South Africa

Rank: #45

South Africa is responsible for 0.45% of the world's corporate tax abuse risks.

CTHI Value: 198

Haven Score: 49.4

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: 0.44%

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

global average 49.4

LOWEST AVAILABLE CORPORATE INCOME TAX

Haven Indicator 1: LACIT 20

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: 28 %

Sources:

- https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html
- IBFD 2020b
- https://www.sars.gov.za/TaxTypes/CIT/Pages/default.aspx
- https://stats.oecd.org/Index.aspx?DataSetCode=CTS_CIT
- KPMG 2020
- OECD Stats 2020a

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

Notes:

- While a tax exemption is applied to income received by small, medium and micro enterprises from approved small business funding entities (IBFD 2020d), for this indicator we consider the highest amount of income and the largest businesses.

Sources:

- IBFD 2020d
- https://home.kpmg.com/xx/en/home/services/tax/tax-tools-and-resources/tax-rates-online/corporate-tax-rates-table.html

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

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).

Notes:

- A corporation is tax resident in South Africa if its incorporated or effectively managed in the country (Deloitte 2020a; IBFD 2020b; 1.1.5.).

Sources:

- IBFD 2020b.
- Deloitte 2020a
- https://www.gov.za/sites/default/files/gcis_document/201505/act-58-1962s.pdf

LOOPHOLES AND GAPS

Haven Indicator 2: Foreign Investment Income 50

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:

- South Africa applies an exemption for dividends received by any person holding above 10 per cent of the total equity (IBFD 2020b; 7.2.6.1.2.).

Sources:

- IBFD 2020b
- https://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2016-07%20-%20IN93%20The%20taxation%20of%20foreign%20dividends.pdf

ID 554 — Double taxation relief, royalties

Question: Legal Person, Resident: Royalties

Answer: Credit.

Notes:

- South Africa implements the credit method for the relief of taxes paid for foreign portfolio royalty income (IBFD 2020b; 7.2.6.1.2.).

Sources:

- IBFD 2020b

ID 553 — Double taxation relief, interest

Question: *Legal Person, Resident: Interest

Answer: Credit.

Notes:

- South Africa implements the credit method for the relief of taxes paid for foreign interest income (IBFD 2020b: 7.2.6.1.2.).

Sources:

- IBFD 2020b.

ID 552 — Double taxation relief, dividends, independent parties

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

Answer: Exemption.

Notes:

- Foreign dividends paid in respect to listed shares are tax exempt for South Africa resident companies.(IBFD 2020b : 7.2.1.3.) Thus, over and above the 10% participation exemption, foreign source dividends received from independent party companies may be tax-exempt. Otherwise, South Africa implements the credit method for the relief of taxes paid for foreign portfolio dividends income (IBFD 2020b : 7.2.6.1.2.).

Sources:

- IBFD 2020b

Haven Indicator 3: Loss Utilisation 50

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: No

Notes:

- In South Africa, losses cannot be carried back (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 South Africa, losses may be carried forward indefinitely (IBFD 2020b: 1.8.1.). A planned amendment of Loss carry-forward provisions was postponed and may be reviewed during 2021, but that remains to be seen (ibid.).

Sources:

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

Haven Indicator 4: Capital Gains Taxation 68

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: 22.4 %

Notes:

- Capital gains tax is not a separate tax but forms part of income tax. However, capital gains are subjected to income tax on the actual realisation of a gain (IBFD 2020b: 1.7. and 6.1.6.2.). As a result, capital gains are taxed at a lower effective tax rate (22.4%) than the ordinary income (sars.gov.za).

Sources:

- IBFD 2020b
- http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Capital-Gains-Tax-(CGT).aspx

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:

- Capital gains from foreign shares are exempt under participation exemption rules if at least 10% of the equity share and voting rights was held for at least 18 months (excluding CFC) (IBFD 2020b: 7.2.1.5.).

Sources:

- IBFD 2020b; Deloitte 2020a
- http://www.sars.gov.za/Tax-Rates/Income-Tax/Pages/Capital-Gains-Tax-(CGT).aspx

Haven Indicator 5: Broad Exemptions 38

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: Partial: Yes, there are partial tax exemptions.

Notes:

- In South Africa real estate investment trusts are available in the form of a company with limited liability (PWC 2019). In specific cases, capital gains derived from disposal of immovable property are tax exempt (id.). For instance, capital gains from real estate sales or purchase are not taxable for the company (REIT), except in the case of disposal of company shares by the investor (PWC: 2019; IBFD 2020b; 12.6.). Therefore, because one of the main income streams of real estate invesment companies is tax exempt, we consider that these activities are partially exempt from corporate income tax.

