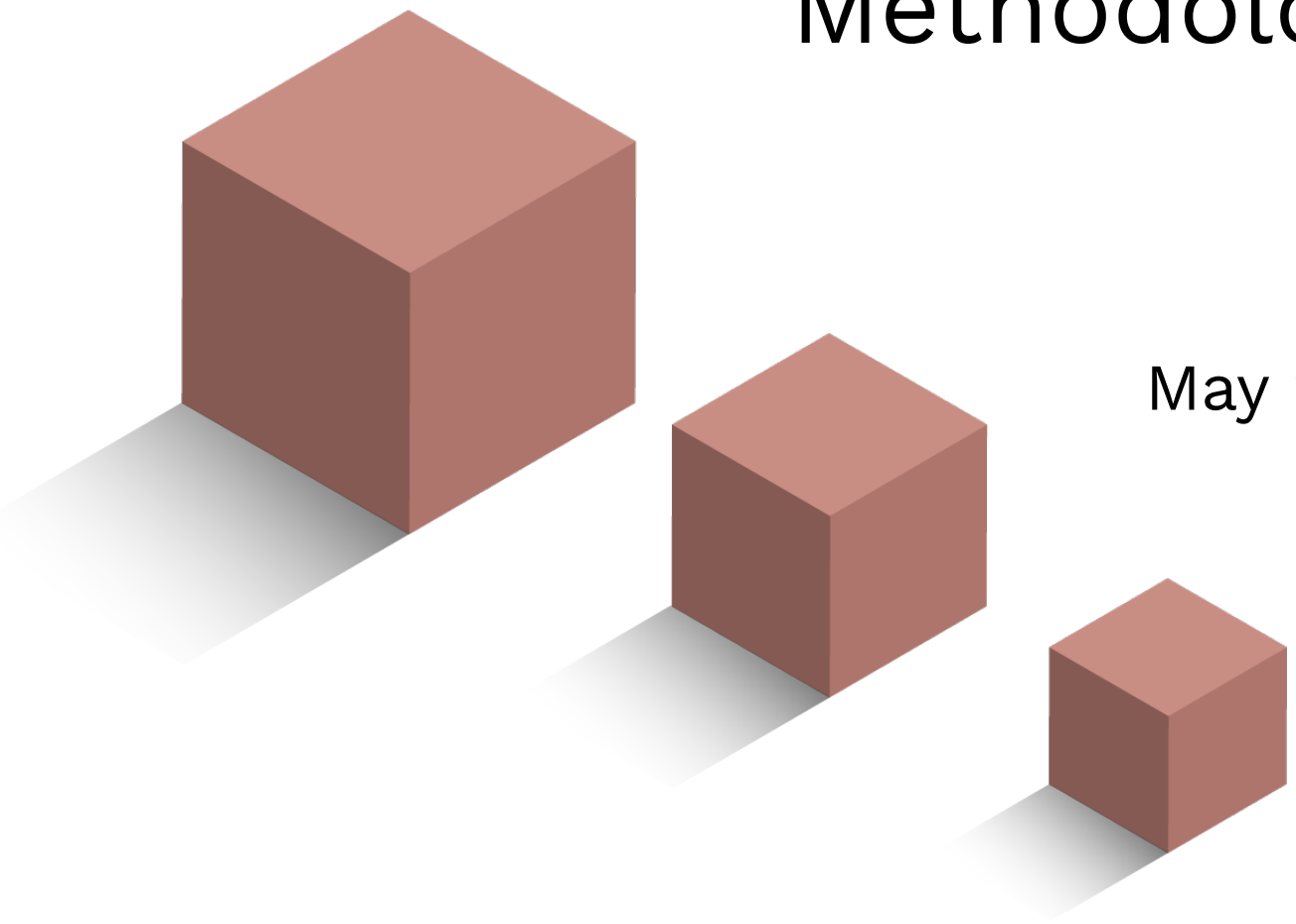
Financial Secrecy Index 2022

Methodology

May 2022



TAX JUSTICE NETWORK

Abstract

This paper explains the construction of the qualitative and quantitative components of the Financial Secrecy Index 2022. The qualitative component is composed of 20 Secrecy Indicators. The paper explains what each measures, including any methodological changes since Financial Secrecy Index 2020, what the underlying data sources are, and how the overall secrecy scores are calculated. Questions of research principles and process are also addressed. With respect to the quantitative component, the underlying data sources and methods for data extrapolation are explained. The combination of the qualitative and quantitative components is then detailed. Finally, the Annex provides the quantitative datasets used for the calculation of the Financial Secrecy Index 2022.

Acknowledgements

This paper is based to some extent on materials published in 2009, 2011, 2013, 2015, 2018 and 2020 on fsi.taxjustice.net and on some occasions uses its text without explicitly highlighting this fact. It is deemed appropriate since the authorship is broadly the same. The creation of the Financial Secrecy Index 2022 and its methodology was a team effort by far too many experts to thank individually, and we are grateful to all. Closely involved in drafting (parts) of this methodology were Alex Cobham, Andres Knobel, Daniel Figueroa, Eva Danzi, Florencia Lorenzo, Idriss Linge, Layne Hofman, Leyla Ateş, Lucas Millán-Narotzky, Markus Meinzer, Miroslav Palanský, Moran Harari, Rachel Etter-Phoya, and Shanna Lima.

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Summary

The Financial Secrecy Index (FSI) uses a combination of qualitative data and quantitative data to create a measure of each jurisdiction's contribution to the global problem of financial secrecy.

Qualitative data based on laws, regulations, cooperation with information exchange processes and other verifiable data sources, is used to prepare a **secrecy score** for each jurisdiction.

Secrecy jurisdictions with the highest secrecy scores are more opaque in the operations they host, less engaged in information sharing with other national authorities and less compliant with international norms relating to combating money-laundering. Lack of transparency and unwillingness to engage in effective information exchange makes a secrecy jurisdiction a more attractive location for routing illicit financial flows and for concealing criminal and corrupt activities.

