Methodology

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The following content will be made available on the Corporate Tax Haven Index website after the embargo lifts and website goes live. Because of this, some of the links below will not work until the embargo lifts.

The Corporate Tax Haven Index is a politically neutral ranking that relies on combining two core measures. The first is a Haven Score based on 20 mostly tax-related indicators of corporate tax haven-ness, assessing how aggressive a jurisdiction's corporate tax haven laws and loopholes and relevant policies are. The second is a Global Scale Weight showing the scale or size of corporate investment activity as a proxy for the magnitude of the profit-shifting potential in that jurisdiction.

These two measures are mathematically combined to create a **Corporate Tax Haven Index value** for each jurisdiction, which is the basis of our ranking. The full methodology is available here.

1. The Global Scale Weight

The "Global Scale Weight" estimates how extensively multinationals are using that jurisdiction. Given that there is no actual data measuring this, the best available proxy we found to estimate this is data on Foreign Direct Investment (FDI) provided by the International Monetary Fund (IMF).

The purpose of the Global Scale Weight is to distinguish among jurisdictions with aggressive tax avoidance provisions but that aren't used often by multinationals in practice, to identify which are the tax havens that in practice are most likely responsible for the global tax avoidance by multinationals).

2. The Haven Indicators

The Haven Score for each jurisdiction is constructed from 20 Haven Indicators, which reflect the many different rules, laws and mechanisms that multinationals can use to escape tax. In these indicators, two themes recur: the tax base and the tax rate: that is, what income gets subjected to tax (including what gets excluded or deducted) and how much tax is actually levied on that income.

We give each jurisdiction a score between 0 and 100, for each of our 20 haven indicators. A score of 0 means the jurisdiction has no tax haven potential for that indicator, and we would give a no-holds-barred corporate tax haven a score of 100. Our indicators often follow criteria identified by the IMF, the European Union, or by the OECD, but in many cases we set a higher bar.

The 20 indicators are not weighted equally in the final Haven Score. Instead, they are grouped into five categories, and each category gets a 20% weighting.

2.1 The five categories

CATEGORY 1: Lowest tax rate

Usually, a jurisdiction has a "headline" or statutory rate of corporate income tax, but in reality a multinational may end up paying a much lower effective tax rate, either because of a secret tax ruling, or some exceptions and exemptions. This indicator indicates the lowest tax rate available to multinational enterprises operating in that jurisdiction. This category has only one indicator (1, the LACIT, Lowest Available Corporate Income Tax rate).

CATEGORY 2: Loopholes and Gaps

These indicators focus on various exclusions and exemptions that can be used to shrink the tax rate or base (that is, what gets taxed and what gets excluded or carved out from tax). This category has seven indicators (2-8).

CATEGORY 3: Transparency

Does the jurisdiction allow corporations to hide their financial affairs there? What kind of information must they file? Is it available to foreign tax authorities? Is it made public? The "transparency" category has six indicators, (9-14).

CATEGORY 4: Anti-avoidance

This category looks at defensive measures that the jurisdiction puts in place to constrain tax-dodging by multinational enterprises. (Those jurisdictions that don't limit these practices are often seeking to attract profit-shifting activity, and as such are engaged in harmful tax haven activity). It contains five indicators (15-19).

CATEGORY 5: Tax treaties

When a multinational enterprise based in one jurisdiction invests in or earns income in another jurisdiction, the question arises as to which jurisdiction gets to tax it. Countries sign "Double Tax Treaties" to resolve these issues. Corporate tax havens tend to sign treaties that override domestic tax laws and impose very low or zero tax rates when multinationals shift money from one country to the other. This category relies on a single, important indicator (20, on tax treaties).

