Kenya

Rank: #63

Kenya is responsible for 0.14% of the world's corporate tax abuse risks.

CTHI Value: 62

Haven Score: 49.7

How much scope for corporate tax abuse the jurisdictions's tax and financial systems allow. 0 means no scope, 100 means unrestrained scope.

Global Scale Weight: 0.013%

How much of the financial activity conducted by multinational corporations around the world is hosted by the jurisdiction.

The jurisdiction's CTHI value (Corporate Tax Haven Index value) is a measure of how intensely the jurisdiction enables multinational corporations to abuse corporate tax. The jurisdiction is ranked on the index by its CTHI value.

A jurisdiction's CTHI Value is calculated by first grading its tax and financial systems with a Haven Score out of 100 where a zero means the jurisdiction's laws allow no scope for corporate tax abuse and a 100 means they allow unrestrained scope. The jurisdiction's Haven Score is then combined with its Global Scale Weight, ie the volume of financial activity conducted in the country by multinational corporations, to calculate how much corporate financial activity the jurisdiction puts at risk of corporate tax abuse.

A higher CTHI value does not mean a jurisdiction has more aggressive tax laws, but rather that the jurisdiction's laws and its position in the global economy combine to create a greater risk of corporate tax abuse by multinational corporations.

Haven Score breakdown

49.7

LOWEST AVAILABLE CORPORATE INCOME TAX

Haven Indicator 1: LACIT

14

This indicator identifies the lowest available corporate income tax rate (LACIT) for any large for-profit company that is tax resident in a country. It takes the statutory corporate income tax rate only as a starting point to analyse legal gaps and loopholes that result in lower accessible rates. The scoring of Haven Indicator 1 is computed by scaling that LACIT rate against the spillover risk reference rate of 35% (the highest available corporate income tax rate in a democracy).

ID 505 — Statutory corporate income tax rate

Question: Statutory-CIT-Rate: What is the statutory CIT rate reported by the OECD (or alternatively by IBFD or KPMG)?

Answer: 30 %

Notes:

- According to IBFD, as of April 2020, the corporate income tax was reduced from 30% to 25% as part of the government's efforts to assist the businesses against the effects of the COVID-10 pandemic (IBFD 2020e). However, in December 2020, the government approved the reversal of the corporate income tax from 25% back to 30% for income above KES 338,000. Given that this change will have an effect already in the year of the index launch, and we focus on the highest amount of income and the largest businesses, we consider the 30% rate as the one applicable.

Sources:

- IBFD 2020e
- https://research.ibfd.org/#/doc?url=/document/kf_ke
- https://research.ibfd.org/#/doc?url=/document/tns_2020-04-28_ke_2
- KPMG 2020
- https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html
- KPMG Tax Insights - Kenya
- https://home.kpmg/xx/en/home/insights/2020/04/kenya-tax-developments-in-response-to-covid-19.html
- https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/tax/Tax%20Alert%20-%20Tax%20Laws%20amendment%20Bill%202020.pdf

ID 506 — Corporate income tax rate: Correction for size of company

Question: CIT-Rate-Correction-Size: What is the deviating CIT rate, if any, applicable to the largest companies in the jurisdiction?

Answer: Not applicable

ID 507 — Corporate income tax rate: Correction for sectoral exemptions

Question: CIT-Rate-Correction-Sector: What is the lowest deviating CIT rate, if any, applicable to companies in jurisdictions exempting a broad range of sectors (at least four full and/or eight partial exemptions)?

Answer: Not applicable

ID 541 — Corporate income tax rate: Correction for subnational regions

Question: CIT-Rate-Correction-Regions: What is the lowest deviating CIT rate, if any, applicable in the political subdivision/subnational region with the lowest CIT rate?

Answer: Not applicable

ID 542 — Corporate income tax rate: Adjustment for retention or distribution

Question: CIT-Rate-Adjustment-Retention: What is the lowest deviating CIT rate, if any, applicable to distributed or retained profits?

Answer: Not applicable

ID 543 — Corporate income tax rate: Adjustment for specific type of company

Question: CIT-Rate-Adjustment-Type: What is the lowest deviating CIT rate, if any, applicable to specific types of companies?

Answer: Not applicable

ID 544 — Corporate income tax rate: Adjustment for territorial tax base

Question: CIT-Rate-Adjustment-Territorial: What is the lowest deviating CIT rate, if any, applicable to active business income from foreign sources?

