Narrative Report on Mauritius

PART 1: NARRATIVE REPORT

Mauritius: The gateway to investing in Africa and Asia

The islands of the Republic of Mauritius lie just 2,000 kilometres off the southeast coast of Africa. Financial secrecy casts a long shadow over its idyllic sandy beaches. Mauritius' double-taxation agreements with forty six nations,[1] eighteen of which are with African states, enables companies and individuals to reduce their tax bills across the world. India and many African nations suffer as a result.

Mauritius' secrecy score of 45 in the Financial Secrecy Index 2020 and its global scale weight of 1.72 per cent reflects the nation's ongoing contribution to illicit financial flows from some of the countries that can least afford to lose tax money. Positioned as the "gateway to Africa,"[2] Mauritius is in the process of ratifying, signing, or negotiating double taxation agreements with a further sixteen African countries.[3] Of its eleven Tax Information Exchange Agreements, none are signed with African jurisdictions. These Information Exchange Agreements allow for the exchange of financial accounting and investment information between countries as part of a package of anti-tax avoidance and evasion measures.

The Mauritian 'miracle': From sugar to secrecy

In 1968, at the time of independence from the British, Mauritius was a mono-crop sugar economy.[4] Today, financial intermediation is a key driver of the economy.[5] In 2017, financial and insurance activities contributed 12 per cent to GDP and this has been growing at over 5 per cent per annum since 2015.[6] In contrast, the sugar sector continues to contract and is now just 0.4 per cent of the economy.[7]

In the 1970s export processing zones (EPZs) were established within the jurisdiction with the aim of encouraging export-led industrialisation and economic diversification.[8] The EPZs offered concessions to foreign investors. Duty exemptions on imported raw materials and free repatriation of capital, profits and dividends lured in investors, and similar terms persist today.[9]

The 1988 Banking Act laid the foundation for Mauritius's offshore industry, while the 1992 Mauritius Offshore Business Activities Act established the country as an 'international financial centre.'[10] Over twenty thousand global business companies were registered in Mauritius in 2017, managed by the Financial Services Commission.[11] It is noteworthy that thirty of the hundred largest US incorporated companies have entities present in Mauritius.[12] Although these global business companies may be registered in Mauritius, they continue to conduct most business outside the island. Just over half of these ("category 1" companies) are resident for tax in Mauritius and can access tax treaties the country has signed.[13]

Mauritius levies a general corporate tax rate of 15 per cent, but no capital gains tax and no withholding tax on interest and royalties for global business companies. A series of tax incentives are also given, including an eight-year tax holiday for companies with a global headquarters administration licence, which was set up in 2016[14] to

Rank: 51 of 133

How Secretive? 72

Moderately secretive	0 to <25
	25 to <50
	50 to <75
Exceptionally secretive	75 to 100

How big? 0.03%

huge · large · small · tiny

huge: >5% large: >1% to 5% small: >0.1% to 1% tiny <0.1%

Mauritius accounts for 0.03 per cent of the global market for offshore financial services. This makes it a tiny player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit

http://www.financialsecrecyindex.com.

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If you have any feedback or comments on this report, contact us at info@taxjustice.net encourage companies to relocate their headquarters to Mauritius, where it is required to have a physical presence and at least 10 employees.[15] The 'incentives' package is sweetened further by the absence of foreign exchange controls, thin capitalisation rules, and controlled foreign company legislation.[16]

In the past, it was highly profitable for capital investment to India to be routed via Mauritius. But it is no longer as attractive following the revision of the Double Taxation Avoidance Treaty between India and Mauritius. In 1982 Mauritius-India tax treaty gave Mauritian residents a capital gains exemption in India and Mauritius' capital gains tax is zero. But it is no longer as attractive following the 2016 revision of the Double Taxation Avoidance Treaty between India and Mauritius.[17] It is of little surprise then that Mauritius is diversifying its customer base for financial services. According to the 2017 African Economic Outlook, East Africa is a target. Mauritian companies invested US $50 million in the Kenyan economy in 2016 alone[18] — more than 10 per cent of total foreign direct investment.[19]

Missing public money

Recent revelations in the Paradise Papers[20] build on other tales of the role Mauritius plays in the offshore secrecy world. More than half a million of the 13.4 million secret records obtained by the International Consortium of Investigative Journalists from offshore law firm Appleby came from its Mauritius office. Many stories showed how companies and individuals use the network of tax treaties and low tax regime in Mauritius to reduce their tax bill.[21]

