Corporate income taxation in the digital age: Africa in the Corporate Tax Haven Index 2019

Rachel Etter-Phoya, Shanna Lima, Markus Meinzer[1]

28 August 2019

Abstract: African nations must adopt policies to counter corporate tax avoidance, especially in a digital economy. The Corporate Tax Haven Index of 2019, developed by the Tax Justice Network, is the first systematic, un-politicised and verifiable measure of how jurisdictions facilitate abusive tax activity by multinational companies and their significance in cross-border activity. Drawing on the data set and results for 64 countries, this paper explores how the nine African jurisdictions that are included have responded to the challenge of tax avoidance and might be intentionally or unwittingly exacerbating profit-shifting activity and the race to the bottom in corporate taxation. The tax treatment of intellectual property and royalties, which are salient in a digital economy, are examined to inform initial recommendations on how African nations may best address the impact of digitalisation on taxation.

Keywords: tax havens, illicit financial flows, digital economy, intellectual property, taxation

COFFERS
EU Horizon 2020 Project

The project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 727145[2]

---

[1] Please send feedback to rachel@taxjustice.net or markus@taxjustice.net. Thank you! This version has been submitted to the African Tax Research Network Congress (9-11 September 2019, Ouagadougou, Burkina Faso). Tax Justice Network Limited (TJN), Not-for-profit Company Limited by Guarantee, registered at Companies House UK, Company No. 05327824, Registered address: 38 Stanley Avenue, Chesham, Buckinghamshire HP5 2JG, United Kingdom.

Table of Contents

List of Figures

List of Tables

1. Introduction

Globally, governments lose out on an estimated US$500bn in revenues annually through corporate tax abuse.[3] The African continent may lose as much as US$50bn each year through illicit financial flows.[4] The digitalisation of the economy poses a particular challenge for taxation in determining taxing rights and addressing base erosion and profit shifting. Even though state and non-state actors assert that tax havens are to blame for corporate tax avoidance, there has been no "comprehensive and empirically robust definition of what constitutes a (corporate) tax haven".[5] In order to tackle the problem, especially in light of the rapid digitalisation of the economy, a definition of and framework for assessing corporate tax havens are required to understand how different jurisdictions contribute to the problem of tax avoidance and the race to the bottom in corporate taxation.

In response to this gap, the Tax Justice Network launched the Corporate Tax Haven Index in 2019.[6] The index assesses "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; and how 'successful' a jurisdiction is, in pursuing this corporate tax haven strategy".[7] The Corporate Tax Haven Index measures the tax avoidance risks of tax rules and other laws and documented practice across 20 indicators, grouped into five categories. Thereby, the Index outlines a comprehensive set of policies or benchmarks that are relevant for countering illicit financial flows and multinational corporate tax avoidance in a digital economy.

Using the Corporate Tax Haven Index, this paper assesses how African jurisdictions are responding to the challenge of base erosion and profit shifting in a digital economy. It focuses on the nine African jurisdictions covered in the index: Botswana, Gambia, Ghana, Kenya, Liberia, Mauritius, Tanzania, the Seychelles and South Africa.[8] The paper will look in more depth at the indicators in the Corporate Tax Haven Index that pertain to the taxation of intellectual

---

[3] Alex Cobham and Petr Janský, *Global Distribution of Revenue Loss from Tax Avoidance: Re-Estimation and Country Results*, WIDER Working Paper (Helsinki, March 2017) <https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf> [accessed 19 October 2017].
[4] African Union Commission and United Nations Economic Commission for Africa, *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows from Africa* (2015) <https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf> [accessed 8 November 2017].
[5] Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2019 Methodology*, 2019, 3 <https://www.corporatetaxhavenindex.org/PDF/CTHI-Methodology.pdf> [accessed 4 June 2019].
[6] Tax Justice Network, 'Corporate Tax Haven Index', 2019 <https://www.corporatetaxhavenindex.org/> [accessed 4 June 2019].
[7] Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2019 Methodology*, 3.
[8] Nine of the 64 jurisdictions covered in the Corporate Tax Haven Index are African. They were selected for inclusion in the CTHI because of their prior coverage in the Financial Secrecy Index 2018 (Tax Justice Network, *Financial Secrecy Index 2018 - Methodology* (London, 2018) <https://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> [accessed 14 February 2018]).

property as this has particular relevance to taxation of the digital economy and the associated risks of base erosion.

2. Methodology[9]

Each of the 64 jurisdictions in the Corporate Tax Haven Index receives an overall value. Two data sources contribute to this value: the haven score and the global scale weight.

The haven score measures the potential risk that a jurisdiction becomes a destination for profit shifting, poaching the tax base of other jurisdictions, which leads to a race to the bottom in taxing companies. The actual risk of a jurisdiction having these negative effects is determined by combining the haven score and the global scale weight. The global scale weight is the quantitative component that measures the relevance of each jurisdiction for cross-border direct corporate investment.

The data for the haven score is derived from 20 indicators which are grouped into five categories, as presented in Figure 1. The haven score is the average of the five categories; further information is provided in Chapter 3 to explain how the score for each category is calculated. In general, a jurisdiction receives a score between 0 and 100 for each indicator, where 0 corresponds to there being no tax avoidance risk or zero corporate tax haven attributes, and 100 signifies full corporate tax haven attributes and maximum spillover risk. Data is collected for each of the numbered IDs, which are based on laws, regulations and documented practices in each jurisdiction. The themes of most of these indicators overlap with the Organisation for Economic Co-operation and Development's (OECD) 15 actions under the Base Erosion and Profit Shifting project, and particularly Action 5 on harmful tax practices,[10] with the International Monetary Fund's spillover approach,[11] with the European Union's initiatives, such as those on state aid or specific directives,[12] or a combination of these. The haven indicators can be understood as benchmarks for countries to tackle illicit financial flows stemming from profit shifting and base erosion by multinational companies.

To calculate the Corporate Tax Haven Index value, the cube of the haven score is multiplied by the cube root of the global. Jurisdictions are ranked based on this

[9] This section draws extensively from: Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2019 Methodology*.
[10] See, for example, OECD, *BEPS Action 5 on Harmful Tax Practices – Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD/G20 Base Erosion and Profit Shifting Project (Paris, 2017), 24 <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf> [accessed 26 March 2019].
[11] International Monetary Fund, *Spillovers in International Corporate Taxation*, 9 May 2014 <https://www.imf.org/external/np/pp/eng/2014/050914.pdf> [accessed 23 May 2019].
[12] European Commission, 'State Aid - Tax Rulings', 2018 <http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html> [accessed 8 August 2018].

value. The jurisdictions ranked the highest are those "that contribute most to: (i) the global race to the bottom in corporate taxation; (ii) the erosion of corporate income taxes globally; and (iii) constraining the tax policy space elsewhere".[13]

LACIT	Loopholes and Gaps	Transparency	Anti-Avoidance	Double Tax Treaty Aggressiveness
1 Lowest Available Corporate Income Tax (LACIT) IDs 505, 506, 507,541, 542, 543, 544 & 545	**2** Foreign Investment Income Treatment IDs 552, 553, 554 & 555	**9** Public Company Accounts IDs 188, 189 & 201	**15** Outbound intra-group payments - Deduction-Limitation Interests IDs 517, 518 & 519	**20** Double Tax Treaty Aggressiveness ID 571
	3 Loss Utilisation IDs 509 & 510	**10** Public country-by-country reporting ID 318	**16** Outbound intra-group payments – Deduction-Limitation – Royalties ID 520	
	4 Capital gains tax rate IDs 513 & 514	**11** Robust local filing of country-by-country reporting ID 419	**17** Outbound intra-group payments – Deduction-Limitation – Services ID 521	
	5 Broad Exemptions IDs 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537 & 538	**12** Unilateral cross-border tax rulings IDs 363, 421, 561, 562, 563 & 564	**18** Outbound payments – Withholding Taxes – Dividends ID 508	
	6 Tax Holidays and Economic Zones IDs 501, 501, 503, 504, 539 & 540	**13** Reporting of tax avoidance schemes IDs 403, 404, 405 & 406	**19** Controlled Foreign Company Rules ID 522	
	7 Patent Boxes ID 515	**14** Tax Court Secrecy IDs 407, 408, 409 & 410		
	8 Notional interest deduction ID 516			

Figure 1. Haven indicator categories in the Corporate Tax Haven Index 2019[14]

When presented in tables and figures, the haven scores of the jurisdictions follow the colour codes described in Figure 2.

Maximum Risk Haven Score 100	Haven Score 76 – 99	Haven Score 51 – 75	Haven Score 26 – 50	Haven Score 1 – 25	Minimum Risk Haven Score 0

Figure 2. Colour coding for haven scores

[13] Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2019 Methodology*, 5.
[14] Tax Justice Network, *Corporate Tax Haven Index (CTHI) 2019 Methodology*, 8.

3. Africa in the Corporate Tax Haven Index

African countries on average are contributing to the problem and risks of tax avoidance much less than member states of the European Union (EU) and the OECD and their dependencies as Figure 3 shows. Although the average haven score for African countries is only slightly smaller than the other regions' averages, when combined with the global scale weight, it results in an average Corporate Tax Haven Index (CTHI) value significantly smaller than the European Union and the OECD values.

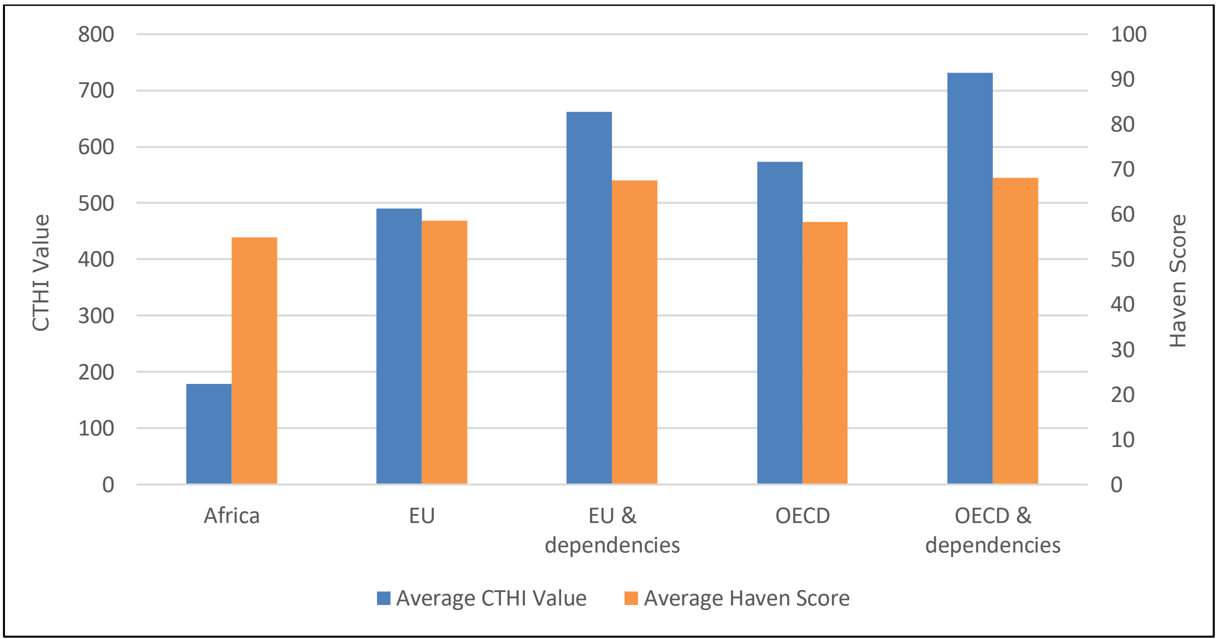


Figure 3. Comparison of Africa, the European Union and OECD countries and dependencies in the Corporate Tax Haven Index 2019

The data on African countries included in the Corporate Tax Haven Index is presented in Table 1. As the high values in the column "Haven Score" indicate, Mauritius is a particularly corrosive tax haven, especially in the region, as will be discussed below. At first glance, most of the other African jurisdictions receive a haven score of around 50. The remainder of this chapter and the following chapter will explore in greater depth the specific ways in which jurisdictions may be exposing themselves and other jurisdictions to base erosion especially in a digitalised economy by examining the categories and a couple of individual indicators. For scores by category, see Annex 1. Overview of scores per category for African countries in the Corporate Tax Haven Index 2019

Table 1. African jurisdictions in the Corporate Tax Haven Index (CTHI) 2019

Africa Rank	CTHI Rank	Jurisdiction	CTHI Value[15]	CTHI Share[16]	Haven Score[17]	Global Scale Weight[18]
1	14	Mauritius	950	2.50%	80	0.65%
2	42	South Africa	184	0.48%	47	0.54%
3	44	Seychelles	163	0.43%	68	0.01%
4	56	Botswana	74	0.20%	55	0.01%
5	57	Liberia	71	0.19%	49	0.02%
6	58	Kenya	60	0.16%	51	0.01%
7	60	Ghana	56	0.15%	49	0.01%
8	62	Tanzania	40	0.11%	46	0.01%
9	63	Gambia	9	0.02%	48	0.00%

Territories marked in light blue are British Commonwealth territories which are not OTs or CDs but whose final court of appeal is the Judicial Committee of the Privy Council in London (see here for more details: http://www.taxjustice.net/cms/upload/pdf/Privy_Council_and_Secrecy_Scores.pdf).

