

# NARRATIVE REPORT ON SOUTH AFRICA



## PART 1: NARRATIVE REPORT

South Africa’s secrecy score of 56 is the second lowest secrecy score of the fifteen African jurisdictions included in the Financial Secrecy Index 2020. Yet its global significance is such that it is the greatest of the African countries, reflecting the relative size of South Africa’s economy; and its position in the FSI ranking is 58, being in the seventh position among African countries.

### State capture and the state of secrecy

Secrecy undermines South Africa’s own tax base. The country’s elite, and South African and foreign multinational companies within its borders exploit weaknesses in legislation and use other secrecy jurisdictions to reduce their tax obligations in a country with deep inequality.

The entanglement of business and state interests and the use of secrecy jurisdictions dates to Apartheid-era sanctions busting in which many countries were complicit.<sup>1</sup> The ensnaring of the state by business interests did not stop with the end of the Apartheid regime. In fact, the recent ‘Gupta Leaks’ reveal the extent of what is described by some South Africans, including former Public Protector Thuli Madonsela, as state capture.<sup>2</sup>

### Capital flight from South Africa and by South African companies

South African finance ministers have not shied away from calling out the problem of capital flight. In the 2016 Budget Speech, then [Finance Minister Pravin Gordhan said](#):

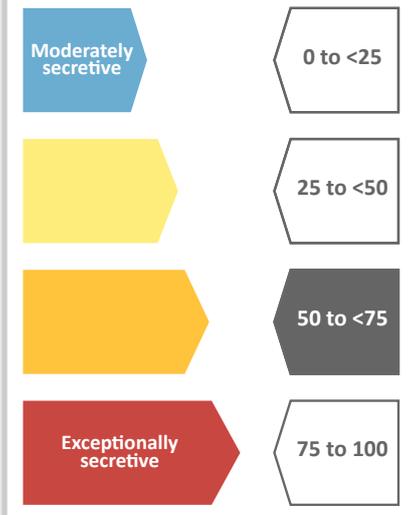
“We will continue to act aggressively against the evasion of tax through transfer pricing abuses, misuse of tax treaties and illegal money flows. Drawing on the work of the OECD, the G20 joint project on base erosion and profit shifting and independent bodies such as the Tax Justice Network, further measures will be taken to address such revenue losses, including inappropriate use of hybrid debt instruments”.<sup>3</sup>

The South African Revenue Service has indicated that the country is at [very high risk of illicit financial flows](#), and particularly transfer pricing, and that some of the largest companies listed on the Johannesburg Stock Exchange, including SAB Miller and Anglo American, have been implicated in tax avoidance stories relating to other countries.<sup>4</sup> According to [South African civil society](#) group African Monitor the country’s legal and regulatory framework for anti-money laundering from criminal activity and counter-terrorist financing is robust, but “there is little focus on other forms of illicit financial flows, especially those perpetrated by the multinationals”.<sup>5</sup>

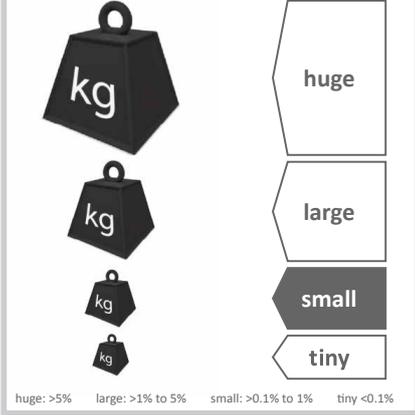
A [study](#)<sup>6</sup> produced by the United Nations Conference on Trade and Development (UNCTAD) attempted to place a value on the loss through trade misinvoicing in the primary commodity sector, including in South Africa’s gold industry. [Trade misinvoicing](#) is, “a form of money laundering that involves deliberately misreporting (on an invoice to customs) the value of a commercial transaction, so as to shift money illicitly across borders”.<sup>7</sup> Firms may be engaging in trade misinvoicing to

**Rank: 58 of 133**

**How Secretive?** **56**



**How big?** **0.19%**



South Africa accounts for 0.19 per cent of the global market for offshore financial services. This makes it a small 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>.  
 The FSI project has received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No 727145.  
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take advantage of tax incentives aimed at promoting exports, to circumvent currency controls, or to circumvent bureaucratic hurdles.<sup>8</sup>

