

Key Corporate Tax Haven Indicators

Haven Indicator 12:

Tax Rulings and Extractive Industries Contracts

What is measured?

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

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

Depending if the jurisdiction has a substantial extractive industry (as defined by the Natural Resource Governance Institute¹), we either evaluate only component 1 or jointly assess components 1 and 2 above on an equal basis. Table 12.1 below summarises the applicable assessment components.

Table 12.1. Applicable Scoring Logic

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

The scoring matrix is shown in Table 12.2, with full details of the assessment logic presented in Table 12.4 below.

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Table 12.2. Scoring Matrix Haven Indicator 12

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

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Component 2: Extractive industries contract disclosure		
	<u>Contract disclosure not required by law</u>	<u>Contract disclosure required by law</u>
	No legal requirement exists that requires contract disclosure	A legal requirement exists that requires contract disclosure
<u>No extractive industries contracts published</u> Extractive industries contracts cannot be accessed online, or unknown	50	45
<u>Only some³ extractive industries contracts published</u> While some extractive industries contracts are available online, not all or nearly all are available online	30	20
<u>All or nearly all⁴ extractive industries contracts published</u> All or nearly all extractive industries contracts as available publicly online	10	0

All underlying data can be accessed freely in the CTHI [database](#).⁵ To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 12.4 and search for the corresponding info IDs (IDs 363, 421, 561-564) in the database report of the respective jurisdiction.

Component 1: Unilateral Cross Border Tax Rulings

A tax ruling is understood broadly in line with the OECD's definition, which includes "any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely".⁶ The tax rulings covered by the scope of this indicator are a subset of these rulings, as they only comprise those with a cross-border element and those issued to specific taxpayers (rather than to the public at large). The scope of our indicator covers the six categories of rulings included under the spontaneous information exchange framework of the OECD's Base Erosion and Profit Shifting Project Action 5.⁷

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

It is important to differentiate unilateral cross-border tax rulings from bi- or multi-lateral advance pricing arrangements. Bi- or multi-lateral advance pricing arrangements involve a priori agreement by all tax administrations of all jurisdictions involved in a cross-border transaction for which the agreement is sought.⁸ In contrast, unilateral cross-border tax rulings do not require, per se, prior agreement. Consequently, only unilateral cross-border tax rulings are considered, as these represent the highest risk for abusive tax practices.

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

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

The data for this component was collected from several sources including country analyses and country surveys in the International Bureau of Fiscal Documentation's (IBFD) database,⁹ the OECD's peer review on harmful tax practices¹⁰ and studies commissioned by the European Union.¹¹ In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

Component 2: Extractive Industries Contract Disclosure

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

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combination: concession, licence, production sharing and service agreements, along with shareholders' agreements where government has an equity stake.¹² This indicator is not concerned with the contracts that are signed between private parties, such as between the oil company and a company providing transport services.

Contract disclosure is assessed for either mining or petroleum as per the Natural Resource Governance Institutes' contract disclosure tracker.¹³ This includes 147 entries for 101 jurisdictions. For 23 jurisdictions there are two entries, one for petroleum and one for mining. The tracker has information for a) countries included in the Natural Resource Governance Institute's most recent Resource Governance Index of 2017,¹⁴ b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including those that have withdrawn membership (for example, Azerbaijan, Niger and the United States of America) and those that have since joined (for example, Armenia, Guyana, Suriname), and c) several other countries that were added on an ad hoc basis, including new and upcoming producers or countries that the Natural Resource Governance Index is working in.¹⁵ The inclusion of information for either petroleum or mining or both for jurisdictions is also based on the information included in the Resource Governance Index and reports from the Extractive Industries Transparency Initiative. For further information, see Endnote 1.

Jurisdictions that disclose all or nearly all contracts¹⁶ online and for free with a requirement for disclosure in law are considered to be fully transparent and to pose a minimum tax spillover risk. They receive the lowest haven score of 0. It is important for contract disclosure to be backed up by a legal requirement for disclosure; this can take the form of a clause in legislation or regulations, or a ministerial decree. To reflect this, where all or nearly all contracts are disclosed in practice but there is no requirement in the law to disclose contracts, jurisdiction get a slightly higher haven score of 10.

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

Jurisdictions that disclose only some contracts¹⁷ receive a reduced haven score of 20 if disclosure is required by law and 30 if there is no legal requirement for contract disclosure.

Where the assessment is made for both mining and petroleum, the weakest practice is recorded. For example, if a country discloses all or nearly all petroleum contracts in practice and this is required by law but does not disclose

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mining contracts or require this by law, the country is assessed as having no extractive industries contracts disclosed in practice or policy and therefore would receive a haven score of 50.