3.1 Lowest available corporate income tax[19]

Revenues from corporate income tax make up about 15 per cent of revenues in developing countries.[20] Yet the corporate income tax rates have been pushed downwards across the world, including in developing and emerging economies, in a race to the bottom in corporate taxation. This race to the bottom in corporate income tax rates harms society since this tax is one of the best ways to tax capital, and it can powerfully curb political and economic inequalities. It also helps to boost economic growth and protects developing countries by reducing their dependence on foreign aid.

However, there is often a discrepancy between statutory corporate tax rates—the rates that countries advertise—and the real, legally documented lowest corporate tax rates available in a country.[21] As such, the Corporate Tax Haven Index examines the lowest rate available for active business income of subsidiaries of multinational companies. The advertised tax rate is corrected for any reductions available for multinational companies based on the business size, sector, or state

[15] The CTHI Value is calculated by multiplying the cube of the Haven Score with the cube root of the Global Scale Weight. The final result is divided through by one hundred for presentational clarity.
[16] The CTHI Share is calculated by summing up all CTHI Values, and then dividing each countries CTHI Value by the total sum, expressed in percentages.
[17] The Haven Score is calculated based on 20 indicators. For full explanation of the methodology and data sources, please read our CTHI-methodology document, here: https://www.corporatetaxhavenindex.org/PDF/CTHI-Methodology.pdf.
[18] The Global Scale Weight represent a jurisdiction's share in global foreign direct investment (inward and outward). For full explanation of the methodology and data sources, please read our CTHI-methodology document, here: https://www.corporatetaxhavenindex.org/PDF/CTHI-Methodology.pdf.
[19] This section draws on: Tax Justice Network, *Haven Indicator 1: Lowest Available Corporate Income Tax Rate (LACIT)*, Corporate Tax Haven Index 2019 (2019), 10 <https://www.corporatetaxhavenindex.org/PDF/1-Corporate-Income-Tax-LACIT.pdf> [accessed 5 June 2019]; Tax Justice Network, *Ten Reasons to Defend the Corporation Tax*, 2015 <https://www.taxjustice.net/wp-content/uploads/2013/04/Ten_Reasons_Full_Report.pdf> [accessed 17 July 2018].
[20] International Monetary Fund, *Spillovers in International Corporate Taxation*, 7.
[21] S. M. Ali Abbas and Alexander Klemm, 'A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies', *International Tax and Public Finance*, 20/4 (2013), 596–617.

or sub-region where it operates. Then adjustments are made for tax reductions relating to the distribution or retention of profits, on the company type, territoriality and unilateral tax rulings.

Over one-third of jurisdictions (22 of the 64) in the Corporate Tax Haven Index offer a zero per cent lowest available corporate income tax rate, also referred to as "LACIT".[22] In Africa, Mauritius and the Seychelles offer a zero per cent lowest available corporate income tax, which is much lower than the statutory tax rate of 15 and 30 per cent, respectively, as shown in Figure 4.

For example, while Mauritius usually records a 15 per cent statutory corporate income tax rate, its legal framework continues to enable tax-exempt companies to be established. The Global Business License company regime is in the process of being amended,[23] but Mauritius allows so-called authorised companies to be taxed on a territorial basis.[24] While authorised companies are not technically tax exempt, they are considered non-resident for tax purposes and therefore do not fall within the scope of Mauritius' corporate income tax.[25] Thus, as long as these Mauritius-incorporated companies are only engaged in foreign operations, they are fully exempt from tax. These companies are barred from undertaking financial services, collective investment or business services, but can otherwise operate in any other economic sector.[26] As a result, the lowest available corporate income tax rate is recorded as zero per cent.

---

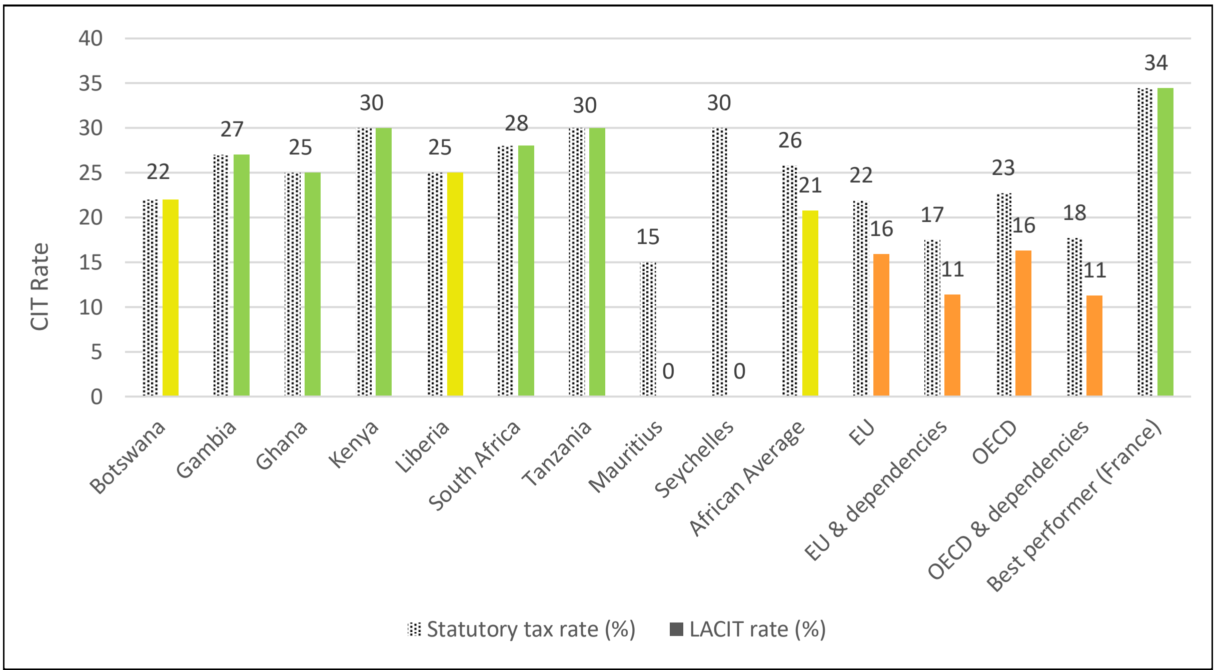
[22] Tax Justice Network, *New Ranking Reveals Corporate Tax Havens behind Breakdown of Global Corporate Tax System; Toll of UK's Tax War Exposed* (28 May 2019), para. 25 <https://www.taxjustice.net/2019/05/28/new-ranking-reveals-corporate-tax-havens-behind-breakdown-of-global-corporate-tax-system-toll-of-uks-tax-war-exposed/, https://www.taxjustice.net/2019/05/28/new-ranking-reveals-corporate-tax-havens-behind-breakdown-of-global-corporate-tax-system-toll-of-uks-tax-war-exposed/> [accessed 5 June 2019].

[23] While the Global Business Companies (GBC2) regime was abolished in 2018, GBC2 issued on or before 16 October 2017 will be valid until 30 June 2021. See

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

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

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



Maximum Risk LACIT 0%	LACIT Rate between 0 and 8.8%	LACIT Rate between 8.9 and 17.4%	LACIT Rate between 17.5 and 26.2%	LACIT Rate between 26.3 and 34.9%	Minimum Risk LACIT Rate 35%

Figure 4. Statutory and lowest available corporate income tax (LACIT), 2019

The difference between tax rates on corporate income across jurisdictions is a driver of profit shifting and the race to the bottom in corporate taxation. Significant differentials in the corporate income tax rate incentivise the manipulation of transfer prices for shifting profits from high to low tax jurisdictions. Existing transfer pricing guidelines based on the arm's length principle are inadequate to prevent such profit shifting. Therefore, a low or nil tax rate creates tax avoidance risks for any jurisdiction with a higher corporate income tax rate. To comparatively measure the intensity of such spillover risks emanating from any country's lowest available corporate income tax rate, a reference rate against which to measure this lowest rate is necessary. The distance from this reference rate serves as a proxy for the intensity of the spillover risks stemming from a country's lowest tax rate. In the absence of an internationally agreed default corporate income tax rate, the Corporate Tax Haven Index identified the highest available corporate income tax rate in a democracy based on the premise that any lower rate risks undermining the democratic choices of the electorate of this jurisdiction. Based on the analysis, the reference rate was set at 35 per cent based on the rates in France, India and Brazil, where capital gains are included in corporate income. The haven score for this first category is calculated by scaling the lowest available corporate income tax rate of each country against the spillover risk reference rate of 35 per cent.

The average lowest available corporate income tax rate and the statutory rate across the nine African countries are 20.78 and 25.78 per cent respectively.

These are almost 15 and 10 per cent lower than the spillover risk rate. These low rates may result in inward profit shifting, potentially undermining the tax base of other countries in Africa and beyond, and entice other countries to follow suit. This likely affects the tax mix by shifting the burden on taxation onto less mobile taxpayers, "hitting more vulnerable people harder".[27]

Nevertheless, the OECD and the European Union's average statutory and lowest available corporate income tax rates are lower than those available in African jurisdictions, which implies countries in these blocks bear more of the responsibility in the race to the bottom, to the detriment of developing countries. This is reflected in the lower average haven score for African jurisdictions compared to the average for the OECD, the OECD and dependencies and the European Union, as presented in Figure 5.

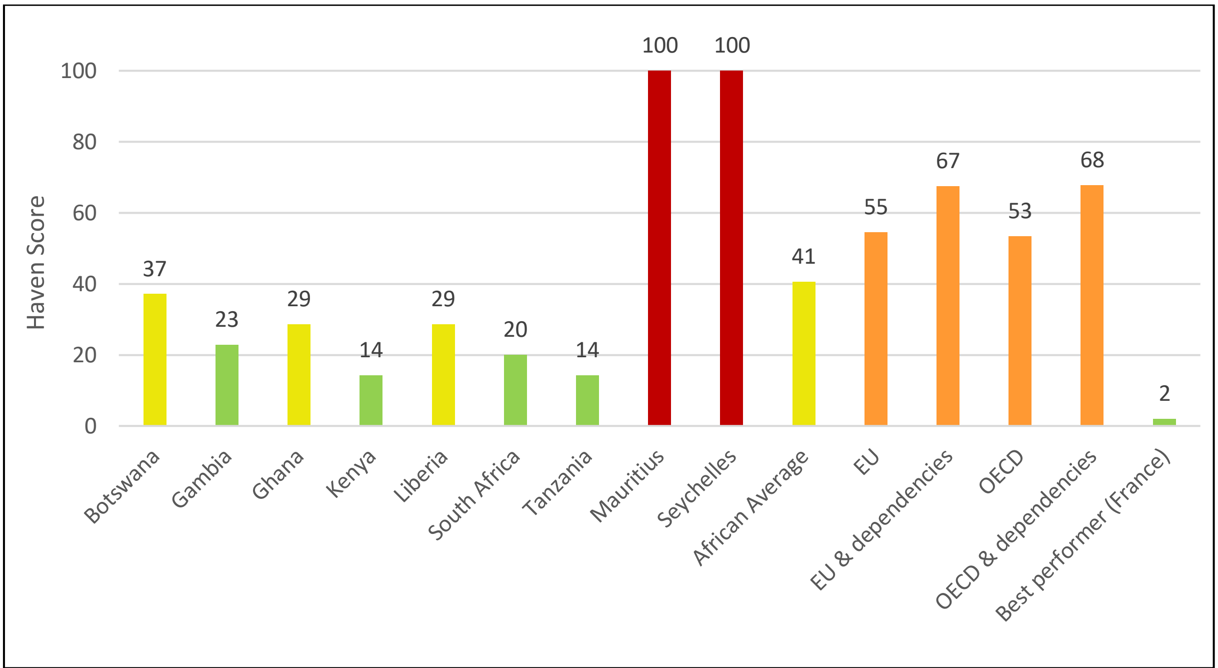


Figure 5. Corporate tax haven scores for Africa and averages – Category 1: Lowest available corporate income tax

3.2 Loopholes and gaps

The second category of indicators referred to as "loopholes and gaps" in the Corporate Tax Haven Index considers the exclusions and exemptions that are in place and can be used by multinational companies to reduce the tax rate or tax base. It is made up of seven indicators and the overall score presented in Figure 6 is the arithmetic average of the seven indicators. These include examining sectoral exemptions, tax holidays and economic zones established that reduce the corporate tax bill. Capital gains tax and rules around loss utilisation, fictional interest deduction and patent box regimes are also considered.

