Narrative Report on Mauritius

PART 1: NARRATIVE REPORT

Overview

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 the idyllic sandy beaches. In entering double taxation agreements with 43 nations,[1] 16 of which are African states, Mauritius enables companies and individuals to reduce their tax bill across the world. India and many African nations suffer as a result.

Mauritius' secrecy score of 72.35 in the Financial Secrecy Index 2018 reflects the nation's ongoing contribution to illicit financial flows from some of the countries that require the public finances the most. Positioned as the 'gateway to Africa',[2] Mauritius is in the process of ratifying, signing, or negotiating double taxation agreements with a further 14 African countries.[3] Of its 11 Tax Information Exchange Agreements, none are signed with African jurisdictions.

The Mauritian 'miracle': from sugar to secrecy

At independence from the British in 1968, Mauritius was a mono-crop sugar economy.[4] Today, financial intermediation rather than the primary commodity sector is a key driver of the economy.[5] In 2017, financial and insurance activities contributed 12.3% to GDP and this has been growing at over 5% per annum since 2015.[6] In contrast, the sugar sector continues to contract.

To encourage export-led industrialisation and economic diversification, export processing zones were set up in Mauritius in the 1970s[7] with 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.[8]

The 1988 Banking Act laid the foundation for Mauritius' offshore industry, while the 1992 Mauritian Offshore Business Activities Act established the country as an 'international financial centre'.[9] Over 20,000 global business companies were registered in Mauritius in 2017, managed by the Financial Services Commission.[10] Even 30 of the 100 largest US incorporated companies have entities present in Mauritius.[11] Global business companies may be registered in Mauritius, but they conduct most business outside the island. Just over half of these ('category 1') are resident for tax in Mauritius so can access tax treaties the country has signed.[12]

The island state levies a general corporate tax rate of 15%, 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 8-year tax holiday for companies with a global headquarters administration licence. The package is sweetened further by the absence of foreign exchange controls, thin capitalisation rules, and controlled foreign

Rank: 49

Chart 1 - How Secretive? 72 Secrecy Score

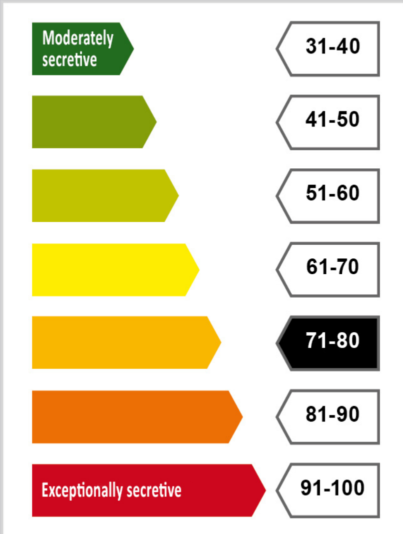
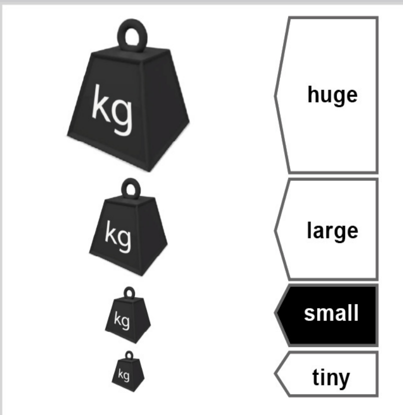


Chart 2 - How Big?



Mauritius accounts for less than 1 per cent of the global market for offshore financial services, making it a small player compared with other secrecy jurisdictions.

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

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

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

If you have any feedback or comments on this report, contact us at info@taxjustice.net company legislation.[13]

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. 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; USD 50 million was invested in the Kenyan economy by Mauritian companies in 2016 alone[14], over 10% of total FDI.[15]

Missing public money

Recent revelations in the Paradise Papers[16] 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 from offshore law firm Appleby that were investigated by over 90 media partners spearheaded came from Appleby's Mauritius office. Many, many stories emerged of the way companies and individuals use the network of tax treaties and low tax regime in Mauritius to reduce their tax bill.[17]

Swiss-Angolan financier, Jean-Claude Bastos de Morais, for example, was helped by Appleby's Mauritius office to incorporate companies in Mauritius and other secrecy jurisdictions to direct some of the public money from Angola's sovereign wealth fund that he manages to investment projects in which he has a stake.[18] And Yale University was advised by Appleby to invest USD 100 million in India via Mauritius without being subject to capital gains tax in either country.[19]

Zero-percent capital gains tax has been one of the drivers for the use of Mauritius's tax treaties by investors like Yale.[20] 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 China, India, Rwanda, and South Africa, have tried to take on the treaties and their impact. In the past four years, all four countries signed new treaties, but other efforts have not always met with success.