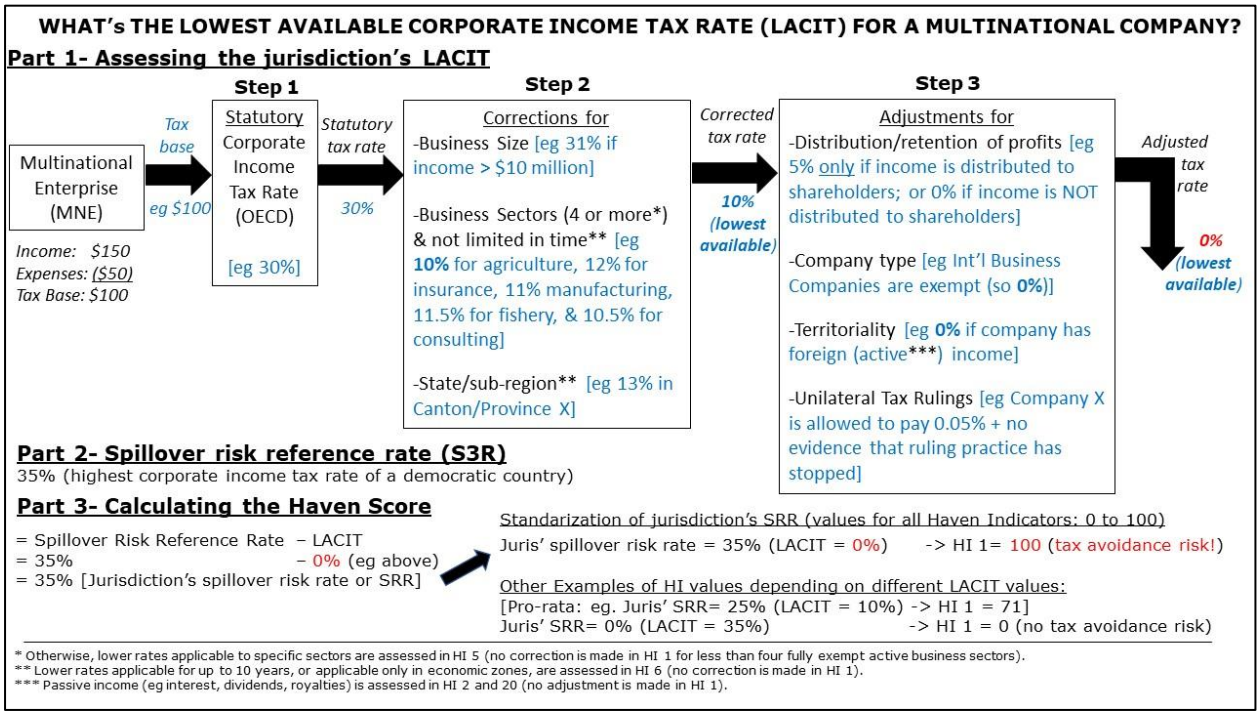
2.2 The 20 Indicators, by category

CATEGORY 1: Lowest tax rate

Indicator 1: Lowest Available Corporate Income Tax Rate

This indicator looks at the Lowest Available Corporate Income Tax (LACIT) in that jurisdiction. It is the most complex, and one of the most important, of our indicators. The LACIT is calculated via a multi-step process.

First, we start with the "headline" or statutory corporate income tax rate. Second, we then look to see if there are lower corporate income tax rates applied to particular business sectors (like agriculture, or consulting), or in individual states or sub-regions, or to businesses above or below a certain size. (This rate needs to be available to more than four business sectors: if it is four or fewer, Indicator 5 deals with it). This may yield a (lower) "Corrected Tax Rate." Third, we make adjustments for special arrangements for certain types of corporate form (for example, a zero percent rate applied to "International Business Companies" common in tax havens. Other arrangements — including Unilateral Tax Rulings or Territorial tax systems — may also offer lower rates. This yields an "Adjusted Tax Rate" (ATR) which may be lower still than the Corrected Tax Rate.



The "Adjusted Tax Rate" (ATR) is then converted into a form to make a Haven Score, compatible with the other indicators. This is done by calculating a country's ATR as a percentage of the highest corporate tax rate in a democracy