[27] Tax Justice Network, *Haven Indicator 1: Lowest Available Corporate Income Tax Rate (LACIT)*, 10.

Figure 6 reveals that there is a wider range of scores for African countries than in the first category where the lowest available corporate income tax rate was assessed. Kenya appears to be an outlier. This may be because the country is positioning its capital city Nairobi as a new financial centre for East and Southern Africa as outlined in Kenya's Vision 2030.[28] In the Corporate Tax Haven Index this is because the country excludes foreign investment income from its tax base; foreign dividends received by tax-resident companies are not subject to tax.[29] Further, the lowest available capital gains tax rate is zero per cent and losses can be carried forwards and backwards allowing companies to reduce their tax bill. Although loss carry backwards is not generally allowed, there is an exception granted to the petroleum exploration industry and losses may be carried forward for all sectors for nine years without an annual ceiling and the Cabinet secretary has the discretionary powers to extend the period for losses to be carried forward. Kenya also offers a raft of sectoral tax exemptions and in special economic zones and export processing zones, the corporate income tax rate is either nil or significantly lower than the statutory rate. The OECD qualifies Kenya's special economic zone regime as an intellectual property and non-intellectual property regime, but specifies that this regime is not operational.[30]

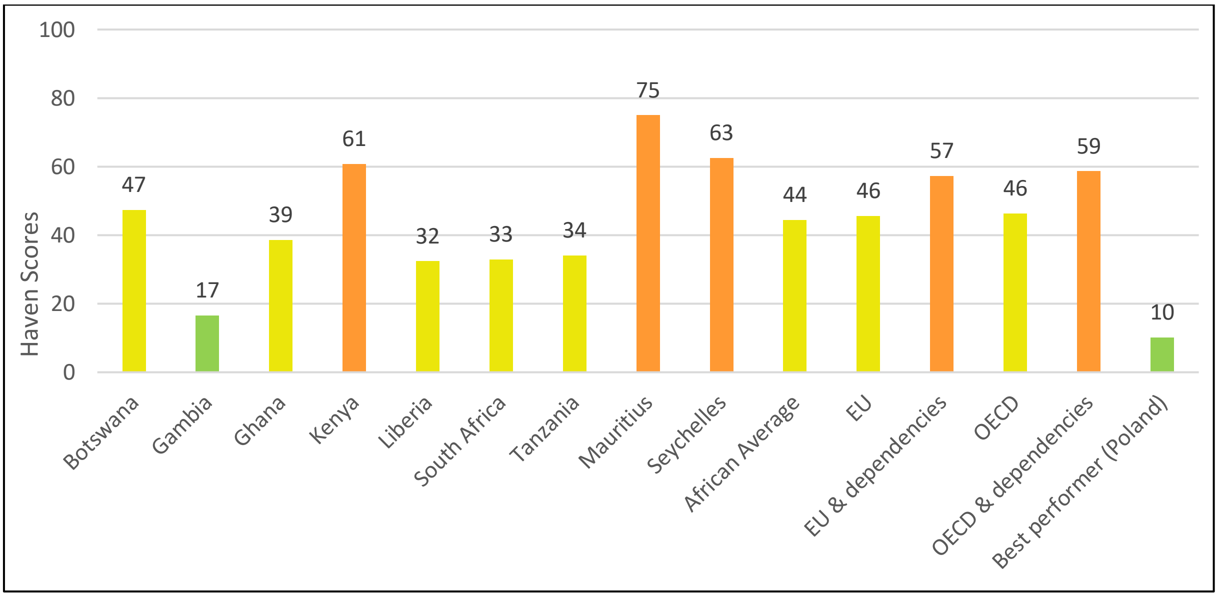


Figure 6. Corporate tax haven scores for Africa and averages – Category 2: Loopholes and gaps

Figure 6 shows that the difference between the average haven scores of African nations and the European Union and OECD is much smaller than in the first

[28] For further information about Nairobi International Financial Centre, see: Joy Ndubai, *Narrative Report on Kenya*, Financial Secrecy Index 2018 (2018) <https://www.financialsecrecyindex.com/PDF/Kenya.pdf> [accessed 7 June 2019].

[29] For further information on the indicator scores for Kenya, see: Tax Justice Network, *Kenya Database Report*, Corporate Tax Haven Index (2019) <https://www.corporatetaxhavenindex.org/database/Kenya.xml> [accessed 7 June 2019].

[30] OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, November 2018, 2 <http://www.oecd.org/tax/beps/update-harmful-tax-practices-2017-progress-report-on-preferential-regimes.pdf> [accessed 5 December 2018].

category described above. However, examining the differences between the regional averages for specific indicators is revealing, as shown in Figure 7, and further detailed in Annex 2. Overview of scores per indicator for African countries in the Corporate Tax Haven Index 2019. On one hand, African countries perform better on average than the OECD and the European Union on the indicators for capital gains taxation, sectoral exemptions, fictional interest deduction, foreign investment income treatment and patent boxes. Patent boxes are analysed in more details in Section 4.1. On the other hand, African countries have higher haven scores on average for two indicators: loss utilisation, which assesses the availability of loss carry forward and loss carry backward, and tax holidays and economic zones.

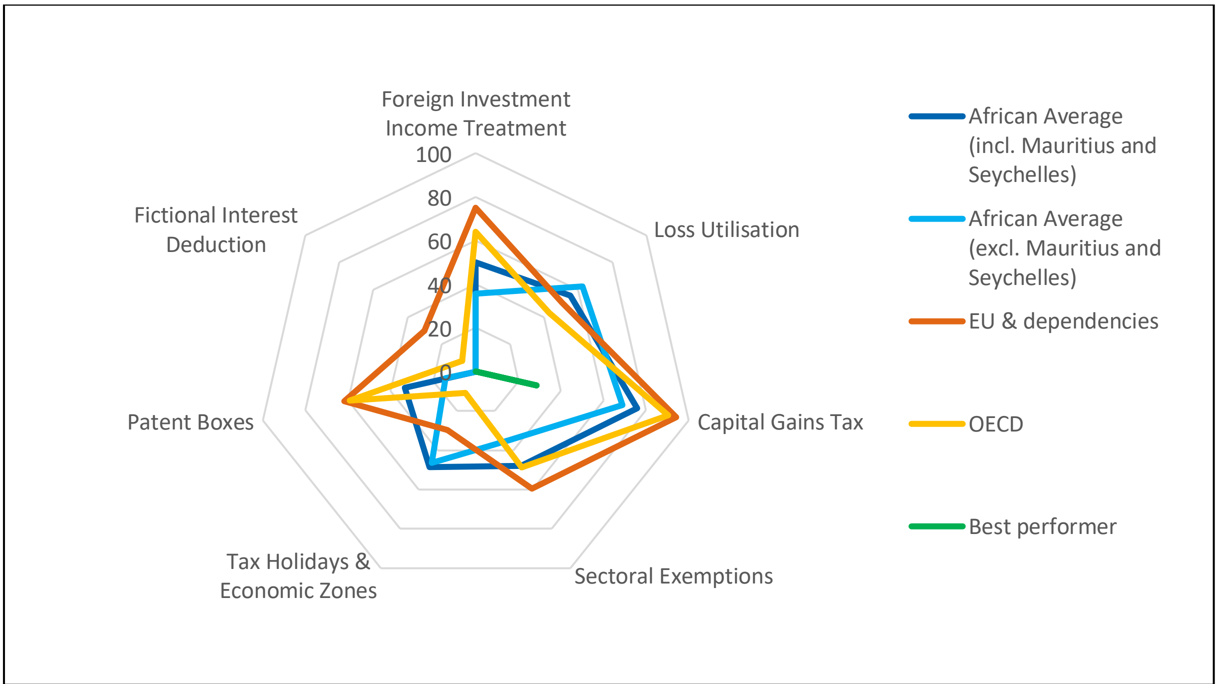


Figure 7. Comparison of Loopholes and Gaps Indicators for African countries, EU and OECD

The greatest difference in haven scores between African countries and those countries in the OECD and European Union is observed for economic zones and tax holidays. This confirms earlier research showing that African nations on average offer three profit-based tax incentives, such as economic zones and tax holidays, for every one cost-based tax incentive while European nations on average offer a near one-to-one ratio of tax incentive types.[31] Cost-based tax incentives target lowering the cost of capital by allowing deductions related to investment and as a result, they may encourage investment that would not have otherwise been made, while profit-based tax incentives reduce that tax on

[31] Markus Meinzer and others, *Comparing Tax Incentives across Jurisdictions: A Pilot Study*, 2019, 43 <https://www.taxjustice.net/wp-content/uploads/2018/12/Comparing-tax-incentives-across-jurisdictions_Tax-Justice-Network_2019.pdf> [accessed 3 July 2019].

income so instead of encouraging new investment, they make profitable projects even more profitable.[32]

In Kenya, Ghana, Tanzania and Mauritius, special tax incentives in a limited geographical area—such as in freeports, export processing zones, special economic zones, and so on—or special tax holidays available over a set period of time receive high haven scores. For example, in Tanzania, companies in the free zone under the Zanzibar Investment and Promotion Act of 2004 are exempt from corporate income tax for the first 20 years and investors in Tanzania's export processing zones are exempt from corporate income tax for the initial 10 years.[33]

The objectives of these geographically-confined tax incentives are usually to attract foreign direct investment, develop disfavoured or rural regions or certain sectors, increase government revenues, encourage skills upgrading, technology transfer, innovation and improve the productivity or domestic enterprises.[34] However, research shows that tax incentives are often ineffective in attracting foreign direct investment, especially in developing countries.[35] Investment climate surveys for low-income countries show that tax incentives are not as decisive for investors compared with good infrastructure, an educated labour pool, the rule of law, macroeconomic stability and other conditions. Evidence also suggests that providing geographically-confined tax incentives impose pressure on policymakers to provide the same benefits to other geographic areas, increasing revenue loss and social distortions.[36]

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.[37] 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

---

[32] International Monetary Fund and others, *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* (15 October 2015), 20 <http://elibrary.worldbank.org/doi/book/10.1596/22923> [accessed 28 March 2018].
[33] For further information, see: Tax Justice Network, *Tanzania Database Report*, Corporate Tax Haven Index (2019) <https://www.corporatetaxhavenindex.org/database/Tanzania.xml> [accessed 7 June 2019].
[34] Douglas Zhihua Zeng, 'Building Engines for Growth and Competitiveness in China: Experience with Special Economic Zones and Industrial Clusters' (2010) <https://openknowledge.worldbank.org/bitstream/handle/10986/2501/564470PUB0buil10Box349496B01PUBLIC1.pdf?sequence=1&isAllowed=y>.
[35] 'Empirical Evidence on the Effects of Tax Incentives', *IMF* <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Empirical-Evidenceon-the-Effects-of-Tax-Incentives-23053> [accessed 16 December 2018].
[36] 'Revenue Mobilization in Sub-Saharan Africa : Challenges from Globalization', *IMF* <https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Revenue-Mobilization-in-Sub-Saharan-Africa-Challenges-from-Globalization-23124> [accessed 16 December 2018].
[37] OECD, *Implementing the Latest International Standards for Compiling Foreign Direct Investment Statistics. FDI Statistics by the Ultimate Investing Country*, 2015 <https://www.oecd.org/daf/inv/FDI-statistics-by-ultimate-investing-country.pdf> [accessed 6 June 2018].

advantage of those incentives. Ghana offers several time-bound tax holidays that reduce the statutory corporate income tax rate of 25 per cent significantly. For example, tree crops, cattle farming, rural banks and venture capital financing companies are taxed at one per cent for the first 10 years, while cocoa by-production processing, construction of residential housing, agro-processing, livestock (other than cattle) farming, fisheries and cash crops are taxed at one per cent for the first five years.[38]

3.3 Transparency

The category on transparency in the Corporate Tax Haven Index, made up of six key indicators, seeks to probe whether corporations and governments are able to hide their financial affairs and decisions regarding taxation, such as unilateral tax rulings and tax court proceedings and rulings, and if companies are required to file their accounts and make them publicly available. In addition, country requirements for public and local country-by-country reporting are assessed since the jurisdiction-level breakdown of activities, declared profits and taxes paid enable tax authorities to identify tax avoidance risks. The haven score for this category is the arithmetic average of the six indicators.