Quantitative data is then used to create a **global scale weighting** for each jurisdiction, according to its share of offshore financial services activity in the global total. To do this, we have used publicly available data about the trade in international financial services of each jurisdiction. Where necessary because of missing data, we follow International Monetary Fund methodology to extrapolate from stock measures to generate flow estimates. Jurisdictions with the largest weighting are those that play the biggest role in the market for financial services offered to non-residents.

The secrecy score is cubed and the weighting is cube-rooted before being multiplied to produce a **Financial Secrecy Index** which ranks secrecy jurisdictions according to their degree of secrecy and the scale of their trade in international financial services.

A jurisdiction with a larger share of the offshore finance market, and a high degree of opacity, may receive the same overall ranking as a smaller but more secretive jurisdiction. The reasons for this are clear – the ranking reflects not only information about which are the most secretive jurisdictions, but also the question of scale (ie the extent to which a jurisdiction's secrecy is likely to have global impact).

In this way, the Financial Secrecy Index offers an answer to the question: by providing offshore financial services in combination with a lack of transparency, how much damage is each secrecy jurisdiction responsible for?

Critics have argued that scale unfairly emphasises large financial centres. However, to dispense with scale risks ignoring the big elephants in the room. While large players may be slightly less secretive than other jurisdictions, their greater financial sector size offers far more opportunities for illicit financial flows to hide. Therefore, the larger a jurisdiction's international financial sector becomes, the greater its responsibility to ensure appropriate regulation and transparency. This logic is reflected in the Financial Secrecy Index and it therefore avoids the conceptual pitfalls of "tax haven" lists, which tend to focus on smaller players – often remote islands whose overall share in global financial markets is tiny.

Although it lacks a consistent and agreed definition, the term "tax haven" continues to dominate political and academic debates around issues of offshore tax evasion and illicit financial flows. However, in a world where economies are deeply integrated across borders and where more than 200 tax jurisdictions exist, "virtually any country might be a 'haven' in relation to another".[1] Arguably, the lack of clarity, consistency and objectivity in defining and identifying tax havens has contributed to a failure to counter the associated problems.[2]

The Financial Secrecy Index provides a (partial) remedy to this problem by replacing the term "tax haven" with the term "secrecy jurisdiction". We define the latter as a jurisdiction which "provides facilities that enable people or entities to escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool".[3]

We emphasise that a secrecy jurisdiction is not a natural phenomenon that is, or is not, observable. Rather, we find that all countries may have some attributes of secrecy jurisdictions, ranging from highly secretive to (in theory) perfectly transparent. Based on those premises, we develop a set of 20 verifiable indicators (Secrecy Indicators, SI(s)) which allow an assessment of the degree to which the legal and regulatory systems (or their absence) of a country contribute to the secrecy that enables illicit financial flows. Each indicator has a secrecy ranging from 0 points (full transparency) to 100 points (full secrecy). The average secrecy score of these 20 indicators is the compound secrecy score allocated to each jurisdiction. In the Financial Secrecy Index 2022, the compound secrecy scores vary between 35.87 points on the low end (Slovenia) and 80.87 points (Vietnam) on the high end of the spectrum.

The Financial Secrecy Index has one core objective: it measures a jurisdiction's contribution to global financial secrecy in a way that highlights harmful secrecy

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[1] Sol Picciotto. *International Business Taxation. A Study in the Internationalization of Business Regulation*. Electronic Re-Publication. London: Weidenfeld and Nicolson, 1992. URL: https://taxjustice.net / cms / upload / pdf / Picciotto % 201992 % 20International % 20Business % 20Taxation . pdf (visited on 06/05/2022), p.132.

[2] Alex Cobham et al. 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy'. *Economic Geography*, 91(3) (2015), pp. 281–303; Markus Meinzer. 'Towards a Common Yardstick to Identify Tax Havens and to Facilitate Reform'. In: *Global Tax Governance – What Is Wrong with It, and How to Fix It*. Ed. by Thomas Rixen and Peter Dietsch. Colchester: ECPR Press, 2016, pp. 255–288.

[3] The Tax Justice Network prefers the term secrecy jurisdiction over tax haven but sometimes uses both interchangeably. See sources in footnote 2 for a thorough discussion of the terminology.

regulations. By doing so, the index contributes to and encourages research by collecting data and providing an analytical framework to show how jurisdictions facilitate illicit financial flows. Second, it focuses policy debates among media and public interest groups by encouraging and monitoring policy change globally towards greater financial transparency.

The Financial Secrecy Index 2022 is the seventh edition after biennial releases in 2009, 2011, 2013, 2015, 2018, and 2020.[4] Since its first release, the index enjoys a high international media profile and has been widely adopted for a broad range of practical purposes (from the Italian central bank and the Basel Anti-Money Laundering Index, to a number of private sector risk/rating agencies), and increasingly in academic research.[5]

In 2022, country coverage was increased to 141 jurisdictions from the 2020 edition. We have made several methodology changes to some of the indicators and implemented a set of an internal cross-indicator consistency criteria, in line with the process we applied for the Corporate Tax Haven Index. All the changes are explained in detail in the next Chapter.

Overall, the changes to the content, structure and emphasis of the secrecy indicators are a natural reflection of both a learning process by all involved and a fast-changing international tax and financial environment. Furthermore, the indicators are shaped to ensure consistency with the criteria used in the Tax Justice Network's complementary index: the Corporate Tax Haven Index.[6] As we explore in more detail later on in chapter 5, we do not pretend that there is a single, constant, fixed and objectively best measure for financial secrecy. It is rather the fruit of an ongoing debate that has been and will continue to be driven to a large extent by the input of the many experts associated with the Tax Justice Network.