Why is this important?

Component 1: Unilateral Cross Border Tax Rulings

The inherently problematic nature of unilateral cross-border tax rulings was exposed widely during the Lux Leaks scandal in 2014. During the subsequent investigations by the European Commissioner for Competition, it was determined that some of these rulings conflicted with the European Union's state aid rules and therefore were illegal.¹⁸ These decisions are currently being appealed by European Union member states, such as Ireland which was ordered by the European Commission to collect additional taxes.¹⁹

This episode has revealed that tax authorities, which are often sanctioned if not mandated by their respective finance ministers, help companies to avoid tax if not illegally, then at least questionably. This is on top of the profit-shifting tricks used by multinational corporations such as Google, FIAT, Starbucks, BASF, SAP or Amazon to reduce their tax bill. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13bn in taxes due through a complex tax manoeuvre agreed with the Irish tax agency.²⁰ Estimates put global tax avoidance by multinationals at around US\$500bn per year.²¹

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

The discussion around the publicity of tax rulings has a historical precedent. Similar to tax rulings, so-called private letter rulings issued by the US tax administration were (and continues to be) made public in 1977 after the non-government organisation Tax Analysts took the Internal Revenue Service to court over this practice in 1972. Private letter rulings gained traction in the 1940s and were criticised for facilitating favouritism. A few privileged law firms were effectively guardians of this kind of privatised law, which allowed them to build libraries of privatised tax law and interpretation, giving them an edge over smaller firms.²² However, since 1991, the US has provided the option of so-called "unilateral advance pricing arrangements" which may include cross-border

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transfer pricing issues and are not public.²³ In contrast, in Belgium, all unilateral cross-border tax rulings are published in anonymised form.²⁴

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

While the European Union has subsequently introduced automatic information exchange on these rulings,²⁵ this does not necessarily guarantee access to rulings by affected third party countries. The OECD has introduced a broader framework for mandatory spontaneous information exchange of tax rulings.²⁶ Yet, even if all countries participated, exchange mechanisms can only capture the tip of the iceberg. This is because it is difficult to define a unilateral cross-border tax ruling, and it is even more difficult, if not outright impossible, to monitor compliance with any obligation to report and exchange those rulings without making them public.

Various examples document the failure of reporting and exchange mechanisms around tax rulings. First, the inconsistent and misleading reporting practice of unilateral rulings by Luxembourg within the European Commission's Joint Transfer Pricing Forum prior to the Lux Leaks scandal²⁷ bears witness to the unreliability of confidential data. This data is only reported by the tax administration without any way to verify the content of the data more publicly. Second, the TAXE Committee, the European Parliament's Special Committee on Tax Rulings, explains decades of non-compliance with requirements under the EU directives on reporting of tax rulings:

The European Parliament [...] Concludes [...] Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not and continue not to spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups,[...]. ([Para. 86](#))²⁸

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

Component 2: Extractive Industries Contract Disclosure

Nigeria gave away nearly \$6 billion in future oil revenues to Shell and Eni in a very generous, veiled deal that Global Witness analysed in 2018.²⁹ Corporate executives are currently on trial in Milan accused of bribery in relation to this deal:

The case brought by the Milan Public Prosecutor alleges that \$520 million from the deal was converted into cash and intended to be paid to then Nigerian President Goodluck Jonathan and other Nigerian government officials. The prosecutors further allege that money was also channelled to Eni and Shell executives as kickbacks.³⁰

The citizens of many other countries with some of the largest deposits of precious minerals worldwide are ripped off in a similar way. Government coffers and citizens often lose out because of hidden agreements, weak laws and aggressive corporate tax practices. In most jurisdictions, non-renewable mineral resources are managed by the state on behalf of the public. States typically extend the right to corporate entities to explore, extract and often sell mineral resources in exchange for revenue or a share of the mineral. The contract outlines the rights, duties and obligations of the parties, including fiscal terms and provisions. These contracts can span decades and have far-reaching and long-lasting impacts. Everything from taxes and infrastructure arrangements to environmental performance, social obligations and employment rules may be set out in contracts. Where contracts are used by jurisdictions, they form part of the legal framework; they are “essentially the law of a public resource project, and a basic tenet of the rule of law is that laws shall be publicly available”.³¹

Contracts vary greatly between and within jurisdictions in terms of complexity, length and the degree of deviation from general legislation or a model contract. Contracts may be standard for every company with the only difference found in the name of companies involved and the area of land granted by the state through a formal legal title. Some contracts may just make one or few changes to general legislation or a model contract while in other contracts everything may be up for negotiation. In cases where many terms can be negotiated, contracts can establish new provisions on tax, environmental, social and other investment obligations, such as local procurement and employment, and so-called “stabilisation periods”. None, any or all of these provisions in a contract may be confidential as well as the information that flows from them (such as revenue payments made by a company to government).³²