As Figure 8 shows, African countries on average have a very high haven score in this category, although scores in the European Union and the OECD and their dependencies are substantial as well.

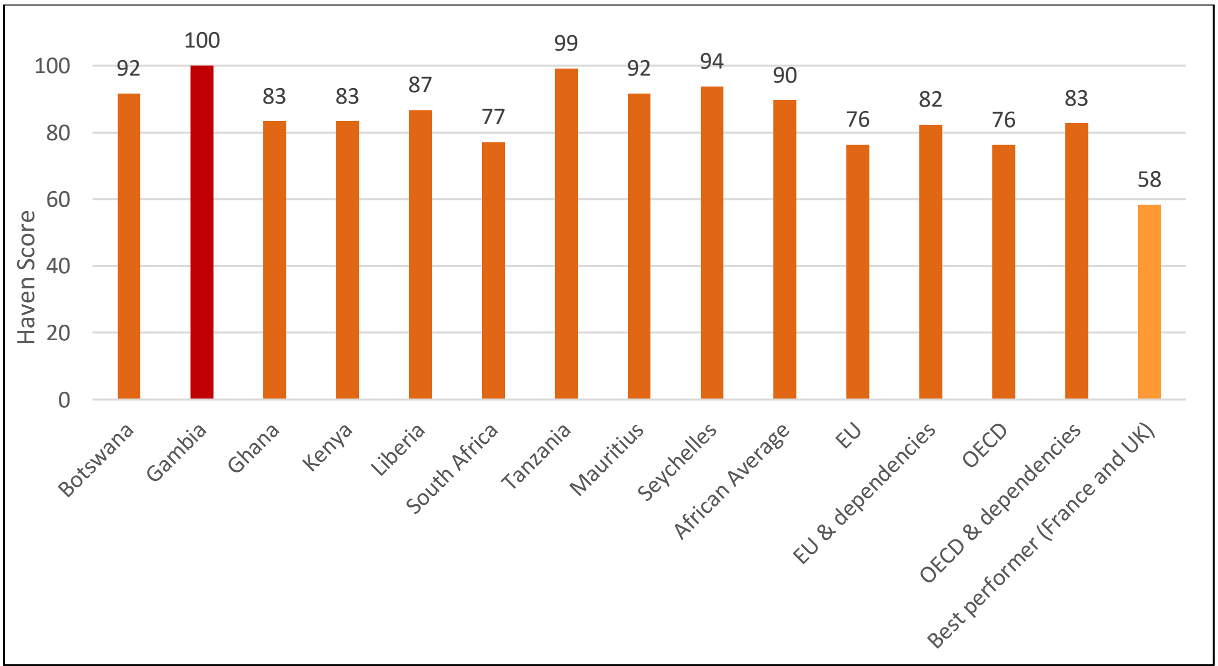


Figure 8. Corporate tax haven scores for Africa and averages – Category 3: Transparency

[38] For further information, see: Tax Justice Network, *Ghana Database Report*, Corporate Tax Haven Index (2019) <https://www.corporatetaxhavenindex.org/database/Ghana.xml> [accessed 7 June 2019].

Figure 9 shows the performance of African countries for each indicator compared to the OECD and the European Union. African countries perform worse than the OECD and the European Union on the indicators for publicity of company accounts, country-by-country reporting and local filing of country-by-country reporting. No African country ensures all company accounts are published online for free, and only Ghana and Mauritius require all companies to submit annual accounts to a public authority. Furthermore, there are no regulations on country-by-country reporting both for multinationals companies headquartered within their borders to produce country-by-country reports, or subsidiaries of multinational companies operating in their country to file a country-by-country report locally. As for the reporting of tax avoidance schemes, haven scores for the OECD and the European Union are as high as the African average. South Africa is the only country that requires taxpayers to report tax avoidance schemes they have used and tax advisers to report tax avoidance schemes they have marketed or sold. No African countries require taxpayers or advisers to report uncertain tax positions for which reserves have been created in annual company accounts.

Practice is slightly better but still weak for tax court transparency, and for the publication of tax rulings and disclosure of extractive industries contracts, where applicable. These findings suggest that African nations can make some decisive policy changes that can curb corporate tax avoidance.

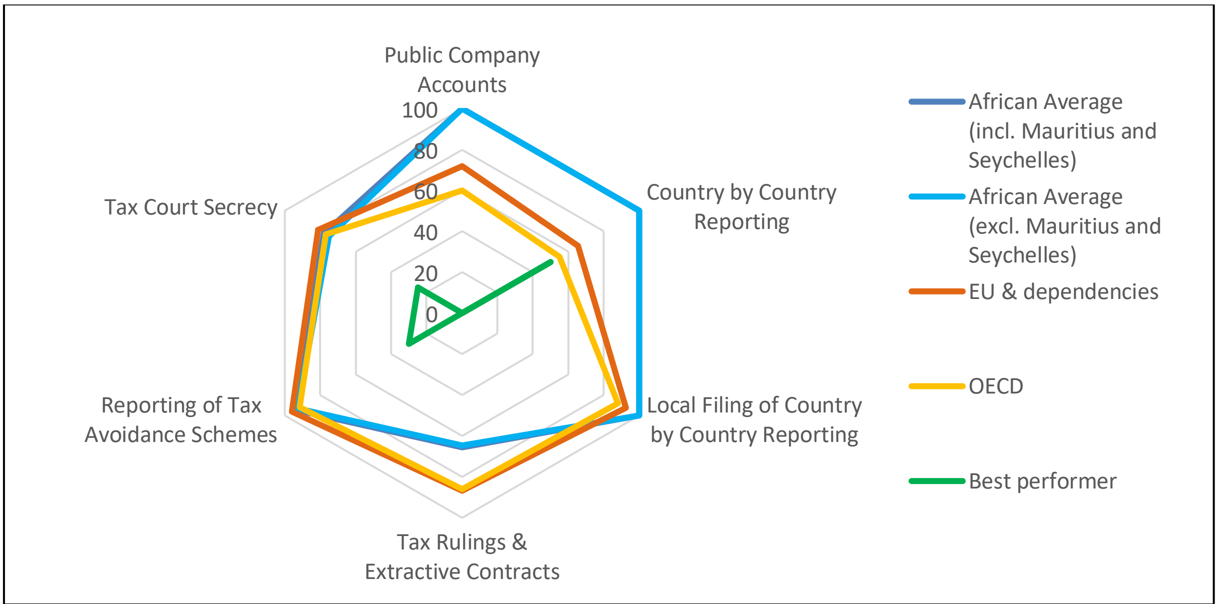


Figure 9. Comparison of Transparency Indicators for African countries, EU and OECD

3.4 Anti-avoidance

In the fourth category of the Corporate Tax Haven Index, the anti-avoidance measures that jurisdictions put in place to constrain base erosion and profit shifting by multinational companies are examined. Some jurisdictions may intentionally not limit these practices as they seek to attract profit-shifting activity; sometimes it is a case of not updating and ensuring the right policies are in place to address harmful tax practices. The arithmetic average of five indicators make up the anti-avoidance score. In this category, the rules limiting deductions for interest, service payments and royalties from the corporate tax base are considered alongside withholding tax rates applied on dividends and controlled foreign company rules. Deduction limitations rules for royalties are considered in more depth in Section 4.2 Deduction Limitation for Royalties

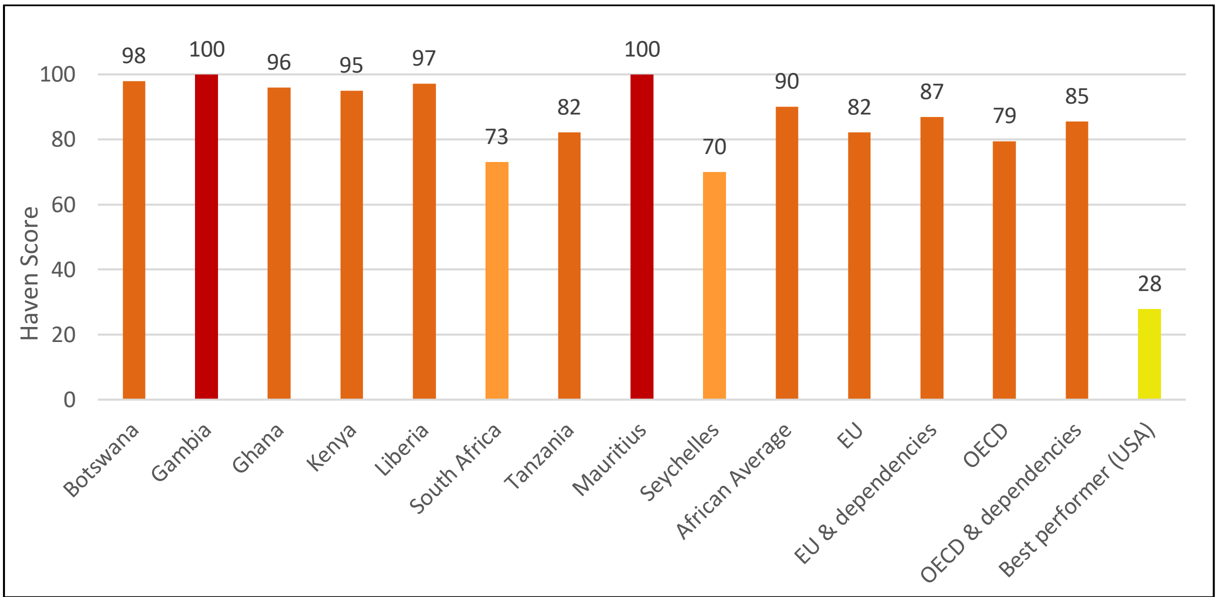


Figure 10. Corporate tax haven scores for Africa and averages – Category 4: Anti-avoidance

Just as all regions received high haven scores in category 3 on transparency in the Corporate Tax Haven Index, high haven scores are observed across regions for category 4 on anti-avoidance measures as shown in Figure 10. Again, the African average is higher than the OECD's and the European Union's, even when their dependencies are included.

When zooming in on individual anti-avoidance policies and indicators, some heterogeneity becomes visible. As shown in Figure 11, the average haven scores in Africa are similar to the averages of the OECD and the European Union (including dependencies) on the indicators for withholding taxes on dividends and deduction limitation for interests, royalties and service payments. However, African jurisdictions perform significantly worse than the OECD and the European Union on the indicator for controlled foreign company rules.

