Corporate Tax Haven Index

Version 3.0

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TAX JUSTICE NETWORK

CTHI methodology version history

Version	Release date	Sections changed	Type of change
3.0	October 2024	1 (Background and concept) and 2 (The index structure)	Major edits to align with new rolling data releases and updated indicator chapters
		All	Minor edits to align with new naming protocols; simplification of content and language.
		Subsections within section 3 (The 18 haven indicators): 3.1, 3.10, 3.12, 3.15, 3.17.	Methodological changes to indicator as part of data-assessment in line with rolling updates and supplementary changes.
		Subsections within section 3 (The 18 haven indicators): 3.1, 3.10, 3.13, 3.14, 3.15, 3.16, 3.17, 3.18.	Indicator section edited in line with rolling updates and supplementary changes.
		Subsections within section 3 (The 18 haven indicators): 3.2, 3.9, 3.11, 3.12.	Indicator sections were edited as part of supplementary changes that were carried forward from the Financial Secrecy Index, in which these indicators are also used.
		Previous section 6 (Robustness).	Section removed and explanation incorporated to subsection 5.2.
Previous editions:			
-	March 2021	2021 edition available online.	
-	October 2019	2019 edition available online.	

Abstract

This report describes in detail the methodology that we use to construct the Corporate Tax Haven Index. The index is composed of two parts – haven scores and global scale weights. First, haven scores are a qualitative measure of the facilities that tax havens provide to multinational corporations; these fall on a scale of 0-100. Haven scores are composed of 18 indicators which cover the ways tax havens enable corporate tax abuse. We explain what each indicator measures, the underlying data sources and the calculation of the haven scores. Second, the global scale weights are a quantitative measure of the activity of multinational corporations in each jurisdiction. We then explain how the haven scores and global scale weight are combined to calculate the Corporate Tax Haven share of a jurisdiction. This is a measure of the contribution of each jurisdiction to the global problem of corporate tax abuse. The reforms made to the Corporate Tax Haven Index in 2024, in accordance with the shift to the rolling updates of the data, are explained in this methodology. The results are available online.

Acknowledgements

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1. Background and concept

Raising corporate income taxes from multinational companies is central for domestic resource mobilisation in the context of the Sustainable Development Goals.[1] The issue 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 crisis of 2007/2008. The State of Tax Justice 2023 report estimated an annual loss of US$311 billion in government revenues due to multinational corporations' profit shifting.[2] 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.

Global financial secrecy is a key driver of illicit financial flows, and the Tax Justice Network's Financial Secrecy Index is now firmly established as a comparative analytical tool for monitoring and ranking financial secrecy jurisdictions. Yet the Financial Secrecy Index does not capture tax avoidance by multinational companies or countries' contribution to the race to the bottom in tax rates. The Financial Secrecy Index focuses more on secrecy than on corporate tax, and on portfolio financial flows than on foreign direct investment (FDI) or corporate profits.

The Corporate Tax Haven Index fills this gap. We define a 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. The index measures how "corrosive" a jurisdiction is, in pursuing this corporate tax haven strategy. It looks specifically at how intensely a jurisdiction abuses its autonomy over corporate income tax rules to enable and incite tax spillovers that affect other jurisdictions' rule setting and tax mix autonomy.

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[1] The IMF summarised the increasing role of inward foreign direct investment (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 per cent — making its tax treatment increasingly germane to these countries' wider fiscal performance" (International Monetary Fund. *Spillovers in International Corporate Taxation*. IMF Policy Briefs. May 2014. URL: https://www.imf.org/external/np/pp/eng/2014/050914.pdf [visited on 09/12/2022], p.6).

[2] Tax Justice Network. *State of Tax Justice 2023*. 2023. URL: https://taxjustice.net/wp-content/uploads/2023/08/State-of-Tax-Justice-2023-Tax-Justice-Network-English.pdf (visited on 18/09/2024).

Tax payment reductions in corporate tax haven jurisdictions result through two channels: tax base spillovers and strategic spillovers. These were identified in a 2014 report published by the International Monetary Fund (IMF). It established how a country's corporate tax system may generate macro-relevant effects on other countries through two channels.[3] The "base spillover" concept includes 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 corporate income tax rates elsewhere by reducing their own rates.[5]

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

Tax spillovers lead both to the tax base in other countries being eroded and to adverse effects on countries' democratic choices over their tax mix. Confronted with the threat of corporate players exiting, tax policymakers tend to respond by increasing the share of more regressive indirect taxes in the tax mix, and by steering 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]

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[3] Ernesto Crivelli et al. 'Base Erosion, Profit Shifting and Developing Countries'. *FinanzArchiv: Public Finance Analysis*, 72(3) (Sept. 2016), pp. 268–301. URL: https://www.jstor.org/stable/24807496 (visited on 15/05/2022); Alex Cobham and Petr Janský. *Global Distribution of Revenue Loss from Tax Avoidance. Re-estimation and Country Results*. Tech. rep. 2017. URL: https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf (visited on 29/05/2017).

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

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

[6] Sol Picciotto. *International Business Taxation. A Study in the Internationalization of Business Regulation*. Electronic Re-Publication. London: Weidenfeld and Nicolson, 1992. URL: https://taxjustice.net/cms/upload/pdf/Picciotto%201992%20International%20Business%20Taxation.pdf (visited on 06/05/2022), p.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 (Max Lawson et al. *Public Good or Private Wealth?* Tech. rep. Oxfam, Jan. 2019. URL: http://hdl.handle.net/10546/620599 [visited on 22/01/2019], p.22). VAT represents 33 per cent of tax revenues in the group of 96 emerging market economies and 58 developing countries while corporate income taxes represent 15 per cent. (IMF. *Fiscal Monitor: Fiscal Policy in the Great Election Year*. 2024. URL: https://www.imf.org/en/Publications/FM/Issues/2024/04/17/fiscal-monitor-april-2024 [visited on 23/09/2024], p.37).

2. The index structure

The Corporate Tax Haven Index focuses only on the corporate income tax rules and practices applicable to the profits and capital gains of (large) multinational enterprises. Capital gains are included because, in some countries, they are part of the ordinary corporate income tax 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 18 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 global scale weight is cube-rooted before both being multiplied with each other 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 creating spillover effects in other jurisdictions' tax bases 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 firepower. The actual risk for mass shootings results from the actual number of guns sold in the jurisdiction under these lenient rules. Similarly, the leniency of the corporate income tax regime - the potential risk – is reflected in the haven score, while the global scale weight serves as a proxy for the volume of users of that regime.

By combining the two components, we aim to capture the actual risk of the contribution of jurisdictions 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 in other jurisdictions. Details about the quantitative component are presented in chapter 4 and the combination is discussed in chapter 5.

2.1 Rolling updates

In 2023, the Tax Justice Network decided to reform both the Financial Secrecy Index and the Corporate Tax Haven Index.[1] As of 2024, we will regularly update the Corporate Tax Haven Index on a rolling basis. We will evaluate countries' laws and regulations against more than 60 questions, organised into 18 indicators.

We will publish updated data for a handful of these indicators at a time, every few months, making our way through all the indicators over the course of our update cycle. We then repeat the process.

Any changes we come across regarding indicators that are not next in queue to be updated are still published as part of the next update. These changes are published as "supplementary updates" alongside our planned "indicator updates". Supplementary country updates are made for individual countries if we become aware of new data for a country ahead of the queued indicator update that would have normally captured that data. This way, we are able to capture a change on the Corporate Tax Haven Index without having to wait for our update cycle to reach the affected indicator. Alongside the indicators, we update the global scale weight once a year.

Prior to 2024, the Corporate Tax Haven Index was updated once every two years. All the indicators were updated together at the same time as part of each biennial update to the index. The new rolling basis allows us to capture legal changes more closely to when they occur and to offer a more dynamic view of countries' complicity in global corporate tax abuse.

We regularly share our evaluations with every country on the Corporate Tax Haven Index, inviting country's authorities to check our assessments and query any discrepancies. If a country's administration provides sufficient evidence that alters an evaluation we made, we update the evaluation to reflect the evidence.

With tax justice policies now at the top of fast-moving national and global agendas, the rolling updates will help ensure the indexes can serve even better as responsive monitoring and troubleshooting tools for countries' regulatory frameworks. They will also help create a more sustainable work environment for the team of researchers and analysts while continuing to produce high-quality analysis.

The rolling approach also gives the researchers greater flexibility to prioritise and release new data faster on indicators that relate to urgent policy developments. This allows the Tax Justice Network to more rapidly equip policymakers in both national contexts and international arenas with the data they need to evaluate and advocate for policy change.

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[1] Markus Meinzer and Moran Harari. *Transforming Our Flagship Indexes to Be Even More Responsive and Timely*. June 2023. URL: https://taxjustice.net/2023/06/13/transforming-our-flagship-indexes-to-be-even-more-responsive-and-timely/ (visited on 20/11/2023).

The indicators will be assessed in sets to ensure consistency and to capture any relevant updates. These sets are presented further below in Table 2.1.

Every time a set of indicators is assessed, we will also always assess ID 505, typically included in the haven indicator on the lowest available corporate income tax rate. ID 505 assesses the statutory corporate income tax rate. Any country with a zero tax rate or no tax rate is assessed by default as having the highest haven scores for four of the five categories, except for the "transparency gaps" category, where an analysis is still carried out to determine the level of secrecy/transparency. If a jurisdiction introduces a corporate tax rate or increases the corporate tax rate from zero, we will then assess the relevant haven indicators for the jurisdiction across all five categories.

2.2 Country coverage

The Corporate Tax Haven Index covers 70 jurisdictions. In the first edition of the index in 2019, 64 jurisdictions were selected based on:

a) their membership in the European Union or dependency of a member state;

b) their role as a major misalignment jurisdiction, as established in the research literature; and/or

c) anecdotal evidence for their important role in international corporate taxation; plus

d) nine African countries were added as part of the Financial Secrecy and Tax Advocacy in Africa (FASTA) project, funded by NORAD, in order to ensure scalability and compatibility beyond Europe and members of the Organisation for Economic Co-operation and Development (OECD).

The first two selection criteria correspond to commitments made in a research project that was part of an EU-funded Horizon 2020 research project (COFFERS[2]).

Six new Latin American jurisdictions were added in the 2021 edition of the index – Brazil, Mexico, Peru, Costa Rica, Ecuador, and Argentina – as part of the Financial Secrecy and Tax Advocacy in Latin America (FASTLA) project, funded by NORAD, in order to ensure scalability and compatibility beyond Europe, Africa and members of the OECD. They were selected based on:

a) their relevance in terms of foreign direct investment; and

b) anecdotal evidence for their important role in international corporate taxation.

In the Corporate Tax Haven Index 3.0, the number of jurisdictions remains 70.

[2]European Commission. *COFFERS – Combating Fiscal Fraud and Empowering Regulators*. 2020. URL: https://cordis.europa.eu/project/id/727145 (visited on 08/05/2022).

2.3 The construction of the qualitative component: Haven Scores

Each jurisdiction's tax and financial systems are graded against 18 haven indicators to arrive at a final haven score. This measures how much scope the jurisdiction's tax and financial systems allow for corporate tax abuse. A score of zero means the jurisdiction's laws will enable no scope for corporate tax abuse and a 100 means they allow unrestrained scope.

The main focus of the Corporate Tax Haven Index is on legal provisions (eg low tax rates, tax incentives, etc) offered by jurisdictions that are targeted at large companies. Therefore, we focus on the tax treatment by jurisdictions of local subsidiaries of foreign large multinational corporate groups. However, we do not rely on a hard quantitative threshold to determine whether a for-profit company, as part of a multinational group, is 'large' and falls within the scope of the index. That is because the definition of a 'large' company varies across countries based on one or more differing financial and accounting variables. These variables may include turnover, profits, tax liability, assets, and staff. Given these definitional differences across countries, adopting a uniform threshold is not possible.

As a general guideline, we believe that any turnover threshold used to define a company as 'large' should be closer to €40m than €750m, which is the threshold often applied by the OECD both in GloBE (pillar two) and in transparency rules, such as the OECD's country by country reporting. The suggestion of €40m is drawn from practice in some jurisdictions or regions. For example, in the European Union, the EU Accounting Directive (2013/34/EU)[3] defines a large enterprise as a company with an annual turnover of more than €40m. Brazil has a similar definition, where large companies are defined with an annual turnover of BRL 300m (approximately €50m).[4] In India, while there is no explicit definition of large companies, any company with a turnover that is larger than 50 crore rupees (approximately €5m) but does not exceed 250 crore rupees (approximately €27m) is defined as medium.[5] Similarly, while there is no definition of large enterprises in Egypt, the Law No. 152 of 2020 regarding the development of Micro, Small and

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[3] European Parliament and Council of the European Union. *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, Amending Directive 2006/43/EC of the European Parliament and of the Council and Repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA Relevance*. June 2013. URL: https : / / eur - lex . europa . eu / LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF (visited on 23/09/2024).

[4] Ministério da Economia. *Receita Define Parâmetros Para Indicação de Pessoas Jurídicas Sujeitas Ao Monitoramento Dos Maiores Contribuintes*. 2022. URL: https : / / www . gov . br / economia / pt - br / assuntos / noticias / 2022 / novembro / receita - federal - define - parametros - para - indicacao - das - pessoas-juridicas-sujeitas-ao-monitoramento-dos-maiores-contribuintes (visited on 03/07/2024).

[5] The Gazette of India. *Ministry of Micro, Small and Medium Enterprises Notification*. June 2020. URL: https://msme.gov.in/sites/default/files/MSME_gazette_of_india.pdf (visited on 02/07/2024).

Medium Enterprises (updated until 2023) defines a medium enterprise as one with a turnover between EGP 50m and 200m (approximately €1 to €4m).[6]

On a separate note, although it is hard to determine when a company becomes "large", determining the threshold for a "small" company is easier. We consider that small companies are those with a turnover threshold of €10m. We apply this threshold for assessing the transparency of company accounts in the respective haven indicator.[7]

At the same time, there may be legal provisions which apply specifically to large companies. In this case, the index will apply the "weakest link principle" across all provisions that apply to large companies. For instance, consider the case where a country offers different tax rates for domestic companies based on the company's size. Suppose the corporate income tax rate is 2 per cent for multinational companies with a turnover above €750m, but 20 per cent for those with a turnover below €750m. In this situation, we disregard the 20 per cent rate and instead rely on the 2 per cent rate for this jurisdiction.

As a result, and as explained in detail in section 2.7 and section 3.1, given GloBE only applies to companies with a group turnover above €750m, and in light of the weakest link principle, GloBE and the implications of pillar two are not considered for the index.

Further, permanent establishments are out of the scope of the index for three main reasons. First, definitions of permanent establishment differ widely across domestic tax rules and not all countries provide a definition. Second, there are deviating and heterogeneous definitions of permanent establishment in tax treaties that override domestic law. Third, even in cases where the definitions are similar, local tax authorities often adopt different interpretations. As a result of the lack of harmonisation, it is not possible to comparatively evaluate permanent establishment across countries.

Jurisdictions with no corporate income tax 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 gaps", where an analysis was still carried out to determine the level of secrecy/transparency. As explained above, for countries that introduce a corporate income tax rate or a rate above zero, we then analyse the relevant haven indicators across all five categories.

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[6] Government of Egypt. *Law No. 152 of 2020 Promulgating the Micro, Small and Medium Enterprises Development Law (Updated until 2023). | FAOLEX*. July 2020. URL: https://www.fao.org/faolex/results/details/en/c/LEX-FAOC221908/ (visited on 23/09/2024).

[7] For further information please consult the haven indicator on the transparency of company accounts.

[8] According to OECD data (OECD. *OECD Data Explorer - Statutory Corporate Income Tax Rates*. 2024. URL: https://data-explorer.oecd.org/vis?df[ds]=DisseminateArchiveDMZ&df[id]=DF_CTS_CIT&df[ag]=OECD&df[vs]=1.0&pd=%2C&dq=.&to[TIME_PERIOD]=false&lo=5&lom=LASTNPERIODS&vw=tb [visited on 09/05/2024]). For jurisdictions not covered by OECD data or when the IBFD data is more up to date, we rely on the International Bureau of Fiscal Documentation's Tax Research Platform (IBFD. *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*. URL: https://research.ibfd.org/ [visited on 01/06/2024]).

The haven score for each country is the average of the scores across all five categories, as follows:

$$\text{Haven Score}_i = (\text{[LACIT]}_i + \text{[Loopholes \& exemptions]}_i + \text{[Transparency gaps]}_i + \\ + \text{[Anti-abuse gaps]}_i + \text{[Tax treaty aggressiveness]}_i)/5$$

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

The second category, "Loopholes and exemptions", comprises seven indicators. This category assesses whether preferential tax regimes are available, or if there are important carve outs of the corporate income tax base or tax rate concessions, including for specific sectors, or through tax holidays or economic zones. The score for this category is the arithmetic average of the seven indicators.

The third category, "Transparency gaps", consists of four indicators. It considers if the jurisdiction implements robust transparency mechanisms for tax administrations and to allow for public accountability of multinational companies' financial and tax affairs. The score for this category is the arithmetic average of the four indicators.

The fourth category, "Anti-abuse gaps", includes five indicators and analyses the extent to which jurisdictions enact robust rules for constraining tax avoidance and profit shifting, eg by applying controlled foreign company rules or by limiting the deductibility of intra-group outward payments (royalties, interest, certain service payments). The score is the arithmetic average of the five indicators.

The fifth category, "Tax Treaty Aggressiveness", comprises one indicator which considers the impact of a jurisdiction's network of double taxation agreements on the withholding tax rates for interest, dividend and royalties in treaty partner jurisdictions. It measures how aggressive a jurisdiction's treaty network is on average in pushing down withholding tax rates in partner jurisdictions. It does this by comparing the analysed jurisdiction's withholding tax rates with each treaty partner's total treaty network average withholding tax rates.

Table 2.1 provides an overview of the five categories, the haven indicators and associated IDs. With the introduction of rolling updates, we update batches of indicators every few months, covering all indicators over the course of several years.

Table 2.1. Five categories of 18 Haven Indicators

Lowest available corporate income tax	Loopholes and exemptions	Transparency gaps	Anti-abuse gaps	Tax treaty aggressiveness
Lowest available corporate income tax	**Foreign investment income**	**Transparency of company accounts**	**Deduction limitation of interest payments**	**Tax treaty aggressiveness**
IDs 505, 507, 541, 542, 543, 544, 545 & 587	IDs 552, 553, 554 & 555	IDs 188, 189 & 201	IDs 517, 518 & 519	ID 571
	Loss utilisation	**Public country by country reporting**	**Deduction limitation of royalty payments**	
	IDs 509 & 510	IDs 1001, 1003, 1004, 1005, 1007, 1008	ID 520	
	Capital gains taxation	**Tax rulings and extractive industries' contracts**	**Deduction limitation of service payments**	
	IDs 513 & 514	ID 363, 421, 561, 562, 563 & 564	ID 521	
	Sectoral exemptions	**Reporting of tax avoidance schemes**	**Withholding taxes on dividends**	
	IDs 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537 & 538	IDs 403, 404, 405 & 406	ID 508	
	Economic zones and tax holidays		**Controlled foreign company rules**	
	IDs 501, 502, 503, 504, 539 & 540		ID 522	
	Patent box regimes			
	ID 515			
	Fictional interest deduction			
	ID 516			

The interactions between the indicators were examined to ensure consistency across the five categories and 18 indicators. The full list of interactions is presented in table 2.2 below. For example, there are interactions between the haven indicator on the lowest available corporate income tax and the haven indicator on sectoral exemptions. Whenever four or more active income sectors are fully exempt, and/or eight or more sectors are partially exempt in the haven indicator on sectoral exemptions, then we consider the lowest tax rate among such exempt sectors to apply to the whole jurisdiction (so this is also reflected in the haven indicator on the lowest available corporate income tax). Similarly, in cases where the non-taxation of active business income from foreign sources applies only to fewer than four sectors, ie only certain economic sectors offer non-taxation of foreign income, then such exemptions are considered in the haven indicator on sectoral exemptions only, and not in the haven indicator on the lowest available corporate income tax.

Another example is the interaction between the haven indicator on foreign investment income treatment and the haven indicator on patent box regimes. Whenever a jurisdiction has a patent box regime that is not subject to OECD nexus constraints in the haven indicator on patent box regimes, we consider the tax treatment in the haven indicator on foreign investment income treatment. By the same token, whenever foreign-source royalties in the haven indicator on foreign investment income treatment are tax exempt in a jurisdiction, we consider that the jurisdiction has a patent box in the respective haven indicator, because the lowest tax rate applicable to royalty payments is zero per cent.

Interactions can take place also between three haven indicators. For example, in the interactions between the haven indicators on the lowest available corporate income tax, on foreign investment income treatment and on capital gains taxation. In the haven indicator on the lowest available corporate income tax, special types of entities are considered whenever it is possible to undertake a broad range of activities using such corporate vehicles. Whenever such special entities are considered in this indicator, the tax treatment of foreign income for these entities is considered for both the haven indicators on foreign investment income and on capital gains taxation. Further, for both of these indicators the tax regime for holding companies is assessed, because holding companies are often the legal vehicle of choice to derive passive income. Table 2.2 presents the interactions between indicators in more detail.

Table 2.2. Interactions between Haven Indicators

Effect from indicator	To indicator/s	Subject matter	Resolution process
Lowest available corporate income tax (LACIT)	**All indicators (except Transparency of company accounts & Public country by country reporting)**	Assessment of no-corporate income tax or zero rate corporate income tax jurisdiction.	For countries with zero rate or no corporate income tax systems, automatic "non-applicable" treatment for all IDs except those related to transparency.
	Foreign investment income (part a)	Territorial tax systems (non-taxation of some or all foreign income) – and foreign investment income.	For countries with territorial tax systems, the tax treatment of foreign investment income (in the haven indicator on foreign investment income) is considered to be "exemption" (unless a jurisdiction presents a hybrid tax system, where certain types of foreign income are taxed but others not).
	Capital gains taxation	Territorial tax systems (non- taxation of some or all foreign income) – and capital gains.	For countries with territorial tax systems, the tax treatment of foreign capital gains income in the haven indicator on capital gains taxation is considered to be "exemption" (zero per cent, unless the jurisdiction exceptionally includes such income as taxable).
	Foreign investment income & Capital gains taxation	Special types of entity (under the haven indicator on LACIT) and foreign income exemptions (under haven indicators on foreign investment income and capital gains taxation)	Special types of entities are taken into account in the haven indicator on LACIT whenever it is possible to undertake a broad range of activities using such corporate vehicles. Whenever such special entities are considered in the haven indicator on LACIT, the tax treatment of foreign income for these entities is considered for the haven indicators on foreign investment income and capital gains taxation. Moreover, within these two haven indicators, the tax regime ofholding companies is assessed because these are often the legal vehicle of choice to derive passive income.
	Sectoral exemptions	Territorial tax systems (non-taxation of some or all foreign income) – and sectoral exemptions.	The territorial characteristic of a jurisdiction is only considered in the haven indicator on sectoral exemptions when the non-taxation of active business income from foreign sources is selective. That is, if only certain economic sectors offer non-taxation of foreign income, then such exemptions are considered in the haven indicator on sectoral exemptions.

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Effect from indicator	To indicator/s	Subject matter	Resolution process
	Sectoral exemptions	Deficient tax residency scope (LACIT) and broad exemption granted to non-residents (Sectoral exemptions)	If a jurisdiction has a deficient tax residency scope (not considering at least all locally incorporated companies as tax residents), then we include tax exemptions offered to non-resident companies in the haven indicator on sectoral exemptions.However, for this indicator, when the tax residency scope has minimum safeguards, exemptions for non-residents are disregarded.
Sectoral exemptions	**LACIT**	Broad range of sectoral exemptions – considered in the assessment of the lowest available corporate income tax.	When four or more active income sectors are fully exempt, and/or eight or more sectors are partially exempt; then we consider the lowest tax rate among such exempt sectors to be the applicable rate for LACIT.
	Patent box regimes	Tax exemptions for business services (in particular related to intellectual property), and patent boxes.	The haven indicator on sectoral exemptions analyses tax exemptions available in each of 14 economic sectors. One of such sectors is that of “business services”. Whenever there are exemptions that would fall within such sector, relating to intellectual property, we disregard the exemption regime in the haven indicator on sectoral exemptions, because the regime is covered under the haven indicator on patent box regimes.
Foreign investment income & Capital gains taxation	**Sectoral exemptions**	Passive income exemptions under the haven indicator on foreign investment income and investment sector exemptions.	In the haven indicator on sectoral exemptions, we consider that investment funds have three main income streams (dividends, interests and capital gains). If some or all of these income streams are tax-exempt (as in hanve indicators on foreign investment income and capital gains taxation), then we consider that investment funds are partially or fully exempt.
Foreign investment income	**Patent box regimes**	Foreign income exemptions for royalties under the haven indicators on foreign investment income and patent box regimes	Whenever foreign-source royalties are tax exempt in a jurisdiction, we consider that the jurisdiction has a patent box, because the lowest tax rate applicable to royalty payments is zero per cent.
Patent box regimes	**Foreign investment income**		Whenever a jurisdiction has a patent box regime that is not subject to OECD Nexus constraints, we consider the tax treatment therein for foreign royalties’ exemptions under the haven indicator on foreign investment income.

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Effect from indicator	To indicator/s	Subject matter	Resolution process
Economic zones and tax holidays	**LACIT, Foreign investment income, Capital gains taxation, Sectoral exemptions & Patent box regimes**	Tax exemptions restricted in time (permanent or temporary?)	When a profits-based corporate income tax exemption is limited in time or space, it is assessed under the haven indicator on economic zones and tax holidays. If there is no indication of time/space limitations, then the exemption is assessed under the corresponding economic sector within the haven indicator on sectoral exemptions. With regards to the considered time period, the threshold is 10 years, above this period, an exemption is considered permanent.
		Tax exemptions restricted in space (is it an economic zone exemption, or a political subdivision exemption?)	With regards to space, the threshold is constitutional independence to enact or prevention from enacting tax laws. If such independence is found, then the lower tax rate applicable in the independent federal subdivision is assessed in LACIT (or haven indicators on foreign investment income, capital gains taxation, sectoral exemptions and patent box regimes). Otherwise, tax exemptions that are exclusively available in economic zones (eg, royalties, capital gains or business income exemptions) are assessed only in the haven indicator on economic zones and tax holidays.
Tax treaty aggressive-ness	**LACIT, Foreign investment income, Capital gains taxation, Sectoral exemptions & Patent box regimes**	Tax treaty benefits vs. Domestic law	Although tax treaty benefits (mainly withholding tax reductions) are assessed in the haven indicator on tax treaty aggressiveness, we do not currently assess preferential tax treatment found within such treaties for the evaluation of other indicators. Thus, we only consider domestic law regimes when analysing haven indicators on the lowest available CIT rate, foreign investment income, capital gains taxation, sectoral exemptions (eg exploration, insurance, or banking), or royalties and other intellectual property income for patent box regimes.

The themes of most indicators partially overlap either with the OECD's 15 action points under its Base Erosion and Profit Shifting initiative, in particular action 5 on harmful tax practices, with the International Monetary Fund's spillover approach, with European Union initiatives (on state aid or specific directives), or with a combination of these (see Table 2.3).

Table 2.3. Haven Indicator overlaps with OECD, IMF and EU Initiatives

Haven Indicator Category	Haven indicator	OECD BEPS	IMF Spillover	EU / State Aid
Lowest available corporate income tax	Lowest available corporate income tax		X	X
Loopholes and exemptions	Foreign investment income		X	X
	Loss utilisation			
	Capital gains taxation		X	
	Sectoral exemptions	X	X	X
	Economic zones and tax holidays	X	X	X
	Patent box regimes	X	X	
	Fictional interest deduction			
Transparency gaps	Transparency of company accounts			
	Public country by country reporting	X		X
	Tax rulings and extractive industries' contracts	X		X
	Reporting of tax avoidance schemes			X
Anti-abuse gaps	Deduction limitation of interest payments	X	X	X
	Deduction limitation of royalty payments			
	Deduction limitation of service payments		X	
	Withholding taxes on dividends			
	Controlled foreign company rules	X	X	X
Tax treaty aggressiveness	Tax treaty aggressiveness		X	

The haven indicators are chosen and designed in order to:

- measure the risk for tax avoidance, base erosion and profit shifting, profit misalignment, and the race to the bottom in corporate income tax rates;
- reflect the impact on the policy space over the domestic tax mix[9] of jurisdictions elsewhere;
- protect source country taxation rights;

[9] Including the tax mix of those democracies with the highest corporate income tax, capital gains tax and withholding tax rates. See Section 3.1 for a discussion of the reference rate we employ for the scoring of some related indicators.

- allow robust and valid comparative research findings with the limited resources and data available;
- ensure in-principle-compatibility with unitary taxation and formulary apportionment.

2.4 Main methodological changes introduced in 2024

As discussed below, two haven indicators have been removed from the Corporate Tax Haven Index (on robust local filing of country by country reports and on tax court secrecy). We have also made changes to the haven indicators on the lowest available corporate income tax, public country by country reporting, reporting of tax avoidance schemes, deduction limitation of service payments, and controlled foreign company rules. To avoid confusion, following the removal of two indicators, we no longer refer to haven indicators by their numbers for the purposes of the index.

2.4.1 Haven indicator on robust local filing of country by country reports

This indicator assessed whether countries are able to require multinational companies to file ”locally” the country by country report (known as ”local filing”) in more circumstances than those allowed by the OECD standard (ie ”beyond the OECD standard”). The OECD standard only allows for local filing when there is an international agreement to exchange information between the host country and the parent country of a multinational. This indicator was relevant a few years ago when countries covered by the Corporate Tax Haven Index lacked international agreements to exchange information and needed the special case of “local filing” as the only way to ensure access to the country by country report. However, as of 2024, most countries covered by the Index - and which had chosen the special case of “local filing” - are already party to the Convention on Administrative Assistance in Tax Matters (and thus have an international agreement in force). Thus, given the special provisions on local filing assessed by this indicator are no longer relevant for the covered jurisdictions, we decided to remove this indicator.

2.4.2 Haven indicator on tax court secrecy

In the Corporate Tax Haven Index of 2019, haven indicator 14 comprised an assessment of two components equally weighted: the first one assessed whether verdicts, judgments and sentences for criminal and civil tax matters were publicly available online. The second was an analysis of the openness of court proceedings, lawsuits and trials for both criminal and civil or administrative tax matters. The assessment of the latter considered whether the public had the right to attend the full proceedings of courts and could not be ordered to leave the courtroom even if a party invoked tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. The two components were removed

mainly due to the absence of reliable and comparable secondary data sources and the associated challenges in resourcing sufficiently robust research processes for primary data analysis and collection. Regarding the first component, given that some jurisdictions rely heavily on judicial settlement of tax disputes whereas in other jurisdictions, most tax cases are resolved at the administrative level, it was difficult to compare the jurisdictions' standards of judicial tax procedures and assessing them fairly across all jurisdictions. The second component of the indicator, in addition to showing an overall low variability across jurisdictions, presented research constraints in certain cases when trying to assess the appropriateness of constitutional limits to the publicity of court proceedings and evidenced a lack of secondary sources.

2.4.3 Other changes

Lowest available corporate income tax rate

ID 506 assessed the deviating corporate income tax rate, if any, applicable to the largest companies in a jurisdiction. This ID 506 has now been removed because it is clearer to incorporate the related data in ID 505 (on the statutory rate) and ID 506 only included data for one country.

Public country by country reporting

In the previous assessment under this indicator, countries were scored based on the degree to which they required public country by country reporting. The scoring varied from requiring no reporting (worst score), one-off reporting (intermediate score), some sectoral reporting (better intermediate score), to full public reporting across all sectors (best haven score). The scoring reflects the then state of affairs: public country by country reporting across all sectors was not common place. This has changed in today's world. Especially since the adoption of EU Directive 2021/2101, full country by country reporting is more common and the EU Directive's regime is now in force in an important number of multinational home jurisdictions. Because full reporting is no longer extra-ordinary, for the new assessment under this indicator we have refined the analysis. Besides the scope of sectors covered under public reporting regimes, we are now also testing the information standard under the regime and the information disaggregation requirements of the country information. Under the new assessment, only a regime that applies to all sectors, requires the reporting of extensive tax information and demands full geographical dissaggregation of country information, obtains a zero haven score.

Reporting of tax avoidance schemes

One component of this indicator assesses whether a jurisdiction requires taxpayers to report tax avoidance schemes they have used and if tax advisors are required to report any tax avoidance schemes they have sold or marketed in the course of assisting companies and individuals prepare tax returns.

Previously, in cases where taxpayers were required to include in their tax returns the tax scheme number which was reported by the tax advisers, we concluded the reporting requirement also applies to taxpayers. Nonetheless, while we acknowledge that mentioning the tax scheme number in the taxpayer's tax return assists the tax administration to track disclosures made by tax advisers and link them to the taxpayer, it does not increase the detection risk of hitherto unknown tax avoidance schemes. This is because only the schemes that were already reported will be issued a number, but the taxpayer has no obligation to report on tax schemes that were not reported by the tax adviser. Incentives for colluding between tax advisers and taxpayers in keeping information about unreported schemes from the tax administration remain high in absence of an independent reporting obligation on both taxpayers and advisers. Thus, we have decided to tighten the assessment and in cases where there is no independent obligation on taxpayers to report on any tax schemes they have used - but rather only provide the reference number of already known and reported tax schemes - we conclude that no reporting obligation for the taxpayer exists.

Haven indicator on deduction limitation of service payments

This indicator assesses whether a jurisdiction has in place limitations on the tax deduction of fees for services paid to related companies. In the past, the scoring under the indicator occurred in a binary fashion: jurisdictions that did not apply restrictions received a 100 points haven score and jurisdictions that applied any specific restrictions or certain deduction limitations received a score of zero. Since our last assessment, more jurisdictions have adopted deduction limitations. However, our analysis of these measures shows that not all of these deduction limitations are equally effective. For this reason, we have refined the scoring under this indicator. Jurisdictions without limitations still receive a 100 points haven score. Jurisdictions that apply specific restrictions or certain deduction limitations (like limitations only applicable to payments to blacklisted tax havens) receive a score of 50. Only jurisdictions that do not allow any deduction of intra-group service payments receive a zero score.

Haven indicator on controlled foreign company rules

In the past, this indicator assessed whether a jurisdiction had controlled foreign company rules and whether they were transactional. Jurisdictions with non-transactional rules were awarded a zero haven score. However, in some instances, jurisdictions allow substance carve-outs to non-transactional rules. These carve-outs narrow the effectiveness of non-transactional controlled foreign company rules as preventive measures and increase administrative and compliance burdens. In essence, these carve-outs are characterised by transactional elements and once adopted, they weaken the clear advantage that non-transactional rules have over transactional ones. As a result, the assessment now also considers whether a jurisdiction applies non-transactional rules that include any type of economic substance carve-out. In those cases, the haven score is reduced to 50 (rather than to zero).

2.5 Underlying data and procedural issues

The dataset underlying the 18 haven indicators is publicly available for review and exploration for non-commercial purposes through an online database.[10] All data in the database is fully referenced and the underlying data sources can be identified. The main data sources were official and public reports published by the OECD, the associated Global Forum,[11] the FATF and IMF. In addition, specialist tax databases and websites such as by the IBFD,[12] PwC[13] and others have been consulted. In many cases, we undertook original legal analysis of laws and regulations. We regularly share our evaluations with all jurisdictions listed on the Corporate Tax Haven Index, inviting every jurisdiction to check our assessments and query any discrepancies. If a country provides sufficient evidence that alters an evaluation we made, we update the evaluation to reflect the evidence.

In terms of cut-off date for assessing information in the database, we generally rely on reports, legislation, regulation and news available no later than 60 days before the launch date of the next set of indicators we update. In some cases, we may be able to incorporate a more recent data.

Any laws that have been enacted and will only be applicable within the launch date of the index – were taken on board. In cases where the law was enacted with a grandfathering provision that will end within four months after the launch, we take the law into account. However, if the grandfathering provision is determined to end at a later stage, we may only consider the law for the following index cycle updates. Regarding international treaties and conventions, if the convention was ratified and the date of entry into force was set before the launch date, we take it on board.

Section 3 discusses each haven indicator in full detail.

2.6 Guiding methodological principles

A central guiding principle for both the Corporate Tax Haven Index and the Financial Secrecy Index in data collection is to always look for and assess the weakest link or lowest standard of transparency or tax rules available in each jurisdiction (weakest link principle). For example, if a jurisdiction offered three different types of companies, two of which require financial statements to be published online, but the third is not required to disclose this information, then

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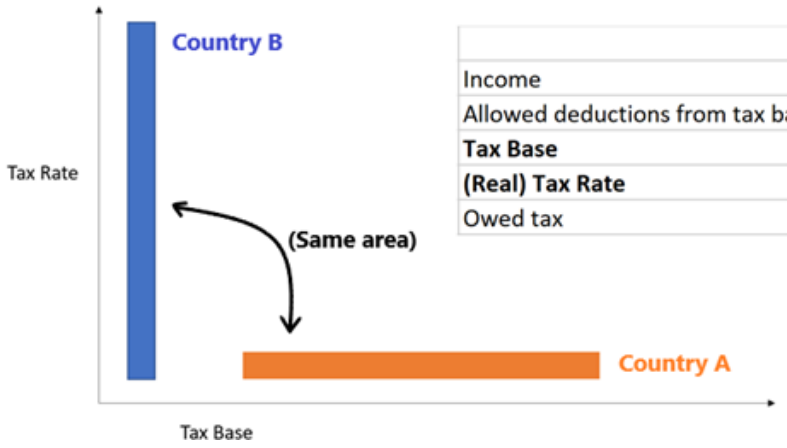
[10] The full dataset can be accessed through the Tax Justice Network data portal. You can also explore the data and sources via our Corporate Tax Haven Index website.

[11] 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 Tax Purposes. They can be viewed at http://www.eoi-tax.org/.

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

[13] PricewaterhouseCoopers (PWC). *Worldwide Tax Summaries*. URL: http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Withholding-tax-(WHT)-rates (visited on 12/03/2020).

Figure 2.1. The relationship between tax rate and tax base (a)



	Country A	Country B
Income	$100	$100
Allowed deductions from tax base	-	($90)
Tax Base	**$100**	**$10**
(Real) Tax Rate	**1%**	**10%**
Owed tax	$1	$1

we have answered ”no” regarding the particular question about the online availability of accounts.

An important principle implemented across all the 18 haven indicators is to treat the corporate income tax base and the corporate income tax rate as fungible and fully equivalent for scoring purposes. Much research on tax policy relies specifically on tax rates. However, jurisdictions can artificially remove income from the tax base, making it hard to assess which type of income is in the scope of the tax.

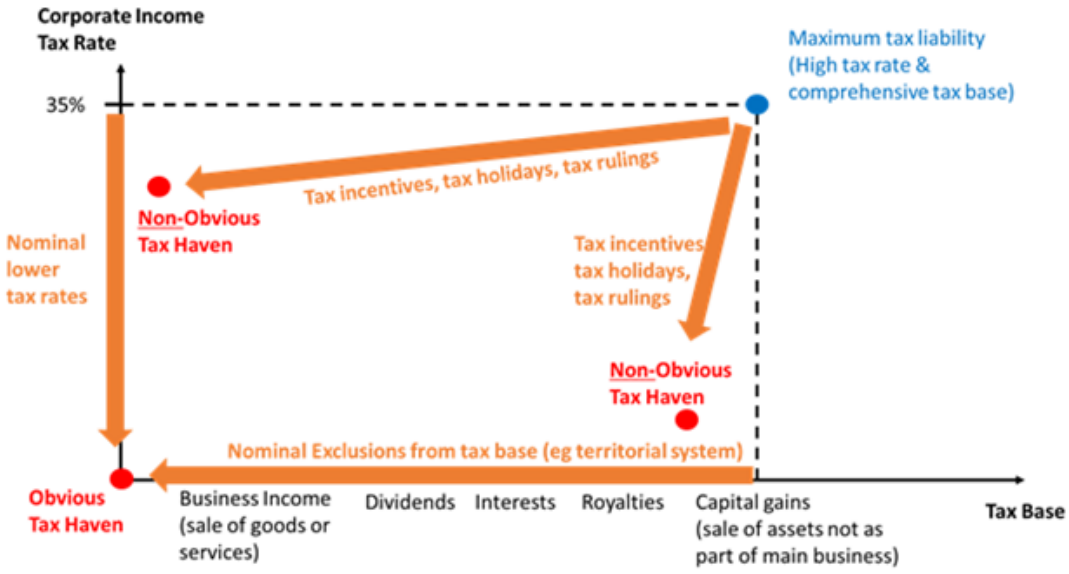
For example, the lowest available corporate income tax rate will be the same for a jurisdiction with a statutory rate of 1 per cent and a jurisdiction with a statutory rate of 10 per cent which exempts the equivalent of 90 per cent of companies’ income. Figure 2.1 illustrates the fungibility between the corporate income tax rate base and rate.

