tax Treaties'.

3.19 HI 19 – Controlled Foreign Company Rules

3.19.1 What is measured?

This indicator assesses whether jurisdictions apply robust non-transactional controlled foreign company (CFC) rules. CFC rules are a type of specific anti-avoidance rules that target particular taxpayers or transactions. Like other types of specific anti-avoidance rules, CFC rules are more effective than general anti-avoidance rules in capturing the specific type of tax avoidance on which they focus.[512] The rules clamp down on tax avoidance by residents who divert income to their companies in low or no-tax jurisdictions. CFC rules aim to prevent the sheltering of income in controlled companies based in low or no-tax jurisdictions. All use the same mechanism: "The pro rata shares of undistributed income of the CFC, in whole or in part, is attributed to and included in the income of the resident taxpayer who holds an interest in the CFC".[513]

There are two types of CFC rules:

1. Non-transactional type of rules are applied based on an analysis of categories of income (e.g. passive income);

2. Transaction-based rules allow profits to be attributed to the CFC on a transactional basis using the arm's length principle, e.g. OECD Transfer Pricing Guidelines.

Transaction-based CFC rules are much harder to enforce than non-transaction-based rules because of the many different, and sometimes conflicting, ways to implement and interpret the Organisation for Economic Co-operation and Development (OECD) transfer pricing rules. To administer transaction-based rules, the burden of proof is on the tax administrations to justify applying the CFC rules on each individual transaction. In contrast, under non-transaction-based CFC rules, the burden of proof to justify each transaction within the scope of the CFC rules would normally fall on the taxpayer.

A haven score of 100 is given if there are no CFC rules whatsoever in the jurisdiction. In cases where there are CFC rules, but these are only transactional-based type of rules, the haven score is reduced to 75. A zero-haven score is given if a jurisdiction has CFC rules and they are non-transactional CFC rules.

The data for this indicator was collected primarily from country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD)

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[512] Ana Paula Dourado, 'The Role of CFC Rules in the BEPS Initiative and in the EU', *British Tax Review*, 3, 2015, 25.

[513] Luc De Broe, *International Tax Planning and Prevention of Abuse*, 2008, 124.

database.[514] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

The scoring matrix is shown in Table 19.1, with full details of the assessment logic presented in Annex B.

Table 19.1. Scoring Matrix Haven Indicator 19

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
No CFC rules There are no CFC rules whatsoever.	100
CFC rules are transactional While the jurisdiction applies CFC rules, these are only transactional type of rules which allow profits to be attributed to the CFC according to the arm's length principle, e.g. OECD Transfer Pricing Guidelines.	75
CFC rules are non-transactional The jurisdiction applies non-transactional CFC rules.	0

All underlying data can be accessed freely in the CTHI database.[515] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID (ID 522) in the database report of the respective jurisdiction.

3.19.2 Why is this important?

Controlled foreign companies[516] are treated as separate entities from their corporate or individual shareholders in the jurisdiction where they are controlled, i.e., the parent jurisdiction. This is based on the corporate personality doctrine, also known as legal personality.[517] They are perceived as autonomous taxpayers

[514] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

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

[516] Slightly different terminology has been used in diffrent tax systems such as controlled foriegn affiliates in Canada or controlled foreign corporations in the United States of America, see IBFD International Tax Glossary, Amsterdam, 2009, 97.

[517] Even if the corporate personality doctrine covers all type of companies (single or group), it has significant effects on group companies since it makes possible for them "to have various companies grouped together carrying out various functions that could

under classical corporate tax systems, and their profits are taxed independently from the tax base of shareholders. As such, the profits of the controlled foreign companies are subject to tax in their resident jurisdiction, whereas the controlling shareholders are subject to tax on their CFC income only when profits are distributed as dividends. Consequently, CFC income is often deferred until it is repatriated to the parent jurisdiction.[518]

If the resident jurisdiction of the CFC imposes low or no-taxes, this structure creates two concerns for the tax base of the resident state of the controlling shareholders. First, the controlling shareholders can take advantage of the time period until the CFC profits are distributed and reinvest the deferred taxes at a market or above-market interest rate.[519] Second, the controlling shareholders can divert income generated in the CFC's resident jurisdiction by making base eroding payments to other controlled subsidiaries in foreign jurisdictions. By doing this, the tax burden is reduced in the CFC's resident state and then taxation is avoided until the income is distributed by the CFCs. This is further exacerbated if the controlling resident state exempts distributed foreign-source (active) business income and enables the repatriated income to be permanently tax exempt, as is the case in the United Kingdom and Japan.[520] The CFC rules thus aim to eliminate profit shifting to controlled companies based in low or no-tax jurisdictions.

There is a dearth of economic studies estimating the scale of profit shifting income by controlling companies into foreign subsidiaries due to poor quality of data.[521] However, recent estimates presented in research by Cobham & Jansky (2018), Crivelli, de Mooij and Keen (2015), Clausing (2016) and Tørsløv, Wier and Zucman (2018) largely indicate a huge amount of lost revenues as a result of shifting income into CFCs based in low or no-tax jurisdictions.[522] These

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otherwise be carried out by a single company" (see Alex Magaisa, *Corporate Groups and Victims of Corporate Torts - Towards a New Architecture of Corporate Law in a Dynamic Marketplace* (2002) <https://warwick.ac.uk/fac/soc/law/elj/lgd/2002_1/magaisa/> [accessed 6 May 2019].

[518] Dourado, 'The Role of CFC Rules in the BEPS Initiative and in the EU', 340.

[519] Daniel W Blum, 'Controlled Foreign Companies: Selected Policy Issues – or the Missing Elements of BEPS Action 3 and the Anti- Tax Avoidance Directive', *INTERTAX*, 46/4, 301.

[520] Blum, 'Controlled Foreign Companies: Selected Policy Issues – or the Missing Elements of BEPS Action 3 and the Anti- Tax Avoidance Directive', 303.

[521] Kimberly A. Clausing, *Profit Shifting Before and After the Tax Cuts and Jobs Act* (Rochester, NY, 29 October 2018), 4 <https://papers.ssrn.com/abstract=3274827> [accessed 6 May 2019].; Thomas Tørsløv, Ludvig Wier and Gabriel Zucman, *The Missing Profits of Nations* (Cambridge, MA, June 2018), 2 <http://www.nber.org/papers/w24701.pdf> [accessed 6 May 2019].

[522] Alex Cobham and Petr Janský, 'Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results', *Journal of International Development*, 30/2 (2018), 206–32.; Ernesto Crivelli, Ruud De Mooij and Michael Keen,

findings are in line with the efforts of many countries to introduce CFC rules to protect their tax base[523] and the public perception that multinational companies often use CFCs to avoid taxes.[524]

In 2013, the OECD stated that weak CFC rules are one of the main sources of base erosion and profit shifting. This was highlighted as part of the OECD and G20 Base Erosion and Profit Shifting (BEPS) project[525]. The BEPS project published a standalone report on CFC rules in 2015 (Action 3: "Designing Effective Controlled Foreign Company Rules").[526] The report indicates several weaknesses of CFC rules and recommends improving their effectiveness by addressing six building blocks. These are, the definition of a CFC, CFC exemptions and threshold requirements, the definition of CFC income, computation of CFC income, attribution of CFC income, and prevention and elimination of double taxation.[527]

Although CFC rules were not included in the minimum standards[528] of the Inclusive Framework on BEPS,[529] which the OECD and G20 countries have agreed to implement, the European Union included CFC rules in the Anti-Tax Avoidance Directive (2016/1164/EU), which EU member states were required to transpose

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'Base Erosion, Profit Shifting and Developing Countries', *FinanzArchiv: Public Finance Analysis*, 2016 <http://www.ingentaconnect.com/content/mohr/fa/pre-prints/content-FA-ID8773> [accessed 22 August 2016].;Thomas Tørsløv, Wier and Zucman, *The Missing Profits of Nations*.

[523] In 2010, the International Fiscal Association branch reports showed a plethora of CFC rules as well as other specific anti-avoidance rules, see, Stef van Weeghel, 'General Report', in *Tax Treaties and Tax Avoidance: Application of Anti-Avoidance Provisions*, IFA Cahiers, 95a., p. 23.

[524] See Rochelle Toplensky, 'Multinationals Pay Lower Taxes than a Decade Ago', *Financial Times*, 2018 <https://www.ft.com/content/2b356956-17fc-11e8-9376-4a6390addb44> [accessed 6 May 2019].

[525]OECD, *Action Plan on Base Erosion and Profit Shifting* (Paris, 2013), 16 <http://www.oecd.org/ctp/BEPSActionPlan.pdf>.

[526] OECD, *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015) <https://www.oecd-ilibrary.org/taxation/designing-effective-controlled-foreign-company-rules-action-3-2015-final-report_9789264241152-en> [accessed 6 May 2019].

[527] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, 10..

[528] OECD, *Explanatory Statement to the Multilateral Convention to Implement Tax Treaty Related-Measures to Prevent BEPS.Pdf* <https://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf> [accessed 6 May 2019].

[529] For the list of membership as of March 2019, see OECD, 'Members of the Inclusive Framework on BEPS', 2019 <https://www.oecd.org/ctp/beps/inclusive-framework-on-beps-composition.pdf> [accessed 7 May 2019].

into domestic legislation by 1 January 2019.[530] Articles 7 and 8 of the Anti-Tax Avoidance Directive introduce two alternative methods (models) for calculating CFC income. This is based on how the tax base is determined for the application of CFC rules.[531] Model A (non-transactional) allows countries to tax a range of passive income in foreign CFCs, unless that CFC carries out substantive (genuine) economic activity[532]. Model B (transactional) puts an onus on the tax authority to demonstrate that the scheme was put in place "for the essential purpose of obtaining a tax advantage".[533]

The two models of CFC rules contained in Article 7 of the Anti-Tax Avoidance Directive draw on Germany's and the United Kingdom's experience of implementing CFC rules. Model A in article 7(2)(a) takes into account Germany's experience. These rules take the non-transaction approach and use passive income catalogue based on the analysis of categories of income.[534] Inspired by the United Kingdom, Model B in article 7(2)(b) uses the "principal purpose test" based on substance analysis.[535] As mentioned above, Model B is considered to be weaker than Model A, mainly because the transaction-based rules impose the

[530] *Council Directive (EU) 2016/ 1164 - of 12 July 2016 - Laying down Rules against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market*, 14 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN>. For a comparison between the Anti-Tax Avoidance Directive and OECD CFC rules, see, A. Rigaut, 'European Union - Anti-Tax Avoidance Directive (2016/1164): New EU Policy Horizons - IBFD', 56/11 (2016), 503 <https://www.ibfd.org/IBFD-Products/Journal-Articles/European-Taxation/collections/et/html/et_2016_11_e2_1.html> [accessed 6 May 2019]. The European Union also included two other anti-abuse measures, interest limitation and hybrid mismatches rules, directly connected to the OECD BEPS Action Plan.

[531] Ana Paula Dourado, *Portugal Branch Report: Assessing BEPS: Origins, Standards, and Responses*, Volume 102 (Rio de Janeiro, 2017), 649. The de minimis approach was translated from the Parent-Subsidiary Directive, see: A. Rigaut, 'European Union - Anti-Tax Avoidance Directive (2016/1164): New EU Policy Horizons - IBFD', 500.

[532] *Council Directive (EU) 2016/ 1164 - of 12 July 2016 - Laying down Rules against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market, art 7(2)(a).*

[533] *Council Directive (EU) 2016/ 1164 - of 12 July 2016 - Laying down Rules against Tax Avoidance Practices That Directly Affect the Functioning of the Internal Market, art 7(2)(b).*

[534] Till Moser and Sven Hentschel, 'The Provisions of the EU Anti-Tax Avoidance Directive Regarding Controlled Foreign Company Rules: A Critical Review Based on the Experience with the German CFC Legislation', *Intertax*, 45 (2017)/10, 606.

[535] Government of Ireland- Department of Finance, *Ireland's Corporation Tax Roadmap-Incorporating Implementation of the Anti-Tax Avoidance Directives and Recommendations of the Coffey Review*, September 2018, 15 <https://assets.gov.ie/4158/101218132506-74b4db520e844588b3d116067cec9784.pdf> [accessed 1 May 2019].

burden of proof on tax administrations to assess whether applying CFC rules on each transaction is justified.

However, the strength of Model A may be weakened by jurisdictions that choose to abuse the substantive economic activity requirement. This requirement was introduced as a result of the Cadbury-Schweppes court ruling in 2006.[536] In the Cadbury-Schweppes case, the European Court of Justice set precedent when it ruled that the United Kingdom's CFC rules ran contrary to the European Union's Freedom of Establishment rules and the rules could only be justified in relation to wholly artificial arrangements. The implication of this ruling is that in cases where a transaction is almost entirely tax-driven with only a minor economic justification, the European Union's rules would strike down the CFC rules. In order to comply with the requirements set out in the Cadbury-Schweppes case, the Anti-Tax Avoidance Directive has introduced an exception[537] for the application of Model A. Model A shall not be applied when the controlled foreign company carries out substantive economic activity supported by staff, equipment, assets and premises. In other words, if a jurisdiction chooses to introduce a weak substantive economic activity requirement, it may avoid applying CFC rules even in cases where it has adopted Model A.[538]

This optional approach is likely to lead to substantially different legal consequences, even though the underlying facts of the case are identical. Thus, "it must be expected that CFC Rules implemented by the respective Member States according to Anti-Tax Avoidance Directive will most likely still be quite heterogeneous in the future".[539] Prior to Anti-Tax Avoidance Directive, only the following 13 of 28 European Union member states included CFC rules in their

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[536] The UK, *Judgment of the Court (Grand Chamber).*, September 2006 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62004CJ0196&from=GA> [accessed 6 May 2019].