Answer: Not applicable

Notes:

- According to IBFD, foreign income of a resident company from a business is fully taxable in Kenya only if it is partly carried on in Kenya and partly outside Kenya (IBFD 2020b), and that in order for the foreign source to be taxed it is required to be related to a foreign branch of a resident entity. However, according to PWC: "Resident companies with business activities outside Kenya are also taxed on income derived from business activities outside of Kenya" (taxsummaries.pwc.com), i.e., no condition is required. Given the contradiction between the sources, we apply the benefit for doubt and assume Kenya taxes all active business income from foreign sources.

Sources:

- IBFD 2020b.
- https://taxsummaries.pwc.com/kenya/corporate/taxes-on-corporate-income

ID 545 — Corporate Income Tax Rate: Adjustment for tax rulings

Question: CIT-Rate-Adjustment-Rulings: What is the lowest deviating CIT rate, if any, derived from documented cross-border unilateral tax rulings issued by the authorities in the jurisdiction?

Answer: Not applicable

ID 587 — Corporate tax residency scope

Question: Corporate tax residency scope: Do the domestic rules for corporate tax residency include as tax resident at least all locally incorporated companies?

Answer: INC & MNG: Yes, all locally incorporated companies are considered tax residents, and in addition some foreign-incorporated companies are considered tax resident (e.g. those with effective management and control in the jurisdiction).

Sources:

- IBFD 2020b; Deloitte 2020a

LOOPHOLES AND GAPS

Haven Indicator 2: Foreign Investment Income 100

This indicator assesses whether a country includes worldwide capital income in its corporate income tax base and if its domestic law grants unilateral tax credits for foreign tax paid on certain foreign capital income.

ID 555 — Double taxation relief, dividends, related parties

Question: *Legal Person, Resident, Related Party: Dividends

Answer: Exemption.

Notes:

- Pursuant to Kenya's territorial tax system, foreign dividends received by tax-resident companies is not subject to tax. (IBFD 2020b, 7.2.1.3).

Sources:

- IBFD 2020b

ID 554 — Double taxation relief, royalties

Question: Legal Person, Resident: Royalties

Answer: Deduction.

Notes:

- Although Kenya operates a territorial system with regards to dividends taxation, if foreign source royalties are paid with respect intellectual property owned by a tax-resident company, then, such royalties will be deemed to be derived from Kenya - and thus subject to tax. (IBFD 2020b, 7.2.1.4) Generally, if foreign tax has been paid on income sourced from a country with which Kenya does not have a tax treaty, then the foreign tax can be deducted from Kenya tax liability. (IBFD 2020b : 7.2.6.)

Sources:

- IBFD 2020b

ID 553 — Double taxation relief, interest

Question: *Legal Person, Resident: Interest

Answer: Deduction.

Notes:

- Although Kenya operates a territorial system with regards to dividends taxation, if foreign source interest are paid with respect to funds that were sourced in Kenya, then, such interest will be deemed to be derived from Kenya - and thus subject to tax. (IBFD 2020b: 7.2.1.4) Generally, if foreign tax has been paid on income sourced from a country with which Kenya does not have a tax treaty, then the foreign tax can be deducted from Kenya tax liability (IBFD 2020b: 7.2.6.).

Sources:

- IBFD 2020b

ID 552 — Double taxation relief, dividends, independent parties

Question: *Legal Person, Resident, Independent Party: Dividends

Answer: Exemption.

Notes:

- Pursuant to Kenya's territorial tax system, foreign dividends received by tax-resident companies is not subject to tax. (IBFD 2020b, 7.2.1.3).

Sources:

- IBFD 2020b

Haven Indicator 3: Loss Utilisation 100

This indicator measures whether a jurisdiction provides loss carry backward and/or unrestricted loss carry forward for ordinary and trading losses. Capital losses fall outside the scope of this indicator.

ID 509 — Loss carry backward

Question: Loss Carry Backward: Does the jurisdiction allow loss carry backward?

Answer: Yes

Notes:

- In principle, loss carry-backward is not allowed in Kenya. However, there are exceptions. Under the exception granted to the petroleum exploration industry, loss carry-backward is allowed for the preceding financial year or if petroleum production had commenced but has subsequently ceased, loss carry-backward is allowed for the 3 preceding financial years. Under the balancing deduction exception, loss carry-backward is allowed for the 6 preceding financial years (IBFD 2020b: 1.8.1.).