Chapter 2 introduces the reader to all changes, underlying data sources, methodological principles and details concerning the secrecy scores. Chapter 3 discusses each of the 20 Secrecy Indicators. Chapter 4 explains the global scale weights and the underlying data sources. It also addresses some issues of data consistency. Chapter 5 explains the formula for combining the secrecy scores and the global scale weights to arrive at the final ranking of the index, including some analysis of potential alternative formulas.

The annexes contain overview tables and all the underlying data of the Financial Secrecy Index, except for full country-level details which can instead be found in country profiles, accessible and downloadable (after registration) on the website.[7]

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[4] See the Financial Secrecy Index archive: https://fsi.taxjustice.net/archive/.

[5] For an overview of the various uses of the Financial Secrecy Index, see: https://fsi.taxjustice.net/impact-and-research/.

[6] Tax Justice Network. *Corporate Tax Haven Index*. 2021. URL: https://cthi.taxjustice.net/en/ (visited on 08/05/2022).

[7] Tax Justice Network. *Financial Secrecy Index Database*. URL: https://fsi.taxjustice.net/en/explore/database (visited on 08/05/2022).

The Qualitative Component: Secrecy Scores

2.1 Main changes 2020-2022

2.1.1 Jurisdictions covered

The number of jurisdictions covered by the Financial Secrecy Index has increased gradually over time, from 60 in 2009 to 141 in 2022, reflecting the long-term ambition of global, or near-global coverage for the index, while taking into account resource and data constraints. In 2009, the 60 jurisdictions were selected on the basis of eleven listings issued by international bodies and academics (eg IMF, FATF, OECD, IBFD).[8] Places named on at least two of those international listings were included. In the following years, we considered two distinct groups as potential additions to the Financial Secrecy Index: first, jurisdictions that account for a large share of international financial services exports (weight); and second, jurisdictions which are indicated by various sources including public media, to be playing or seeking a role in the provision of financial secrecy.

For the 2011 edition, the sample was extended to include all 20 jurisdictions which in 2009 had the highest global market share in financial services exports (based on 2007 data). Nine of the 13 newly added jurisdictions were included in 2011 based on this criterion,[9] and four countries were added because of their known or suspected provision of financial secrecy.

For the 2013 edition, in regard to the first group, seven jurisdictions with a global scale weight (ie a share of international financial services exports) in the top 30 of the 2011 edition were added. With respect to the second group, two more countries were added.

For the 2015 edition, six countries were added due to their share in the global market of offshore financial services was in the Top 40 jurisdictions. Seven

[8] The selection process for the initial 60 jurisdictions is explained in detail here: (Richard Murphy. *Where Are the World's Secrecy Jurisdictions?* Sept. 2009. URL: https://fsi.taxjustice.net/Archive2009/Notes%20and%20Reports/SJ_Mapping.pdf [visited on 09/05/2022]).

[9] Markus Meinzer and Steven Eichenberger. *Mapping Financial Secrecy 2011 - Methodology*. Sept. 2011. URL: https://fsi.taxjustice.net/Archive2011/Notes%20and%20Reports/SJ-Methodology.pdf (visited on 09/05/2022), p.3.

countries were added because of indications of secrecy or financial centre ambitions. In addition to this, for the 2015 edition, we also included all OECD members, following various publications about the role these countries play in absorbing and facilitating illicit financial flows.[10]

With the support of a large research project funded by the European Commission ("COFFERS"[11]), for the 2018 index edition, nine new countries were added (covering all EU member states). In the 2020 edition, 21 additional countries were analysed with support from NORAD.[12] Finally, the coverage has expanded with eight new countries in this 2022 edition of the Financial Secrecy Index, reaching a total of 141 jurisdictions. The rationale for including these jurisdictions is summarised below (see Table 2.1).

Table 2.1. New jurisdictions covered in 2022

Total of 8 new jurisdictions included because of:		
Indication of secrecy opportunities	**High global scale weight**	**Other reasons**
American Samoa	Oman	Kosovo
Fiji	Namibia	Serbia
	Guam	Albania

2.1.2 Secrecy Indicators (SI)

Some small changes were made in nine indicators, and a set of cross-indicator consistency criteria has been implemented (see Table 2.2, in line with the process we applied for the Corporate Tax Haven Index.[13] The full details of each indicator, including changes (if applicable), are provided in Chapter 3.

SI 1 (Banking secrecy) changed with regards to one of the 6 sub-questions (IDs) included in its assessment. Previously, ID 89 measured whether banks where required to report large transactions to a public authority. The data for this ID was based on the International Narcotics Control Strategy Reports[14] (INCSR) annual reports, and given the INCSR has stopped updating it a few years ago, we decided to replace this ID with a new assessment (ID 643), which can more effectively assess country-level developments in the coming years. For this purpose, we chose to integrate FATF recommendation 15 on virtual asset service providers. According to recommendation 15,[15] countries should treat Virtual

[10] OECD. *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*. 2014. URL: https://www.oecd.org/corruption/illicit_financial_flows_from_developing_countries.pdf (visited on 08/05/2022).

[11] European Commission. *COFFERS – Combating Fiscal Fraud and Empowering Regulators*. 2020. URL: https://cordis.europa.eu/project/id/727145 (visited on 08/05/2022).

[12] *Norad - Norwegian Agency for Development Cooperation*. URL: https://www.norad.no/en/front/ (visited on 08/05/2022).

[13] Tax Justice Network, *Corporate Tax Haven Index*.

[14] U.S. Department of State. *International Narcotics Control Strategy Reports*. URL: https://www.state.gov/international-narcotics-control-strategy-reports/ (visited on 14/05/2022).

[15] Financial Action Task Force. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*. Paris, Mar.