Based on most countries’ frameworks, the “tax base” size for multinationals has its limits on the upper bound. It usually does not cover more than local and foreign: (i) business income (eg from sale of goods or services), (ii) passive income (dividends, interests or royalty income) or (iii) capital gains (income from sales of assets not part of the main business). As for the tax rate for corporate income, in most cases, it does not go above 35 per cent.

Globally, countries offer a spectrum between this maximum case of tax liabilities and no tax liability at all. Uncovering the way in which tax havens achieve this race to the bottom of no or little tax liability is complex.

A nominal low corporate income tax rate or an obvious exclusion from the tax base (eg a country with a territorial system that excludes foreign income from the tax base) would lead to identifying the obvious tax havens (red dot at the bottom left in Figure 2.2). The interesting insight, however, is to identify the non-obvious tax havens. On the one hand, there are jurisdictions with high or mid corporate income tax rate but an artificially small tax base. For example, Country A has a corporate income tax rate of 20 per cent. Yet the patent box regime in Country A provides that the proportion of income from patents and similar rights is exempt

Figure 2.2. The relationship between tax rate and tax base (b)



from corporate income tax up to a maximum of 90 per cent. On the other hand, there may be cases of countries that artificially lower the tax rate in convoluted ways. Country B has a high statutory tax rate of 35 per cent, which is artificially lowered based on an automatic tax refund of 86 per cent of the taxes paid if the company distributes dividends. The resulting tax rate companies will pay is thus instead 5 per cent than 35 per cent.

2.7 International tax reform

In 2022, the OECD introduced the Global Anti-Base Erosion (GloBE) rules as part of its ”two-pillar approach” to reform the taxation of multinational companies. The GloBE rules aspire to create a coordinated system of taxation that imposes a top-up tax on a multinational’s profits that are taxed below the minimum rate of 15 per cent. The top-up tax may be levied in the country where the undertaxed profits arise or, if no such tax is levied, by other countries where the multinational is active.

Many countries have expressed the intention to either adopt these rules or to accept the consequences of the adoption of the rules by other countries. Resisting adoption could be politically and economically costly. Countries that do not align with the GloBE rules may face the extraterritorial application of top-up taxes, meaning other countries could levy additional top-up tax in function on the undertaxed local profits arising in a non-adopting country. This makes ignoring the GloBE rules particularly costly for lower-income countries, as it could result in significant losses in tax revenue and make justified tax incentives ineffective. The revenue spent on the incentive would simply flow abroad in the form of a top-up tax raised elsewhere.

Despite global pressure to adopt the GloBE rules, the new regime is not considered in the Corporate Tax Haven Index due to two main concerns. First, the

GloBE rules are limited in scope; they only apply to companies to the extent that they are part of the largest multinational corporations, ie multinationals with consolidated group revenue of at least €750m. As such, companies that are considered 'large' because of their individual revenue numbers (see section 2.3 above) are not affected by the GloBE rules if the consolidated revenue of the group to which they belong stays below the threshold. Additionally, the GloBE rules do not apply to group companies with low revenue and income that are part of multinationals with consolidated revenue above the threshold. Both these aspects create significant loopholes in the coverage of the GloBE regime, meaning that some firms responsible for substantial undertaxed revenues may be excluded. As the index operates on the weakest link principle, rules manifesting significant loopholes are qualified as unfit for purpose. Second, these rules add complexity and draw heavily on the scarce resources of tax administrations. While the GloBE rules may partially address the race to the bottom, they also introduce new forms of tax and non-tax competition which present new challenges, especially for lower-income countries. This, too, makes the GloBE rules unfit for purpose.

Additionally, the GloBE rules do not function as a direct tax with a clearly defined tax base. Instead, they rely on complex calculations derived from existing rules, adding another layer of complexity rather than simplifying the tax system.[14] This further complicates the tax landscape without reducing the number of taxes or rules, merely applying additional taxes on top of already complex regulations that result in low effective tax rates.

The added complexity and the in-built outsourcing to the OECD of future rulemaking under GloBE will likely lead to high administrative costs. At the same time, the GloBE regime is expected to generate relatively little revenue in return, especially from the perspective of lower-income countries.[15] The result may be the creation of an expensive and underdelivering parallel tax system for multinational companies with a turnover exceeding EUR 750 million.

While the GloBE rules may have some positive aspects, better results could be achieved without them. The GloBE rules do advance important principles, such as the minimum tax rate and, to some extent, the unitary treatment of multinationals, which are significant steps forward.[16] Moreover, multinational

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[14] For more on the issues of scope and of complexity of the GloBE rules, see (Emmanuel Eze et al. *The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base*. Tech. rep. Aug. 2023. URL: https://www.southcentre.int/research-paper-172-1-december-2022/ [visited on 18/09/2024], Section 3.0(A)(I) and (II)). For similar considerations regarding the application of the Subject to Tax Rule (STTR) which together with the GloBE rules comprises the Pillar Two regime, see (B.J. Arnold. 'Earth to OECD: You Must Be Joking – The Subject to Tax Rule of Pillar Two'. *Bulletin For International Taxation* [Feb. 2024]. URL: https://www.ibfd.org/sites/default/files/2024-06/oecd_international-earth-to-oecd-you-must-be-joking-the-subject-to-tax-rule-of-pillar-two-ibfd-1.pdf [visited on 18/09/2024]).

[15] For more on the minimal revenue returns under the GloBE regime, see (Eze et al., *The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base*, Section 3.0(A)(III)).

[16] For an analysis of the unitary taxation aspects of the two pillar approach, see (Eze et al., *The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base*, Section 3.0(A)(III)).

companies might reduce their lobbying for tax incentives, knowing they would need to pay taxes regardless.

However, the GloBE rules also create new inefficiencies and distortions. Residence countries may selectively choose not to implement certain GloBE rules and refrain from levying top-up taxes to induce multinationals to move their parent companies. Source countries may attempt to preserve multinational activity under GloBE by resorting to the granting of incentives that are outside the scope of GloBE and thereby also less transparent.[17]

There are more effective and less harmful ways to prevent the race to the bottom without implementing the GloBE rules. Source countries can protect their tax base from erosion by reforming their domestic tax systems in line with the indicators in this index. For example, countries can safeguard their corporate tax base from erosion facilitated by tax havens through unilateral measures, such as the levying of withholding taxes on outbound payments or the limiting of intra-group deductions for royalty and services payments. Finally, the GloBE rules are built on top of an unprincipled and unfair allocation of the corporate tax base across countries and lack democratic legitimacy. Rather than fixing this issue, the GloBE rules exacerbate the shortcomings of the arms' length principle which underlies this allocation. Countries should therefore support the ongoing negotiations of a United Nations Framework Convention on International Tax Cooperation. One of the pre-agreed commitments for work under the Framework Convention is the fair allocation of taxing rights, including equitable taxation of multinational enterprises.[18]

[17] For a country specific application of these considerations, see (Dominik Gross. *The Global Tax Rate Is Now a Tax Haven Rewards Programme, and Switzerland Wants in First*. Apr. 2023. URL: https://taxjustice.net/2023/04/06/the-global-tax-rate-is-now-a-tax-haven-rewards-programme-and-switzerland-wants-in-first/ [visited on 18/09/2024]).

[18] United Nations. *Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation*. Aug. 2024. URL: https://financing.desa.un.org/sites/default/files/2024-08/Chair's%20proposal%20draft%20ToR_L.4_15%20Aug%202024____.pdf (visited on 20/09/2024).

3. The 18 Haven Indicators

3.1 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 can be a subsidiary of a multinational corporation.[1] The scoring of this haven indicator is computed by scaling that the LACIT rate against the spillover risk reference rate of 35 per cent, explained in detail in Part 2 below.[2]

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, the LACIT is determined in three steps, only the first of which relies on (top) statutory CIT rates as reported in the OECD's tax database.[3]

The first step compiles 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 economic sector in which the business operates or 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,

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[1] 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, local tax authorities often adopt different interpretations. 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.

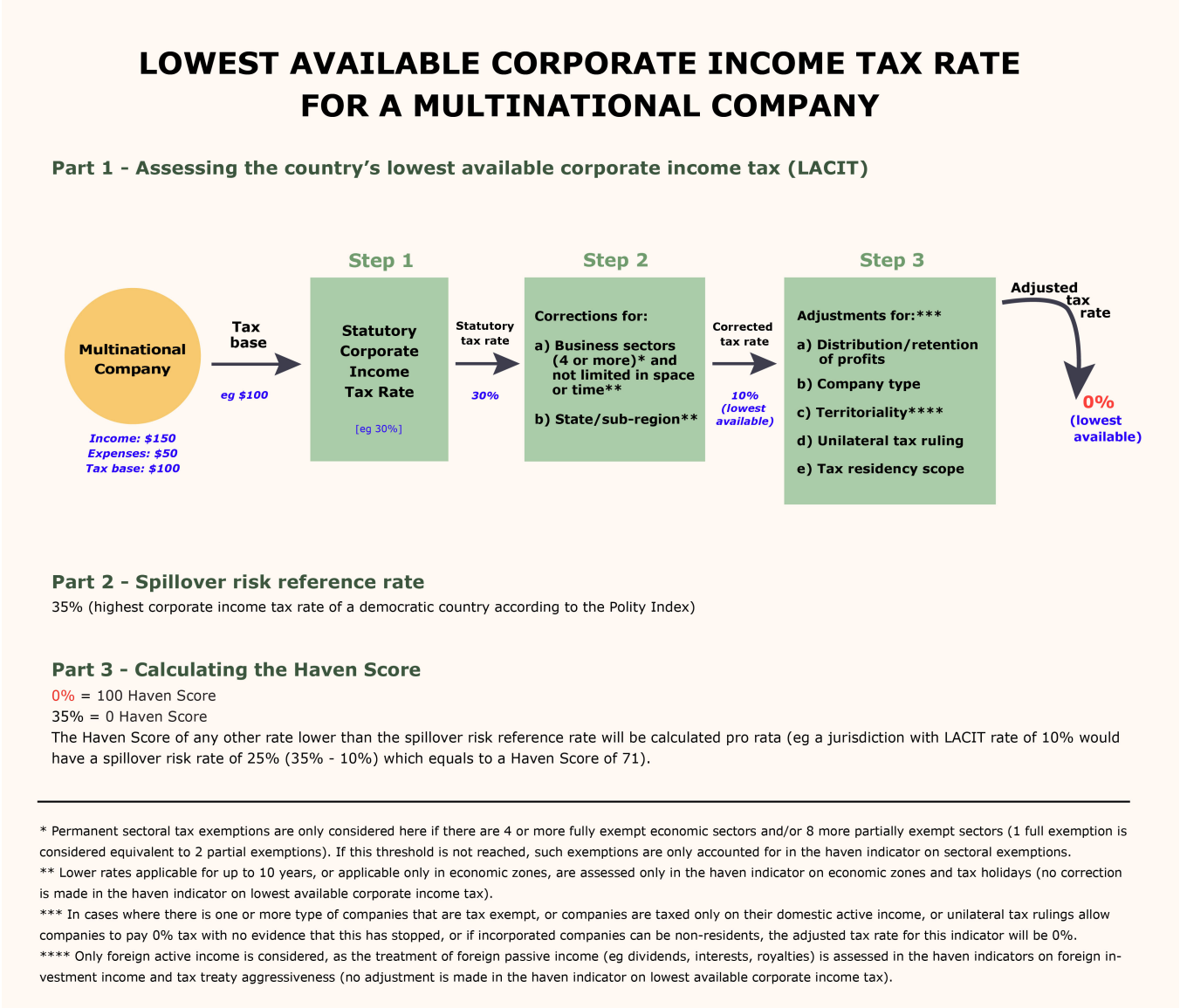
[2] Venkat Josyula. '4 Collection Methods'. *Coordinated Portfolio Investment Survey Guide (Third Edition)* (Sept. 2018). URL: https://www.elibrary.imf.org/view/IMF069/24789-9781484331897/24789-9781484331897/ch04.xml (visited on 20/11/2018).

[3] OECD, *OECD Data Explorer - Statutory Corporate Income Tax Rates*.

upon selection of a particular type of company, upon sourcing profits from inside or outside the jurisdiction (territorial tax regimes), upon issuance of unilateral tax rulings, or if a country provides loopholes in its tax residency rules. Each step is explained in more detail below and presented in Figure 3.1.[4]

As explained in sections 2.3 and 2.7, GloBe rules are not included in this assessment, as they only apply to the largest multinational companies, with a turnover exceeding EUR 750 million. The high threshold, and the added complexity these rules entail, makes us regard them as unfit for purpose under the ”weakest link” principle.

Figure 3.1. Overview of Haven Indicator - LACIT



[4] Full data sets can be downloaded through our data portal.

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,[5] which covers OECD and non-OECD jurisdictions. In cases where jurisdictions were not covered by the OECD, or when the relevant OECD data was not up to date, we used IBFD data[6] and alternative sources, like PwC[7].

Step 2: review of and corrections to statutory rates

The reported statutory rates are checked alongside two main dimensions and corrected if deviating rates apply. We ask: are different tax rates available depending on the economic sector in which the business operates, or on subnational regions where the business is tax resident?[8] The corrections are made as follows.

- *First Correction – the sector in which the business operates*

For this correction, we consider that if a lower rate is broadly applicable across a wide range of economic sectors, then such a rate is indeed the lowest tax rate available in the jurisdiction. This is because a jurisdiction can decide to "specialise" in several economic sectors and provide very aggressive tax exemptions in those sectors while formally keeping a higher tax rate for all other sectors. In effect, because most economic activity may occur across exempt sectors, the lowest tax rate that is broadly available is the one applicable in such sectors.

In this assessment, we disregard tax exemptions that are temporary (10 years or less) and those that apply in specific economic zones, since these are covered under the haven indicator on economic zones and tax holidays. We focus on sectoral exemptions, as analysed in the haven indicator of the same name. The haven indicator on sectoral exemptions analyses permanent exemptions (10+ years) across 13 "active income" sectors, and the investment sector – a sector where the main income streams are passive, such as dividends, interests and capital gains.[9] Because the risks of aggressive tax policies in the investment sector are covered, directly or indirectly, in indicators on foreign investment income treatment, capital gains taxation, and sectoral exemptions, we do not consider tax exemptions in the investment sector for the analysis of the LACIT.

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[5] OECD, *OECD Data Explorer - Statutory Corporate Income Tax Rates*.

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

[7] PricewaterhouseCoopers, Worldwide Tax Summaries.

[8] 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 differ by type of entity (ie charitable, non-profit, or for-profit), only the CIT applicable to for-profit companies is considered, given the focus of the Corporate Tax Haven Index.

[9] This classification of economic activities across sectors derives from established sectoral classifications by the United Nations (Rev. 4) and Eurostat (Rev.2). Full details are available in the haven indicator on sectoral exemptions.

For sectoral exemptions to be considered applicable across a "wide range of economic sectors", we only consider situations where a country offers a high number of permanent tax exemptions: if a jurisdiction exempts fully four or more active economic sectors, and/or partially exempts eight or more active economic sectors, the lowest rate applicable to these economic sectors will determine the LACIT. One full exemption is considered as equivalent to two partial exemptions. In these cases, economic sector exemptions will be accounted for both in the LACIT and in the haven indicator on sectoral exemptions. When a jurisdiction does not reach the threshold (of exempting fully four or partially eight economic active economic sectors), permanent tax exemptions are only covered in the haven indicator on sectoral exemptions.

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

- *Second 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 a jurisdiction. Therefore, a jurisdiction's lowest available compound CIT rate may differ depending on the subnational region chosen for analysis (at state/cantonal level). To compute 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 (ie a specific area within a country designated by the government for special economic activities) or a subnational region (ie an administrative division or geographic area within a larger nation state), are disregarded for this indicator as these will be analysed and assessed in the haven indicator on economic zones and tax holidays.

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 to achieve the Corporate Tax Haven Index's aim of indicating tax spillover risks. We apply five main adjustments, as explained below.

- *First Adjustment – a lower rate upon distribution or retention of profits*

[10] Sandy van Thol. *Aruba - Corporate Taxation - 1. Corporate Income Tax*. Tech. rep. International Bureau of Fiscal Documentation, Sept. 2020. URL: https://research.ibfd.org/#/doc?url=/collections/gtha/html/gtha_aw_s_001.html (visited on 05/03/2021).

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 has been made.

For example, Malta, with a statutory CIT ordinarily reported at 35 per cent[11] 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 per cent and 10 per cent.[12]

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

A similar result can be achieved when the tax is imposed only upon distribution. For example, in both Latvia[13] and Estonia,[14] 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.[15]

- *Second Adjustment – tax exempt specific types of 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.

- *Third Adjustment – territorial tax system for active business income*

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

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[11] See, for example, (Conrad Cassar Torregiani. *Malta - Corporate Taxation - 1. Corporate Income Tax*. Tech. rep. International Bureau of Fiscal Documentation, Sept. 2020. URL: https://research.ibfd.org/#/doc?url=/collections/cta/html/cta_mt_s_001.html [visited on 05/03/2021]) and (KPMG. *Corporate Tax Rates Table - KPMG Global*. Nov. 2020. URL: https://home.kpmg/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html [visited on 08/03/2021]).

[12] TP Guidelines. *Malta*. URL: https://tpguidelines.com/pop-pages/malta/ (visited on 05/03/2021).

[13] Larisa Gerzova. *Latvia - Corporate Taxation - 1. Corporate Income Tax*. Tech. rep. International Bureau of Fiscal Documentation, Jan. 2021. URL: https://research.ibfd.org/#/doc?url=/collections/cta/html/cta_lv_s_001.html (visited on 05/03/2021).

[14] Marek Herm. *Estonia - Corporate Taxation - 1. Corporate Income Tax*. Tech. rep. International Bureau of Fiscal Documentation, Aug. 2020. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_ee_s_1.&refresh=1614929839069#cta_ee_s_1. (visited on 05/03/2021).

[15] The accumulation of largely untaxed, undistributed profits offshore by US multinational companies before the US tax reform enacted at the end of 2017 has resulted from 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.

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.

Similarly, countries which exclusively exempt a 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 per cent 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 per cent is the CIT usually reported as Monaco's statutory tax rate,[16] in accordance with LACIT underlying logic, Monaco's CIT rate would accordingly be considered as zero.[17]

- *Fourth 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,[18] multinational corporations often gain access to tax administrations through specialist tax advisers. The subsequent European Union investigation into state aid has revealed that tax rulings have been used for large-scale tax avoidance in at least Belgium, Ireland, Luxembourg and the Netherlands.[19][20]

Where details of cases have been thoroughly investigated and published, allowing for an analysis of the tax outcomes of the rulings, the deviating CIT rate has been used in this indicator. Because the ruling is a binding legal instrument or at least involves an element of administrative consent, administrations should be held responsible and accountable to the legislature and the public over any rate offered through a ruling. 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 evidence available in the public domain. Only official state aid investigations by the European Commission[21] into such rulings currently provide sufficiently ample and in-depth evidence to determine a deviating LACIT based on unilateral tax rulings.

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[16] See, for example, (Burg, 2021b; and (KPMG, *Corporate Tax Rates Table - KPMG Global*)

[17] *Monaco Company Registration | The Best in the World*. 2021. URL: https://www.healyconsultants.com/monaco-company-registration/ (visited on 05/03/2021).

[18] ICIJ. *Luxembourg Leaks: Global Companies' Secrets Exposed*. 2014. URL: https://www.icij.org/investigations/luxembourg-leaks/ (visited on 03/05/2022).

[19] European Commission. *State Aid: Tax Rulings*. 2021. URL: https://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html (visited on 03/05/2022).

[20] This is the case even if the European Court of Justice concludes that state aid rules were not violated.

[21] European Commission, *State Aid: Tax Rulings*.

These tax rulings[22] result in tax avoidance risks emanating in the 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. As was documented in Apple's case, unilateral tax rulings made in the European Union also affect countries outside the region, for example in Africa.[23] 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.[24]

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 reliable indications that the ruling practice has changed in substance 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 have chosen to appeal on the European Commission's decision that these rulings were illegal state aid.[25] Jurisdictions that wish to challenge our assessment of the continuing availability of such low tax rates are welcome to publish all of their more recent 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.

- *Fifth Adjustment – Deficient corporate tax residency scope*

An important characteristic of a multinational corporation's tax avoidance is the circumvention of tax residency status. Various jurisdictions present clear loopholes in their corporate tax residency scope. In these countries, locally incorporated companies are not necessarily tax residents of the jurisdiction under whose laws they have been created. This allows a dangerous legal void, whereby

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[22] 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: (ICIJ, *Luxembourg Leaks*)

[23] 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: (European Commission. *Press Release - State Aid: Commission Concludes Belgian "Excess Profit" Tax Scheme Illegal; around €700 Million to Be Recovered from 35 Multinational Companies*. Jan. 2016. URL: https : / / europa . eu / rapid/press-release_IP-16-42_en.htm [visited on 30/08/2019])

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

[25] 'Luxembourg to Contest Amazon State Aid Decision in EU Court'. *MNE Tax* (Dec. 2017). URL: https : //mnetax.com/luxembourg-fight-amazon-state-aid-case-eu-court-25180 (visited on 03/02/2021).

companies may end up not being considered tax residents of any jurisdiction.[26][27] While we consider that both effective management and place of incorporation should be independent triggers of tax residency, we believe that the very minimum standard should be that all locally incorporated companies are tax residents of a country. At a minimum, a country should take responsibility for companies created under its laws.

In this edition of the Corporate Tax Haven Index, we penalise countries with a definition of tax residency that does not include, at least, all companies incorporated under its laws. Because the lowest tax applicable to non-residents is often zero per cent (commonly for foreign income), we consider such rate in the calculation of the LACIT.

For example, in Montserrat, only companies with central management and control in Montserrat are considered tax residents therein. Montserrat-incorporated companies that do not have central management and control in Montserrat are not considered tax residents. Such non-residents are only taxed on their Montserrat-source income, when the income is transferred outside Montserrat (by way of withholding). For instance, a Montserrat-incorporate company with effective place of management in the British Virgin Islands or Macao would not be considered tax resident of either place, and (i) its foreign income would not be taxed in Montserrat, and (ii) its Montserrat-source income would only be taxed (WHT) in case of exit payment.[28][29]

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

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[26] Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs, United States Senate. *Offshore Profit Shifting and the U.S. Tax Code - Part 2 (Apple Inc.)* Tech. rep. United States Senate, May 2013. URL: https://www.govinfo.gov/content/pkg/CHRG-113shrg81657/pdf/CHRG-113shrg81657.pdf (visited on 02/12/2022), pp.3–4, 172–76, 201.

[27] A notorious tax avoidance strategy known as the "Double Irish" only ceased being available in 2020. The gap in the definitions of tax residency resulted from the following mismatch of tax rules: Ireland had taxed companies only if they were 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. However, there was also a long grandfathering provision that allowed companies which had already used the scheme to continue doing so for an additional five years (until 31 December 2019). For information on the grandfathering provision see: (and Deloitte, 2014; 'Looking to the Future', n.d.)

[28] Violette R. Silcott. *Montserrat - Corporate Taxation*. Tech. rep. International Bureau of Fiscal Documentation, Apr. 2020. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_ms (visited on 05/03/2021), sec. 1.2.1, 6.2.1.

[29] Ying Zhang. *Macau - Corporate Taxation - 1. Corporate Income Tax - Residence*. Tech. rep. Sept. 2020. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_mo_s_1.2.1.&refresh=1614946908561#gtha_mo_s_1.2.1. (visited on 05/03/2021).

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 avoidance risks which undermine democratic choices elsewhere. Determining this spillover risk reference rate is a one-off process to be carried out afresh every new research cycle of the Corporate Tax Haven Index research. 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, ie 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 2018.[30] With a few exceptions for small population jurisdictions,[31] 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[32] 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,[33] or information from the International Bureau of Fiscal Documentation (IBFD) database.[34] In general, we derived statutory CIT rates from OECD Stats database. When updated data from OECD was not available, we use IBFD.

As a result of this analysis, the spillover risk reference rate is set at 35 per cent, Argentina and Colombia being the democracies with the highest statutory corporate income tax rate. In Argentina[35] capital gains are included in the corporate income and are thus taxed equally at a rate of 35 per cent. The rate of

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[30] We downloaded the dataset on 24 September 2024 from (Center for Systemic Peace. *Polity5 Project - Political Regime Characteristics Database*. 2024. URL: https://prosperitydata360.worldbank.org/en/dataset/POLITY5+PRC [visited on 24/09/2024]).

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

[32] Max Roser. 'Democracy'. *Our World in Data* (Mar. 2013). URL: https://ourworldindata.org/democracy (visited on 05/03/2021).

[33] OECD. *Table II.1. Statutory Corporate Income Tax Rate*. 2021. URL: https://stats.oecd.org/Index.aspx?DataSetCode=TABLE_II1 (visited on 05/03/2021).

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

[35] Eduardo Meloni. *Argentina - Corporate Taxation*. Tech. rep. IBFD, 2024. Chap. Country Surveys. URL: https://research.ibfd.org/collections/gtha/printversion/pdf/gtha_ar.pdf (visited on 26/03/2024), sec.1.4.

35 per cent is also used a reference to calculate the scores for the haven indicator on capital gains taxation, and the haven indicator, on withholding taxes on dividends.[36] The full results of the filtering and sorting exercise are shown in Table 3.1 below.

Table 3.1. Spillover risk reference rate

Jurisdiction	Maximum CIT Rate 2023	Democracy? Polity5 Index (≥7)[a]
Argentina	35%[b]	9
Colombia	35%[c]	7
Chad	35%[b]	-2
Equatorial Guinea	35%[b]	-6
Brazil	34%[c]	8
Cameroon	33%[c]	-4

Sources: (a) Polity2 score in the Polity5 Project - Political Regime Characteristics Database; (b) PwC – Worldwide corporate income tax rates; (c) OECD – Data Explorer Stats.
Note: In the Corporate Tax Haven Index in 2021, the spillover risk reference rate was defined as 35 per cent, given the corporate income tax rate of Pakistan in 2020. However, its corporate income tax rate has decreased since the publication of the 2021 index. Since 2021, Pakistan's rate has been 29 per cent (Trading Economics). Nevertheless, Argentina and Colombia have increased their corporate income tax rate between 2020 and 2023, from 30 to 35 per cent (Trading Economics) and from 32 to 35 per cent (OECD – Data Explorer Stats), respectively, maintaining the spillover risk reference rate at 35 per cent.

Part 3: Calculating the haven score

A CIT rate of 35 per cent 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 LACIT according to the corrections and adjustments explained above. Second, we subtract the LACIT from the spillover risk reference rate of 35 per cent. 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;[37] 2) the IBFD database (country analyses and country surveys);[38] 3) in some instances, we have also consulted additional websites and reports of accountancy firms and other local websites.

[36]The highest available unilateral rate on dividend withholding tax in a democracy amounts to 35%, in Chile, followed by 33.3% in Jamaica. We assume that any lower withholding rate creates risks for tax avoidance and spillovers by enticing the shifting of profits into lower taxed jurisdictions and for jurisdictions to lower their dividend withholding rates in response.

[37]OECD, *Table II.1. Statutory Corporate Income Tax Rate*.

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

Table 3.2. Scoring Matrix: Lowest available corporate income tax

Regulation	Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
LOWEST AVAILABLE CORPORATE INCOME TAX RATE (LACIT) (100)	
The corporate income tax imposed by the jurisdiction is scaled between zero and 35% 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, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.1.2 Why is this important?

Corporate tax revenues make up about ten per cent of total tax revenues in OECD countries, however, lower- and middle-income countries tend to be more reliant on corporate income tax than higher-income countries. On average, corporate tax revenues are a much larger share of total tax revenues in Africa (18.72% in 32 countries), in Asia and Pacific (18.2% in 31 jurisdictions), and in Latin America and the Caribbean (15.4% in 27 jurisdictions).[39] 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.[40]

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, 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

[39] OECD. *Corporate Tax Statistics 2024*. Tech. rep. Paris: OECD, July 2024. URL: https://doi.org/10.1787/9c27d6e8-en (visited on 19/09/2024).

[40] 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: ('OECD Tax Database', n.d.)

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 or on more regressive taxes such as VAT.[41]

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 progressive taxes a state can levy and a tool to reduce inequality within and between countries.[42] 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)[43] 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 lower income countries to multinational corporations and their shareholders in higher income countries.

Furthermore, when a country cuts its CIT rate, it may lead countries to a race to the bottom or to 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. This is because their tax policies adjust by shifting the tax mix onto less mobile factors, without respect to democractic preferences, 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

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[41] Tax Justice Network. *Ten Reasons to Defend the Corporation Tax*. Tech. rep. 2015. URL: https : / / www . taxjustice . net / wp - content / uploads / 2013 / 04 / Ten _ Reasons _ Full _ Report . pdf (visited on 07/03/2021).

[42] Tax Justice Network, *Ten Reasons to Defend the Corporation Tax*.

[43] Tax Justice Network, *Ten Reasons to Defend the Corporation Tax*.

representatives of people for the common good.[44] Finally, fiscal equity – which is also perceived as a democratic rule[45] – is one of the most important attributes of any responsible tax system.[46]

One key shortcoming of the OECD's Base Erosion and Profit Shifting (BEPS) project is the lack of a combined focus on both the equitable allocation across jurisdictions of the taxing rights on the corporate tax base and the application of the minimum corporate income tax rates on the allocated tax base. Under BEPS 1.0, the goal was "restoring the full effects and benefits of international standards", but not making these old international standards more fair and equitable, for instance by allocating taxing rights solely in function of genuine activities.[47] Furthermore, the "rights to tax" does not require actual taxation – a jurisdiction's choice not to tax or to tax at zero per cent is treated mostly as equivalent to full taxation. Addressing this last aspect has been the objective of Pillar Two of BEPS 2.0. The global minimum tax (GloBE) regime was designed to curtail a continuous race to the bottom in CIT rates. However, the minimum tax rules do not address the fundamental need to align taxing rights with genuine economic activity or substantial activities. The proposed GloBE rules are problematic for a number of other reasons (*see* section 2.7), one of these being the lack of universal application to all companies. After BEPS 2.0, the decisive challenge still remains the defining and quantifying "genuine economic activities" and the allocation of corporate income taxing rights in function of this quantification. The failure to address this challenge makes any attempts to address the race to the bottom with CIT rates an imperfect mission. Under GloBE, the neutralising effect on CIT rate spillovers is likely to be replaced by alternative forms of competition to attract tax base, which remains ever the possibility unless objective criteria are used to allocate said tax base.[48] This, combined with the less than universal application of GloBE makes that what the IMF calls tax competition in its broadest sense, namely spill-overs that reflect "the impact on a country's policy choices of tax changes abroad"[49] are still commonplace after BEPS, including CIT rate based spill-overs.

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

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[44] Jean-François Rougé. 'The Globar War: The EU's Apple Tax Case'. *ECONOMICS*, 5(1) (June 2017), pp. 14–35. URL: https://content.sciendo.com/view/journals/eoik/5/1/article-p14.xml (visited on 23/05/2019), p.27.

[45] Rougé, 'The Globar War', p.19.

[46] Diana Scolaro. 'Tax Rulings : Opinion or Law? The Need for an Independent 'Rule-Maker''. *Revenue Law Journal* (Jan. 2006).

[47] Abdul Muheet Chowdhury et al. *Taxing Multinationals: The BEPS Proposals and Alternatives*. Tech. rep. BEPS Monitoring Group (BMG), 2023. URL: https://www.bepsmonitoringgroup.org/news/2023/7/5/the-beps-proposals-and-alternatives (visited on 18/09/2023).

[48] Chowdhury et al., *Taxing Multinationals: The BEPS Proposals and Alternatives*.

[49] Crivelli et al., 'Base Erosion, Profit Shifting and Developing Countries', p.4.

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.[50]

As can be seen in Figure 3.2, statutory tax rates can be far removed from reality as they usually take the jurisdiction's "flat or top marginal"[51] CIT rates at face value. For example, for Malta, OECD corporate tax statistics report a 35 per cent CIT rate. Yet the note explains that for distributed profits, the rate may be as low as 5 per cent.[52] A recent IMF meta study on tax avoidance confirmed that researchers usually rely on statutory corporate tax rates when estimating the extent of base erosion and profit shifting.[53] 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 neither suitable as independent or explanatory variables. Jansky (2019) discusses thoroughly the various methodologies and data sources used to derive effective tax rates.[54] He differentiates between law-based (or ex ante/forward looking) and data-based (ex post, backward looking) approaches. As 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".[55] LACIT is a novel contribution, deriving law-based CIT rates ex post based on the transparent legal analysis of the CIT framework and thus enabling their use in economic and other research.

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[50] Petr Janský. *Effective Tax Rates of Multinational Enterprises in the EU*. tech. rep. 2019. URL: https://www.greens-efa.eu/files/doc/docs/356b0cd66f625b24e7407b50432bf54d.pdf (visited on 05/03/2019), p.3.

[51] OECD, *Table II.1. Statutory Corporate Income Tax Rate*.

[52] "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 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 (eg 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 (Organisation for Economic Co-operation and Development, 2021b)

[53] Sebastian Beer et al. 'International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots'. *Journal of Economic Surveys*, 34(3) (Jan. 2019), pp. 660–688. URL: https://onlinelibrary.wiley.com/doi/abs/10.1111/joes.12305 (visited on 18/03/2024).

[54] Janský, *Effective Tax Rates of Multinational Enterprises in the EU*, pp.31-41.

[55] Sebastian Beer et al. *International Corporate Tax Avoidance: A Review of the Channels, Magnitudes, and Blind Spots*. Tech. rep. WP/18/168. International Monetary Fund, 2018. URL: https://www.imf.org/-/media/Files/Publications/WP/2018/wp18168.ashx (visited on 18/03/2024), p.16.

Figure 3.2. Comparison of statutory corporate income tax rates and LACIT rates by country

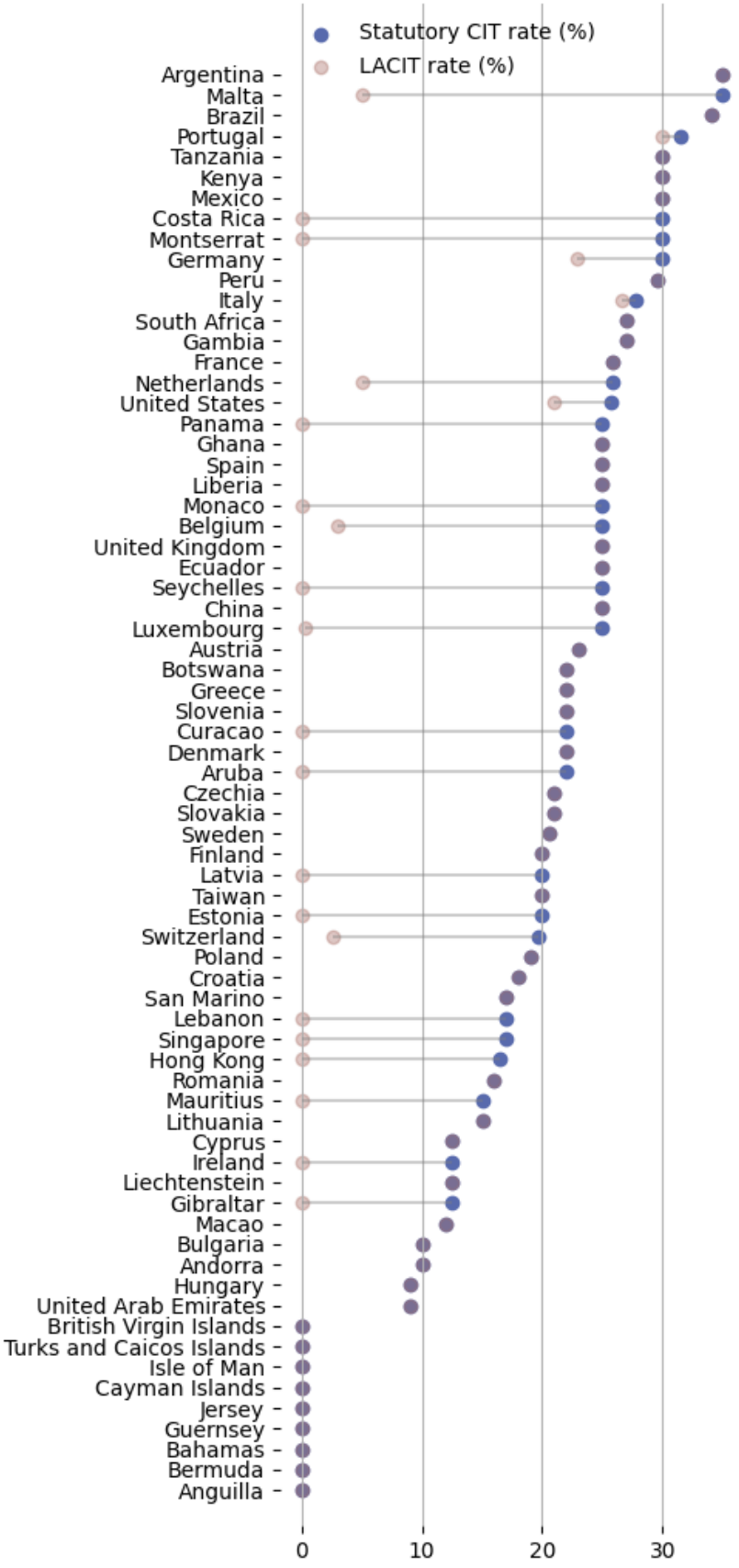

Table 3.3. Assessment Logic: Lowest available corporate income tax

ID	ID description	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 alternative sources)?	Lowest available CIT tax rate (between 0 and 35)	If ID587=-2 Or >1: ((35 – answer)/35) *100 If ID587=1: 100
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?		

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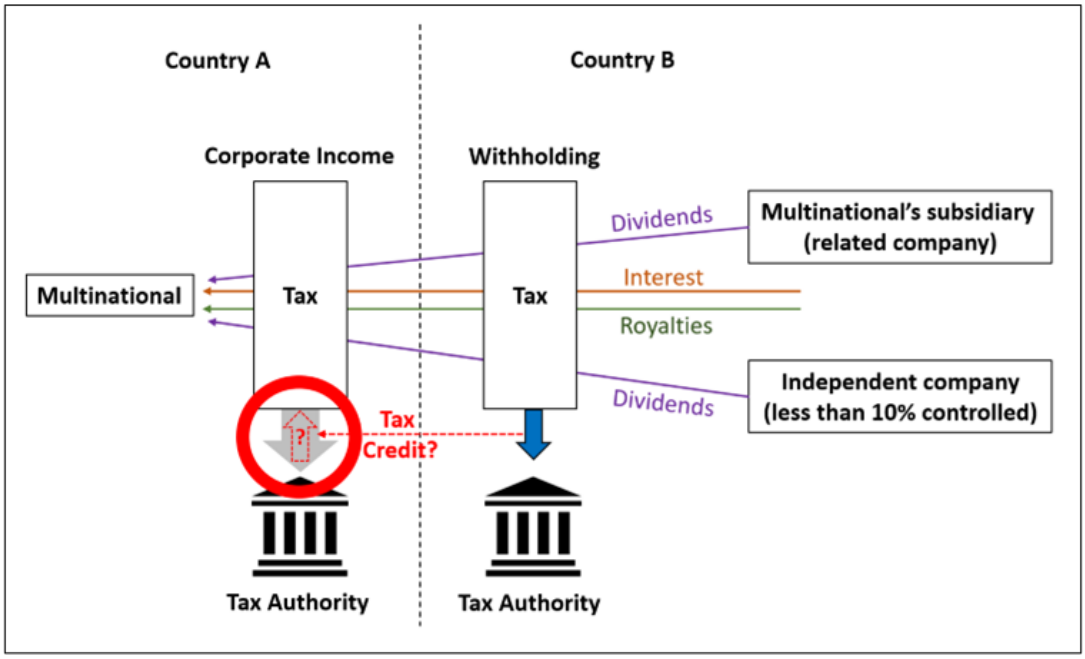
ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
587	Corporate tax residency scope: Do the domestic rules for corporate tax residency include as tax resident at least all locally incorporated companies?	-2: Unknown; 1: NO, not all locally incorporated companies are considered tax resident of the jurisdiction. 2: INC: Yes, at least all locally incorporated companies are considered tax resident. 3: INC & MNG: Yes, all locally incorporated companies are considered tax residents, and in addition some foreign-incorporated companies are considered tax resident (e.g. those with effective management and control in the jurisdiction).	