Sources:

- IBFD 2020b

ID 510 — Loss carry forward

Question: Loss Carry Forward: Does the jurisdiction restrict loss carry forward independent of change of ownership?

Answer: No, unrestricted loss carry forward is available.

Notes:

- In Kenya, losses may be carried forward for 9 consecutive fiscal years without an annual ceiling. But, the Cabinet Secretary has discretionary power to extend time limit beyond 10 years (IBFD 2020b: 1.8.1.). The law does not set out the circumstances under which an extension may be granted, neither does it specify how long it should take to receive a response upon applying for such an extension. Thus we consider that unrestricted loss carry forward is available.

Sources:

- IBFD 2020b
- Deloitte 2020a
- https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-kenyahighlights-2020.pdf?nc=1

Haven Indicator 4: Capital Gains Taxation 100

This indicator measures the extent to which a jurisdiction taxes corporate capital gains arising from the disposal of domestic and/or foreign securities (i.e. shares and bonds). As such, it assesses the lowest available tax levied on corporate capital gains, applicable for large for-profit corporations which are tax resident in the jurisdiction, irrespective of whether the capital gains are taxed as part of corporate income tax or as part of another type of tax, such as wealth tax or an independent capital gains tax.

ID 513 — Domestic securities capital gains taxation

Question: Domestic Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of domestic securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

Answer: 0 %

Notes:

- Gains derived from the disposal of shares in resident companies are subject to capital gains tax at the rate of 5% (IBFD 2020b: 1.10.2.). However, gains from the disposal of shares listed on the Nairobi Securities Exchange are exempt from capital gains tax (IBFD 2020b: 1.7.5.).

Sources:

- IBFD 2020b

ID 514 — Foreign securities capital gains taxation

Question: Foreign Securities Capital Gains Taxation: What is the lowest available capital gains tax rate arising from disposal of foreign securities applicable for large "for profit" companies which are tax resident in the jurisdiction?

Answer: 0 %

Notes:

- The Kenyan tax system is territorial with all income earned or derived in Kenya being subject to tax in Kenya. Foreign earned income is as such generally not taxable in Kenya (IBFD 2020b: 7.2.1.5.).

Sources:

- IBFD 2020b

Haven Indicator 5: Broad Exemptions 63

This indicator measures the availability of broad exemptions from corporate income tax (CIT). It covers exemptions applicable to companies engaged in specific activities or sectors.

ID 524 — Real estate investment sector tax exemption (passive)

Question: Real Estate Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in real estate?

Answer: Full: Yes, there are full tax exemptions.

Notes:

- Income earned by Real Estate Investment Trusts is exempt from tax, as long as these business entities are registered with the Commissioner (IBFD 2020b : 1.2.3.6).

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- https://taxsummaries.pwc.com/kenya/corporate/taxes-on-corporate-income
- PWC 2020a

ID 525 — Financial investment sector tax exemption (passive)

Question: Other Investment (passive): Are there any (partial) tax exemptions applicable to collective investment companies investing in assets other than real estate?

Answer: Full: Yes, there are full tax exemptions.

Notes:

- Income derived by unit trusts or collective investment schemes is exempt from tax under certain conditions (IBFD 2020b : 1.2.3.6). Income from trading in the Kenyan securities exchange is also exempt from corporate income tax when the securities are held less than 24 months (IBFD 2020b : 1.2.3.5). Additionally, income arising form the disposal of shares that are listed on the Nairobi Securities Exhange are exempted from capital gains tax (IBFD 2020b : 6.1.6.1).

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- https://taxsummaries.pwc.com/kenya/corporate/taxes-on-corporate-income
- PWC 2020a

ID 526 — Extractive sector tax exemption

Question: Extractives (active): Are there any (partial) tax exemptions applicable to companies active in the extractives sector (oil, gas, mining)?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 527 — Agriculture and farming sector tax exemption

Question: Agriculture and farming (active): Are there any (partial) tax exemptions applicable to companies active in the agricultural and farming sector?

Answer: Partial: Yes, there are partial tax exemptions.

Notes:

- In Kenya, a farmer may choose to account for his stock's value at the beginning and end of the tax period or be taxed on the amount received for stock disposed (IBFD 2020b : 12.3). Pursuant to the income tax act, a "farmer" is defined as "a person who carries on pastoral, agricultural or other similar operations" (ITA, Cap.470, section 2), and "person" is used interchangeably to refer to individuals and companies (see definition of "permanent establishment", ibid.). Since this represents an alternative regime, we treat this measure as a partial tax exemption on agricultural activities.