Assets Service Providers (VASPs) equally as financial institutions by requiring them to identify, assess, and take effective action to mitigate their money laundering and terrorist financing risks. As part of this requirement, VASPs should be licensed or registered and countries should ensure that VASPs are subject to adequate regulation and supervision or monitoring for Anti-Money Laundering/Counter Terrorism and are effectively implementing the relevant FATF Recommendations. As such, VASPs must comply with policies and procedures related to Know Your Customer (KYC), Anti-Money Laundering (AML) and Counter Terrorism (CTF).

With regards to **SI 4 (Other wealth ownership)**, **SI 5 (Limited partnership transparency)**, **SI 6 (Transparency of company ownership)** and **SI 7 (Public company accounts)**, for this index edition, we are no longer analysing whether the country is publishing information on the ownership and accounts of entities and individuals in an open data format. Instead, this edition analyses whether information is available in a format which can be easily copied. This means that for ownership information, we analyse only whether information could be copied and pasted in a clear and usable way. For accounts' information, data is considered easily copied only when it is fully downloadable from the internet in a format that can be used for data analysis (for example: XLS, XBRL and XML) or in a format that allows for copying and pasting the relevant information, and the pasted text is clear and usable. As a result, we are no longer verifying the licensing requirements, among others, due to the difficulties in determining whether a specific licensing is in place for each registry.

SI 9 (Corporate tax disclosure) was modified in relation to the assessment of published tax rulings. In the previous edition of the index, we assessed four different types of tax rulings disclosure possible ("some tax rulings available for free"; "tax rulings available against a cost"; "all tax rulings available for free but in anonymised format"; "all tax rulings available online for free"). However, the assessment of these possible scenarios presented an undue burden on resources, while not clearly measuring different levels of public interest in relation to the publication of tax rulings. Indeed, although the level of disclosure on tax rulings has increased marginally in the past years in some jurisdictions, a review of recent publications of tax rulings in various countries has evidenced the need to raise the bar for disclosures to be of value to the public as well as to other authorities. Specifically, we have witnessed the proliferation of "de minimis" publication of tax rulings, whereby not all rulings are published, or they are not published in full. Alongside the complete absence of publication of tax rulings, we now consider that the highest risk scenario is for a jurisdiction to selectively publish only some of the rulings. When this is the case, it opens the door for discretionary choices on which rulings to publish, making publication ineffective in terms of public accountability. Thus, in relation to the assessment of tax rulings, a new answer category now gathers all cases where rulings are either not published, or selectively published ("none or some"). Countries that fall within

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2022. URL: https : / / www . fatf - gafi . org / media / fatf / documents / recommendations / pdfs / FATF % 20Recommendations%202012.pdf (visited on 15/04/2022), pp.76-77.

this category are assigned a maximum secrecy score. Otherwise, for jurisdictions that do publish all rulings, we then assess whether the rulings are published in a summarised or anonymised format.

In addition, for this 2022 edition we have also considered the existence of tax rulings even if they are legally considered to be non-binding, either on the tax authority or on the taxpayer. This is because evidence from recent years, including from the Luxleaks,[16] has shown that the binding nature of tax rulings is a grey area. Even if tax rulings are claimed not to be strictly binding, there may be sufficient legal certainty for private sector tax advisers to market the relevant tax positions, among others, as the risks for litigation in this regard are rather low. In the absence of full disclosure of all tax rulings, we cannot assess their legal effect and therefore a jurisdiction is scored as being able to issue tax rulings even if they are officially not-binding.

Moreover, we have expanded the consistency of this indicator by implementing a systematic assessment of countries with no income tax or incomplete income tax. In line with the previous edition, countries that did not issue tax rulings because they did not even have an income tax were assigned the highest risk score. This is because the secrecy risks of not imposing income tax are not lower than those stemming from issuing secretive tax rulings. Indeed, if a country does not impose income taxes, companies and individuals do not even need a tax ruling to obtain a secretive approval of tax avoidance structures, since in most cases there is no obligation to file annual returns. For this 2022 edition of the index, we expand this logic also in cases where jurisdictions do not have either corporate or personal income tax, or jurisdictions have a statutory 0% tax in one of these income taxes. In short, if a country lacks personal income tax or corporate income tax, or both, we assign to this country the maximum secrecy score for the tax rulings sub-component of SI 9. As a result, based on our weakest link principle, if for example a jurisdiction does not have corporate income tax but does have personal income tax, we consider the tax rulings publication question to be “not applicable”, given the absence of corporate income tax may ensure maximum secrecy, even in cases where personal income tax rulings are published.

For **SI 12 (Consistent personal income taxes)** and **SI 13 (Avoids promoting tax evasion)**, we have strengthened our “weakest link” approach. That is, we are considering temporary personal income tax exemptions - often linked to “expatriate” regimes - as indications for uncomprehensive scope of personal income tax. As a result, in cases where country A exempts foreign income of resident “expatriates” for a period of X years, it will get the highest secrecy score for the component of comprehensive scope of personal income tax (see ID 435 of Secrecy indicator 12 for more details). Indeed, if a citizen of country B becomes a tax resident of country A and benefits from an “expatriate” tax regime, there is a high risk that most income from sources other than country A escapes taxation

[16] ICIJ. *Luxembourg Leaks - Database*. URL: https://www.icij.org/investigations/luxembourg-leaks/explore-documents-luxembourg-leaks-database/ (visited on 08/05/2022).

altogether. Therefore, these types of regime are taken into account both for SI 12 (to assess the scope of personal income tax) and SI 13 (to consider the tax treatment for foreign investment income received by a natural person). Reciprocally, when a jurisdiction provides for exempt treatment of foreign investment income received by natural persons (SI 13), we consider this trait as evidence of an incomplete personal income tax system under SI 12. Further specifications of the newly introduced processes to verify consistency across different indicators can be found in the following section.