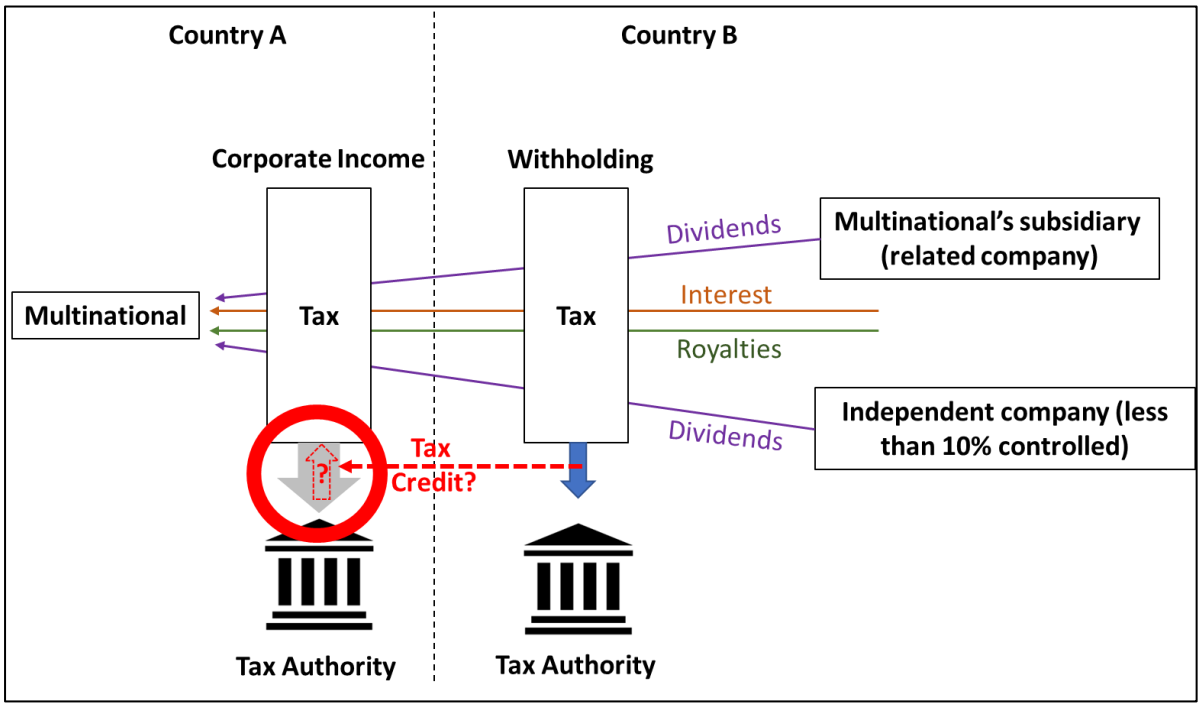
(currently 34-35 percent in Brazil and India) and subtracting this number from 100. So if the ATR is 0 percent (country without income tax), the Haven Score for this indicator is 100 (that is, 100 minus 0/35 expressed as a percentage), indicating the highest tax avoidance potential. If the ATR is 25 percent, the Haven Score would be 100 minus 25/35 as a percentage = 28.6.

For more technical details, see Indicator 1.

CATEGORY 2: Loopholes and Gaps

Indicator 2: Treatment of Foreign Investment Income

This race-to-the-bottom indicator assesses whether a jurisdiction's tax system excludes foreign investment income from its tax base, and/or if it puts pressure on other countries to lower their corporate tax rates.



To understand the issue, consider a multinational headquartered in country A that receives passive income from country B (the image above). This passive income could be dividends (if the multinational has shares in either a related or independent company resident in country B), or interest (if the multinational made a loan to a company resident in country B), or royalties (if the multinational allows a company in country B to use its patents or trademark). Country B's tax authorities may likely levy withholding taxes when the dividends, interests or royalties are paid from the companies in country B to the multinational in country A. What this indicator assesses is what country A does when those payments are received.

If country A doesn't levy withholding taxes on those received payments (of dividends, interest or royalties), or if it merely allows those payments to be deducted from the multinational's tax base, then country A is putting pressure on a race to the bottom. The multinational will only pay taxes on those payments in the foreign countries where the payment originated, but not in country A (where the multinational is headquartered). Therefore, a tax war may start among countries, such as country B, to lower the withholding taxes that they levy on dividends, interests and royalties in order to attract multinationals to invest there.

Instead, if country A levies taxes on all foreign income (eg dividends originated in country B), but gives a tax credit for any tax paid abroad, then there will be no tax war or race to the bottom. In this case, the multinational headquartered in country A will have to pay taxes, say at a 35% rate, either way. Be it the full 35% to country A (if country B levies no withholding taxes) or part to country B and the remaining to country A. This is the case of tax credits. If the multinational paid say 20% taxes to country B, then it will get a tax credit for that, and will only have to pay 15% (=35% - 20%). In other words, if country A taxes all foreign income and gives tax credit for taxes paid abroad, there is no race to the bottom. The multinational would pay overall 35% in taxes, so it makes no difference to it, if country B offers lower taxes or not, because either way it will have to pay 35% (the only difference is to which country).

For more technical details, see Indicator 2.

Indicator 3 - Loss Utilisation

This indicator is about how companies can use losses in one year, as deductions to cut their tax bills in other years.