Governments stand to gain from ensuring all contracts are public. Contract disclosure helps governments compare their own contracts with contracts in other jurisdictions, enables improved intra-governmental coordination in the enforcement of contracts, and can positively influence the trust of citizen’s in the state.³³ There are already great asymmetries in information that put

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governments at a disadvantage in negotiations with companies. In turn, citizens can use the contracts to hold government and companies accountable on their obligations. Disclosure may be an additional incentive for governments to ensure as many constituents as possible are satisfied, contributing to more durable contracts that are less likely to be renegotiated or subject to corrupt influence for special deviations that ultimately undervalue the resource.³⁴ In Oxfam's 2018 Contract Disclosure Survey, secrecy is described as being short-lived because where companies have negotiated windfall deals by exploiting secrecy or through bribery, subsequent government administrations have grounds and choose to renegotiate contracts.³⁵

Those who defend contract secrecy often claim it protects so-called commercially sensitive information. There is no consensus technical definition of this type of information, but being generous with the term, even if information is deemed to be commercially sensitive, this "is only one consideration among many when determining whether information should be made publicly available".³⁶ Under freedom of information principles, information that is likely to cause harm to a company's competitive position, such as trade secrets or information about future transactions, would be redacted. However, this information is unlikely to be found in contracts. As a study of publicly available contracts in Mongolia shows, trade secrets are not included, often because they are signed by a consortium of companies that may change over time: "it is highly unlikely that any company would risk writing trade secrets into any contract".³⁷ Financial terms that are always found in deals are often already known within the industry or released on stock exchanges for the shareholders of listed companies. Most countries disclose contracts without redaction.³⁸

To date, there is no evidence to suggest public disclosure of contracts has harmed companies. For companies, disclosure can help dispel suspicion, build trust and "temper unrealistic expectations and correct misconceptions that may skew communities' perceptions" especially when the signing of contracts is often associated with great celebration by governments and companies.³⁹ In fact, some companies have taken a lead in disclosing contracts signed with governments in countries where contracts are not typically disclosed. In Oxfam's survey, 18 of the 40 assessed companies had made statements supporting contract disclosure. Kosmos Energy⁴⁰ and Tullow Oil⁴¹ go further. They have public contract disclosure policies and disclose contracts on their websites or stock exchanges.

Publication of contracts along with the project-level disclosure of revenues "are now established as international norms", according to an International Monetary Fund briefing at the end of 2018.⁴² Indeed, significant progress has been made in recent years.⁴³

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Civil society movements, especially through the convening network Publish What You Pay, have demanded that governments and companies commit to contract disclosure. From 2013, the Extractive Industries Transparency Initiative (EITI) has “encouraged” implementing countries to publish contracts and has required countries to publish their government’s position and practice on contract transparency.⁴⁴ In February 2019, the EITI Board agreed on changes to the EITI Standard. From 1 January 2021, all implementing countries will be required to make public contracts signed going forward. In the meantime, they must develop a plan to ensure compliance with the new contract disclosure requirement.⁴⁵

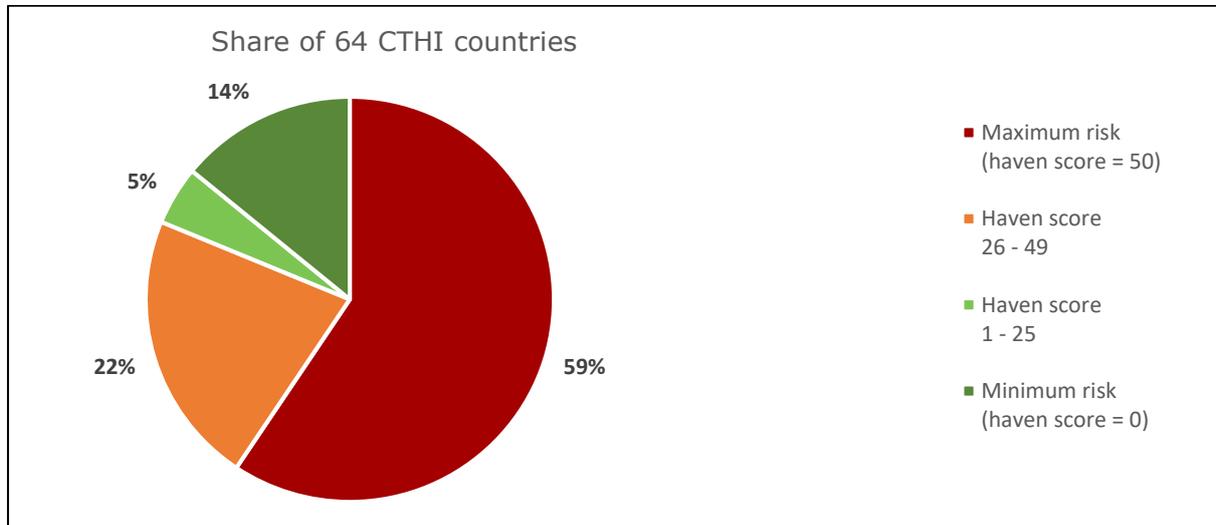
In practice, 29 EITI implementing countries, just over half of EITI countries (including one subnational region), already have disclosed some agreements and three-quarters of countries globally that have disclosed contracts are part of the EITI.⁴⁶ According to this 2017 study published by the Natural Resource Governance Institute, there is, however, discrepancy between policy and practice in some jurisdictions. For example, the Central African Republic, Ivory Coast and Tanzania require disclosure by law but have not followed through in practice.⁴⁷ Further, in only 16 EITI countries, all or nearly all contracts have been disclosed in at least one sector (mining or petroleum). Without a comprehensive list of what contracts actually exist in a jurisdiction it is often difficult to assess the extent of disclosure.