In **SI 14 (Tax court secrecy)**, we have simplified the indicator focusing the analysis exclusively on online availability of judgements on tax matters (both criminal and civil or administrative). Previously, the indicator was divided into two equally weighted components, one on online availability of court judgements, and the other on openness of court proceedings. The latter, while showing an overall low variability across jurisdictions, presented significant research constraints in certain cases when trying to assess the appropriateness of constitutional limits to the publicity of court proceedings. Therefore, as of this 2022 edition onwards, SI 14 is based solely on the public online availability of court judgements, both in criminal and civil tax matters, in line with indicator 14 of the Corporate Tax Haven Index.

Next, we have updated **SI 18 (Automatic Exchange of Information or AEOI)**, taking into account the 2020 Global Forum publication of assessments[17] on the level of compliance with requirements for automatic exchange of information pursuant to the Common Reporting Standard. Based on this new valuable information, we added two new IDs in SI 18 as follows: the first ID reflects the country's compliance with the required legal framework and due diligence procedures ("Core Requirement 1"); the second reflects on whether its network of exchange relationships is compliant with the requirement to enter into agreements with all "Interested Appropriate Partners" ("Core Requirement 2"). For countries which have not yet been assessed by the OECD's Global Forum, we applied an "unknown" answer which – unlike other cases of the index - will not grant them high secrecy score.

Regarding **SI 19 (Information exchange upon request)**, in the previous index editions, for countries that have not yet adhered to the amended multilateral amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters[18] ("Tax Convention"), we assessed the number of effective bilateral information exchange relationships they had entered into and calculated a proportional secrecy score in accordance with that number. We considered bilateral information exchange relationship to be effective only if they were already in force and considered "compliant with the standard" of exchange

[17] OECD. *Peer Review of the Automatic Exchange of Financial Account Information 2020*. Text. OECD Publishing, 2020. URL: https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2020_175eeff4-en (visited on 08/05/2022).

[18] OECD and Council of Europe. *Convention on Mutual Administrative Assistance in Tax Matters*. 1988, amended by Protocol in 2010. URL: https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page1 (visited on 06/05/2022).

of information upon request, according to the Global Forum table of treaties published for every Global Forum member. However, in recent years the Global Forum is no longer publishing those tables. As of this 2022 index edition, the methodology has changed to consider the adherence to the Tax Convention as a sole criterion for SI 19. Over and above the unavailability of the data source previously used to assess bilateral information exchange relationships outside the Tax Convention, another important consideration further supports the change to our methodology. The signature of bilateral treaties to fulfill the same purpose outside the Tax Convention poses an undue burden on lower income countries, which do not have the resources to negotiate many treaties and which are usually pressured to make tax concessions in those treaties in addition to any exchange of information provision. As a result, the cumulative implementation of bilateral information exchange treaties is a substantially weaker policy than the adherence to the multilateral Tax Convention.

2.1.3 Systematic verification of interactions within and across indicators

In the 2020 edition of the Financial Secrecy Index and earlier ones, consistency of data both within and across the indicators was based on a manual process. For this 2022 edition of the index, we have developed an automated processes to flag potential inconsistencies in the analysed data. The process enabled us to apply a more exhaustive and systematic approach to assess possible interactions within and across the indicators. Indeed, due to the conceptual nature of laws, the same vulnerability may be reflected in different dimensions. The jurisdictions for which data is flagged are then reviewed by other analysts, and the issue is resolved adjusting the data or explanation attached to it, ensuring equal treatment across flagged jurisdictions. This process, however, does not replace the critical and constructive resolution of methodological doubts that has been in place since the first edition of the index.

In Table 2.2 we present a summary of the different “interactions” or cross-indicator consistency criteria followed in the 2022 edition of the Financial Secrecy Index.

Two main interactions were implemented in the 2022 edition. The first focuses on jurisdictions without income taxes or with incomplete income tax systems. The second relates to the scope of personal income taxation and the treatment of foreign investment income (eg foreign dividend and interest payments received by natural persons that are residents in a jurisdiction).

The first interaction (which is marked as (1) in Table 2.2) ensures that countries that do not impose income taxes or impose zero income taxes are treated consistently with regards to countries that do impose income taxes, but have secretive regulations in place in their income tax system. The core rationale, as explained above, is that the financial secrecy risks of a jurisdiction that imposes income tax, but has some secretive elements of tax policy in place (eg by not assigning a tax identification number for all its taxpayers, or by issuing secretive

Table 2.2. Cross-indicator consistency criteria

Interaction	SI	IDs	Topic	Explanation
(1)	9, 11, 12, 13, 14	SI 9 (363 and 421), SI 11 (400, 401, 317, 402, 403, 404, 405, 406), SI 12 (435), SI 13 (558, 559, 552, 553, 554), SI 14 (409, 410)	Zero rate CIT or no CIT	"If there is no income tax, then indicators relating to income taxation must be set to maximum harmfulness (and "not applicable").
(2)	12, 13	435, 558, 559	Comprehensive PIT (SI 12) and Natural Person foreign income treatment (SI 13)	An incomplete PIT (lump-sum, exemption, territoriality) usually means that foreign investment income of natural persons is exempt (unless exception applies). Reciprocally, if foreign investment income of natural persons is exempt, this means that a jurisdiction has an incomplete PIT.
(3)	2, 15	204, 224	Trusts availability	If trusts cannot be created according to local laws, and if foreign trusts are prohibited from being administered by a local trustee, then no trust may exist or operate in the country, and thus there could be no trusts with flee clauses.
(4)	5	Availability (269), Ownership (476, 479, 483, 477, 480, 484, 481, 482), Accounts (272, 273, 274)	Limited partnerships	We check ID 269 on whether partnerships with limited liability are available in the jurisdiction. If the answer is NO for that, then all the IDs regarding partnership accounts (ID 272, 273 and 274) should be "not applicable".
Main consistency check	All	Most	Residence/ Incorporation/ Legal seat	With regards to a jurisdiction, we check which entities or arrangements are considered "from" that jurisdiction, ie, if a specific policy is referred to a jurisdiction, then such jurisdiction should be held responsible for the relevant regulations concerning that policy.

tax rulings), are comparable to the secrecy risks of a jurisdiction that does not impose income taxes in the first place. Indeed, the lack of income taxes creates inherent risks by leaving economic activity of resident individuals and entities unassessed by a public authority. As such, it may be abused by domestic entities and individuals who wish to evade tax or escape from criminal prosecution in other countries.