[537] Till Moser and Sven Hentschel, 'The Provisions of the EU Anti-Tax Avoidance Directive Regarding Controlled Foreign Company Rules: A Critical Review Based on the Experience with the German CFC Legislation', 617–18.

[538] For example, the Netherlands chose to set a weak substantive economic activity requirement according to which the CFC should be considered to carry out genuine economic activity in the foreign jurisdiction if it: "(i) meets the Dutch minimum substance requirements in its country of residence; (ii) has at least €100,000 of (internally or externally rendered) labor costs; and (iii) owns or rents an office space that is used to perform its activities for at least 24 months." See 'Netherlands Enacts New CFC Legislation - Impact on Multinational Enterprises' <https://www.ey.com/gl/en/services/tax/international-tax/alert--netherlands-enacts-new-cfc-legislation---impact-on-multinational-enterprises> [accessed 12 May 2019].

[539] Till Moser and Sven Hentschel, 'The Provisions of the EU Anti-Tax Avoidance Directive Regarding Controlled Foreign Company Rules: A Critical Review Based on the Experience with the German CFC Legislation', 617–18.

domestic legislation: Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Poland, Portugal, Spain, Sweden and the United Kingdom.[540]

[540] See European Commission, *Study on Structures of Aggressive Tax Planning and Indicators. Final Report*, 2015 <http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_61.pdf> [accessed 17 May 2016].; European Commission, 'Tax Policies in the European Union. 2016 Survey', 2016 <https://ec.europa.eu/taxation_customs/sites/taxation/files/tax_policies_survey_2017.pdf> [accessed 10 May 2019]. Based on country surveys, this study named the Netherlands as a country with CFC rules (for full surveys, see, Appendix 1 to the 'Study on Structures of Aggressive Tax Planning and Indicators', available at European Commission, 'Taxation Papers', *Taxation and Customs Union - European Commission*, 2016 <https://ec.europa.eu/taxation_customs/publications/taxation-services-papers/taxation-papers_en> [accessed 10 May 2019]. However, there was no specific CFC regime in the Netherlands before the Anti-Tax Avoidance Directive (H-J. van Duijn & K. Sinnige, *Netherlands - Corporate Taxation,* sec. 10., Country Analyses IBFD, 2018, https://research.ibfd.org/#/doc?url=/document/cta_nl_s_10 [accessed 21 December 2018].

3.20 HI 20 – Double Tax Treaty Aggressiveness

3.20.1 What is measured?

This indicator analyses the aggressiveness of a jurisdiction in their double tax agreements with other countries, as revealed by the withholding tax rates that apply to the payment of dividends, interests or royalties.

Aggressiveness is understood as the ability of country A to secure lower withholding taxes from country B in a double tax agreement.

The text of a double tax agreement only includes the applicable withholding tax rates but not which country secured it from the other one. As such, the withholding tax rate itself does not reveal whether country A secured it from country B, or the other way around. In order to evaluate that, we apply the following steps.

Step 1. Defining comparable rates to assess dividends, interests and royalties withholding rates

To determine if country A secured lower withholding tax rates from country B, this indicator compares the withholding tax rate present in the double tax agreement between country A and country B, with the withholding tax rates available in country B's treaties with other countries.

For example, in the double tax agreement between country A and country B the withholding tax rate on dividends is 5%. However, in all other double tax agreements country B has signed the average withholding tax rate on dividends is 20%. That is, the tax rate is 20% in the agreements between country B and county C, country B and country D, and country B and country E, and so on.

Given that there is a withholding tax rate on dividends of 20% on average in country B's treaties with countries C, D and E, while the withholding tax rate is 5% with country A, the underlying assumption is that country A was the one to secure lower withholding tax rates from country B. As a result, this indicator reflects that country A was aggressive towards country B in determining the withholding tax rates.

Step 2. Calculating the aggressiveness for each type of payment (dividends, interests and royalties)

To determine how aggressive country A was against country B, this indicator subtracts the reference rate (the average rate in all other treaties of country B) from the rate in the assessed treaty of country B with country A. In other words, country A's aggressiveness against country B in relation to dividends will be calculated in the following way: 5% - 20%= -15. So, the result is, that country A's aggressiveness on withholding tax on dividends is -15.

This above calculation – the withholding tax rate available in the assessed treaty minus the average withholding tax rate in all other treaties – is then repeated for each type of payments: dividends, interests and royalties.

The aggressiveness on withholding tax on interests is calculated in the same way. For example, in the double tax agreement between country A and country B the withholding tax rate on interest is 5%. However, in all other double tax agreements country B has entered (i.e. with country C, D and E, and so on), the average withholding tax rate on interest is 10%.

Country A's aggressiveness against country B in relation to interests will be calculated in the following way: 5% - 10% = -5. Therefore, country A's aggressiveness on withholding tax on interests is -5.

The aggressiveness of country A in the case of withholding tax on royalties is also calculated in the same way. For example, in the double tax agreement between country A and country B the withholding tax rate on royalties is 5%. However, in all other double tax agreements has entered (i.e. with country C, D and E, and so on), the average withholding tax rate on royalties is 2%.

Thus, in the case of withholding tax on royalties, country A is not considered aggressive towards country B because country B's average withholding tax rate on royalties with other countries is actually lower than the withholding tax rate that applies with country A. However, this indicator only considers "aggressive" values. Given that country A was not aggressive against country B in relation to royalties, country A's aggressiveness on withholding tax royalties is 0.

Step 3. Calculating the aggressiveness of each treaty

To calculate the total aggressiveness of country A in the double tax agreement with country B, the aggressiveness of the withholding tax on each payment is simply added together in the following way:

= Aggressiveness on dividends + aggressiveness on interests + aggressiveness on royalties

= -15 + (-5) + (0)

= -20

Country A's total aggressiveness against country B = -20.

Step 4. Calculating the total aggressiveness of each country (the aggressiveness of all of a country's treaties)

The next step would be to repeat the calculations for each of country A's double tax agreements, for example with countries F, G and H.

The total aggressiveness of country A will be the sum of the aggressiveness of all its treaties.

For example:

1) country A's total aggressiveness against country B = -20
2) country A's total aggressiveness against country F = -10
3) country A's total aggressiveness against country G = 0
4) country A's total aggressiveness against country H = -30

Country A's total aggressiveness = -60

Step 5. Transforming a country's total aggressiveness into a country's haven score for Indicator 20

The last step is to transform a country's aggressiveness into a haven score for indicator 20. For this purpose, out of the 64 jurisdictions assessed by this indicator, the country with the highest level of aggressiveness (mathematically, the country with the lowest "negative" value, given that aggressiveness always refers to values below zero) will be given a haven score of 100 (the maximum haven score). All other countries will receive a haven score in proportion to that value.

For example, if country Z had an aggressiveness of −2000, and this was the highest available aggressiveness when comparing all countries, then country Z will receive a haven score of 100 (the maximum haven score). Then, if country Y had an aggressiveness score of −500, it will receive a haven score of 25 because its aggressiveness is equal to one quarter of country Z's aggressiveness.

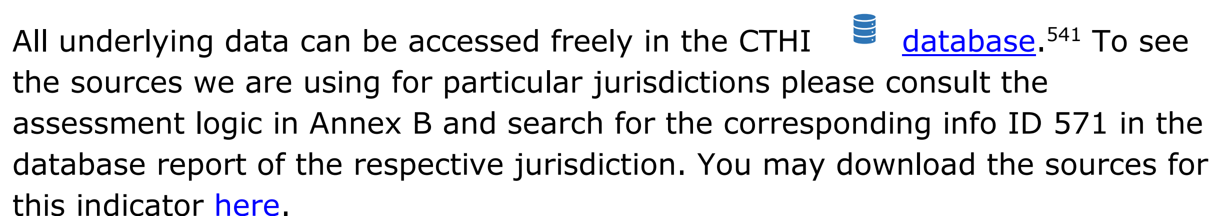
In addition, countries that have no corporate income tax rate or the statutory corporate income tax is zero (see Haven Indicator 1) will also obtain a haven score of 100 under indicator 20, regardless of the number of double tax agreements and their aggressiveness. This is because indicator 20 on treaty network aggressiveness focuses on the network of double tax agreements which enables income to be shifted without any (tax) obstacles. However, one of the reasons that double tax treaties enable jurisdictions to become conduits is to ultimately terminate at a tax favourable jurisdiction. Otherwise there would be no incentive for companies to engage in profit shifting among many countries' double tax agreements only to terminate at a high tax jurisdiction.

Jurisdictions with nil corporate income tax or with a statutory corporate tax rate of zero per cent constitute an end-point for the network of double tax agreements. As such, even if a nil tax jurisdiction itself is a party to only one double tax treaty, it is likely to become the destination of profit shifting either through its sole tax treaty, or through the use of hybrids elsewhere (e.g. in the "Double Irish Dutch Sandwich" tax planning the use of Irish hybrid entities enable the shift of profits to Bermuda) or simply because some of these conduit

countries that are party to many tax treaties do not withhold any tax on dividends, interest and/or royalties, so they could easily become the last link in a chain that ends in a zero tax jurisdiction.

Table 20.1. Scoring Matrix Haven Indicator 20

Regulation	**Haven Score** [100 = maximum risk; 0 = minimum risk]
A jurisdiction has a statutory corporate income tax rate of zero per cent **or** it has the highest available value of aggressiveness	100
A jurisdiction has a value of aggressiveness which is higher than zero per cent and lower from the highest available level of aggressiveness	Proportionate, based on the value of aggressiveness
A jurisdiction has no double tax agreements **or** it has an aggressiveness of zero	0



All underlying data can be accessed freely in the CTHI database.[541] To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info ID 571 in the database report of the respective jurisdiction. You may download the sources for this indicator here.

3.20.2 Why is this important?

For more than a century, countries have entered bilateral tax treaties that distribute taxing rights between nations. This has significant implications for worldwide inequality. In recent decades, these treaties have increasingly become the bedrock of "treaty shopping", enabling tax avoidance strategies by multinational companies. As part of cross-border economic activity, legal provisions and lower tax rates of a particular set of treaties are often exploited for shifting income away from its source, where such income could otherwise be taxed or reinvested. Jurisdictions have been central actors in driving the race to the bottom in the taxation of passive income (dividends, interests and royalties) by conceding lower withholding rates during treaty negotiations or by lowering or abolishing their domestic withholding rates in treaties, or both.

In this section, we first discuss the current function and content of double tax treaties. Then, we explore how jurisdictions are driving a race to the bottom in corporate taxation before analysing how multinationals exploit tax treaties for

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

tax avoidance and the implications of "treaty shopping" for domestic resource mobilisation and global development.

(1) The function and content of double tax treaties

The prevailing justification for bilateral tax treaties is that they are the most effective way to prevent the double taxation of the same income by two jurisdictions that have a trade or investment relationship. Preventing double taxation is essentially achieved by limiting the taxing rights of the country where profits are sourced. Because tax treaties are integrated into the national laws of the two jurisdictions, the common framework provided by the treaty is meant to provide a fixed legal environment creating certainty for companies engaging in business in both places. However, to avoid double taxation, countries can also choose to provide a unilateral tax credit in the destination country for tax paid in the source country. This can be done without having to expressly limit the right of the source country to tax domestic revenue.[542]

Until the recent development of multilateral tax conventions by the Organisation for Economic Co-operation and Development (OECD), key terms like "company", "permanent establishment" or "dividend" were defined in bilateral treaties for a pair of jurisdictions. The lack of globally agreed standards was attenuated by the relative success of "model" treaties; most prominently, the OECD model[543] and to a lesser extent the United Nations[544] model. As legal scholar Sol Picciotto found, the widely followed OECD model treaty gives "virtually all the exclusive rights to tax […] to the state of residence".[545] That is, exclusive rights to tax are assigned to the state where the investor company resides, as opposed to the state where profits are generated. In the context of today's investment dynamics, the "state of residence" is often a tax haven or a developed "capital exporting" country. With respect to passive investment income – dividends, interest and royalties – the OECD model treaty defines maximum tax rates that the source state can charge on passive income. For dividends, 5% or 15% (the lower rate applies to

[542] Tsilly Dagan, *The Tax Treaties Myth* (Rochester, NY, 28 March 2003) <https://papers.ssrn.com/abstract=379181> [accessed 14 May 2019].

[543] Organisation for Economic Co-operation and Development, 'Model Tax Convention on Income and on Capital: Condensed Version September 1992' <https://www.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-september-1992_mtc_cond-1992-en> [accessed 24 May 2019].

[544] United Nations Department of Economic & Social Affairs *United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)* (New York, 2017) <https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf> [accessed 6 March 2019].