Yet disclosing contracts is just part of necessary transparency throughout the contracting process, from planning and assessment of applications to the award, negotiation, implementation and monitoring of contracts.⁴⁸ Lessons from transparency in public procurement illustrate the potential of open contracting. A 2017 World Bank study using data from 88 countries on almost 34,000 firms shows that countries with more transparent public procurement systems have fewer and smaller kickbacks and creates a more level playing field for smaller companies.⁴⁹

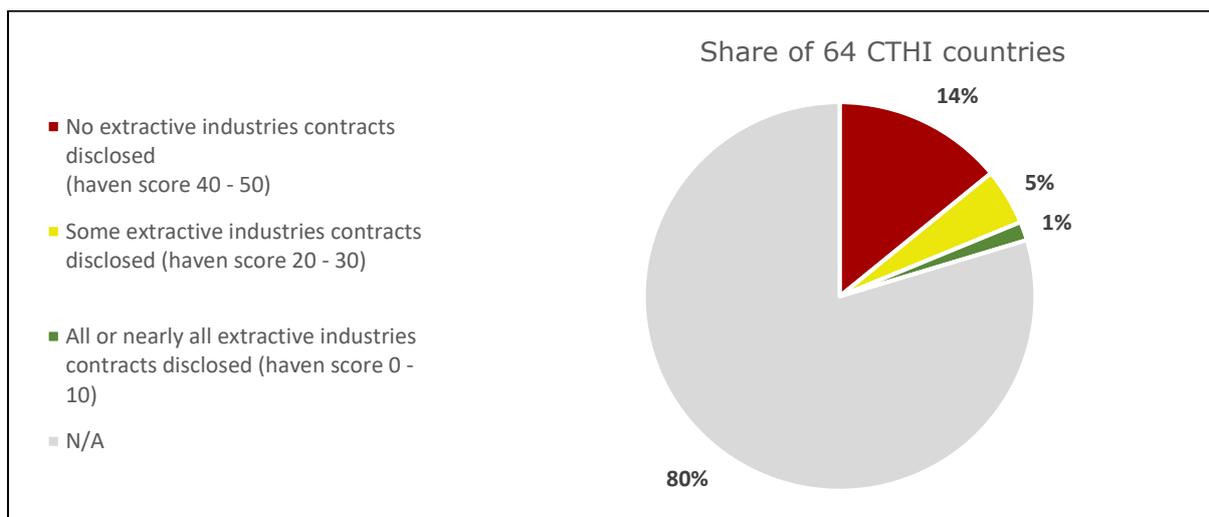
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Results Overview