While the case of jurisdictions that have neither personal nor corporate income tax in place (eg Anguilla or British Virgin Islands) is rather clear, other jurisdictions present different levels of incomplete income taxes. In the case of Bahrain and

the United Arab Emirates (UAE), the jurisdictions selectively impose tax only on specific economic activities (mainly the extraction of fossil fuels). In jurisdictions like Jersey or the Isle of Man, while unspecified economic activities are nominally subject to a 0% rate, certain economic activities are subject to higher (10-20%) rates (eg financial services or retail). Applying the "weakest link" principle, we consider that a 0% tax broadly available in a jurisdiction is to a large extent equivalent to the lack of an income tax system for that type of income tax (personal and/or corporate). Finally, some countries have corporate but not personal income taxes in place and a few have personal but not corporate income taxes.

Interaction (1) ensures a consistent assessment of data points (IDs) directly linked to the absence or presence of income tax obligations, across indicators 9, 11, 12, 13, and 14. For instance, in SI 9 on corporate tax disclosure, we consider that questions on unilateral tax rulings are "not applicable" for jurisdictions that do not impose corporate and/or personal income taxes. As such, if a country does not have personal income taxes, we assign the maximum secrecy score on tax rulings regardless of what tax rulings are potentially published for corporate income taxes. This is because the lack of personal income tax obligations allows unchecked economic activity for individuals, promoting secretive activity at least as much as a jurisdiction that has personal income tax obligations and does not publish tax rulings. With regards to SI 11, the data points (IDs) 317, 402, 404 and 405 are directly related to corporate income taxation, and thus countries without corporate income tax are considered "not applicable" in these IDs. The same criteria is used when assessing IDs 400 and 401, which are directly related to personal income tax. When a data point relates to both personal and corporate income taxes (such as ID 403 and 404), the absence of one or the other triggers "not applicable" assessment, and the maximum secrecy score assigned in the relevant component. This rationale is also used for SI 12 (Consistent personal income tax), SI 13 (Avoids promoting tax evasion) and SI 14 (Tax Court secrecy).

The SIs are grouped around four dimensions of secrecy (see Table 3.1): 1) ownership registration (total of five SIs); 2) legal entity transparency (five SIs); 3) integrity of tax and financial regulation (six SIs); and 4) international standards and cooperation (four SIs).

2.2 Underlying data and procedural issues

The dataset underlying the 20 SIs is available to view and explore for non-commercial purposes through the online country profiles accessible on the Financial Secrecy Index website, and is available to download in excel format after registration to our data portal[19]. All data in the database is fully referenced and the underlying data sources can be identified. The main data sources were official and public reports by the OECD, the associated Global Forum[20], the FATF[21] and IMF[22]. In addition, specialist tax databases and websites such as by the IBFD[23], PwC[24], Lowtax.net and others have been consulted and in many cases, original legal analysis was undertaken to laws and regulations. Furthermore, every jurisdiction ranked on the index is given two opportunities before the index is published to feedback on and dispute the index's assessment of their financial and legal systems. We share our existing assessment from the previous edition of the index with every ranked jurisdiction at the start of the research process. Towards the end of the research process, we share our new, preliminary assessment for the new edition of the index with every jurisdiction. If a jurisdiction provides sufficient evidence that counters an assessment we made, the assessment is changed to reflect the evidence.

When we were not able to find information for a specific jurisdiction and the jurisdiction did not respond to our survey, we reflect this absence of data by marking the relevant data point (answer to this ID) as "unknown". For the purposes of the secrecy score, these unknowns were treated usually as "secrecy" (see section 2.3 for the "unknown is secrecy" principle).[25]

For researchers using the database, please note that in some jurisdiction reports, questions are not always numbered strictly sequentially. This reflects the database's built-in logic of display, and occurs when the answer to a prior question has been negative so as to invalidate the relevance of the following, omitted questions. For instance, if trusts do not need to be registered, the database does not display answers to the subsequent questions on the registered information of trusts. Similarly, where there is no obligation to keep accounting records, answers are not displayed as to whether annual accounts must be submitted by companies, or if underlying accounting records have a minimum retention period.

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[19] See our website for further information: https://fsi.taxjustice.net/download-data/

[20] The peer reviews reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes, can be viewed at: https://www.oecd.org/tax/transparency/; (visited on 10/05/2022).

[21] The Financial Action Task Force

[22] International Monetary Fund

[23] International Bureau of Fiscal Documentation, Amsterdam.

[24] PricewaterhouseCoopers, Worldwide Tax Summaries.

[25] Exceptionally, in the case of SI 11, in which for one of the components we obtain data directly from a Natural Resource Governance Institute (NGRI), and this source does not include data for all jurisdiction in our sample, we do not penalise those countries that are not assessed even if the data for them is technically unknown.

In terms of auditing the data quality at the end of the research cycle, a four-pronged approach was chosen. First, a comparison matrix has been created to double check on any data variations between the previous edition of the index and the current one (where the IDs/SIs remained constant). Second, any outlier or unexpected data has been identified and checked for integrity (inhouse). Third, preliminary results were shared with countries' authorities and local experts (when available). Fourth, full finalised reports of several jurisdictions (each including all 20 indicators) are checked in their entirety on a jurisdiction by jurisdiction basis.