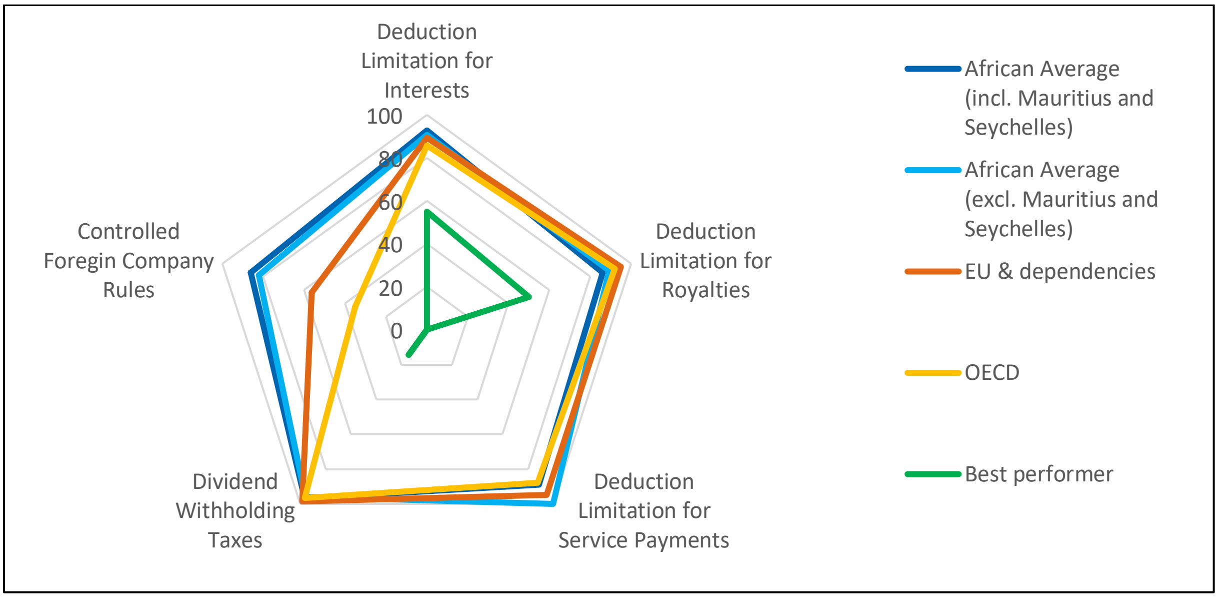


Figure 11. Comparison of Anti-Avoidance Indicators for African countries, EU and OECD

Deduction limitation rules for interest, royalties and service payments are weak across African countries. Deductions enable multinational companies to reduce their local taxable income. Research shows that developing countries are 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.[39] Most of the African countries also often allow zero per cent withholding taxes on outbound dividend payments under certain scenarios. These payments are made by a subsidiary of a multinational enterprise to the headquarters in another jurisdiction. Only Liberia and Tanzania impose a withholding tax, but this is set at only five per cent.

The withholding tax rate on dividends influences cross-border tax planning opportunities and can play an important role in countering tax avoidance especially in lower income countries.[40] The level of withholding taxes, along with the level of corporate income taxation and double tax relief agreements, are used as parameters by multinational corporations to determine which countries are used as investment platforms in repatriation strategies, acting as conduit countries.[41]

---

[39] Hugh J Ault and Brian J Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, New York*, 2015. second Edition 2017 p.11. As we noted above, applying limitations on interest payments of standalone entities rather than at a group ratio level also carry base erosion and profit shifting risks, see OECD, *Limiting Base Erosion Involving Interest Deductions and Other Financial Payments, Action 4 - 2015 Final Report,* 19.
[40] Maarten van 't Riet and Arjan Lejour, 'Ranking the Stars: Network Analysis of Bilateral Tax Treaties' (2014) <https://www.cpb.nl/sites/default/files/publicaties/download/cpb-discussion-paper-290-ranking-stars_0.pdf> [accessed 1 May 2019].
[41] Simon Loretz, Richard Sellner and Bianca Brandl, 'Aggressive Tax Planning Indicators' (2017), 33.

Similarly, only South Africa and Tanzania have some form of controlled foreign company regulations, although Tanzania's rules follow the weak arm's length principle. These rules allow countries to tax the profits of locally-based headquarters or affiliate where they have generated large profits in an offshore tax haven and this income has not been taxed properly or at all.

3.5 Double tax treaty aggressiveness[42]

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 the income. Double tax treaties were designed to address the problem of double taxation by determining how cross-border payments get taxed, by which jurisdiction and at what rate. However, corporate tax havens have tended to sign many double tax agreements that override domestic tax laws and impose very low or zero tax rates and often include other weaknesses that allow multinationals to choose or "shop" around to find the treaties and jurisdictions that will enable them to reduce their tax bill. This is typically at the expense of the countries where the genuine economic activity is taking place.

This fifth category in the Corporate Tax Haven Index is made up of one indicator which assesses the impact of a jurisdiction's network of double taxation agreements on the withholding tax rates in interest, dividend and royalties in treaty partner jurisdictions. It measures how aggressive a jurisdiction's treaty network is on average in pushing down the withholding tax rates in partner jurisdictions. It does this by comparing the analysed jurisdiction's withholding tax rates with each treaty partner's average withholding tax rates across the total treaty network.

In Africa, Mauritius and South Africa stand out with their aggressive double tax treaty networks, as shown in Figure 12. Mauritius, in particular, has been negotiating very aggressive treaties. For example, Senegal's treaty withholding tax rates are above 10 per cent on average for all types of income, but Mauritius and Senegal have signed a treaty ensuring zero per cent withholding tax in all cases.[43] With these very aggressive treaty rates, Mauritius reduces the tax base of Senegal and sends a signal to multinational corporations that Mauritius is an advantageous destination to shift profits away from Senegal.[44]

---

[42] This section draws from: Tax Justice Network, *Haven Indicator 20: Double Tax Treaty Aggressiveness* (2019) <https://www.corporatetaxhavenindex.org/PDF/20-Double-Tax-Treaties.pdf> [accessed 6 June 2019].

[43] http://taxsummaries.pwc.com/ID/Mauritius-Corporate-Withholding-taxes; [accessed 27 May 2019]; see also http://taxsummaries.pwc.com/ID/Senegal-Corporate-Withholding-taxes; [accessed 27 May 2019].

[44] For a more in-depth discussion on double tax treaty aggressiveness in and affecting Africa in the Corporate Tax Haven Index, see: Lucas Millan-Narotzky, Maïmouna Diakité and Markus Meinzer, *A Race to the Bottom in Treaty Withholding Taxes: Who Is Eroding Africa's Tax Base?* (Forthcoming).

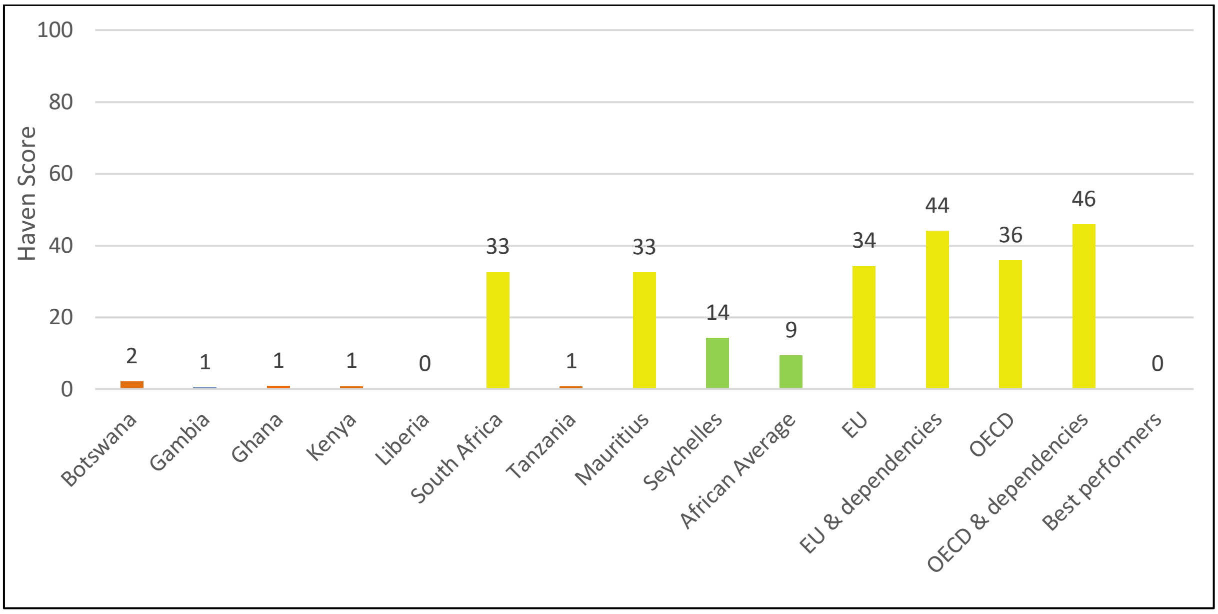


Figure 12. Corporate tax haven scores for Africa and averages - Category 5: Double tax treaty aggressiveness

4. Intellectual property and tax avoidance risks

The digital transformation of the global economy has shaken the foundations of the century-old international taxation system. Digitalised business models rely on investment in intangible assets, especially intellectual property assets, such as algorithms and software that supports website and online platforms, which may be owned by a subsidiary of a multinational company or a third-party.[45] Countries are exposed to base erosion and profit-shifting risks through the tax arrangements in different jurisdictions. Both preferential regimes for the tax treatment of intellectual property and the absence of rules limiting the deduction of royalty payments for intellectual property or intangibles between intra-group companies from the corporate income tax base put countries at risk.

In this section, patent box regimes and deduction limitation for royalties are examined. These are two indicators in the Corporate Tax Haven Index that are salient to addressing the taxation system in light of the digital economy.

4.1 Patent boxes[46]

Countries have extended a range of preferential tax treatments for intellectual property rights. These are referred to as "patent box regimes" even though they

[45] OECD, *Tax and Digitalisation*, OECD Going Digital Policy Note (Paris, 2019), 3 <https://www.oecd.org/going-digital/tax-and-digitalisation.pdf> [accessed 6 June 2019].
[46] This section draws from: Tax Justice Network, *Haven Indicator 7: Patent Boxes*, Key Corporate Tax Haven Indicators (2019) <https://www.corporatetaxhavenindex.org/PDF/7-Patent-Boxes.pdf> [accessed 6 June 2019].

are used more extensively than for patent incentives alone.[47] A patent box regime provides tax privileges for highly profitable businesses and enables cross-border profit shifting into these tax regimes, undermining the tax bases of jurisdictions elsewhere.[48] 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 United States of America and published in May 2017 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.[49]

Similarly, recent empirical research, published by the Max Planck Institute for Innovation and Competition, analysed the effects of the introduction of patent box regimes in 13 European countries between 2000 and 2014. According to the research, given that a patent box regime subsidises output rather than input, it benefits mainly companies that have already had success with their invention. And while it may encourage other companies to undertake such inventions, this can be done in a better and more efficient way.[50]

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.[51] In fact, it appears that jurisdictions without such patent box regimes have been more successful in attracting and fostering innovative businesses.[52] However, although the efficiency of patent box regimes in fostering

---

[47] Alex Cobham, 'Will the Patent Box Break BEPS?', *Tax Justice Network*, 2015 <https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/, https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/> [accessed 6 June 2019].
[48] https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].
[49] Gary Guenther, *Patent Boxes: A Primer* (May 2017), 19 <https://fas.org/sgp/crs/misc/R44829.pdf>.
[50] Fabian Gaessler, Bronwyn H Hall and Dietmar Harhoff, *Should There Be Lower Taxes on Patent Income?*, 2018, 44 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3216471>.
[51] Annette Alstadsa eter and others, 'Patent Boxes Design, Patents Location, and Local R&D', *Economic Policy*, 33/93 (2018), 131–177. <https://ec.europa.eu/jrc/sites/jrcsh/files/JRC96080_Patent_boxes.pdf > [accessed 16 August 2018].
[52] CPB Netherlands Bureau for Economic Policy Analysis, *A Study on R & D Tax Incentives: Final Report*, Working Paper n. 52 – 2014 (Luxembourg, 2014) <https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_52.pdf>.

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.[53] For example, in 2015, the Dutch government found that its innovation box resulted in a tax loss of €361m to the Netherlands in 2010. In 2012, this sum was almost double, increasing to €743m.[54] 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.[55]

Patent box regimes confirm the futile notion of competition on tax, locking in a race to the bottom.[56] 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 respond by introducing even more aggressive and corrosive tax policies.[57] 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 the misattribution of economic activities, resulting in productivity slowdown.[58] 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 that can allow them to avoid tax.[59]

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

---

[53] https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].
[54] Esmé Berkhout, *Tax Battles: The Dangerous Global Race to the Bottom on Corporate Tax* (December 2016), 19 <https://www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf>.
[55] ZEW Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, November 2013, 38–39 <ftp://ftp.zew.de/pub/zew-docs/dp/dp13070.pdf>.
[56] https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/; [accessed 1 March 2019].
[57] Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, 39.
[58] Fatih Guvenen and others, *Offshore Profit Shifting and Domestic Productivity Measurement* (2017) <https://www.nber.org/papers/w23324.pdf>.
[59] Andrew Hwang, *Thinking Outside the (Patent) Box: An Intellectual Property Approach to Combating International Tax Avoidance* (2018), 28 <http://rooseveltinstitute.org/wp-content/uploads/2018/05/Thinking-Outside-the-Patent-Box-final.pdf>.

practice is legitimised by the patent box regime. Patent box regimes, therefore, cannot be justified as a viable fiscal incentive and should be eliminated.