[545] Sol Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation* (London, 1992).

substantial holdings); for interests, 10%; and for royalties 0%.[546] In the UN model, rates are not specified, and thus left for negotiation between potential treaty partners. Overall, it appears that the taxing rights of source jurisdictions are better secured in the United Nations model treaty.[547]

(2) The race to the bottom

Tax war[548] dynamics have led to a wide diversity of loopholes and increasingly lower rates, which the more aggressive jurisdictions have secured through negotiations.[549] Apart from very low withholding rates, some tax treaties also include provisions like the "management and control" clause, allowing a company that is resident in two countries at the same time to only be considered tax resident in the jurisdiction where "effective management" is undertaken.[550] Other treaties exclude key activities from the definition of a "permanent establishment", allowing substantial economic activities to be carried out in a jurisdiction without triggering taxation.[551] Importantly, vague definitions of "dividend" and "interest" within a bilateral treaty may give rise to hybrid treatment of investment income, which may result in negative tax rates.[552]

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[546] Organisation for Economic Co-operation and Development, 'Model Tax Convention on Income and on Capital'.

[547] Michael Lennard, 'The UN Model Tax Convention as Compared with the OECD Model Tax Convention – Current Points of Difference and Recent Developments', *IBFD Asia-Pacific Tax Bulletin*, January/February 2009, 2009, 4–11.

[548] For the use of the term 'tax war' see here: Tax Justice Network, *Ten Reasons to Defend the Corporation Tax*, 2015 <https://www.taxjustice.net/wp-content/uploads/2013/04/Ten_Reasons_Full_Report.pdf> [accessed 17 July 2018].

[549] Martin Hearson, *The European Union's Tax Treaties with Developing Countries: Leading by Example?*, September 2018, 20–21 <https://martinhearson.files.wordpress.com/2018/10/hearson-2018-ep.pdf>.

[550] Martin Brehm Christensen and Emma Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?* (Brussels, 21 June 2018) <https://www.guengl.eu/content/uploads/2018/06/Apple_report_final.pdf>; see also: Organisation for Economic Co-operation and Development, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report - En - OECD*, BEPS, 5 October 2015, 81 <https://www.oecd.org/tax/preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstances-action-6-2015-final-report-9789264241695-en.htm> [accessed 25 May 2019].

[551] Organisation for Economic Co-operation and Development, *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report*, BEPS (15 October 2015) <https://www.oecd-ilibrary.org/taxation/preventing-the-artificial-avoidance-of-permanent-establishment-status-action-7-2015-final-report_9789264241220-en> [accessed 25 May 2019].

[552] Assuming that a "dividend" flow is subject to withholding tax in country A when paid to a parent company in country B. Hybrid treatment may occur when the flow is considered "interest" in country A (deductible), potentially subject to no withholding tax, and then considered "dividend" income in country B, where such income is tax-exempt. As a result, not only can hybrid treatment result in non-taxation of certain amount of

Historical evidence from 1960 to 1980 indicates that European countries, such as the United Kingdom, insistently pushed developing countries to sign double tax treaties in order to secure a "competitive advantage" for UK businesses in those countries.[553] Frequent interactions with public officials, lobbyists and private sector tax experts were found to be very influential in ensuring negotiating priorities and securing advantages.[554] Research shows that the power imbalance between negotiating countries, through unequal technical expertise or higher dependence on foreign investment, result in treaties that are more favourable to the capital exporting country, which are usually developed countries and tax havens.[555]

Yet the idea that bilateral treaties increase foreign direct investment is not always supported by empirical evidence.[556] On the contrary, the International Monetary Fund's 2018 working paper finds that signing treaties with investment hubs is not associated with increased investment, and that those treaties "tend to come with non-negligible revenue losses".[557]

Pursuant to the dynamics of tax-war high income countries and jurisdictions with big "financial centres" have driven the treaty-making process with the objective of securing the lowest possible rates for resident investors.[558] The outcome of decades of tax treaty war is apparent with regards to withholding rates.

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income, but it can also result in having that amount considered deductible (interest); effectively lowering the tax paid on other income.

[553] Martin Hearson, 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion' (The London School of Economics and Political Science, 2016), 103 <http://etheses.lse.ac.uk/3529/1/Hearson_Bargaining_away_the_tax_base.pdf> [accessed 28 April 2019].

[554] Hearson, 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion', 16, 112–13.

[555] Martin Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?', *Journal of International Development*, 30/2 (2018), 233–55.

[556] International Monetary Fund, *Spillovers in International Corporate Taxation*, 9 May 2014 <https://www.imf.org/external/np/pp/eng/2014/050914.pdf> [accessed 23 May 2019].

[557] Sebastian Beer and Jan Loeprick, *The Cost and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa*, 24 October 2018 <https://www.imf.org/en/Publications/WP/Issues/2018/10/24/The-Cost-and-Benefits-of-Tax-Treaties-with-Investment-Hubs-Findings-from-Sub-Saharan-Africa-46264> [accessed 24 May 2019].

[558] Within our sample of 64 jurisdictions, just 13 jurisdictions are responsible for more than 50% of measured aggressiveness. All of them are categorised as High Income Countries by the World Bank, and at least 9 out of 13 can be considered financial centres: United Arab Emirates (Dubai), France (Paris), United Kingdom (London), Switzerland (Zurich), Germany (Frankfurt), Ireland (Dublin), Netherlands (Amsterdam), Luxembourg and Cyprus.

Table 20.2. Evolution of Average Withholding Rates[559]

The evolution of WHT [Withholding] rates					
Time Period	Dividend	Participating Dividend	Interest	Royalty	
Year	Average Domestic Law WHT Rates				No. Countries
2000	15.2	14.1	15.1	17.2	107
2013	13.1	10.7	14.0	15.7	179
Treaty Age	Average Treaty WHT Rates				No. Treaties
0-5 years	10.1	5.6	7.9	8	533
5-10 years	11.7	6.9	9.1	9.3	635
10-20 years	12.4	8.1	9.6	9.8	1554
20-30 years	14.2	11.2	10.8	11.5	529
>30 years	14.6	11.1	11.7	11.3	328

Source: International Bureau of Fiscal Documentation database, 2011.

According to the International Monetary Fund, since 1980 average withholding tax rates have fallen by 30% for most types of income, while the average rates on qualifying dividends has fallen by almost 50%.[560] The 2014 report points out that European Union directives have been a key driver of this change, eliminating dividend withholding tax within the European Union member states and limiting taxes on interest and royalty payments.[561] To a large extent, governments are responsible for negotiating and signing bilateral treaties that contribute to the race to the bottom in withholding taxes.

Haven Indicator 20 serves as a proxy to assess a country's role in pushing for lower withholding tax rates and reducing the taxing rights of source countries. This indicator measures the comparative aggressiveness of each jurisdiction's treaty network. By comparing each treaty rate to the average rate otherwise available at the partner jurisdiction, we measure the spillover effect that a jurisdiction creates when systematically agreeing to low or zero withholding tax rates with its treaty partners.

The assessment of whether a specific country should sign a tax treaty with another jurisdiction is beyond the scope of this indicator and would otherwise require a detailed analysis of the bilateral economic relations and potential treaty provisions. However, this Haven Indicator enables a comparison of different jurisdictions' tax treaty networks in relation to withholding rates for dividends, interest and royalty payments. Indicator scores measure the aggregate aggressivity of a country's treaties. Both this metric and the average aggressivity provide useful insights for civil society and government negotiating teams when

[559] International Monetary Fund, *Spillovers in International Corporate Taxation*, 69.
[560] Ibid., 68–69.
[561] Ibid.

considering prospective treaties (for more details see Table 20.3 (A) and (B) in Haven Indicator 20).

(3) How multinationals avoid taxation through treaty shopping

In addition to treaty shopping, multinational companies have been engaging in "jurisdiction shopping" where they choose the most convenient countries or territories to minimise their tax. Google, for example, chose to set up a Bermuda resident holding company to receive royalty payments from a range of companies resident in higher tax countries,[562] draining the profits from places where employees or users generated value. Both Google and Apple use Ireland to shift offshore profits made in the European Union by taking advantage of Ireland's laws and its extensive network of bilateral treaties.[563] The fact that outbound royalty payments amount to 26.39% of Ireland's gross domestic product between 2010 and 2015[564] shows the extent to which certain jurisdictions are used as conduits for profit shifting. For comparison, the average of outbound royalty payments in the European Union for the same period is just 2.16%.[565]

The importance of tax treaties in the context of aggressive tax planning is evident by looking at statistics prepared by European Commission staff: for income from intangible assets, the Effective Average Tax Rate (EATR) resulting from profit shifting strategies that use royalty payments to offshore jurisdictions is 40.7% in the absence of treaty; however, the EATR goes down to 2% where tax-treaties are available.[566] In other words, if a multinational company would like to shift intellectual property profits offshore, doing so in the absence of treaty is more than 20 times more "costly". With regards to offshore profit shifting via interest payments, the effective tax rate is more than two times higher if there is no treaty.[567]

For instance, the treaty between France and Vietnam, signed in 1993, secures a 0% withholding rate for interest payments. This means that even if Vietnam wants to reduce dependence on foreign creditors by increasing domestic

[562] Brehm Christensen and Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?*

[563] Brehm Christensen and Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?*, 26–30..

[564] Simon Loretz and others, *Aggressive Tax Planning Indicators. Final Report*, European Commission - TAXUD/2016/DE/319, 2017, 102 <https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_papers_71_atp_.pdf> [accessed 8 March 2018].

[565] Loretz and others, *Aggressive Tax Planning Indicators. Final Report*, 102.

[566] Ibid., 26.

[567] Ibid.

withholding rates on interests, French lenders will still be able to repatriate interest tax free. On average, the other treaties signed by Vietnam set withholding tax rates of about 10% with respect to interests.[568] Yet it may be the case that profits shifted from Vietnam through interest payments do not end up in France but are again shifted to lower tax countries like Switzerland, with which France has favourable treaties. The fact that France has negotiated these rates reveals an aggressive stance towards Vietnam that most likely benefits French banks and corporate investors.

Recently developed offshore financial centres like Mauritius have also been negotiating very aggressive treaties. For example, Senegal's treaty withholding tax rates are above 10% on average for all types of income, but Mauritius and Senegal have signed a treaty ensuring 0% withholding tax in all cases.[569] With these very aggressive treaty rates, Mauritius reduces the tax base of Senegal and sends a signal to multinational corporations that Mauritius is an advantageous destination to shift profits away from Senegal.

(4) Untaxed investment income, offshore accumulation and shortfalls in domestic revenue

The distributional conflict inherent in the allocation of taxing rights in double tax treaties goes back to the League of Nations when the first model for a double tax treaty was negotiated.[570] With the propagation of stateless international finance, tax treaties have become a tool to set up artificial economic relations in order to minimise tax on economic rents.

Although preventing double taxation has been the declared objective, double non-taxation has often been the result. Sharply declining withholding rates[571] together with widespread tax exemptions on investment activities[572] and falling statutory corporate income tax rates[573] have undoubtedly contributed to

[568] PricewaterhouseCoopers (PWC), 'Vietnam - Corporate Withholding Taxes', *Worldwide Tax Summaries*, 2018 <http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Vietnam-Corporate-Withholding-taxes> [accessed 28 May 2019].

[569] http://taxsummaries.pwc.com/ID/Mauritius-Corporate-Withholding-taxes; [accessed 27 May 2019]; see also http://taxsummaries.pwc.com/ID/Senegal-Corporate-Withholding-taxes; [accessed 27 May 2019].

[570] Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*, 49–60.

[571] International Monetary Fund, *Spillovers in International Corporate Taxation*, 68.

[572] See Haven Indicator 5.

[573] Organisation for Economic Co-operation and Development, *Top Incomes and Taxation in OECD Countries: Was the Crisis a Game Changer?*, FOCUS On (May 2014), 7 <http://www.oecd.org/social/OECD2014-FocusOnTopIncomes.pdf> [accessed 28 May 2019].

increasing global inequalities. The race to the bottom in corporate income tax rates harms virtually all countries with the exception of a few tax havens where most profits end up accumulating.[574]

With double tax treaties, the tax losses to developing countries are most problematic.[575] Even a single treaty can greatly affect a country's tax base,[576] as network externalities can arise when the treaty partner has various low or no tax treaties. More specifically, when double tax treaties are signed between a developed country (or a tax haven) and a developing country, the latter is usually the capital-importing party to the bilateral agreement. In other words, capital is expected to flow into the developing country as investment and the income resulting from the investment is expected to mostly flow out from the developing country to a tax haven or a developed country. Given that the function of double tax treaties in relation to dividends, interest and royalty payments is to restrict the tax that the source country can withhold on the outflows, then almost by definition developing countries will forego substantially more revenue than their capital-exporting counterparty.[577] The following graph (Graph 20.1) illustrates the strikingly different foreign direct investment (FDI) positions of G20 countries.