Sources:

- IBFD 2020b
- https://eregulations.invest.go.ke/media/Income%20Tax%20Act.pdf

ID 528 — Manufacturing sector tax exemption

Question: Manufacturing (active): Are there any (partial) tax exemptions applicable to companies active in the manufacturing sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 529 — Construction sector tax exemption

Question: Construction (active): Are there any (partial) tax exemptions applicable to companies active in the construction sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 530 — Infrastructure sector tax exemption

Question: Infrastructures (active): Are there any (partial) tax exemptions applicable to companies active in the infrastructures sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 531 — Transportation and storage sector tax exemption

Question: Transportation and storage (active): Are there any (partial) tax exemptions applicable to companies active in the transportation and storage sector?

Answer: None: No, there are no specific exemptions.

Notes:

- Although income of a non-resident company in the business of air transportation and chartering may be exempt, in cases where the country of residence of such company reciprocally exempts such income (IBFD 2020b: 1.2.3.2.), we consider that this exemption is not applicable to de facto tax resident companies in Kenya. Indeed, both companies incorporated in Kenya, and (foreign) companies with effective place of management in Kenya would be automatically considered tax resident (IBFD 2020b: 1.1.5.). Thus, because companies that are effectively tax resident in Kenya may not be tax-exempt under this regime, we disregard it for the purposes of this indicator.

Sources:

- IBFD 2020b
- IBFD 2020d

ID 532 — Distribution sector tax exemption

Question: Distribution (active): Are there any (partial) tax exemptions applicable to companies active in the distribution sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 533 — Accommodation, food and recreation sector tax exemption

Question: Accommodation, food and recreation (active): Are there any (partial) tax exemptions applicable to companies active in the accommodation, food and recreation sector?

Answer: Partial: Yes, there are partial tax exemptions.

Notes:

- Gaming operators pay a reduced rate of 15% on income from lotteries, betting, and gaming (IBFD 2020b : 2.3.2). Although there is no indication in the Betting, Lotteries and Gaming Act (CAP.131) that the taxes therein established replace regular corporate income tax (kenyalaw.org), there is also no indication that income from bets, lotteries and gaming activities is included in regular corporate income and otherwise subject to tax (Income Tax Act, Cap.470, section 3(2)). Thus, we consider that the gaming tax is an alternative regime, for which a lower tax rate applies (partial exemption).

Sources:

- IBFD 2020b
- http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20131
- https://eregulations.invest.go.ke/media/Income%20Tax%20Act.pdf

ID 534 — Information and telecom sector tax exemption

Question: Information and telecom (active): Are there any (partial) tax exemptions applicable to companies active in the information and telecom sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 535 — IT services sector tax exemption

Question: IT services (active): Are there any (partial) tax exemptions applicable to companies active in the IT services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 536 — Banking and insurance sector tax exemption

Question: Banking and insurance (active): Are there any (partial) tax exemptions applicable to companies active in the banking and insurance sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 537 — Professional and technical services sector tax exemption

Question: Professional and technical services (active): Are there any (partial) tax exemptions applicable to companies active in the professional and technical services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

ID 538 — Business services sector tax exemption

Question: Business services (active): Are there any (partial) tax exemptions applicable to companies active in the business services sector?

Answer: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

This indicator measures whether and to what extent time-bound or geographically confined tax incentives are available in a country. It measures if these incentives offer partial or full exemptions from corporate income tax (CIT) and/or capital gains tax (CGT). This includes temporary tax holidays and special tax incentives (temporary or permanent) given to companies located in designated economic zones.

ID 540 — Tax holidays, non-economic zones, full exemption

Question: NonEZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

Answer: 0

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- http://eregulations.invest.go.ke/menu/322?l=en

ID 539 — Tax holidays, non-economic zones, partial exemption

Question: NonEZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered to companies established anywhere in the jurisdiction (except in economic zones or non-autonomous regions)?