The final Action 5 report of the OECD Action Plan on Base Erosion and Profit Shifting, which focuses on tackling harmful tax practices[60] (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. The Action 5 report comprises two parts: the first aims at identifying whether features of patent box regimes are harmful and the second aims at ensuring transparency through the compulsory exchange of related tax rulings. The Action 5 report is one of the four minimum base erosion and profit shifting standards, which all members of the Inclusive Framework on Base Erosion and Profit Shifting have committed to implement.

The nexus approach, as developed by the OECD and presented in 2014 in a preliminary Action 5 report,[61] was one of several approaches that were proposed for requiring substantial activity for any preferential tax regime, such as patent boxes. The nexus approach requires a link between the income benefiting from the intellectual property and the underlying research and development activities that generate the intellectual property.[62] The approach allows taxpayers to benefit from an intellectual property regime only if they can link the income that stems from the intellectual property to the expenditures, such as research and development, it incurred (either by the taxpayer itself or by outsourcing it to a third party, i.e., qualified research and development activities).[63] 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,

---

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

[61] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, OECD/G20 Base Erosion and Profit Shifting Project (2014) <http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance_9789264218970-en> [accessed 16 August 2018].

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

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

the proportion of expenditures directly related to development activities acts as a proxy for how much substantial activity the taxpayer undertook.[64]

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 a taxpayer meets specific criteria for development activities taking place in the jurisdiction. Transfer pricing requires the assessment of functions, assets and risks.[65] 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.[66] As of May 2019—the launch of the Corporate Tax Haven Index—in cases where a jurisdiction introduced grandfathering rules that enable companies which entered the regime earlier to continue benefitting from the old patent box regime (without nexus constraints) until 30 June 2021, the preferential regime is still available and assessed as such.

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.[67] 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, but also the criterion for demonstrating "substantial economic activities" as a condition for profit attribution can be met easily by ticking the right boxes or, at worst, following professional advice.

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".[68] This may be a recipe for disastrous

---

[64] OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, 29.
[65] https://www.taxnotes.com/tax-notes-today/intangible-assets/news-analysis-patent-box-bad-idea-crosses-atlantic/2015/07/20/14938061; [accessed 16 August 2018].
[66] https://www.oecd.org/ctp/explanatory-paper-beps-action-5-agreement-on-modified-nexus-approach-for-ip-regimes.pdf; [accessed 1 March 2019].
[67] https://www.taxjustice.net/2014/11/13/uk-patent-box-will-come-back-back-door-accompanied-germany/; [accessed 1 March 2019].
[68] https://www.taxjustice.net/2014/11/17/patent-boxes-progress-racing-bottom/; [accessed 1 March 2019].

sweetheart deals[69] as we have already seen with the Lux Leaks revelations[70] and the European Commission's decisions on illegal state aid from countries including Ireland, Luxemburg and the Netherlands.[71] Furthermore, as long as the thresholds required by any nexus rules have been taken, the amounts of profit to be attributed to the patents can be easily manipulated under the existing indeterminacy of transfer pricing rules. Therefore, the abuse of patent boxes with a nexus constraint can hardly be prevented. Nonetheless, we acknowledge that the nexus approach has so far only been implemented for a short period and there is not enough robust evidence and studies to confirm our arguments for its insufficiency.

In acknowledging the lack of empirical validation of the nexus' rules inefficacy, the Corporate Tax Haven Index reduces the haven score by only 10 for jurisdictions that offer patent box regimes in line with the OECD nexus approach. A haven score of zero for this indicator is provided only if the jurisdiction has not introduced a patent box regime, either with or without the constraints determined by the OECD nexus approach. A haven score of 100 is given if the jurisdiction offers a patent box regime without OECD nexus constraints or if the patent box regime is not applicable for the jurisdiction given that it imposes no corporate income tax or a zero statutory tax rate.

In Africa, five jurisdictions do not have preferential patent box regimes, while Mauritius, Seychelles and Botswana have these in place. Here, it is evident again that the responsibility for addressing tax avoidance risks primarily lies with OECD and European Union countries.

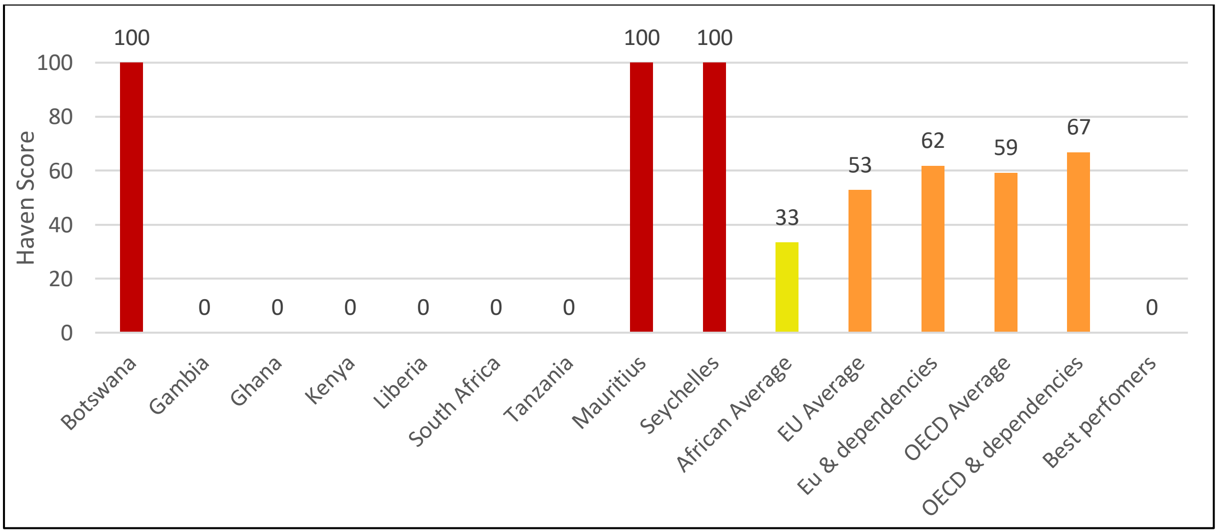


Figure 13. Haven Indicator 7: Patent Boxes

69 http://www.cgdev.org/blog/luxleaks-reality-tax-competition; [accessed 1 March 2019].
70 https://www.icij.org/investigations/luxembourg-leaks/; [accessed 1 March 2019].
71 http://ec.europa.eu/competition/state_aid/overview/index_en.html; [accessed 1 March 2019].

4.2 Deduction Limitation for Royalties[72]

Royalties are payments for the right to a temporary use of intellectual property.[73] Similar to interest payments, royalties are normally considered deductible expenses for the taxpayer and are often abused by companies that engage in profit shifting to reduce their taxable profits. When a company that deducts royalties from its income is based in a high tax jurisdiction and its subsidiary that receives the royalties is in a low (or zero) tax jurisdiction, then the multinational company may end up paying very low or no tax. This is because the deduction of royalties lowers the tax base of the company in the high tax jurisdiction while very low or no tax is levied on the royalties' income in the low tax jurisdiction. Such cross-border royalty payments result in significant base erosion and profit shifting and have become increasingly prevalent given the large sums that multinational companies claim to derive from the exploitation of intellectual property.[74]

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.[75]

The arm's length principle requires that royalties should be tax deductible only up to the arm's length price, however, 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.[76]

The OECD does not recommend a specific limitation rule for the deduction of outbound intra-group royalty payments. Nevertheless, some countries have already adopted measures to limit the deduction of intra-group royalty payments related to intellectual property regimes. For example, in Germany, a new Act against Harmful Tax Practices with regard to Licensing of Rights of 2 June 2017 has resulted in the introduction of a new provision, Sec. 4j of the Income Tax

---

[72] This section draws from: Tax Justice Network, *Haven Indicator 16: Deduction Limitation for Royalties*, Key Corporate Tax Haven Indicators (2019), 16 <https://www.corporatetaxhavenindex.org/PDF/16-Deduction-Limitation-Royalties.pdf> [accessed 6 June 2019].
[73] Ault and Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', 44.
[74] HM Revenue & Customs, 'Deduction of Income Tax at Source: Royalties', 2016, 4 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532314/M1070_revised_TN_final.pdf> [accessed 14 May 2019].
[75] Ault and Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', 44.
[76] Centre for European Economic Research, *Intellectual Property Box Regimes: Effective Tax Rates and Tax Policy Considerations*, 4–5.

Act.[77] This aims to anticipate the application of the nexus approach.[78] The restricted nexus approach allows taxpayers to benefit from an intellectual property regime only if they can link the income that stems from the intellectual property to expenditures incurred. Expenditure could be on research and development, for example, by either the taxpayer itself or outsourcing it to a third party, i.e. qualified research and development activities.[79] The provision partially limits the deductibility of royalty payments at the level of the licensee in case the corresponding royalty income is subject to low taxation in a preferential regime that is not in line with the nexus approach.

Another approach to limit the deduction of intra-group royalty payments was introduced by South Africa. South Africa allows the deduction of intra-group royalty payments for intellectual property in accordance with the withholding tax rate. As such, one-third of intra-group royalty payments can be deducted when the withholding tax rate is at least 10 per cent while half of the intra-group royalty payments can be deducted when the withholding tax is 15 per cent.[80] This approach follows the same logic of disallowing these payments when they do not comply with the nexus approach.

Several countries have gone further and introduced rules that limit the deductibility of intra-group royalty payments regardless of whether the intellectual property regime complies with the nexus approach. For example, Ecuador limits intra-group royalty payment deductions up to 20 per cent of the 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.[81] In Rwanda, a new provision, which came into force in April 2018, limits the deduction of royalties paid by local companies to their related non-resident companies to two per cent of their turnover.[82]

The United States has also recently introduced an alternative way to limit intra-group royalty payments regardless of the nexus approach. The 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.[83] The base

[77] Xaver Ditz and Carsten Quilitzsch, ‘Countering Harmful Tax Practices in Licensing of Rights: The New License Barrier Rule in Section 4j of the German Income Tax Act’, *Intertax*, 45/12 (2017), 823.
[78] Friedrich Heinemann and others, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017), 40.
[79] Friedrich Heinemann and others, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017), 40.
[80] P.J. Hattingh, South Africa - Corporate Taxation, Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_za; [accessed 27 May 2019].
[81] G. Guerra, Ecuador - Corporate Taxation, Country Surveys IBFD, 2019, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_ec; [accessed 27 May 2019].
[82] R. Niwenshuti, Rwanda - Corporate Taxation, Country Surveys IBFD, 2018, https://research.ibfd.org/#/doc?url=/linkresolver/static/gtha_rw; [accessed 27 May 2019].
[83] Susan C. Morse, ‘International Cooperation and the 2017 Tax Act’, *The Yale Law Journal Forum*, 2018 <https://www.yalelawjournal.org/pdf/Morse_ac1hex9k.pdf> [accessed 13 May 2019].

erosion and anti-abuse tax is a minimum tax that is imposed at a rate of 10 per cent[84] on the taxpayer's modified taxable income[85], calculated by adding back most categories of related-party deductible payments.[86] 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 three per cent for the tax year, which in practice means a threshold of base erosion payments as a percentage of total deductions.[87]

These measures are indeed a significant step in the right direction, but they are still open to abuse by multinational companies for tax avoidance purposes. One difficulty in implementing these measures is that tax authorities require significant resources to examine whether there is sufficient evidence for the contribution of the related parties to intellectual property development. The evidence will often be submitted only upon the 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 of 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.