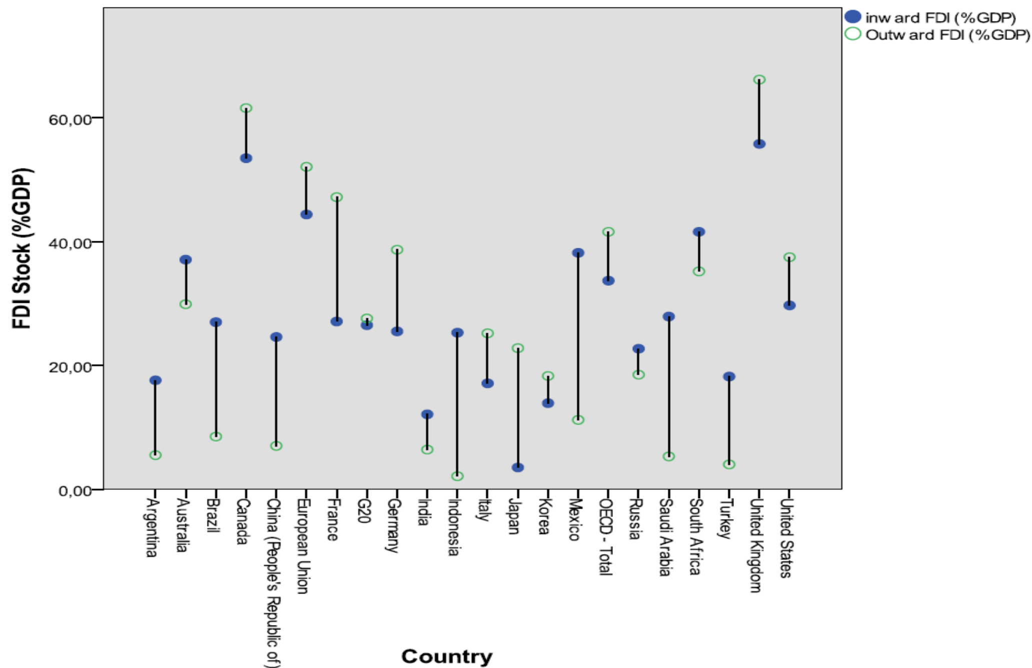
[574] Annette Alstads, 'Who Owns the Wealth in Tax Havens? Macro Evidence and Implications for Global Inequality', 34.

[575] International Monetary Fund, *Spillovers in International Corporate Taxation*, 26.

[576] International Monetary Fund, *Spillovers in International Corporate Taxation*, 27.

[577] Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*, 20, 27. See also: Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?', 233–55.

Graph 20.1. Comparison of G20 inward and outward FDI stock, 2012. (Lips 2019)[578]



Source: OECD (2015), FDI flows (indicator). Retrieved from https://data.oecd.org/fdi/fdi-flows.htm

The graph above sheds light on the countries that may suffer greater losses from low or no withholding taxes in treaties. For more accurate estimates in developing countries, a 2018 study finds that the potential revenue loss from lower treaty withholding tax rates can be significant. For the Philippines, Pakistan and Bangladesh alone, these losses amounted to almost US$800m in just one year.[579] A 2013 study found that the treaties Netherlands signed with developing countries led to more than €770m in lost revenue.[580]

Thus, by allowing a race to the bottom in terms of taxation of dividends, interest and royalties and by promoting "jurisdiction shopping", we consider that tax treaties with low or no withholding taxes are systemically harmful, predominantly for developing countries.

[578] Wouter Lips, 'Great Powers in Global Tax Governance: A Comparison of the US Role in the CRS and BEPS', *Globalizations*, 16/1 (2019), 104–19.

[579] Petr Jansky and Marek Sedivy, *Estimating the Revenue Costs of Tax Treaties in Developing Countries*, Working Papers IES (August 2018) <https://ideas.repec.org/p/fau/wpaper/wp2018_19.html> [accessed 28 May 2019].

[580] Katrin McGauran, *Should the Netherlands Sign Tax Treaties with Developing Countries?* (June 2013) <https://www.somo.nl/wp-content/uploads/2013/06/Should-the-Netherlands-sign-tax-treaties-with-developing-countries.pdf> [accessed 28 May 2019].

4. The Quantitative Component: Global Scale Weight (GSW)

The second component of the CTHI is the global scale weight (GSW) attributed to each jurisdiction. It is based on an assessment of the size of each jurisdiction's share of the global total of foreign direct investment (FDI). Foreign direct investment is broadly understood as any investment made by a firm or an individual from one country into business in another country (there are a number of definitions, for example, UNCTAD's Handbook of Statistics 2018 defines FDI as an investment reflecting a lasting interest and control by a foreign direct investor, resident in one economy, in an enterprise resident in another economy, foreign affiliate). The objective of the global scale weights is thus to quantify the importance of each jurisdiction considered in the CTHI for cross-border direct corporate investment. The global scale weights represent a measure of the volume at stake in each country when assessing the risks associated with it being a corporate tax haven. In the final stage of constructing the CTHI, we combine the global scale weights with the haven scores to create a ranking of each jurisdiction's contribution to the global problem of corporate tax havens.

It is appropriate to note that GSWs alone do not imply anything wrong. The United States, the Netherlands and Luxembourg, the three countries that, as we find below, have the highest GSWs, are not necessarily or in reality the three largest tax havens in the world. The GSW should be considered as an indicator of the potential for a jurisdiction to contribute to the global problem of corporate tax havenry, if tax haven options are chosen in the range of policy areas discussed above. It is then only in the subsequent step, where this ranking by scale of activity is combined with the Haven Scores, that we construct the Corporate Tax Haven Index which reflects the risk of global harm done by each jurisdiction.

In this section we describe in detail how we construct the global scale weights for the CTHI. We start by introducing the two main sources of FDI data and explaining that we ultimately choose the IMF's CDIS as the primary source due to its coverage, bilateral nature and directional reporting principles. Then, we show the individual steps to construct GSWs from this data. In the last part of this section, we discuss how GSWs can be bundled together to enable the derivation of CTHI for groups of countries, and illustrate this for the UK's network of overseas territories and dependencies.

4.1 Foreign direct investment data

There are two main data sources for foreign direct investment at the country level from two international organisations.

The first and the ultimately preferred source is the International Monetary Fund's (IMF) Coordinated Direct Investment Survey (CDIS) which includes bilateral data on FDI. Reporting economies submit data on FDI using the so-called directional

approach which requires reporting data on both inward and outward FDI. An important advantage of the directional approach is that it allows the derivation of inward (outward) FDI positions even for countries that do not report that data in the survey simply by summing the values of outward (inward) FDI that other countries report for relationships with the non-reporting country. In the CDIS, variables constructed in this way are called derived variables. As we describe in detail below, we make use of this increased availability of data by using it where there is no reported data.

The CDIS[581] contains a total of 137,483 bilateral observations of inward FDI stocks and 97,586 for outward FDI stocks, spanning over the time period 2008-2017.[582] For stocks of inward FDI, we use the variable called "Inward Direct Investment Positions, US Dollars (IIW_BP6_USD)", and for stocks of outward FDI, we use the variable "Outward Direct Investment Positions, US Dollars (IOW_BP6_USD)". A total of 64 jurisdictions are considered in the CTHI, and we naturally need data on foreign direct investment for all these countries to be able to construct their GSWs and ultimately their final CTHI values. With a combination of reported and derived data, the CDIS covers all jurisdictions included in the CTHI.

The second main source of FDI data comes from the United Nations Conference on Trade and Development (UNCTAD) which publishes data on unilateral inward and outward FDI stock positions for every year since 1990 as part of its annual World Investment Report. We ultimately prefer CDIS mainly due to its superior coverage when we combine reported with derived data, but also due to the seemingly higher reliability in our preliminary empirical analysis, in which we compared the two sources with other, partial data sources such as the Bureau of Economic Analysis (BEA) for US FDI.

While there are other sources of cross-country FDI data, such as the BEA and also the OECD and the European Union's Eurostat, their coverage is much smaller and thus not useful for our purposes (on the other hand, one advantage of the OECD data is that it is the only data source of the three that distinguishes investment in special purpose entities; although this is not directly useful for the purposes of the CTHI).

The IMF's CDIS is thus our preferred source for the GSW and we discuss some of its characteristics here. The 2015 CDIS guide provides the most recent and

581 The version of the CDIS that we use for the CTHI was accessed at http://data.imf.org/CDIS in January 2019.

582 IMF, *Coordinated Direct Investment Survey*, 2019 <http://data.imf.org/CDIS>.

detailed information on the CDIS and the data[583]. Economies participating in the CDIS have agreed to compile the following information for inward direct investment: the value of outstanding positions by immediate (first) direct investor, by counterpart economy, for both net equity and net debt instruments (the corresponding debt instrument assets and liabilities reported separately), as of the reference date (end-December)[584]. In addition, economies are asked to provide the following information on outward direct investment, where significant: the value of outstanding positions by immediate (first) counterpart economy, for both net equity and net debt instruments (the corresponding assets and liabilities reported separately), as of the reference date (end-December). In addition, the guide discusses that economies may wish to collect additional items for their own use, however, these data are not requested to be submitted to the IMF[585]. These additional items include for example industry breakdowns, data on round tripping, income, financial transactions or ultimate investing economy.

The fact that we use data that are recorded for the immediate counterpart economy only imply that we are not able to capture the information on ultimate investor or host country and also that we are not able to capture round-tripping and other similar phenomena.

The values on the books of the direct investment enterprise should be used for both inward and outward direct investment[586]. To the maximum extent possible, the concepts and principles in the sixth edition of the IMF's Balance of Payments and International Investment Position Manual (BPM6) and the fourth, 2008 edition of the OECD Benchmark Definition of Foreign Direct Investment (BD4) are used as the basis for compiling data reported in the CDIS.

According to OECD, FDI statistics encompass mainly four types of operations that qualify as FDI: i) purchase/sale of existing equity in the form of mergers and acquisitions (M&A); ii) greenfield investments; iii) extension of capital (additional new investments); and iv) financial restructuring.[587] Although it is not very clear, it seems that private equity can be included as a part of other equity category.[588] OECD discusses the growing trend of individual primary investors investing into collective investment institutions (including investment, mutual, hedge, or private equity funds) and acquiring sufficient ownership of voting power to

[583] Rita Mesias, *The Coordinated Direct Investment Survey Guide 2015* (2015) <https://www.elibrary.imf.org/abstract/IMF069/22557-9781513519418/22557-9781513519418/22557-9781513519418.xml> [accessed 2 May 2019].

[584] Ibid., p.3.

[585] Ibid., p.4.

[586] Ibid.

[587] OECD, *OECD Benchmark Definition of Foreign Direct Investment (BD4)*, 2008, 87.

[588] Mesias, *The Coordinated Direct Investment Survey Guide 2015*, 17.

qualify as direct investment, as well as the increasing number of such institutions becoming direct investors in their own right[589]. Both aspects, investments in and by collective investment institutions, are included in FDI statistics as far as the basic FDI criteria are met. However, the nature and motivation of collective investment institutions may differ from those of multinational enterprises and there is a need to observe this phenomenon more closely in the coming years.

Using data on foreign direct investment to construct the global scale weights is our preferred option given data availability. Alternative measures for GSW considered earlier instead of FDI stock data were profit shifting and misalignment indicators such as those recently proposed by Tørsløv, Wier, & Zucman[590], Bolwijn, Casella, & Rigo[591] or Cobham & Janský[592], and reviewed and compared quantitatively by Janský & Palanský[593]. In contrast with all these and other existing studies, the FDI data has the advantage of better data availability and coverage of more countries. The FDI data also represent a relatively neutral economic measure that only in combination with haven scores results into the CTHI that can be interpreted as an estimate of the contribution of a jurisdiction to the problem of corporate tax havens. Despite the choice of the FDI data for the GSW of the CTHI, it is good to keep in mind that even the best available data are imperfect, as noted above, and here we briefly discuss some related literature.

Rather than providing an exhaustive literature survey, we point to some of the most relevant papers. These include contributions in economic geography by

[589] OECD, *OECD Benchmark Definition of Foreign Direct Investment (BD4)*, p.23, p.193.

[590] Thomas R. Tørsløv, Ludvig S. Wier and Gabriel Zucman, *The Missing Profits of Nations* (June 2018) <http://www.nber.org/papers/w24701> [accessed 18 June 2018]..

[591] Richard Bolwijn, Bruno Casella and Davide Rigo, 'An FDI-Driven Approach to Measuring the Scale and Economic Impact of BEPS', *Transnational Corporations*, 25/2 (2018), 107..

[592] Alex Cobham and Petr Janský, 'Measuring Misalignment: The Location of US Multinationals' Economic Activity versus the Location of Their Profits', *Development Policy Review*, 2019, 1–38..

[593] 'Janský, P., & Palanský, M. (Forthcoming). Estimating the Scale of Profit Shifting and Tax Revenue Losses Related to Foreign Direct Investment. International Tax and Public Finance.'

Haberly & Wojcik,[594] in economics by Blanchard & Acalin[595], by UNCTAD,[596] as well as by the Tax Justice Network[597]. The IMF notes that foreign direct investment data includes both 'greenfield' investments and also mergers and acquisitions, and argues that estimates suggest that more than half may reflect mergers and acquisitions[598]. Haberly (forthcoming) documents how FDI data fails to account for round tripping capital and its other shortcomings. Garcia-Bernardo, Fichtner, Takes, & Heemskerk[599] quantify that many jurisdictions serve primarily only as conduits, via which the FDI flows through - in and out. As an example of a recent relevant contribution on the quality and characteristics of the FDI data, Damgaard & Elkjaer[600] explain the differences whether or not special purpose entities are included in the FDI data, and that some multinational enterprises invest in China through the British Virgin Islands and Hong Kong.

To sum up, the IMF CDIS data are the best available data suitable for the construction of the GSW, but they are far from perfect.