Answer: 1

Notes:

- (1). Income of local car assemblers are taxed at a rate of 15% for a first 5-year period; they can benefit from this reduction for another 5-year period under certain conditions. (IBFD 2020b : 1.10.1)
- [Construction] (disregarded) Income of companies having constructed at least 400 residential units in the same year is taxed at a CIT rate of 15% for that year. (IBFD 2020b) Because the construction of 400 residential units is necessarily a cost-based requirement, we disregard this temporary exemption for the purposes of this indicator. Additionally, the following incentives were repealed with the Tax Laws Amendments Bill, 2020 which was signed into law on April 25, 2020 and are thus disregarded for this assessment (ey.com): (i) Income derived from newly listed entities on the Nairobi Securities Exchange are taxed either at the rate of 27% for a 3-year period if 20% of shares are listed or 25% for a 5-year period if 30% of shares are listed or 20% for a 5-year period if 40% at least of shares are listed. In listing its shares on a security exhange, companies will benefit from a reduced CIT rate of 25% for a 5-year period (IBFD 2020b : 1.10.1). (ii). Companies that operate a plastic recycling plant will be taxed at 15% during the first 5 years of activity (Id.).

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- https://www.ey.com/en_gl/tax-alerts/kenya-enacts-tax-laws-amendment-act-2020

ID 504 — Permanent, economic zones, full exemption

Question: EZ-Permanent-Full: How many permanent and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 0

Sources:

- IBFD 2020b

ID 503 — Permanent, economic zones, partial exemption

Question: EZ-Permanent-Partial: How many permanent and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 0

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- http://eregulations.invest.go.ke/menu/322?l=en

ID 502 — Tax holidays, economic zones, full exemption

Question: EZ-Temporary-Full: How many temporary (tax holidays) and full tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 1

Notes:

- Companies operating in EPZ (Export Processing Zones) are fully exempt from CIT for the first 10-year period of their activities (IBFD 2020b : 1.9.4.1).

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- http://eregulations.invest.go.ke/menu/322?l=en

ID 501 — Tax holidays, economic zones, partial exemption

Question: EZ-Temporary-Partial: How many temporary (tax holidays) and partial tax exemptions are offered by the jurisdiction to companies established in economic zones or non-autonomous regions?

Answer: 3

Notes:

- (1). CIT rate for SEZ (Special Economic Zone) companies is 10% over a first period of 10 years then, (2). SEZ companies are taxed at 15% CIT for the next 10 years (IBFD 2020b : 1.10.1). (3). Otherwise, a CIT rate reduction (from 30% headline rate to 25%) is available for EPZ enterprises after the ten year full exemption.

Sources:

- IBFD 2020b
- https://www.kra.go.ke/en/ngos/incentives-investors-certificate/investing-in-kenya/incentives-investors
- http://eregulations.invest.go.ke/menu/322?l=en

Haven Indicator 7: Patent Boxes 0

This indicator measures whether a jurisdiction offers preferential tax treatment for income related to intellectual property rights (e.g. patent boxes) and whether the Organisation for Economic Co-operation and Development (OECD) nexus approach constraints are applicable to the patent box.

ID 515 — Patent box

Question: Patent Box: Does the jurisdiction offer preferential tax treatment for income related to intellectual property?

Answer: No, there is no exemption or a lower CIT for IP-income.

Notes:

- According to the latest OECD report of November 2020, Kenya's "special economic zone" IP regime is not operational (OECD HTP 2020).

Sources:

- OECD HTP 2020
- IBFD 2020b

Haven Indicator 8: Fictional Interest Deduction 0

This indicator measures whether a jurisdiction offers fictional interest deduction to lower the corporate income tax. Because the deduction is given even though no actual interest was paid, the interest deduction is referred to as “fictional” or “nominal”. Fictional interest deduction allows a company with a capital structure with high equity (i.e. mostly financed by issuing shares instead of borrowing money) to deduct a certain sum of fictitious financial costs from its tax base.

ID 516 — Fictional interest deduction

Question: Fictional Interest Deduction: Does the jurisdiction offer a scheme that allows deducting from the corporate income tax base a notional return on equity?

Answer: No

Sources:

- IBFD 2020b

TRANSPARENCY

Haven Indicator 9: Public Company Accounts 100

This indicator considers whether a country requires all available types of company with limited liability (except for small companies) to keep accounts according to the international standard and to file their accounts with a government authority and to make them accessible online for free or at a low cost.

ID 188 — Compliance with international standard on keeping accounting records

Question: *Is there an obligation to keep accounting data?

Answer: No

Notes:

- Although there is a requirement in place for companies to keep accounting records, there are issues regarding the supervision of this obligation: “While there is a comprehensive oversight programme in the form of desktop audits and on-site visits in place by the KRA [Kenyan Revenue Authority], generally only entities with Kenya sourced income are required to be registered with the KRA. (…) Therefore, there may be a small number of cases where entities are not required to be registered with the KRA and will not come under the annual filing requirement to supply certain accounting information or be subject to the supervision programme in place by the KRA. While most entities are required to be registered with the Registrar of Companies, officials from the Registrar have reported that there is currently no supervision of accounting record requirements undertaken by the Registrar” (GF 2016: 61-62; [TJN's note]).