Graph 12.1. Disclosure of Tax Rulings Overview

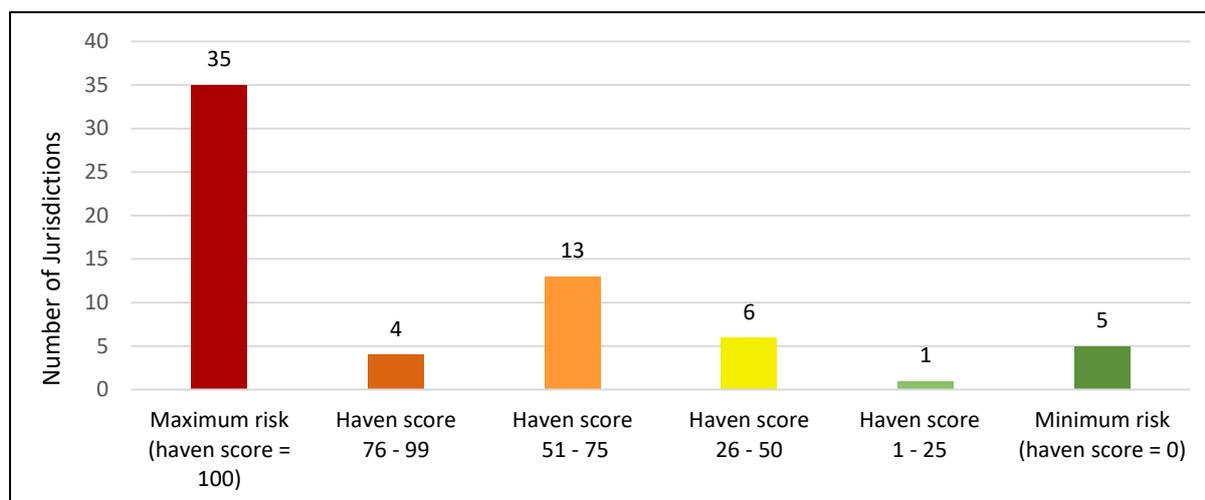


Graph 12.2. Disclosure of Extractive Industries Contracts Overview⁵⁰



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Graph 12.3. Tax Rulings and Extractive Industries Contracts Overview



Results Detail

Table 12.3. Tax Rulings and Extractive Industries Contracts – Haven Scores

ISO	Country Name	Final Score	Unilateral Tax Rulings	Extractive Industries Contract Disclosure
AD	Andorra	75.0	37.5	N/A
AI	Anguilla	100.0	50.0	N/A
AW	Aruba	100.0	50.0	N/A
AT	Austria	100.0	50.0	N/A
BS	Bahamas	100.0	50.0	N/A
BE	Belgium	50.0	25.0	N/A
BM	Bermuda	100.0	50.0	N/A
BW	Botswana	50.0	0.0	50.0
VG	British Virgin Islands	100.0	50.0	N/A
BG	Bulgaria	0.0	0.0	N/A
KY	Cayman Islands	100.0	50.0	N/A
CN	China	100.0	50.0	50.0
HR	Croatia	100.0	50.0	N/A
CW	Curacao	100.0	50.0	N/A
CY	Cyprus	100.0	50.0	N/A
CZ	Czech Republic	100.0	50.0	N/A
DK	Denmark	75.0	37.5	N/A
EE	Estonia	75.0	37.5	N/A
FI	Finland	75.0	37.5	N/A
FR	France	75.0	37.5	N/A
GM	Gambia	100.0	50.0	N/A
DE	Germany	70.0	50.0	20.0

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ISO	Country Name	Final Score	Unilateral Tax Rulings	Extractive Industries Contract Disclosure
GH	Ghana	50.0	0.0	50.0
GI	Gibraltar	100.0	50.0	N/A
GR	Greece	100.0	50.0	50.0
GG	Guernsey	100.0	50.0	N/A
HK	Hong Kong	75.0	37.5	N/A
HU	Hungary	100.0	50.0	N/A
IE	Ireland	100.0	50.0	N/A
IM	Isle of Man	100.0	50.0	N/A
IT	Italy	75.0	37.5	N/A
JE	Jersey	100.0	50.0	N/A
KE	Kenya	50.0	25.0	N/A
LV	Latvia	75.0	37.5	N/A
LB	Lebanon	0.0	0.0	0.0
LR	Liberia	20.0	0.0	20.0
LI	Liechtenstein	100.0	50.0	N/A
LT	Lithuania	100.0	50.0	N/A
LU	Luxembourg	75.0	37.5	N/A
MO	Macao	0.0	0.0	N/A
MT	Malta	100.0	50.0	N/A
MU	Mauritius	50.0	25.0	N/A
MC	Monaco	0.0	0.0	N/A
MS	Montserrat	0.0	0.0	N/A
NL	Netherlands	75.0	37.5	N/A
PA	Panama	100.0	50.0	N/A
PL	Poland	100.0	50.0	N/A
PT	Portugal (Madeira)	100.0	50.0	N/A
RO	Romania	100.0	50.0	N/A
SM	San Marino	100.0	50.0	N/A
SC	Seychelles	87.5	37.5	50.0
SG	Singapore	100.0	50.0	N/A
SK	Slovakia	100.0	50.0	N/A
SI	Slovenia	100.0	50.0	N/A
ZA	South Africa	87.5	37.5	50.0
ES	Spain	75.0	37.5	N/A
SE	Sweden	75.0	37.5	N/A
CH	Switzerland	100.0	50.0	N/A
TW	Taiwan	100.0	50.0	N/A
TZ	Tanzania	95.0	50.0	45.0
TC	Turks and Caicos Islands	100.0	50.0	N/A
AE	United Arab Emirates (Dubai)	50.0	0.0	50.0