Sources:

- IBFD 2020b
- PWC 2019

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: Partial: Yes, there are partial tax exemptions.

Notes:

- Foreign dividends paid in respect to listed shares are tax exempt for South Africa resident companies. (IBFD 2020b : 7.2.1.3.) Thus, because one of the main income streams of companies engaged in financial investment is tax exempt, we consider that investment activities are partially exempt.

Sources:

- IBFD 2020b

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: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

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: Full: Yes, there are full tax exemptions.

Notes:

- Income derived from international shipping by a resident company that holds a share in a South African flagged ship is exempt from income tax. (PWC 2019a) Because there is no tonnage regime applicable to shipping companies in South Africa, companies exclusively deriving income from international transport with South African flagged ship are fully exempt from tax. (IBFD 2020b, 1.9.4.4.)

Sources:

- IBFD 2020b
- http://taxsummaries.pwc.com/ID/South-Africa-Corporate-Tax-credits-and-incentives
- PWC 2019a

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: None: No, there are no specific exemptions.

Sources:

- IBFD 2020b

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

Haven Indicator 6: Economic Zones and Tax Holidays 13

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

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: 0

Sources:

- IBFD 2020b

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: 1

Notes:

- Income derived from activities carried-out in Special Economic Zones is taxed at 15% provided that they meet the requirements; this incentive is "subject to review" after 5 years and 10 years. (IBFD 2020b : 1.9.4.3.) In this case, we consider that the partial tax exemption is not limited in time, because the concession is merely "subject to review" instead of being limited to a specific number of years by law. Thus, we assesses the regime as a permanent, partial, exemption to CIT applicable for companies estblished in an Economic Zone.

Sources:

- IBFD 2020b

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: 0

Sources:

- IBFD 2020b

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: 0

Sources:

- IBFD 2020b

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:

- There is no patent box regime in South Africa (IBFD 2020b: 1.4.8., 1.9.2.1.).

Sources:

- 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
- EU Code of Conduct 2019

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: Yes

Notes:

- The Global Forum reported that, in South Africa, all relevant entities and arrangements must keep proper accounts including underlying documentation for at least five years (GF 2013: 47).

Sources:

- GF 2013: 41-43; 45-47
- https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-southafricaliahighlights-2020.pdf?nc=1
- https://www.nordeatrade.com/fi/explore-new-market/south-africa/accounting?vider_sticky=oui

ID 189 — Submission of annual accounts to a government authority

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

Answer: No, annual accounts are not always required to be submitted to a public authority.

Notes:

- According to the Global Forum: "where there is no obligation to file the financial statement, a financial accountability statement must be filed with the annual return at the CIPC [Companies and Intellectual Property Commission]" (GF 2013: 42; [TJN's note]). This suggests that there is no obligation for certain companies to submit accounts. The website of the Companies and Intellectual Property Commission confirms that only public and state-owned companies must file a copy of the latest Financial Statements with the CIPC (cipc.co.za).

Sources:

- https://web.archive.org/web/20130418025523/http://www.cipc.co.za:80/Notices_files/2013_03_28_Filing_of_Audited_fin_statements.pdf
- GF 2012: 41
- http://www.cipc.co.za/index.php/manage-your-business/manage-your-company/public-company/compliance-obligations/financial-statements/

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:

- Accounts are not required to be filed in all cases (see note on [ID189]). In addition, prior to accessing the 'public' registry, the user must enrol with the system through an online form and provide a South African address. While some information is claimed to be available for download, "no records were found" when searching for company names which were obtained from a list of companies provided by the registry itself. When searching for annual returns, the exact company name and company number was required, but it was not clear how to obtain the corresponding company number.

Sources:

- http://www.cipc.co.za/

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: OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the CbCR)

Notes:

- "No inconsistencies were identified with respect to the limitation on local filing obligation" (OECD CBCR 2018: 670). "No changes were identified with respect to the limitation on local filing obligation" (OECD CBCR 2019: 485). This was confirmed in 2020 (OECD CBCR 2020: 368).

Sources:

- OECD CBCR 2018
- 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:

- South Africa can issue unilateral cross-border tax rulings. According to the OECD, one ruling can be issued: "preferential regimes" (OECD UTR 2019: 401).