According to [UNCTAD](#), total misinvoicing of gold exports to South Africa's leading trading partners totalled \$113.6 billion between 2000 and 2014.<sup>9</sup> [The report](#) sparked significant debate and criticism,<sup>10</sup> including about whether [trade data](#) between two trading partners can be used to quantify trade misinvoicing given deliberate manipulation,<sup>11</sup> genuine errors, or differences in reporting rules, and that discrepancies do not necessarily point to intended tax evasion<sup>12</sup> – so much so that [UNCTAD revised some of its findings](#).<sup>13</sup> Curiously, between the release of the initial report and the revised version, [South Africa's Department of Trade and Industry changed its export statistics](#) and methodology, making it difficult to calculate the discrepancies with any certainty.<sup>14</sup>

The debate underscores the need for harmonising and improving customs data reporting especially for major exporters like South Africa which are at [highest risk of illicit flows](#), as well as data for customs and transit trade through key commodity hubs, especially Switzerland and the Netherlands, where the lack of transparency affects the levels of illicit financial flows from other countries.<sup>15</sup> An [earlier study](#) on the diamond sector drew similar conclusions that transparency in reporting of production and value,<sup>16</sup> realised prices, intra-company sales and loans is required for a clear assessment of potential tax losses from the mining sector.

South Africa has taken action to protect its tax base including renegotiating its [double taxation agreement with Mauritius](#).<sup>17</sup> And more recently it has introduced country-by-country reporting, implementing the Action 13 report of the OECD/G20 Base Erosion and Profit Shifting projects, with multinational enterprises required to file their [first reports](#) by end of February 2018.<sup>18</sup> However, this information is not available to the public and will only be exchanged with tax authorities.

South African companies which have an increasing footprint across sub-Saharan Africa are also complicit in draining the coffers of other African nations. Telecoms giant MTN – the largest cell phone company on the continent in terms of subscribers – has [shifted billions](#) of Rand, for example, to its subsidiaries in Ghana, Nigeria and Uganda through Mauritius.<sup>19</sup> These countries have responded by freezing payments and Uganda has notified the company of outstanding taxes owed.

South Africa's compliance with worldwide country-by-country reporting standards for companies incorporated or listed in South Africa will make it easier for tax authorities in other countries to identify potential risks to their revenue and collect evidence to address corporate tax abuse. Yet for many nations in the region, the introduction of the reporting standard is of little help. Most African countries have not signed the [Multilateral Competent Authority Agreement](#) on the Exchange of Country-By-Country Reports and do not have bilateral agreements with South Africa so information reported by multinationals that have a footprint in their country will remain out of reach.<sup>20</sup>

### The state of capture

In 2017, the [Financial Intelligence Centre Amendment Act](#) was passed and came into force.<sup>21</sup> This has tightened regulation around beneficial ownership disclosure to address, among other issues, the use of shell companies in fraudulently accessing government tenders. It prevents organisations from entering a business relationship with a client when [ultimate beneficial owners](#) cannot be identified.<sup>22</sup> South Africa has yet to implement a public beneficial ownership register in open data format, which is a commitment in its [third Open Government Partnership National Action Plan 2016-2018](#) specifically to target fraud in public procurement.<sup>23</sup> However, as of December 2019, there was no indication that beneficial ownership information had to be registered in South Africa.<sup>24</sup>

However, in some cases, even when beneficial owners have been known, government has entered contracts with companies owned by politically exposed persons and those that make use of secrecy jurisdictions. Most notorious in the last couple of years has been a series of questionable relationships and business transactions between various government departments, politicians, and the Gupta family. For example, the [Gupta Leaks](#)<sup>25</sup> have shown how [the Guptas use of shell companies](#) in the United Arab Emirates (UAE) has allowed them and their associates to move “the dubious proceeds of state tenders in South Africa to their collection of shell companies in and around Dubai”.<sup>26</sup>

In July 2017, it was reported that the family also sought advice on how to “move tens of billions of rands to the United Arab Emirates [...] The timing of the inquiries suggests they wanted to ensure they benefited from a [new treaty](#) between South Africa and the Middle Eastern tax haven without being heavily penalised by local authorities”.<sup>27</sup> This treaty has been described by tax professionals in

South Africa as ‘unusual’ since it prevents the South African Revenue Service from taxing high net worth individuals on global assets and income if they are UAE residents. Under UAE law, a tax resident includes anyone who [holds a three-year residency permit](#) and Gupta family members as well as their business associate and son of President Jacob Zuma, Duduzane Zuma, are tax residents.<sup>28</sup>

Yet these challenges go beyond the Gupta family and may lie at the heart of inequality and corruption in South Africa today. In the wake of the Panama Papers in 2016, in which over 2,000 South African companies and individuals were named, the South African government introduced a [voluntary disclosure programme](#) to allow South Africans to disclose offshore assets or face potential investigation by the South African Revenue Services, even if the offshore jurisdiction allows secrecy.<sup>29</sup> Yet more recently, in November 2017, more than 500 companies and individuals, including Spar and SABMiller, [were named](#) in the Paradise Papers which included over 13.4 million files from offshore law firm Appleby that the International Consortium of Journalists and over 90 media house worked through.<sup>30</sup>