Sources:

- GF 2016: 61-62

ID 189 — Submission of annual accounts to a government authority

Question: *Are annual accounts submitted to a public authority?

Answer: Not applicable

Notes:

- In absence of requirements to keep accounting records, financial statements cannot be sufficiently prepared and submitted (see the note on [ID188]).

Sources:

- GF 2016: 61-62

ID 201 — Online availability of annual accounts / financial statements

Question: *Are annual accounts available on a public online record (up to 10 €/US$/GBP)?

Answer: Not applicable

Notes:

- In absence of requirements to keep accounting records, financial statements cannot be sufficiently prepared, submitted or made publicly available(see the note on [ID188]). Moreover, there is no indication that any information is available online. There seems to be a possibility to require a certificate by writing an email or an e-platform for corporate service providers (statelaw.go.ke).

Sources:

- http://www.statelaw.go.ke/registrar-of-companies/

Haven Indicator 10: Public Country By Country Reporting (CBCR) 100

This indicator measures whether the companies listed on the stock exchanges or involved in certain sectors (eg extractives) or incorporated in a given jurisdiction are required to publish publicly worldwide financial reporting data on a country-by-country reporting basis.

ID 318 — Public country-by-country reporting standard

Question: *CBCR: Are companies listed on the national stock exchange or incorporated in the jurisdiction required to comply with a worldwide country-by-country reporting standard?

Answer: No public country-by-country reporting at all.

Sources:

- Email communication with PWYP International, 19.02.2019 & 05.08.2019
- Meinzer & Trautvetter 2018
- Freymeyer 2019
- Email communication with Eurodad, 09.09.2020

Haven Indicator 11: Robust Local Filing of Country By Country Reporting (CBCR) 100

This indicator assesses whether a jurisdiction, going beyond the OECD standard, ensures its own access to the country-by-country reports of any relevant foreign multinational enterprises with domestic operations. Access is ensured if the jurisdiction requires country-by-country reports to be filed locally by the local subsidiary or branch of a foreign multinational enterprise whenever the jurisdiction does not obtain these reports through the automatic exchange of information for whatever reason.

ID 419 — Robust local filing of country-by-country reporting

Question: *CBCR: Is there a local filing requirement of a global country-by-country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?

Answer: No.

Notes:

- "Kenya does not yet have legislation in place for implementing the BEPS Action 13 minimum standard" (OECD CBCR 2019: 291). This was confirmed in 2020 (OECD CBCR 2020: 230).

Sources:

- OECD CBCR 2019
- OECD CBCR 2020

Haven Indicator 12: Unilateral Cross-Border Tax Rulings 100

This indicator measures whether and to what extent a country publishes online unilateral cross-border tax rulings; and for countries with extractive industries, whether extractive industries contracts are published.

ID 363 — Tax rulings availability

Question: *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?

Answer: Yes

Notes:

- Kenya can issue unilateral cross-border tax rulings. The Tax Procedures Act (TPA) (2006) provides for private and public tax rulings (IBFD 2019b). According to the OECD, these include: "(i) preferential regimes; (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings" (OECD UTR 2019: 238).

Sources:

- IBFD 2020b
- OECD UTR 2019: 238

ID 421 — Tax rulings disclosure

Question: *Tax Rulings: Are all unilateral crossborder tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?

Answer: NONE OR SOME: None or only some of the unilateral crossborder tax rulings are published online.

Notes:

- Kenya can issue both public and private rulings according to the Tax Procedures Act. Prior to the Tax Laws (Amendment) Act 2020, enacted on 25 April 2020, all rulings were published in two major newspapers, both online and in print. While much of this new Act concerns ameliorating the effects of the COVID-19 pandemic on taxpayers, it also repeals the requirement for the Kenyan Revenue Authorities to publish all private rulings (IBFD 2020g). A Deloitte Tax Alert confirms that this Act "deleted the provision that requires the Commissioner to publish a private ruling in at least two daily newspapers" (Deloitte 2020). We therefore have changed the answer to reflect the new legislation and consider that tax rulings are no longer published online.