Swiss-Angolan financier, Jean-Claude Bastos de Morais, for example, used Appleby's Mauritius office to incorporate companies in Mauritius and other secrecy jurisdictions to direct money from Angola's sovereign wealth fund, which he manages, to investment projects in which he has a stake.[22] And Yale University was advised by Appleby to invest US $100 million in India via Mauritius to avoid capital gains tax in either country.[23]

A zero-per cent capital gains tax draws investors like Yale to utilise Mauritius as a conduit for investment.[24] Because of the use (and abuse) of Mauritian tax treaties and without suitable anti-avoidance clauses, government revenues in other countries have taken a hit. In response, some countries, including India, Rwanda[25] and South Africa[26], have renegotiated treaties to mitigate their impact.[27] In the past four years, all four of these countries signed new treaties, but other efforts have not always met with success.

The Indian Supreme Court, for example, has ruled in favour of taxpayers on several occasions when the country's tax treaty with Mauritius was used to avoid taxes in India. At the turn of the century, in a case of treaty shopping (where a resident of a third country takes advantage of a treaty between two contracting states) the court ruled that India benefits from increased foreign direct investment as a result of the India-Mauritius tax treaty and that the "loss of revenue could be insignificant compared to the other non-tax benefits to the economy."28 The court found that a taxpayer is granted "the right to implement tax treaty shopping schemes that produce double non-taxation outcomes" since the treaty contains no anti-avoidance clauses in the treaty and since domestic laws did not apply to the case.29

India's Ministry of Finance reported in 2013 that the country lost US $600 million annually in revenue through 'roundtripping' (the practice of illicitly shifting capital offshore - typically through fraudulent invoicing or other profits shifting techniques - and then routing it back to the source country disguised as foreign direct investment) associated with its treaty with Mauritius.[30] Companies from all over the globe 'set up shop' in Mauritius to invest in India because of the 1982 tax treaty (see above), thus paying no capital gains tax anywhere. Intended for foreign investment, Indian individuals and domestic companies took advantage of the treaty by channelling their domestic funds through Mauritius to avoid capital gains tax. About 10 per cent of inflows to India between 2004 and 2009 were attributed to roundtripping.[31] These cases provided some impetus for the government to act.

India's new 2016 tax treaty with Mauritius now gives India the right to tax capital gains by investors on shares of Indian companies.[32] This, however, has led companies to use jurisdictions like Singapore, ranked 5 in the 2020 Financial Secrecy Index and where India still has tax treaties that exempt them from capital gains taxes.[33]

In the case of South Africa, it successfully renegotiated an improved tax treaty with Mauritius two years before India. The South African government introduced provisions to enable the collection of capital gains tax and withholding tax that had not been possible under the earlier treaty. South Africa's own ambitions to become a conduit for international capital into the rest of Africa may have also prompted the treaty renegotiation.34

At present, Lesotho and Zambia are renegotiating agreements with Mauritius in a bid to address some of these similar concerns. A study by ActionAid in 2013 suggested that the Zambian subsidiary of the global food giant Associated British Foods paid a third of its pre-tax profits (over US $13.8 million) out of Zambia through sister companies in secrecy jurisdictions, including Mauritius, reducing taxable profits and avoiding withholding taxes normally levied on foreign payments.[35]In 2014, Tax Justice Network Africa sued the Kenyan cabinet secretary to the treasury, the Kenya Revenue Authority and the attorney-general, challenging the constitutionality of the Kenya-Mauritius Double Taxation Avoidance Agreement signed in 2012.[36] The High Court of Kenya agreed with Tax Justice Network Africa that proper procedures had not been followed and that the treaty was unconstitutional.[37] Kenya and Mauritius signed a new agreement in October 2019 that will "it will enable investors to enjoy more favourable tax rates than what is applied under the domestic law," according to Mauritius.[38]

The risk of revenue lost from current and future treaties with Mauritius is high. For African jurisdictions, where treaties do not have anti-abuse clauses and do not have automatic exchange-of-information provisions as is the case for many existing ones, the risk of lost revenue. is especially high.