4.2 Constructing the GSW

To construct the GSW from IMF CDIS data, we proceed in four steps. First, for each bilateral (country-pair) relationship and separately for inward and outward data, we take the maximum of three values: reported FDI stock, derived FDI stock, and zero. We do this because the most likely explanation for different values of reported and derived data is under-reporting by the jurisdiction, as discussed in the CDIS Guide 2015, although it also calls for caution in using the derived data.[601] Also, there are instances of both under-reporting and correctly-reporting reporters in the data without obvious guidance which of the two, reported or derived values, better reflect the reality. By using the higher of the

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[594] Daniel Haberly and Dariusz Wojcik, 'Tax Havens and the Production of Offshore FDI: An Empirical Analysis', *Journal of Economic Geography*, 2014, 1–27.; Daniel Haberly and Dariusz Wójcik, 'Regional Blocks and Imperial Legacies: Mapping the Global Offshore FDI Network', *Economic Geography*, 91/3 (2015), 251–80.

[595] Olivier Blanchard and Julien Acalin, *What Does Measured FDI Actually Measure?* (2016).

[596] Richard Bolwijn, Bruno Casella and Davide Rigo, 'Establishing the Baseline: Estimating the Fiscal Contribution of Multinational Enterprises', *Transnational Corporations*, 25/3 (2018), 111–143.

[597] Markus Meinzer and others, 'Comparing Tax Incentives across Jurisdictions: A Pilot Study', 2019, 43.

[598] International Monetary Fund (IMF), 'Spillovers in International Corporate Taxation'.

[599] Javier Garcia-Bernardo and others, 'Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network', *Scientific Reports*, 7/1 (2017), 6246.

[600] Jannick Damgaard and Thomas Elkjaer, 'The Global FDI Network: Searching for Ultimate Investors', *IMF Working Paper*, 17/258 (2017), p.17/p.20.

[601] Mesias, *The Coordinated Direct Investment Survey Guide 2015*, 66.

two we trust we are lowering the risk of underreporting without running much risk of including values that are much higher than reality. If both the reported and the derived value is negative (23 cases for inward data and 23 cases for outward data), we use zero, since negative values would decrease the country's total sum of FDI stock. More formally, for each country i and partner jurisdiction j, we derive the inward and outward FDI positions as:

$$inward\ FDI\ position_{ij} = \max(reported\ inward\ FDI_{ij}, derived\ inward\ FDI_{ij}, 0)$$

$$outward\ FDI\ position_{ij} = \max(reported\ outward\ FDI_{ij}, derived\ outward\ FDI_{ij}, 0)$$

Second, using these FDI positions, we sum the value of all N bilateral FDI stock positions of each country to calculate the total global inward and outward FDI stock positions of country i as:

$$inward\ FDI\ position_{i} = \sum_{j=1}^{N} inward\ FDI\ position_{ij}$$

$$outward\ FDI\ position_{i} = \sum_{j=1}^{N} outward\ FDI\ position_{ij}$$

Third, for each country i, we calculate the arithmetic average of its inward and outward FDI stock as:

$$average\ FDI\ position_{i} = \frac{inward\ FDI\ position_{i} + outward\ FDI\ position_{i}}{2}$$

Fourth, for each country, we take the share of this averaged value on the global total of averaged values to derive the GSW of jurisdiction i as:

$$GSW_{i} = \frac{average\ FDI\ position_{i}}{\sum_{i=1}^{M} average\ FDI\ position_{i}}$$

where M is the number of jurisdictions for which data is available.

In total, data on average FDI position in 2017 is available for 245 jurisdictions, out of which 64 are included in the CTHI. We find that the 64 jurisdictions considered in the CTHI together account for 84.9% of all global FDI. The United States has the largest recorded share of global FDI with 12.9%, followed by the Netherlands with 12.8% and Luxembourg with 10.5%.

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5. The CTHI – Combining Haven Scores and Global Scale Weights

The final step in the creation of the CTHI is to combine the global scale weights with the haven scores to generate a single number by which jurisdictions can be ranked, reflecting the potential global harm done by each jurisdiction (which is consistent with the FSI's methodology, on which this section is based). As with the choice of haven indicators and their relative weighting in the haven score, and with the focus on foreign direct investment to determine the relative global scale weight, the choice of method to combine haven score and scale is necessarily subjective. In each case, however, the approach taken is transparent and reflects the expertise of a wide group of stakeholders.

In the choice of how to combine have scores with global scale weights we are led by the CTHI's core objective (stated above). By doing so, the CTHI contributes to and encourages research by collecting data and providing an analytical framework to show how jurisdictions facilitate profit shifting, tax avoidance and tax evasion. Second, it focuses policy debates among media and public interest groups by encouraging and monitoring policy change globally towards greater fairness in corporate taxation.

To construct the CTHI, we use a formula that is consistent with the FSI. The formula that defines the CTHI 2019 for jurisdiction i thus looks as follows:

$$CTHI_i = \left(HS_i^3 * \sqrt[3]{GSW_i}\right) / 100$$

The choice of this formula, which we call the cube/cubed-root formula, is explained in detail in chapter 5 of the methodology of the FSI 2018. We also divide the final CTHI number by 100 for presentational purposes. In constructing the CTHI, we choose to remain consistent with the approach used in the FSI because this formula fits well the objective of the CTHI – to measure a jurisdiction's contribution to the global problem of corporate tax havens while highlighting harmful regulations of tax havens. In particular, we prefer this formula mainly due to two of its important characteristics.

First, the formula ensures that both of the components of the CTHI play an important role in the final CTHI value. Due to the different empirical distributions of the two variables, a simple multiplication formula would make the CTHI ranking over-reliant on global scale weights and only marginally reliant on haven scores. Figure 1 shows the histograms of the two distributions. We observe that the distribution of the global scale weights is heavily skewed to the left, leaving little space for the heterogeneity in haven scores to be reflected in a simple multiplicative formula. Indeed, using a simple multiplication, the correlation between global scale weights and CTHI values is 0.967 (and only 0.129 between haven scores and CTHI values). Cubing haven scores and taking a cube root of global scale weights ensures that the role of the two variables is more balanced –

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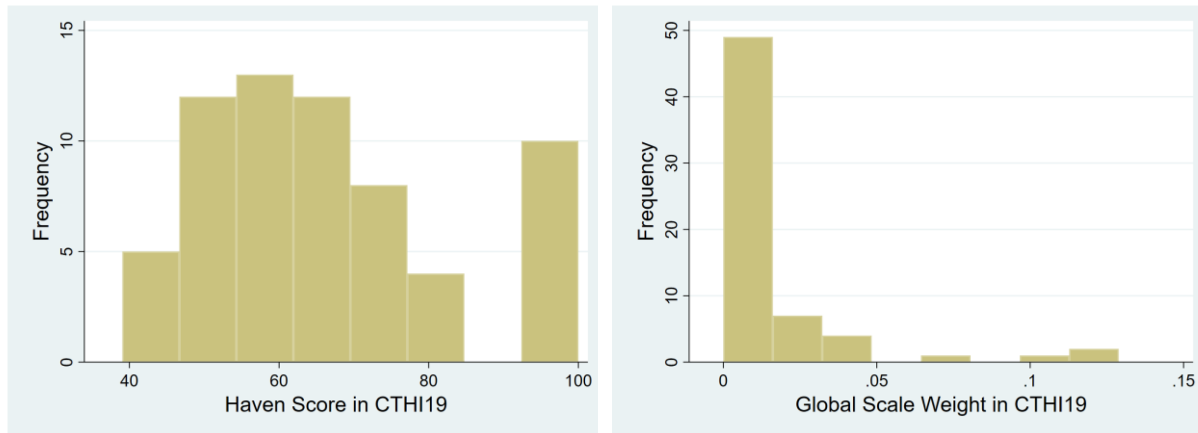
in our final CTHI, the correlation between CTHI values and global scale weights is 0.484 (and 0.686 between CTHI values and haven scores). In this way, the formula highlights the role of harmful regulations of tax havens.

Figure 1: Histograms of Haven Scores and Global Scale Weights of the CTHI



Source: Authors

This feature of the cube/cubed-root formula is nicely illustrated by the gradient of the surface formed by the combination of haven scores with global scale weights that together form the CTHI. For jurisdictions with high HSs and small GSWs, even a small increase in GSW will increase the CTHI substantially, but not so much for jurisdictions with low haven scores. Similarly, jurisdictions with high GSWs and low haven scores would see a substantial increase in their CTHI were they to increase their haven scores.

The second main advantage of the cube/cubed-root formula is that it is consistent with the FSI. While there are other formulas which would also achieve the objective of highlighting harmful regulations of tax havens (and we have explored and carefully considered a number of such options), the cube/cubed-root formula ensures that the CTHI can be directly compared to the results of the FSI.

Once decided on the cube/cubed-root formula to combine the haven scores with the global scale weights, we proceed with one additional step to arrive at the final number that best matches the objective of the CTHI – taking the share of each jurisdiction's CTHI in the total sum of CTHI scores for all jurisdictions. Assuming that the sum of CTHI scores for all 64 jurisdictions can be considered as the total global contribution to the problem of corporate tax havens, the constructed shares will represent each jurisdiction's contribution, in percentage terms, to the global problem of corporate tax havens. This contribution to global tax havenry of jurisdiction i is thus defined as follows:

$$Contribution\ to\ global\ tax\ havenry_i = \frac{CTHI_i}{\sum_{j=1}^{64} CTHI_j} * 100\%$$

We present the results of the CTHI 2019 in four parts: haven scores, global scale weights, corporate tax haven index value, and contribution to global tax havenry. The full results for all 64 jurisdictions are reported in Annex A.

5.1. GSW and CTHI for the UK network

A special methodological consideration concerns the aggregation of jurisdictions which are controlled by and dependent upon another jurisdiction. Most importantly, this question arises with respect to the large network of satellite jurisdictions associated with the United Kingdom[602]. In Overseas Territories (OTs) and Crown Dependencies (CDs) the Queen is head of state; powers to appoint key government officials rest with the British Crown; laws must be approved in London; and the UK government holds various other powers (as discussed, for example, in the FSI's narrative report for the UK, http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf). Political responsibility for the haven scores of OTs and CDs rests with the United Kingdom. Therefore, we seek to compute a GSW for the entire group of OTs and CDs. Calculating the joint Global Scale Weight is straightforward – we just sum up each jurisdiction's individual Global Scale Weight to arrive at 13.77% (or 6.47% excluding the UK).

To combine the GSW with Haven Scores (HS) into the CTHI, we see at least three relevant options.

First, and most consistent with the overall CTHI approach of applying the weakest link principle, is to search across all relevant dependencies for the highest haven score in each of the HSs separately. This haven score is then allocated to the whole group, and the set of highest haven scores is averaged to arrive at the group haven score. The resulting Haven Score for the UK sphere of influence then would be 100. We could arrive at this value of 100 by opting for the highest Haven Score of any of these jurisdictions, which would again be 100. The UK would then top the CTHI by a very large margin with a CTHI value of 5164 (or 4014 excluding the UK).

Second, we could take a simple arithmetic average to arrive at 90.00 (or 93.00 excluding the UK), resulting in a CTHI of 3768 (or 3196 excluding the UK), putting the whole group again into first place.

Third, using average Haven Scores weighted by each jurisdiction's GSW, which emphasises the relatively low HS of the UK over its network, we arrive at 79.85 (98.36 excluding the UK), resulting in a CTHI of 2629 (or 3820 excluding the UK). Excluding the UK puts the whole group in first place, while in the case with

[602] Our list of UK's OTs and CDs includes the following eleven jurisdictions: United Kingdom, British Virgin Islands, Bermuda, Cayman Islands, Jersey, Gibraltar, Guernsey, Turks and Caicos Islands, Anguilla, Montserrat, Isle of Man. It excludes many British Commonwealth realms where the Queen remains head of state.

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the UK included, the group as a whole would rank third – just behind its own members, the British Virgin Islands and Bermuda.

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6. Country Coverage

The 64 jurisdictions included in the first CTHI were selected based on:

(a) their EU membership or dependency;

(b) their role, established in the research literature, as a major misalignment jurisdiction; and/or

(c) anecdotal evidence that the jurisdiction may be playing an important role in international corporate taxation; plus

(d) nine African countries, which have been added as part of our FASTA[603] project (sponsored by NORAD) in order to ensure scalability and compatibility beyond Europe/OECD.

The first two selection criteria correspond to commitments made in a research project that is part of an EU funded H2020 research project (COFFERS[604]). Table 3 below provides an overview of the jurisdictions to be covered.