Imagine a multinational affiliate makes 200 Euros in losses in the year 2020, and 300 Euros in taxable profits in 2021. With a full "loss carry-forward", it can reduce its taxable profits (or its tax base) in 2021 to 100 Euros (= 300 Euros – 200 Euros).

This may seem reasonable and normal. But now imagine that the company instead made a loss of 5,000 Euros in 2020, and 300 Euros in profits for each of the years from 2021 to 2030. Can it carry forward those losses from 2020 to cut its taxable profits to zero for the next ten years? (This is, in fact, something like what has happened to a lot of bailed-out banks in and after the global financial crisis. Even worse, there may be no real "losses" but only accounting tricks to make it appear as a company has no profit, since it would be hard for a company to sustain so many bad years without going bankrupt). Would a country allow losses to be carried forward indefinitely, with no time limit? Even more dramatically, could the multinational carry its losses backwards in time, to 2019, 2018, 2017 and so on, and get tax refunds for those years?

Corporate tax havens use these extensive loss-utilisation facilities as lures to attract multinational profit-shifting that might otherwise end up elsewhere.

This indicator measures whether losses can be carried forwards or backwards, and what limits are placed on these practices.

For more technical details, see Indicator 3.

Indicator 4 - Capital Gains Tax

When you buy an asset like a house, or a portfolio of shares, and sell it in a later year at a higher price, you have made a capital gain. Countries tax capital gains, to varying degrees, generally when a sale occurs.

Some jurisdictions include capital gains by multinationals in the ordinary corporate income tax, and others tax capital gains separately. The rates may also differ depending on what is being bought and sold: whether it is real estate, financial securities, or some other kind of asset. This indicator considers capital gains by multinationals only on domestic and foreign financial securities, because this is where the profit-shifting generally occurs. Typically, a company affiliate in a tax haven will be a holding company that owns shares in other affiliates around the world. Low or zero capital gains taxes are often deliberately set in order to try and attract such holding companies. See for example the capital gains rates in a treaty between Mauritius and India – (our indicator however, looks at the non-treaty default position).

This indicator operates like Indicator 1, where we aren't looking at the headline tax rate but at the lowest available capital gains tax rate, and similarly it is expressed as a percentage of the same 35 percent reference rate: so a low tax rate yields a high haven score. It has two components, equally weighted:
- The lowest available tax rate on corporate capital gains when disposing of domestic securities
- The lowest available tax rate on corporate capital gains when disposing of foreign securities

For more technical details, see Indicator 4.

Indicator 5 - Sectoral Exemptions″

Countries offer tax exemptions in all sorts of ways, and for all sorts of reasons. Some exemptions are geographical - you can get tax exemptions if you set up in a special economic zone, for instance - while others are time-limited: you might get a ten-year tax holiday. Those exemptions are covered in Indicator 6. This indicator (5) by contrast, covers exemptions for particular economic sectors and activities, which aren't in restricted zones or time-limited. So if Argentina, say, had a headline corporate tax rate of 35 percent, but only 15 percent for agricultural activities, it would be covered under this indicator.

We don't want to penalise countries for trying to support particular economic sectors, perhaps as part of an industrial policy playing to the country's strengths. So this indicator distinguishes between cost-based exemptions (where exemptions are granted on the basis real capital investment or for salaries for staff, where money was actually invested and spent by the multinational;) and profit-based exemptions, which are granted simply because the company is engaged in specific for-profit activities. So we don't penalise cost-based exemptions: they can be harmful, but are generally less so than the profit-based exemptions — which are the ones that drive profit-shifting, and which we therefore measure as part of this index.

This indicator has two components:

- Investment activities, notably financial investments, and real estate investments, which we class as passive income; and
- Economic sectors, such as agriculture, manufacturing, information technology, and so on.

Note: This indicator potentially overlaps with Indicator 1 (Lowest Available Corporate Income Tax Rate, or LACIT,) and the categorisation depends on the question of degree. If a country has these reductions or exemptions in enough sectors (more than four) it is considered also under Indicator 1, which has a higher weighting in the index. Likewise, if a country has a 0 percent statutory tax rate (indicator 1), then any sector or activity would also have a 0 percent tax rate (Indicator 5), resulting in a haven score of 100 (highest tax avoidance risk).

For more technical details, see Indicator 5.

Indicator 6 - Tax Holidays, Economic Zones

This indicator looks at whether a jurisdiction offers special tax incentives in a limited geographical area — such as in freeports, export processing zones, economic zones, and so on — or special tax holidays available over a set period of time. In contrast to Indicator 5, which focuses on tax incentives that are available to particular economic sectors or investment activities, this indicator focuses on geographical zones and time horizons.