3.2 Foreign investment income

3.2.1 What is measured?

This indicator assesses whether a jurisdiction includes worldwide capital income in its corporate income tax base and if it 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 does not assess provisions available in tax agreements, which are covered under the haven indicator on tax treaty aggressiveness (section 3.18).

Figure 3.3. 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 owned at less than 10 per cent).[56]
2. Dividends received by a multinational from a related legal person located abroad.

[56] When there is a participation exemption granted to "less than 10 per cent" shareholdings, we treat this as a participation exemption for dividends received from an independent party.

For interest and royalties[57], no distinction is made between independent and related companies (because no differences were found in regulations for these types of capital income payments).

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 (dividends, interest or royalties). 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.

In addition, regardless of the unilateral relief available in a jurisdiction, we retain the maximum haven score (+25) for a payment scenario (eg interest) or type of capital income payment (eg 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 royalties[58] income) or

   ii specific legal entities (such as International Business Companies);[59]

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

d) zero or near zero tax rates (eg on corporate income).[60]

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[57]The haven indicator on patent box regimes (section 3.7 also examines royalties. However, the difference in this indicator's treatment of royalty income is mainly that the haven indicator on patent box regimes only examines if royalties are taxed preferentially in comparison with the general principles of taxation in the relevant jurisdiction, and whether the OECD "nexus" limitation is applicable for this preferential treatment. In contrast, this indicator 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 the deduction method is available. Where royalties and/or other payments for the exploitation of intellectual property are exempt without OECD nexus limitation under a patent box regime in the respective haven indicator, we consider that royalties are generally exempt in this haven indicator.

[58]Where royalties and/or other payments for the exploitation of intellectual property are excluded from the tax base without OECD nexus limitation under a patent box regime, we consider that royalties are generally exempt in this indicator. If, however, a jurisdiction has a patent box regime with an OECD nexus limitation (see ID 515), we disregard such regime from this indicator (for more details, please see the methodology for the haven indicator on patent box regimes (section 3.7)).

[59]In this indicator, we only consider exempt legal entities as available if a wide range of economic activity can be undertaken tax-free. For example, for International Business Companies where foreign investment income is only exempt because companies are exclusively engaged in certain economic activity that is tax-exempt (ie investment funds, management companies), we consider these broad exemption regimes in the haven indicator on sectoral exemptions (section 3.5, but not in this indicator.

[60]We used this terminology to mean "low" from the OECD's 1998 Harmful Tax Competition Report. This is one of the key factors in identifying and assessing harmful preferential tax regimes: "A low or zero effective tax rate on the relevant income is a necessary starting point for an examination of whether a preferential tax regime is harmful. A zero or low effective tax rate may arise because the schedule rate itself is very low or because of the way in which a country defines the tax base to which the rate is applied". (OECD. *Harmful Tax Competition: An Emerging Global Issue*. OECD Publishing, May 1998. URL: https://www.oecd-ilibrary.org/taxation/harmful-tax-competition_9789264162945-en [visited on 26/05/2019])

In this indicator, we attribute the maximum risk score to instances that may result in double non-taxation (effective exemption of foreign investment income) and to regulations that create double taxation (no unilateral relief, deduction treatment).

The scoring matrix is shown in Table 3.4, with full details of the assessment logic in Table 3.5 below.

Table 3.4. Scoring Matrix: Foreign investment income

Regulation	Haven Score Assessment [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 (above 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

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

The data for this indicator has been collected primarily through the International Bureau for Fiscal Documentation's (IBFD) database (country analyses and country surveys).[61][62]

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 (ie at source), or taxing it where its recipient resides.[63] 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,[64] 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.[65] The G20 has declared that "Profits should be taxed where economic activities deriving the profits are performed and where value is created".[66] While this could be interpreted as a mandate to treat the corporate group of multinational enterprise as a single firm and ensure that its tax base is attributed according to its activities in each country,[67] the OECD's BEPS project[68] has continued to follow the independent entity principle and refused to consider unitary taxation and formulary apportionment to tax transnational corporations.

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

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

[62] In some instances, additional websites and reports published by the large accountancy firms have also been consulted.

[63] Tax Justice Network. *Tax Justice Briefing. Source and Residence Taxation.* Tech. rep. Sept. 2005. URL: http://www.taxjustice.net/cms/upload/pdf/Source_and_residence_taxation_-_SEP-2005.pdf (visited on 08/05/2022).

[64] Tax Justice Network. *Unitary Taxation: Our Responses to the Critics*. Tech. rep. Feb. 2013. URL: https://www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf (visited on 08/05/2022).

[65] Reuven S. Avi-Yonah. 'A 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*. P. Dietsch and T. Rixen. Colchester, U.K: ECPR Press, 2016, pp. 289–306.

[66] G20. *Communiqué. G20 Meeting of Finance Ministers and Central Bank Governors Washington DC, April 19, 2013*. Tech. rep. London, 2013. URL: http://www.g20.utoronto.ca/2013/2013-0419-finance.html (visited on 02/12/2022).

[67] BEPS Monitoring Group. *Overall Evaluation of the G20/OECD Base Erosion and Profit Shifting (BEPS) Project*. Tech. rep. 2015. URL: https://bepsmonitoringgroup.files.wordpress.com/2015/10/general-evaluation.pdf (visited on 02/05/2022).

[68] OECD. *Action Plan on Base Erosion and Profit Shifting*. Tech. rep. Paris, 2013. URL: http://www.oecd.org/ctp/BEPSActionPlan.pdf (visited on 06/05/2022).

or both ways because it hinders cross-border economic activity. Bilateral treaties are expensive to negotiate, and they 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.[69] 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 multinationals typically offer provisions in their own laws to prevent or reduce double taxation.[70]

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);

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

There is however a third mechanism called "deduction" which is sometimes used to offer relief from double taxation. Nonetheless, the deduction method does not offer full relief from double taxation. It allows any taxes paid abroad to be deducted from foreign income (eg 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.

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[69] Martin Hearson. *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*. Tech. rep. Brighton, 2016. URL: https://core.ac.uk/download/pdf/46172854.pdf (visited on 10/04/2022); Markus Meinzer. *The Creeping Futility of the Global Forum's Peer Reviews*. Tech. rep. Tax Justice Network, Mar. 2012. URL: http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf (visited on 01/04/2022); Alliance Sud. *Schweizer Steuerabkommen Mit Entwicklungsländern: Fragwürdiger Druck Auf Quellensteuern*. Tech. rep. Mar. 2013. URL: https://www.alliancesud.ch/de/publikationen/downloads/dokument-24-2013.pdf (visited on 03/05/2022); Eric Neumayer. 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' *The Journal of Development Studies*, 43(8) (Nov. 2007), pp. 1501–1519. URL: http://www.tandfonline.com/doi/full/10.1080/00220380701611535 (visited on 06/05/2022).

[70] 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: "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." (Tax Justice Network, *Unitary Taxation: Our Responses to the Critics*, p.3). 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 reveals the dubious and theoretically flawed nature of the concept of double taxation. (Martin Hearson. 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion'. PhD thesis. London: The London School of Economics and Political Science, 2016. URL: http://etheses.lse.ac.uk/3529/1/Hearson_Bargaining_away_the_tax_base.pdf [visited on 07/03/2021])

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 pressure on capital importing countries to conclude bilateral treaties with the other country. These treaties in turn can expose capital importing countries to risks and disadvantages.[71]

In addition, with more than 3000 double tax treaties currently in place, 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[72]). 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.[73]

When using a unilateral exemption mechanism to exempt all foreign income from liability to tax at home, the country of residence 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 (source) jurisdiction, they may 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. This may have an important collateral effect: countries not offering an exemption mechanism to their residents nonetheless may see their resident taxpayers move their assets and legal structures (such as holding companies) into those countries where capital income is not taxed or taxed at a low rate. By doing so, and because information sharing between states is weak, taxpayers can easily evade the taxes due at home on their foreign income. As a consequence, a country offering low or no taxes to non-residents promotes tax evasion in the rest of the world.

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

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[71] BEPS Monitoring Group, *Overall Evaluation of the G20/OECD Base Erosion and Profit Shifting (BEPS) Project*.

[72] See (Sol Picciotto. *Towards Unitary Taxation of Transnational Corporations*. Tech. rep. Tax Justice Network, 2012. URL: http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf [visited on 08/05/2022]) for ways to address these issues, and the various reports of the BEPS Monitoring Group (https://bepsmonitoringgroup.wordpress.com/tag/bmg/).

[73] We are not looking at deduction in more detail because deduction of foreign taxes from the domestic tax base only provides partial relief from double taxation whereas the credit and exemption method both have in principle the capacity to completely prevent double taxation. For details about the exemption and credit method, see (United Nations. *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries 2019*. 2019. URL: https://www.un.org/esa/ffd/wp-content/uploads/2019/06/manual-bilateral-tax-treaties-update-2019.pdf [visited on 16/09/2024], pp.19-22).

war (or competition).[74] Second, citizens and corporations from other countries make use of the low tax rates by shifting assets into these low-tax countries to avoid taxes. 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.[75]

[74] For a background on the terminology around tax competition and tax wars, see (Nicholas Shaxson. *Tax Havens Meet Monopoly Power: Why National Competitiveness Harms Competition*. Aug. 2021. URL: https://taxjustice.net/2021/08/12/tax-havens-meet-monopoly-power-why-national-competitiveness-harms-competition/ [visited on 16/05/2022]).

[75] Reuven Avi-Yonah describes how the U.S. adoption of a unilateral tax credit in 1918 “led to a cooperative outcome that prevents double taxation and maximizes world welfare.”(Reuven S. Avi-Yonah. ‘Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State’. *Harvard Law Review*, 113(7) [2000], pp. 1573–1676. URL: https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1049&context=articles [visited on 02/05/2022], p.1608)

Table 3.5. Assessment Logic: Foreign investment income

ID	ID description	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

3.3 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 3.6 and full details of the assessment logic are in Table 3.7.

Ordinary companies generate revenue by selling goods or providing services, and create expenses, by, for example, 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 losses forward 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 backwards allows a company, when it makes a loss in a current year, 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.[76] According to the OECD, loss carry backward provisions have a more severe impact on reducing government budgets and are more difficult to administer than carry forward provisions.[77]

To avoid abuse of such provisions by multinational companies,[78] jurisdictions generally place limits on the time and value of loss carry forward rules.

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[76] OECD. *Corporate Loss Utilisation through Aggressive Tax Planning*. Tech. rep. Aug. 2011. URL: https://doi.org/10.1787/9789264119222-en (visited on 02/12/2022).

[77] OECD, *Corporate Loss Utilisation through Aggressive Tax Planning*, pp.26-27.

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

This time limit threshold refers to the period within which revenue administrations are permitted to reopen tax assessments.[79] 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.[80]

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

As a measure to deal with Covid-19 pandemic, several jurisdictions introduced changes to loss utilisation to enable companies to relieve their losses. Whenever the measure was only for a short time and was lifted in 2020 or 2021 we disregarded it for the purposes of this indicator. However, if it lasted during 2021 or beyond, we treated it as a permanent measure and the jurisdiction has been assessed accordingly. These permanent measures are likely to be disregarded in the next assessment of this indicator.

The data for this indicator was collected primarily from the country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD) database.[81] In some instances, we have also consulted additional local websites and reports.

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[79] Dominic de Cogan. *Building Incoherence into the Law: A Review of Relief for Tax Losses in the Early Twentieth Century*. SSRN Scholarly Paper ID 2312950. Rochester, NY: Social Science Research Network, Aug. 2013. URL: https://papers.ssrn.com/abstract=2312950 (visited on 16/05/2019), p.661, Footnote 34.

[80] OECD. *Tax Co-operation: Towards a Level Playing Field - 2006 Assessment by the Global Forum on Taxation, Annex III*. tech. rep. 2006. URL: https://www.oecd.org/ctp/harmful/42179473.pdf (visited on 16/05/2019), para.14.

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

Table 3.6. Scoring Matrix: Loss utilisation

Regulation	Haven Score Assessment [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

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the

document version history at the beginning of this report to see when the methodology for this indicator was last updated.

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.[82] 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.[83]

The Apple case illustrates the damage that multinational corporate practice has on public revenues. These tax avoidance games would not have been possible if comprehensive limitations were in place. Both this indicator and the haven indicators on intra-group payments deductibility present measurements and alternatives towards a financially consistent and fiscally responsible environment for multinational corporations. This is the reason any temporary loss utilisation rules introduced in the wake of the Covid-19 pandemic were considered problematic if lasted long and assessed as such in this indicator as they created room for businesses to game the system. The World Bank underlines the heightened risk of "sham" losses: "Whereas an increase of NOL [net operating loss] is expected to be filed by taxpayers engaged in business affected by overall economic conditions, some businesses perceive economic downturn periods as opportunities to claim sham NOLs".[84] In any case, if a country nevertheless chooses to provide such temporary measures for companies, the least it can do is to subject the measures to several conditions in order to prevent taxpayer's money from ending up in corporate tax havens.[85]

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[82] Seamus. *Economic Incentives: What Apple Did Next*. Jan. 2018. URL: http://economic-incentives.blogspot.com/2018/01/what-apple-did-next.html (visited on 21/05/2019).

[83] 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?*. This Report Was Commissioned by GUE/NGL Members of the European Parliament's TAX3 Special Committee on Tax Evasion, Tax Avoidance and Money Laundering. Brussels, June 2018. URL: https://www.guengl.eu/content/uploads/2018/06/Apple_report_final.pdf (visited on 07/03/2021).

[84] World Bank Group. *Covid-19: Revenue Administration Implications: Potential Tax Administration and Customs Measures to Respond to the Crisis*. Tech. rep. 2020. URL: https://openknowledge.worldbank.org/bitstream/handle/10986/34152/COVID-19-Revenue-Administration-Implications-Potential-Tax-Administration-and-Customs-Measures-to-Respond-to-the-Crisis.pdf?sequence=4&isAllowed=y (visited on 23/02/2021), p.6.

[85] The Tax Justice Network proposed five key bailout test conditions "designed to prevent tax payer's money from ending up in corporate tax havens and to ensure tax transparency from bailout recipients into the future". These conditions include 1) requiring full public country by country reporting for

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".[86] 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.[87]

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 (ie where its net interest expense exceeds the maximum permitted), or having unused interest capacity (ie where its net interest expense is below the maximum permitted).[88]

Several kinds of limitation on loss relief exist. The OECD has captured some of these based on country practice:[89]

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companies with one or more subsidiaries ranked among the top 10 countries in the Corporate Tax Haven Index or Financial Secrecy Index, 2) banning any company involved in tax scandals, such as having received illegal state aid, 3) requiring publication online of most recent accounts for all legal entities in the group, including full country by country reporting in line with the Global Reporting Initiative's standard, 4) requiring the publication of all beneficial and legal owners of all legal vehicles across the entire corporate structure, and 5) requiring the corporate group to be committed to employee protection and to no shareholder extraction until rescue loans have been paid back in full and the corporate group has returned to profitability or become insolvent. (Tax Justice Network. *Bail, or Bailout? Tax Experts Publish 5-Step Test for Covid19 Business Bailouts*. Tech. rep. Apr. 2020. URL: https://www.taxjustice.net/press/bail-or-bailout-tax-experts-publish-5-step-test-for-covid19-business-bailouts/ [visited on 03/03/2021])

[86] Roberta Romano and Mark Campisano. 'Recouping Losses: The Case for Full Loss Offsets'. *Northwestern University Law Review*, 76(5) (1981), pp. 709–744. URL: https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3014&context=fss_papers, p.710.

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

[88] OECD. *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*. Tech. rep. Paris: OECD, 2015. URL: https://www.oecd-ilibrary.org/docserver/9789264241176-en.pdf?expires=1557996390&id=id&accname=guest&checksum=4C61C67D7652BE5C0ABF0421567F6774 (visited on 16/05/2019), p.69, para.164.

[89] OECD. *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update*. Tech. rep. Paris: OECD, 2016. URL: https://www.oecd-ilibrary.org/taxation/limiting-

- 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 per cent 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 per cent 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.[90] 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.

base - erosion - involving - interest - deductions - and - other - financial - payments - action - 4 - 2016 - update_9789264268333-en (visited on 23/12/2022).

[90] 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) (June 2013), pp. 513–543. URL: http://link.springer.com/10.1007/s10797-012-9240-1 (visited on 03/07/2018).

Table 3.7. Assessment Logic: Loss utilisation

ID	ID description	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 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.	0: 50 1: 37.5 2: 37.5 3: 12.5 4: 12.5 5: 0

3.4 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. 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.

By securities, we mean any negotiable financial instrument with monetary value, including equity shares, corporate debt, government bonds, hybrid financial products, and derivatives.

It is worth noting that, although we consider the capital gains tax generally applicable to companies in a jurisdiction, we assess the lowest capital gains rate applicable to any type of (domestic or foreign) security. Thus, if there is a specific type of domestic or foreign security from which companies can derive capital gains at a lower rate, we consider such lower rate for purposes of this indicator.

The lowest available corporate capital gains tax rate in each of the two components is then assessed against 35 per cent in line with the haven indicator on the lowest available corporate income tax rate ("spillover risk reference rate", see section 3.1).[91] 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 per cent, the combined resulting haven score is thus 100. If the lowest available capital gains tax rate is 35 per cent in each of the components, the haven score is zero. Any rate in between is linearly scaled against 35 per cent.

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 each of these tax rates from the spillover risk reference rate of 35 per cent; 3) scaling the resulting metrics in proportion to a

[91] The rate of 35 per cent is the spillover risk reference rate defined in the haven indicator on the lowest available corporate income tax rate. The rate was determined by filtering: a) all jurisdictions for democracies, and b) sorting for the highest corporate income tax rates observed. As a result of this analysis, the spillover risk reference rate is set at 35 per cent, Argentina being the democracy with the highest statutory corporate income tax rate. In Argentina, capital gains are included in the corporate income and are thus taxed equally at the corporate income tax.

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.

While, in general, we consider the lowest capital gains tax rate applicable to any company that is tax resident in the jurisdiction, disregarding tax rates applicable to special types of entities, we exceptionally include the tax rate applicable to special types of entities in two situations. First, if a special type of entity can engage in economic activities in a broad range of sectors (4 or more) which are exempt, we consider lower tax rates applicable to such company, if any.[92] Second, when holding companies are offered lower tax rates for domestic or foreign capital gains, we also consider these entities for this haven indicator.[93]

Investment funds as well as other types of funds that are open to the general public (both "regulated" funds such as mutual funds or hedge funds, and any investment entity that may not be regulated, such as a family trust) are out of scope for this indicator. This is because, first, their legal form varies significantly from country to country and in some cases, they are not considered a company (but rather a partnership or trust or other legal form); second, they usually can undertake a very narrow range of business activities whereas this haven indicator takes a more holistic approach and thus does not consider specific types of entities; finally, investment funds which are open to the public are usually not subsidiaries of large multinational corporations given the shareholding is diluted within a large group of corporate and individual shareholders.

The data for this indicator was collected primarily from country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD) database.[94] In some instances, we have also consulted additional websites and reports of accountancy firms. The scoring matrix is shown in Table 3.8, with full details of the assessment logic in Table 3.9 below.

[92] The basis for this exception is the following: if a jurisdiction allows a special type of entity that is able to engage in a broad range of economic activities, then such entity may be the vehicle of choice for large multinationals, regardless of the specific business carried out. Thus, it is appropriate to consider that the lowest tax rate applicable to a tax resident subsidiary of a multinational company is the tax rate applicable to such special type of entity.

[93] The rationale in this case is similar: large multinationals often use holding companies to manage shareholding in other companies in the corporate group, or set up financing arrangements. Because this type of company is the legal vehicle of choice for multinationals accruing capital gains upon the sale of domestic or foreign securities, we consider any lower rate applicable to holding companies for the assessment of the capital gains rate in this haven indicator.

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

Table 3.8. Scoring Matrix: Capital gains taxation

Regulation	Haven Score Assessment [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 2: 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, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

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 response to these profit shifting techniques regarding highly mobile financial and other service activities, countries often choose to enter the race to the bottom by providing lower taxes for holding passive investments. As a result, nowadays, many countries in practice apply very low or no taxes on the income from shareholdings (a term jointly used to refer to dividend income and capital gains).[95]

[95] OECD, *Harmful Tax Competition: An Emerging Global Issue*, p.25.

One of the ways to do this is through the application of special rules of a holding company regime.[96] Another common way is to exempt capital gains through what is known as a participation exemption system.[9798] Participation exemption is widely used by European Union member states, countries in the European Economic Area and many other countries as well.[99] 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.[100]

The extent of participation exemption varies among jurisdictions. Some jurisdictions exempt from tax all capital gains on domestic and foreign shares derived from a participating holding or from the disposal of such holding[101]. Other jurisdictions 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[102].

The 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 the result of a policy that seeks to mitigate double taxation.[103] 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. The OECD, in its 1998 Harmful Tax Competition Report ('1998 Report'), has already 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.[104] 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.[105] Another factor to

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[96] OECD Centre for Tax Policy and Administration. *The OECD's Project on Harmful Tax Practices Consolidated Application Note - Guidance in Applying the 1998 Report to Preferential Tax Regimes*. 2004. URL: https://web-archive.oecd.org/2012-06-15/157820-30901132.pdf (visited on 18/03/2024), pp.63-64.

[97] OECD Centre for Tax Policy and Administration, *The OECD's Project on Harmful Tax Practices Consolidated Application Note - Guidance in Applying the 1998 Report to Preferential Tax Regimes*, pp.63-64.

[98] Participation exemption was adopted after the repeal of the imputation system, often as a way to mitigate against what was called "double taxation".

[99] Tax Foundation. *Appendix Table 1 Participation Exemptions in OECD Countries*. 2021. URL: https://files.taxfoundation.org/20210706170552/Appendix-Anti-Base-Erosion-Provisions-and-Territorial-Tax-Systems-in-OECD-Countries.pdf (visited on 10/09/2024), Table 1.

[100] Maisto Guglielmo and Jacques Malherbe. *Trends in the Taxation of Capital Gains on Shares under Domestic Law*. Tech. rep. International Bureau of Fiscal Documentation. URL: https://www.ibfd.org/sites/default/files/2021-08/Taxation-of-Companies-on-Capital-Gains-sample.pdf (visited on 20/03/2024), p.14.

[101] For example, in Malta (Conrad Cassar Torregiani. *Malta - Corporate Taxation*. Tech. rep. IBFD, Oct. 2023. Chap. Country Analyses. URL: https://research.ibfd.org/collections/cta/printversion/pdf/cta_mt.pdf [visited on 26/03/2024], section 1.7).

[102] For example, in Germany (Andreas Perdelwitz. *Germany - Corporate Taxation*. Tech. rep. IBFD, Nov. 2023. Chap. Country Surveys. URL: https://research.ibfd.org/collections/gtha/printversion/pdf/gtha_de.pdf [visited on 26/03/2024], section 1.4).

[103] OECD Centre for Tax Policy and Administration, *The OECD's Project on Harmful Tax Practices Consolidated Application Note - Guidance in Applying the 1998 Report to Preferential Tax Regimes*, p.67.

[104] Guglielmo and Malherbe, *Trends in the Taxation of Capital Gains on Shares under Domestic Law*, p.14.

[105] OECD, *Harmful Tax Competition: An Emerging Global Issue*, p.6.

consider 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.[106]

According to the OECD's approach – which was further developed in its Base Erosion and Profit Shifting Action 5 report[107] – 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'".[108]

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 that exempt domestic or foreign capital gains from taxation contribute to base erosion and profit shifting in other countries.

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[106](OECD. *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*. Tech. rep. OECD, Oct. 2015. URL: https : / / www . oecd - ilibrary . org / docserver / 9789264241190 - en . pdf ? expires = 1614877067 & id = id & accname = guest & checksum = C393A092E4E891081A3EF1E1C25A4A40 [visited on 03/05/2022], p.69) For example, the 'headquarter regime' in South Africa, which grants preferential tax treatment to taxpayers was considered potentially harmful by the OECD in its 2015 report, among others, because it has ring-fenced the tax benefits from resident taxpayers while enabling foreign multinational enterprises to use South Africa as a conduit for passive income flows. For further details, see (Johann Hattingh. *South Africa - Corporate Taxation, Country Analyses*. Tech. rep. IBFD, 2024. URL: https://research.ibfd.org / collections / cta / printversion / pdf / cta _ za . pdf [visited on 19/04/2024], section 1.9.4.1). See also (OECD. *Harmful Tax Practices – Peer Review Results*. 2024. URL: https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/harmful-tax-practices/harmful-tax-practices-consolidated-peer-review-results-on-preferential-regimes.pdf [visited on 10/09/2024], p.4).

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

[108]OECD. *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Oct. 2017. URL: https : / / doi . org / 10 . 1787 / 9789264283954-en (visited on 10/01/2023), p.15.

Table 3.9. Assessment Logic: Capital gains taxation

ID	ID description	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

3.5 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[109] 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, economic undertakings with passive income streams (capital gains, dividends and interest/rents) are analysed.

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. Situations are assessed where companies that are engaged in a specific activity are subject to lower corporate income tax rates.

For this indicator, only tax exemptions for corporations are considered. As such, any exemption extended to shareholders on income received from a corporation are not assessed. Generally, we only consider exemptions for corporations that are tax residents in the assessed jurisdiction. However, when a jurisdiction has a deficient corporate tax residency scope (see the haven indicator on lowest available corporate income tax), we also consider in this indicator any exemptions offered to "non-resident" corporations in a specific economic sector.[110]

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 (ie not limited in time) and generally available to companies established in any part of the jurisdiction's territory (ie not limited to a specific area or zone).[111]

Importantly, only "profit-based" exemptions 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

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[109] 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.

[110] For more details, see ID 587 (in the LACIT indicator, see table 3.3) and ID 531 (in this indicator, see table 3.14).

[111] In contrast, exemptions that are limited to a specific territory (economic zones) and/or time (tax holidays) are measured in the haven indicator on economic zones and tax holidays. In addition, this haven indicator excludes cases of exemptions resulting from a patent box regime or exclusively relating to capital gains as these are covered in other haven indicators.

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

Tax exemptions for added corporations' 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 (ie not cost-based) and is penalised both in this indicator as well as in the haven indicator on economic zones and tax holidays.

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[112] 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 3.10 below.

Table 3.10. Scoring Matrix: Sectoral exemptions

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 Assessment** [100 = maximum risk; 0 = minimum risk] Tax Exemption Type		
		Full	Partial	Cost-based (Full or Partial)
1. Investment sector (passive income)	Financial investment	+ 25	+ 12.5	+ 0
	Real Estate investment	+ 25	+ 12.5	+ 0
2. Active income sectors (13 sectors)		+ 12.5	+ 6.25	+ 0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

The maximum score for each of the two sub-indicators (investment and active income sectors) is 50 points. In the sub-indicator on the investment sector, if jurisdictions exempt fully both financial and real estate, then the haven score will be 50 points. In the other sub-indicator on active income sectors, when a

[112] By "headline rate" we refer to the lowest available corporate income tax 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 the haven indicator on the lowest available corporate income tax, 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.

jurisdiction fully exempts four or more economic sectors, it will have a haven score of 50 points.

Furthermore, in cases where four or more economic sectors are fully exempt, then in the haven indicator of the same name 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 active income sectors (one full exemption is assessed as two partial exemptions).

Similarly, if a jurisdiction presents a tax exemption under a special entity regime, the special 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 (ie four fully exempt or eight partially exempt), then the exempt entity regime will be accounted for in the haven indicator on the lowest available corporate income tax as the lowest deviating corporate income tax rate applicable to specific types of companies3.1.

In addition, for this indicator, we do not take into account cases where a jurisdiction systematically exempts foreign-source active income from the corporate tax base[113] If, however, there are legal provisions that effectively exempt income in specific sectors by reclassifying income from specific activities as foreign exempt 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: (i) a business entity is taxable under the corporate income tax law, but if the entity is exclusively engaged in a specific activity, it is subject to lower or no tax; and (ii) an entity is taxable under corporate income tax 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 3.11 below highlights the focus of the analysis.

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[113] Please refer to the third adjustment of Step 3 in the haven indicator on the lowest available corporate income tax (section 3.1.)

Table 3.11. 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 is offered 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:[114]

> 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 States achieve that goal.[115]

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[116], entity-level exemptions are covered as explained below.

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[114] 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." (OECD. *Model Tax Convention on Income and on Capital: Condensed Version 2017*. Tech. rep. OECD, 2017. URL: https://www.oecd-ilibrary.org/fr/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2017_mtc_cond-2017-en [visited on 22/04/2020], p.63)

[115] OECD, *Model Tax Convention on Income and on Capital*, p.64.

[116] Tax exemptions to the shareholder or parent companies are considered in the haven indicator on foreign investment income (from the perspective of the company that receives a dividend from foreign sources), and in the haven indicator on dividend withholding taxes (from the perspective of the company that pays the dividend abroad).

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 (ie “corporations” or “companies”). Thus, we do not cover an investment entity exemption if non-taxation is derived from partnership legal form (tax-transparency) 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. An explanatory diagram is provided in Figure 3.4.

Figure 3.4. Typology of collective investment vehicles

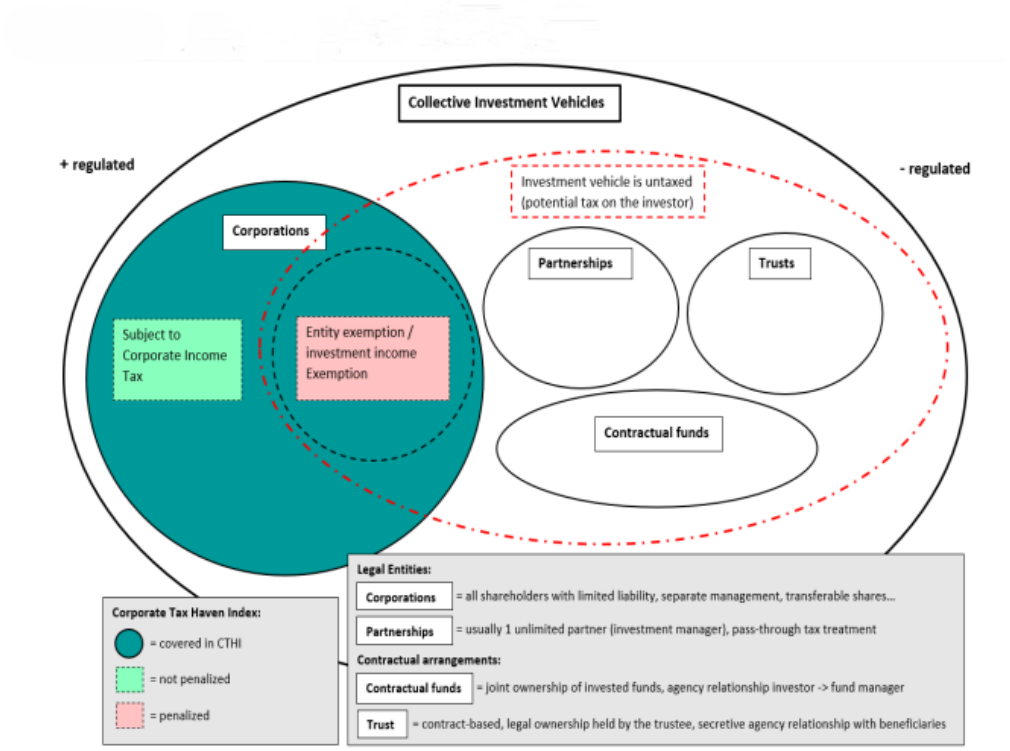

Table 3.12. Scoring Matrix for sub-indicator 1: Investment sector

Sub-indicator Regulation [0 points= minimum risk; 50 points=maximum risk. Each jurisdiction’s score starts at 0, and for each exemption found, a specific credit is added (either 25 or 12.5 points) according to the type of exemption applicable, up to a maximum of 50 points.]	**Full Exemption**	**Partial Exemption**	**No exemption (or disregarded “cost-based incentive”)**
Financial products: Companies engaged in investment activities with regards to shares, bonds, and/or derivatives are subject to a lower corporate income tax rate and/or at least one of the main income streams is tax-exempt.	+ 25	+ 12.5	+ 0
Real Estate: companies engaged in real estate investment are subject to a lower corporate income tax rate and/or rents or real estate capital gains are tax-exempt.	+ 25	+ 12.5	+ 0

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.

For example, in Spain, investment funds are considered taxable legal entities, and these are taxed at a rate of 1 per cent.[117] 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 per cent of the capital stock – are subject to tax at a 10 per cent rate or more.[118] 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 points, out of a haven score of 50 points 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),[119] Deloitte (International Tax Highlights),[120] PricewaterhouseCoopers (Worldwide Tax Summaries)[121] and Invest Europe (Tax Benchmark Study 2018, in association with KPMG).[122]

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.

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[117] Álvaro de la Cueva González-Cotera and Esther Quintana Ortiz. *Spain - Corporate Taxation*. Tech. rep. IBFD, Dec. 2023. Chap. Country Analyses. URL: https : / / research . ibfd . org / collections / cta/printversion/pdf/cta_es.pdf (visited on 26/03/2024), Sections 1.10.1 & 12.1.

[118] de la Cueva González-Cotera and Quintana Ortiz, *IBFD ES 2023b*, Section 12.6.

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

[120] Deloitte. *Tax Guides and Country Highlights | Deloitte International Tax Source*. URL: https : / / dits . deloitte.com/#TaxGuides (visited on 08/03/2019).

[121] *Worldwide Real Estate Investment Trust (REIT) Regimes*. Tech. rep. PricewaterhouseCoopers, Oct. 2019. URL: https://www.pwc.com/gx/en/asset-management/assets/pdf/worldwide-reit-regimes-nov-2019.pdf (visited on 05/03/2021).

[122] Invest Europe and KPMG. *Tax Benchmark Study 2018 : Defining Tax Environments for the Private Equity and Venture Capital Industry*. Tech. rep. June 2018. URL: https://www.investeurope.eu/media/1156/ie_tax-benchmark-study-2018.pdf (visited on 08/03/2019).

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,[123] and Eurostat[124] (see Table 3.13 below).

The aim of using the framework in Table 3.13 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 corporate income tax 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 where 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.[125]

For each sector, our methodology distinguishes between "no exemption", "partial exemption" and "full exemption". While the latter corresponds to a zero per cent rate, "partial exemption" is assessed when the statutory or constructive tax rate applicable for an economic activity is lower than the headline tax rate applicable to unspecified economic sectors. As such, when alternative regimes are available for certain economic activities, we consider that such regimes amount to a partial exemption.

The rationale for this assessment rests on the following consideration. If an alternative tax regime is not structured as an "alternative minimum tax", we consider that the effective tax is likely lower than the corporate income tax that would otherwise be due. Indeed, with "alternative minimum tax" regimes, if the tax due under the alternative regime is lower than the corporate tax calculated pursuant to the general regime, the general corporate income tax applies. On the contrary, with "substitute" alternative tax regimes, if a lower tax is applicable under the alternative regime, such lower tax is due. Thus, we consider that all

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[123] *International Standard Industrial Classification of All Economic Activities (ISIC), Rev. 4*. Tech. rep. New York: United Nations, 2008. URL: https://unstats.un.org/unsd/publication/SeriesM/seriesm_4rev4e.pdf (visited on 08/03/2021).

[124] EUROSTAT. *NACE Rev. 2 Statistical Classification of Economic Activities in the European Community*. Tech. rep. European Commission, 2008. URL: https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF (visited on 08/03/2021).

[125] In some cases, it would take a team of accountants and tax lawyers to ascertain whether the alternative regime is 'preferable' to the regular corporate income tax 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 corporate income tax liability, then such a regime is likely to lower the tax liability of covered activities, in comparison to the statutory corporate income tax rate.

alternative regimes that are not legislated as alternative minimum taxes are constructively equivalent to partial exemptions to corporate income tax. Profits-based tonnage tax regimes are considered alternative regimes akin to partial corporate income tax exemptions. This is also consistent with the treatment of alternative tax regimes in every other sector.[126]

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 Malta, income from bars, spa and wellness services, as well as betting and gambling activities are covered under the tonnage regime.[127] Therefore, we consider that the "accommodation, food and recreation" sector is partially exempt.[128] It is not uncommon that activities in the "extractives" sector are covered by tonnage tax regimes (see ID 526).

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

Table 3.13 below provides an overview of the classification of economic sectors and activities used in the Corporate Tax Haven Index. The classification derives from the United Nations Statistics Division's sectoral classification (Rev4 2008)[129] and the European Commission Eurostat's statistical classification of economic activities in the European Community (NACE Rev.2, 2008).[130]

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[126] This has not always been the way these regime have been treated. In the first edition of the Corporate Tax Haven Index 2019, we retained an exception to the above rationale with regards to "tonnage tax" regimes. 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 regressive; that is, the higher the total tonnage of a shipping company, the lower the marginal tax will be for each additional tonne. In 2019, we considered that a "tonnage tax" regime limited to transportation and necessarily related activities was in line with "international tax standards". For this reason, if a tonnage tax regime was not over broad, it was not accounted as an exemption. However, after more detailed analysis of tonnage regimes, we concluded that such regimes were not adopted by a majority of jurisdictions. Due to the inconsistent coverage and depth in the analysis of tonnage tax regimes in IBFD, we systematically review regimes by consulting relevant legislation and other available sources, to ascertain the availability (and width of coverage) of tonnage tax regimes. However, we found in the Corporate Tax Haven Index 2021 that over and above the no-corporate income tax or zero per cent corporate income tax countries, there is parity between jurisdictions that do not provide any exemption to the shipping business, and jurisdictions that provide for tonnage taxation of such activities (around 35 per cent of the). Thus, it does not seem appropriate to disregard tonnage regimes in the analysis of (partial) tax exemptions, on the basis that such regimes are internationally accepted. For this reason, profits-based tonnage tax regimes are now considered alternative regimes akin to partial corporate income tax exemptions.

[127] European Commission. *Commission Decision of 21.10.2015 on State Aid SA.38374 (2014/C Ex 2014/NN) Implemented by the Netherlands to Starbucks*. 2015. URL: https://ec.europa.eu/competition/state_aid/cases/253201/253201_1762441_575_2.pdf (visited on 30/08/2019).

[128] The harmfulness of such uncomprehensive coverage is apparent from the following example. A Maltese company owns a fleet of boats equipped with casinos, bars and spas, where customers spend money over the year. The company is cautious to increase or decrease the price of the ticket ("genuine" transportation income) so that the income from casinos, bars and spas is always below 50 per cent of total revenue, complying with law. 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 and spa operations is completely unrelated to the tonnage of the ship. Thus, a large portion of such income potentially remains untaxed.

[129] *International Standard Industrial Classification of All Economic Activities (ISIC), Rev. 4*.

[130] EUROSTAT, *NACE Rev. 2 Statistical Classification of Economic Activities in the European Community*.

Two notable differences are the following: 1) investment activities are separated from the more functional side of finance (Banking and Insurance); and 2) natural resource extractive activities (Extractives) are separated from other raw material producing activities (Agriculture and Farming). Sectors designated A-F are excluded from analysis due to usual direct control by public authorities, or informality.

