

Haven Indicator 13: Reporting of tax avoidance schemes

What is measured?

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

1. Regarding the reporting of tax avoidance schemes: it assesses whether a jurisdiction requires taxpayers to report tax avoidance schemes they have used; and tax advisers to report any tax avoidance schemes they have sold or marketed in the course of assisting companies and individuals prepare tax returns.
2. Regarding the reporting of uncertain tax positions: it assesses whether a jurisdiction requires taxpayers and tax advisers to report uncertain tax positions for which reserves have been created in annual corporate accounts.

Each component contributes half of the haven score. A jurisdiction receives a zero haven score where both tax advisers and taxpayers have to report tax avoidance schemes and uncertain tax positions. In cases where only either taxpayers or tax advisers must report tax avoidance schemes, the haven score is reduced by only 20. Similarly, in cases where only either taxpayers or tax advisers have to report on uncertain tax positions, the haven score is reduced but only by 20. Where there are no reporting requirements of tax avoidance schemes for taxpayers and tax advisers, the jurisdiction receives a full haven score of 50, as it poses a maximum risk for tax avoidance schemes to go unnoticed. The same applies where there are no reporting requirements of uncertain tax positions for taxpayers and tax advisers. Thus, a jurisdiction receives a 100 haven score if there are no reporting requirements in a jurisdiction for taxpayers and for tax advisers neither with regard to tax avoidance schemes nor with regard to uncertain tax positions.

The data for this indicator is based on several sources: a) TJN-Survey 2020¹; b) the International Bureau of Fiscal Documentation (IBFD) database;² c) local websites of jurisdictions' tax authorities; d) local tax legislation of jurisdictions; e) the OECD publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report."³

The haven scoring matrix is shown in Table 13.1, with full details of the assessment logic given in Table 13.3 below.

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Table 13.1: Scoring Matrix Haven Indicator 13

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

All underlying data can be accessed in the Corporate Tax Haven Index [database](#)⁴. To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 13.3 and search for the corresponding info IDs (IDs 403, 404, 405 and 406) in the database report of the respective jurisdiction.

Why is this important?

Component 1: Reporting of tax avoidance schemes

Mandatory disclosure rules require taxpayers to report to the tax administration on aggressive tax planning schemes they have used and intermediaries (e.g. tax advisers, accountants and lawyers) to report on the schemes they have sold to their client.⁵

There are several reasons to support the imposition of mandatory reporting of tax avoidance schemes. First, the reporting requirements help tax administrations to identify areas of uncertainty in the tax law that may need clarification or legislative improvements, regulatory guidance, or further research.⁶ Second, providing the tax administration with early information about tax avoidance schemes allows it to assess the risks schemes pose before the tax assessment is made and to focus audits more efficiently. This is significant mainly because, in many jurisdictions, tax administrations do not have sufficient capacity to fully audit a large number of the tax files. Thus, flagging certain files that carry a greater risk of tax avoidance is likely to increase the efficiency of tax

administrations and their ability to increase tax revenues. Third, requiring mandatory reporting of tax schemes is likely to deter taxpayers from using these tax schemes because they know there are higher chances that files will be flagged, exposed and assessed accordingly. Fourth, such mandatory reporting may reduce the supply of these schemes by altering the economics of tax avoidance of their providers because a) they will be more exposed to claims of promoting aggressive tax schemes, increasing the risk of reputational damage, and b) their profits and rate of return on the promotion of these schemes is likely to be reduced because schemes are closed down more quickly. This is all the more true if contingency fees are part of contracts.