Sources:

- OECD UTR 2018: 426
- IBFD 2020b
- https://uk.practicallaw.thomsonreuters.com/Document/I481c80de1db611e798dc8b09b4f043e0/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true&bhcp=1
- OECD UTR 2019: 401
- http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-TAdm-G02%20-%20Comprehensive%20Guide%20to%20Advance%20Tax%20Rulings.pdf

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:

- According to the OECD, "South Africa publishes their tax rulings in redacted form on South Africa Revenue Service's website" (OECD UTR 2019: 400) and SARS states that "the Commissioner publishes binding rulings when considered necessary, for different reasons and in different circumstances" (OECD UTR 2018: 426). On the SARS website it is stated that "binding private rulings are issued in favour of an applicant (or applicants) and cannot be applied in general by other taxpayers. They determine how SARS interpret and apply the relevant tax law's provisions in relation to a proposed transaction. A binding private ruling is published by consent of the applicant to which it has been issued. It has a binding effect between SARS and the applicant only, and is published for general information. It does not constitute a practice prevailing. A third party may not rely upon a binding ruling under any circumstances" (sars.gov.za). Some can indeed be found online on that website.

Sources:

- OECD UTR 2018: 426
- http://www.sars.gov.za/Legal/Interpretation-Rulings/Published-Binding-Rulings/Pages/default.aspx
- http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-TAdm-G02%20-%20Comprehensive%20Guide%20to%20Advance%20Tax%20Rulings.pdf
- OECD UTR 2019: 400

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: No

Notes:

- South Africa does not require mining contracts to be disclosed by law (NRGI Policy Tracker 2020).

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: No, contracts are not available online.

Notes:

- South Africa does not publish mining contracts online (NRGI Policy Tracker 2020).

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

50

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: Yes, but the schemes are only reported to the tax administration, and are not published.

Notes:

- In South Africa, "promoters have the primary obligation to disclose and if such disclosure is made then users are not, as a general rule, required to provide details of the scheme to the tax administration". However, "the promoter must provide the participant or user with a scheme reference number to put on their return and, in South Africa, the participant's obligation to disclose only falls away when the participant has obtained written confirmation that disclosure has been made by a promoter or another participant" (OECD 2015: 34). Through the use of scheme reference number, South Africa employs a mechanism to track disclosures and link disclosures made by promoters and clients as identifying scheme users (see, OECD 2015: 10).

Sources:

- OECD 2015: 91-94
- 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: Yes, but the schemes are only reported to the tax administration (they are not published).

Notes:

- According to the OECD (2015: 91-92), promoters are required to disclose reportable transactions which are expected to provide tax benefits. Promoters are defined as the ones "responsible for organising, designing, selling, financing or managing the reportable arrangement" (id.: 91).

Sources:

- OECD 2015: 91-92
- 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 50

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: Cost/Anonym: Yes, full text of verdicts is always online but only at a cost of up to 10 €/US$/GBP, or it is always available for free but in anonymised form.

Notes:

- Full texts of the judgements from the Tax Court, the High Court, the Supreme Court of Appeal and the Constitutional Court are available on the website of the South African Revenue Service (sars.gov.za). However, according to the South African Revenue Service: "Tax Court judgments are supplied here in a sanitized format, i.e. where all client specific information had been taken out from the original judgment" (id.).

Sources:

- http://www.sars.gov.za/Legal/DR-Judgments/Pages/default.aspx
- http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/default.aspx

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: Cost/Anonym: Yes, full text of verdicts is always online but only at a cost of up to 10€/US$/GBP, or it is always available for free but in anonymised form..

Notes:

- Judgements from the Tax Court, the High Court, the Supreme Court of Appeal and the Constitutional Court are available on the website of the South African Revenue Service (sars.gov.za). However, according to the South African Revenue Service, "Tax Court judgments are supplied here in a sanitized format, i.e. where all client specific information had been taken out from the original judgment" (id.).
- Tax appeals in the first instance are heard either by the Tax Board or the Tax Court, decisions from the Tax Court are published on the website but decisions from the Tax Board are not public (sars.gov.za). However, according to the website of the tax authority: "The Tax Board is established by the Minister of Finance under section 108 of the Tax Administration Act. It is not a court as referred to in section 166 of the Constitution, but an administrative tribunal created under the Tax Administration Act. The Tax Board hears tax appeals involving tax in dispute that does not exceed R1000 000 (equivalent to approximately 60.000 USD) (sars.gov.za).

Sources:

- http://www.sars.gov.za/Legal/DR-Judgments/Pages/default.aspx
- http://www.sars.gov.za/Legal/DR-Judgments/Tax-Court/Pages/default.aspx
- https://www.sars.gov.za/Legal/DR-Judgments/Pages/Dispute-Resolution-Process.aspx

ANTI-AVOIDANCE

Haven Indicator 15: Deduction Limitation of Interest Payments ▲ 100

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: NO: No deduction limitation for intra-group interest payments.