Usually, these tax holidays and tax-free zones are advertised as ways to stimulate private investment, but in reality they can be easily abused for attracting profit-shifting activity, with relatively little benefit to the local population in terms of jobs or tax revenues, and often large tax losses and a range of other harms.

For more technical details, see Indicator 6.

Indicator 7 - Patent Boxes

This indicator measures where a country offers special tax incentives for Intellectual Property (IP) such as patents. The usual stated purpose of patent boxes is to stimulate innovation, but in reality they tend to be designed to attract corporate profit-shifting activity, with little or no resulting innovation, and often plenty of harm. As with so many other corporate tax haven facilities, patent boxes trigger other countries to follow suit, ensuing in a race to the bottom.

For instance, In May 2017 the Congressional Research Service in the US concluded:

> *"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."*

Jurisdictions that do not offer patent boxes get a haven score of zero.

One (slightly) mitigating factor is the "nexus" question - whether or not the patent box regime requires that genuine research and development activities underly the intellectual property in question — that is, a genuine nexus between the income generated and the underlying innovation that led to that income. The OECD has produced a "nexus" test that is supposed to reduce the abuses that stem from patent boxes — but its approach is complex and intellectually and practically flawed, so we give only a minor credit if countries comply with the nexus test. Jurisdictions that comply with the OECD's nexus test get a 90 percent score. Jurisdictions that offer patent boxes but don't comply get a 100 percent haven score for this indicator.

For more technical details and evidence, see this Indicator 7.

Indicator 8 - Fictional Interest Deduction

This is a facility that allows multinational corporations to reduce their tax base (that is, to reduce the amount of their income that gets subjected to tax) by allowing them to deduct "fictional" interest costs from their taxable income: that is, to deduct payments they could have made, but didn't.

The facility, more commonly known as the "Notional Interest Deduction," or NID, has been justified by its proponents as a way to avoid encouraging the large-scale use of debt, which can harm financial stability. However, it has ended up

serving as a facility to shift profits and escape tax.

Here's how it works. Normally, a company that borrows a large amount can deduct the interest payments on its debt from its taxable income, and this encourages firms to take on debt, rather than get their financing from shareholder funds. The NID, however, says 'you can have this deduction anyway, whether or not you borrow money and pay interest,' so it is supposed to remove this harmful incentive for loading up with debt. It is generally calculated as a percentage of a company's issued share capital. However, of course, it provides an avenue for companies, especially for companies with large shareholder capital, to escape tax (and there are better ways to eliminate this 'debt bias').The evident better way to address the debt bias would be to end the deductibility of interest.

A numerical example illustrates how it works.

Let's say a jurisdiction has an NID calculated at 3 percent of a company's share capital. A company with US$1 million in share capital makes a $35,000 profit from financial activities. The NID would deduct $30,000 (that is, 3 percent of $1 million) from those profits, to leave just $5,000 in taxable profits: cutting the tax bill to a seventh of its original size. A NID rate of 3.5 percent would eliminate taxes entirely.

As soon as this facility was first introduced in Belgium, firms quickly perfected the "double dip" where they took the NID and the interest deductions, and also worked out schemes to artificially boost their local affiliates' share capital, so as to maximise the deductions.

For more technical details, see Indicator 8.

CATEGORY 3: Transparency and disclosure

Indicator 9 - Public Company Accounts

This simple indicator assesses whether a jurisdiction requires all types of company with limited liability to file annual accounts with a governmental body, and that these accounts are made accessible online.

If all company accounts are available for free, they get a zero (good) haven score. If they are available for free, but not in open data format, they get 25 percent. If they are available online but for a fee (up to 10 Euros/$/GBP) they get a 50 percent score. Otherwise, they get a full 100 percent haven score.

Note 1: this is not just about the famous "LLCs" - which are a common kind of company subject to particular tax rules. This is about all companies that enjoy the privilege of limited liability, which entitles the communities where they are licenced to operate to demand accountability - and this includes having its accounts available on public record.

Note 2: This indicator is the same as Indicator 7 in our Financial Secrecy Index.

For more technical details, see Indicator 9.