Mandatory disclosure rules were first introduced by the US in 1984 and several countries, including EU member states (the UK, Ireland, Portugal, Canada, South Africa, South Korea and Israel)⁷, have followed suit. The revelations of Lux Leaks⁸ and Panama Papers scandals⁹ and the EU State Aid cases¹⁰ have demonstrated the role of intermediaries in using tax planning schemes for tax avoidance and further pushed governments to take action. As a result, the European Council required all EU member states to create mandatory disclosure rules no later than 31 December 2019, and even obliged the tax authorities of the states to automatically exchange reportable cross-border arrangements as of 1 July 2020 (Directive 2018/822/EU).¹¹ In the wake of the Covid-19, member states were given the option to defer by up to six months the filing information on these reportable cross-border arrangements, as per the directive. Most member states have opted for the six-month deferral, with the exceptions of Austria (three-month deferral), and Finland and Germany (no deferral).¹²

The difficulty in imposing mandatory reporting rules for tax avoidance schemes is the potential for ambiguity of whether the scheme is considered a tax avoidance scheme within the mandatory disclosure rules. In order to mitigate against this risk, the reporting obligation should apply not only to the taxpayer who uses the tax scheme or only to the promoter (tax advisers) of the scheme, but rather to both. This kind of double obligation is imposed in the United States.¹³ If both are obliged to report independently on the marketed/used tax avoidance schemes, the chances that tax administration will be able to detect hidden dubious schemes are significantly higher. Precisely because there are numerous and regular conflicts between the tax administration and taxpayers and advisers on the interpretation of tax laws, it should be expected that many tax schemes will be designed in grey areas which certain promoters might chose to interpret as not being subject to the remit of the reporting obligation. Third party reporting obligations increase the detection risk of these dubious schemes and thereby incentivises the reporting of a broader set of schemes.

However, the EU Directive 2018/822/EU imposes the disclosure obligation primarily on the intermediaries who design and sell the aggressive tax planning schemes whereas taxpayers are required to report on such



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schemes only in some limited instances. Nonetheless, EU member states are still free to extend the scope and impose a similar disclosure obligation on taxpayers.¹⁴

Component 2: Reporting of uncertain tax positions

To further mitigate the risk of a taxpayer's or tax adviser's failure to define and report properly all relevant tax avoidance schemes, mandatory rules should require uncertain tax positions to be reported in annual financial accounts. The International Financial Reporting Standards, which most multinational companies adhere to in their annual financial reporting, require the reporting of uncertain tax positions. Whenever a tax payment related to a tax risk is "probable", these positions need to be included in their financial accounts.¹⁵ Under these International Financial Reporting Standards, prudence¹⁶ is an important principle for the preparation of accounts. In fact, shareholders may hold management accountable for prudential reporting. Therefore, it is likely that even more tax avoidance schemes would be reported to tax administrations if there was a consistent requirement to report details on uncertain tax positions. Similarly, if both tax advisers and taxpayers are obliged to annually report on any uncertain tax positions of accounts they prepared or submitted, the detection risks of errors in reporting or failures to report increases.