The files revealed mining company Lonmin’s use of a subsidiary Western Metal Sales in secrecy jurisdiction Bermuda, facilitated by Appleby. The company, South African Police Service and [Cyril Ramaphosa](#), who was a Lonmin director and shareholder and is now the newly elected president of the African National Congress, have faced investigations as well as public outcry over the murder of 34 mine workers involved in a peaceful strike at Lonmin’s Marikana Platinum Mine.<sup>31</sup>

Following this unconscionable event and several years before the Paradise Papers, South African civil society group, the Alternative Information and Development Centre, showed that contrary to Lonmin’s claims that it did not have enough money to finance the 5,500 houses they were obligated to build according to the terms of their mining licence, the company was using its [Bermudan subsidiary](#) to shift profits.<sup>32</sup> The practice was not put to an end sooner, because, [claimed](#) Lonmin, “it was blocked by its black economic empowerment partner Incwala – a company controlled by Ramaphosa’s Shanduka Group”.<sup>33</sup>

Secrecy in South Africa and secrecy jurisdictions used by the country’s elite and multinational companies hurt the nation. If left unchecked, it will continue to allow a cosy relationship between capital and politics that undermines democracy and

the rule of law.

### Endnotes

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- 9 UNCTAD 2016, 'Trade Misinvoicing in Primary Commodities in Developing Countries: the cases of Chile, Cote d'Ivoire, Nigeria, South Africa and Zambia', p. 28, [http://unctad14.org/Documents/UNCTAD\\_SUC\\_2016\\_2\\_en\\_Advance\\_Copy.pdf](http://unctad14.org/Documents/UNCTAD_SUC_2016_2_en_Advance_Copy.pdf); 24.1.2020.
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- 11 Transactions may be triangulated, using an intermediary (with or without substance) located in a third country, that would allow to under price the exports in a high tax country and shift the profits through the intermediary country. The estimation of trade misinvoicing using the country-partner methodology would thus include possible trade mispricing as well. See Grondona, V.; Burgos, M. (2015) 'Fuga de Capitales VI, Argentina 2015, Estimación de los precios de transferencia. El caso del complejo sojero', Working Document 71, CEFID-AR, July 2015, in <http://www.iade.org.ar/noticias/estimacion-de-los-precios-de-transferencia-el-caso-del-complejo-sojero>; 28.1.2020.
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- 25 For further information, see <http://www.gupta-leaks.com/>; 24.1.2020.
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- 27 <https://www.timeslive.co.za/sunday-times/investigations/2017-07-22-guptas-see-to-shift--billions/>; 24.1.2020.
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# SOUTH AFRICA

## PART 2: SECRECY SCORE

### OWNERSHIP REGISTRATION

- 26 1. Banking Secrecy
- 38 2. Trust and Foundations Register
- 100 3. Recorded Company Ownership
- 50 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
- 94 9. Corporate Tax Disclosure
- 100 10. Legal Entity Identifier

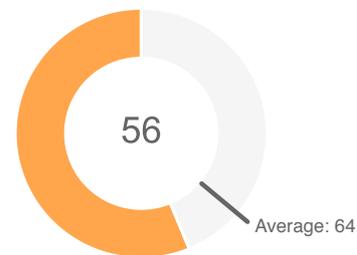
### INTEGRITY OF TAX AND FINANCIAL REGULATION

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

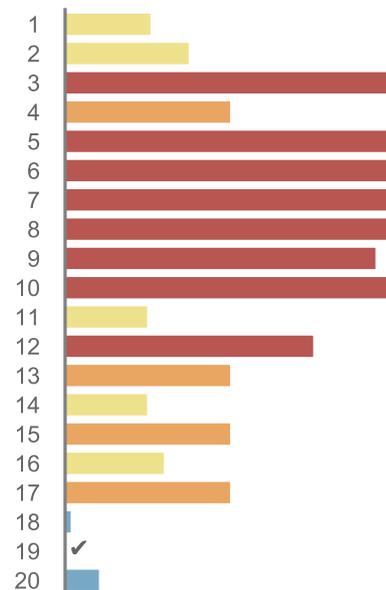
### INTERNATIONAL STANDARDS AND COOPERATION

- 50 17. Anti-Money Laundering
- 2 18. Automatic Information Exchange
- 0 19. Bilateral Treaties
- 11 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.financialsecrityindex.com/database>.

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