[603] FASTA: Financial Secrecy and Tax Advocacy in Africa. See https://www.taxjustice.net/taxjustice-team/rachel-etter-phoya-2/; 22.5.2018.
[604] www.coffers.eu

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Annex A: CTHI 2019 – Ranking of the 64 jurisdictions

Rank	Jurisdiction	CTHI Value[4]	CTHI Share[5]	Haven Score[2]	Global Scale Weight[3]
1	British Virgin Islands	2769	7.29%	100	2.12%
2	Bermuda	2653	6.98%	100	1.87%
3	Cayman Islands	2534	6.67%	100	1.63%
4	Netherlands	2391	6.29%	78	12.77%
5	Switzerland	1875	4.94%	83	3.41%
6	Luxembourg	1795	4.73%	72	10.53%
7	Jersey	1541	4.06%	98	0.43%
8	Singapore	1489	3.92%	81	2.12%
9	Bahamas	1378	3.63%	100	0.26%
10	Hong Kong	1372	3.61%	73	4.38%
11	Ireland	1363	3.59%	76	3.12%
12	United Arab Emirates	1245	3.28%	98	0.22%
13	United Kingdom	1068	2.81%	63	7.30%
14	Mauritius	950	2.50%	80	0.65%
15	Guernsey	891	2.35%	98	0.09%
16	Belgium	822	2.17%	68	1.83%
17	Isle of Man	804	2.12%	100	0.05%
18	Cyprus	698	1.84%	71	0.73%
19	China	659	1.73%	58	3.67%
20	Hungary	561	1.48%	69	0.49%
21	Curacao	552	1.45%	72	0.32%
22	France	525	1.38%	56	2.81%
23	Malta	519	1.37%	74	0.22%
24	Germany	461	1.21%	52	3.32%
25	USA	408	1.07%	43	12.89%
26	Panama	405	1.07%	72	0.13%
27	Spain	403	1.06%	55	1.53%
28	Gibraltar	398	1.05%	66	0.28%
29	Sweden	365	0.96%	56	0.90%
30	Italy	302	0.79%	51	1.28%
31	Czech Republic	270	0.71%	59	0.23%
32	Turks and Caicos Islands	265	0.70%	100	0.00%
33	Austria	258	0.68%	52	0.66%
34	Finland	237	0.62%	55	0.29%
35	Anguilla	233	0.61%	100	0.00%
36	Denmark	226	0.60%	52	0.44%
37	Liechtenstein	224	0.59%	70	0.03%
38	Lebanon	221	0.58%	73	0.02%
39	Estonia	211	0.56%	67	0.04%
40	Monaco	207	0.54%	68	0.03%
41	Latvia	197	0.52%	68	0.02%

Rank	Jurisdiction	CTHI Value[4]	CTHI Share[5]	Haven Score[2]	Global Scale Weight[3]
42	South Africa	184	0.48%	47	0.54%
43	Romania	178	0.47%	56	0.11%
44	Seychelles	163	0.43%	68	0.01%
45	Bulgaria	144	0.38%	56	0.06%
46	Macao	144	0.38%	57	0.05%
47	Slovakia	136	0.36%	53	0.08%
48	Croatia	127	0.33%	55	0.05%
49	Portugal	127	0.34%	46	0.23%
50	Taiwan	120	0.32%	47	0.16%
51	Andorra	109	0.29%	69	0.00%
52	Lithuania	107	0.28%	55	0.03%
53	Poland	98	0.26%	40	0.33%
54	Aruba	92	0.24%	64	0.00%
55	Slovenia	81	0.21%	50	0.03%
56	Botswana	74	0.20%	55	0.01%
57	Liberia	71	0.19%	49	0.02%
58	Kenya	60	0.16%	51	0.01%
59	San Marino	57	0.15%	62	0.00%
60	Ghana	56	0.15%	49	0.01%
61	Greece	54	0.14%	39	0.07%
62	Tanzania	40	0.11%	46	0.01%
63	Gambia	9	0.02%	48	0.00%
64	Montserrat	7	0.02%	65	0.00%

Footnote 1: The territories marked in Dark Blue are Overseas Territories (OTs) and Crown Dependencies (CDs) of the United Kingdom where the British Queen is head of state; powers to appoint key government officials rest with the British Crown; laws must be approved in London; and the UK government holds various other powers (see here for more details: www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf). Territories marked in light blue are British Commonwealth territories which are not OTs or CDs but whose final court of appeal is the Judicial Committee of the Privy Council in London (see here for more details: http://www.taxjustice.net/cms/upload/pdf/Privy_Council_and_Secrecy_Scores.pdf).

To compute a CTHI for the entire group of OTs and CDs (or also including the UK), we first need to calculate the group's joint Haven Score and joint Global Scale Weight. Calculating the joint Global Scale Weight is straightforward - we just sum up each jurisdiction's individual Global Scale Weight to arrive at 13.8% (or 6.5% excluding the UK). To combine the Haven Scores, we see at least three relevant options. All of them result in the UK and its satellite network of corporate tax havens to top the CTHI by a large margin (for more details, see Section 5.1). Note that our list excludes many British Commonwealth realms where the Queen remains head of state.

Footnote 2: The Haven Score is calculated based on 20 indicators. For full explanation of the methodology and data sources, please read Section 3.

Footnote 3: The Global Scale Weight represent a jurisdiction's share in global foreign direct investment (inward and outward). For full explanation of the methodology and data sources, please read our CTHI-methodology document, here: https://www.corporatetaxhavenindex.org/PDF/CTHI-Methodology.pdf

Footnote 4: The CTHI Value is calculated by multiplying the cube of the Haven Score with the cube root of the Global Scale Weight. The final result is divided through by one hundred for presentational clarity.

Footnote 5: The CTHI Share is calculated by summing up all CTHI Values, and then dividing each countries CTHI Value by the total sum, expressed in percentages.

Annex B: Assessment Logic of 20 Hs, all details

Table I: Assessment Logic HI 1 – Lowest Available Corporate Income Tax

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
505	Statutory-CIT-Rate: What is the statutory CIT rate reported by the OECD (or alternatively by IBFD or KPMG)?	Lowest available CIT tax rate (between 0 and 35)	Haven score = ((35 – answer)/35)*100
506	CIT-Rate-Correction-Size: What is the deviating CIT rate, if any, applicable to the largest companies in the jurisdiction?		
507	CIT-Rate-Correction-Sector: What is the lowest deviating CIT rate, if any, applicable to companies in jurisdictions exempting a broad range of sectors (at least four full and/or eight partial exemptions)?		
541	CIT-Rate-Correction-Regions: What is the lowest deviating CIT rate, if any, applicable in the political subdivision/subnational region with the lowest CIT rate?		
542	CIT-Rate-Adjustment-Retention: What is the lowest deviating CIT rate, if any, applicable to distributed or retained profits?		
543	CIT-Rate-Adjustment-Type: What is the lowest deviating CIT rate, if any, applicable to specific types of companies?		
544	CIT-Rate-Adjustment-Territorial: What is the lowest deviating CIT rate, if any, applicable to active business income from foreign sources?		

545	CIT-Rate-Adjustment-Rulings: What is the lowest deviating CIT rate, if any, derived from documented cross-border unilateral tax rulings issued by the authorities in the jurisdiction?		

Table II: Assessment Logic HI 2 - Foreign Investment Income Treatment

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
552	Dividends (independent party)	0: None. There is no unilateral relief from double taxation; 1: Deduction; 2: Credit; 3: Exemption.	2: 0 All other: 25
553	Interest	0: None. There is no unilateral relief from double taxation; 1: Deduction; 2: Credit; 3: Exemption.	2: 0 All other: 25
554	Royalties	0: None. There is no unilateral relief from double taxation; 1: Deduction; 2: Credit; 3: Exemption.	2: 0 All other: 25
555	Dividends (related party)	0: None. There is no unilateral relief from double taxation; 1: Deduction; 2: Credit; 3: Exemption.	2: 0 All other: 25

Table III: Assessment Logic HI 3 – Loss Utilisation

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
509	Loss Carry Backward: Does the jurisdiction allow loss carry backward?	0: No; 1: Yes	0: 0 1: 50
510	Loss Carry Forward: Does the jurisdiction restrict loss carry forward independent of change of ownership?	0: No, unrestricted loss carry forward is available; 1: Yes, loss carry forward is available with a time limit of more than 5 years but there is no annual ceiling; 2: Yes, loss carry forward is limited only by annual ceiling (minimum tax); 3: Yes, loss carry forward is available with a time limit	0: 50 1: 37.5 2: 37.5 3: 12.5 4: 12.5

		of up to 5 years but there is no annual ceiling; 4: Yes, loss carry forward is limited by an annual ceiling and a time limit of more than 5 years; 5: Yes, either there is no loss carry forward available or it is restricted by an annual ceiling and a time limit of 5 years or less.	5: 0

Table IV: Assessment Logic HI 4 – Capital Gains Taxation

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

Table V: Assessment Logic HI5 – Sectoral Exemptions

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
524	Real Estate Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in real estate?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions.; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +12.5 2: +25
525	Other Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in assets other than real estate?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +12.5 2: +25
526	Extractives (active): Are there any (partial) tax exemptions applicable to companies active in the extractives sector (oil, gas, mining)?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
527	Agriculture and farming (active): Are there any (partial) tax exemptions applicable to companies active in the agricultural and farming sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6,25 2: +12.5 (Maximum across ID526-538 of +50)
528	Manufacturing (active): Are there any (partial) tax exemptions applicable to companies active in the manufacturing sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
529	Construction (active): Are there any (partial) tax exemptions applicable to companies active in the construction sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
530	Infrastructures (active): Are there any (partial) tax exemptions applicable to companies active in the infrastructures sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
531	Transportation and storage (active): Are there any (partial) tax exemptions applicable to companies active in the transportation and storage sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
532	Distribution (active): Are there any (partial) tax exemptions applicable to companies active in the distribution sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
533	Accommodation, food and recreation (active): Are there any (partial) tax exemptions applicable to companies active in the accommodation, food and recreation sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
534	Information and telecom (active): Are there any (partial) tax exemptions applicable to companies active in the information and telecom sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
535	IT services (active): Are there any (partial) tax exemptions applicable to companies active in the IT services sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
536	Banking and insurance (active): Are there any (partial) tax exemptions applicable to companies active in the banking and insurance sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
537	Professional and technical services (active): Are there any (partial) tax exemptions applicable to companies active in the professional and technical services sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)
538	Business services (active): Are there any (partial) tax exemptions applicable to companies active in the business services sector?	0: None: No, there are no specific exemptions; 1: Partial: Yes, there are partial tax exemptions; 2: Full: Yes, there are full tax exemptions.	0: +0 1: +6.25 2: +12.5 (Maximum across ID526-538 of +50)

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Table VI: Assessment Logic HI 6 - Tax Holidays and Economic Zones

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
501	EZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?	Number of Tax Holidays and Tax Exemptions (NTHTE)	ID501*12.5
502	EZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?	NTHTE	ID502*25
503	EZ-Permanent-Partial: How many permanent and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?	Number of Tax Exemptions (NTE)	ID503*12.5
504	EZ-Permanent-Full: How many permanent and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?	NTE	ID504*25
539	NonEZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?	NTHTE	ID539*12.5
540	NonEZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?	NTHTE	ID540*25

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Table VII: Assessment Logic HI 7 – Patent Boxes

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
515	Patent Box: Does the jurisdiction offer preferential tax treatment for income related to intellectual property?	0: Yes, special tax treatment of IP-income is available without OECD nexus constraints; 1: Yes, special tax treatment of IP-income is available only with OECD nexus constraints; 2: No, there is no special tax treatment of IP-income.	0: 100 1: 90 2: 0

Table VIII: Assessment Logic HI 8 - Fictional Interest Deduction

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
516	Fictional Interest Deduction: Does the jurisdiction offer a scheme that allows deducting from the corporate income tax base a notional return on equity?	0: No; 1: Yes	0: 0 1: 100

Table IX: Assessment Logic HI 9 – Public Company Accounts

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
188	Is there an obligation to keep accounting data?	0: No; 1: Yes	0: 100 1: See below
189	Are annual accounts	0: No, annual accounts are not always required to be submitted to	0: 100

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
	submitted to a public authority?	a public authority; 1: Except for small companies, annual accounts need to be submitted to a public authority; 2: Yes, there is an obligation to submit annual accounts for all types of companies.	1 & 2: See below
201	Are annual accounts available on a public online record (up to 10 €/US$/GBP)?	0: No, company accounts are not always online (up to 10 €/US$); 1: COST: Yes, company accounts are always online but only at a cost of up to 10€/10$; 2 FREE: Yes, company accounts are always online for free, but not in open data format; 3 OPEN: Yes, company accounts are always online for free & in open data format.	0: 100 1: 50 2: 25 3: 0 (only if answers re accounting data and submission are not "no")

Table X: Assessment Logic HI 10 - Country-by-Country Reporting

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
318	CBCR: Are companies listed on the national stock exchange or incorporated in the jurisdiction required to comply with a worldwide country-by-country reporting standard?	0: No public country-by-country reporting at all; 1: No, except one-off EITI-style disclosure for new listed companies; 2: No, except for partial disclosure in either extractives or banking sector; 3: Yes, partial disclosure for both extractives and banking sector; 4: Yes, full public country-by-country reporting for all sectors.	0: 100 1: 90 2: 75 3: 50 4: 0

Table XI: Assessment Logic HI 11 - Robust local filing of country-by-country reporting

Info_ID	**Text_Info_ID**	**Answers** **(Codes applicable for all questions: -2: Unknown; -3: Not Applicable)**	**Valuation % Secrecy**
419	Country by country report: Is there a local filing requirement of a global country by country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?	0: No; 1: OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the country by country report); 2: Beyond OECD Legislation: Secondary mechanism is not subject to restrictions imposed by OECD model legislation: any domestic subsidiary of a group would have to file the country by country report in all cases in which the jurisdiction cannot obtain the Country by country report via automatic exchange of information.	If answer is 2: 0; otherwise 100.