Indicator 10 - Public Country by Country Reporting

Currently, most jurisdictions allow multinationals to scoop up their financial results — profits, taxes paid, and so on — from a number of jurisdictions and lump them all together in a single 'regional' or 'global' set of figures. It is impossible to unpick these figures to work out what is happening in each country, or to see how much of a multinational's profits are being shifted into tax havens. This enables multinationals to shroud large parts of their financial affairs in secrecy.

Public Country-by-country reporting (CbCR), which the Tax Justice Network has advocated since its founding in 2003, is the solution to this: it involves requiring companies to publish relevant information, broken down separately for every country where it does business, including the tax havens.

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

If a jurisdiction does not require CbCR, it gets a haven score of 100. If it requires complete CbCR, according to our standards (no country currently even comes close) it gets zero. If it requires some annual or occasional) reporting, or some reporting just for some economic sectors, or reporting of incomplete data, it gets a partial score.

For more technical details, see Indicator 10.

Indicator 11 - Local Filing of Country by Country Reporting

This indicator complements Indicator 10. However, whereas Indicator 10 requires country by country reports to be published, this indicator (11) assesses whether local authorities have ensured that they can obtain country-by-country reports, even if they aren't published.

Countries can obtain country by country reports in two ways: either via information exchange with the country where the multinational has its headquarters (as required by the OECD BEPS Action 13), or directly, from the multinational itself, whenever the country cannot obtain it automatically.

Currently, the OECD has a complex scheme in place to allow countries to access country by country reports via the indirect route, and only exceptionally, via the direct rule. In practice, there are all sorts of legal and practical obstacles in the way of information exchange between jurisdictions — such as confidentiality

provisions, or lack of an appropriate treaty allowing this information to be exchanged — and as a result, many countries are unable to obtain the country by country reports either indirectly or directly.

This indicator has a simple scoring mechanism. Jurisdictions get a zero (good) haven score if they go beyond the OECD framework and require direct filing of country by country reports whenever they cannot obtain it automatically (regardless of the reason). They get a score of 100 (bad) if they merely adopt the OECD framework, which severely constraints their ability to access the country by country report and use it as they see fit (or if they don't even require access to country by country reports at all).

This indicator is based on Indicator 9 in our Financial Secrecy Index.

The full methodology and underlying data can be accessed here.

Indicator 12 - Unilateral tax Rulings and Extractive Industries Contracts

This indicator measures two related things: first, whether the jurisdiction publishes unilateral tax rulings; and second, if the jurisdiction has an extractive industry (like oil production or mining,) whether it publishes the relevant contracts.

Tax rulings

Tax rulings were made famous in the "Luxleaks" corporate tax scandal, where it emerged that Marius Kohl, known in local tax circles as "Monsieur Ruling," had rubber-stamped thousands of corporate tax avoidance schemes for some of the world's biggest multinationals, through official "rulings" blessing the schemes. When a reporter asked whether these schemes were being correctly used, Kohl licked his thumb and held it in the air. "There is no way to verify it," he said.

Unilateral tax rulings are private rulings that concern individual taxpayers and singular cases undertaking cross-border tax schemes. They have a high risk of abuse partly because they give approval to many questionable cross-border tax schemes, but also because they give favourable treatment to large multinationals (which use the schemes) at the expense of smaller competitors, which generally don't. Multinationals sometimes defend tax rulings as helping them with something called "tax certainty," which sounds good, but in fact merely means "certainty of low taxes," as we have explained here.

Jurisdictions that don't issue tax rulings at all get a zero (good) haven score. If they issue rulings but publish them, they get a partial score, and if they issue rulings but keep them secret, they get a full score.

Note: Unilateral tax rulings are not the same as "Advanced Pricing Agreements (APAs)." An APA involves the advance agreement by two or more tax

administrations of jurisdictions involved in a cross-border transaction, so it is a bilateral or multilateral affair. A unilateral tax ruling concerns only the jurisdiction and the local taxpaying affiliate.

If the jurisdiction has no extractive industries, then the full score gives 100 points for this indicator. If the jurisdiction has extractive industries, then the full score on tax rulings gives 50 points.

Extractive industries contracts

If there is an extractive industry, the jurisdiction gets up to 50 further points for this indicator, complementing the tax ruling sub-indicator. If the jurisdiction discloses all or nearly all contracts online for free, with a requirement for disclosure in law, it gets a zero (good) score here.

For more technical details, see Indicator 12.

Indicator 13 - Reporting Tax Avoidance Schemes

This indicator assesses whether tax avoidance schemes need to be reported. It has two main components.