The Indian Supreme Court, for example, has ruled in favour of tax payers on several occasions where the Mauritian tax treaty 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 Supreme Court ruled in favour of the tax payer on legal and economic grounds. The court ruled in the case of the *Union of India v Azadi Bachao Andolan* that India has benefitted 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'.[21] The court found that given the absence of anti-avoidance clauses in the treaty and the non-application of domestic provisions to the case that a taxpayer right is granted: 'the right to implement tax treaty shopping schemes that produce double non-taxation outcomes'.[22]

India's Ministry of Finance reported in 2013 that the country lost USD 600 million annually in revenue through round tripping associated with its treaty with Mauritius.[23] Companies set up shop in Mauritius to invest in India as the old 1982 Mauritius-India tax treaty gave Mauritian residents capital gains tax exemption in India – and Mauritius' capital gains tax is zero percent. Companies paid 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% of inflows to India between 2004 and 2009 were attributed to roundtripping.[24] These cases provided some impetus for the government to act.

India's new tax treaty with Mauritius of 2016 now gives India rights to tax capital gains by investors on shares of Indian companies.[25] However, this has led to a diversion of companies to jurisdictions like Singapore, where India still has tax treaties with capital gains exemption.[26]

South Africa successfully renegotiated an improved tax treaty with Mauritius a couple of years before India, also introducing provisions to enable the collection of capital gains tax and withholding tax that were not 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.[27]

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 group paid a third of its pre-tax profits (over USD13.8 million) out of Zambia through sister companies in secrecy jurisdictions including Mauritius, reducing taxable profits and avoiding withholding taxes normally levied on foreign payments.[28]

In 2015, Tax Justice Network Africa sued the Kenyan Cabinet Secretary to the Treasury, Kenya Revenue Authority and the Attorney-General, challenging the constitutionality of the Kenya/Mauritius Double Taxation Avoidance Agreement signed in 2012.[29] The risk of revenue lost from current and future treaties with Mauritius is high, particularly 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.

Reforms that don't help the neighbours

Mauritius' reform efforts have not been swift and comprehensive enough. 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 better in principle than 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 anti-abuse measures are to be introduced. Many of those excluded are other African nations. And Mauritius has opted to not apply the principle purpose test – the most effect 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.[30]

This half-hearted approach reflects Mauritius' ongoing efforts to maintain and consolidate its position as international financial centre. Its focus on the African continent is increasing the exposure of Africa to illicit financial flows.[31]

Rachel Etter-Phoya, Anglophone Africa Hub Researcher, Tax Justice Network

Endnotes:

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PART 2: MAURITIUS' SECRECY SCORE

OWNERSHIP REGISTRATION

- 60% 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
- 50% 9. Corporate Tax Disclosure
- 100% 10. Legal Entity Identifier

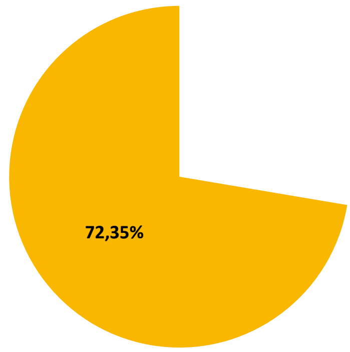
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 63% 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

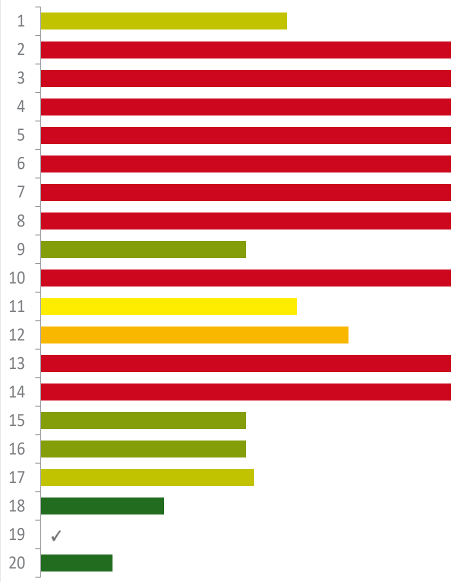
INTERNATIONAL STANDARDS AND COOPERATION

- 52% 17. Anti-Money Laundering
- 30% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 18% 20. International Legal Cooperation

Mauritius - Secrecy Score



Mauritius KFSI-Assessment Secrecy Scores



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click here to see our full methodology).

The secrecy score of 72 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail by clicking on the name of the indicator.

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

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 30.09.2017.

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