Table XII: Assessment Logic HI 12 - Tax Rulings and Extractive Industries Contracts

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
		Component 1: Unilateral Tax Rulings	
363	Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) available in laws or regulation, or in administrative practice?	0: No; 1: Yes	ID363=1 & ID421=0: 50 ID363=1 & ID421=2 Or ID363=1 & ID421=1: 37.5

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
421	Tax Rulings: Are all unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?	0: No; 1: SOME FOR FREE: Some unilateral cross-border tax rulings are published online for free; 2: COST: Unilateral cross-border tax rulings are published online only against a cost (irrespective of if all or only some are available online); 3: ALL FOR FREE BUT ANONYMISED: All unilateral cross-border tax rulings are published online for free but without the name of the taxpayer concerned; 4: ALL FOR FREE AND NAMED: All unilateral cross border tax rulings are published online for free, including the name of the taxpayer concerned.	ID363=1 & ID421=3: 25 ID363=1 & ID421=4: 12.5 ID363=0: 0
Component 2: Extractive Industries Contract Disclosure			
561	Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?	0: No; 1: Yes	**MN**: ID561=-3[605] & ID562=-3: 50 ID561=0 & ID562=0: 50 ID561=1 & ID562=0: 45 ID561=0 & ID562=1: 30 ID561=1 & ID562=1: 20 ID561=0 & ID562=2: 10 ID561=1 & ID562=2: 0
562	Mining contracts in practice: Are all extractive industries mining contracts published online in practice?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	

[605] Here, -3 means that the jurisdiction has not a substantial extractive sector (see table 12.1 above for further details).

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
563	Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?	0: No; 1: Yes	**PT**: ID563=-3 & ID564=-3: 50 ID563=0 & ID564=0: 50 ID563=1 & ID564=0: 45 ID563=0 & ID564=1: 30 ID563=1 & ID564=1: 20 ID563=0 & ID564=2: 10 ID563=1 & ID564=2: 0
564	Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	

Table XIII: Assessment Logic HI 13 - Reporting of Tax Avoidance Schemes

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 Both 1 or 2 (i.e>=1): 0
404	Tax advisers reporting schemes: Are tax advisers (who help companies and individuals to prepare tax returns) required to report at least annually on certain tax avoidance schemes they	0: No; 1: Yes, but the schemes are only reported to the tax administration (they are not published); 2: Yes, and the schemes are made publicly available.	

	have sold/marketed (if applicable)?		
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
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.	Both 1 or 2 (i.e>=1): 0

Table XIV: Assessment Logic HI 14 – Tax Court Secrecy

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
407	Are all court proceedings on criminal tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	ID407<=0 & ID408<=0: 50 ID407<=0 & ID408=1 Or
408	Are all court proceedings on civil tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	ID407=1 & ID408<=0: 25 ID407=1 & ID408=1: 0

409	Is the full text of judgements / verdicts issued by criminal tax courts published online for free, or for a cost of up to 10 €/US$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10 €/US$/GBP; 2: Yes, full text of verdicts is always online for free.	<=0: 25 1: 12.5 2: 0
410	Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10€/US$/GBP; 2: Yes, full text of verdicts is always online for free.	<=0: 25 1: 12.5 2: 0

Table XV: Assessment Logic HI 15 - Deduction Limitation for Interest

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
517	Outbound intra-group interest deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base interest paid to non-resident group affiliates?	0: NO: No deduction limitation for intra-group interest payments; 1: YES, RESTRICTED LAX: Deduction limitation only for payments worth 30% EBITDA or above, and/or any other interest deduction limitation method using a fixed ratio rule; 2: YES, RESTRICTED: Deduction limitation only for payments worth between 10% EBITDA and below 30% EBITDA; 3: YES, DISALLOWED: Deductions of intra-group interest payments are not permitted.	ID517=0: 100 ID517=1 Or ID517=2 (i.e., ID517>=1) & ID518=1: 90 ID517=1 & ID518=0 & ID519=1: 80 ID517=1 & ID518=0 & ID519=0: 75
518	Group ratio rule: Does the jurisdiction apply a group ratio rule opt-in alongside fixed ratio	0: NO, group ratio rule opt-in is not applied; 1: YES, group ratio rule opt-in is applied.	

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
	limitations on interest deduction?		ID517=2 & ID518=0 & ID519=1: 55 ID517=2 & ID518=0 & ID519=0: 50 ID517=3: 0
519	Financial undertaking exclusion: Does the jurisdiction apply a financial undertaking exclusion alongside fixed ratio limitations on interest deduction?	0: NO, financial undertaking exclusion is not applied; 1: YES, financial undertaking exclusion is applied.	

Table XVI: Assessment Logic HI 16 - Deduction Limitation for Royalties

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
520	Outbound intra-group royalty deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base royalties paid to non-resident group affiliates?	0: No deduction limitation for intra-group royalty payments; 1: YES, RESTRICTED NEXUS: Deduction limitation/disallowance applies only with respect to certain intra-group royalty payments to patent boxes that are not complying with OECD NEXUS rules; 2: YES, RESTRICTED TIGHT: Deduction limitation/disallowance applies with respect to certain intra-group royalty payments irrespective of countries complying with OECD NEXUS rules; 3: YES, DISALLOWED: No deductions of	0: 100 1: 75 2: 50 3: 0

		any intra-group royalty payments are permitted.	

Table XVII: Assessment Logic HI 17 - Deduction Limitation for Service Payments

Info_ID	**Text_Info_ID**	**Answers** (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	**Valuation Haven Score**
521	Outbound intra-group services deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base payments for management, technical, legal or accounting services paid to non-resident group affiliates?	0: No, there is no deduction restriction beyond transfer pricing rules, the arm's length principle or other generic rules; 1: Yes, there are specific restrictions or deduction limitations on outbound service payments.	0: 100 1: 0

Table XVIII: Assessment Logic HI 18 - Dividend Withholding Taxes

Info_ID	**Text_Info_ID**	**Answers** **(Codes applicable for all questions: -2: Unknown; -3: Not Applicable)**	**Valuation Haven Score**
508	What is the (lowest) applicable unilateral cross-border withholding tax rate for outgoing dividend payments to a related party?	Withholding tax rate (between 0 and 35)	Haven score = ((35 – answer)/35)*100

Table XIX: Assessment Logic HI 19 - Controlled Foreign Company Rules

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
522	CFC-Rules: Does the jurisdiction apply robust non-transactional CFC rules?	0: NONE: No, there are no CFC rules whatsoever; 1: NO, TRANSACTIONAL: While there are CFC rules, these are only transactional type of rules which allow attribution of profit to the CFC according to the arm's length principle, e.g. OECD Transfer Pricing Guidelines; 2: YES, NON-TRANSACTIONAL: Yes, there are non-transactional CFC rules.	<=0: 100 1: 75 2: 0

Table XX: Assessment Logic HI 20 – Double Tax Treaty Aggressiveness

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
571	Haven Indicator 100 score: Result from the normalisation of total aggressiveness.	Score from 0 to 100	Please see section 3.20 and here.

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Annex C: Breakdown of Haven Scores for the 64 jurisdictions

Jurisdiction \ Indicator	HI1	HI2	HI3	HI4	HI5	HI6	HI7	HI8	HI9	HI10	HI11	HI12	HI13	HI14	HI15	HI16	HI17	HI18	HI19	HI20	Final Haven Score
Andorra	94	50	38	100	63	0	100	0	100	100	100	75	100	100	100	100	100	100	100	5	69
Anguilla	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Aruba	71	100	50	100	75	13	100	0	100	100	100	100	100	100	100	50	100	86	100	1	64
Austria	29	50	50	64	38	0	0	0	50	50	100	100	100	100	100	50	100	100	0	47	52
Bahamas	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Belgium	92	75	38	100	50	0	100	100	0	50	100	50	100	75	80	100	100	100	75	28	68
Bermuda	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Botswana	37	0	50	100	69	13	100	0	100	100	100	50	100	100	90	100	100	100	100	2	55
British Virgin Islands	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Bulgaria	71	25	13	86	56	0	0	0	25	50	100	0	100	100	80	100	100	100	100	22	56
Cayman Islands	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
China	29	0	38	29	44	100	90	0	100	100	100	100	100	100	100	100	100	100	75	25	58
Croatia	49	50	13	74	38	25	0	0	100	50	100	100	100	100	80	100	100	100	0	28	55
Curacao	100	100	50	100	81	13	90	0	100	100	100	100	100	100	80	100	100	100	100	2	72
Cyprus	64	75	13	100	31	0	100	100	100	50	100	100	100	50	100	100	100	100	100	48	71
Czech Republic	46	100	13	100	38	0	0	0	25	50	100	100	100	100	100	100	100	100	100	34	59
Denmark	37	25	38	69	56	0	0	0	100	50	100	75	100	50	75	100	100	100	0	40	52
Estonia	100	100	0	100	100	0	0	0	50	50	100	75	100	100	90	100	100	100	75	18	67
Finland	43	50	38	100	50	0	0	0	50	50	100	75	100	100	90	100	100	100	0	41	55
France	2	100	88	88	75	100	90	0	50	50	0	75	100	75	90	100	100	100	0	63	56
Gambia	23	0	38	29	13	38	0	0	100	100	100	100	100	100	100	100	100	100	100	1	48
Germany	35	25	88	97	50	0	0	0	100	50	0	70	100	100	90	75	100	100	0	47	52
Ghana	29	0	63	64	56	88	0	0	100	100	100	50	100	50	80	100	100	100	100	1	49
Gibraltar	100	75	38	86	50	0	0	0	100	100	100	100	80	75	100	100	100	100	100	0	66
Greece	17	25	13	100	31	0	100	0	100	50	100	100	100	50	80	50	0	100	0	10	39

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Jurisdiction / Indicator	HI1	HI2	HI3	HI4	HI5	HI6	HI7	HI8	HI9	HI10	HI11	HI12	HI13	HI14	HI15	HI16	HI17	HI18	HI19	HI20	Final Haven Score
Guernsey	100	100	100	100	100	100	100	100	100	100	100	100	100	25	100	100	100	100	100	100	98
Hong Kong	100	100	50	100	81	0	0	0	100	90	100	75	100	100	100	100	100	100	100	24	73
Hungary	74	75	13	87	63	25	100	0	50	50	100	100	100	100	90	100	100	100	75	43	69
Ireland	100	75	100	100	63	0	100	0	50	50	100	100	80	50	100	100	100	100	75	49	76
Isle of Man	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
Italy	23	50	38	97	63	0	100	0	50	50	100	75	100	75	90	100	100	100	0	27	51
Jersey	100	100	100	100	100	100	100	100	100	100	100	100	100	50	100	100	100	100	100	100	98
Kenya	14	100	100	100	50	75	0	0	100	100	100	50	100	50	75	100	100	100	100	1	51
Latvia	100	100	0	100	100	13	0	0	100	50	100	75	100	100	90	100	100	100	75	15	68
Lebanon	100	75	13	100	100	88	100	0	100	100	100	0	100	75	100	100	100	100	100	17	73
Liberia	29	100	38	64	0	25	0	0	100	100	100	20	100	100	100	100	100	86	100	0	49
Liechtenstein	64	100	38	100	38	0	100	100	100	100	100	100	100	100	100	100	100	100	100	15	70
Lithuania	57	50	38	100	6	38	100	0	100	50	100	100	100	50	90	100	100	100	0	8	55
Luxembourg	99	100	38	100	63	13	100	0	25	50	100	75	100	75	90	100	100	100	75	40	72
Macao	66	100	13	83	38	0	0	0	100	100	100	0	100	100	100	100	100	100	100	1	57
Malta	86	100	50	100	31	13	100	100	50	50	100	100	100	75	90	100	100	100	75	39	74
Mauritius	100	100	50	100	100	75	100	0	100	100	100	50	100	100	100	100	100	100	100	33	80
Monaco	100	25	88	100	100	50	0	0	100	100	100	0	100	75	100	100	100	100	100	7	68
Montserrat	100	100	13	100	100	50	0	0	100	100	100	0	100	100	100	100	100	57	100	0	65
Netherlands	93	100	88	100	75	0	100	0	100	50	100	75	100	100	75	100	100	100	75	53	78
Panama	100	100	0	86	100	25	90	0	100	100	100	100	100	100	100	100	100	86	100	5	72
Poland	46	25	0	46	0	0	0	0	25	50	100	100	80	100	80	75	0	100	0	20	40
Portugal (Madeira)	14	25	0	100	25	25	100	100	100	50	100	100	50	50	80	100	100	100	0	10	46
Romania	54	100	38	100	6	25	0	0	100	50	100	100	100	100	75	100	100	100	0	19	56
San Marino	51	75	0	51	38	25	90	0	100	100	100	100	100	100	100	100	100	100	100	16	62
Seychelles	100	100	13	100	88	38	100	0	100	100	100	88	100	75	100	50	0	100	100	14	68