- It assesses whether i) taxpayers and ii) tax advisers are required to report at least annually on certain tax avoidance schemes that they have used or marketed, with a 25 percent score for each category not being required to report.
- It assesses whether i) taxpayers and ii) tax advisers are required to report at least annually details of uncertain tax positions for which reserves have been created in the annual accounts. A 25 percent score is awarded for each case, where reporting is not required.

If reporting is required, the score is zero (good).

For the full methodology for this indicator, please see here.

Indicator 14 - Tax Court Secrecy

This indicator assesses how secretive the jurisdiction's courts system is, with respect to multinational tax affairs. It considers two components:

- whether court proceedings, lawsuits and trials are open to the public (a few reasonable exceptions are allowed); and
- whether verdicts and judgements and sentences are publicly available online.

The scoring system is simple: a score of 100 (bad) is reduced by 25 for criminal matters and 25 for civil matters if court proceedings are openly accessible; and by a similar amount (25 for criminal, 25 for civil) if judgements are published

online for free. If there are fees payable or other limitations to publication, then the score isn't reduced by as much.

For more technical details, see Indicator 14.

CATEGORY 4: Anti-avoidance

Indicator 15 - Limits on deductions for Interest

Interest deductions are common tax planning tools. If a local affiliate of a multinational enterprise borrows money from a foreign affiliate of the same multinational, it may have to make a stream of interest payments to that foreign affiliate. Those interest payments can be deducted as costs, reducing local taxable income (that is, reducing the tax base).

This indicator assesses the extent to which jurisdictions put in place anti-avoidance measures to limit these practices.

Various measures are used to limit interest deductions. The most effective is one that bars any interest deductions for payments to affiliates of the same multinational. Less effective but better than nothing are caps of interest deductions at a percentage of EBITDA (a standard corporate measure, representing earnings before interest, tax, depreciation and amortisation). Our indicator gives a zero (good) score if no intra group interest deductions are permissible, a score of 100 if there is no limitation on interest deductions, and a 50 percent score if deductions are capped at 10-30 percent of EBITDA.

Scores between 50 and 100 are also possible but the criteria are complex.

For more technical details, see Indicator 15.

Indicator 16 - Limits on deductions for Royalties

This is rather like Indicator 15, except it examines the use of cross-border royalty payments, instead of interest payments, to create deductions against local taxable income (that is, against the 'tax base.')

Such deductions are, again, quite straightforward. A local affiliate of a multinational enterprise makes royalty payments to a foreign affiliate of the same multinational, for the use of some intellectual property (such as a brand, or a patent). Those outward royalty payments to the foreign affiliate may be deducted as costs against the local affiliate's taxable income, thus reducing the local 'tax base' and the local tax bill.

Some jurisdictions place limits on these practices. We give a zero (good) haven score if the jurisdiction disallows these deductions, a 100 (bad) score if they place no limits on these deductions, and a partial (50 or 75) score if they impose some limits on these deductions.

For more technical details, see Indicator 16.

Indicator 17 - Limits on deductions for services payments

This is another indicator that looks at tools that are used to reduce local taxable income (or the 'tax base'). This technique is rather like the interest deductions covered in Indicator 15, and 16, but with fees replacing interest payments or royalties as the tool for creating the deductions.

Here is how the technique works, in essence. A local affiliate of a multinational pays inflated fees for management or technical services, for consulting, and so on, to a foreign affiliate of the same multinational. If those fee payments flowing overseas can be deducted against the local affiliate's income, this reduces the local tax bill there — while the foreign affiliate receiving those fees may pay little or no tax on that fee income if it is set up in a tax haven. These techniques are often especially damaging for developing countries, which often find that multinationals charge massively for such services in order to shift profits offshore.

This indicator looks to see if the jurisdiction has defences against this kind of income-stripping via cross-border fee payments. We have two possible scores: a zero (good) score if there are certain restrictions made on deductions for service payments, and a score of 100 if there are no limitations.

For more technical details, see Indicator 17.

Indicator 18 - Withholding taxes on dividends

When the subsidiary of a multinational enterprise in Country A pays a dividend back to headquarters (or to another affiliate of the multinational) in another jurisdiction, Country A will typically apply a withholding tax to that outbound dividend payment.

This indicator looks at the lowest available tax rate on outbound dividend payments in cases where no tax treaty applies (so called unilateral rate). It is calculated in a similar way to Indicator 1: on a sliding scale measured according to its distance to the top reference rate (of 35 percent). So if the tax rate is 35, it will get a 0 haven score (good), whereas if the tax rate is zero, it will get a score of 100 (bad).