For the Financial Secrecy Index 2022, users can access the full database after registration. Non-commercial use of the data is provided freely, while commercial use requires a license and payment of a fee.[26]

[26] See further information on our website: https://fsi.taxjustice.net/download-data/

2.3 Guiding methodological principles

The guiding principle for data collection was to always look for and assess the weakest link or lowest standard (or denominator) of transparency available in each jurisdiction ("weakest link principle"). For example, if a jurisdiction offered three different types of companies, two of which require financial statements to be published online, but the third is not required to disclose this information, then we have answered the particular question about the online availability of accounts with "no".

Despite our commitment to use the best data sources available, we had to resort during the implementation of the weakest link principle to reasoned judgment because of a lack of quality data sources and/or conflicting information. If data was unavailable, we resorted to the "unknown-is-secrecy principle": If a jurisdiction did not respond to the questionnaire for a specific relevant question, and if we were unable to locate publicly accessible information on this specific question, this absence of data is reflected in the database by marking the relevant field as "unknown". However, when constructing the indicators, the jurisdictions without relevant data have been assessed under these circumstances as if their policies with respect to the particular indicator under assessment provide secrecy. Absence of data after investigation is generally interpreted as evidence of opacity, and results in a higher secrecy score (for details and special cases see chapter 3 detailing each SI below).

In cases of conflicting information, we resorted to reasoned judgement – while recognising the necessary subjectivity of this approach. Where this was the case, therefore, we aim to provide full transparency about criteria and interpretation. As a result, in addition to references to all underlying sources, the database reports also include a large amount of supporting information and notes relating to data analysis.

The data collection cut-off date for the 2022 edition of the index was 30 September 2021, after which changes in regulations are not guaranteed to be included in the jurisdiction's evaluation for the 2022 edition of the index. For some indicators, more recent data has been included. All jurisdictions ranked on the index had up to January 2022 to provide evidenced feedback or new information that may alter their assessment on the index.

2.4 Secrecy score

Once each SI has been assessed with a value between 0 (full transparency) and 100 (full secrecy) we simply take the arithmetic average to arrive at one compound secrecy score for each jurisdiction (adding the values of each of the assessed SIs and divide the sum by the number of assessed SIs). The resulting value is a secrecy score between 0 to 100. Consequently, a jurisdiction can always achieve a maximum value of 0 secrecy (equivalent to 100% transparency) if it receives a 0 secrecy score for all 20 indicator. In each indicator, by default, a jurisdiction has a 100 secrecy score unless we find evidence to the contrary.

A list of all 20 SI values for each jurisdiction can be found in Annex B. Each jurisdiction's secrecy score is displayed in alphabetical order in Annex C. The following chapter details the logic behind each indicator, chapter 4 presents the calculation of global sale weights, with full details in Annex E, and chapter 5 explains the method of combination of secrecy and scale into the final index.

The 20 Secrecy Indicators 2022

Table 3.1 provides a summary overview of the 20 Secrecy Indicators (SI), and the remaining chapter 3 discusses each indicator in full detail.

Three principles guided the design of the Secrecy Indicators. **First** and foremost, the selected indicators should most accurately capture a jurisdiction's status as a secrecy jurisdiction, that is the extent to which each jurisdiction "provides facilities that enable people or entities to escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool". The choice of these indicators has necessarily been subjective, but an objective choice of indicators does not exist, and never will: the issue boils down to whether the selected indicators are plausible. To achieve plausibility, the research team relied on expert and practitioners' input and knowledge. The stakeholder survey we carried out in 2016 further ensured input by more than 130 individuals. The vast amount of expertise available in and to the Tax Justice Network has proven invaluable during the research process.

An aim was to be open and transparent about the choices we have made and not to claim objectivity when all we can hope for is an understanding based on a wide range of different perspectives. If the reader feels uncomfortable with some of the choices made, we would welcome suggestions for improving our methodology. In fact, by offering the disaggregated data of each SI through the Financial Secrecy Index website, we have made publicly available the resources for testing alternative indicators at relatively low cost. **Second**, we wanted to be as parsimonious as possible by selecting a relatively small number of indicators. We did this largely to avoid unnecessary complexity for the reader and also in order to ensure that this work can be carried forward without undue cost or delay caused by data gaps. **Third**, we considered it important that the index should be sufficiently simple and transparent to provide clear indication of what steps a secrecy jurisdiction could take to improve its secrecy ranking. Our approach encourages policy change in secrecy jurisdictions to improve their performance.

The following sections provide detailed explanations of what exactly is measured by each indicator, what sources we used for each of them, and why we think the underlying issue is relevant to financial secrecy.

Table 3.1. Overview of the 20 Secrecy Indicators

Ownership Registration		Legal Entity Transparency		Integrity of Tax and Financial Regulation		International Standards and Cooperation	
1	**Banking Secrecy**	6	**Transparency of Company Ownership**	11	**Tax Administration Capacity**	17	**Anti-Money Laundering**
	IDs 157, 158, 352, 353 360, and 643		IDs 470–475, 485 and 486		IDs 317 and 400-406		ID 335
2	**Trusts and Foundations Register**	7	**Public Company Accounts**	12	**Consistent Personal Income Tax**	18	**Automatic Information Exchange**
	IDs 204, 206, 214, 234, 236 - 240, 244, 355, 384, 393, 395 and 396		IDs 188, 189 and 201		IDs 374, 435 and 489		IDs 150, 371, 372, 374, 376, 377, 566-569, 641 and 642
3	**Recorded Company Ownership**	8	**Country by Country Reporting**	13	**Avoids Promoting Tax Evasion**	19	**Exchange of Information upon Request**
	IDs 388, 470 - 473, 485 and 486		ID 318		IDs 552, 553, 555, 558 and 559		ID 309
4	**Other Wealth ownership**	9	**Corporate Tax Disclosure**	14	**Tax Court Secrecy**	20	**International Legal Cooperation**
	IDs 416, 418, 437, 439 and 487		IDs 363, 419, 421 and 561-564		IDs 409 and 410		IDs 33, 35, 36, 309 - 314 and 469
5	**Limited Partnership Transparency**	10	**Legal Entity Identifier**	15	**Harmful Structures**		
	IDs 269, 272, 273, 274, 476, 477 and 479 to 484		IDs 414, 415 and 420		IDs 172, 184, 224 and 488		
				16	**Public Statistics**		
					IDs 425 to 434		