Sources:

- IBFD 2020g
- Deloitte Kenya Tax Alert 2020
- https://www2.deloitte.com/content/dam/Deloitte/ke/Documents/tax/Tax%20Laws%20Amendment%20Act%202020.pdf

ID 561 — Mining contracts disclosure in law

Question: *Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?

Answer: Not Applicable

Sources:

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=4

ID 562 — Mining contracts disclosure in practice

Question: *Mining contracts in practice: Are all extractive industries mining contracts published online in practice?

Answer: Not applicable

Sources:

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=41

ID 563 — Petroleum contracts disclosure in law

Question: *Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?

Answer: Not Applicable

Sources:

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0

ID 564 — Petroleum contracts disclosure in practice

Question: *Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice?

Answer: Not applicable

Sources:

- Contract Disclosure Policy and Practice Tracker, Natural Resource Governance Institute 28.07.2020
- https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=9

Haven Indicator 13: Reporting of Tax Avoidance Schemes

100

This indicator assesses two components of mandatory reporting to tackle tax avoidance schemes: (i) the reporting of tax avoidance schemes, in which we assess whether a country requires both taxpayers and tax advisers to report tax avoidance schemes they have used; and (ii) the reporting of uncertain tax positions, in which we assess whether a country requires taxpayers and tax advisers to report uncertain tax positions for which reserves have been created in annual corporate accounts.

ID 403 — Taxpayers' mandatory reporting of tax avoidance schemes

Question: *Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?

Answer: No.

Sources:

- IBFD 2020b

ID 404 — Tax advisers' mandatory reporting of tax avoidance schemes

Question: *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)?

Answer: No.

Sources:

- IBFD 2020b

ID 405 — Taxpayers' mandatory reporting of uncertain tax positions

Question: *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?

Answer: No.

Sources:

- IBFD 2020b

ID 406 — Tax advisers' mandatory reporting of uncertain tax positions

Question: *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?

Answer: No.

Sources:

- IBFD 2020b

Haven Indicator 14: Tax Court Transparency

0

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing the public online availability of verdicts, judgements, and sentences.

ID 409 — Criminal tax courts' publication of decisions

Question: *Is the full text of judgements / verdicts issued by criminal tax courts published online for free, or for a cost of up to 10 €/US$/GBP??

Answer: Free: Yes, full text of verdicts is always online for free.

Notes:

- The National Council for Law Reporting regularly maintains a website (http://www.kenyalaw.org) with decisions from all courts.

Sources:

- http://kenyalaw.org/caselaw/

ID 410 — Civil tax courts' publication of decisions

Question: *Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US$/GBP?

Answer: Free: Yes, full text of verdicts is always online for free.

Notes:

- The National Council for Law Reporting regularly maintains a website (http://www.kenyalaw.org) with decisions from all courts.

Sources:

- http://kenyalaw.org/caselaw/

ANTI-AVOIDANCE

Haven Indicator 15: Deduction Limitation of Interest Payments 80

This indicator assesses a country's limitations on the deduction of interest expenses from the corporate income tax base. It focuses on limits placed on interest paid to non-resident group affiliates ("intra-group interest payments"), including by means of a fixed ratio rule.

ID 517 — Outbound intra-group interest deduction limitation

Question: Outbound intra-group interest deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base interest paid to non-resident group affiliates?

Answer: YES, RESTRICTED LAX: Deduction limitation only for payments worth 30% EBITDA or above, and/or any other interest deduction limitation method using a fixed ratio rule.

Notes:

- In Kenya, a branch's interest, royalties or service fees payments to the head office are not tax deductible. There is no similar restriction for intra-group payments to subsidiaries. Nonetheless, Kenya implements thin capitalisation rules based on a 3:1 (2:1 for extractive sector) debt/equity ratio (IBFD 2020b: 10.3).

Sources:

- IBFD 2020b

ID 518 — Group ratio rule (as part of fixed ratio interest deduction limitation)

Question: Group ratio rule: Does the jurisdiction apply a group ratio rule opt-in alongside fixed ratio limitations on interest deduction?

Answer: NO, group ratio rule opt-in is not applied.

Notes:

- There is no opportunity to increase the thin capitalization ratio based on a worldwide debt-to-equity ratio in Kenya (IBFD 2020b: 10.3).

Sources:

- IBFD 2020b

ID 519 — Financial undertaking exclusion (as part of fixed ratio interest deduction limitation)

Question: Financial undertaking exclusion: Does the jurisdiction apply a financial undertaking exclusion alongside fixed ratio limitations on interest deduction?