Notes:

- South Africa has different kinds of interest limitation rules (taxcom.org.za). One of them is a fixed ratio rule, namely thin capitalisation based on debt to equity ratio of 3:1. However, the South African Tax Administration has a discretionary power to evaluate and find the amount of debt at arm's length (IBFD 2020b: 10.3). Since discretionary application of thin capitalisation rule rather than automatic reduces leverage of restriction considerably (IMF 2014, p. 5), we consider their interest deduction limitation to be insufficient.

Sources:

- IBFD 2020b
- http://www.taxcom.org.za/docs/New_Folder3/6%20BEPS%20Final%20Report%20-%20Action%204.pdf
- IMF 2014

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: Not applicable

Notes:

- South Africa has a discretionary thin capitalisation regime (IBFD 2020b: 10.3; IMF 2014: 24), that makes their interest deduction limitation to be insufficient. Thus we consider a safe harbour based on worldwide debt-to-equity ratio is not applicable.

Sources:

- IBFD 2020b
- IMF 2014

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: Not applicable

Notes:

- South Africa has a discretionary thin capitalisation regime (IBFD 2020b: 10.3; IMF 2014: 24), that makes their interest deduction limitation to be insufficient. Thus we consider that a financial undertaking exclusion is not applicable.

Sources:

- IBFD 2020b
- IMF 2014

Haven Indicator 16: Deduction Limitation of Royalty Payments ▲ 75

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: YES, RESTRICTED NEXUS or SUBJECT TO TAX HAVEN LISTS: Deduction limitation/disallowance applies only with respect to certain intra-group royalty payments to patent boxes that are not complying with OECD NEXUS rules or to countries listed as tax havens.

Notes:

- In principle, South Africa disallows intra-group royalty payments for intellectual property which was originally developed in South Africa. However, if such royalty payments are subject to withholding taxes, then deduction is allowed up to a limit depending on withholding tax rate. One third of royalty payments can be deducted when the withholding tax rate at least 10% and one half of royalty payments can be deducted when the withholding tax is 15% (IBFD 2020b: 1.4.6). In our view, this approach (i.e. conditioning the deduction of royalty intra-group payments in the implementation of withholding tax payments) corresponds to the same logic of disallowing these payments when they do not comply with the nexus approach.

Sources:

- IBFD 2020b
- http://www.margoip.co.za/royaltyPayments.html

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 South Africa, there is no deduction limitation for intra-group service payments beyond the arm's length principle (IBFD 2020b: 1.4.7; 10.2).

Sources:

- IBFD 2020b

Haven Indicator 18: Withholding Taxes on Dividend Payments ▲ 100

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: 0 %

Notes:

- South Africa levies a 20 per cent withholding tax on dividend payments by South African resident subsidiaries to non-resident parent companies (IBFD 2020b: 7.3.4.1) or "by a non-resident company to a non-resident where the shares in respect of which the dividends are paid are listed on a South African exchange" (PWC 2020a). Thus, there is no withholding tax on dividend payments by a non-resident company to a non-resident where the shares in respect of which the dividends are paid are unlisted on a South African exchange.

Sources:

- IBFD 2020b
- PWC 2020a

Haven Indicator 19: Controlled Foreign Company Rules ▲ 0

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: YES, NON-TRANSACTIONAL: Yes, there are non-transactional CFC rules.

Notes:

- South Africa has CFC rules that are comprehensive but complex. According to the Davis Committee which was appointed by the South African Minister of Finance to make recommendations by taking into account recent domestic and international developments, the reason of the complexity is: "the regime is trying to protect the tax base without unduly interfering with the global competitiveness of South Africa's global listed multinationals" (taxcom.org). The Committee is also of the opinion that "South Africa's CFC rules are very stringent" (Id.), but "(c)countries such as the UK and Netherlands (major competitors in the region) have fairly light CFC regimes" (Id.). And "(c)consideration could be given to adopting a regime similar to that of the UK or Netherlands in order to improve South Africa's tax competitiveness in the long term" (taxcom.org). According to the IBFD, South Africa's current CFC rules may even sometimes override arm's length transactions (IBFD 2020b: 10.4). Thus, we consider the South Africa's CFC regime as non-transactional.

Sources:

- IBFD 2020b
- https://www.taxcom.org.za/docs/New_Folder3/1%20BEPS%20Final%20Report%20-%20Executive%20Summary.pdf

DOUBLE TAX TREATY AGGRESSIVENESS

Haven Indicator 20: Treaty Aggressiveness ▲ 38

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: 37.6261574501479

Global Scale Weight breakdown 0.44%

Inward foreign direct investment (US$)

$ 164,474,875,256

Outward foreign direct investment (US$)

$ 254,954,217,933

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

$ 419,429,093,189

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)

0.443%