For more technical details, see Indicator 18.

Indicator 19 - Controlled Foreign Company (CFC) Rules

A controlled foreign company or corporation (CFC) is exactly what it says: a foreign company that is controlled by a locally based headquarters (or affiliate) of a multinational enterprise.

CFC rules are defensive measures against profit-shifting into offshore tax havens. If a multinational based in Country A generates large profits in an offshore tax haven, and that tax haven doesn't tax that income properly (or at all), then Country A can impose CFC rules which reach out and tax that affiliate in the haven. However, loopholes abound. The OECD has said that weak CFC rules are one of the biggest problems in international tax.

If a jurisdiction has no CFC rules, we give it a score of 100 (bad). For jurisdictions that have some CFC rules, we follow EU logic and divide them into two categories: transactional (less bad, but still not great because they are based on the arm's length principle as established by the OECD transfer pricing guidelines), and non-transactional (better). The explanation for this is as follows.

CFC rules are hard to implement. Some countries deliberately weaken or dilute their CFC rules to try and attract profit-shifting activity to attract multinational headquarters or holding companies to set up there. In addition, the European Court of Justice in 2006 set a dangerous precedent when it ruled (in the "Cadbury-Schweppes" case) that the UK's CFC rules were contrary to the EU's Freedom of Establishment rules, and could be justified only in relation to *wholly* artificial arrangements. That word "wholly" was key. In other words, in a transaction that was almost entirely tax-driven but had a tiny bit of economic justification, EU rules would strike the CFC rules down. This test should be applied transaction by transaction, and it effectively gutted countries' efforts to tax CFCs.

Fortunately, the EU's Anti Tax Avoidance Directive (ATAD) was introduced in 2016, which clarified the rules and softened the impact of Cadbury-Schweppes. It offered jurisdictions a choice of two options: Option A (non-transactional), the better option which allows countries to tax a range of passive income in foreign CFCs, unless that CFC carries out substantive (genuine) economic activity; and the much weaker (transactional) Option B, which 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." Luxembourg, the UK and other havens have adopted Option B.

Our scoring method is this:

- Jurisdictions with no CFC rules get a 100 (bad) score on this indicator.
- Jurisdictions that have adopted Option B get a 75 (pretty bad) score.
- Jurisdictions that have adopted Option A get a 0 (good) score (even though Option A is far from perfect).

For more technical details, see Indicator 19.

CATEGORY 5: Tax treaties

Indicator 20 - Double Tax Treaty Aggressiveness

This complex, important indicator indicates how aggressive a jurisdiction has been in signing its bilateral Double Tax Agreements (DTAs, which are treaties that decide how cross-border payments gets taxed, at what rate, and by which jurisdiction.) Corporate tax havens generally sign large numbers of DTAs with very low or zero tax rates and wide-open gaps and loopholes and other weaknesses, and multinationals consequently choose these jurisdictions as stepping stones in their low-tax pathways around the international tax system, to escape tax.

This indicator is assessed on the basis of the withholding tax rates for Dividends, Interest and Royalties laid out in its tax treaties. Many thousands such bilateral treaties exist, so this indicator requires a lot of number-crunching.

To see how this indicator is calculated, consider two jurisdictions, J1 and J2. If J1 and J2 have a DTA that withholds no tax on dividends (0 percent tax rate), we don't know who is to blame. Did J1 impose this on J2, or the other way around? To determine this, we look at the treaties signed by J1 and J2 with other jurisdictions. If J2's treaties with countries J3, J4 and J5 is on average 15 percent, but with J1 it's zero percent, we assume that J1 is to blame. This would be confirmed if most of J1's treaties with other countries also have tax rates of zero percent.

To assess J1's score, we start by looking at the average dividend tax rates in DTAs, say, for J2, then look to see if the treaty with J1 has a lower or higher rate than that average of J2. If it is lower, then J1's treaty policy is taken to be aggressive. This differential, and all similar differentials observed in all of J1's treaty network are added together. The same will then be done for tax rates on interest, and then on royalties. These numbers will then be added to produce a country's score for this indicator. The most harmful country's score is defined as maximum haven risk (100), and all other country's scores are scaled pro rata against that maximum risk.

Note: We treat zero tax havens as worst countries as well, as they exert a downwards pressure on taxes even without treaties.

For more technical details, see Indicator 20.