The Corporate Tax Haven Index considers jurisdictions that apply no limits on the deduction of intra-group royalty payments as corporate tax havens, receiving a score of 100. The haven score of a jurisdiction is reduced to 75 if the jurisdiction applies a deduction limitation or disallows certain intra-group royalty payments for intangible and intellectual property only if they are not compliant with the OECD nexus rules ("restricted nexus"), as explained above. The haven score is further reduced to 50 if a jurisdiction applies a deduction limitation or disallows certain intra-group royalty payments irrespective of whether the intellectual property regime complies with the OECD nexus approach ("restricted tight"). A

[84] 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.
[85] Baker Mckenzie, 'Tax News and Developments- North America Tax Practice Group', *Volume XVIII, Issue 1*, 2018, 17–18 <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/02/nl_na_taxnewsdevelopmentv2_feb2018.pdf?la=en> [accessed 25 November 2018].
[86] Morse, 'International Cooperation and the 2017 Tax Act'.
[87] Rebecca M. Kysar, 'Critiquing (and Repairing) the New International Tax Regime', *The Yale Law Jounal Forum*, 2018, 358 <https://www.yalelawjournal.org/pdf/Kysar_su38oca6.pdf> [accessed 13 May 2019].

zero haven score is granted if a jurisdiction does not permit any deductions of intra-group royalty payments whatsoever.

The majority of African countries do not limit the deduction of intra-group royalty payments. South Africa's rules were discussed above. Nevertheless, the average haven score in African countries is again lower than the average among OECD and European Union countries and their dependencies.

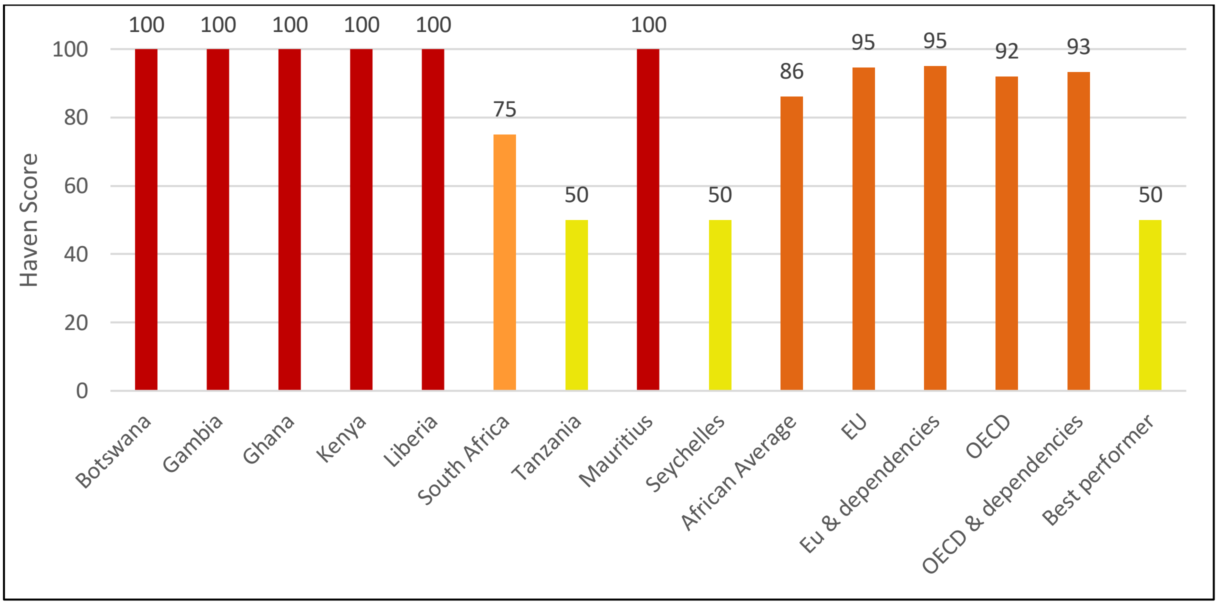


Figure 14. Haven Indicator 16: Deduction limitation for royalties

5. Conclusion

The Corporate Tax Haven Index reveals that African nations are on average more exposed to tax avoidance risks than responsible for creating these risks, compared to higher income regions (see Figure 3 above). This implies that African nations along with other developing regions need to remain alert and resolute in current negotiations at the OECD in determining the best approach to taxing the digital economy.[88]

When concentrating on the details of the tax avoidance risk categories and policies, substantial heterogeneity in the relative performance becomes apparent. Figure 15 shows how African nations have less aggressive treaty networks, have protected higher corporate income tax rates and have fewer loopholes and gaps in their taxation systems that encourage profit-shifting activity and the race to the bottom in corporate taxation. Yet in the categories of anti-avoidance and

[88] Mark Bou Mansour, 'IMF Support for Radical Overhaul of International Tax Rules Welcomed by Tax Justice Network', *Tax Justice Network*, 2019 <https://www.taxjustice.net/2019/03/10/imf-support-for-radical-overhaul-of-international-tax-rules-welcomed-by-tax-justice-network/> [accessed 7 June 2019].

transparency, African countries are performing below the average of the OECD and the EU.

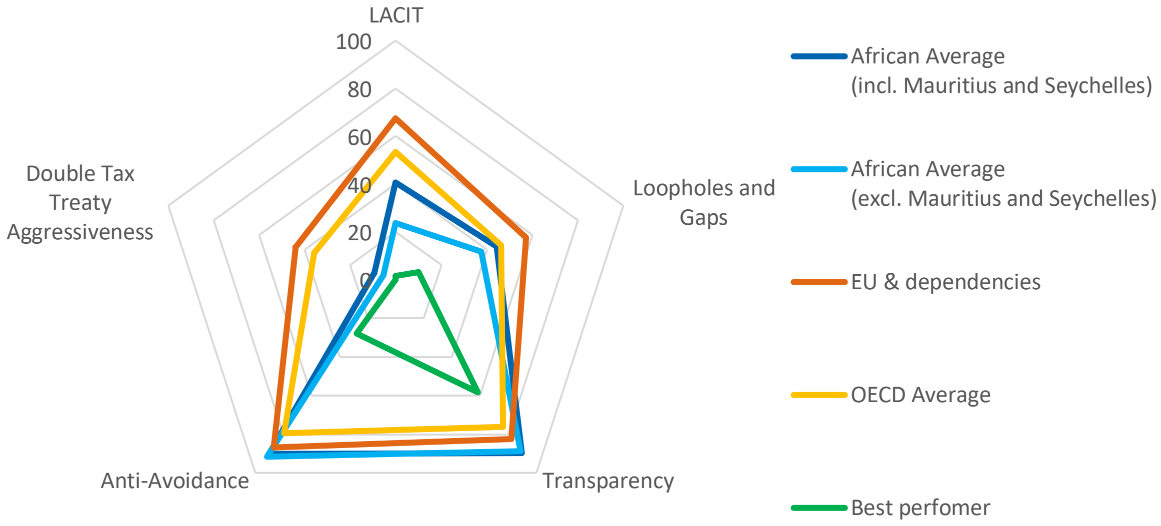


Figure 15. Comparison of five corporate tax haven categories for Africa, the EU and OECD

The individual policy categories and indicators in the Corporate Tax Haven Index indicate concrete policies and steps African nations can take unilaterally in order to address tax avoidance across all sectors and to improve taxation of the digital economy. For example, improvements in transparency will assist African tax administrations in prioritising and conducting audits of multinational companies with local subsidiaries and indeed build trust with citizens. This includes requiring all companies to submit accounts and for these to be freely available online, to file country by country reports locally, and to report tax avoidance schemes or uncertain tax positions. Public access is vital; tax courts and decisions, any unilateral tax rulings issued and contracts for mining and petroleum projects should all be freely accessible to the public.

Anti-avoidance measures can be improved to reduce the risk of base erosion and profit shifting. Robust controlled foreign company rules and withholding taxes on outbound dividends can act as a backstop for shifting untaxed profits to secrecy jurisdictions and zero tax havens. Deduction limitation rules could be introduced or strengthened to prevent multinationals from deducting interest, royalties and certain service payments from their tax base if paid to other members of the same multinational. Any upcoming trade agreement on the African continent should ensure that such defensive measures remain compatible with the trade regime and regulations. The Rwandan example of limiting the deduction of outbound royalties is a case that warrants close examination by African peers. At the same time, African nations should withstand the false lure of introducing patent box regimes themselves, and consider appropriate reactions to countries that do, including Botswana, Mauritius and the Seychelles.

Beyond the domestic reform efforts, the Corporate Tax Haven Index underlines the important differences between members of the OECD and the European Union, and the African countries included in the sample. These differences suggest that Africa so far is less engaged in a ruinous race to the bottom in corporate taxation than the OECD and the European Union. Therefore, the ongoing negotiations under the inclusive framework of the OECD on the reform of international tax rules requires a vigilant approach as it is uncertain if this preference for lenient corporate income tax rules will determine the negotiation mandate of many member states.

In these negotiations under the Inclusive Framework, unitary taxation with formulary apportionment has become the leading alternative to the arm's length approach to taxing the digital, if not the entire economy. Indeed, the unitary approach is arguably the most promising alternative to replace the current global tax rules which have not kept up with the globalised or digital economy and have resulted in vast profit shifting and base erosion. Due to the arm's length approach, there is massive misalignment between the location of multinational companies' genuine economic activity and where their profits are declared for tax purposes.[89] The unitary approach has the potential to vastly improve the taxing rights of African nations if the factors for apportioning profits of a multinational corporation take into account not only sales and consumption, but also production and employment.

Earlier attempts to introduce unitary taxation, first at the League of Nations almost 100 years ago were thwarted. At the OECD Base Erosion and Profit Shifting project that commenced in 2013, this alternative was kept off the table by major actors insisting on applying and retaining the arm's length principle.[90] There is a risk that the interests of developing nations and the African continent could be undermined once again, especially since there are no African nation members in the OECD. If conflicts over the distribution of taxing rights should arise between OECD members and non-members, more inclusive fora, such as the Inclusive Framework on Base Erosion and Profit Shifting that involves 80 developing countries, may be relegated to footnotes or ignored. Therefore, African countries may consider if a convention at the globally representative

[89] Alex Cobham, *Tax Avoidance and Evasion - The Scale of the Problem* (November 2017) <https://taxjustice.wpengine.com/wp-content/uploads/2017/11/Tax-dodging-the-scale-of-the-problem-TJN-Briefing.pdf> [accessed 7 June 2019].

[90] Mark Bou Mansour, 'Submission to OECD Consultation on "Addressing the Tax Challenges of the Digitalisation of the Economy"', *Tax Justice Network*, 2019 <https://www.taxjustice.net/2019/03/15/submission-to-oecd-consultation-on-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy%e2%80%8b/, https://www.taxjustice.net/2019/03/15/submission-to-oecd-consultation-on-addressing-the-tax-challenges-of-the-digitalisation-of-the-economy%e2%80%8b/> [accessed 7 June 2019].

United Nations to counter illicit financial flows, including from multinational companies, could better serve their interests.[91]

[91] Markus Meinzer, 'Adapt or Step aside: Pressure on OECD to Reform Pre-World War II Tax Rules as UN Convenes Historic Tax Meeting', 2019 <https://www.taxjustice.net/2019/04/24/adapt-or-step-aside-pressure-on-oecd-to-reform-pre-world-war-ii-tax-rules-as-united-nations-convenes-historic-tax-meeting/> [accessed 26 April 2019].