Table 3.13. Classification of economic sectors and activities

	Economic Sector	Includes
1	Investment activities	- Financial investment: fund and asset management, trade, brokerage - Real estate investment: Buying/selling real estate, renting/operating real estate, agencies and intermediation
2	Extractives	- Mining, crude/gas extraction, quarrying - Water collection - Maritime fishing, hunting, natural forest logging -Support services (excl. processing)
3	Agriculture and farming	- Cultivation, forestry (cultivation/logging) - Farming (land, fisheries) - Related services (excl. processing)
4	Manufacturing	- Processing of raw materials: Food products, beverages, textiles, apparel, wood products, paper products, printing, reproduction of recorded media, refined petroleum products, chemicals (non-pharma), pharmaceuticals, rubber/plastic products, other non-metallic prods., basic metals, metal products (excl. machinery), hardware and optical prods., electrical equipment, machinery, motor vehicles, other transport equipment, furniture, other manufacturing (jewels, coins, instruments, games, medical instruments..), repair/installation of machinery
5	Construction	- Construction of buildings - Specialised construction services (demolition, drilling, electrical, plumbing)
6	Infrastructures	- Energy: Electric power generation/distribution, fuel distribution (incl. pipelines) - Water: treatment, supply, sewerage (excl. collection) - Waste: collection, disposal, waste management, remediation - Civil infrastructure (construction & operation): construction of roads, rails, dams, airports, seaports, construction of Energy/water/waste facilities.
7	Transportation and storage	- Land (passenger, freight), water (passenger, freight), air (passenger, freight, space), warehousing (storage, support/incidental activities in transport, cargo handling), postal and courier activities

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	Economic Sector	Includes
8	Distribution and wholesale	- Wholesale/ retail of goods: raw materials (incl. precious metals), food and beverages, vehicle products, household, information technology (IT) equipment: * including mail/internet order retail sales (incl. warehousing if integrated) - Buy/sell intermediation: distribution centres, export services, sales agents
9	Accommodation, food services and recreation	- Hotels, accommodation, - Food and beverage service activities, - Recreation (including amusement parks, gaming, gambling, excluding internet platforms) - For-profit sports activities
10	Information and Telecommunications	- Publishing: books, directories, journals, software, games... (Excluding direct sales by the publisher through the internet => retail) - Audio-visual production and publishing: sound and video (including integrated production/dissemination by the publisher through the internet) - News and Broadcasting: Incl. Radio/TV, news agencies, newspapers (incl. print and digital) - Telephone/Internet service providers: access to internet/telephone service (including cable/satellite network construction & maintenance)
11	Information technology (IT) services	- Internet platforms: digital intermediation, incl. online gaming (income: usually subscription based, fee based, advertisement or other data monetizing) (excluding internet based retail) - Internet-related services: (server hosting, could computing, website maintenance, cybersecurity) - Other IT services (programming, implementation, data processing and analysis)
12	Banking and Insurance	- Banking: including deposits, credit, monetary intermediation, leasing - Insurance: insurance and reinsurance, excluding social security - Auxiliary activities: if integrated, including financial market administration, risk and damage evaluation, back office processing (if differentiated, auxiliary activities are considered within Business Services)

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	Economic Sector	Includes
13	Professional & Technical Services	[All advisory, professional activities other than IT] - Law; Tax; accounting; financial advisory (financial services other than core banking, insurance and investment activities, trust & company services, excl. fund/asset management) - Technical: architectural, engineering, testing and analysis, hardware/software consultancy, R&D (natural sciences and engineering, biotech, social sciences); - Marketing/advertisement: advisory (excluding online advertisement platforms); - Other professional (design, photo, translation...); - Medical/veterinary services.
14	Business Services / Intermediation	[business function outsourcing, B2B] - Management services: external management (excl. Fund management) - Rental and leasing activities: vehicles, machinery, equipment (including charters)/ leasing of intellectual property and similar products (IP/licensing) - Employment activities (human resources and temporary employment agencies), - Security and investigation (private security, security systems, investigation), - Services to buildings and landscaping, - Auxiliary support services (office support, call centres, conventions, credit rating, packaging)
A	Public administration and defence; compulsory social security	- Social services, foreign affairs, defence, justice, fire services, social security...
B	Education	- Including sports and recreation
C	Human health and social work activities	- Human health (public health services), residential care (public nursing, disability, rehabilitation, elderly), social work (excl. accommodation, childcare)
D	Arts, entertainment and recreation	- Creative/performing arts, libraries/museums, non-profit sport associations
E	Membership organisations and extraterritorial bodies	- Membership organisations (economic groupings, trade unions, religious groups, political organisations...), international organisations
F	Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	- Domestic personnel, production for own use

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".[131] For example, if investment in fossil fuels is profitable at 5 per cent when taxed under the regular regime, and a country provides a tax incentive that makes the investment profitable at 20 per cent, 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 are sovereign and thus can incentivise specific sectors for purposes they deem legitimate, such as for promoting renewable 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 2015 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.[132]

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.

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[131] Council of Economic Advisors. *Economic Report of the President (2007)*. Tech. rep. H. Doc. 110-2. United States Government Printing Office, 2007. URL: https://www.govinfo.gov/app/details/ERP-2007 (visited on 27/05/2019), pp.18, 63–70.

[132] International Monetary Fund et al. *Options for Low Income Countries Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank*. Tech. rep. World Bank, Oct. 2015. URL: http://elibrary.worldbank.org/doi/book/10.1596/22923 (visited on 28/03/2018), p.20.

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".[133] In addition, the report focuses on tax regimes that are "usually targeted specifically to attract those economic activities which can be most easily shifted [...], generally financial and other services activities", even though this was not considered as a criteria of harmfulness.[134]

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".[135] The authors of the study 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.[136]

The OECD has been monitoring the abolishment of harmful tax practices. According to the OECD, providing tax exemptions to "geographically mobile financial and other services activities" is a "key factor" in identifying a harmful regime.[137] 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.[138] As a result, a number of regimes fall through the cracks. In particular, the OECD 2020 monitoring report on harmful tax practices does not recognise the harmfulness of the most common exemptions available:

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[133] OECD, *Harmful Tax Competition: An Emerging Global Issue*, p.25.

[134] OECD, *Harmful Tax Competition: An Emerging Global Issue*, p.25.

[135] Junhyung Park et al. 'A Partial Race to the Bottom : Corporate Tax Developments in Emerging and Developing Economies' (Jan. 2012). URL: 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 (visited on 25/05/2019), p.22.

[136] Park et al., 'A Partial Race to the Bottom', p.21.

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

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

that is, those applicable to investment activities, banking and insurance and business services.[139]

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 in a 2015 report by staff from the IMF, the World Bank, and the OECD itself.[140] Furthermore, the Forum needs to pay particular attention to jurisdictions that replace one harmful tax practice for another.[141] Such loophole-building intentions may eventually render the process largely ineffective.

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.

Table 3.14. Assessment Logic: Sectoral exemptions

ID	ID description	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)

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[139] OECD, Global Forum on Transparency and Exchange of Information for Tax Purposes. *Harmful Tax Practices - Peer Review Results*. Tech. rep. OECD, Nov. 2020. URL: https://www.oecd.org/tax/beps/harmful-tax-practices-peer-review-results-on-preferential-regimes.pdf (visited on 04/03/2021).

[140] International Monetary Fund et al., *Options for Low Income Countries Effective and Efficient Use of Tax Incentives for Investment*.

[141] *Letters Seeking Commitment on the Replacement by Some Jurisdictions of Harmful Preferential Tax Regimes with Measures of Similar Effect*. Feb. 2019. URL: https://data.consilium.europa.eu/doc/document/ST-5981-2019-INIT/en/pdf.

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
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)
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)
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)

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
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)

3.6 Economic zones and tax holidays

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 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.[142] 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.[143] These regimes are assessed in the haven indicator on the lowest available corporate income tax where the "weakest link" principle is followed.

b) On the other hand, some jurisdictions determine a different corporate income tax 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 institutions. In this indicator, we consider such special tax regimes as applicable to economic zones.[144]

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[142] FIAS. *Special Economic Zones Performance, Lessons Learned, and Implications for Zone Development*. Apr. 2008. URL: http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf (visited on 09/05/2018).

[143] 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*. URL: https : / / stats . oecd . org / index . aspx ? DataSetCode=TABLE_II3 [visited on 04/04/2019]).

[144] 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 per cent rate will apply from April 2018 (Jivaan Bennett. *United Kingdom - Corporate Taxation*. Tech. rep. International Bureau of Fiscal Documentation, Nov. 2020. URL: https : / / research . ibfd . org / # / doc ? url = /linkresolver / static / cta _ uk [visited on 05/03/2021], Section 1). In Spain, companies established in its African enclaves Ceuta and Melilla benefit from a 50 per cent tax exemption on income from operations in these territories. (Álvaro de la Cueva González-Cotera and Adrián Arroyo Ataz. *Spain - Corporate Taxation*. Tech. rep. International Bureau of Fiscal Documentation, Jan. 2021. URL: https : //research.ibfd.org/#/doc?url=/linkresolver/static/cta_es [visited on 05/03/2021], Section 1) Closer to

Importantly, only tax exemptions considered "profits-based" are penalised by this indicator. Profits-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 (ie not cost-based) and penalised in both this haven indicator and the haven indicator on sectoral exemptions.

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] (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 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.[146] 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 the haven indicator on sectoral exemptions.

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the traditional understanding of an Economic Zone, companies licensed to operate in the Seychelles' "International Trade Zone" are considered tax exempt entities. (Emily Muyaa. *Seychelles - Corporate Taxation*. Tech. rep. IBFD, May 2020. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_sc [visited on 05/03/2021], Section 1).

[145] By "headline rate" we refer to the lowest available corporate income tax 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 the haven indicator on the lowest available corporate income tax, 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 section 3.1.

[146] For example, in Latvia, companies continue to benefit from "old" free port and special economic zone regimes until 31 Dec 2035. For Special Economic Zone and Free Port companies, corporate income tax is reduced by 80 per cent. Although the exemption is limited in time, because the partial corporate income tax exemption applies for 10 or more years, we consider that the exemption is permanent rather than temporary. (Gerzova, *Latvia - Corporate Taxation - 1. Corporate Income Tax*, Sections 1.4.1.3 & 1.9.4.1).

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 2022 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 2022. Any tax regimes effectively abolished or amended in 2022 or after will be considered when we reassess this indicator for the next edition of the Corporate Tax Haven Index.

The haven score is computed as explained in Table 3.15 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.

The data for this indicator was sourced from the International Bureau of Fiscal Documentation (IBFD) database,[147] websites of the big four accounting firms, government designated websites including those of the ministries of finance, the tax authorities and investment agencies.[148]

Table 3.15. Scoring Matrix: Economic zones and tax holidays

Regulation [0 = minimum risk; 100 maximum risk.] 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 Assessment** [100 = maximum risk; 0 = minimum risk] Tax Exemption Type	
		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

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

[148] For more details about robustness of the data and sources, see (Markus Meinzer et al. *Comparing Tax Incentives across Jurisdictions: A Pilot Study*. Tech. rep. 2019, p. 43. URL: https://www.taxjustice.net/wp-content/uploads/2018/12/Comparing-tax-incentives-across-jurisdictions_Tax-Justice-Network_2019.pdf [visited on 03/07/2019]).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

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.[149]

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.[150] 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.[151] 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.[152] The International Monetary 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.[153]

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.[154] 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

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[149] Alexander Klemm. *Causes, Benefits, and Risks of Business Tax Incentives*. International Monetary Fund, 2009. URL: https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Causes-Benefits-and-Risks-of-Business-Tax-Incentives-22628.

[150] Christopher Heady and Mario Mansour. *Tax Expenditure Reporting and Its Use in Fiscal Management A Guide for Developing Economies*. International Monetary Fund. Fiscal Affairs Dept. International Monetary Fund, 2019. URL: 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 (visited on 15/03/2024), p.7.

[151] Heady and Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management A Guide for Developing Economies*, p.1.

[152] Heady and Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management A Guide for Developing Economies*, p.2.

[153] Heady and Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management A Guide for Developing Economies*, p.1.

[154] OECD. *Implementing the Latest International Standards for Compiling Foreign Direct Investment Statistics. FDI Statistics by the Ultimate Investing Country*. Tech. rep. 2015. URL: https://www.oecd.org/daf/inv/FDI-statistics-by-ultimate-investing-country.pdf (visited on 05/06/2018).

advantage of those incentives. In some sectors, eg mining, time-bound tax incentives can be particularly harmful as they may cause a high grading of reserves.[155]

The objectives of geographically-confined tax incentives are usually to attract foreign direct investment, 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.[156] However, research shows that tax incentives are often ineffective in attracting foreign direct investment, especially in developing countries.[157] 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.[158] Evidence also suggests that providing geographically-confined tax incentives imposes pressure on policymakers to provide the same benefits to other geographic areas, increasing revenue loss and social distortions.[159]

Furthermore, tax incentives confined in economic zones (such as 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.[160] These zones are often used for the transhipment of goods without the adequate export control, to hide profits and reduce tax payments, or for the creation of legal entities to launder illicit proceeds.[161] The Financial Action Task Force (FATF) reports cases where free trade zones are used

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

[156] Douglas Zhihua Zeng. *Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters*. 2010. URL: https://doi.org/10.1596/978-0-8213-8432-9.

[157] Alexander D. Klemm and Stefan van Parys. *Empirical Evidence on the Effects of Tax Incentives*. Tech. rep. 09/136. International Monetary Fund, July 2009. URL: https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Empirical-Evidenceon-the-Effects-of-Tax-Incentives-23053 (visited on 25/03/2020).

[158] Oyetunji Abioye. *IMF Wants Nigeria to Stop Tax Holidays*. Oct. 2017. URL: https://punchng.com/imf-wants-nigeria-to-stop-tax-holidays/ (visited on 05/03/2021).

[159] Mario Mansour and Michael Keen. *Revenue Mobilization in Sub-Saharan Africa : Challenges from Globalization*. Tech. rep. 09/157. International Monetary Fund, July 2009. URL: https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Revenue-Mobilization-in-Sub-Saharan-Africa-Challenges-from-Globalization-23124 (visited on 16/12/2018).

[160] FATF-GAFI. *Money Laundering Vulnerabilities of Free Trade Zones*. Tech. rep. Mar. 2010. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf (visited on 03/05/2022).

[161] FATF-GAFI, *Money Laundering Vulnerabilities of Free Trade Zones*; FATF and Egmont Group. *Money Laundering and Terrorist Financing through Trade in Diamonds*. Tech. rep. Oct. 2013. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-through-trade-in-diamonds.pdf (visited on 08/03/2019).

for the laundering of drug trafficking proceeds, and used by multinational companies to shift profits abroad, circumventing transfer pricing regulations.[162]

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 be widely used worldwide.[163]

Table 3.16. Assessment Logic: Economic zones and tax holidays

ID	ID description	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 different* tax exemptions	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?	Number different* tax exemptions	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 different* tax exemptions	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?	Number different* tax exemptions	ID504*25

...continues on next page

[162] FATF and Egmont Group, *Money Laundering and Terrorist Financing through Trade in Diamonds*, p.61.
[163] OECD, *Harmful Tax Practices – Peer Review Results*.

Continuing from previous page...

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
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)?	Number different* tax exemptions	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)?	Number different* tax exemptions	ID540*25

*Note: We consider that two tax exemptions are different if either the tax rate and/or the duration of the tax exemption differs.

3.7 Patent box regimes

3.7.1 What is measured?

This indicator measures if a jurisdiction offers exemptions or preferential tax treatment for income related to intellectual property rights (eg patent boxes) and whether the OECD nexus approach constraints (as explained below) are applicable to the patent box regimes. 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.[164] 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 fully includes foreign royalties in its domestic corporate income tax base and if it has not introduced a patent box regime, either with or without the constraints determined by the OECD nexus approach. A haven score of 100 points is given if the jurisdiction offers a patent box regime without OECD nexus constraints, exempts foreign royalties altogether from its tax base or if the patent box regime is not applicable for the jurisdiction because it imposes no corporate income tax or has a zero statutory tax rate. The haven score is reduced by 10 points if the patent box regime offered by the jurisdiction is in line with the OECD nexus approach.

The scoring matrix is shown in Table 3.17, with full details of the assessment logic in Table 3.18 below.

Table 3.17. Scoring Matrix: Patent box regimes

Regulation	Haven Score Assessment [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

[164] Alex Cobham. *Will the Patent Box Break BEPS?*. July 2015. URL: https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/,%20https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/ (visited on 06/06/2019).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

Jurisdictions can entice tax avoidance, base erosion and profit shifting through the channel of intellectual property related payments by either broadly exempting foreign royalty income from its domestic tax base or by offering narrower preferential tax treatment for royalty payments. In cases where a country exempts foreign-source royalty payments, the risk it creates for cross-border tax avoidance is so high that the availability of a patent box regime in that country becomes irrelevant as in effect the consequences of exempt royalty payments are potentially equal to that of a narrower patent box regime which is not in line with the nexus approach. The nexus approach by the OECD was intended to constrain the potentials for tax abuse arising purely from the narrower type of patent box regimes that offer deviating preferential tax treatment.

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

The final Action 5 report of the OECD Action Plan on Base Erosion and Profit Shifting (BEPS), which focuses on tackling harmful tax practices[165] (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.[166]

The nexus approach, as developed by the OECD and presented in 2014 in a preliminary Action 5 report,[167] was one among others suggested for requiring

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

[166] The Action 5 report includes two parts, the first aims to identify whether features of patent box regimes are harmful and the second aims to ensure 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.

[167] OECD. *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*. Tech. rep. OECD, Sept. 2014. URL: https://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance_9789264218970-en (visited on 03/05/2022).

substantial activity for any preferential tax regime, such as patent box regimes.[168] 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.[169] 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, ie, qualified research and development activities).[170,171]

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 per cent 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.[172] For the 2021 edition of the Corporate Tax Haven Index, in cases where a jurisdiction introduced grandfathering rules that enable companies to continue benefiting from the old patent box regime (without nexus constraints) until 30 June 2021, we considered the grandfathering provision as no longer applicable and assessed the amended regime instead. When the data for this indicator is assessed within our next cycle update, we will revisit the way jurisdictions have complied with their commitment to eliminate certain patent box regimes.

The data for this indicator has been collected primarily through the International Bureau of Fiscal Documentation (IBFD) database (country analyses and country

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[168] 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. See (Ajay Gupta. 'News Analysis: The Patent Box: A Bad Idea Crosses the Atlantic'. *Tax Notes* [July 2015]. URL: https://www.taxnotes.com/tax-notes-today-federal/intangible-assets/news-analysis-patent-box-bad-idea-crosses-atlantic/2015/07/20/14938061 [visited on 03/04/2020]).

[169] Cobham, *Will the Patent Box Break BEPS?*.

[170] See (OECD, *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*). 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.

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

[172] OECD. *Explanatory Paper: Agreement on Modified Nexus Approach for IP Regimes*. Tech. rep. 2015. URL: https://www.oecd.org/ctp/explanatory-paper-beps-action-5-agreement-on-modified-nexus-approach-for-ip-regimes.pdf (visited on 03/04/2020).

surveys),[173] the OECD's latest peer reviews[174] of preferential regimes, and the review by ministries of finance of our jurisdiction-level assessments of the indicators. In some instances, we have also consulted additional websites and reports of the Big 4 accountancy firms and local tax authorities.

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 base of jurisdictions elsewhere.[175] 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 activity in host countries in the absence of a local development requirement.[176]

Similarly, 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.[177]

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.[178] In fact, it appears that jurisdictions without such patent box

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

[174] OECD. *Harmful Tax Practices – Peer Review Results on Preferential Regimes*. Tech. rep. Nov. 2018. URL: http://www.oecd.org/tax/beps/update-harmful-tax-practices-2017-progress-report-on-preferential-regimes.pdf (visited on 10/01/2023).

[175] Nicholas Shaxson. *Patent Boxes: Progress, or More Racing to the Bottom?* Nov. 2014. URL: https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/ (visited on 03/04/2020).

[176] Gary Guenther. *Patent Boxes: A Primer*. Tech. rep. Congressional Research Service, May 2017, p. 28. URL: https://fas.org/sgp/crs/misc/R44829.pdf, p.19.

[177] Fabian Gaessler et al. *Should There Be Lower Taxes on Patent Income?* Tech. rep. National Bureau of Economic Research, 2018.

[178] Annette Alstadsæter et al. 'Patent Boxes Design, Patents Location, and Local R&D'. *Economic Policy*, 33(93) (Jan. 2018), pp. 131–177. URL: https://academic.oup.com/economicpolicy/article/33/93/131/4833998 (visited on 03/04/2020).

regimes have been more successful in attracting and fostering innovative businesses.[179] 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.[180] 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 doubled, increasing to €743m.[181] Finally, a report published by the Centre for European Economic Research in 2013 claims that:

> 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.[182]

Importantly, patent box regimes confirm the futile notion of competition on tax, locking in a race to the bottom.[183] As a result, while patent boxes could increase tax revenues in theory, positive effects of an individual country's policy are likely to be eroded by the response of other governments, which may introduce even more aggressive and corrosive tax policies.[184] 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.[185] 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.[186]

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[179] CPB Netherlands Bureau for Economic Policy Analysis. *A Study on R & D Tax Incentives: Final Report*. Tech. rep. Luxembourg: European Commission, 2014. URL: https : / / ec . europa . eu / taxation _ customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_52.pdf.

[180] Shaxson, *Patent Boxes*.

[181] Esmé Berkhout. *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax*. Tech. rep. Oxfam Policy Paper, Dec. 2016, p. 46. URL: https : / / www . oxfam . org / sites / www . oxfam . org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf.

[182] Lisa Evers et al. *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*. Nov. 2013. URL: http : / / ftp . zew . de / pub / zew - docs / dp / dp13070 . pdf (visited on 07/10/2019), pp.38-39.

[183] Shaxson, *Patent Boxes*.

[184] Evers et al., *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, p.39.

[185] Fatih Guvenen et al. *Offshore Profit Shifting and Domestic Productivity Measurement*. Tech. rep. National Bureau of Economic Research, 2017.

[186] Andrew Hwang. *Thinking Outside the (Patent) Box: An Intellectual Property Approach to Combating International Tax Avoidance*. Tech. rep. Roosevelt Institute, 2018, p. 28. URL: http : / / rooseveltinstitute . org/wp-content/uploads/2018/05/Thinking-Outside-the-Patent-Box-final.pdf.

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 amount of qualifying profits may be unlimited.[187] 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".[188] This may be a recipe for sweetheart deals[189] as evident in the LuxLeaks revelations[190] and the European Commission's decisions on illegal state aid from countries.[191] In addition, 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, as of 2021, the nexus approach has not been implemented long enough to enable empirical validation that confirms our arguments for its insufficiency. We therefore reduce the haven score by 10 points for jurisdictions that offer patent box regimes in line with the OECD nexus approach.

Another significant flaw of the entire OECD review of potentially harmful tax regimes is that it only focuses on what the OECD qualifies as high risk "geographically mobile business income",[192] and thus ignores any other economic activities that might equally result in base erosion and profit shifting and lead to

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[187] Nicholas Shaxson. *The UK Patent Box – Will It Come Back in through the Back Door, Accompanied by Germany?* Nov. 2014. URL: https://www.taxjustice.net/2014/11/13/uk-patent-box-will-come-back-back-door-accompanied-germany/ (visited on 03/04/2020).

[188] Shaxson, *Patent Boxes*.

[189] Alex Cobham. *#Luxleaks: The Reality of Tax 'Competition'*. Dec. 2014. URL: https://www.cgdev.org/blog/luxleaks-reality-tax-competition (visited on 03/04/2020).

[190] ICIJ, *Luxembourg Leaks*.

[191] European Commission. *State Aid Control*. URL: https://ec.europa.eu/competition/state_aid/overview/index_en.html (visited on 03/04/2020).

[192] OECD. *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*. OECD/G20 Base Erosion and Profit Shifting Project. 2019. URL: https://doi.org/10.1787/9789264311480-en (visited on 20/05/2019), p.13.

lower corporate taxes.[193] In fact, except for the modified nexus approach for patent boxes, the Action 5 framework does not require robust and clearly defined economic substance. As a result, countries may create substance rules which are easy to comply with but in effect will not require the companies to materially change the gross disproportion between substance or expenditure, and profits attributed.[194]

Furthermore, the Action 5 framework has weaknesses in its ring-fencing approach by disregarding broad exemptions or low corporate tax for all foreign source income in territorial tax systems.[195] As such, the risks arising from territorial tax systems like Gibraltar or Singapore are ignored. For these reasons, we have applied a more exhaustive approach that resulted in several jurisdictions receiving a haven score of 100 points in this haven indicator despite the OECD's conclusion that the application of the nexus approach or even the complete abolishment of the patent box regime in those jurisdictions results in harmlessness.

Table 3.18. Assessment Logic: Patent box regimes

ID	ID description	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, an exemption or a lower CIT for IP-income is available without OECD nexus constraints. 1: Yes, an exemption or a lower CIT for IP-income is available with OECD nexus constraints. 2: No, there is no exemption or a lower CIT for IP-income.	0: 100 1: 90 2:0

[193] Heady and Mansour, *Tax Expenditure Reporting and Its Use in Fiscal Management A Guide for Developing Economies*.

[194] Rachel Etter-Phoya et al. 'Tax Base Erosion and Corporate Profit Shifting: Africa in International Comparative Perspective'. *Journal on Financing for Development*, 1(2) (2020), pp. 68–107. URL: https://uonjournals.uonbi.ac.ke/ojs/index.php/ffd/article/view/560 (visited on 29/04/2020).

[195] OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, pp.38-39.

3.8 Fictional interest deduction

3.8.1 What is measured?

This indicator measures whether a jurisdiction offers fictional interest deduction to lower corporate income taxes. Since the deduction is given even though no actual interest is paid, the interest deduction is referred to as 'fictional' or 'nominal'. Fictional interest deduction allows a company with a capital structure with high equity (ie 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 (ie 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),[196] the Centre for European Economic Research's 2017 Report,[197] the International Monetary Fund's 2018 report[198] and the European Union Code of Conduct 2018 report.[199] In some instances, additional websites and reports of the Big 4 accountant firms have also been consulted.

A jurisdiction receives a haven score of 100 points for this indicator if it has a fictional interest deduction regime. If there is no fictional interest deduction regime, a jurisdiction receives a zero haven score. The scoring matrix is shown in Table 3.19, with full details of the assessment logic in Table 3.20 below.

Table 3.19. Scoring Matrix: Fictional interest deduction

Regulation	Haven Score Assessment [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

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

[197] Christoph Spengel et al. *Effective Tax Levels Using the Devereux/Grifith Methodology- Project for the EU Commission TAXUD/2013/CC/120, Final Report 2017*. Tech. rep. Centre for European Economic Research, Jan. 2018. URL: https://ec.europa.eu/taxation_customs/sites/taxation/files/final_report_2017_effective_tax_levels_en.pdf (visited on 27/12/2018).

[198] Shafik Hebous and Alexander D. Klemm. *A Destination-Based Allowance for Corporate Equity*. IMF Working Paper. IMF, Nov. 2018. URL: https://www.imf.org/en/Publications/WP/Issues/2018/11/08/A-Destination-Based-Allowance-for-Corporate-Equity-46314 (visited on 15/03/2024).

[199] 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*. Tech. rep. Dec. 2018. URL: http://data.consilium.europa.eu/doc/document/ST-9639-2018-REV-2/en/pdf (visited on 25/03/2019).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.8.2 Why is this important?

The difference in the tax treatment of equity returns (ie dividends) and returns on debt (ie 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.[200]

Many tax systems around the world offer tax advantages for corporations to finance their investments by debt rather than through dividends (equity). Dividends are not deductible and are paid to shareholders only after tax has been paid, while interest payments on loans are one of the many deductible costs a company can make for corporate tax purposes. Thus, the more debt a company takes on, the more interest it pays, and this lowers its tax bill and leads to a debt bias, that is, a tax-induced bias toward debt finance. Evidence show that debt bias creates significant inequities, complexities, and economic distortions.[201] The 2008 economic crisis brought home the harmful economic effects of excessive levels of debt in the banking sector.[202]

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.[203]

Given that excessive debt in financial firms creates negative spillover effects in the rest of the economy,[204] countries should endeavour to prevent this bias

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[200] Ruud A de Mooij. 'Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions'. *Fiscal Studies*, 33(4) (2012), pp. 489–512. URL: https://www.jstor.org/stable/24440192.

[201] Norman TL Chan. *Excessive Leverage - Root Cause of Financial Crisis.* Dec. 2011. URL: https://www.bis.org/review/r111215g.pdf (visited on 21/01/2021); Ruud de Mooij et al. *Fixing the Great Distortion: How to Undo the Tax Bias Toward Debt Finance*. Nov. 2016. URL: https://www.imf.org/en/Blogs/Articles/2016/11/10/fixing-the-great-distortion-how-to-undo-the-tax-bias-toward-debt-finance (visited on 15/03/2024).

[202] Ruud A de Mooij. *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*. IMF Staff Discussion Note. May 2011. URL: https://www.imf.org/external/pubs/ft/sdn/2011/sdn1111.pdf (visited on 15/03/2024), p.3.

[203] 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.

[204] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.19.

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 first introduced in Belgium in 2005, multinational companies used commonly applied techniques of abuse. Through double dipping, Belgian companies ended 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.[205]

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 it may also shift the tax burden to other segments of society, especially labour and less mobile businesses. Additionally, in response to fictional interest deduction, other countries may decide 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.[206] 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 in 2008.[207] 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.[208] 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.[209] This worsens inequality in the distribution of the tax contributions and aggravates human rights deficits.

Within the European Union, guidance on notional interest deduction was produced by the Group for the Code of Conduct for business taxation. Endorsed by the Council of the European Union in December 2019, the guidance aims to assist "Member States that would wish to implement a similar [notional interest

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[205] Bernard Peeters and Thomas Hermie. *Notional Interest Deduction: The Belgian Experience*. Tech. rep. Brussels, Belgium: Tiberghien Lawyers, 2012. URL: https : / / www . tiberghien . com / media / ACTL%20seminarie_Bernard&Thomas.pdf (visited on 21/01/2021).

[206] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.18.

[207] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.17.

[208] Madalina Cotrut. *International Tax Structures in the BEPS Era*. 2015, pp.110-112.

[209] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.18.

deduction] regime to those already assessed as not harmful by the Group".[210] The guidance outlines a non-exhaustive list of the limitations of the scope of notional interest deduction and anti-abuse measures that place the burden of proof with the taxpayer. Examples of limitations to minimise the vulnerability of a regime to tax abuse include exclusion of a company's own shares, prohibiting the notional interest deduction from being applied where it would create or increase tax losses and limiting the regime to only new equity created after the starting date of the regime. Further, member states are required to maintain data to provide to the Code of Conduct Group on the number of taxpayers benefitting from the regime, how many of the companies benefitting are domestic or foreign owned companies, and the aggregate amount of income benefitting from the regime.[211] Nevertheless, in the Corporate Tax Haven Index, the differentiation between harmful and non-harmful notional interest deduction regimes by the European Union is considered as not sufficiently limiting the potential for tax abuse. In fact, the very existence of such regimes, even with all the European Union's limitations and anti-abuse measures, means that companies can still deduct hypothetical interest expenses within a specific scope. As such, EU member states with this regime that are considered "not harmful" are still awarded a full haven score in this indicator.

A possible solution for addressing the debt bias, supported by the International Monetary Fund and others,[212] is by introducing an Allowance for Corporate Equity (often referred to as ACE). Here, the deduction for interest is typically retained and a similar deduction for the normal return on equity is added.[213] Yet as indeed the Fund points out, ACE could induce tax planning similar to classical debt shifting spurred on by differences in CIT rates, creating yet another race to the bottom. Debt shifting would only be significantly curtailed if all countries were to adopt ACE, which is unlikely, while "an asymmetric adoption of ACE by only some countries can induce new forms of tax planning".[214] Rather than adopting the fictional interest deduction regime or an allowance for corporate equity, further 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 [...]".[215] Denying the deduction of interest on cross-border intra-company loans[216] would force multinational companies either to borrow funds and share the risks among their local domestic subsidiaries or

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[210] Council of the European Union. *Guidance on Notional Interest Deduction Regimes, Code of Conduct Group (Business Taxation) Report to the Council*. Tech. rep. 8374/20. Brussels, Belgium: Council of the European Union, Nov. 2019. URL: https://data.consilium.europa.eu/doc/document/ST-14114-2019-INIT/en/pdf (visited on 09/05/2023), p.5.

[211] Council of the European Union, *Guidance on Notional Interest Deduction Regimes, Code of Conduct Group (Business Taxation) Report to the Council*, p.39.

[212] IMF. *Tax Policy, Leverage and Macroeconomic Stability*. IMF Staff Report. International Monetary Fund, Oct. 2016. URL: https://www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Tax-Policy-Leverage-and-Macroeconomic-Stability-PP5073 (visited on 15/03/2024).

[213] R. de Mooij et al., *Fixing the Great Distortion: How to Undo the Tax Bias Toward Debt Finance*.

[214] IMF, *Tax Policy, Leverage and Macroeconomic Stability*, p.28.

[215] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.19.

[216] See the haven indicator on deduction limitation of interest payments (section 3.13 for further details.

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 access to the more advantageous conditions that multinational companies enjoy in the international capital markets.[217]

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. In addition, it may create tax arbitrage opportunities that add a substantial cost of administration and compliance, which in turn can have deleterious effects on corporate income tax.[218] Instead, constraining deductibility of intra-group interest can assist host countries in protecting their tax base and facilitate fair market competition in domestic markets.

Table 3.20. Assessment Logic: Fictional interest deduction

ID	ID description	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

[217] George Turner. *Tax Justice Network Briefing - Shifting Profits and Dodging Taxes Using Debt*. Tech. rep. Tax Justice Network, Nov. 2017. URL: https://www.taxjustice.net/wp-content/uploads/2017/11/Dodging-taxes-with-debt-TJN-Briefing.pdf (visited on 02/12/2022), p.4.

[218] R. A. de Mooij, *Tax Biases to Debt Finance: Assessing the Problem, Finding Solutions*, p.13.

3.9 Transparency of 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, at a maximum cost of US$10, €10 or £10 or in an accessible format from which the data can be easily copied.[219]

The haven scoring matrix is shown in Table 3.21, with full details of the assessment logic given in Table 3.22.

Table 3.21. Scoring Matrix: Transparency of company accounts

Regulation	Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
Not online (at a small cost) Companies do not always publish their annual accounts online either for free or for a cost of up to €10/US$10/£10; or unknown.	100
Online at a small cost All types of companies file their annual accounts and publish them online at a cost of up to €10/US$10/£10.	50
Online for free, but not in a format that can be easily copied All types of companies file their annual accounts and publish them online for free, but not in a format that can be easiy copied.	25
Online, free & in a format that can be easily copied All types of companies file their annual accounts and publish them online for free and in a format that can be easily copied	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

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

[219] We believe online accessibility for free is a reasonable requirement given a) the prevalence of the internet 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.

will be further reduced to 25 points. To obtain a zero haven score, this data needs to be accessible online for free and in a format in which data can be easily copied and used for data analysis. Even if the cost per record is low, it can be prohibitively expensive to import and use this information, which limits the use of the data. Access costs create substantial hurdles for conducting real-time network analyses for constructing cross-references between companies and jurisdictions. Complex payment or user-registration arrangements for accessing the data (eg registration of an account, the requirement of a local identification number or sending a hard-copy request by post) should not be required.[220]

Other requirements refer to the accessibility of the information. Data is considered accessible only when it is fully downloadable from the internet in a format that can be used for data analysis (for example, XLS, XBRL and XML) or in a format that allows for copying and pasting the relevant information easily, and the pasted text is clear and usable. For example, if accounts are available only in PDF, we consider the data is not accessible as it is not possible to copy and paste the data in a clear and usable way.

We performed a random search of each of the relevant corporate registries to ensure that the accounts are effectively available online and that technical problems do not persistently block access. A precondition for a reduction of the haven score is that all available types of large companies with limited liability [221] are required to keep accounting records, including underlying documentation, for a period of at least five years and that they are required to submit accounts to a public authority. Given the risks involved in the absence of proper requirements for the retention of underlying documentation, we also apply these criteria for companies that are considered inactive or have ceased to exist for various reasons. An exception is made for cases of liquidation, where usually an external party, such as an insolvency practitioner, is involved, and hence, the risks posed by liquidated companies without sufficient records are fairly low.

We have drawn the information for this indicator from five principal sources. First, the Global Forum peer reviews[222] have been used to find out whether a company's financial 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

[220] 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.

[221] This indicator is also assessed in our complementary index, the Financial Secrecy Index. However, this index focuses only on large companies (ie companies with an annual turnover threshold which is higher than €10m), while the scope of the Financial Secrecy Index covers all types of companies with limited liability, regardless of their size.

[222] 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 Tax Purposes. Section A.2. in the reports refers to, among other things, the requirement to keep underlying documentation and the retention period for keeping accounting records. The reports can be viewed at: (OECD. *Exchange of Information*. 2021. URL: https://www.oecd.org/tax/exchange-of-tax-information/ [visited on 06/05/2022]).

consulted. Third, review by ministries of finance of our jurisdiction-level assessments of the indicators. Fourth, in cases where the previous sources indicated that annual accounts are submitted and available online, the corresponding company registry websites have been consulted.

According to the weakest link principle[223], for our Corporate Tax Haven Index research, a precondition for reducing the haven score in this component is that all available types of large companies are required to publish the relevant information online and that the information is required to be updated at least annually. Suppose any exceptions are allowed for certain types of companies. In that case, we assume that anyone intending to conceal information from public view will simply opt for establishing a company where these requirements do not apply. In line with the Corporate Tax Haven Index's focus on large multinational companies, the only exception for keeping or filing accounts relates to small companies.

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 various reasons.

First, public accounts allow for assessing the potential risks of trading with limited liability companies. Thus, public accounts help protect the legitimate interests of a wide range of actors. These actors include consumers, clients, 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 the 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.

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[223]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.

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 corporate and individual 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, which is considered in another haven indicator (see section 3.10.

Table 3.22. Assessment Logic: Transparency of company accounts

ID	ID description	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 submitted to a public authority?	0: No, annual accounts are not always required to be submitted to 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.	0: 100 1 & 2: See below
201	Are annual accounts available on a public online record (up to €10/US$10/£10)?	0: No, company accounts are not always online (up to 10 €/US$/£10); 1: COST: Yes, company accounts are always online but only at a cost of up to 10€/10$/£10; 2 FREE: Yes, company accounts are always online for free, but not in open data format; 3 FREE & EASILY COPIED: 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”)

3.10 Public country by country reporting

3.10.1 What is measured?

This indicator measures whether multinational companies listed on the stock exchange or with parent companies incorporated in a given jurisdiction are required to publicly disclose financial reporting data about their global activities on a country by country reporting basis. Country by country reporting regimes come in different sizes and flavours. The focus in this indicator is on those regimes that require public disclosure of reports. There are divergences even among these public disclosure regimes. Some countries apply regimes that only cover specific sectors or that require only limited information to be disclosed on activities in other countries. Other regimes apply to all companies but limit the country activity coverage due in the reports.

In principle, any country could require all companies incorporated and operating under its laws (including subsidiaries, branches and holding companies) to disclose a report with the relevant information about the multinational company's global activity on a country by country basis. Appropriate reporting requirements can be implemented by a legal or regulatory provision enacted by the competent regulatory or legislative body.

This indicator measures the extent to which countries have enacted public country by country reporting rules. A zero score can be achieved when public country by country is required by all multinational companies (or at least all very large multinationals with consolidated turnover above a certain threshold) and the financial information to be reported is comprehensive (ie of a 'high or medium information standard' - see Table 3.23 for a summary of how we set these definitions) and with full geographical disaggregation, meaning that the information is reported country by country for each country of activity. As of yet, no country has applied such a regime.

If a jurisdiction does not require public country by country reporting for any corporation in any sector, or requires only one-off reporting (such as for the initial company listing on a stock exchange) the score is the maximum of 100 points. Jurisdictions that require annual public country by country reporting with only incomplete disclosures or partial disclosure for single data points, such as disclosures only for tax payments but not profit and losses before tax or not for employees or tangible assets (ie 'low information standard') receive a score of 90 points. A score of 50 can be achieved by requiring either all multinational companies active in certain sectors to annually report comprehensive information specified per country of activity (regardless of local incorporation) or by requiring all multinational companies (of all sectors) to annually report comprehensive information (ie 'high or medium information standard') on all activities performed by local group companies but with limited geographical disaggregation. The disaggregation is considered limited if the rules allow, for example, the reporting of aggregated group company information for certain groups of countries of

Table 3.23. Public country by country reporting: regime information standard

		Low information standard	Medium information standard	High information standard
Basic info	Receiving jurisdiction	✓	✓	✓
	Name of entities	x	x	✓
	Description of activities	x	✓	✓
Financial data	Revenue	x	✓	✓
	Revenues from third party sales	x	x	✓
	Revenues from intra-group sales	x	x	✓
	Profit or loss before tax	x	✓	✓
	Tangible assets other than cash	x	x	✓
	Number of employees	x	✓	✓
Tax data	Income tax paid	✓	✓	✓
	Income tax charged	x	✓	✓
	Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.	x	x	✓

activity. Although we prefer regimes to apply to any multinational corporation regardless of its size, we do not penalise the use of a minimum aggregate revenue threshold in cases where a reporting regime only applies to multinationals above a certain size.

If a country has adopted more than one regime that imposes public country by country reporting (like a general regime that applies to all companies and a specific regime with different features that applies only to a specific economic sector), the regime with the lowest score determines the country's score for this indicator. The relevant available regimes for each country are collected under ID 1003, available in each country's profile on our Corporate Tax Haven Index website.

For an overview of all data fields included in various country by country information reporting standards, please refer to Annex A.

The scoring matrix is shown in Table 3.24, with full details of the assessment logic presented in Table 3.25.