Answer: YES, financial undertaking exclusion is applied.

Notes:

- Kenya exempts financial undertakings from the scope of thin capitalisation rules (PWC 2020a).

Sources:

- PWC 2020a

Haven Indicator 16: Deduction Limitation of Royalty Payments 100

This indicator measures whether or to what extent a jurisdiction disallows or restricts the deduction of royalties paid to non-resident group affiliates ("intra-group royalty payments") from the corporate income tax base.

ID 520 — Outbound intra-group royalty deduction limitation

Question: Outbound intra-group royalty deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base royalties paid to non-resident group affiliates?

Answer: NO: No deduction limitation for intra-group royalty payments.

Notes:

- In Kenya, a branch's interest, royalties or service fees payments to its head office are not tax deductible. There is no similar restriction for intra-group payments to subsidiaries. Only transfer pricing rules are implemented (IBFD 2020b: 1.4.6; 10.2).

Sources:

- IBFD 2020b

Haven Indicator 17: Deduction Limitation of Service Payments 100

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

ID 521 — Outbound intra-group services deduction limitation

Question: Outbound intra-group services deduction limitation: Does the jurisdiction restrict or disallow deducting from the corporate income tax base payments for management, technical, legal or accounting services paid to non-resident group affiliates?

Answer: No, there is no deduction restriction beyond transfer pricing rules, the arm's length principle or other generic rules.

Notes:

- In Kenya, a branch's interest, royalties or service fees payments to the head office are not tax deductible. However, there is no similar restriction for intra-group payments to subsidiaries. Only transfer pricing rules are implemented (IBFD 2020b: 1.4.7; 10.2).

Sources:

- IBFD 2020b

Haven Indicator 18: Withholding Taxes on Dividend Payments 57

This indicator measures the extent to which a jurisdiction levies withholding taxes on outbound dividends. It assesses the lowest available unilateral withholding tax rate on outbound dividend payments.

ID 508 — Dividend-related party payment

Question: Dividend-Related Party Payment: What is the (lowest) applicable unilateral cross-border withholding tax rate for outgoing dividend payments to a related party?

Answer: 15 %

Notes:

- Effective from 25 April 2020, Kenya abolished the withholding exemption for dividends paid by special economic zone enterprises, developers or operators to non-residents (IBFD 2020b: 7.3.4.1.). Meanwhile, the same law increased the withholding tax rate for dividends paid to a nonresident person from 10 to 15 per cent (IBFD 2020b: 7.3.4.1.; ey.com).

Sources:

- IBFD 2020b
- https://www.ey.com/en_gl/tax-alerts/kenya-enacts-tax-laws-amendment-act-2020

Haven Indicator 19: Controlled Foreign Company Rules 100

This indicator assesses whether countries apply robust non-transactional controlled foreign company (CFC) rules. CFC rules are a type of specific anti-avoidance rules that target particular taxpayers or transactions. Like other types of specific anti-avoidance rules, CFC rules are more effective than general anti-avoidance rules in capturing the specific type of tax avoidance on which they focus.

ID 522 — Controlled Foreign Company (CFC) rules

Question: CFC-Rules: Does the jurisdiction apply robust non-transactional CFC rules?

Answer: NONE: No, there are no CFC rules whatsoever.

Notes:

- There are no CFC rules in Kenya (IBFD 2020b: 10.4).

Sources:

- IBFD 2020b

DOUBLE TAX TREATY AGGRESSIVENESS

Haven Indicator 20: Treaty Aggressiveness 1

This indicator analyses the aggressiveness of a jurisdiction in their double tax agreements with other countries, as revealed by the withholding tax rates that apply to the payment of dividends, interests and royalties.

ID 571 — Aggregate tax treaty aggressiveness

Question: Aggregate-Aggressiveness: What is the scaled value of all negative differentials between the assessed jurisdiction's treaty withholding rates on all three payment types (dividend, interest and royalty) and those of its treaty partner jurisdiction.

Answer: 0.992291650366207

Global Scale Weight breakdown 0.013%

Inward foreign direct investment (US$)

$ 9,421,072,694

Outward foreign direct investment (US$)

$ 2,874,224,649

Sum of inward and outward foreign direct investment (US$)

$ 12,295,297,344

Global total of sum of inward and outward foreign direct investment (US$)

$ 94,690,323,833,261

Global scale weight (share of jurisdiction's inward and outward foreign direct investment on the global total)

0.013%