Reforms that don't help the neighbours

Mauritius' reform efforts have not been swift and comprehensive enough.[39] Mauritius signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) in 2017. This is geared to stop tax avoidance by multinational companies through inserting anti-abuse measures in existing tax treaties without requiring renegotiation. This is more evident in principle than in practice.

Mauritius has left out almost half of its treaty relationships from the list of preference countries for treaty modifications. This means Mauritius would have to renegotiate these treaties bilaterally if the MLI anti-abuse measures are to be introduced. Many of those excluded are other African nations. And Mauritius has opted not to apply the 'principle purpose' test[40] — the most effective anti-treaty-abuse clause — to agreements that fall outside its list of preference countries. In addition, Mauritius has chosen to express many reservations about the MLI provisions, including those on strengthening provisions around capital gains tax so these will not be included even in the modifications of treaties under the MLI.[41]

This half-hearted approach reflects Mauritius' ongoing efforts to maintain and consolidate its position as an international financial centre. Its focus on the African continent is increasing the exposure of Africa to illicit financial flows.[42]

That was shown in vivid detail in July 2019 when the International Consortium of Investigative Journalists and partners published the Mauritius Leaks based on 200,000 documents from the Mauritius office of Conyers Dill & Pearman, an offshore-law firm based in Bermuda.[43] The reports showed how companies used Mauritius to avoid taxes in other countries, especially in Africa, the Middle East and Asia.[44]

In December 2017, the EU put Mauritius on its so-called grey list of countries that have committed to make their tax rules compliant with EU standards but have yet to do so. Mauritius passed new legislation imposing economic substance requirements for corporations and new transfer-pricing rules.[45] In October 2019, the EU removed Mauritius from the list, saying that it was no longer non-compliant. The International Monetary Fund, however, included Mauritius in a September 2019 report on "phantom investments," writing that "Empty corporate shells in tax havens undermine tax collection in advanced, emerging market, and developing economies."[46]

In 2020 the United Nations Independent Expert on foreign debt and human rights will conduct a country visit to Mauritius at the invitation of the Government. The Independent Expert's visit will focus on a range of issues "including, but not limited to, the impact of public debt, economic reforms, tax and fiscal policies, illicit financial flows and the realization of human rights." [47]

Endnotes

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Mauritius

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 54 — 1. Banking Secrecy
- 100 — 2. Trust and Foundations Register
- 100 — 3. Recorded Company Ownership
- 100 — 4. Other Wealth Ownership
- 100 — 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 100 — 6. Public Company Ownership
- 100 — 7. Public Company Accounts
- 100 — 8. Country-by-Country Reporting
- 75 — 9. Corporate Tax Disclosure
- 100 — 10. Legal Entity Identifier

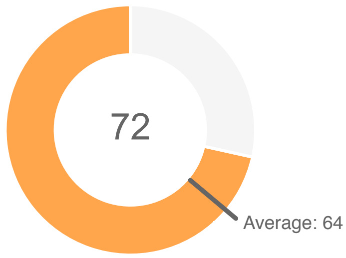
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 50 — 11. Tax Administration Capacity
- 75 — 12. Consistent Personal Income Tax
- 100 — 13. Avoids Promoting Tax Evasion
- 100 — 14. Tax Court Secrecy
- 50 — 15. Harmful Structures
- 50 — 16. Public Statistics

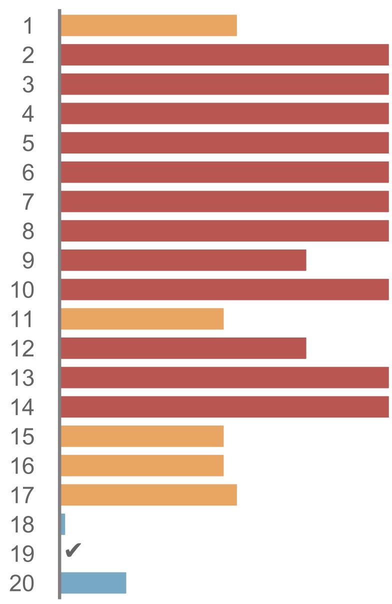
INTERNATIONAL STANDARDS AND COOPERATION

- 54 — 17. Anti-Money Laundering
- 2 — 18. Automatic Information Exchange
- 0 — 19. Bilateral Treaties
- 21 — 20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click here to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financialsecrecyindex.com.