Table 3.24. Scoring Matrix: Public country by country reporting

Regulation	Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
No annual public reporting No annual public country by country reporting required for any corporations in any sector or only one-off reporting requirements (eg in the extractive industries when a company is initially listed).	100
Annual public reporting at low information standard Public country by country reporting required for corporations in certain or all sectors, but low standard information disclosure (eg only tax payments).	90
Annual public reporting at medium or high information standard but for limited sectors only Annual public country by country reporting at a medium or high standard of information is required for companies active in a specific sectors (eg banking), with or without full geographical disaggregation. **OR** **Annual public reporting at medium or high information standard for all sectors but without full individual country coverage** Annual public country by country reporting at a medium or high standard of information is required for all (very large) companies, but with limited geographical disaggregation.	50
Full reporting Full annual public country by country reporting required for all companies (or at least for those listed or for all above €750m turnover) of all sectors at a medium or high standard of information and with full geographical disaggregation.	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.10.2 Why is this important?

Country by country reporting helps to remove the veil of secrecy from the operations of multinational companies, which is why it has faced fierce opposition.[224] Traditional reporting requirements are so opaque that it is almost impossible to discover what multinational companies are doing or how much they are effectively paying in tax in any given country. This is also the case for countries with local multinational presence: countries may be aware what the

[224] Markus Meinzer and Christoph Trautvetter. *Accounting (f)or Tax: The Global Battle for Corporate Transparency*. Tech. rep. 2018. URL: https://www.taxjustice.net/wp-content/uploads/2018/04/MeinzerTrautvetter2018-AccountingTaxCBCR.pdf (visited on 07/05/2022).

local company is doing but do not have access to the global picture of the multinational's activities, including the internal dealings of the local company with other group companies. This opacity helps multinationals to minimise their global tax rates without being successfully challenged anywhere. Large-scale shifting of profits to low-tax jurisdictions and of costs to higher-tax countries ensues from this lack of transparency. Profit shifting is largely done through transfer mispricing, internal debt financing (thin capitalisation), reinsurance operations, or artificial relocation and licensing of intellectual property rights. These transactions take place within a multinational company, that is, between the different parts of a group 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 multinational company's international tax and financing affairs are effectively hidden from view. Not only do countries and their citizens forego significant amounts of tax revenue because of this profit shifting,[225] the lack of transparency also makes it difficult for policymakers to quantify the profit-shifting problem, which is needed to develop adequate solutions.

Under its Base Erosion and Profit Shifting (BEPS) project, the OECD has attempted to solve the transparency problem but only from the perspective of countries with multinational presence and only in relation to very large multinational companies (multinational companies with an annual consolidated group revenue of at least €750m). In line with the recommendations under BEPS Action 13, many member countries of the OECD/G20 Inclusive Framework on BEPS have adopted domestic legislation that requires local parent entities of very large multinationals to file an annual country by country report in its jurisdiction. This report includes for each tax jurisdiction in which the multinational does business the amount of revenue, profit before income tax and income tax paid and accrued. The parent entity is also required to report the total employment, capital, retained earnings and tangible assets in each jurisdiction where it is active.[226]

In line with the BEPS Action 13 recommendations, countries have also been signing agreements for the automatic exchange of country by country reports. Such agreements are needed to compel the country where the report is filed by the parent company to share it with other countries where the multinational company is present. Various issues exist, however, with the OECD's confidential exchanging of country by country reports. First, several low-income countries, predominantly countries not covered by the Index, do not have the necessary treaties in place or are unable to comply with the imposed standards required to

[225] The Tax Justice Network estimates that according to most recent estimates, multinationals are shifting between USD 900 billion and 1,100 billion of profits per year, totalling a corresponding global tax revenue loss of about USD 311 billion. (Tax Justice Network, *State of Tax Justice 2023*).

[226] OECD. *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Oct. 2015. URL: http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en (visited on 06/05/2022).

participate in automatic exchange of information. This means that these countries will not receive information on multinationals active in their country, even though the information regarding the multinational's activities in their country is filed by the parent entity and thus available in the country of the parent jurisdiction. This is the case for many African countries.[227] Second, if countries do sign up to the automatic exchange of the reports, parent entity jurisdictions remain in control as they are allowed to suspend exchanges if the recipient country does not meet the OECD's proclaimed standards of confidentiality, consistency and appropriate use of country by country reports. Using the reports for proposing changes to transfer prices or adjusting a taxpayer's income using global formulary apportionment is furthermore explicitly outlawed by the OECD as an inappropriate use of country by country reports.[228] This prohibition is inconsistent with most other forms of exchange of information which can be relied on directly to enforce tax laws. This restriction on the use of CbCR data drastically reduces the usefulness of the regime. With the release of the 'GloBE Transitional CbCR Safe Harbour' regime in 2022 to reduce compliance cost associated with the new global minimum tax rules, the OECD itself admitted to the usefulness of country by country reporting data to determine multinationals' tax liabilities, something previously considered inappropriate.[229] Third, the reports are accessible only to countries where the multinational company is active in the sense that it has taxable presence in the country. Especially in the digitalised economy which thrives on the remote sale of goods and services, it is clear that multinationals can also be very active on a local market without taxable presence. Under the OECD's regime, such countries are not entitled to any information about multinational operations. This limited access of country by country information exacerbates global inequalities in taxing rights.[230]

Based on the exchanged country by country reports, the OECD does make publicly available a selection of anonymised and aggregated country by country data, but this disclosure is less helpful than may appear at first sight. Not only is the data aggregated and thereby potentially masks tax and other anomalies by individual multinationals, the data is also updated less frequently than it could be

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[227] Only 27 out of the 54 countries of Africa are member of the Inclusive Framework on BEPS. Of those 27 countries, only 8 countries are currently participating in the exchange of information of country by country reports. The remaining 46 countries of Africa have no access to this kind of information regarding locally active multinational companies. (OECD. *Compare Your Country: Tax Co-Operation*. URL: https://www.compareyourcountry.org/tax-cooperation/en/2/631/default [visited on 03/09/2024]).

[228] OECD. *BEPS Action 13 on Country-by-Country Reporting - Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*. Tech. rep. Sept. 2017. URL: http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf (visited on 23/09/2024), Paragraph 6.

[229] OECD. *Safe Harbours and Penalty Relief: Global Anti-Base Erosion Rules (Pillar Two)*. Dec. 2022. URL: https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/safe-harbours-and-penalty-relief-global-anti-base-erosion-rules-pillar-two.pdf (visited on 23/09/2024).

[230] Andres Knobel and Alex Cobham. 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights' (2016). URL: https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf (visited on 03/05/2022).

and is impaired by serious data limitations. Most importantly, reporting countries can opt out of having the data in locally filed country by country reports used for aggregate data publication.[231] Several important headquarter countries have done so, and this is especially harmful to low-income countries. For example, as of mid 2024, Viet Nam has not been able to sign up to the automatic exchange of country by country reports filed by foreign multinationals with activities in the country. Viet Nam's most significant foreign headquarter country, South Korea, is one of the many countries that has opted against submitting aggregated country by country statistics.[232] As such, Viet Nam has no access to information on locally active foreign multinationals, which is detrimental to the country's ability to adequately reshape its corporate tax rules in light of recent international developments.

Countries could overcome the failures of the selective and confidential sharing of country by country reports between tax authorities under the OECD's rules by adopting rules that require the public disclosure of country by country reports.

However, countries (and their tax authorities) are not the only relevant stakeholders with a vested interest in public disclosure of multinationals' country by country reports. Public disclosure would also allow investors, trading partners, financial regulators, civil society organisations, and consumers to make better informed decisions. Civil society, for example, does not have access to reliable information about a multinational company's tax bill in a given country in order to question a company's policies on tax and corporate social responsibility, thereby exposing multinationals to reputational risk and helping citizens to make informed consumption choices.[233] Public information access would also allow tax authorities and auditing institutions to be better at making 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 government bodies often hardly know where to start looking for suspicious activity because corporate tax returns reveal only a partial view of corporate activity.[234] Evidence furthermore suggests that routine public scrutiny of country

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[231] OECD. *Corporate Tax Statistics - Anonymised and Aggregated Country-by-Country Reporting Data - Frequently Asked Questions*. July 2024. URL: https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/corporate-taxation/corporate-tax-statistics-country-by-country-reporting-faqs.pdf (visited on 18/09/2024).

[232] See (OECD. *Country-by-Country Reporting – Compilation of 2022 Peer Review Reports. Inclusive Framework on BEPS: Action 13*. Tech. rep. Oct. 2022. URL: https://doi.org/10.1787/5ea2ba65-en [visited on 18/09/2024], p.219) and (OECD. *Corporate Tax Statistics 2023 - Country-by-country Reporting Statistics*. Tech. rep. 2023. URL: https://doi.org/10.1787/f1f07219-en [visited on 18/09/2024], p.52). The peer review report urges Viet Nam to sign up to exchange of information instruments whereas a similar peer recommendation is not imposed on South Korea urging the country to provide statistical data.

[233] For an example of a report elaborated on data from mandatory disclosures made by extractive companies in the European Union, see (Transparency International EU. *Under the Surface: Looking into Payments by Oil, Gas and Mining Companies to Governments*. Oct. 2018. URL: https://api.eiti.org/sites/default/files/attachments/under-the-surface_full_report1.pdf [visited on 23/09/2024]) and (Lisa Lee et al. *Buried Treasure: The Wealth Australian Mining Companies Hide around the World*. Tech. rep. Oxfam Australia; Tax Justice Network Australia; Uniting Church in Australia, July 2019. URL: https://apo.org.au/node/250226 [visited on 18/09/2024]).

[234] For an explanation of why this is very likely to remain the case for most developing countries even after introduction of OECD's non-public country-by-country reporting see (Knobel and Cobham,

by country reports by researchers and media can result in a tangible deterrent effect on profit shifting.[235]

For all of these reasons, the Tax Justice Network has, since 2003, consistently advocated for public country by country reporting and was the first in doing so. Implementation of the standards in the Tax Justice Network's proposal for public country by country reporting from 2010[236] would ensure comprehensive information on multinational corporate activities is in the public domain for different stakeholders. The proposal requires multinational companies of all sectors, listed and non-listed, to annually disclose certain items of information for each individual country in which they operate, known for the purpose of this indicator as the 'medium standard of information'. This medium standard of information comprises (at least) the following items of information, individualised per country of activity:

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.

Other organisations have subsequently built on the Tax Justice Network's public country by country reporting proposals. In December 2019, the Global Reporting Initiative (GRI) - an independent organisation that provides a widely recognised framework for sustainability reporting - published its standard for multinational's public reporting on tax (known as GRI 207-4: 2019[237]). Full public disclosure of comprehensive country by country reports is one of four elements of the tax reporting standard.[238] Like the Tax Justice Network's proposal, in 2010, the Global Reporting Initiative standard also requires country by country reporting to apply to multinationals in all sectors and information to be reported per country of

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'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights').

[235] In a paper published in 2021, economists at the University of Cologne investigated 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. (Michael Overesch and Hubertus Wolff. 'Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance'. *Contemporary Accounting Research*, 38(3) [Jan. 2021], pp. 1616–1642. URL: https://onlinelibrary.wiley.com/doi/10.1111/1911-3846.12669 [visited on 13/05/2022]).

[236] Tax Research UK and Tax Justice Network. *Country-by-Country Reporting*. Research Briefing. 2010. URL: http://www.taxresearch.org.uk/Documents/CBC.pdf (visited on 08/05/2022).

[237] Global Reporting Initiative. *GRI 207: Tax 2019*. Dec. 2019. URL: https://www.globalreporting.org/pdf.ashx?id=12434 (visited on 07/05/2022).

[238] Global Reporting Initiative, *GRI 207*.

operation. The breadth of information to be reported under the GRI is slightly wider, though, than the Tax Justice Network's initial proposal. For example, under the GRI 207 standard, multinationals also need to report per country on the "reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax."[239]

While the relevance of access and use of public country by country reporting has been well established in recent years, it is clear that the policy debates regarding the appropriate breath of information to be reported is on-going. For example, given the expected move from tax competition to subsidy competition triggered by the global minimum tax rules, it would be useful to include country by country information on subsidies received.[240] In the same vein, given the current debates on taxation of cross-border services in the digitalised economy at the United Nations, country by country reports should also include information on sales by destination country, instead of only reporting sales by the country in which they were booked as revenue by a group company.

For the purpose of this indicator, country by country reporting regimes like those under the initial pioneering Tax Justice Network proposal and Global Reporting Initiative standards are considered regimes that implement a 'medium standard of information'. If the regime also requires reporting on reasons of varying effective tax rates, it is considered a regime with a 'high standard of information'.

In recent years, a number of countries have introduced binding public country by country reporting regimes along the standards suggested by the Tax Justice Network and the GRI. In November 2021, the European Union adopted Directive 2021/2101 imposing public country by country reporting on very large multinationals headquartered in the EU.[241] By mid 2024, the Directive was transposed into the domestic law of all but three EU member countries. Reporting starts for financial years beginning after 21 June 2024.

While the EU regime has a wide scope of application, it requires only a medium standard of information reporting. For example, no disclosure of reasons for divergent effective tax rates is required under the Directive. The EU regime also does not require full disaggregation. Only activities by the multinational in other EU countries and in listed 'non-cooperative jurisdictions' need to be reported on a country by country basis. Information on activities in other countries has to be reported on an aggregated basis. This is a serious restriction of the effectiveness of the Directive's reporting regime.[242] Australia is another example of a country

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[239] Global Reporting Initiative, *GRI 207*, Section 207-4-b-x at p.14.

[240] For a discussion on the global minimum tax from the perspective of the Tax Justice Network's Corporate Tax Haven Index see Section 2.7.

[241] European Union. *Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches (Text with EEA Relevance)*. Nov. 2021. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021L2101 (visited on 18/09/2024).

[242] While not affecting individual EU countries' score for the purpose of the indicator, the widespread use of certain optional clauses in the national transposition of the Directive is further watering down the effectiveness of the regime. Examples of these such opt-outs are the safeguard proviso

that is currently contemplating the introduction of a comprehensive public country by country regime along the lines of the standards suggested by the Tax Justice Network and Global Reporting Initiative. The latest bill to enact such a wide scoped reporting regime was introduced to the Parliament of Australia in June 2024. Under the proposed regime, multinational companies are required to report information at a high standard, which means they are also required to disclose reasons for divergent effective tax rates. Full geographical disaggregation of the information is not required, however.[243,244]

Another approach followed is the creation of country by country reporting rules that apply only to certain sectors of the economy or in relation to certain economic activities. One example of this narrower approach is derived from the reporting standard developed by the Extractive Industries Transparency Initiative (EITI). The EITI Standard is implemented by more than 50 countries around the world. EITI member countries commit to annually disclose information on payments and government revenues received from the extractive industries companies active in their countries.[245]

Separate from the EITI standard, a number of countries have implemented narrow country by country reporting regimes that apply only to multinationals active in the extractive industries. The information reporting obligation under these regimes is similar to the disclosure requirement taken on by countries under the EITI standard: in-scope multinationals are obliged to disclose "material payments" to governments on a country by country basis. This usually includes payments like mining royalties, mining dividends, production entitlements and taxes paid to the local government but not information on company sales, employment or profits and losses before tax. For this reason, these types are considered to employ a low information standard. These types of regimes usually do require full geographical disaggregation, meaning that all "material payments" to whichever country have to be individually specified per country. Examples of

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for allowing companies to temporarily exclude certain commercially sensitive information from the country by country report, the lack of compulsory publication of the report on the company's website if published in a public online register and the omission of a penalty regime to sanction non-compliance with the reporting. See (European Union, *EU Directive 2021/2101*, Article 48c(6)), and (PWC. *EU Public Country-by-Country Reporting Tracker*. Apr. 2024. URL: https://www.pwc.com/gx/en/tax/pcbcr/pwc-pcbcr-tracker-full-data.pdf [visited on 30/06/2024]).

[243] Parliament of Australia. *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*. 2024. URL: https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7199.

[244] Cindy Chan. *New Country-by-Country Reporting Regime Proposed for Large Multinationals*. Aug. 2024. URL: https://www.wolterskluwer.com/en-au/expert-insights/country-by-country-reporting-multinationals (visited on 23/09/2024).

[245] The EITI Standard (2023) Requirement 4 on revenue collection, requires "comprehensive disclosure 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 transactions; (4.6) subnational payments; (4.7) level of disaggregation; (4.8) data timeliness; and (4.9) data quality of the disclosures. Revenue streams include the host government's production entitlement (eg 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. (EITI. *The EITI Standard 2023*. June 2023. URL: https://eiti.org/sites/default/files/2024-04/2023%20EITI%20Standard_Parts1-2-3.pdf [visited on 23/09/2024]).

such regimes currently in place are the reporting regime on EU companies active in the extractive and logging industry, introduced by EU Directive 2013/34 of 2013 and fully transposed by all EU countries.[246] Similar regimes have been adopted in Canada by means of the Extractive Sector Transparency Act of 2014[247] and in the United States by means of the Dodd Frank Act of 2010. The relevant section of this Act, section 1504, effectively entered into force only in 2021 and only in 2024, US multinationals active in the extractive industry have been filing the first public country by country reports under the Act.[248]

Finally, a second type of sector specific public country by country reporting regime are the reporting obligations for financial institutions introduced by EU Directive 2013/34 (also known as the 'Capital Requirements Directive IV'). The Directive's rules, which have been fully transposed in all EU Member Countries, require EU banks to annually report on turnover, number of employees, profit or loss before tax, tax on profit or loss, and public subsidies received. No information is required regarding sales or capital assets. As such, this regime employs a medium standard of information reporting with full geographical disaggregation of individual country information is required under this regime.

A comparison of information standards of the various country-by-country reporting regimes is provided in Annex A.

[246] European Parliament and Council of the European Union, *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, Amending Directive 2006/43/EC of the European Parliament and of the Council and Repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA Relevance*.

[247] Government of Canada. *Extractive Sector Transparency Measures Act*. 2014. URL: https://laws-lois.justice.gc.ca/eng/acts/E-22.7 (visited on 07/04/2023).

[248] United States. *Dodd-Frank Wall Street Reform and Consumer Protection Act*. July 2010. URL: https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf (visited on 23/09/2024).

Table 3.25. Assessment Logic: Public country by country reporting

ID	ID description	Answers					
1001	Does the jurisdiction have legislation in place that requires companies to publicly disclose their country by country reports or authorities to make those reports publicly available?	No	Yes				
1005	How frequently is reporting required for the type of country by country reporting being assessed?	-	Less than annually or one off	Annually			
1004	What is the 'standard of reporting' that companies have to meet, according to the type of country by country reporting being assessed?	-	-	Low	Medium OR High		
1007	What is the level of coverage by sectors, according to the type of country by country reporting being assessed by the assessment?	-	-	-	Some sectors	All sectors	All sectors
1008	Are any further restrictions applied (other than by sector or threshold), according to the type of country by country reporting being assessed?	-	-	-	-	Yes	No
Valuation score		100		90	50		0

3.11 Tax rulings and extractive industries' contracts

3.11.1 What is measured?

This indicator measures whether a jurisdiction issues unilateral cross-border tax rulings, and if these are at least published online in full text and with the name(s) of the taxpayer(s); and for jurisdictions with extractive industries, whether extractive industries contracts are published. Accordingly, we have split this indicator into two components:

1. **Component 1: 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, with full text and the names of the taxpayers, or if some are made available upon payment of a fee in a redacted form or anonymised.
2. **Component 2: extractive industries' contracts**. We assess whether a jurisdiction publishes extractive industries (mining and petroleum) contracts online for free.

For jurisdictions with substantial extractive industries (as defined by the Natural Resource Governance Institute[249]), we assess components 1 and 2 on an equal basis so that each contributes 50 points to the overall haven score. Table 3.26 below summarises the applicable assessment components.

Table 3.26. Applicable Scoring Logic

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

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".[250] 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

[249] The Natural Resource Governance Institute maintains a Contract Disclosure Practice and Policy Tracker (The Natural Resource Governance Institute. *Contract Disclosure Practice and Policy Tracker*. Mar. 2021. URL: https : / / docs . google . com / spreadsheets / d / 1FXEeD43jw6VYHV8yS - 8KJ5 - rR5l0XtKxVQZBWzr-ohY/edit#gid=0 [visited on 22/04/2022]).

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

information exchange of advance cross-border rulings and advance pricing arrangements.[251] The tax rulings covered by the scope of this indicator are a subset of these rulings, as they only comprise those with a cross-border element and those issued by the tax authority to specific taxpayers (rather than the public at large). The scope of our indicator covers the following six categories of rulings included under the spontaneous information exchange framework of the OECD's Base Erosion and Profit Shifting Project Action 5:

> ... (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.[252]

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 binding interpretation of tax law issued publicly by the tax administration through circulars, regulations or similar administrative acts.

It is essential to differentiate unilateral cross-border tax rulings from bilateral or multilateral advance pricing arrangements. These 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.[253] In contrast, unilateral cross-border tax rulings or unilateral advanced pricing agreement (hereinafter together referred to as "unilateral cross-border tax rulings") do not require, per se, prior agreement. Consequently, only unilateral cross-border tax rulings are considered, representing the highest risk for abusive tax practices.

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[251] 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) of(European Parliament and Council of the European Union. *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*. Dec. 2015. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN [visited on 03/05/2022]).

[252] OECD. *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Dec. 2017. URL: http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-peer-review-reports-on-the-exchange-of-information-on-tax-rulings_9789264285675-en (visited on 07/05/2022), p.9.

[253] 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 used by the OECD in its Transfer Pricing Guidelines as updated in 2010.(OECD. *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Tech. rep. Aug. 2010. URL: https://www.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2010_tpg-2010-en [visited on 12/05/2022], pp.169-172) Whilst 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 concerning information exchange(United Nations. *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)*. Tech. rep. New York, 2011. URL: https://www.un.org/esa/ffd/wp-content/uploads/2014/09/UN_Model_2011_Update.pdf [visited on 12/05/2022]).

Whenever no formal system exists for the issuance of unilateral cross-border tax rulings, we consider them not available unless we find more evidence that ruling issuance is an established practice. Jurisdictions that do not issue unilateral cross-border tax rulings (but impose income tax) receive the lowest haven score of zero.

To assess if unilateral cross-border tax rulings are available, we consider the OECD's peer reviews on harmful tax practices[254] as the prevailing source. If the OECD states that cross-border tax rulings exist, we assess the jurisdiction as able to issue rulings. This assessment is made regardless of what other sources say. This is because jurisdictions are motivated to disclose the status of rulings for the OECD peer review. So, if the government claims that it has a binding ruling or a ruling it has to honour, it will likely be so. In cases where the OECD states that there are no binding rulings, we do not necessarily apply the OECD assessment if we find another source that states rulings are available. In this case, the assessment will be left as "unknown" due to conflicting information. We have carried out additional research in cases where the OECD does not assess a jurisdiction. If the International Bureau of Fiscal Documentation[255] indicates that there are rulings, this is applied, and where there is a contradictory source, the score is unknown.

Where a jurisdiction issues unilateral cross-border rulings,it is assessed as being able to issue rulings, whether these rulings are considered binding or not. This is because the binding nature of tax rulings is a grey area. Even if rulings are not strictly binding, private sector tax advisers may have sufficient legal certainty to market the tax positions because of the low risks of litigation about those tax positions. In the absence of full disclosure of all rulings, we cannot assess the impact of rulings or their legal effect, and therefore, a jurisdiction is scored as being able to issue rulings.

Jurisdictions that issue unilateral cross-border tax rulings but do not make these available online in all cases (for instance, they make available only some tax rulings) receive the highest haven score of 100 points (or 50 points where both indicator components are assessed). If only minimal information is available online (eg a summary or a redacted version of the text), jurisdictions are scored 80 points (or 40 where both components are assessed). Where all tax rulings are available online in full text but are anonymised, that is, the name(s) of the taxpayer(s) involved are redacted; or when the opposite situation happens, ie the published tax rulings include the name(s) of the taxpayer(s) but not the full text of the tax ruling, then the score is 60 points (or 30 where both components are assessed). In cases where the full text of all tax rulings is available online and all tax rulings include the name(s) of the taxpayer(s) concerned, then the jurisdiction

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[254] OECD. *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*. Tech. rep. Dec. 2021. URL: https://www.oecd.org/tax/beps/harmful-tax-practices-2020-peer-review-reports-on-the-exchange-of-information-on-tax-rulings-f376127b-en.htm (visited on 27/04/2022).

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

receives a lower haven score of 20 points (or 10 where both components are assessed).

The data for this component was collected from several sources including country analyses and country surveys in the International Bureau of Fiscal Documentation's database,[256] the OECD's peer review on harmful tax practices,[257] studies commissioned by the European Union,[258] jurisdictions' relevant regulations and where available, the review by ministries of finance of our jurisdiction-level assessments of the indicators. In some instances, we have also consulted additional websites, academic journals, and the reports of accountancy firms 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 a consortium). Sometimes referred to as "primary contracts", these contracts can take several forms or a combination: concession, licence, production sharing and service agreements, along with shareholders' agreements where the government has an equity stake.[259] 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.[260] 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.

Jurisdictions that disclose all or nearly all contracts[261] online and for free, with a requirement for disclosure in law, are considered fully transparent and pose a

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

[257] OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*; OECD, *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings*.

[258] European Commission, *State Aid: Tax Rulings*; Elly Van de Velde. *'Tax Rulings' in the EU Member States*. Tech. rep. Brussels, 2015. URL: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf (visited on 08/05/2022).

[259] Peter Rosenblum and Susan Maples. *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. New York, NY: Revenue Watch Institute, 2009, p.19.

[260] The tracker (The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*) includes information for a) countries included in the Natural Resource Governance Institute's Resource Governance Index 2017, b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including some that have withdrawn membership or were delisted, and 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, 28.01.2019).

[261] 'All or nearly all' is the categorisation used by the Natural Resource Governance Institute (The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*) 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.

minimum tax spillover risk. They receive the lowest haven score of zero. Contract disclosure needs 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, a jurisdiction receives a slightly higher haven score of 10 points in case all or nearly all contracts are disclosed in practice but there is no requirement in the law to disclose contracts.

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 score for this component. Jurisdictions that have a legal requirement for contract disclosure but in practice do not disclose any contracts online receive a slightly lower component score.

Jurisdictions that disclose only some contracts[262] receive a reduced component score of 20 points if disclosure is required by law and 30 points if there is no legal requirement for contract disclosure.

Finally, the weakest link practice is applied when we assess contract disclosure in both the mining and petroleum sectors. For example, suppose 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. In that case, the country is assessed as having no extractive industries contracts disclosed in practice or by law and, therefore, would receive a haven score of 50 points.

The scoring matrix is shown in Table 3.27, with full details of the assessment logic given in Table 3.28, below.

[262] 'Some' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25.01.2019).

Table 3.27. Scoring Matrix: Tax rulings and extractive industries' contracts

Regulation		Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
Component 1 (default): Unilateral cross-border tax rulings (50 points if component 2 is also assessed; otherwise 100 points)		
Tax rulings are issued	**Not all tax rulings are published online (if any)** Only some or no unilateral cross-border tax rulings can be accessed online, or unknown, or the jurisdiction does not apply income tax.	Where both components are assessed: 50 each. Where only component 1 is assessed: 100
	Minimal information on tax rulings published online All unilateral cross-border tax rulings are published online, but in a reduced version and without the name(s) of the taxpayer(s) concerned.	Where both components are assessed: 40 Where only component 1 is assessed: 80
	All tax rulings are published in full text, but anonymised All unilateral cross-border tax rulings are published online in their full text, but without the name(s) of the taxpayer(s) concerned. **Or** **All tax rulings are published with the name(s) of the taxpayer(s), but not in full text** All unilateral cross-border tax rulings are published online, including the name(s) of the taxpayer(s) concerned but only in a reduced version.	Where both components are assessed: 30 Where only component 1 is not assessed: 60
	All tax rulings published online in full text with the name(s) of the taxpayer(s) All unilateral cross border tax rulings are published online, in full text, including the name(s) of the taxpayer(s) concerned.	Where both components are assessed: 10 Where only component 1 is assessed: 20
No tax rulings issued No unilateral cross-border tax rulings are available in the jurisdiction and the jurisdiction applies income tax.		0

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Regulation		Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
Component 2: Extractive industries contract disclosure (50 points where applicable): petroleum or mining (where both sectors exist, the assessment of most secretive sector is considered)		
	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 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 extractive industries contracts published All or nearly all extractive industries contracts as available publicly online	10	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.11.2 Why is this important?

Component 1: Unilateral cross-border tax rulings

The inherently problematic nature of unilateral cross-border tax rulings was widely exposed during the Lux Leaks scandal of 2014. As part of the subsequent investigations by the European Commission for Competition, it was determined that some of these rulings conflicted with the European Union's state aid rules

and, therefore, were illegal.[263] European Union member states, including Belgium, Luxembourg, Ireland, and the Netherlands, later appealed the European Commission's decision.[264] In the statement released by Executive Vice President of the European Commission Margrethe Vestager, on announcing the appeal against the decision regarding Ireland, she said:

> Making sure that all companies, big and small, pay their fair share of tax remains a top priority for the Commission. The General Court has repeatedly confirmed the principle that, while Member States have competence in determining their taxation laws, they must do so in respect of EU law, including State aid rules. If Member States give certain multinational companies tax advantages not available to their rivals, this harms fair competition in the European Union in breach of State aid rules. We have to continue to use all tools at our disposal to ensure companies pay their fair share of tax. Otherwise, the public purse and citizens are deprived of funds for much needed investments – the need for which is even more acute now to support Europe's economic recovery.[265]

These episodes have revealed that some 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. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13 billion, and despite Ireland's appeal, the European Court of Justice gave final judgement in the matter confirming the Commission's decision that unilateral tax rulings granted to the Apple Group consisted of unlawful aid, which Ireland must recover. taxes.[266]

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 others, often smaller competitors who neither can obtain nor know about the possibility of receiving 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. More recently, the LuxLetters[267] demonstrated that Luxembourg is still attempting to bypass transparency rules:

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[263] European Commission, *State Aid: Tax Rulings*.

[264] Peter Hamilton. 'State Recovers €14.3bn from Apple over Alleged State Aid'. *The Irish Times* (Sept. 2018). URL: https://www.irishtimes.com/business/technology/state-recovers-14-3bn-from-apple-over-alleged-state-aid-1.3633191 (visited on 03/05/2022).

[265] European Commission. *Statement by EVP Margrethe Vestager: Apple State Aid Case*. Sept. 2020. URL: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1746 (visited on 03/05/2022).

[266] Javier Espinoza et al. *Apple Must Pay €13bn in Back Taxes, Top EU Court Rules*. Sept. 2024. URL: https://www.ft.com/content/d6b7d0fd-a41b-45a9-a830-9cacb10c5151 (visited on 19/09/2024).

[267] Maxine Vaudano et al. '« LuxLetters » : la nouvelle astuce pour contourner la transparence fiscale au Luxembourg'. *Le Monde.fr* (July 2021). URL: https://www.lemonde.fr/evasion-fiscale/article/2021/07/01/luxletters-la-nouvelle-astuce-pour-contourner-la-transparence-fiscale-au-luxembourg_6086592_4862750.html (visited on 29/04/2022).

> Luxembourg began efforts in 2014 to meet EU and OECD rules on exchanging information with other countries about its corporate tax rulings. However, it is now revealed that shortly after this, many of Luxembourg's accounting and law firms engaged with the tax authority to establish "information letters" about the tax planning of multinational corporations. These information letters effectively fulfil the same purpose as tax rulings – but crucially, were deemed to be outside of the scope of the information exchange rules and so were not reported as rulings, according to sources familiar with the practice.
>
> Importantly, however, this too is prohibited under EU rules and is likely illegal also under OECD rules. Any type of tax agreements – even if not demonstrably legally binding – must be exchanged with European tax authorities.[268]

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 continue to be) made public in 1977 after the non-governmental 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.[269] However, since 1991, the US has provided the option of so-called "unilateral advance pricing arrangements" [APAs], which may include cross-border transfer pricing issues and are not public.[270]

We do not consider it acceptable if jurisdictions publish no or only some tax rulings because this gives tax authorities discretion about what to disclose. At the same time, while we recognise that publishing some information on all tax rulings allows users to know the number of rulings issued by each jurisdiction and

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[268] Tax Justice Network. *EU and OECD Half-Measures Fail to Detect Luxembourg's Shadow Tax Rulings*. July 2021. URL: https://taxjustice.net/press/eu-and-oecd-half-measures-fail-to-detect-luxembourgs-shadow-tax-rulings/ (visited on 29/04/2022).

[269] See (Markus Meinzer. *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*. Munich: C.H.Beck, 2015). See also (Thomas R. III Reid. 'Public Access to Internal Revenue Service Rulings'. *George Washington Law Review*, 41(1) [1972], p. 23. URL: https://heinonline.org/HOL/LandingPage?handle=hein.journals/gwlr41&div=10&id=&page=) and (Yehonatan Givati. *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*. SSRN Scholarly Paper ID 1433473. Rochester, NY: Social Science Research Network, June 2009. URL: https://papers.ssrn.com/abstract=1433473 [visited on 03/05/2022]).

[270] Although the IRS states a "Preference for Bilateral and Multilateral APAs" over unilateral ones (*Procedures for Advance Pricing Agreements. Internal Revenue Code 482: Allocation of Income and Deductions among Taxpayers. Rev. Proc. 2015-41*. 2015. URL: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf [visited on 23/09/2024], Section 2.4.d), the latter may nonetheless be available under certain conditions. After a lawsuit brought by BNA for disclosure of APAs, legislative action in December 1999 prevented the disclosure of APAs. (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) [Jan. 2000], pp. 143–234. URL: https://repository.law.umich.edu/mjil/vol21/iss2/1 [visited on 14/05/2022], p.160, footnote 52) and (Givati, *Resolving Legal Uncertainty*, p.174, footnote 130). In our classification, these so-called "unilateral APAs" would be considered unilateral tax rulings despite the name suggesting that it is an APA and thence involving at least two tax administrations.

maybe also the concerned taxpayers, anything short of publishing the full text of a tax ruling is of limited use. This is because, with just an extract or summary of the ruling, it is difficult to understand the ruling itself and the decision-making and planning that went into agreeing on the tax ruling. The European Court of Auditors confirms the problem concerning the summary tax rulings that are exchanged between member states: "the summary of uploaded rulings sometimes lacked sufficient detail for a proper understanding of the underlying information; it was difficult for Member States to know when to request further information and, if they did so, to demonstrate that it was needed for purposes of tax assessment".[271]

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 will likely be hardest hit by the impact of unilateral tax rulings on tax base poaching.

The European Union has subsequently introduced automatic information exchange between Member States on these rulings, which is an essential step towards transparency.[272] However, 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.[273] Yet even if all countries participated, exchange mechanisms 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 before the Lux Leaks scandal[274] bears witness to the 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,

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[271] European Court of Auditors. *Exchanging Tax Information in the EU: Solid Foundation, Cracks in the Implementation*. Tech. rep. 2021. URL: https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf (visited on 03/05/2022), p.35.

[272] European Parliament and Council of the European Union, *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*.

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

[274] 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 Zahlen*, pp.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*, p.289).

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[...].[275]

Lastly, publishing the full text of all rulings (disclosing the name(s) of the concerned taxpayer(s)) or at least exchanging them without exception with all relevant jurisdictions is much better than publishing only some rules or extracts from them. However, full transparency on tax rulings does not neutralise all the risks created by tax rulings in the first place. Accessing the text of a tax ruling is very different from understanding the consequences in practical terms, such as how much money will not be paid in tax or where profits will be shifted. In other words, issuing tax rulings adds to the current overwhelming problems tax authorities face worldwide. The lack of capacity in tax administrations, especially in lower-income countries, the complex nature of multinational cross-border transactions, and weak international transfer pricing regulations add further constraints to affected governments' efforts to counteract tax avoidance embedded in aggressive unilateral tax rulings. For this reason, jurisdictions can obtain a haven score of zero only when they do not issue any tax rulings.

Component 2: Extractive industries contract disclosure

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 jurisdictions use contracts, 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".[276]

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[275] Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect. *Report on Tax Rulings and Other Measures Similar in Nature or Effect: (2015/2066(INI))*. tech. rep. European Parliament, Nov. 2015. URL: https://www.europarl.europa.eu/doceo/document/A-8-2015-0317_EN.html (visited on 08/05/2022), Paragraph.86.

[276] Rosenblum and Maples, *Contracts Confidential*, p.16.

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 names of the companies involved and the area of land granted by the state through a formal legal title. Some contracts may make one or a few changes to general legislation or a model contract; 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).[277]

Governments stand to gain from ensuring all contracts are public. Contract disclosure helps governments compare their contracts with contracts in other jurisdictions, enables improved intra-governmental coordination in the enforcement of contracts, and can positively influence citizens' trust in the state.[278] There are already great asymmetries in the information that put governments at a disadvantage in negotiations with companies. Citizens can use the contracts to hold the government and companies accountable for 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.[279] 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.[280]

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. Still, being generous with the term, even if the information is deemed commercially sensitive, this "is only one consideration among many when determining whether information should be made publicly

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[277] 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 compared to other commercial contracts. According to Rosenblum and Maples, these general confidentiality clauses do 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" (Rosenblum and Maples, *Contracts Confidential*, p.27).

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

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

[280] Isabel Munilla and Kathleen Brophy. *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*. Tech. rep. Oxfam International, 2018, p. 64.

available".[281] 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".[282] 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.[283]

To date, no evidence suggests 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 signing contracts is often associated with great celebration by governments and companies.[284] Some companies have taken a lead in disclosing contracts signed with governments in countries where contracts are not typically disclosed.[285].

Publication of contracts and the project-level disclosure of revenues "are now established as international norms", according to an International Monetary Fund briefing at the end of 2018.[286] Indeed, significant progress has been made in recent years.[287] In September 2021, the International Council on Mining and Metals, established two decades ago to improve industry performance on sustainable development, adopted a contract disclosure principle for all members,[288] signalling the normalisation of contract transparency.

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[281] Rosenblum and Maples, *Contracts Confidential*, p.36.

[282] Robert Pitman. *Mongolia's Missing Oil, Gas and Mining Contracts*. Jan. 2019. URL: https://resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf (visited on 22/04/2022), p.6.

[283] Don Hubert and Rob Pitman. *Past the Tipping Point? Contract Disclosure within EITI*. tech. rep. Natural Resource Governance Institute, Mar. 2017, p. 48. URL: https://eiti.org/sites/default/files/attachments/past-the-tipping-point-contract-disclosure-within-eiti.pdf (visited on 22/04/2022), p.48.

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

[285] For example, Kosmos Energy(Sophie Durham. 'Contract Transparency Builds Trust and Mitigates Risk Says Kosmos'. *Extractive Industries Transparency Initiative* [Dec. 2018]. URL: https://eiti.org/blog/contract-transparency-builds-trust-mitigates-risk-says-kosmos [visited on 03/05/2022]) and Tullow Oil(Tullow Oil. *Equality and Transparency*. 2022. URL: https://www.tullowoil.com/sustainability/equality-and-transparency/ [visited on 29/04/2022]) had adopted public contract disclosure policies and disclosed contracts on their websites or stock exchanges by 2018

[286] International Monetary Fund. *Fiscal Transparency Initiative: Integration of Natural Resource Management Issues*. Tech. rep. Jan. 2019. URL: https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues (visited on 22/04/2022), p.7.

[287] Rob Pitman and Isabel Munilla. 'It's Time for EITI to Require Contract Transparency. Here Are Four Reasons Why.' *Natural Resource Governance Institute* (Feb. 2019). URL: https://resourcegovernance.org/blog/its-time-eiti-require-contract-transparency-here-are-four-reasons-why (visited on 06/05/2022).

[288] ICMM. *Transparency of Mineral Revenues: Position Statements*. Sept. 2021. URL: https://www.icmm.com/en-gb/about-us/member-requirements/position-statements/mineral-revenues (visited on 29/04/2022).

Civil society movements, especially through the convening network Publish What You Pay, have demanded that governments and companies commit to contract disclosure. Since 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.[289] Since 1 January 2021, all implementing countries must make public any new contracts they sign.[290]

Yet, disclosing contracts is just one part of the transparency measures needed throughout the contracting process, from planning and assessing applications to the awarding, negotiating, implementing and monitoring of contracts.[291] 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 create a more level playing field for smaller companies.[292]

[289] Dyveke Rogan and Gisela Granado. *Contract Transparency in EITI Countries: A Review on How Countries Report on Government's Contract Transparency Policy*. Tech. rep. Extractive Industries Transparency International International Secretariat, Aug. 2015.

[290] Extractive Industries Transparency Initiative. *EITI International Secretariat: The Board Agreed in Principle to the Proposals Made on Clarifications and Changes to the EITI Requirements*. Feb. 2019. URL: https://eiti.org/documents/board-agreed-principle-proposals-made-clarifications-and-changes-eiti-requirements (visited on 22/04/2022).