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Results Overview

Figure 13.1: Reporting of Tax Avoidance Schemes*



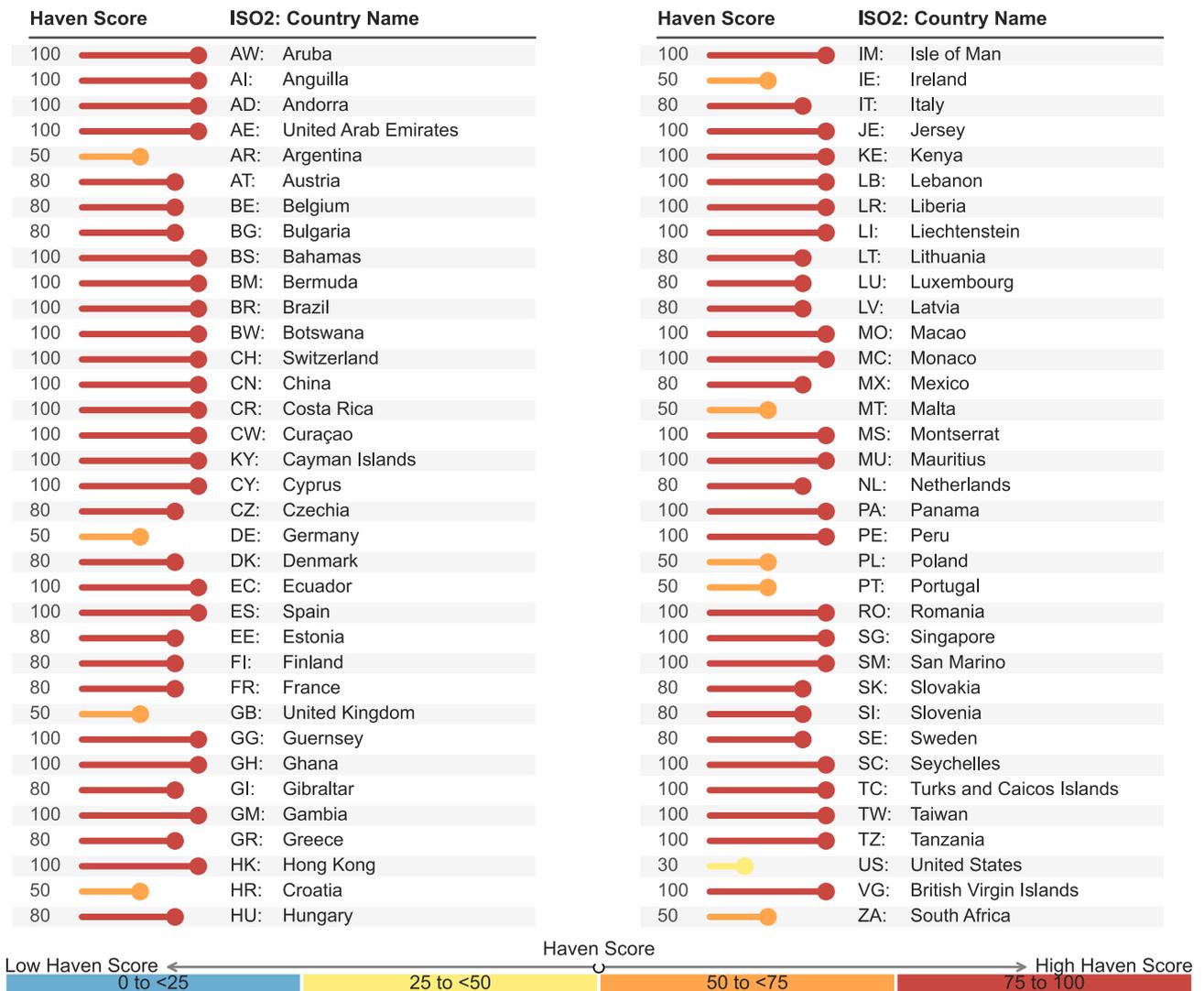
Figure 13.2: Reporting of Uncertain Tax Positions*



*Note: Given that this jurisdiction has no corporate tax system, we conclude this indicator is not relevant and thus not applicable for this jurisdiction. The haven score is the highest possible for these jurisdictions due to the corporate tax avoidance spillover risks as a result of having no corporate tax system.

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Table 13.2: Reporting of Tax Avoidance Schemes – Haven Indicator Scores



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Table 13.3: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
403	Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?	0: No; 1: Yes, but the schemes are only reported to the tax administration, and are not published; 2: Yes, and the schemes are made publicly available.	Both 0: 50 One 1 Or 2 and the other one 0: 30
404	Tax advisers reporting schemes: Are tax advisers (who help companies and individuals to prepare tax returns) required to report at least annually on certain tax avoidance schemes they have sold/marketed (if applicable)?	0: No; 1: Yes, but the schemes are only reported to the tax administration (they are not published); 2: Yes, and the schemes are made publicly available.	Both 1 or 2: 0
405	Taxpayers reporting uncertain tax positions: Are taxpayers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts?	0: No; 1: Yes, but the details are only reported to the tax administration (they are not published); 2: Yes, and the details are made publicly available.	Both 0: 50 One 1 Or 2) and the other one 0: 30
406	Tax advisers reporting uncertain tax positions: Are tax advisers required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts of the companies they advised?	0: No; 1: Yes, but the details are only reported to the tax administration (they are not published); 2: Yes, and the details are made publicly available.	Both 1 or 2: 0

Reference List

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¹ The survey was conducted by the Tax Justice Network in June 2020. The questionnaire sent out to the Ministries of Finance can be viewed here: <http://cthi.taxjustice.net/cthi2021/TJNSurvey2020.pdf>; and the preliminary assessment of the data assessed by the Tax Justice Network was sent in November 2020 to the Ministries of Finance and can be viewed here: <http://cthi.taxjustice.net/cthi2021/TJNSurvey2020a.pdf>

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⁴ Corporate Tax Haven Index database: <https://cthi.taxjustice.net/cthi21/data-downloads>

⁵ Leyla Ates, 'More Transparency Rules, Less Tax Avoidance', *The Progressive Post*, 2018 <<https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/%20>> [accessed 24 May 2019].