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ISO	Country Name	Final Score	Unilateral Tax Rulings	Extractive Industries Contract Disclosure
GB	United Kingdom	100.0	50.0	50.0
US	USA	80.0	50.0	30.0

Final Score					
Maximum Risk (Haven Score 100)	Haven Score 76 - 99	Haven Score 51 - 75	Haven Score 26 - 50	Haven Score 1 - 25	Minimum Risk (Haven Score 0)
Component score					
Maximum Risk (Haven Score 50)	Haven score 26-49		Haven Score 1-25		Minimum Risk (Haven Score 0)

Table 12.4. Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
Component 1: Unilateral Tax Rulings			
363	Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) available in laws or regulation, or in administrative practice?	0: No; 1: Yes	ID363=1 & ID421=0: 50 ID363=1 & ID421=2 Or ID363=1 & ID421=1: 37.5 ID363=1 & ID421=3: 25
421	Tax Rulings: Are all unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions)	0: No; 1: SOME FOR FREE: Some unilateral cross-border tax rulings are published online for free; 2: COST: Unilateral cross-border tax rulings are published online only against a cost (irrespective of if all or only some are available online); 3: ALL FOR FREE BUT	ID363=1 & ID421=4: 12.5 ID363=0: 0

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Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
	published online for free, either anonymised or not?	ANONYMISED: All unilateral cross-border tax rulings are published online for free but without the name of the taxpayer concerned; 4: ALL FOR FREE AND NAMED: All unilateral cross border tax rulings are published online for free, including the name of the taxpayer concerned.	
Component 2: Extractive Industries Contract Disclosure			
561	Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?	0: No; 1: Yes	MN: ID561=-3 ⁵¹ & ID562=-3: 50 ID561=0 & ID562=0: 50 ID561=1 & ID562=0: 45
562	Mining contracts in practice: Are all extractive industries mining contracts published online in practice?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	ID561=0 & ID562=1: 30 ID561=1 & ID562=1: 20 ID561=0 & ID562=2: 10 ID561=1 & ID562=2: 0
563	Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?	0: No; 1: Yes	PT: ID563=-3 & ID564=-3: 50 ID563=0 & ID564=0: 50

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Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
564	Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	ID563=1 & ID564=0: 45 ID563=0 & ID564=1: 30 ID563=1 & ID564=1: 20 ID563=0 & ID564=2: 10 ID563=1 & ID564=2: 0

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

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

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

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

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

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

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

² See Note 1.

³ "Some" is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019).

⁴ "All or nearly all" is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019) as not every contract online has been checked (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019). This would also require countries to publish a comprehensive list of all contracts and licences issued.

⁵ <http://www.corporatetaxhavenindex.org/database/menu.xml>

⁶ OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 47 <https://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en> [accessed 26 March 2019].

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

(b) The following points are added:

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

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative

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subdivisions, including local authorities, irrespective of whether it is effectively used;

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

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

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

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place. The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling; [...]

16. For the purpose of point 14 "cross-border transaction" means a transaction or series of transactions where:

(a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;

(b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or

(d) such transactions or series of transactions have a cross border impact.

⁷ "These six categories are (i) rulings relating to preferential regimes; (ii) unilateral advance pricing agreements (APAs) or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; (v) related party conduit rulings; and (vi) any other type of ruling agreed by the FHTP [Forum on Harmful Tax Practices] that in the absence of spontaneous information exchange gives rise to BEPS concerns." OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*, OECD/G20 Base Erosion and Profit Shifting Project (2017), 9 <http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-peer-review-reports-on-the-exchange-of-information-on-tax-rulings_9789264285675-en> [accessed 12 April 2018].

⁸ Advance pricing arrangements have their roots in international tax norms for the avoidance of double taxation. Here, we define an advance pricing arrangement as always involving all affected jurisdictions. That is, advance pricing arrangements always involve bi- or multi-lateral negotiation. This definition is similar, but not identical to the definition used by the OECD in its Transfer Pricing Guidelines as updated in 2010 OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (Paris, 2010), 169–72

<<http://www.oecd.org/ctp/transferpricing/transferpricingguidelinesformultinationallenterprisesandtaxadministrations.htm>> [accessed 27 February 2013].