[291] Rob Pitman et al. *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice*. Tech. rep. Open Contracting Partnership; Natural Resource Governance Institute, June 2018. URL: https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf (visited on 06/05/2022); Open Contracting Partnership. *Open Contracting Global Principles*. URL: https://www.open-contracting.org/what-is-open-contracting/global-principles/ (visited on 22/04/2022).

[292] Stephen Knack et al. *Deterring Kickbacks and Encouraging Entry in Public Procurement Markets: Evidence from Firm Surveys in 88 Developing Countries*. Policy Research Working Papers. The World Bank, May 2017. URL: http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-8078 (visited on 07/05/2022).

Table 3.28. Assessment Logic: Tax rulings and extractive industries' contracts

ID	ID description	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=1: 40 ID363=1 & ID421=2 or 3: 30 ID363=1 & ID421=4: 10 ID363=0: 0
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: NONE OR SOME: None or only some of the unilateral cross-¬border tax rulings are published online. 1: MINIMAL (ANONYMISED AND NOT FULL TEXT): All unilateral cross-¬border tax rulings are published online, but in a reduced version and without the name(s) of the taxpayer(s) concerned. 2: ANONYMISED (FULL TEXT BUT ANONYMISED): All unilateral cross-border tax rulings are published online in their full text, but without the name(s) of the taxpayer(s) concerned. 3: SUMMARY (NAMED BUT NOT FULL TEXT): All unilateral cross border tax rulings are published online, including the name(s) of the taxpayer(s) concerned but only in a reduced version of the text. 4: COMPLETE (NAMED AND FULL TEXT): All unilateral cross border tax rulings are published online, in full text, including the name(s) of the taxpayer(s) concerned.	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
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 or unknown; 1: Yes;	MN: ID561=-3 & ID562=-3: consider petroleum values, and if petroleum also –3, consider only tax rulings 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	
563	Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?	0: No or unknown; 1: Yes	PT: ID563=-3 & ID564=-3: consider mining values, and if petroleum also –3, consider only tax rulings 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	

3.12 Reporting of tax avoidance schemes

3.12.1 What is measured?

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

1. **Regarding the reporting of tax avoidance schemes**: the indicator assesses whether a jurisdiction requires taxpayers to report on tax avoidance schemes they have used and tax advisers to report on 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**: the indicator assesses whether a jurisdiction requires corporate taxpayers and tax advisers to report on uncertain tax positions for which reserves have been created in annual corporate accounts.[293]

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 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) the International Bureau of Fiscal Documentation (IBFD) database;[294] c) local websites of jurisdictions' tax authorities; c) local tax legislation of jurisdictions; d) the OECD publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report".[295]

The haven scoring matrix is shown in Table 3.29, with full details of the assessment logic in Table 3.30 below.

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[293] The reporting can be done either as part of the corporations' annual accounts or separately.

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

[295] OECD. *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*. Paris: OECD Publishing, 2015. URL: https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1558684255&id=id&accname=guest&checksum=AD69BFF7976DA14EC68E1CD7708DB17B (visited on 06/05/2022).

Table 3.29. Scoring Matrix: Reporting of tax avoidance schemes

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

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.12.2 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. They also require intermediaries, such as tax advisors, accountants and lawyers, to report on the schemes they have sold or marketed to their clients.[296]

[296] Leyla Ates. *More Transparency Rules, Less Tax Avoidance*. Nov. 2018. URL: https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/ (visited on 07/05/2022).

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.[297] Second, providing the tax administration with early information about tax avoidance schemes allows it to assess the risks that schemes pose before the tax assessment is made and to focus audits more efficiently. This is significant mainly because tax administrations in many jurisdictions do not have sufficient capacity to fully audit a large number of 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 for their providers because they will be more exposed to claims of promoting aggressive tax schemes, increasing the risk of reputational damage. Further, their profits and rate of return on the promotion of these schemes are likely to be reduced because schemes can be closed down more quickly by tax authorities. The bottom line impact for tax advisers is all the more true if contingency fees are part of contracts with clients.

Mandatory disclosure rules were first introduced by the US in 1984 and several countries, including EU member states, Canada, Israel, South Africa, South Korea, and the UK,[298] have followed suit. The revelations of Lux Leaks[299] and the Panama Papers[300] along with the EU State Aid cases[301] have demonstrated the role of intermediaries in using tax planning schemes for tax avoidance. These have further pushed governments to take action. For example, in the wake of these scandals, the European Council required all EU 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).[302]

Imposing mandatory reporting rules for tax avoidance schemes is difficult because of the potential for ambiguity of whether the scheme is considered a tax avoidance scheme within the mandatory disclosure rules. In order to mitigate this risk, the reporting obligation should apply to both the taxpayer who uses the tax

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[297] *Reportable Tax Position Schedule Instructions 2020*. 2020. URL: https://www.ato.gov.au/Forms/Reportable-tax-position-schedule-instructions-2020/ (visited on 06/05/2022).

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

[299] ICIJ, *Luxembourg Leaks*.

[300] ICIJ. *The Panama Papers: Exposing the Rogue Offshore Finance Industry*. 2018. URL: https://www.icij.org/investigations/panama-papers/ (visited on 03/05/2022).

[301] European Commission. *State Aid Cases*. Jan. 2019. URL: https://ec.europa.eu/competition/state_aid/register/ (visited on 03/05/2022).

[302] Council of the European Union. *Council Directive 2018/822/EU of 25 May 2018 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements*. June 2018. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L0822 (visited on 07/05/2022).

scheme and not only to the promoter (tax advisers) of the scheme. This kind of double obligation is imposed in the United States.[303] If both taxpayers and advisers are obliged to report independently on the used or marketed tax avoidance schemes (respectively), the chances that tax administrations 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 and advisers on the interpretation of tax laws, many tax schemes will be designed in grey areas.

The EU Directive 2018/822/EU imposes the disclosure obligation primarily on the intermediaries who design and sell the aggressive tax planning schemes, while taxpayers are required to report on such schemes only in limited instances. However, EU member states are able to extend the scope and impose a similar disclosure obligation on taxpayers. Some of these countries require taxpayers to include in their tax returns the scheme reference number issued to the tax adviser who already reported on it. Nonetheless, while including the scheme reference number may assist the tax administration to track disclosures made by tax advisers and link them to the taxpayer,[304] it does not increase the detection risk of hitherto unknown tax avoidance schemes. This is because only the schemes that were already reported will be issued a number, but a taxpayer has no obligation whatsoever to report on tax schemes that were not reported by the tax adviser. In the absence of an independent reporting obligation on both taxpayers and tax advisers, incentives for collusion between tax advisers and taxpayers to keep information about unreported schemes from the tax administration remain high.

Component 2: Reporting of uncertain tax positions

To further mitigate the risk of failure by a taxpayer or tax adviser to define and report properly all relevant tax avoidance schemes, mandatory rules should require uncertain tax positions for which reserves have been created in the annual corporate account to be reported (either as part of the financial accounts or separately). Such best practice has been endorsed, for example, by the OECD's voluntary co-operative tax compliance programme, in which participating jurisdictions require multinational enterprises to bring uncertain tax positions and other problematic tax positions to their attention.[305]

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

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[303] John G. Rienstra. *United States - Corporate Taxation*. Tech. rep. International Bureau of Fiscal Documentation, Jan. 2021. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_us (visited on 06/05/2022), Section 1.

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

[305] OECD iLibrary. *Co-Operative Tax Compliance: Building Better Tax Control Frameworks*. 2016. URL: http://dx.doi.org/10.1787/9789264253384-en (visited on 06/05/2022).

"probable", these positions need to be included in their financial accounts.[306] Under these International Financial Reporting Standards, prudence[307] is an important principle for the preparation of accounts. In fact, shareholders may hold management accountable for prudential reporting. Therefore, it is likely that 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 independently to annually report on any uncertain tax positions of accounts they prepared or submitted, the detection risk for errors in reporting or failures to report is likely to decrease.

[306] PricewaterhouseCoopers. *IFRIC 23 - Putting some certainty into uncertain tax positions*. 2021. URL: https://www.pwc.com/ph/en/accounting-buzz/accounting-client-advisory-letters/ifric-23-putting-some-certainty-into-uncertain-tax-positions.html (visited on 06/05/2022).

[307] *Prudence and IFRS*. tech. rep. ACCA, 2014. URL: http://www.accaglobal.com/content/dam/acca/global/PDF-technical/financial-reporting/tech-tp-prudence.pdf (visited on 06/05/2022).

Table 3.30. Assessment Logic: Reporting of tax avoidance schemes

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

3.13 Deduction limitation of interest payments

3.13.1 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.[308] The leading model used by the OECD is the fixed ratio rule based on the entity's net interest-to-Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) ratio.[309] A company's 'net interest cost' or 'exceeding borrowing cost' is the amount of interest paid in excess of interest received. In 2015, in the final report on 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 per cent EBITDA as the best practice measure to tackle base erosion and profit shifting involving interest payments ('best practice measure').[310] Subsequently, in 2016, the European Union incorporated a fixed deduction limit of up to 30 per cent of EBITDA in its Anti-Tax Avoidance Directive.[311]

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) (with none of these earnings being interest income), from which it pays €40 in intra-group interest payments, and is required to apply the best practice measure of 30 per cent 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 rule. As a consequence, these €10 would be included in the taxable profit of a multinational corporation.

The scoring matrix is shown in Table 3.31, with full details of the assessment logic in Table 3.32 below.

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[308] These are: the arm's length principle, 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*, p.19, para.11).

[309] Richard Collier et al. *Dissecting the EU's Recent Anti-Tax Avoidance Measures: Merits and Problems*. Tech. rep. European Network for Economic and Fiscal Policy Research, Sept. 2018. URL: https://www.ifo.de/DocDL/EconPol_Policy_Report_08_2018.pdf (visited on 06/03/2024).

[310] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, pp.11, 25.

[311] 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*. July 2016. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN (visited on 29/04/2019).

Table 3.31. Scoring Matrix: Deduction limitation of interest payments

Regulation	Haven Score Assessment [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 (eg automatic application of thin capitalisation rules).	75
The haven score increases by 5 points if financial undertakings or another economic sector are excluded from the scope of the restrictions.	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.	50
The haven score increases by 5 points if financial undertakings or another economic sector are excluded from the scope of the restrictions.	55 if financial undertaking exclusion is applied
No deduction of intra-group interest payments is permitted	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

A 100 points 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 points in two cases which we consider as lax restrictions on interest deductions:

a) the jurisdiction applies a fixed ratio deduction limitation only for net interest payments above 30 per cent EBITDA; or

b) the jurisdiction applies a fixed ratio deduction in the form of a thin capitalisation rule based on a fixed debt/equity ratio to disallow the

deduction of interest on excessive debt, unless the application of the rule is discretionary rather than automatic.[312]

Like 30 per cent EBITDA deduction limitations, we consider thin capitalisation rules to be weak instruments to address the excessive use of debt. Thin capitalisation rules are based on an equity test: entities with higher levels of equity capital are allowed to deduct more interest expense. However, this limitation is easy for multinational groups to manipulate by increasing the level of equity in a particular group company.[313] 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.[314] The same applies for jurisdictions that base their deduction limitation fully on the application arm's length principle to determine the amount of allowable debt.[315]

The haven score is further reduced to 50 points if a jurisdiction applies the best practice measure and allows a deduction of net interest paid up to a ceiling higher than 10 per cent EBITDA but below 30 per cent of 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 per cent limit in certain circumstances based on a relevant financial ratio of its worldwide group.[316] 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.[317] The same holds true for applying a safe-harbour debt-to-equity ratio for thin capitalisation rules given that this

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[312] Jennifer Blouin et al. *Thin Capitalization Rules and Multinational Firm Capital Structure*. Tech. rep. WP/14/12. 2014. URL: https://www.imf.org/external/pubs/ft/wp/2014/wp1412.pdf (visited on 28/03/2019).

[313] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, p.21.

[314] 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.

[315] OECD. *Thin Capitalisation Legislation A Background Paper For Country Tax Administrations (Pilot Version for Comments)*. 2012. URL: http://www.oecd.org/ctp/tax-global/5.%20thin_capitalization_background.pdf (visited on 23/12/2022), pp.8-9.

[316] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, pp.57-58, paras.115, 118.

[317] (Wolfgang Tischbirek. *Germany: Interest Barrier, Loss of Losses and Other Delicacies*. 2008. URL: https://m.pplaw.com/sites/default/files/publications/2008/11/wt-2008-germany-interest-barrier.pdf [visited on 15/05/2019]). See also (Deloitte. 'Lower Tax Court clarifies application of escape clause in harmful shareholder financing' [Oct. 2013]. URL: http://www.deloitte-tax-news.de/german-tax-legal-news/lower-tax-court-clarifies-application-of-escape-clause-in-harmful-shareholder-financing.html [visited on 05/03/2021])

allows a company to fully deduct the interest as loss as long as the fixed proportion is not exceeded.[318] 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 points (rather than to 75 in the case of lax restrictions or to 50 points 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.[319] 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. Nonetheless, the OECD emphasised that its recommendation does not imply complete exclusion of these sectors from the best practice measure 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.[320] However, following public consultations on interest limitation rules in the banking and insurance sectors[321] and receiving comments,[322] the OECD has not produced any specific limitation rules for the banking and insurance sectors in its latest update of Action 4.[323] 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".[324] 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 points. In the rare case a country with a general deduction limitation

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[318] EY. *Thin Capitalization Regimes in Selected Countries - Report Prepared for the Advisory Panel on Canada's System of International Taxation*. May 2008. URL: https : / / publications . gc . ca / site / eng / 344005 / publication . html (visited on 10/01/2023); Valeria Merlo and Georg Wamser. *Debt Shifting and Thin-capitalization Rules*. Tech. rep. Dec. 2014, p. 5. URL: https : / / www . cesifo - group . de / DocDL / dicereport414-forum5.pdf (visited on 10/01/2023).

[319] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, pp.75-76.

[320] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update.* p.80.

[321] OECD. *Public Discussion Draft - BEPS Action 4: Approaches to Address BEPS Involving Interest in the Banking and Insurance Sectors*. Tech. rep. July 2016. URL: https : / / web - archive . oecd . org / 2016 - 07 - 28 / 409669 - discussion - draft - beps - action - 4 - banking - and - insurance - sector . pdf (visited on 19/03/2024).

[322] OECD. *Comments Received on Public Discussion Draft- BEPS Action 4 Approaches to Address BEPS Involving Interest in the Banking and Insurance Sectors*. Tech. rep. Sept. 2016. URL: https : / / web - archive . oecd . org / 2016 - 10 - 03 / 413776 - comments - received - Discussion - draft - Banking - Insurance - sectors.pdf (visited on 18/03/2024).

[323] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update.* p.80.

[324] 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.

rule has adopted an exclusion for another specific sector instead of or in addition to the financial sector exclusion, we apply the same 5 points increase.

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) database.[325] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

3.13.2 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 set up tax preferences for assets to be held by multinational companies rather than domestic companies, and thus undermine capital ownership neutrality.[326]

The distortion is also used by many multinational companies to avoid taxes.[327] 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 the use of hybrid instruments that qualify as debt instruments in one country and thus give rise to deductible interest payments, whereas they qualify as equity in the other country and the proceeds are accounted for as tax exempt dividends. Loans can also be used to invest in assets resulting in returns that are not taxed or taxed at a reduced rate.[328] 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 lower- and higher-income countries. Lower-income countries are even more

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

[326] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, p.15.

[327] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2016 Update.* p.19.

[328] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, p.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.[329]

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.[330]

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 between 10 per cent and 30 per cent, 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 per cent of EBITDA is very high. It comes as no surprise that the highest margin of 30 per cent has been chosen by many countries that have adopted the new best practice measure.[331] This high ratio will probably impact only a small number of highly indebted companies.[332]

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 measure, that is, 10 per cent of EBITDA. Unfortunately, when the best practice measure was introduced, some countries moved from the lower to the upper margin, or even decided to replace a more rigorous measure (ie under 10 per cent) with an amount within the EBIDTA-based limitation rule.

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 varying 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.[333] However,

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[329](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 et al. Second. New York: United Nations, 2017, pp. 1–59, 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*, p.19).

[330]OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, p.17.

[331]Turner, *Tax Justice Network Briefing - Shifting Profits and Dodging Taxes Using Debt*.

[332]Deloitte. *BEPS Actions Implementation by Country, Action 4- Interest Deductions*. Tech. rep. 2017. URL: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-beps-action-4-interest-deductions-implementation-matrix.pdf (visited on 26/02/2021).

[333]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*

these highly leveraged groups could easily avoid the double taxation caused by the non-deduction of excess borrowing cost by de-leveraging towards reasonable debt levels. 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 lower-income 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.[334,335] Applying a domestic cap on interest payment deductions is essential to prevent corporate tax base erosion, even if the leverage of that company is at or below its group level.[336] 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 measure. Analogously, any economic sector carveout without a specific limitation rule weakens the overall anti-tax avoidance impact of a country's interest deduction limitation rules.

Furthermore, some jurisdictions have also weakened the impact of their general interest deduction limitation rules by complementing it with a carve-outs for pre-existing loans. For example, the EU Anti-Tax Avoidance Directive (ATAD) allows EU Member States to implement the Directive's compulsory 30 per cent EBIDTA limitation with the optional exclusion for interest paid on loan agreements signed before 17 June 2016.[337] Many EU Member States have used this option. This exclusion may allow for such 'grandfathered' loan agreements to be abused to circumvent the deduction limitation. In principle, loan agreements that are modified after the cut-off date cannot benefit from the exception. However, modification of interest rate and term within the scope of modification that was contractually foreseen when the loan was agreed, and which does not require agreement of the parties is not considered a prohibited modification of a grandfathered loan. Furthermore, companies do use long-term credit lines with flexible draw-down possibilities that have been agreed before the cut-off date and which are still relevant today.[338] For this reason, we continue to consider the

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Deductions And Other Financial Payments. Tech. rep. 2015. URL: https://www.taxcom.org.za/docs/New_Folder3/6%20BEPS%20Final%20Report%20-%20Action%204.pdf (visited on 15/05/2019).

[334] Tischbirek, *Germany: Interest Barrier, Loss of Losses and Other Delicacies*, p.14.

[335] Deloitte, 'Lower Tax Court clarifies application of escape clause in harmful shareholder financing'.

[336] Peter A. Barnes. 'Chapter 4: Limiting Interest Deductions'. In: *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*. Ed. by Alexander Trepelkov et al. Second. New York: United Nations, 2017, pp. 179–213.

[337] European Commission. *Report from the Commission to the European Parliament and the Council on the Implementation of 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 as Amended by Council Directive (EU) 2017/952 of 29 May 2017 Amending Directive (EU) 2016/1164 as Regards Hybrid Mismatches with Third Countries*. Tech. rep. Brussels, Aug. 2020. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0383&rid=3 (visited on 25/02/2021).

[338] Le Gouvernement du Grand-Duche de Luxembourg. *Tax Authorities Administrative Guideline, No. L.I.R. N° 168bis/1 of 25 March 2022*. Mar. 2022. URL: https://impotsdirects.public.lu/dam-assets/fr/

use of this exclusion to be a loophole, even if significant time has lapsed since 17 June 2016. As such, in cases where EU member states have opted to apply this exclusion, we conclude in our analysis that because of this loophole these countries have not imposed intra-group interest deduction limitation. If a country actively inserted in its domestic law date a sunset date in the near future on which the grandfathering clause lapses, we consider this sufficient to qualify the country as not having adopted the exception.

The US Tax Cuts and Jobs Act has also created another type of 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.[339] The base erosion and anti-abuse tax is a minimum tax that is imposed at a rate of 10 per cent[340] to the taxpayer's modified taxable income,[341] which is calculated by adding back most categories of related-party deductible payments.[342] 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 per cent for a tax year, which in practice means a threshold of base erosion payments as a percentage of total deductions.[343]

In general, it should be noted that while limiting intra-group interest deductions is better than not imposing any limitations, the preferred approach by the Tax Justice Network is for countries 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. There is little difference between a shareholder loan and a capital contribution, other than the fact that the return on a loan (ie interest) is usually paid at a fixed rate unlike the return on capital (ie dividends) which depends on the profit level and profit distribution decision. This decision can however be influenced by the shareholder.[344] 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 contributes capital 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.[345]

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legislation / legi22 / 2022 - 03 - 25 - LIR168bis - 1 - du - 2532022 . pdf (visited on 03/07/2024), Paragraphs 105-107 at pp.37-38.

[339] Susan C. Morse. 'International Cooperation and the 2017 Tax Act'. *The Yale Law Journal Forum* (Oct. 2018). URL: https://www.yalelawjournal.org/pdf/Morse_ac1hex9k.pdf (visited on 13/05/2019).

[340] Note that this will increase to 12.5 per cent as of 2026 and was temporarily set to 5 per cent for 2018.

[341] Baker McKenzie. *Tax News and Developments Newsletter*. Tech. rep. Volume XVIII: Issue 1. Feb. 2018. URL: https : / / www . bakermckenzie . com / - / media / files / insight / publications / 2018 / 02 / nl _ na _ taxnewsdevelopmentv2_feb2018.pdf?la=en (visited on 26/02/2021), pp.17-18.

[342] Morse, 'International Cooperation and the 2017 Tax Act'.

[343] Rebecca M. Kysar. 'Critiquing (and Repairing) the New International Tax Regime'. *The Yale Law Jounal Forum* (2018). URL: https : / / www . yalelawjournal . org / pdf / Kysar _ su38oca6 . pdf (visited on 13/05/2019).

[344] Turner, *Tax Justice Network Briefing - Shifting Profits and Dodging Taxes Using Debt*.

[345] Turner, *Tax Justice Network Briefing - Shifting Profits and Dodging Taxes Using Debt*.

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),[346] 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.[347]

Therefore, while adopting the best practice measure may slightly improve the debt-bias problem (particularly if the lower margin of 10 per cent EBITDA is applied instead of the commonly accepted higher margin of 30 per cent), 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.

[346] 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.

[347] Turner, *Tax Justice Network Briefing - Shifting Profits and Dodging Taxes Using Debt*.

Table 3.32. Assessment Logic: Deduction limitation of interest payments

ID	ID description	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 & ID518=1: 90 ID517=1 & ID518=0 & ID519=1: 80 ID517=1 & ID518=0 & ID519=0: 75 ID517=2 & ID518=0 & ID519=1: 55 ID517=2 & ID518=0 & ID519=0: 50 ID517=3: 0
518	Group ratio rule: Does the jurisdiction apply a group ratio rule opt-in alongside fixed ratio limitations on interest deduction?	0: NO, group ratio rule opt-in is not applied. 1: YES, group ratio rule opt-in is applied.	
519	Financial undertaking exclusion: Does the jurisdiction apply a financial undertaking or other sectoral exclusion alongside fixed ratio limitations on interest deduction?	0: NO, financial undertaking exclusion or other sectoral exclusion is not applied. 1: YES, financial undertaking exclusion and/or other sectoral exclusions is applied.	

3.14 Deduction limitation of royalty payments

3.14.1 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 points 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') or to countries listed as tax havens by the assessed jurisdiction, as explained further below. The haven score is further reduced to 50 points 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.

The scoring matrix is shown in Table 3.33, with full details of the assessment logic in Table 3.34 below.

Table 3.33. Scoring Matrix: Deduction limitation of royalty payments

Regulation	Haven Score Assessment [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 or subject to tax haven lists Deduction limitation/disallowance applies only to certain intra-group royalty payments for intellectual property regimes that are not compliant with OECD nexus approach or to countries listed as tax havens by the assessed jurisdiction.	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

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

The data for this indicator was collected primarily from country analyses and country surveys in the IBFD database.[348] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

3.14.2 Why is this important?

Royalties are defined as payments for the use of, or the right to use, intellectual property that is owned by another party.[349] 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 based 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 royalty paying 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.[350]

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.[351]

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 parties exist for royalty payments given that these payments are usually related to intangible property which can be argued to be unique.[352]

Although 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

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

[349] Ault and B. J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', p.44.

[350] HM Revenue & Customs. *Deduction of Income Tax at Source: Royalties*. June 2016. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532314/M1070_revised_TN_final.pdf (visited on 14/05/2019), p.4.

[351] Ault and B. J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', p.44.

[352] Evers et al., *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, pp.4-5.

to intellectual property regimes.[353] Another approach to limit the deduction of intra-group royalty payments is to allow the deduction of intra-group royalty payments for intellectual property in accordance with the withholding tax rate.[354] This approach follows the same logic of disallowing these payments when they do not comply with the nexus approach. In a similar vein, a number of countries use a listing approach to limit deductions for royalty payments.[355] The listing approach for implementing international anti-avoidance rules has been employed by national governments for a while.[356] However, such an approach is inconsistent and has variation problems as a result of disagreements among international observers with regard to the justifications for including countries in those lists as well as for removing them.[357,358] Moreover, even with a highly accurate and idiosyncratic list, taxpayers can easily circumvent anti-avoidance rules by creating an intermediary structure in a non-listed jurisdiction.[359] For this reason, we score royalty deduction limitations that apply only to intra-group royalty payments to certain listed countries in the same way as deduction limitations that follow the restricted nexus approach.

A few 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 per cent of the

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[353] For example, in Germany, an 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.(Xavier 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], pp. 822–827. URL: https://doi.org/10.54648/taxi2017072, p.823) The provision aims to anticipate the application of the nexus approach.(Christoph Spengel et al. *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany*. Tech. rep. Jan. 2018. URL: https : / / ftp . zew . de / pub / zew - docs/gutachten/US_Tax_Reform_2018.pdf [visited on 10/01/2023], p.40) 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 the expenditures incurred, for research and development, for example, by either the taxpayer itself or by outsourcing it to a third party, ie qualified research and development activities.(Spengel et al., *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany*, p.40) As such, 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.

[354] For example, in South Africa where one-third of intra-group royalty payments can be deducted when the withholding tax rate is at least 10 per cent while half of the intra-group royalty payments can be deducted when the withholding tax is 15 per cent.(Hattingh, *IBFD ZA 2024b*)

[355] Greece, for example, disallows intra-group royalty payments if the payee is in a non-cooperative country (ie a country that has not signed administrative cooperation convention with Greece and at least 12 other countries) or in a country with preferential tax regime (ie a country that offers 14.4 per cent or lower income tax rate)(Stelios Papademetriou and George Kerameus. *Greece - Corporate Taxation - Country Tax Guides*. Tech. rep. IBFD, Oct. 2020. URL: https://research.ibfd.org/collections/cta/printversion/pdf/cta_gr.pdf [visited on 21/06/2024], Section 10)

[356] Markus Meinzer. 'Countering Cross-Border Tax Evasion and Avoidance: An Assessment of OECD Policy Design from 2008 to 2018'. PhD thesis. Utrecht, Netherlands: Utrecht University, 2019. URL: http://coffers.eu/wp-content/uploads/2019/10/1910-Meinzer-PhD-Dissertation-OECD-Tax-Policies.pdf (visited on 02/06/2020).

[357] J. C. Sharman. 'Dysfunctional Policy Transfer in National Tax Blacklists'. *Governance*, 23(4) (2010), pp. 623–639. URL: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0491.2010.01501.x (visited on 04/03/2021).

[358] Council of the European Union. *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*. Dec. 2011. URL: https://eur-lex.europa.eu/eli/dir/2011/96/oj/eng (visited on 02/05/2022).

[359] Meinzer, 'Countering Cross-Border Tax Evasion and Avoidance: An Assessment of OECD Policy Design from 2008 to 2018'.

taxable base and up to 10 per cent of the asset value in cases where the company is in a pre-operational stage provided there is a taxable income.[360,361]

The USA has also 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.[362] The base erosion and anti-abuse tax is a minimum tax that is imposed at a rate of 10 per cent[363] on the taxpayer's modified taxable income,[364] calculated by adding back most categories of related-party deductible payments.[365] 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 per cent for the tax year, which in practice means a threshold of base erosion payments as a percentage of total deductions.[366]

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 so as to claim "nexus". 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 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.

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[360] G Guerra. *Ecuador - Corporate Taxation, Country Surveys IBFD*. 2019. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_ec (visited on 27/05/2019).

[361] In Rwanda, a 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 per cent of their turnover. (R Niwenshuti. *Rwanda - Corporate Taxation, Country Surveys IBFD*. 2019. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_rw [visited on 27/05/2019]).

[362] Morse, 'International Cooperation and the 2017 Tax Act'.

[363] Note that the minimum tax will be increased to 12.5 per cent as of 2026 and was temporarily set to 5 per cent for 2018.

[364] Baker McKenzie, *Tax News and Developments Newsletter*, pp.17-18.

[365] Morse, 'International Cooperation and the 2017 Tax Act'.

[366] Kysar, 'Critiquing (and Repairing) the New International Tax Regime', p.358.

Table 3.34. Assessment Logic: Deduction limitation of royalty payments

ID	ID description	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 OR SUBJECT TO TAX HAVEN LISTS: Deduction limitation/disallowance applies only with respect to certain intra-group royalty payments to patent boxes that are not complying with OECD NEXUS rules or to countries listed as tax havens by the assessed jurisdiction; 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 any intra-group royalty payments are permitted.	0: 100 1: 75 2: 50 3: 0

3.15 Deduction limitation of service payments

3.15.1 What is measured?

This indicator measures whether or to what extent a jurisdiction restricts or disallows the deduction from the corporate income tax base of intra-group services payments (management fees, technical fees, consulting services fees, fees for legal or accounting services) paid to non-resident group affiliates.

A haven score of 100 points 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 50 points score is given if a jurisdiction applies specific restrictions or deduction limitations on intra-group service payments. Such is the case, for example, if a deduction limitation applies only in case no withholding tax is levied on the outbound payment; or if it only covers payments to related companies that are subject to preferential (low) tax regimes or that are located in jurisdictions listed as tax havens. Partial limitation deductions that limit the deduction amount in function of a certain percentage of the annual turnover, assets, taxable income or Earnings Before Interest, Taxes, Interest, Depreciation and Amortisation (EBITDA) also fall in the 50 points score category. The same applies to deduction limitations that are imposed based on the tax authorities' discretional powers.

A zero haven score is granted in cases where the jurisdiction does not permit any deductions of intra-group service payments whatsoever.

The data for this indicator was collected primarily from the country analyses and country surveys in the International Bureau of Fiscal Documentation (IBFD) database.[367] 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 3.35, with full details of the assessment logic in Table 3.36 below.

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

Table 3.35. Scoring Matrix: Deduction limitation of service payments

Regulation	Haven Score Assessment [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	50
The jurisdiction does not allow any deduction of intra-group service payments	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.15.2 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 section 3.13) as well as to intra-group royalty payments (see section 3.14). 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.[368]

Base erosion and profit shifting through intra-group services transactions is one of the reasons why the United Nations has introduced the new Article 12A "Fees of technical services" in its 2017 update of the UN 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

[368] Ault and B. J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', pp.42-43.

services are provided outside the country).[369] For countries that have bilateral tax treaties in place that are not incorporating a provision modelled to Article 12A, cross-border intra-group service payments are covered by Article 7 or 14 of the convention. As such, these payments 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.[370] Taxation in the source country is however often avoided by multinational companies setting up their activities in such a way that they do not trigger the permanent establishment nor a fixed place of business threshold in the source country.[371] 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.[372]

However, levying source withholding tax under article 12A is likely to impose a heavy financial and administrative burden on source countries. Furthermore, they would need to re-negotiate existing tax treaties to have the clause inserted, which will take time and is likely to be met with opposition from certain treaty partner countries.[373] It is doubtful whether lower-income countries have the negotiation power to convince higher-income countries to include such a provision in tax treaties. This power imbalance may change in the near future when countries will negotiate a multilateral protocol on the fair and equitable taxation of cross-border services in the context of the United Nations Framework Convention in International Tax Cooperation.[374]

In the meantime, instead or in addition of levying tax at source on the recipient of service payments, countries can instate deduction limitations on the side of the payor of fees for intra-group service payments. Deduction restrictions are a more readily available solution for countries struggling to address services related base erosion and profit shifting by multinational companies.

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[369] United Nations. *United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)*. Tech. rep. New York, 2017. URL: https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf (visited on 07/03/2021), pp.23-24.

[370] United Nations, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)*, pp.323.

[371] United Nations, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)*, pp.321.

[372] Ault and B. J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', pp.44.

[373] 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. URL: http : / / eprints . lse.ac.uk/86396/1/Hearson_UK-Colombia_tax_treaty.pdf [visited on 22/05/2019]).

[374] See the proposal that was approved in August 2024 by the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation (United Nations, *Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation*). The Terms of Reference refer to 'fairness in the allocation of taxing rights' as a guiding principle and 'addressing tax-related illicit financial flows' as a commitment to be taken on board by countries in the Framework Convention that will be subject to negotiation as of 2025. The 'taxation of income derived from the provision of cross-border services' is singled out as the sole predetermined topic for a simultaneously negotiated early protocol under the new framework of international tax cooperation.

The 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 applying 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.[375]

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.[376]

It may be argued that completely disallowing the deduction of payments for intra-group services penalises the payer's legitimate income-earning expenses and thus may lead to undesired economic distortions.[378] There are good arguments, however, to counter this claim: First, the risk of economic distortions is mitigated already by the possibility to deduct from taxable income of the service providing firm any capital and payroll costs required for the provision of the service. Second, the value added of a service provision beyond those costs (and hence a higher price that includes an additional cost for the service) should only be accounted for once it leaves the economic group that operates under ultimate joint control and management. This in turn is ensured by the continuous deductibility of services provided by independent legal economic parties. Full deduction of cross-border intra-group services prevents the alignment of multinational corporations' profits where the economic activity takes place. Instead of eroding the local tax base and inflating the base offshore, multinational corporations could also purchase locally. Last but not least, given the potential for abusive intra-group service payments, constraining the deduction of such payments may be the only effective way to protect the source country's tax base. The risks of such abuses are particularly high when the source countries are low-income countries and especially in cases where the non-resident service provider is a resident of a tax haven jurisdiction.[379] A

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[375] OECD. *Addressing the Tax Challenges of the Digital Economy - Action1: 2015 Final Report*. Tech. rep. Paris, 2015. URL: https://doi.org/10.1787/9789264241046-en (visited on 18/03/2024).

[376] 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.[377] In case companies are in the pre-operational stage, the deduction is allowed only up to 10% of the company's assets and provided there is taxable income.(G Guerra. *Ecuador - Corporate Taxation, Country Surveys IBFD*. 2024. URL: https://research.ibfd.org/collections/gtha/printversion/pdf/gtha_ec.pdf [visited on 02/06/2024]) In Seychelles, intra-group services payments are deductible up to 3% of the annual turnover.(John Mpoha. *Seychelles - Corporate Taxation*. Tech. rep. IBFD, 2024. Chap. Country Surveys. URL: https://research.ibfd.org/collections/gtha/printversion/pdf/gtha_sc.pdf [visited on 21/06/2024], Section 1)

[378] Brian J. Arnold. 'Chapter 2: Taxation of Income from Services'. In: *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries*. Ed. by Alexander Trepelkov et al. Second. New York: United Nations, 2017, pp. 61–126, p.122.

[379] Ault and B. J. Arnold, 'Chapter 1: Protecting the Tax Base of Developing Countries: An Overview', p.44.

mitigation measure against this kind of distortion would consist in shifting to a unitary basis of taxation for any multinational company so that group company share of the overall profits are allocated based on objective parameters (like assets, employees, external sales contributed to the whole) instead of on the basis of untransparent intra-group service dealings.

Table 3.36. Assessment Logic: Deduction limitation of service payments

ID	ID description	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 certain deduction limitations on intra-group services payments. 2. Yes, the jurisdiction does not allow any deduction of intra-group service payments	0: 100 1: 50 2: 0

3.16 Withholding taxes on dividends

3.16.1 What is measured?

This indicator measures the extent to which a jurisdiction levies withholding taxes on outbound dividends. As such, it assesses the lowest withholding tax rate (WTR) available under domestic law on outbound dividend payments. It is the rate that applies unilaterally, in the absence of a bilateral tax treaty.

The lowest unilateral withholding tax rate on dividends is then assessed against 35 per cent in line with our assessment of the lowest available corporate income tax rate ("spillover risk reference rate") (see Section 3.1). The highest available unilateral rate on dividend withholding tax in a democracy[380] amounts to 35 per cent in Chile,[381] followed by 33.33 per cent in Jamaica.[382] We assume that any lower withholding rate creates risks for tax avoidance and spillovers by enticing the shifting of profits into lower taxed jurisdictions and for jurisdictions to lower their dividend withholding rates in response.

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 per cent, the haven score is zero. Any rate in between is linearly scaled against 35 per cent. 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 per cent; 3) scaling this rate in proportion to a haven score between 0 and 100.

The scoring matrix is shown in Table 3.37, with full details of the assessment logic in Table 3.38 below.

[380] Following the methodology used in the LACIT indicator (Section 3.1, we rely on the Polity Index (Polity2 measure of 2018) to identify democracies. Countries with a polity index of 7 or more are identified as democracies.

[381] IBFD. *Chile - Treaty Withholding Rates Table*. 2024. URL: https://research.ibfd.org/#/doc?url=/document/wht_cl (visited on 28/05/2024).

[382] IBFD. *Jamaica - Country Key Features*. Tech. rep. IBFD, 2024. Chap. Country Key Features. URL: https://research.ibfd.org/collections/kf/printversion/pdf/kf_jm.pdf (visited on 28/05/2024).

Table 3.37. Scoring Matrix: Withholding taxes on dividends

Regulation	Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
Dividend Withholding Taxes (WTR)	
The unilateral withholding tax rate on outbound dividend payments imposed by the jurisdiction is scaled between zero and 35% Jurisdictions with zero dividend WTR have a haven score of 100 while a 35% withholding tax rate is equal to a haven score of zero. The jurisdiction's WTR 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, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

The data for this indicator was collected primarily from the IBFD-database (country analyses and country surveys).[383] 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, type of company or shareholding participation size. For example, although Liberia levies a 15 per cent withholding tax on outbound dividends, a lower withholding tax rate (5 per cent) is implemented when the resident subsidiary is a mining, petroleum or renewable resource company. We thus consider 5 per cent as the rate for this indicator.[384] We consider the rate is zero when there are exemptions for specific sectors or types of companies. The Seychelles, for example, levies a 15 per cent dividends withholding tax, but exempts dividend payments to non-resident companies by resident exempt entities, such as international trusts, certain limited partnerships, international free-trade zone companies and foundations.[385]

Countries from the European Union that exempt dividend payments to other EU Member States, under the conditions laid down in the Parent-Subsidiary Directive

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

[384] L. Olandor Boyce. *Liberia - Corporate Taxation*. Tech. rep. IBFD, June 2023. Chap. Country Surveys. URL: https://research.ibfd.org/collections/gtha/printversion/pdf/gtha_lr.pdf (visited on 28/05/2024), Section 6.

[385] Yvette Nakibuule Wakabi. *Seychelles - Corporate Taxation, Country Surveys IBFD*. tech. rep. IBFD, May 2024. URL: https : / / research . ibfd . org / # / doc ? url = /linkresolver / static / gtha _ sc (visited on 28/05/2024), Section 6.

(2011/96/EU),[386] are also considered to have a zero withholding tax rate. Furthermore, both the EEA Agreement between the EU countries and Iceland, Liechtenstein and Norway, and the EU-Switzerland Agreement provide benefits similar to those in the EU-parent subsidiary directive, reducing withholding taxes to 0 per cent on cross border dividend payments between related companies.[387] In cases where these exemptions apply, we consider the lowest available rate as zero.

3.16.2 Why is this important?

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.[388] The level of withholding taxes, along with the level of corporate income taxation and the 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 countries.[389] The anti-avoidance role of withholding taxes has been recognised by the OECD already in 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.[390]

Both the OECD[391] and the European Commission[392] include withholding taxes on dividends in their analysis of countries anti-avoidance rules or aggressive tax planning (ATP) opportunities. According to a study on structures of ATP produced by the European Commission in 2015, having withholding taxes in place may impede ATP:

> [...] under certain circumstance, the absence of such withholding taxes may allow for ATP in the sense that had a withholding tax existed, it

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[386] Council of the European Union, *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*.

[387] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2024.

[388] Maarten van't Riet and Arjan Lejour. *Ranking the Stars: Network Analysis of Bilateral Tax Treaties*. Tech. rep. 290. CPB Netherlands Bureau for Economic Policy Analysis, Oct. 2014. URL: https://ideas.repec.org/p/cpb/discus/290.rdf.html (visited on 26/03/2020).