⁶ 'Reportable Tax Position Schedule Instructions 2020', *Australian Taxation Office* <<https://www.ato.gov.au/Forms/Reportable-tax-position-schedule-instructions-2020/>> [accessed 5 March 2021].

⁷ OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*. p. 23.

⁸ ICIJ, 'Luxembourg Leaks: Global Companies' Secrets Exposed', *ICIJ*, 2014 <<https://www.icij.org/investigations/luxembourg-leaks/>> [accessed 3 April 2020].

⁹ ICIJ, 'The Panama Papers: Exposing the Rogue Offshore Finance Industry', 2018 <<https://www.icij.org/investigations/panama-papers/>>.

¹⁰ European Commission, 'State Aid Cases', 2019 <https://ec.europa.eu/competition/state_aid/register/> [accessed 5 March 2021].

¹¹ Council Directive 2018/822/EU (Official Journal of European Union, L 139, 5 June 2018). According to Article 3, the Directive came into force on the twentieth day following its publication in the EU Official Journal i.e. 25 June 2018. The directive requires the automatic exchange of information among other EU members through a central directory. As opposed to a similar database within the OECD called the "aggressive tax planning depository" which is only available to the members of the Aggressive Tax Planning Expert Group, that is a sub-group of OECD Working Party No. 11, the directive aims to create a level playing field for all EU member countries in terms of access to such relevant information." For further information see: Organisation for Economic Co-operation and Development, 'Co-Operation and Exchange of Information on ATP', 2021 <<http://www.oecd.org/ctp/aggressive/co-operation-and-exchange-of-information-on-atp.htm>> [accessed 5 March 2021]. and Ates, 'More Transparency Rules, Less Tax Avoidance'.

¹² 'European Union: Tax Developments in Response to COVID-19', *KPMG*, 24 November 2020 <<https://home.kpmg/xx/en/home/insights/2020/04/european-union-tax-developments-in-response-to-covid-19.html>> [accessed 23 February 2021].

¹³ John G. Rienstra, *United States - Corporate Taxation* (1 January 2021), sec. 1 <https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_us> [accessed 5 March 2021].

¹⁴ For example, Portugal obliges both intermediaries and taxpayers to report on certain tax avoidance schemes. Moreover, the Portuguese Decree Law No. 29/2008 provides in its Article 15 that the Portuguese fiscal authority shall publicly disclose the reported schemes which are considered abusive by Portuguese authorities. However, as of October 2020, there were only a summary of 13 tax avoidance schemes published by the Portuguese fiscal authority, particularly from 2010, For more information, see 'Portal Das Finanças:

Destaques', *Autoridade Tributária e Aduaneira*, 2021 <<https://info.portaldasfinancas.gov.pt/pt/Pages/homepage.aspx>> [accessed 5 March 2021]; Ana Valente Vieira, *Portugal - Corporate Taxation* (10 November 2020) <https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_pt> [accessed 5 March 2021].

¹⁵ PricewaterhouseCoopers, 'IFRIC 23 - Putting Some Certainty into Uncertain Tax Positions', *PwC*, 2021 <<https://www.pwc.com/ph/en/accounting-buzz/accounting-client-advisory-letters/ifric-23-putting-some-certainty-into-uncertain-tax-positions.html>> [accessed 5 March 2021].

¹⁶ *Prudence and IFRS* (2014) <<http://www.accaglobal.com/content/dam/acca/global/PDF-technical/financial-reporting/tech-tp-prudence.pdf>> [accessed 5 March 2021].