Jurisdiction \ Indicator	HI1	HI2	HI3	HI4	HI5	HI6	HI7	HI8	HI9	HI10	HI11	HI12	HI13	HI14	HI15	HI16	HI17	HI18	HI19	HI20	Final Haven Score
Singapore	100	75	100	100	88	75	100	0	100	100	100	100	100	75	100	100	100	100	100	34	81
Slovakia	40	100	13	100	6	0	90	0	0	50	100	100	100	75	55	100	100	100	75	24	53
Slovenia	46	50	38	73	63	0	0	0	25	50	100	100	100	75	80	100	100	100	0	19	50
South Africa	20	50	50	68	50	13	0	0	100	100	100	88	50	25	90	75	100	100	0	33	47
Spain	29	75	38	100	50	25	100	0	100	75	0	75	100	25	90	100	100	100	0	48	55
Sweden	37	50	100	100	13	0	0	0	50	50	100	75	100	100	75	100	100	100	0	51	56
Switzerland	93	100	88	100	56	13	100	0	100	100	100	100	100	100	100	100	100	100	100	59	83
Taiwan	43	0	38	100	50	25	0	0	100	100	0	100	100	50	80	100	100	40	75	7	47
Tanzania	14	0	100	57	6	75	0	0	100	100	100	95	100	100	100	50	100	86	75	1	46
Turks and Caicos Islands	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
United Arab Emirates (Dubai)	100	100	100	100	100	100	100	100	100	100	100	50	100	100	100	100	100	100	100	100	98
United Kingdom	46	50	88	100	38	13	100	0	0	50	100	100	50	50	90	100	100	100	75	65	63
USA	40	25	38	40	50	13	100	0	100	100	100	80	30	50	75	50	0	14	0	34	43

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Annex D: Haven Scores by category for the 64 jurisdictions

Jurisdiction / Category	LACIT [HI 1]	Loopholes & Gaps [HIs 2-8]	Transparency [HIs 9-14]	Anti-Avoidance [HIs 15-19]	Double Tax Treaties [HI 20]		Final Haven Score
Andorra	94	50	96	100	5		69
Anguilla	100	100	100	100	100		100
Aruba	71	63	100	87	1		64
Austria	29	29	83	70	47		52
Bahamas	100	100	100	100	100		100
Belgium	92	66	63	91	28		68
Bermuda	100	100	100	100	100		100
Botswana	37	47	92	98	2		55
British Virgin Islands	100	100	100	100	100		100
Bulgaria	71	26	63	96	22		56
Cayman Islands	100	100	100	100	100		100
China	29	43	100	95	25		58
Croatia	49	28	92	76	28		55
Curacao	100	62	100	96	2		72
Cyprus	64	60	83	100	48		71
Czech Republic	46	36	79	100	34		59
Denmark	37	27	79	75	40		52
Estonia	100	43	79	93	18		67
Finland	43	34	79	78	41		55
France	2	77	58	78	63		56
Gambia	23	17	100	100	1		48
Germany	35	37	70	73	47		52
Ghana	29	39	83	96	1		49
Gibraltar	100	35	93	100	0		66
Greece	17	38	83	46	10		39
Guernsey	100	100	88	100	100		98
Hong Kong	100	47	94	100	24		73
Hungary	74	52	83	93	43		69
Ireland	100	63	72	95	49		76
Isle of Man	100	100	100	100	100		100
Italy	23	50	75	78	27		51
Jersey	100	100	92	100	100		98
Kenya	14	61	83	95	1		51
Latvia	100	45	88	93	15		68
Lebanon	100	68	79	100	17		73
Liberia	29	32	87	97	0		49
Liechtenstein	64	68	100	100	15		70
Lithuania	57	47	83	78	8		55
Luxembourg	99	59	71	93	40		72
Macao	66	33	83	100	1		57

Jurisdiction \ Category	LACIT [HI 1]	Loopholes & Gaps [HIs 2-8]	Transparency [HIs 9-14]	Anti-Avoidance [HIs 15-19]	Double Tax Treaties [HI 20]		Final Haven Score
Malta	86	71	79	93	39		74
Mauritius	100	75	92	100	33		80
Monaco	100	52	79	100	7		68
Montserrat	100	52	83	91	0		65
Netherlands	93	66	88	90	53		78
Panama	100	57	100	97	5		72
Poland	46	10	76	51	20		40
Portugal (Madeira)	14	54	75	76	10		46
Romania	54	38	92	75	19		56
San Marino	51	40	100	100	16		62
Seychelles	100	63	94	70	14		68
Singapore	100	77	96	100	34		81
Slovakia	40	44	71	86	24		53
Slovenia	46	32	75	76	19		50
South Africa	20	33	77	73	33		47
Spain	29	55	63	78	48		55
Sweden	37	38	79	75	51		56
Switzerland	93	65	100	100	59		83
Taiwan	43	30	75	79	7		47
Tanzania	14	34	99	82	1		46
Turks and Caicos Islands	100	100	100	100	100		100
United Arab Emirates (Dubai)	100	100	92	100	100		98
United Kingdom	46	55	58	93	65		63
USA	40	38	77	28	34		43

Annex E: Haven Scores, alphabetical order

ISO Code	Jurisdiction	Haven Score
AD	Andorra	69.05
AI	Anguilla	100.00
AW	Aruba	64.39
AT	Austria	51.59
BS	Bahamas	100.00
BE	Belgium	67.84
BM	Bermuda	100.00
BW	Botswana	55.26
VG	British Virgin Islands	100.00
BG	Bulgaria	55.57
KY	Cayman Islands	100.00
CN	China	58.30
HR	Croatia	54.53
CW	Curacao	72.04
CY	Cyprus	71.13
CZ	Czech Republic	58.89
DK	Denmark	51.70
EE	Estonia	66.52
FI	Finland	55.03
FR	France	55.70
GM	Gambia	47.99
DE	Germany	52.34
GH	Ghana	49.49
GI	Gibraltar	65.59
GR	Greece	39.06
GG	Guernsey	97.50
HK	Hong Kong	73.03
HU	Hungary	69.10
IE	Ireland	75.67
IM	Isle of Man	100.00
IT	Italy	50.55
JE	Jersey	98.33

ISO Code	Jurisdiction	Haven Score
KE	Kenya	50.83
LV	Latvia	68.13
LB	Lebanon	72.84
LR	Liberia	48.96
LI	Liechtenstein	69.51
LT	Lithuania	54.83
LU	Luxembourg	72.44
MO	Macao	56.65
MT	Malta	73.51
MU	Mauritius	79.83
MC	Monaco	67.56
MS	Montserrat	65.40
NL	Netherlands	78.01
PA	Panama	71.78
PL	Poland	40.45
PT	Portugal (Madeira)	45.84
RO	Romania	55.61
SM	San Marino	61.51
SC	Seychelles	68.11
SG	Singapore	81.35
SK	Slovakia	52.95
SI	Slovenia	49.57
ZA	South Africa	47.12
ES	Spain	54.54
SE	Sweden	55.97
CH	Switzerland	83.31
TW	Taiwan	46.76
TZ	Tanzania	46.08
TC	Turks and Caicos Islands	100.00
AE	United Arab Emirates (Dubai)	98.33
GB	United Kingdom	63.45
US	USA	43.21

Annex F: Haven Scores, descending order

ISO Code	Jurisdiction	Haven Score
VG	British Virgin Islands	100.00
BM	Bermuda	100.00
KY	Cayman Islands	100.00
BS	Bahamas	100.00
IM	Isle of Man	100.00
TC	Turks and Caicos Islands	100.00
AI	Anguilla	100.00
JE	Jersey	98.33
AE	United Arab Emirates (Dubai)	98.33
GG	Guernsey	97.50
CH	Switzerland	83.31
SG	Singapore	81.35
MU	Mauritius	79.83
NL	Netherlands	78.01
IE	Ireland	75.67
MT	Malta	73.51
HK	Hong Kong	73.03
LB	Lebanon	72.84
LU	Luxembourg	72.44
CW	Curacao	72.04
PA	Panama	71.78
CY	Cyprus	71.13
LI	Liechtenstein	69.51
HU	Hungary	69.10
AD	Andorra	69.05
LV	Latvia	68.13
SC	Seychelles	68.11
BE	Belgium	67.84
MC	Monaco	67.56
EE	Estonia	66.52
GI	Gibraltar	65.59
MS	Montserrat	65.40

ISO Code	Jurisdiction	Haven Score
AW	Aruba	64.39
GB	United Kingdom	63.45
SM	San Marino	61.51
CZ	Czech Republic	58.89
CN	China	58.30
MO	Macao	56.65
SE	Sweden	55.97
FR	France	55.70
RO	Romania	55.61
BG	Bulgaria	55.57
BW	Botswana	55.26
FI	Finland	55.03
LT	Lithuania	54.83
ES	Spain	54.54
HR	Croatia	54.53
SK	Slovakia	52.95
DE	Germany	52.34
DK	Denmark	51.70
AT	Austria	51.59
KE	Kenya	50.83
IT	Italy	50.55
SI	Slovenia	49.57
GH	Ghana	49.49
LR	Liberia	48.96
GM	Gambia	47.99
ZA	South Africa	47.12
TW	Taiwan	46.76
TZ	Tanzania	46.08
PT	Portugal (Madeira)	45.84
US	USA	43.21
PL	Poland	40.45
GR	Greece	39.06

Annex G: Global Scale Weight, alphabetical order

ISO Code	Jurisdiction	Global Scale Weight
AD	Andorra	0.00%
AI	Anguilla	0.00%
AW	Aruba	0.00%
AT	Austria	0.66%
BS	Bahamas	0.26%
BE	Belgium	1.83%
BM	Bermuda	1.87%
BW	Botswana	0.01%
VG	British Virgin Islands	2.12%
BG	Bulgaria	0.06%
KY	Cayman Islands	1.63%
CN	China	3.67%
HR	Croatia	0.05%
CW	Curacao	0.32%
CY	Cyprus	0.73%
CZ	Czech Republic	0.23%
DK	Denmark	0.44%
EE	Estonia	0.04%
FI	Finland	0.29%
FR	France	2.81%
GM	Gambia	0.00%
DE	Germany	3.32%
GH	Ghana	0.01%
GI	Gibraltar	0.28%
GR	Greece	0.07%
GG	Guernsey	0.09%
HK	Hong Kong	4.38%
HU	Hungary	0.49%
IE	Ireland	3.12%
IM	Isle of Man	0.05%
IT	Italy	1.28%
JE	Jersey	0.43%

ISO Code	Jurisdiction	Global Scale Weight
KE	Kenya	0.01%
LV	Latvia	0.02%
LB	Lebanon	0.02%
LR	Liberia	0.02%
LI	Liechtenstein	0.03%
LT	Lithuania	0.03%
LU	Luxembourg	10.53%
MO	Macao	0.05%
MT	Malta	0.22%
MU	Mauritius	0.65%
MC	Monaco	0.03%
MS	Montserrat	0.00%
NL	Netherlands	12.77%
PA	Panama	0.13%
PL	Poland	0.33%
PT	Portugal (Madeira)	0.23%
RO	Romania	0.11%
SM	San Marino	0.00%
SC	Seychelles	0.01%
SG	Singapore	2.12%
SK	Slovakia	0.08%
SI	Slovenia	0.03%
ZA	South Africa	0.54%
ES	Spain	1.53%
SE	Sweden	0.90%
CH	Switzerland	3.41%
TW	Taiwan	0.16%
TZ	Tanzania	0.01%
TC	Turks and Caicos Islands	0.00%
AE	United Arab Emirates (Dubai)	0.22%
GB	United Kingdom	7.30%
US	USA	12.89%

Annex H: Global Scale Weight, descending order

ISO Code	Jurisdiction	Global Scale Weight
US	USA	12.89%
NL	Netherlands	12.77%
LU	Luxembourg	10.53%
GB	United Kingdom	7.30%
HK	Hong Kong	4.38%
CN	China	3.67%
CH	Switzerland	3.41%
DE	Germany	3.32%
IE	Ireland	3.12%
FR	France	2.81%
VG	British Virgin Islands	2.12%
SG	Singapore	2.12%
BM	Bermuda	1.87%
BE	Belgium	1.83%
KY	Cayman Islands	1.63%
ES	Spain	1.53%
IT	Italy	1.28%
SE	Sweden	0.90%
CY	Cyprus	0.73%
AT	Austria	0.66%
MU	Mauritius	0.65%
ZA	South Africa	0.54%
HU	Hungary	0.49%
DK	Denmark	0.44%
JE	Jersey	0.43%
PL	Poland	0.33%
CW	Curacao	0.32%
FI	Finland	0.29%
GI	Gibraltar	0.28%
BS	Bahamas	0.26%
PT	Portugal (Madeira)	0.23%
CZ	Czech Republic	0.23%

ISO Code	Jurisdiction	Global Scale Weight
AE	United Arab Emirates (Dubai)	0.22%
MT	Malta	0.22%
TW	Taiwan	0.16%
PA	Panama	0.13%
RO	Romania	0.11%
GG	Guernsey	0.09%
SK	Slovakia	0.08%
GR	Greece	0.07%
BG	Bulgaria	0.06%
IM	Isle of Man	0.05%
MO	Macao	0.05%
HR	Croatia	0.05%
EE	Estonia	0.04%
MC	Monaco	0.03%
LI	Liechtenstein	0.03%
SI	Slovenia	0.03%
LT	Lithuania	0.03%
LV	Latvia	0.02%
LR	Liberia	0.02%
LB	Lebanon	0.02%
SC	Seychelles	0.01%
GH	Ghana	0.01%
KE	Kenya	0.01%
BW	Botswana	0.01%
TZ	Tanzania	0.01%
AW	Aruba	0.00%
AD	Andorra	0.00%
TC	Turks and Caicos Islands	0.00%
SM	San Marino	0.00%
AI	Anguilla	0.00%
GM	Gambia	0.00%
MS	Montserrat	0.00%

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