[389] Simon Loretz et al. *Aggressive Tax Planning Indicators: Final Report*. Tech. rep. 71 – 2017. European Commission, 2017. URL: https://taxation-customs.ec.europa.eu/system/files/2018-03/taxation_papers_71_atp_.pdf (visited on 02/12/2022), p.33.

[390] OECD, *Harmful Tax Competition: An Emerging Global Issue*.

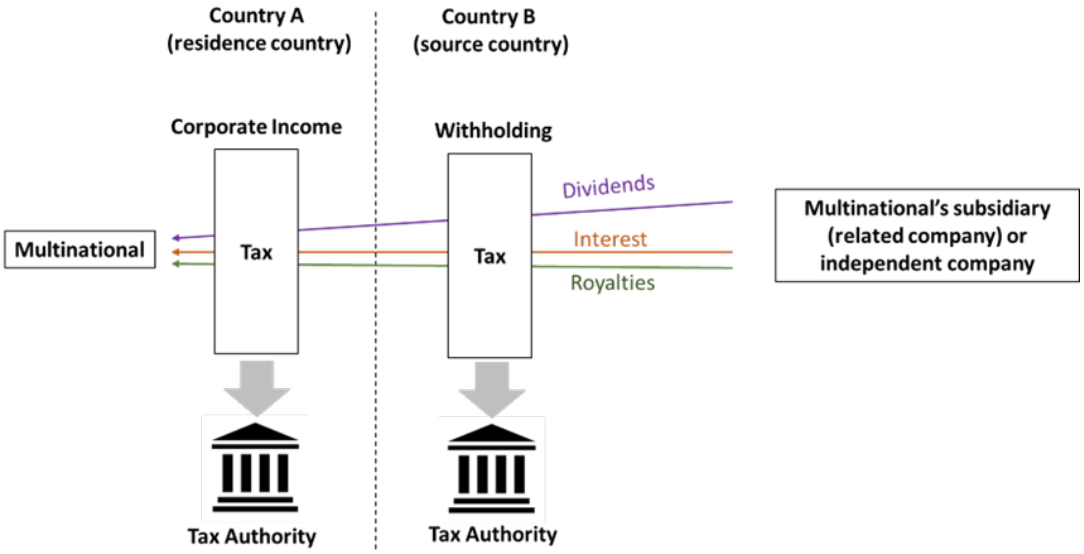
[391] Åsa Johansson et al. *Anti-Avoidance Rules Against International Tax Planning: A Classification*. OECD Economics Department Working Paper. OECD, Dec. 2016. URL: https://www.oecd.org/tax/public-finance/Anti-avoidance-rules-against-international-tax-planning-A-classification.pdf (visited on 19/03/2024).

[392] Ramboll Management Consulting and Corit Advisory. *Study on Structures of Aggressive Tax Planning and Indicators*. Working Paper 61. European Commission, 2015, p.58.

could have impeded an ATP structure. ATP structures, particularly those that rely on tax-free repatriation of funds up to the ultimate parent company (ie 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.[393]

Withholding tax on dividends contributes to protecting the tax bases particularly of capital-importing countries (eg countries hosting subsidiaries of multinational corporations). In case of unequal flows of capital between countries, withholding taxes on dividends help mitigate the imbalance in taxing rights between source countries (country B in Figure 3.5 below) and residence countries (country A in the figure), in which headquarters of multinational companies are based.[394]

Figure 3.5. Application of withholding taxes for multinational companies



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, eroding the local tax base and thereby reducing source countries' corporate income tax revenues.[395] 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

[393] Ramboll Management Consulting and Corit Advisory, *Study on Structures of Aggressive Tax Planning and Indicators*, p.58.

[394] Michael C. Durst. *Taxing Multinational Business in Lower-Income Countries: Economics, Politics and Social Responsiblity*. 2019. URL: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/14336/Durst_Book_Final.pdf (visited on 02/12/2022).

[395] Durst, *Taxing Multinational Business in Lower-Income Countries: Economics, Politics and Social Responsiblity*, pp.31-32.

and on dividends have the potential to at least partially compensate for these losses, protecting the taxing rights of the source countries.[396,397]

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 reduce their own tax base, but they also incite other countries to respond by further reducing their taxes[398] 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 by more than 30 per cent over the past decades as a result of these ruinous tax wars.[399] The race to the bottom in corporate taxes exacerbates income inequality between countries, since lower income countries are predominantly importers of capital and therefore source countries of dividend payments. In a recent policy paper, the International Monetary Fund urges the low-income countries to prioritise withholding taxes on dividends, together with the adoption of appropriate anti-abuse provisions.[400]

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.[401] The Parent-Subsidiary Directive (2011/96/EU)[402] relies on this argument for exempting dividends and other profit distributions paid by subsidiary companies to their parent companies from withholding taxes.[403] However, it can be argued that under the Directive, the risk of double taxation is mitigated by a solution which entails the double non-taxation of dividends. The Directive obliges subsidiary countries to refrain from levying withholding tax on dividends paid to the parent company. At the level of the parent country, the dividends received are exempt from tax under the so-called 'participation exemption' which is also part of the Directive rules. A foreign tax credit instead of an exemption would be sufficient to address the concern of juridical double taxation.

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[396] Durst, *Taxing Multinational Business in Lower-Income Countries: Economics, Politics and Social Responsiblity*, pp.31-32.

[397] While this indicator focuses on withholding taxes on dividends, the potential of losses of revenues due to the deduction of expenses with interests, royalties and services are covered in other haven indicators - Sections 3.13, 3.14 and 3.15 respectively.

[398] This race to the bottom process can also apply to corporate income tax rates, which are assessed in the indicator on Lowest Corporate Income Tax Rates (Section 3.1.

[399] International Monetary Fund, *Spillovers in International Corporate Taxation*, p.68.

[400] International Monetary Fund. *International Corporate Tax Reform*. Tech. rep. Feb. 2023. URL: https://www.imf.org/-/media/Files/Publications/PP/2023/English/PPEA2023001.ashx (visited on 05/07/2024), p.29.

[401] It is important to highlight that the meaning of double taxation is different from what the term may suggest. It implies merely a partial overlap between states' taxing claims which may result in a slightly higher effective tax rate to be paid by a given taxpayer, 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.(Tax Justice Network, *Unitary Taxation: Our Responses to the Critics*, p.3)

[402] Council of the European Union, *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*.

[403] Council of the European Union, *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*.

For this reason, the Parent-Subsidiary Directive (2011/96/EU) in its current version has at times been viewed as practically encouraging the use of (aggressive) tax planning by European Union intermediate holding structures.[404] An ultimate parent entity resident in a member state might use an intermediate company resident in another member state for holding a subsidiary resident in a non-EU country imposing no or low tax. When the intermediate holding company is in a member state that has a bilateral tax treaty with the non-EU country, the income may arrive at its final destination untaxed thanks to the participation exemption mechanism between two member states as a result of the Parent-Subsidiary Directive (2011/96/EU).

In recognition of this risk of encouraging untaxed or low-taxed income to enter the EU internal market, certain countries like Austria and Hong Kong have added a switch-over clause to their participation exemption. This anti-avoidance measure changes the exemption of dividends received by the parent company into a foreign tax credit for taxes paid abroad on the dividends in case the underlying income is not sufficiently taxed in the source country. The switch-over clause is as of yet not a standard feature of the EU tax rules, though.[405,406]

In many instances, the withholding tax rate on outbound dividends will not be the domestic unilateral rate but the one agreed in an applicable bilateral tax treaty. Tax treaties typically eliminate withholding tax rate on dividends or reduce the rate to lower levels than the ones prescribed in domestic law. The domestic unilateral rate is relevant in absence of an applicable tax treaty – low-income countries tend to have few tax treaties – or in case the taxpayer is denied the benefit of the tax treaty because of confirmed tax abuse or illegal tax avoidance. The aggressiveness of the jurisdictions' bilateral treaties network is assessed in the Tax Treaty Aggressiveness indicator (Section 3.18) which measures, amongst other things, how countries use bilateral tax treaties to obtain a lower withholding tax rate on dividends than the domestic rate.

Table 3.38. Assessment Logic: Withholding taxes on dividends

ID	ID description	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	Withholding tax rate (between 0 and 35)	Haven score = ((35 – answer)/35)*100

[404] Satenik Melkonyan and Filip Schade. 'Teiltransparente EU-Holdinggesellschaften als steuerliches Investitionsvehikel deutscher Unternehmen in der Post-BEPS-Welt' (2018), p. 46.

[405] Y. Schuchter and A. Kras. *Austria - Corporate Taxation*. Tech. rep. International Bureau of Fiscal Documentation, 2024. URL: https://research.ibfd.org/#/doc?url=/document/cta_at_s_ (visited on 28/05/2024), Section 7.

[406] Ying Zhang. *Hong Kong - Corporate Taxation*. Tech. rep. IBFD, 2024. Chap. Country Surveys. URL: https://research.ibfd.org/#/doc?url=/document/cta_hk_chaphead (visited on 28/05/2024).

3.17 Controlled foreign company rules

3.17.1 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 rule 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.[407] 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".[408]

There are two types of CFC rules:

1. Non-transactional rules attribute categories of income derived by the CFC (eg passive income) to the parent;
2. Transaction-based rules allow CFC income to be attributed based on an assessment of substantive economic activity of the CFC, for instance by using the arm's length principle, eg 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 substantive economic activity criteria like the ones set out by the 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, which makes it much harder to apply. In contrast, the trigger for applying non-transactional CFC rules is based simply on an analysis of the types of income covered, which can range from only certain types of income (eg only passive income) to all types of income under what is known as a 'full inclusion' non-transactional CFC rule.

However, in the case of non-transactional CFC rules a substance carve out is often added so that the CFC rules only apply to income streams that are proven to be the result of the most aggressive tax avoidance that lacks even the most minimal substance. This carve-out narrows the effectiveness of non-transactional CFC rules as preventive measures and increases administrative and compliance burdens. In essence, this carve-out is characterised by

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[407] Ana Paula Dourado. 'The Role of CFC Rules in the BEPS Initiative and in the EU'. *British Tax Review*, (3) (2015), pp. 340–363. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3370194 (visited on 18/03/2024).

[408] Luc de Broe. *International Tax Planning and Prevention of Abuse*. IBFD Doctoral Series. Aug. 2008. URL: https://www.ibfd.org/shop/book/international-tax-planning-and-prevention-abuse (visited on 18/03/2024), p.124.

transactional elements and once adopted, it weakens the clear advantage that non-transactional rules have over transactional ones. In accordance with the weakest link principle, the fact that a jurisdiction applies a substance carve-out only in relation to certain jurisdictions (eg EU countries)- rather than all jurisdictions- does not alter our conclusion and scoring of the jurisdiction as having the substance carve-out in place.

A 100-points haven score 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 points. In cases where there are non-transactional CFC rules but they include a substance carve-out, a score of 50 points is given. A zero-haven score is given if a jurisdiction has CFC rules that are of the non-transactional type and which do not include a substance carve-out.

The data for this indicator was collected primarily from country analyses and country surveys in the IBFD database.[409] In some instances, we have also consulted additional websites, academic journals, and the reports of accountancy firms and other local websites.

The scoring matrix is shown in Table 3.39, with full details of the assessment logic in Table 3.40 below.

Table 3.39. Scoring Matrix: Controlled foreign company rules

Regulation	Haven Score Assessment [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 the transactional type of rules which allow profits to be attributed to the CFC according to the arm's length principle, eg OECD Transfer Pricing Guidelines.	75
CFC rules are non-transactional but with economic substance carve-out While the jurisdiction applies non-transactional CFC rules, the rules include an economic substance carve-out.	50
CFC rules are non-transactional and do not include a substance carve-out The jurisdiction applies non-transactional CFC rules which do not include a substance carve-out.	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the

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

document version history at the beginning of this report to see when the methodology for this indicator was last updated.

3.17.2 Why is this important?

Controlled foreign companies[410] are treated as separate entities from their corporate or individual shareholders in the jurisdiction where they are controlled, ie, the parent jurisdiction. This is based on the corporate personality doctrine, also known as legal personality.[411] They are perceived as autonomous taxpayers 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.[412]

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.[413] 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 CFC. 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.[414] 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

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[410] Slightly different terminology has been used in different tax systems, such as controlled foreign affiliates in Canada or controlled foreign corporations in the United States of America.

[411] 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 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'. *Law Social Justice and Global Development Journal* [2002]. URL: https : / / warwick . ac . uk / fac / soc / law / elj / lgd / 2002 _ 1 / magaisa/ [visited on 23/09/2024]).

[412] Dourado, 'The Role of CFC Rules in the BEPS Initiative and in the EU', p.340.

[413] 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) (2018), pp. 296–312. URL: https : //doi.org/10.54648/taxi2018031 (visited on 18/03/2024), p.301.

[414] Blum, 'Controlled Foreign Companies: Selected Policy Issues – or the Missing Elements of BEPS Action 3 and the Anti-Tax Avoidance Directive', p.303.

data.[415,416] However, various 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.[417] These findings are in line with the efforts of many countries to introduce CFC rules to protect their tax base[418] and the public perception that multinational companies often use CFC rules to avoid taxes.[419]

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.[420] The BEPS project published a standalone report on CFC rules in 2015.[421] 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.[422]

Although CFC rules were not included in the minimum standards[423] of the Inclusive Framework on BEPS, 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 into domestic legislation by 1 January 2019.[424] Articles 7 and 8 of the Anti-Tax

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[415] Kimberly A. Clausing. 'Profit Shifting Before and After the Tax Cuts and Jobs Act'. *National Tax Journal*, 73(4) (June 2020), pp. 1233–1266. URL: https://papers.ssrn.com/abstract=3274827 (visited on 18/03/2024).

[416] Thomas Tørsløv et al. *The Missing Profits of Nations*. Tech. rep. Working Paper 24701. National Bureau of Economic Research, June 2018. URL: https://www.nber.org/papers/w24701 (visited on 09/12/2022), p.2.

[417] 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), pp. 206–232. URL: https://onlinelibrary.wiley.com/doi/abs/10.1002/jid.3348 (visited on 28/05/2018); Crivelli et al., 'Base Erosion, Profit Shifting and Developing Countries'; Tørsløv et al., *The Missing Profits of Nations*.

[418] 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*. 2010. URL: https://lib.ugent.be/en/catalog/rug01:002266730 [visited on 23/09/2024], p.23).

[419] Rochelle Toplensky. 'Multinationals Pay Lower Taxes than a Decade Ago'. *Financial Times* (2018). URL: https://www.ft.com/content/2b356956-17fc-11e8-9376-4a6390addb44 (visited on 20/03/2024).

[420] OECD, *Action Plan on Base Erosion and Profit Shifting*, p.16.

[421] OECD. *Designing Effective Controlled Foreign Company Rules, Action 3 - 2015 Final Report*. Tech. rep. Oct. 2015. URL: https://www.oecd-ilibrary.org/taxation/designing-effective-controlled-foreign-company-rules-action-3-2015-final-report_9789264241152-en (visited on 23/12/2022).

[422] OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report*, p.10.

[423] OECD. *Explanatory Statement to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*. URL: https://www.oecd.org/tax/treaties/explanatory-statement-multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf (visited on 18/03/2024).

[424] (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*). For a comparison between the Anti-Tax Avoidance Directive and OECD CFC rules, see (A Rigaut. 'Anti-Tax Avoidance Directive (2016/1164): New EU Policy Horizons'. *European Taxation*, 56(11) [Oct. 2016]. URL: https://www.ibfd.org/shop/journal/anti-tax-avoidance-directive-20161164-new-eu-policy-horizons [visited on 23/09/2023], p.503). The European Union also included two other anti-abuse measures, interest limitation and hybrid mismatches rules, directly connected to the OECD BEPS Action Plan.

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.[425] 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.[426] 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".[427]

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-transactional approach and use passive income catalogue based on the analysis of categories of income.[428] Inspired by the United Kingdom, Model B in article 7(2)(b) uses the "principal purpose test" based on substance analysis.[429] As mentioned above, Model B is considered to be weaker than Model A, mainly because the transaction-based rules impose the burden of proof on tax administrations to assess whether applying CFC rules on each transaction is justified.

However, as mentioned earlier, the strength of Model A may be weakened by adding a substance threshold which may water down the effectiveness of their CFC rules. For EU countries, a compulsory economic substance threshold was introduced as a result of the Cadbury-Schweppes court ruling in 2006.[430] 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

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[425](Ana Paula Dourado. *Assessing BEPS: Origins, Standards, and Responses - Portugal Branch Report. In 102A Cahiers de Droit Fiscal International; Rio de Janiero Congress*. Tech. rep. International Fiscal Association, 2017. URL: https://www.cideeff.pt/xms/files/Assessing_BEPS_origins_standards_and_responses_Portugal_National_Report.pdf [visited on 20/03/2024], p.649) The de minimis approach was translated from the Parent-Subsidiary Directive, see (Rigaut, 'Anti-Tax Avoidance Directive (2016/1164): New EU Policy Horizons', p.500).

[426]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*, Art.7(2)a.

[427]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*, Art.7(2)b.

[428]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(10) (Oct. 2017), pp. 606–623. URL: https://kluwerlawonline.com/api/Product/CitationPDFURL?file=Journals%5CTAXI%5CTAXI2017052.pdf (visited on 18/03/2024), p.606.

[429]Government of Ireland. *Ireland's Corporation Tax Roadmap - Incorporating Implementation of the Anti-Tax Avoidance Directives and Recommendations of the Coffey Review*. Sept. 2018. URL: https://assets.gov.ie/4158/101218132506-74b4db520e844588b3d116067cec9784.pdf (visited on 18/03/2024), p.15.

[430]*Judgment of the Court (Grand Chamber) of 12 September 2006. Cadbury Schweppes Plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue. Case C-196/04*. 2006. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62004CJ0196&from=EN (visited on 02/12/2022).

order to comply with the requirements set out in the Cadbury-Schweppes case, the Anti-Tax Avoidance Directive has introduced an exception[431] 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.[432]

This option to choose between Model A and Model B under the Anti-Tax Avoidance Directive has led to substantially different legal consequences, even though the underlying facts of the case are identical. Even after the Anti-Avoidance Directive which aimed to harmonise the regimes, CFC rules across EU countries are quite heterogeneous.[433] Research furthermore shows that in response to the substantive economic activity carve-out in EU country CFC rules that follow Model B, multinational companies have been opting for simple ways (like increasing the cost of employees rather than altering the number of employees or investment) to substantiate economic activity in low-tax countries, rather than rerouting pre-existing income flows.[434]

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[431] Moser and 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', pp.617-618.

[432] For example, the Netherlands initially 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 (EY. *Netherlands Enacts New CFC Legislation - Impact on Multinational Enterprises*. 2019. URL: https://www.ey.com/gl/en/services/tax/international-tax/alert--netherlands-enacts-new-cfc-legislation---impact-on-multinational-enterprises [visited on 12/05/2019]). However, at a later stage the Netherlands introduced a legislative change to the substance requirements, applicable as of 1 January 2020, in order to no longer be considered a 'safe harbour' for the CFC rules. Following the legal amendments, the CFC rules can still apply if the substance requirements are met in cases where the tax inspector demonstrates that there is tax abuse based on the specific circumstances (PricewaterhouseCoopers. *Amendments to anti-abuse provisions in Dutch tax legislation*. Sept. 2019. URL: https://www.pwc.nl/en/insights-and-publications/tax-news/pwc-special-budget-day/amendments-to-anti-abuse-provisions-in-dutch-tax-legislation.html [visited on 03/03/2021]). While this is an improvement to the CFC rules, it seems the burden may still fall on the tax inspector to deny application of the escape provision in case the substance requirements are only met with the main goal or one of the main goals to avoid the CFC regime (PricewaterhouseCoopers. *Dutch Government Proposes Amendments to Substance Rules Following the Danish BO Cases*. Tech. rep. Sept. 2019. URL: https://www.pwc.com/gx/en/tax/newsletters/eu-direct-tax-newsalerts/eudtg/pwc-eudtg-newsalert-19-sep-2019.pdf [visited on 03/03/2021]).

[433] Moser and 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', p.617-618.

[434] Emilia Gschossmann and Alina Pfrang. *Location, Financial and Real Effects of CFC Rules after the ATAD Implementation in the EU*. SSRN Scholarly Paper. Rochester, NY, Feb. 2024. URL: https://papers.ssrn.com/abstract=4735272 (visited on 13/05/2024).

Table 3.40. Assessment Logic: Controlled foreign company rules

ID	ID description	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, BUT WITH SUBSTANCE CURVE OUT: While CFC rules are non-transactional, they include a substance carve-out; 3: YES, NON-TRANSACTIONAL: Yes, there are non-transactional CFC rules with no substance carve-out.	0: 100 1: 75 2: 50 3: 0

3.18 Tax treaty aggressiveness

3.18.1 What is measured?

This indicator analyses the aggressiveness of a jurisdiction in their tax treaties (often referred to as "Double Taxation Treaties") with other countries, as revealed by the withholding tax rates that apply to the payment of dividends, interests or royalties. As it is further developed in a related 2021 publication, treaty aggressiveness can be measured across several other dimensions, such as the extent of Permanent Establishment (PE) exclusions, or limitations on source taxation of services payments or capital gains.[435] Due to insufficient treaty data availability in those other dimensions, the current edition of the index maintains its focus on dividends, interests and royalties withholding taxes. This ensures comparability across the index.

In this indicator, aggressiveness is understood as the ability of country A to secure lower withholding taxes from country B in a tax treaty. Importantly, this indicator takes into account bilateral tax treaties (signed and ratified by two different countries) as well as multilateral tax treaties (those ratified by groups of countries often in regional agreements). In the latter case, we consider a multilateral treaty as if every country enforcing that treaty had a bilateral tax treaty in place with every other country that enforces the multilateral treaty.

The text of tax treaties only includes the withholding tax rates applicable to both countries that signed the treaty but does not reveal which country asked or pushed the other into accepting lower rates. As such, the withholding tax rate itself does not reveal whether country A secured it from country B, or the other way around. To determine a country's overall responsibility for lowering withholding tax rates in tax treaties worldwide, 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 tax treaty between country A and country B, with the withholding tax rates available in country B's treaties with other countries.

Let's consider a hypothetical example. In the tax treaty between country A and country B, the withholding tax rate on dividends is 5 per cent. However, in all other tax treaties that country B has signed, the average withholding tax rate on dividends is 20 per cent. That is, the average tax rate is 20 per cent in the treaties between country B and country C, country B and country D, and country B and country E, and so on.

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[435] Lucas Millán-Narotzky et al. *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?* ICTD Working Paper 125. Tax Justice Network / ICTD, 2021. URL: https://www.ictd.ac/publication/tax-treaty-aggressiveness-undermining-taxing-rights-africa-2/ (visited on 13/09/2024).

Given that there is a withholding tax rate on dividends of 20 per cent on average in country B's treaties with countries C, D and E, while the withholding tax rate is 5 per cent with country A, the conclusion is that country A is the one that has secured lower withholding tax rates from country B. As a result, this indicator reflects that country A is aggressive towards country B by setting lower 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 per cent - 20 per cent= -15. Country A's aggressiveness towards country B in 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 payment: dividends, interest and royalties.

Let's continue the exemplary calculation with interest. In the tax treaty between country A and country B, the withholding tax rate on interest is 5 per cent. However, in all other tax treaties country B has entered (ie with country C, D and E, and so on), the average withholding tax rate on interest is 10 per cent.

Country A's aggressiveness against country B in relation to interests will be calculated in the following way: 5 per cent - 10 per cent = -5. Therefore, country A's aggressiveness towards Country B in interest is -5.

Continuing with royalties in our example, the withholding tax rate on royalties is 5 per cent in the tax treaty between country A and country B. However, in all other tax treaties Country B has entered (ie with country C, D and E, and so on), the average withholding tax rate on royalties is 2 per cent.

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 tax treaty 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 tax treaties, 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 haven score for this indicator

The last step is to transform a country's aggressiveness into their haven score for tax treaty aggressiveness. For this purpose, out of the 70 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 aggressiveness when comparing all countries in our sample, 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 whose statutory corporate income tax is zero (see the indicator on lowest available corporate income tax (Section 3.1)) will also obtain a haven score of 100 under this indicator, regardless of the number of tax treaties and their aggressiveness. This is because this indicator on tax treaty aggressiveness focuses on the network of bilateral and multilateral tax treaties that enables income to be shifted with minimum tax "obstacles". However, one of the main reasons for multinationals to use conduit jurisdictions – intermediate countries with dense networks of very aggressive treaties – is to allow corporate profits to ultimately terminate at a zero or no tax jurisdiction.

Hence, the aggressiveness of all countries with treaties is largely conditional upon the existence of, and their responsibility thus shared by, jurisdictions with zero corporate tax. Without zero corporate tax rates, there would be no incentive for companies to engage in profit shifting - for what would be the point in shifting

profit among other countries' tax treaties only to terminate at a high tax jurisdiction.[436]

The scoring matrix is shown in Table 3.41, with full details of the assessment logic in Table 3.42 below.

Table 3.41. Scoring Matrix: Tax treaty aggressiveness

Regulation	Haven Score Assessment [100 = maximum risk; 0 = minimum risk]
A jurisdiction has a statutory corporate income tax rate of zero per cent (or no CIT) 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 than the highest available level of aggressiveness	Proportionate, based on the value of aggressiveness
A jurisdiction has no tax treaties or it has an aggressiveness of zero	0

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal. Please refer to the document version history at the beginning of this report to see when the methodology for this indicator was last updated.

A detailed step-by-step guide for calculating the haven scores for this Tax Treaties indicator included in Annex B. An excel detailing the results and calculations for our most recent assessment of this indicator is available on request.[437]

3.18.2 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

[436] 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 tax agreements. As such, even if a nil tax jurisdiction itself is a party to only one 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 (eg in the "Double Irish Dutch Sandwich" tax planning the use of Irish hybrid entities enables the shifting 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.

[437] Please contact us at info@taxjustice.net.

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, or both. In this section, we first discuss the current function and content of 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 tax avoidance and the implications of "treaty shopping" for domestic resource mobilisation and the achievement of the Sustainable Development Goals.

1) The function and content of 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.[438]

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[439] and to a lesser extent the United Nations[440] 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".[441] 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 higher-income "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 per cent or 15 per cent (the lower rate applies to substantial holdings); for interests, 10 per cent; and for royalties 0 per cent.[442] In the UN model, rates are not specified, and thus left for negotiation

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[438] Tsilly Dagan. *The Tax Treaties Myth*. SSRN Scholarly Paper ID 379181. Rochester, NY: Social Science Research Network, Mar. 2003. URL: https://papers.ssrn.com/abstract=379181 (visited on 02/05/2022).

[439] OECD. *Model Tax Convention on Income and on Capital: Condensed Version - September 1992*. Oct. 1992. URL: https://doi.org/10.1787/mtc_cond-1992-en (visited on 07/03/2021).

[440] United Nations, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2017 Update)*.

[441] Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*.

[442] OECD, *Model Tax Convention on Income and on Capital*.

between potential treaty partners. Overall, it appears that the taxing rights of source jurisdictions are better secured in the United Nations model treaty.[443]

2) The race to the bottom

Tax war[444] dynamics have led to a wide diversity of loopholes and increasingly lower rates, which the more aggressive jurisdictions have secured through negotiations.[445] 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.[446] 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.[447] 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.[448]

Historical evidence from 1960 to 1980 indicates that European countries, such as the United Kingdom, insistently pushed developing countries to sign bilateral tax treaties in order to secure a "competitive advantage" for UK businesses in those countries.[449] Frequent interactions with public officials, lobbyists and private sector tax experts were found to be very influential in ensuring negotiating priorities and securing advantages.[450] Research shows that the power imbalance between negotiating countries, through unequal technical expertise or higher dependence on foreign investment, results in treaties that are more favourable to

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[443] 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), pp. 4–11. URL: https://www.taxjustice.net/cms/upload/pdf/Lennard_0902_UN_Vs_OECD.pdf (visited on 07/03/2021).

[444] For the use of the term 'tax war' see (Tax Justice Network, *Ten Reasons to Defend the Corporation Tax*).

[445] Martin Hearson. *The European Union's Tax Treaties with Developing Countries: Leading by Example?* Report for the European United Left/Nordic Green Left (GUE/NGL) in the European Parliament. Sept. 2018. URL: https://martinhearson.files.wordpress.com/2018/10/hearson-2018-ep.pdf (visited on 07/03/2021), pp.21-21.

[446] (Brehm Christensen and Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?*); see also (OECD. *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 - 2015 Final Report - En - OECD*. tech. rep. Oct. 2015. URL: https://www.oecd.org/tax/preventing-the-granting-of-treaty-benefits-in-inappropriate-circumstances-action-6-2015-final-report-9789264241695-en.htm [visited on 07/03/2021], p.81).

[447] OECD. *Preventing the Artificial Avoidance of Permanent Establishment Status, Action 7 - 2015 Final Report*. Text. OECD, Oct. 2015. URL: https://www.oecd-ilibrary.org/taxation/preventing-the-artificial-avoidance-of-permanent-establishment-status-action-7-2015-final-report_9789264241220-en (visited on 07/03/2021).

[448] 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 a certain amount of income, but it can also result in having that amount considered deductible (interest); effectively lowering the tax paid on other income.

[449] Hearson, 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion', p.103.

[450] Hearson, 'Bargaining Away the Tax Base: The North-South Politics of Tax Treaty Diffusion', pp.16, 112–113.

the capital exporting country, which are usually high-income countries and tax havens.[451]

While the idea that bilateral treaties increase desirable and real foreign direct investment is often mentioned as the key reason for entering into tax treaties, it is hardly supported by empirical evidence.[452] 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".[453]

Pursuant to the dynamics of tax-wars, 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.[454] The outcome of decades of tax treaty war is apparent with regards to withholding rates.

Figure 3.6. Evolution of average withholding rates

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.

Source: International Monetary Fund. *Spillovers in International Corporate Taxation.* IMF Policy Briefs. May 2014, p.69. URL: www.imf.org.

According to the International Monetary Fund, since 1980 average withholding tax rates have fallen by 30 per cent for most types of income, while the average rates

[451] Martin Hearson. 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?' *Journal of International Development*, 30(2) (Mar. 2018), pp. 233–255. URL: http : / / onlinelibrary . wiley . com/doi/10.1002/jid.3351/abstract (visited on 07/03/2021).

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

[453] Sebastian Beer and Jan Loeprick. *The Cost and Benefits of Tax Treaties with Investment Hubs: Findings from Sub-Saharan Africa*. Tech. rep. Oct. 2018. URL: 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 (visited on 07/03/2021).

[454] Within our sample of 70 jurisdictions, just 14 jurisdictions are responsible for more than 50 per cent of measured aggressiveness. All of them are categorised as High Income Countries by the World Bank, and at least 9 out of 14 can be considered financial centres: United Arab Emirates (Dubai), France (Paris), United Kingdom (London), Switzerland (Zurich), Germany (Frankfurt), Ireland (Dublin), Netherlands (Amsterdam), Singapore and Cyprus.

on qualifying dividends has fallen by almost 50 per cent, as shown in figure 3.6[455] 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.[456] To a large extent, governments are responsible for negotiating and signing bilateral treaties that contribute to the race to the bottom in withholding taxes.

This indicator on tax treaties 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 aggressiveness of a country's treaties. Both this metric and the average aggressiveness provide useful insights for civil society and government negotiating teams when considering prospective treaties (an excel detailing these results for our most recent analysis is available upon request[457]).

3) How multinationals avoid taxation through treaty shopping

Treaty shopping by multinational companies entails the deliberate and artificial structuring of its business operations and financial flows to take advantage of those treaties with the desired features and lowest tax rates. Complementary 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,[458] 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.[459] The fact that outbound royalty payments amount to 26.39 per cent of Ireland's gross domestic product between

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[455] International Monetary Fund, *Spillovers in International Corporate Taxation*, pp.68-69.

[456] International Monetary Fund, *Spillovers in International Corporate Taxation*, pp.68-69.

[457] Please contact us at info@taxjustice.net.

[458] Brehm Christensen and Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?*.

[459] Brehm Christensen and Clancy, *Exposed: Apple's Golden Delicious Tax Deals. Is Ireland Helping Apple Pay Less than 1% Tax in the EU?*, pp.26-30.

2010 and 2015[460] 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 per cent.[461]

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 per cent in the absence of a treaty; however, the EATR goes down to 2 per cent where tax-treaties are available.[462] In other words, if a multinational company would like to shift intellectual property profits offshore, doing so in the absence of a 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.[463]

For instance, a treaty that provides for zero per cent withholding tax on interests may undermine the efforts of a developing country to reduce dependence on foreign creditors by increasing domestic withholding rates. That is, even if a country legislates a 15 per cent withholding tax on interests to mitigate cross border tax avoidance through financing arrangements, treaties enforcing a zero per cent rate will still be applicable, opening the way for continued financial engineering (for instance, with back-to-back loan agreements with financial institutions in favorable treaty countries). Indeed, even if treaty language often restricts application of advantageous provisions where the "beneficial owner" of the income is not a resident of one of the treaty partners, treaty shopping dynamics commonly allow multinationals to choose the most favorable jurisdiction and obtain reduced rates.

Recently developed offshore financial centres like Mauritius and the United Arab Emirates (UAE) have also been negotiating very aggressive treaties. The dire impact in the public finances of Global South countries resulted in the termination of Mauritius' treaties with Niger and Zambia.[464] India, in turn, decided to renegotiate its treaty with Mauritius, including additional provisions to prevent the use of shell entities in Mauritius to provide tax benefits for companies established in third countries.[465] While countries such as Indonesia renegotiated their treaties with the UAE,[466] the latter has maintained and expanded its treaty network. International pressure induced the jurisdiction to sign the OECD's

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[460] Loretz et al., *Aggressive Tax Planning Indicators: Final Report*, p.102.

[461] Loretz et al., *Aggressive Tax Planning Indicators: Final Report*, p.102.

[462] Loretz et al., *Aggressive Tax Planning Indicators: Final Report*, p.26.

[463] Loretz et al., *Aggressive Tax Planning Indicators: Final Report*, p.26.

[464] Danish Mehboob. 'Is the Mauritius Tax Treaty Network Crumbling?' *International Tax Review* (July 2020). URL: https://www.internationaltaxreview.com/article/2a6a66eh04saxacklrpq8/is-the-mauritius-tax-treaty-network-crumbling (visited on 20/08/2024).

[465] Archana Rao. 'India-Mauritius DTAA Amendment Closes Tax Avoidance Loophole'. *India Briefing News* (Apr. 2024). URL: https://www.india-briefing.com/news/india-mauritius-dtaa-amendment-addresses-tax-avoidance-loophole-32041.html/ (visited on 20/08/2024).

[466] PwC. *Renegotiated Indonesia – UAE Tax Treaty Comes into Force*. Tech. rep. PWC, Feb. 2022. URL: https://www.pwc.com/id/en/taxflash/assets/english/2022/taxflash-2022-07.pdf.

Multilateral Instrument (MLI),[467] and implement a federal corporate income tax regime.[468]

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.[469] 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[470] together with widespread tax exemptions on investment activities[471] and falling statutory corporate income tax rates[472] have undoubtedly contributed to 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.[473]

With tax treaties, the tax losses to developing countries are most problematic.[474] Even a single treaty can greatly affect a country's tax base,[475] as network externalities arise when the treaty partner has various low or no tax treaties. More specifically, when bilateral 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 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

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[467] EY. 'UAE Ratifies Multilateral Convention to Implement Tax Treaty Related Measures'. *Tax News Update* (July 2019). URL: https : / / taxnews . ey . com / news / 2019 - 1302 - uae - ratifies - multilateral - convention-to-implement-tax-treaty-related-measures (visited on 20/08/2024).

[468] Howard R. Hull. 'United Arab Emirates: Corporate Tax Relief on International Investment'. *Bulletin for International Taxation*, 77(3) (Mar. 2023). URL: https : / / www . ibfd . org / sites / default / files / 2023 - 03/ibfd_freearticle_united-arab-emirates_oecd_0.pdf.

[469] Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*, pp.49-60.

[470] International Monetary Fund, *Spillovers in International Corporate Taxation*, p.68.

[471] See the indicator on sectoral exemptions (Section 3.5).

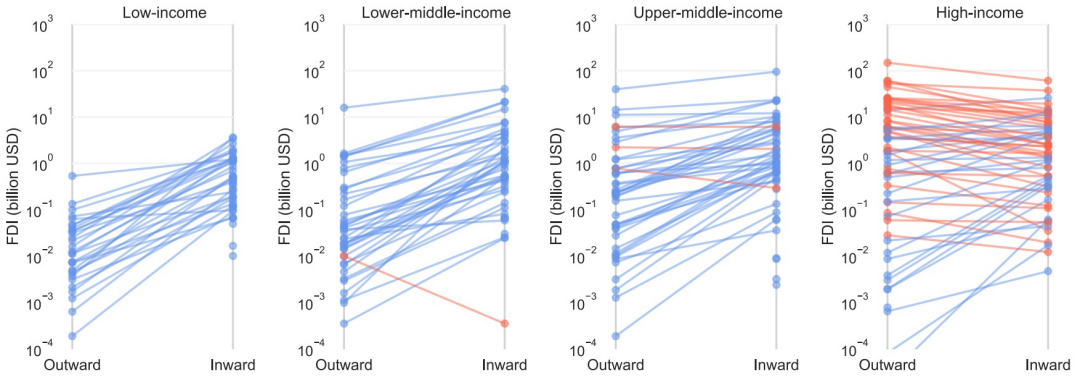
[472] OECD. *Top Incomes and Taxation in OECD Countries: Was the Crisis a Game Changer?* Tech. rep. OECD Directorate for Employment, Labour and Social Affairs, May 2014. URL: http : / / www . oecd . org / social/OECD2014-FocusOnTopIncomes.pdf (visited on 07/03/2021), p.7.

[473] Annette Alstadsæter et al. 'Who Owns the Wealth in Tax Havens? Macro Evidence and Implications for Global Inequality' (Dec. 2017). URL: https : / / gabriel - zucman . eu / files / AJZ2017b . pdf (visited on 18/03/2020).

[474] International Monetary Fund, *Spillovers in International Corporate Taxation*, p.26.

[475] International Monetary Fund, *Spillovers in International Corporate Taxation*, p.27.

Figure 3.7. Comparison of inward and outward greenfield FDI as of 2018.



Source: Lucas Millán-Narotzky et al. *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?* ICTD Working Paper 125. Tax Justice Network / ICTD, 2021. www.ictd.ac (visited on 13/09/2024).

definition developing countries will forego substantially more revenue than their capital-exporting counterparty.[476]

Figure 3.7 illustrates the strikingly different foreign direct investment (FDI) positions across income groups. The graph 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.[477] A 2013 study found that the treaties the Netherlands signed with developing countries led to more than €770m in lost revenue.[478]

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.

[476] (Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*, pp.20, 27). See also (Hearson, 'When Do Developing Countries Negotiate Away Their Corporate Tax Base?').

[477] Petr Jansky and Marek Sedivy. 'Estimating the Revenue Costs of Tax Treaties in Developing Countries' (Aug. 2018). URL: https : / / ideas . repec . org / p / fau / wpaper / wp2018 _ 19 . html (visited on 07/03/2021).

[478] Katrin McGauran. *Should the Netherlands Sign Tax Treaties with Developing Countries?* Tech. rep. SOMO Centre for Research on Multinational Corporations, June 2013. URL: https://www.somo.nl/wp-content/uploads/2013/06/Should-the-Netherlands-sign-tax-treaties-with-developing-countries.pdf (visited on 03/05/2022).

Table 3.42. Assessment Logic: Tax treaty aggressiveness

ID	ID description	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 refer to the detailed methodology in Annex B. An excel detailing the results and calculations for our most recent assessment of this indicator is available on request.

4. The quantitative component: global scale weights

The second component of the Corporate Tax Haven Index is the global scale weight (GSW) for multinationals. The GSW for multinationals is a measure of the volume of financial activity conducted by multinational corporations in each jurisdiction.