Bibliography

Abbas, S. M. Ali, and Alexander Klemm, 'A Partial Race to the Bottom: Corporate Tax Developments in Emerging and Developing Economies', *International Tax and Public Finance*, 20/4 (2013), 596–617 <https://doi.org/10.1007/s10797-013-9286-8> [accessed 5 June 2019]

African Union Commission, and United Nations Economic Commission for Africa, *Illicit Financial Flow: Report of the High Level Panel on Illicit Financial Flows from Africa* (2015) <https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf> [accessed 8 November 2017]

Alstads\a eter, Annette, Salvador Barrios, Gaëtan Nicodème, Agnieszka Maria Skonieczna, and Antonio Vezzani, 'Patent Boxes Design, Patents Location, and Local R&D', *Economic Policy*, 33/93 (2018), 131–177

Ault, Hugh J, and Brian J Arnold, 'Protecting the Tax Base of Developing Countries: An Overview', *United Nations Handbook on Selected Issues in Protecting the Tax Base of Developing Countries, New York*, 2015

Baker Mckenzie, 'Tax News and Developments- North America Tax Practice Group', *Volume XVIII, Issue 1*, 2018 <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/02/nl_na_taxnewsdevelopmentv2_feb2018.pdf?la=en> [accessed 25 November 2018]

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

Cobham, Alex, 'Will the Patent Box Break BEPS?', *Tax Justice Network*, 2015 <https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/, https://www.taxjustice.net/2015/07/20/will-the-patent-box-break-beps/> [accessed 6 June 2019]

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

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

Ditz, Xaver, 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), 822–27

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

European Commission, 'State Aid - Tax Rulings', 2018 <http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html> [accessed 8 August 2018]

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

Guenther, Gary, *Patent Boxes: A Primer* (May 2017), 28 <https://fas.org/sgp/crs/misc/R44829.pdf>

Guvenen, Fatih, Raymond J Mataloni Jr, Dylan G Rassier, and Kim J Ruhl, *Offshore Profit Shifting and Domestic Productivity Measurement* (2017) <https://www.nber.org/papers/w23324.pdf>

Heinemann, Friedrich, O. Pfeiffer, T. Schwab, C. Spengel, M. Olbert, and K. Stutzenberger, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017)

———, *Analysis of US Corporate Tax Reform Proposals and Their Effects for Europe and Germany* (2017)

HM Revenue & Customs, 'Deduction of Income Tax at Source: Royalties', 2016 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/532314/M1070_revised_TN_final.pdf> [accessed 14 May 2019]

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

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

Kysar, Rebecca M., 'Critiquing (and Repairing) the New International Tax Regime', *The Yale Law Journal Forum*, 2018 <https://www.yalelawjournal.org/pdf/Kysar_su38oca6.pdf> [accessed 13 May 2019]

Morse, Susan C., 'International Cooperation and the 2017 Tax Act', *The Yale Law Journal Forum*, 2018

<https://www.yalelawjournal.org/pdf/Morse_ac1hex9k.pdf> [accessed 13 May 2019]

OECD, *BEPS Action 5 on Harmful Tax Practices – Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD/G20 Base Erosion and Profit Shifting Project (Paris, 2017), 24 <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf> [accessed 26 March 2019]

———, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, OECD/G20 Base Erosion and Profit Shifting Project (2014) <http://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance_9789264218970-en> [accessed 16 August 2018]

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

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

———, *Tax and Digitalisation*, OECD Going Digital Policy Note (Paris, 2019) <https://www.oecd.org/going-digital/tax-and-digitalisation.pdf> [accessed 6 June 2019]

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

Tax Justice Network, 'Corporate Tax Haven Index', 2019 <https://www.corporatetaxhavenindex.org/> [accessed 4 June 2019]

———, *Corporate Tax Haven Index (CTHI) 2019 Methodology*, 2019 <https://www.corporatetaxhavenindex.org/PDF/CTHI-Methodology.pdf> [accessed 4 June 2019]

———, *Financial Secrecy Index 2018 - Methodology* (London, 2018) <https://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> [accessed 14 February 2018]

———, *Haven Indicator 1: Lowest Available Corporate Income Tax Rate (LACIT)*, Corporate Tax Haven Index 2019 (2019)

<https://www.corporatetaxhavenindex.org/PDF/1-Corporate-Income-Tax-LACIT.pdf> [accessed 5 June 2019]

———, *Haven Indicator 7: Patent Boxes*, Key Corporate Tax Haven Indicators (2019) <https://www.corporatetaxhavenindex.org/PDF/7-Patent-Boxes.pdf> [accessed 6 June 2019]

———, *Haven Indicator 16: Deduction Limitation for Royalties*, Key Corporate Tax Haven Indicators (2019) <https://www.corporatetaxhavenindex.org/PDF/16-Deduction-Limitation-Royalties.pdf> [accessed 6 June 2019]

———, *Haven Indicator 20: Double Tax Treaty Aggressiveness* (2019) <https://www.corporatetaxhavenindex.org/PDF/20-Double-Tax-Treaties.pdf> [accessed 6 June 2019]

———, *New Ranking Reveals Corporate Tax Havens behind Breakdown of Global Corporate Tax System; Toll of UK's Tax War Exposed* (28 May 2019) <https://www.taxjustice.net/2019/05/28/new-ranking-reveals-corporate-tax-havens-behind-breakdown-of-global-corporate-tax-system-toll-of-uks-tax-war-exposed/, https://www.taxjustice.net/2019/05/28/new-ranking-reveals-corporate-tax-havens-behind-breakdown-of-global-corporate-tax-system-toll-of-uks-tax-war-exposed/> [accessed 5 June 2019]

———, *Ten Reasons to Defend the Corporation Tax*, 2015 <https://www.taxjustice.net/wp-content/uploads/2013/04/Ten_Reasons_Full_Report.pdf> [accessed 17 July 2018]

Annexes

In the following Annex, the colour coding key below applies:

Maximum Risk Haven Score 100 (CIT Rate = 0)	Haven Score 76 - 99 (0 < Rate < 8.8)	Haven Score 51 - 75 (8.8 ≤ Rate < 17.5)	Haven Score 26 - 50 (17.5≤ Rate < 26.3)	Haven Score 1 - 25 (26.3 ≤ Rate < 35)	Minimum Risk Haven Score 0 (CIT Rate = 35)

Annex 1. Overview of scores per category for African countries in the Corporate Tax Haven Index 2019

Africa Rank	CTHI Rank	Jurisdiction	Haven Scores: Cat 1: LACIT	Haven Scores: Cat 2: Loopholes and Gaps	Haven Scores: Cat 3: Trans-parency	Haven Scores: Cat 4: Anti-Avoidance	Haven Scores: Cat 5: Double Tax Treaty Aggressiveness	LACIT rate (%)	Statutory tax rate (%)	CTHI Value	CTHI Share	Haven Score	Global Scale Weight
4	**56**	Botswana	37	47	92	98	2	22	22	74	0.20%	55	0.01%
9	**63**	Gambia	23	17	100	100	1	27	27	9	0.02%	48	0.00%
7	**60**	Ghana	29	39	83	96	1	25	25	56	0.15%	49	0.01%
6	**58**	Kenya	14	61	83	95	1	30	30	60	0.16%	51	0.01%
5	**57**	Liberia	29	32	87	97	0	25	25	71	0.19%	49	0.02%
2	**42**	South Africa	20	33	77	73	33	28	28	184	0.48%	47	0.54%
8	**62**	Tanzania	14	34	99	82	1	30	30	40	0.11%	46	0.01%
1	**14**	Mauritius	100	75	92	100	33	0	15	950	2.50%	80	0.65%
3	**44**	Seychelles	100	63	94	70	14	0	30	163	0.43%	68	0.01%
		African Average	41	44	90	90	9	21	26	179	0.47%	55	0.14%
		EU Average	55	46	76	82	34	16	22	490	1.29%	59	1.77%
		EU & dependencies	67	57	82	87	44	11	17	662	1.74%	68	1.41%
		OECD Average	53	46	76	79	36	16	23	574	1.51%	58	2.58%
		Average OECD &dependencies	68	59	83	85	46	11	18	732	1.93%	68	1.93%
		Best perform-er score	2	10	58	28	0	34	35	7	0.02%	39	0.00%
		Best performer(s)	France	Poland	France & UK	USA	Gibraltar, Liberia & Montserrat	France	Spillover risk reference rate	Montserrat	Gambia	Greece	Gambia
		Best performer Africa	14	17	77	70	0	30	30	9	0.02%	46	0.00%
		Best performer Africa	Kenya & Tanzania	Gambia	South Africa	Seychelles	Liberia	Kenya & Tanzania	Kenya, Seychelles & Tanzania	Gambia	Gambia	Tanzania	Gambia

Annex 2. Overview of scores per indicator for African countries in the Corporate Tax Haven Index 2019

			Category 1	Category 2							Category 3	
			Lowest available CIT	**Foreign Investment Income Treatment**	**Loss utilisation**	**Capital gains tax**	**Sectoral exemptions**	**Tax holidays & Economic zones**	**Patent boxes**	**Fictional interest deduction**	**Public company accounts**	**Country-by-country reporting**
Africa Rank	**CTHI Rank**	**Jurisdiction**	**HI 1**	**HI 2**	**HI 3**	**HI 4**	**HI 5**	**HI 6**	**HI 7**	**HI 8**	**HI 9**	**HI 10**
4	**56**	Botswana	37	0	50	100	69	13	100	0	100	100
9	**63**	Gambia	23	0	38	29	13	38	0	0	100	100
7	**60**	Ghana	29	0	63	64	56	88	0	0	100	100
6	**58**	Kenya	14	100	100	100	50	75	0	0	100	100
5	**57**	Liberia	29	100	38	64	0	25	0	0	100	100
2	**42**	South Africa	20	50	50	68	50	13	0	0	100	100
8	**62**	Tanzania	14	0	100	57	6	75	0	0	100	100
1	**14**	Mauritius	100	100	50	100	100	75	100	0	100	100
3	**44**	Seychelles	100	100	13	100	88	38	100	0	100	100
		African Average	41	50	56	76	48	49	33	0	100	100
		EU Average	55	65	38	92	46	11	53	14	60	51
		EU & dependencies	67	75	51	94	60	30	62	30	72	66
		OECD Average	53	64	43	90	49	11	59	8	60	55
		Average OECD & dependencies	68	75	55	93	63	31	67	27	73	70
		Best performer score	2	0	0	29	0	0	0	0	0	50
		Best performers	France	China, Taiwan, Botswana, Gambia, Ghana & Tanzania	Estonia, Latvia, Portugal, Poland, Panama & San Marino	China	Liberia & Poland	22 of 64 CTHI countries received minimum score	25 of 64 CTHI countries received minimum score	49 of 64 CTHI countries received minimum score	Belgium, Slovakia & UK	50 of 64 CTHI countries received score of 50 (lowest among CTHI countries)
		Best performer Africa	14	0	13	29	0	13	0	0	100	100
		Best performers Africa	Kenya and Tanzania	Botswana, Gambia, Ghana and Tanzania	Seychelles	Gambia	Liberia	Botswana & South Africa	Gambia, Ghana, Kenya, Liberia, South Africa & Tanzania	All African countries received minimum score	All African countries received maximum score	All African countries received maximum score

			Category 3				Category 4					Category 5
			Local filing of country by country reporting	Tax rulings & Extractive contracts	Reporting of tax avoidance schemes	Tax court secrecy	Deduction limitation for interest	Deduction limitation for royalties	Deduction limitation for service payments	Dividend Withholding taxes	Controlled Foreign Company Rules	Double Tax Treaty Aggressiveness
Africa Rank	**CTHI Rank**	**Jurisdiction**	**HI 11**	**HI 12**	**HI 13**	**HI 14**	**HI 15**	**HI 16**	**HI 17**	**HI 18**	**HI 19**	**HI 20**
4	**56**	Botswana	100	50	100	100	90	100	100	100	100	2
9	**63**	Gambia	100	100	100	100	100	100	100	100	100	1
7	**60**	Ghana	100	50	100	50	80	100	100	100	100	1
6	**58**	Kenya	100	50	100	50	75	100	100	100	100	1
5	**57**	Liberia	100	20	100	100	100	100	100	86	100	0
2	**42**	South Africa	100	88	50	25	90	75	100	100	0	33
8	**62**	Tanzania	100	95	100	100	100	50	100	86	75	1
1	**14**	Mauritius	100	50	100	100	100	100	100	100	100	33
3	**44**	Seychelles	100	88	100	75	100	50	0	100	100	14
		African Average	100	66	94	78	93	86	89	97	86	9
		EU Average	89	85	95	79	86	95	93	100	38	34
		EU & dependencies	93	87	96	81	89	95	95	99	56	44
		OECD Average	88	86	92	77	86	92	88	97	35	36
		Average OECD & dependencies	92	88	94	80	90	93	92	96	56	46
		Best performer score	0	0	30	25	55	50	0	14	0	0
		Best performers	France, Germany, Spain & Taiwan	Bulgaria, Lebanon, Macao, Monaco & Montserrat	USA	Guernsey, South Africa & Spain	Slovakia	Aruba, Austria, Greece, Seychelles, Tanzania & USA	Greece, Poland, Seychelles & USA	USA	17 of 64 CTHI countries received minimum score	Gibraltar and Liberia
		Best performer Africa	100	20	50	25	75	50	0	86	0	0
		Best performers Africa	All African countries received maximum score	Liberia	South Africa	South Africa	Kenya	Seychelles & Tanzania	Seychelles	Liberia & Tanzania	South Africa	Liberia