While no explicit reference to advance pricing arrangements is made in the OECD Model Convention of 2008 (including the commentary), the Commentary to the UN Model Convention of 2011 refers to advance pricing arrangements with respect to information exchange United Nations Department of Economic & Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)* (New York, 2011), 447

<https://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf> [accessed 17 April 2014]. The relevant article in the UN Model Tax Convention allowing for Advance pricing arrangements is Art. 25.3:

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

Art. 25 (3) of the OECD Model Tax Convention of 2008 contains exactly the same wording OECD, *OECD Model Tax Convention on Income and on Capital - an Overview of Available Products* (Paris, 2008), 37

<<http://www.oecd.org/tax/treaties/oecdmtcavailableproducts.htm>> [accessed 28 July 2013]. This “permits countries to enter into Advance Pricing Agreements (Hereafter APAs)” European Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU*, COM(2007) 71 Final (Brussels, 26 February 2007), 9.

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

An APA is an agreement between tax administrations over the way in which certain transfer pricing transactions between taxpayers will be taxed in the future.” European Commission, *Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU*, 5.

An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the

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determination of the transfer pricing for those transactions over a fixed period of time.” European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 9.

An APA application should typically have four distinct stages: (a) Pre-filing stage/Informal application (b) Formal application (c) Evaluation and negotiation of the APA (d) Formal agreement.” European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 11.

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

¹⁰ OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, January 2019 <<https://www.oecd-ilibrary.org/docserver/9789264311480-en.pdf?expires=1552638135&id=id&accname=guest&checksum=C4EEE3F55F4E6C17D62674F36049D20F>> [accessed 15 March 2019].

¹¹ European Commission, ‘State Aid - Tax Rulings’, 2018 <http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html> [accessed 8 August 2018]; Elly Van de Velde, *Tax Rulings’ in the EU Member States*, ECON Committee EU Parliament (Brussels, 2015) <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA\(2015\)563447_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf)> [accessed 20 October 2017].

¹² Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (New York, NY, 2009), 19.

¹³ The Natural Resource Governance Institute’s Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019)

¹⁴ Resource Governance Index, <https://resourcegovernanceindex.org/>.

¹⁵ Email communication with Rob Pitman, Natural Resource Governance Institute, 28 January 2019.

¹⁶ “All or nearly all” is the categorisation used in the Natural Resource Governance Institute’s Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019) as not every contract online has been checked (email communication with Rob Pitman, Natural Resource Governance Institute, 25.01.2019). This would also require countries to publish a comprehensive list of all contracts and licences issued.

¹⁷ “Some” is the categorisation used in the Natural Resource Governance Institute’s Contract Disclosure Practice and Policy tracker.

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(<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25 January 2019).

¹⁸ http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html; [accessed 15 May 2019].

¹⁹ <https://www.irishtimes.com/business/technology/state-recovers-14-3bn-from-apple-over-alleged-state-aid-1.3633191>; [accessed 15 May 2019].

²⁰ <http://www.zeit.de/wirtschaft/unternehmen/2016-09/apple-steuern-eu-kommission-transparenz>; [accessed 12 October 2016].

²¹ <https://www.wider.unu.edu/publication/global-distribution-revenue-loss-tax-avoidance>; [accessed 4 November 2017].

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

²³ Although the IRS states a "Preference for Bilateral and Multilateral APAs" over unilateral ones (Rev. Proc. 2015-41, Section 2.4.d, <https://www.irs.gov/pub/irs-drop/rp-15-41.pdf>), the latter may nonetheless be available under certain conditions. After a lawsuit brought by BNA for disclosure of APAs, legislative action in December 1999 led to preventing disclosure of APAs. See Diane Ring, 'On the Frontier of Procedural Innovation: Advance Pricing Agreements and the Struggle to Allocate Income for Cross Border Taxation', *Michigan Journal of International Law*, 21/2 (2000), 160, footnote 52 and Givati, *Resolving Legal Uncertainty*, 174, footnote 130. In our classification (see above), these so-called "unilateral APAs" would be considered to be unilateral tax rulings despite the name suggesting that it is an APA and thence involving at least two tax administrations.

²⁴ Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, 185.

²⁵ Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation.

²⁶ OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*.

²⁷ Luxembourg had reported only 2 unilateral APAs to be in force in 2012, while reporting 119 in 2013. In contrast, more than 500 unilateral tax rulings were disclosed through LuxLeaks which were reported to have been agreed mainly between 2002 and 2010. These appear not to have been captured by the EU Joint Transfer Pricing Forum statistic which builds on information submitted by member states such as Luxembourg. See Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, 178–79. Within the context of the OECD transparency regime on tax rulings under BEPS Action 5, Luxembourg reportedly issued 1,922 rulings between 1 April 2016 and 31

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December 2016, published annually in a summarised and anonymised form in the tax administration's annual report (OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, 289).

²⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//EN&language=EN>; [accessed 19 December 2017].

²⁹ Global Witness, *Take The Future: Shell's Scandalous Deal for Nigeria's Oil* (November 2018) <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/>> [accessed 1 April 2019].

³⁰ 'Shell and Eni on Trial', *Global Witness*, 2019, para. 11 <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-eni-trial/>> [accessed 1 April 2019].

³¹ Rosenblum and Maples, *Contracts Confidential*, 16.

³² In one of the earliest surveys of contracts, Rosenblum and Maples (2009) observed that confidentiality clauses in 150 mining and oil contracts were largely uniform with confidentiality applying to all information, with some exceptions for public disclosure of certain information by law, such as to the stock exchange, or information in the public interest. The similarity in clauses across different extractive contracts seems to be an exception when compared to other commercial contracts. According to Rosenblum and Maples, this general confidentiality clauses does not actually prevent contracts from being disclosed: "If the government and the company, or consortium of companies, agree to disclose the contract, the confidentiality clause poses no impediment, except possibly a procedural one—written consent of the parties. [...] On the other hand, procedural requirements may serve as a pretext to mask the unwillingness of one or both parties to disclose" (2009: 27).

³³ Rosenblum and Maples, *Contracts Confidential*.

³⁴ Rosenblum and Maples, *Contracts Confidential*.

³⁵ Isabel Munilla and Kathleen Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, Oxfam Briefing Paper (2018), 64.

³⁶ Rosenblum and Maples, *Contracts Confidential*, 36.

³⁷ Robert Pitman, *Mongolia's Missing Oil, Gas and Mining Contracts* (January 2019), 6 <<https://resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf>> [accessed 2 April 2019].

³⁸ Don Hubert and Rob Pitman, *Past the Tipping Point? Contract Disclosure within EITI* (March 2017), 48.

³⁹ Munilla and Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, 14.

⁴⁰ Sophie Durham, 'Contract Transparency Builds Trust and Mitigates Risk Says Kosmos', *Extractive Industries Transparency Initiative*, 11 December 2018 <<https://eiti.org/blog/contract-transparency-builds-trust-mitigates-risk-says-kosmos>> [accessed 5 March 2019].

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⁴¹ Tullow Oil PIC, 'Transparency', 2019

<<https://www.tulloil.com/sustainability/shared-prosperity/transparency>> [accessed 5 March 2019].

⁴² *Fiscal Transparency Initiative: Integration of Natural Resource Management Issues* (28 December 2018), 7 <<https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues>> [accessed 18 February 2019].

⁴³ Rob Pitman and Isabel Munilla, 'It's Time for EITI to Require Contract Transparency. Here Are Four Reasons Why.', *Natural Resource Governance Institute*, 22 February 2019 <<https://resourcegovernance.org/blog/its-time-eiti-require-contract-transparency-here-are-four-reasons-why>> [accessed 1 March 2019].

⁴⁴ Dyveke Rogan and Gisela Granada, *Contract Transparency in EITI Countries: A Review on How Countries Report on Government's Contract Transparency Policy* (August 2015), 36.

⁴⁵ Extractive Industries Transparency Initiative International Secretariat, 'The Board Agreed in Principle to the Proposals Made on Clarifications and Changes to the EITI Requirements.', *Extractive Industries Transparency Initiative*, 2019 <<https://eiti.org/BD/2019-25>> [accessed 5 March 2019].

⁴⁶ Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 48.

⁴⁷ Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 18.

⁴⁸ Rob Pitman and others, *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice* (26 June 2018) <<https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>> [accessed 12 February 2019]; Open Contracting Partnership, 'Global Principles', *Open Contracting Partnership* <<https://www.open-contracting.org/implement/global-principles/>> [accessed 5 March 2019].

⁴⁹ Stephen Knack, Nataliya Biletska and Kanishka Kacker, *Deterring Kickbacks and Encouraging Entry in Public Procurement Markets: Evidence from Firm Surveys in 88 Developing Countries*, Policy Research Working Papers (2017) <<http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-8078>> [accessed 5 March 2019].

⁵⁰ As per Endnote 1 above, only countries with extractive industries and included in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy Tracker have been assessed. In the Corporate Tax Haven Index of 2019, eight countries have been assessed: Botswana, Germany, Ghana, Liberia, South Africa, Tanzania, the United Kingdom and the USA.

(<<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>>, updated 30 April 2019)

⁵¹ Here, -3 means that the jurisdiction has not a substantial extractive sector (see table 12.1 above for further details).