The Corporate Tax Haven Index measures each jurisdiction's global scale weight using data on foreign direct investment (FDI) provided by the International Monetary Fund's Coordinated Direct Portfolio Statistics (IMF CDIS). Foreign direct investment is an investment from a party in one country into a legal entity, such as a corporation, that is based in another country. The investment is in the form of controlling ownership, or stock, in the legal entity (there are a number of definitions, for example, UNCTAD's Handbook of Statistics 2018[1] defines foreign direct investment 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 GSW therefore quantifies the importance of each jurisdiction considered in the Corporate Tax Haven Index for cross-border direct corporate investment. The GSW thus represents a measure of the financial 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 Corporate Tax Haven Index, we combine global scale weights with 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 high 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 most important corporate tax havens in the world. The GSWs 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 in the previous chapter and as measured by haven scores. It is then only in the subsequent step, where the global scale weight's measure of scale of multinationals' financial activity is combined with the haven

[1] UNCTAD. *Handbook of Statistics 2018*. Tech. rep. Geneva, 2018. URL: https://unctad.org/system/files/official-document/tdstat43_en.pdf (visited on 12/08/2024).

scores, that we construct the Corporate Tax Haven Index which reflects the risk of global harm done by each jurisdiction. As a result, while a high or low global scale weight is neither good nor bad, we consider that the higher a jurisdiction's global scale weight is, the greater the responsibility the jurisdiction has to guard against corporate tax abuse – and conversely, the greater the risk for corporate tax abuse the jurisdiction creates when it fails to uphold that responsibility.

In the remainder of this section we describe in detail how we construct the global scale weights for the Corporate Tax Haven Index. We start by introducing the two main existing sources of FDI data and explaining that we ultimately choose the IMF's CDIS over UNCTAD's FDI statistics 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 and present some descriptive statistics.

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 for the Corporate Tax Haven Index is the International Monetary Fund's Coordinated Direct Investment Survey (IMF 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 for countries with no directly reported data.

The version of the CDIS that we currently use for the CTHI was accessed from the IMF's website[2] on 31 May 2024 and the latest data it contains is from 2022 (and that is therefore the year of data currently used to construct GSW). In the recent years, this data has been updated every December and the CTHI will thus be regularly updated to consider the most up-to-date data in the construction of GSW. As of this version, the CDIS contains a total of 226,701 bilateral observations of inward FDI stocks and 167,491 for outward FDI stocks, spanning over the time period 2008-2022. 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 70 jurisdictions are considered in the Corporate Tax Haven Index, 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

[2] Available at http://data.imf.org/CDIS

values. With a combination of reported and derived data, the CDIS covers all jurisdictions included in the Corporate Tax Haven Index.

The second main source of foreign direct investment data comes from the United Nations Conference on Trade and Development (UNCTAD) which publishes data on unilateral inward and outward foreign direct investment 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 foreign direct investment.

While there are other sources of cross-country foreign direct investment 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 Corporate Tax Haven Index).

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 detailed information on the CDIS and the data. 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).[3] 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.[4] These additional items include, for example, industry breakdowns, data on round tripping, income, financial transactions or ultimate investing economy.

Data on FDI in the CDIS is recorded for the immediate counterpart economy only, which implies that it does not capture the information on ultimate investor or host country and also that it does not capture round-tripping and other similar phenomena.[5] Recent evidence that combines multiple sources for a limited set of countries shows that around 40 per cent of total FDI can be characterized as phantom FDI, i.e. investment into corporate shells with no substance and no real

[3] Rita Mesias. *The Coordinated Direct Investment Survey Guide 2015*. Oct. 2015. URL: https : / / www . elibrary.imf.org/display/book/9781513519418/9781513519418.xml (visited on 19/03/2024), p.3.

[4] Mesias, *The Coordinated Direct Investment Survey Guide 2015*, p.4.

[5] Mesias, *The Coordinated Direct Investment Survey Guide 2015*.

links to the local economy.[6] However, for our purposes, we argue that using immediate counterpart economy data is more suitable anyway, as even phantom FDI can constitute opportunities for lowering an MNE's global tax liabilities.

The values on the books of the direct investment enterprise should be used for both inward and outward direct investment.[7] 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.

Using data on foreign direct investment to construct the global scale weights is our preferred option because they represent the best widely available measure of financial activity of multinational enterprises. Alternative measures for GSW considered earlier instead of foreign direct investment stock data were profit shifting and misalignment indicators such as those recently proposed by Tørsløv, Wier, & Zucman,[8] Bolwijn, Casella, & Rigo[9] or Cobham & Janský,[10] and reviewed and compared quantitatively by Janský & Palanský.[11] In contrast with all these and other existing studies, the foreign direct investment data has the advantage of better data availability and coverage of more countries. Despite the choice of the foreign direct investment data for the GSW of the Corporate Tax Haven Index, 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 here, we point to some of the most relevant papers on measures of cross-border financial activity of multinationals. These include contributions in economic geography by Haberly & Wójcik,[12] in economics by Blanchard & Acalin,[13] by UNCTAD[14] as well as by the Tax Justice Network.[15] The IMF notes that foreign direct investment data includes

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[6] Jannick Damgaard et al. 'What Is Real and What Is Not in the Global FDI Network?' *Journal of International Money and Finance*, 140 (2024), p. 102971.

[7] Mesias, *The Coordinated Direct Investment Survey Guide 2015*, p.4.

[8] Thomas Tørsløv et al. 'The Missing Profits of Nations'. *The Review of Economic Studies* (July 2022). URL: https://doi.org/10.1093/restud/rdac049.

[9] Richard Bolwijn et al. 'An FDI-driven Approach to Measuring the Scale and Economic Impact of BEPS'. *Transnational Corporations*, 25(2) (Sept. 2018), pp. 107–143. URL: https://www.un-ilibrary.org/content/journals/2076099x/25/2/6 (visited on 19/03/2024).

[10] Alex Cobham and Petr Janský. 'Measuring Misalignment: The Location of US Multinationals' Economic Activity versus the Location of Their Profits'. *Development Policy Review*, 37(1) (2019), pp. 91–110. URL: https://onlinelibrary.wiley.com/doi/abs/10.1111/dpr.12315 (visited on 16/01/2019).

[11] Petr Janský and Miroslav Palanský. 'Estimating the Scale of Profit Shifting and Tax Revenue Losses Related to Foreign Direct Investment'. *International Tax and Public Finance*, 26(5) (2019), pp. 1048–1103. URL: https://doi.org/10.1007/s10797-019-09547-8 (visited on 05/09/2019).

[12] Daniel Haberly and Dariusz Wójcik. 'Regional Blocks and Imperial Legacies: Mapping the Global Offshore FDI Network'. *Economic Geography*, 91(3) (2015), pp. 251–280. URL: https://onlinelibrary.wiley.com/doi/abs/10.1111/ecge.12078 (visited on 16/04/2020).

[13] Olivier Blanchard and Julien Acalin. *What Does Measured FDI Actually Measure?* Oct. 2016. URL: https://www.piie.com/publications/policy-briefs/what-does-measured-fdi-actually-measure (visited on 19/03/2024).

[14] Richard Bolwijn et al. 'Establishing the Baseline: Estimating the Fiscal Contribution of Multinational Enterprises'. *Transnational Corporations*, 25(3) (2018), pp. 111–142. URL: https://www.un-ilibrary.org/content/journals/2076099x/25/3/5 (visited on 20/03/2024).

[15] Meinzer et al., *Comparing Tax Incentives across Jurisdictions: A Pilot Study*.

both 'greenfield' investments and also mergers and acquisitions, and argues that estimates suggest that more than half may reflect mergers and acquisitions.[16] Garcia-Bernardo, Fichtner, Takes, & Heemskerk[17] quantify that many jurisdictions serve primarily only as conduits, via which the foreign direct investment flows through - in and out. As an example of a recent relevant contribution on the quality and characteristics of the foreign direct investment data, Damgaard, Elkjaer & Johannesen (2024)[18] explain the differences whether or not special purpose entities are included in the foreign direct investment data, and that some multinational enterprises invest in China through the British Virgin Islands and Hong Kong.

4.2 Constructing the global scale weight

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 foreign direct investment stock, derived foreign direct investment 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.[19] 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 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, we use zero, since negative values would decrease the country's total sum of foreign direct investment stock. This would imply that the potential for tax abuse by a multinational company's activity in that jurisdiction is diminishing through negative FDI, which is conceptually unjustified and would be misleading.

More formally, for each country i and partner jurisdiction j, we derive the inward and outward foreign direct investment (FDI) positions as:

$$\text{inward FDI position}_{ij} = \max(\text{reported inward FDI}_{ij}, \text{derived inward FDI}_{ij}, 0) \quad (4.1)$$

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

[17] Javier Garcia-Bernardo et al. 'Uncovering Offshore Financial Centers: Conduits and Sinks in the Global Corporate Ownership Network'. *Scientific Reports*, 7(1) (Dec. 2017). URL: http : / / www . nature . com/articles/s41598-017-06322-9 (visited on 27/09/2017).

[18] Damgaard et al., 'What Is Real and What Is Not in the Global FDI Network?'

[19] Mesias, *The Coordinated Direct Investment Survey Guide 2015*, p.66.

$$\text{outward FDI position}_{ij} = \max(\text{reported outward FDI}_{ij}, \text{derived outward FDI}_{ij}, 0) \tag{4.2}$$

Second, using these foreign direct investment positions, we sum the value of all N bilateral foreign direct investment stock positions of each country to calculate the total global inward and outward foreign direct investment stock positions of country i as:

$$\text{inward FDI position}_i = \sum_{j=1}^{N} \text{inward FDI position}_{ij} \tag{4.3}$$

$$\text{outward FDI position}_i = \sum_{j=1}^{N} \text{outward FDI position}_{ij} \tag{4.4}$$

Third, for each country i, we calculate the total of its inward and outward foreign direct investment stock as:

$$\text{total FDI position}_i = \text{inward FDI position}_i + \text{outward FDI position}_i \tag{4.5}$$

Fourth, we take the share of the total FDI position on the global total of these values to derive the GSW of jurisdiction i as:

$$GSW_i = \frac{\text{total FDI position}_i}{\sum_{i=1}^{M} \text{total FDI position}_i} \tag{4.6}$$

where M is the number of jurisdictions for which data is available.

In total, data on foreign direct investment positions in 2022 is available for 245 jurisdictions, out of which 70 are included in the Corporate Tax Haven Index. We find that the 70 jurisdictions considered in the Corporate Tax Haven Index together account for 86.67 per cent of all global foreign direct investment. The United States has the largest recorded share of global foreign direct investment with 13.5 per cent, followed by Netherlands with 9.6 per cent and Luxembourg with 7.6 per cent.

Complete results of global scale weights for all countries in the Corporate Tax Haven Index is available in the country profiles on the Corporate Tax Haven Index website and full data sets can be downloaded through our data portal.

5. Combining haven scores and global scale weights

The final step in the creation of the Corporate Tax Haven Index 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. 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 for multinationals, the choice of method to combine haven score and global scale weight is necessarily arbitrary to some extent. 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 haven scores with global scale weights we are led by the Corporate Tax Haven Index's core objective to measure a jurisdiction's contribution to the global problem of corporate tax havens while highlighting harmful regulations of tax havens. By doing so, the Corporate Tax Haven Index 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 Corporate Tax Haven Index, we use a formula that is consistent with the Financial Secrecy Index. The formula that defines the Corporate Tax Haven Index for jurisdiction i looks as follows:

$$\text{CTHI}_i = \frac{\text{Haven score}_i^3 * \text{Global scale weight}_i^{1/3}}{100}$$

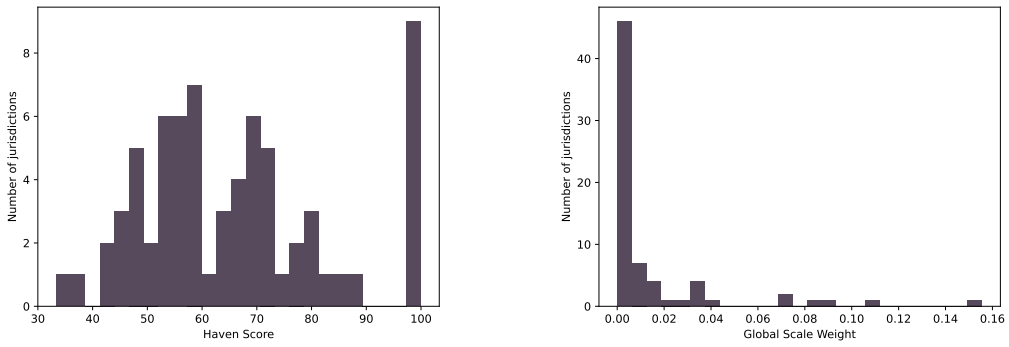
The choice of this formula, which we call the cube/cubed-root formula, is explained in detail in chapter 5 of the methodology of the Financial Secrecy Index 2018.[1] We divide the final CTHI value by 100 for presentational purposes. In constructing the Corporate Tax Haven Index, we choose to remain consistent with the approach used in the Financial Secrecy Index because this formula fits well

[1] Tax Justice Network. *Financial Secrecy Index*. 2018. URL: https://www.financialsecrecyindex.com/en/ (visited on 15/08/2019).

with the objective of the Corporate Tax Haven Index – 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 Corporate Tax Haven Index 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 Corporate Tax Haven Index ranking over-reliant on global scale weights and only marginally reliant on haven scores. Figure 5.1 shows the histograms of the two distributions in the CTHI as of October 2024. 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.

Figure 5.1. Histograms of haven scores and global scale weights of the Corporate Tax Haven Index

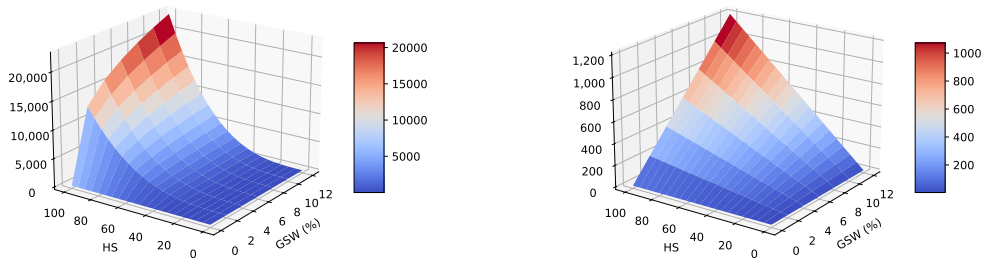


This feature of the cube/cube-root formula is nicely illustrated by the gradient of the surface formed by the combination of haven scores with global scale weights that together form the Corporate Tax Haven Index. For jurisdictions with high haven scores and small global scale weights, even a small increase in global scale weight will increase the resulting CTHI value 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 value were they to increase their haven scores.

The second main advantage of the cube/cubed-root formula is that it is consistent with the Financial Secrecy Index. 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, as we detail in Section 5.2), the cube/cubed-root formula ensures that the Corporate Tax Haven Index can be directly compared to the results of the Financial Secrecy Index.

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 Corporate Tax Haven Index – taking the share of each jurisdiction's CTHI value in the total sum of Corporate

Figure 5.2. Comparison of surface plots of haven scores, global scale weights, and the resulting CTHI value for the cube/cube-root formula (left panel) and a simple multiplicative formula (right panel)



Tax Haven Index values for all jurisdictions. Assuming that the sum of Corporate Tax Haven Index value for all assessed 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 havenry. This contribution to global tax havenry, or CTHI share, of jurisdiction i is thus defined as follows:

$$\text{CTHI share}_i = \frac{\text{CTHI}_i}{\sum_i^M \text{CTHI}_i} * 100\%$$

where M is the number of jurisdictions assessed in the CTHI.

We thus present the main results of the Corporate Tax Haven Index in four parts: haven scores, global scale weights, CTHI value, and CTHI share.

5.1 Global scale weight and the Corporate Tax Haven Index 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.[2] In overseas territories and crown dependencies the King 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, by

[2]Our list of UK's overseas territories and crown dependencies 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 King remains head of state.

Cobham (2022)[3] and Tax Justice UK (2019)[4]). Political responsibility for the haven scores of overseas territories and crown dependencies rests with the United Kingdom. Therefore, we seek to compute a GSW for the entire group of overseas territories and crown dependencies. Calculating the joint global scale weight is straightforward—one can simply sum up each jurisdiction's individual global scale weight to calculate the group's global scale weight.

To derive joint haven scores for such groups of related countries (to then be combined with the group's global scale weight to form the group's Corporate Tax Haven Index value), we see at least three relevant options. First, and most consistent with the overall Corporate Tax Haven Index approach of applying the weakest link principle, is to use the highest haven score in the group. Second, we could take a simple arithmetic average of the individual countries' haven scores. Third, we could use average haven scores weighted by each jurisdiction's global scale weight.

5.2 Robustness checks

In constructing the Corporate Tax Haven Index, we make several methodological choices which are described in detail in the preceding sections. We recognise that these choices are, to a degree, necessarily arbitrary and other choices exist that we also consider sensible and that would lead to alternative versions of the Index. In the 2021 edition of the Corporate Tax Haven Index,[5] we ran a comprehensive set of robustness checks in which we challenged some of those choices to assess the degree to which the results of the Corporate Tax Haven Index are consistent across the variations on those methodological choices. Specifically, we constructed a total of 18 alternative versions of the Corporate Tax Haven Index and we classified these robustness checks into three categories: (A) changes to the formula that aggregates haven scores and global scale weights; (B) changes to the construction of global scale weights; and (C) changes to the construction of haven scores. The choice of the robustness checks that we presented partly built on the findings of the statistical audits carried out by the Joint Research Centre of the European Commission on the Corporate Tax Haven Index 2019[6] and the Financial Secrecy Index 2018.[7] While these results of robustness checks refer to older versions of the underlying data, the methodology

[3] Alex Cobham. 'Imperial Extraction and 'Tax Havens''. In: *Imperial Inequalities*. Ed. by Gurminder K. Bhambra and Julia McClure. Manchester University Press, Nov. 2022. Chap. Imperial Inequalities, pp. 280–298. URL: https://www.manchesterhive.com/display/9781526166159/9781526166159.00025.xml (visited on 30/08/2023).

[4] Tax Justice UK and TaxWatch. *A Manifesto for Tax Equality*. Nov. 2019. URL: https://taxjustice.uk/wp-content/uploads/2024/03/a_manifesto_for_tax_equality.pdf (visited on 19/09/2024).

[5] Tax Justice Network. *Corporate Tax Haven Index (CTHI) 2021 Methodology*. Tech. rep. 2021. URL: http://cthi.taxjustice.net/cthi2021/methodology.pdf (visited on 17/03/2020).

[6] Erhart Szilárd. *The JRC Statistical Audit of the Corporate Tax Haven Index 2019*. 2020.

[7] William Becker and Michaela Saisana. *The JRC Statistical Audit of the Financial Secrecy Index 2018*. Tech. rep. Joint Research Centre, European Commission, 2018. URL: https://knowledge4policy.ec.europa.eu/sites/default/files/jrc_statistical_audit_of_the_financial_secrecy_index_2018.pdf (visited on 02/05/2022).

to construct the haven scores, global scale weights, and the resulting Corporate Tax Haven Index itself has remained the same since the 2021 edition.

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Annex A: Comparison of country by country reporting information requirements

		GRI 207 (2019) pCbCR	OECD BEPS 13 CbCR	EU Directive 2021/202	EU Directive 2013/36	EU Directive 2013/34	US Dodd Frank Act Sec: 1504
Scope:		All sectors	All sectors	All sectors	Financial sector	Extractives sector	Extractives sector
Public reporting:		✓	x	✓	✓	✓	✓
Multinational enterprise size threshold:		x	<€750m	<€750m	x	x	x
Information disaggregation:		Full	Full	Partial	Full	Full	Full
Information requirements:							
Basic info	Name of entities	✓	✓	x	✓	x	x
	Description of activities	✓	✓	✓	✓	x	x
	Tax jurisdiction / receiving government	✓	✓	✓	✓	✓	✓
	Project name	x	x	x	x	✓	✓
Financial data	Revenue	✓	✓	✓	✓	x	x
	Revenues from third party sales	✓	✓	x	x	x	x
	Revenues from intra-group sales	✓	✓	x	x	x	x
	Profit or loss before tax	✓	✓	✓	✓	x	x
	Tangible assets other than cash	✓	✓	x	x	x	x
	Stated capital	x	✓	x	x	x	x
	Accumulated earnings	x	✓	✓	x	x	x
	Number of employees	✓	✓	✓	✓	x	x
Tax data	Income taxes paid	✓	✓	✓	✓	✓	✓
	Income tax charge	✓	✓	✓	x	x	✓

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		GRI 207 (2019) pCbCR	OECD BEPS 13 CbCR	EU Directive 2021/202	EU Directive 2013/36	EU Directive 2013/34	US Dodd Frank Act Sec: 1504
	Reasons for the difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax.	✓	x	x	x	x	x
Management approach disclosures	Approach to tax (overall, not country by country)	✓	x	x	x	x	x
	Tax governance, control and risk management (overall, not country by country)	✓	x	x	x	x	x
	Stakeholder engagement and management of tax concerns (overall, not country by country)	✓	x	x	x	x	x
Sector-specific disclosures	Public subsidies received	x	x	x	✓	✓	✓
	Dividends paid to government	x	x	x	x	✓	✓
	Royalties paid to government	x	x	x	x	✓	✓
	License fees, rental fees, entry fees paid to government	x	x	x	x	✓	✓
	Signature, discovery and production bonuses paid to government	x	x	x	x	✓	✓
	Production entitlements paid to government	x	x	x	x	✓	✓
	Payments for infrastructure improvements paid to government	x	x	x	x	✓	✓

Annex B: Detailed methodology for calculation of tax treaty aggressiveness

In order to assess the relative aggressiveness of a jurisdiction's (country i) treaty network, we compare the rates that a jurisdiction (country i) has accorded bilaterally with a treaty partner (country j, for example) with the average rates which that partner jurisdiction (j) has agreed with all its other treaty partners – that is, the jurisdictions $(k, l, m, ...)$ with which j has concluded treaties, excluding i.

This comparison is made separately within each type of income covered: Dividends, Interest and Royalty (D/I/R) payments. If the rates between i and j are lower than the average rates available in j's treaty network (excluding the treaty between i and j), then the difference between these rates is treated (and measured) as an indication of i treaty aggressiveness. The differential will thus increase the haven score of country i.

For example, we assess the aggressiveness of Singapore in relation to Rwanda, for dividends withholding (Figure 5.3). We compare the withholding taxes agreed between Singapore and Rwanda, with those agreed between Rwanda and Jersey, Belgium, Mauritius and South Africa.[8] In another step, this analysis is undertaken not only for dividends withholding, but also for interests and royalties withholding.

In mathematical terms, the aggressiveness, D, with regards to WHT on dividends (component k) of Singapore (country i) on Rwanda (country j) can be defined as

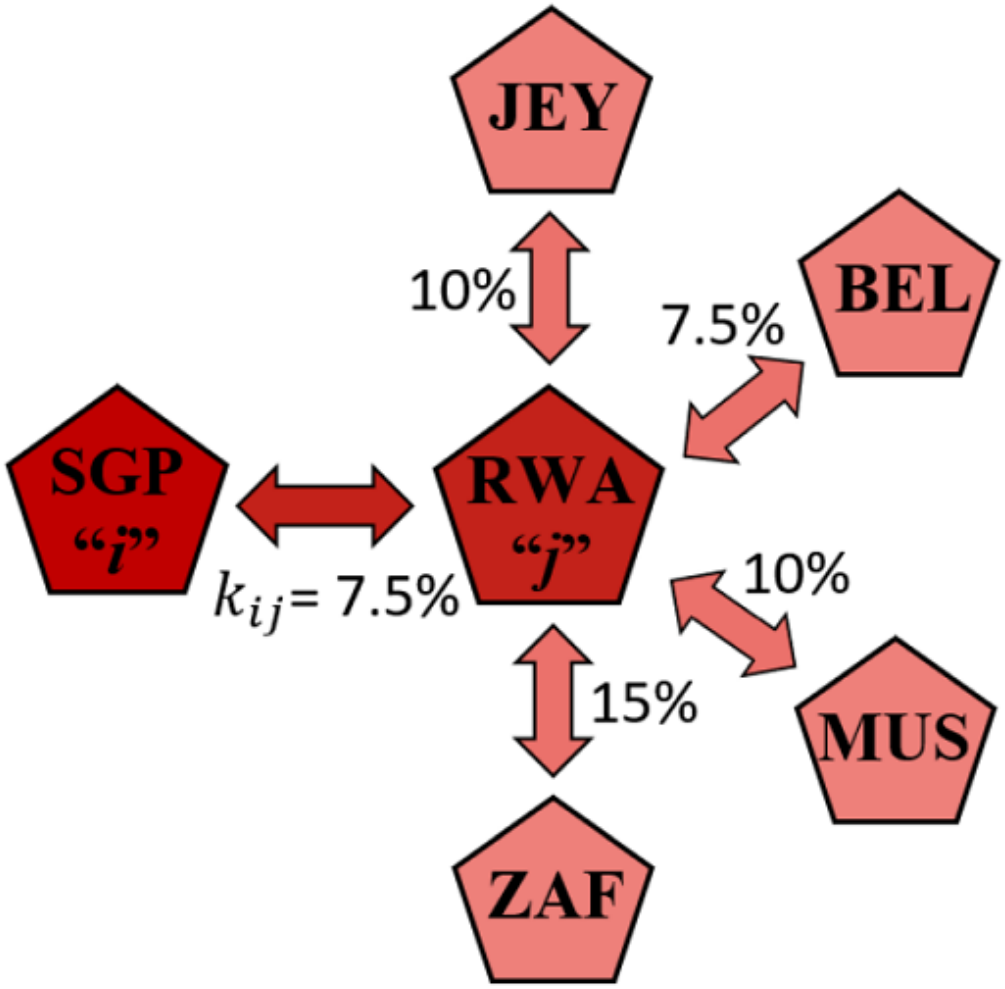
$$D_{ij}^{k} = \begin{cases} k_{ij} - \overline{k}_{j,i} & \text{if } k_{ij} - \overline{k}_{j,i} < 0, \\ 0 & \text{otherwise,} \end{cases} \tag{5.1}$$

with k_{ij} the withholding tax rate on dividends agreed between Singapore and Rwanda, and $\overline{k}_{j,i}$ the average withholding tax rate on dividends in all treaties between Rwanda (country j) and all its treaty partners, excluding Singapore (country i) — that is, the average withholding tax that would be applicable in Rwanda if it had not signed its tax treaty with Singapore.

We note that k_{ij} corresponds to a quantity for which higher values are beneficial to the source country – the country from which dividends, interests or royalties are paid out. That is, with Singapore as the country whose aggressiveness is assessed, the higher the withholding taxes applicable under the Rwanda-Singapore treaty, the more tax rights Rwanda keeps on subsidiaries of Singaporean companies.

[8] Please note that this example uses treaties in force as of 2021, following peer-review and publication of the methodology by the ICTD. (Millán-Narotzky et al., *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?*) As of the 2024 update of the CTHI, Rwanda now has 4 additional treaties in force. However, the precise number of treaties does not have any impact on the illustrative function of the example.

Figure 5.3. Example of the assessment of treaty aggressiveness in Rwanda's treaty network, as of 2021



Source: Lucas Millán-Narotzky et al. *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?* ICTD Working Paper 125. Tax Justice Network / ICTD, 2021. www.ictd.ac (visited on 13/09/2024).

Importantly, we only consider negative differentials for the assessment of a jurisdiction's overall aggressiveness. That is, if the value $k_{ij} - \overline{k}_{j,i}$ is positive (ie, when the treaty in question does not offer lower taxes in comparison to the average treaty signed by j), we set aggressiveness to zero $D_{ij}^{k} = 0$. In this indicator, we disregard positive differentials because treaties respecting source tax rights (by potentially allowing high withholding taxes) do not have a clear compensatory and mitigating effect with regards to jurisdiction shopping and the race to the bottom in withholding taxes.[9] In any case, simulations show very

[9]The use of relatively high treaty withholding tax rates by a jurisdiction does not push other jurisdictions (treaty partners) to adopt higher rates in their treaties with third parties. In other words, there can be no 'race to the top' in double tax agreement rates within the current function of double tax agreements. Since tax treaties set maximum rates chargeable by contracting states on outflows, if the maximum rate is high, this does not mean that the tax rate will indeed be high, just that the contracting jurisdictions will have the option to raise rates up to that higher limit under domestic law. Conversely, if the maximum tax rate under a treaty is low, the actual tax rate on outflows is automatically lowered. Treaties with low rates can thus be systematically exploited for profit shifting, while treaties with high withholding rates will rarely be used by multinational companies.

similar results when considering all differentials (sum or average), as opposed to considering only negative differentials.

The example above is detailed in Table 5.2 below. For instance, the aggressiveness of Singapore towards Rwanda is -3.125, that is, the difference between the average withholding rate for all treaties of Rwanda excluding Singapore (10.625) and the withholding of the treaty Rwanda-Singapore (7.5).

Table 5.2. Treaty aggressiveness with regard to withholding taxes on dividends for Rwanda (as of 2021)

Country i	Country j	WHT on dividends (k_{ij})	Average WHT, excluding i ($\overline{k}_{j,i}$)	$k_{i,j} - \overline{k}_{j,i}$	D_{ij}^{k}
Singapore	Rwanda	7.5	10.625	-3.125	-3.125
Jersey	Rwanda	10	10	0	0
Belgium	Rwanda	7.5	10.625	-3.125	-3.125
Mauritius	Rwanda	10	10	0	0
South Africa	Rwanda	15	8.75	+ 6.25	0

Next, we explain the calculation steps leading to haven score for the indicator on Tax Treaties.

Step A: defining average 'tax treaty rates'

As mentioned above, we define a "tax treaty rate" with respect to a bilateral relation (and for a specific type of income) as the average of the applicable rates under the tax treaty in force, as amended by subsequent protocols, if any. We assess each treaty with regards to three different components "k": withholding taxes on dividends, interests and royalties.

Table 5.3. Definition of tax treaty rates

Tax treaty rate for Dividends	$Div_{i,j} = \frac{\sum r}{n}$ **(2a)**
	- r refers to dividend WHT tax rates that are shown in the "Dividends" column of IBFD withholding rate tables. - n is the total number of rates available in the "Dividends" column of the IBFD WHT tables of countries i and j.
Tax treaty rate for Interests	$Int_{i,j} = \frac{\sum r}{n}$ **(2b)**
	- r refers to interest WHT tax rates that are shown in the "Interest" column of IBFD withholding rate tables. - n is the total number of rates available in the "Interest" column of the IBFD WHT tables of countries i and j.
Tax treaty rate for Royalties	$Roy_{i,j} = \frac{\sum r}{n}$ **(2c)**
	- r refers to royalty WHT tax rates that are shown in the "Royalties" column of IBFD withholding rate tables. - n is the total number of rates available in the "Royalties" column of the IBFD WHT tables of countries i and j.

As shown above, the "tax treaty rate" is simply the average of rates available in our dataset for dividends, interests, and royalties in our dataset. These rates are sourced from the International Bureau of Fiscal Documentation (IBFD), specifically in the columns corresponding to each type of income in IBFD Treaty Withholding Rates Tables.[10]

In principle, if countries i and j have signed a tax treaty that is currently in force, such treaty (and its corresponding tax rates) should appear in the withholding tax table of i, as well as in the withholding tax table of j. Moreover, because the vast majority of treaties are symmetrical (equally applicable for companies from i engaged in j, and companies from j engaged in i), we would expect that the tax rates appearing in the withholding tax table of i are the same as the tax rates shown in the withholding tax table of j. Regretfully, this is not always the case, and we have observed a significant number of asymmetries across IBFD withholding tax tables. Some asymmetries are justifiable, because treaty language provides for different tax rates depending on each of the treaty partners. However, the vast majority of asymmetries that we have observed appear to result from differences in the methodology used to populate each country's IBFD WHT table, or from a different interpretation of symmetric treaty text. Most problematically, even if domestic WHT rates are presented in a separate section of Treaty Withholding Rates Tables, some countries include domestic WHT rates

[10] Between 2021 and 2024, IBFD changed the format of Withholding Rates Tables, consolidating dividends WHT rates previously shown in two different columns under a single column for "dividends". In this edition of the CTHI, we slightly adapted the formula and conducted additional verification to adapt to the changes in IBFD data.

in the entries provided for tax treaty rates. Because our analysis in the indicator only considers treaty withholding tax rates, the inclusion of domestic tax rates for some countries would result in disparate treatment.

We transform raw IBFD data (as presented in each country's table) in several ways, to ensure consistency in the assessment of each treaty for all its signatory countries, and to ensure that only tax treaty rates are taken into account. It is worth noting that certain adjustments are used as "second best" options considering that available resources do not allow to review and manually adjust all treaties in the database. Thus, with the overall objective of improving fairness and comparability across all assessed jurisdictions, we undertake the following transformations/ adjustments:

- **Treaty imputation:** in cases where a treaty is presented in the table of a treaty partner, but not in the other partner's treaty table, we consider that the treaty is in force for both countries.
- **Multilateral treaties:** We review existing multilateral agreements, including EU directives,[11] to ensure that provisions with WHT rate limitations are assessed for all signatory jurisdictions who have ratified each of the treaties.
- **Tax rate imputation:** Assuming that tax treaties are in principle symmetric, we combine tax rates shown for the same treaty in different treaty tables, to use a single set of tax rates for both treaty partners.[12] Exceptionally, we deviate from standard tax rate imputation in the following cases:
  - Malaysia (MYS): Noting that many of Malaysia's tax treaties are asymmetric with regards to dividends WHT, we do not impute dividends treaty tax rates. [13]
  - Malta (MLT): Noting that tax treaty rates shown in Malta's IBFD table for dividends wrongly convey domestic tax rates, we retain dividends tax rates shown in treaty partner's IBFD tables for both Malta and its partners. Dividends WHT shown in Malta's IBFD table are disregarded.

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[11] As of 2024, we account for 5 multilateral tax treaties with relevant WHT provisions: CARICOM (Caribbean Community), CEMAC (Communauté Économique et Monétaire des États d'Afrique Centrale), ECOWAS (Economic Community of West African States), EU (Directives (2003/123/EC)(Council of the European Union, *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*) and (2003/49/EC)(Council of the European Union. *Council Directive 2003/49/EC of 3 June 2003 on a Common System of Taxation Applicable to Interest and Royalty Payments Made between Associated Companies of Different Member States*. June 2003. URL: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003L0049 [visited on 08/03/2021])) and UEMOA (Union Economique et Monétaire Ouest Africaine).

[12] This adjustment has been subject to enhanced verification, reviewing jurisdictions and treaties for which the adjustment had the largest impact on scores. Enhanced verification implies the targeted consultation of a treaty's text to determine whether or not tax rate imputation accurately conveys treaty contents. In general, verifications reveal that tax rate imputation is effective in harmonising tax rates while rendering a more accurate assessment of applicable tax treaty rates.

[13] Tax rates in Malaysia's IBFD WHT table are considered to be those affecting companies in treaty partner countries, while the tax rates shown in the WHT tables of Malaysia's treaty partners are assessed as affecting companies in Malaysia.

- Singapore (SGP): Noting that tax treaty rates shown in Singapore's IBFD table for dividends wrongly convey domestic tax rates, we retain dividends tax rates shown in treaty partner's IBFD tables for both Singapore and its partners. Dividends WHT shown in Singapore's IBFD table are disregarded.
- United States (USA):
  * Noting that many of the United States' tax treaties are asymmetric with regards to dividends WHT, we do not impute dividends treaty tax rates.[14]
  * Noting that tax treaty rates shown in the United States' IBFD table for interests wrongly convey domestic tax rates, we retain interests tax rates shown in treaty partner's IBFD tables for both the United States and its partners. Interests WHT shown in the United States' IBFD table are disregarded.

- **"Real" asymmetric treaties:** As a final adjustment, we replace tax rates applicable to specific treaties that have been identified as asymmetric with a curated set of tax rates, directly derived from treaty language.[15]

In the 2024 update of the Corporate Tax Haven Index, we therefore improve on previous editions, by further automating treaty WHT data preparation, and redressing inconsistencies found in IBFD data.

Subsequently, we will refer to this average of available (treaty and/or protocol) rates as the 'tax treaty rate' with respect to dividend ($Div_{i,j}$), interest ($Int_{i,j}$) or royalty ($Roy_{i,j}$) payments.

Step B: defining the two comparable metrics (A and P) each of the assessed jurisdictions

Table 5.4. Defining comparable metrics

Type of income	A is the tax treaty rate of Assessed jurisdiction (i) with regards to a Partner jurisdiction (j)	P is the average of tax treaty rates otherwise available (excluding i) at a Partner jurisdiction (j)
Dividend	$Div_{i,j}$ (2a)	$\overline{Div_{j,l}}$ (3a)
Interest	$Int_{i,j}$ (2b)	$\overline{Int_{j,l}}$ (3b)
Royalty	$Roy_{i,j}$ (2c)	$\overline{Roy_{j,l}}$ (3c)

[14] Tax rates in the United States' IBFD WHT table are considered to be those affecting companies in treaty partner countries, while the tax rates shown in the WHT tables of the United States' treaty partners are assessed as affecting companies in the United States.

[15] Due to resource limitations, we were unable to manually verify the symmetric or asymmetric nature of all treaties. However, as mentioned above, the treaties for which tax rate imputation resulted in the largest score changes were reviewed. Treaties found to be asymmetric were reviewed and recorded in a separate dataset to be used for the final data adjustment.

Definitions	We use $\overline{Div_{j,l}}$, $\overline{Int_{j,l}}$, $\overline{Roy_{j,l}}$ to define the average value of tax treaty rates on dividends, interests and royalties (respectively), in all treaties available at the partner country j, excluding the rates in the treaty between country i and country j.

Step C: comparing the withholding tax rates agreed between a jurisdiction and its treaty partner, to the average withholding tax rates available through the partner's other treaties

Then, within each type of income and for each partner jurisdiction j in country i's tax treaty network, we compare the withholding rate in the tax treaty between country i and j, to the average withholding rate in j's other tax treaties, as follows:

Table 5.5. Calculating differentials

Treaty aggressiveness for Dividends WHT	$D_{i,j}^{\text{Div}} = \begin{cases} Div_{i,j} - \overline{Div}_{j,l} & \text{if } Div_{i,j} - \overline{Div}_{j,l} < 0 \\ 0 & \text{otherwise} \end{cases}$	(4a)	$\forall i; \forall j \in P_i$; where P_i is the group of jurisdictions that are country i's treaty partners
Treaty aggressiveness for Interest WHT	$D_{i,j}^{\text{Int}} = \begin{cases} Int_{i,j} - \overline{Int}_{j,l} & \text{if } Int_{i,j} - \overline{Int}_{j,l} < 0 \\ 0 & \text{otherwise} \end{cases}$	(4b)	$\forall i; \forall j \in P_i$;
Treaty aggressiveness for Royalties WHT	$D_{i,j}^{\text{Roy}} = \begin{cases} Roy_{i,j} - \overline{Roy}_{j,l} & \text{if } Roy_{i,j} - \overline{Roy}_{j,l} < 0 \\ 0 & \text{otherwise} \end{cases}$	(4c)	$\forall i; \forall j \in P_i$;

For each of the three types of income, the assessment of country i results in as many values of D_{ij}^{Div}, D_{ij}^{Int}, and D_{ij}^{Roy} as the number of treaty partners of country i. If a particular tax treaty does not impose a limit on withholding rates with regards to a specific type of income (Div, for example), then we cannot define D_{ij}^{Div}, since there is no withholding rate limitation applicable to dividends and instead, domestic rates of i or j apply alternatively. In these cases, we consider that $Df_{Div;J_a,Jp} = 0$.

Step D: Aggregating differentials, by treaty

Importantly, in order to assess the overall aggressiveness of country i's treaty network, only the negative differentials are considered.

Table 5.6. Aggregating differentials

Aggregating by treaty	$D_{i,j}^{\text{treaty}} = D_{i,j}^{\text{Div}} + D_{i,j}^{\text{Int}} + D_{i,j}^{\text{Roy}}$	(5)	$D_{i,j}^{\text{treaty}}$ represents the aggregate value of the aggressiveness of a single treaty, the subscript indicates the assessed jurisdiction and the partner jurisdiction.
Aggregate aggressiveness by assessed country i	$A_i = \sum_{\forall j \in P_i} D_{i,j}^{\text{treaty}}$	(6)	A_i is the aggregate value of differentials. The subscript indicates the assessed jurisdiction (here, country i). $\forall j \in P_i$; where P_i is the group of jurisdictions that are country i's treaty partners.

Using the previous example, note that $D_{(Singapore,Rwanda)}^{treaty}$ is a different metric than $D_{(Rwanda,Singapore)}^{treaty}$, because although the withholding taxes in the Rwanda-Singapore treaty are the same for both jurisdictions, the average treaty rates "otherwise available" in Rwanda are significantly different from those available in Singapore (see Table 5.2).

Step E: Normalisation to obtain haven indicator score

Table 5.7. Normalisation of aggregate negative differentials

Tax treaty aggressiveness score for country i	$HI20_{(i)} = \frac{A_i}{A_{\text{max}}} \times 100$	(6')	A_{max} represents the maximum aggregate aggressiveness observed among those jurisdictions included in our sample.