3.1 Secrecy Indicator 1: Banking secrecy

3.1.1 What is measured?

This indicator assesses whether a jurisdiction provides banking secrecy. We go beyond the statutory dimension to assess the absence or inaccessibility of banking information and the criminalisation of breaches as elements of banking secrecy. For a jurisdiction to obtain a zero secrecy score on this indicator, it must ensure that banking data exists, that it has effective access to this data and that it does not impose prison term sentences for breaching of banking secrecy. We consider that effective access exists if the authorities can obtain account information without the need for separate authorisation, for example, from a court, and if there are no undue notification requirements or appeal rights against obtaining or sharing this information.

Accordingly, we have split this indicator into six subcomponents; the overall secrecy score for this indicator is calculated by simple addition of these subcomponents. The secrecy scoring matrix is shown in Table 3.2, with full details of the assessment logic given in Table 3.4.

In order to determine whether a jurisdiction's law includes the possibility of imprisonment or custodial sentencing for breaching banking secrecy, we rely on responses to the TJN-survey and analyse each country's relevant laws to the extent this is feasible. Unless we are certain that a jurisdiction may not punish breaches of banking secrecy (for example, by a potential whistleblower) with prison terms, we add a 20 points of secrecy score.

The availability of relevant banking information is measured by a jurisdiction's compliance with FATF-recommendations 10, 11 and 15.[27] Recommendation 10 states that "Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names". The recommendation specifies that the financial institution must be able to identify not just the legal owner but also the beneficial owner(s), both in the case of natural and legal persons.[28] If a jurisdiction fails to comply with this recommendation, this adds a 20 points of secrecy score.[29]

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[27] These recommendations refer to the new FATF methodology consolidated in 2012. Under the old FATF methodology of 2003, the corresponding recommendations are numbers 5 (replaced by new rec. 10), 8 (replaced by new rec. 15), and 10 (replaced by new rec. 11). Financial Secrecy Index 2022 takes into account both the old and new methodologies because the FATF has not yet assessed all jurisdictions under the new methodology. 124 out of the 141 FSI jurisdictions were assessed by the FATF under the new methodology. For 47 jurisdictions, the most recent FATF mutual evaluation reports available were published before 2013, under the old methodology. The old recommendations can be viewed at: (Financial Action Task Force. *Financial Action Task Force on Money Laundering. The Forty Recommendations.* June 2003. URL: http : / / www . fatf - gafi . org / media / fatf / documents / recommendations / pdfs / FATF % 20Recommendations % 202003 . pdf [visited on 12/04/2022]); the new recommendations are available at: (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*)

[28] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, also see footnote 27.

[29] In order to measure compliance, the FATF uses the following scale: 0 = non-compliant; 1 = partially compliant; 2 = largely-compliant; 3 = fully compliant. We attribute a 20% secrecy score

FATF-recommendation 11 requires financial institutions to "maintain, for at least five years, all necessary records on transactions, both domestic and international".[30] A further 20 points of secrecy score is added if a jurisdiction is non-compliant with this recommendation.

Recommendation 15 requires jurisdictions to ensure that virtual assets service providers (VASPs) are treated equally as financial institutions by requiring them to identify, assess, and take effective action to mitigate their money laundering and terrorist financing risks. As part of this requirement, VASPs should be licensed or registered and countries should ensure that VASPs are subject to adequate regulation and supervision or monitoring for AML/CFT and are effectively implementing the relevant FATF Recommendations. As such, VASPs must comply with policies and procedures related to Know Your Customer (KYC), Anti-Money Laundering (AML) and Counter Terrorism (CTF).[31] A further 20 points of secrecy score is added if a jurisdiction is non-compliant with this recommendation.[32] We have relied on the mutual evaluation reports and follow up reports published by the FATF, FATF-like regional bodies, or the IMF for the assessment of these criteria.[33]

In addition, since it is not sufficient for banking data to merely exist, we also measure whether this data can be obtained and used for information exchange purposes, and if no undue notification[34] requirements or appeal rights[35] prevent effective sharing of banking data. We rely on the Global Forum's element B.1[36] for

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for non-compliant, 13% for partially compliant, 7% for largely compliant and zero secrecy for fully compliant answers.

[30] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*

[31] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*.

[32] In the previous edition of the Financial Secrecy Index of 2020, we measured whether banks were required to report large transactions to a public authority. Because the data for this ID came from International Narcotics Control Strategy Reports (INCSR), and the INCSR has stopped updating it since 2016, we have replaced this measure for one that could more effectively assess country-level developments in coming years. For this purpose, we chose to integrate FATF recommendation 15 on virtual asset service providers.

[33] The FATF periodically monitors jurisdictions' compliance to the recommendations set in the mutual evaluation reports. The results of the monitoring process are published in follow-up reports, which may inform of changes in jurisdictions' ratings. For jurisdictions assessed according to the new methodology, we have used the most recent rating published in FATF's consolidated table of assessment ratings (Financial Action Task Force. *FATF Consolidated Table of Assessment Ratings*. 2022. URL: https : / / www . fatf - gafi . org / publications / mutualevaluations / documents / assessment - ratings . html [visited on 23/02/2022]), be it a mutual evaluation report or a follow-up report. However, for jurisdictions assessed according to the old methodology, we considered only the ratings of the mutual evaluation reports published before the cut-off date for this SI of 30 September 2021.

[34] While the Global Forum peer reviews assess whether a notification (to the investigated taxpayer) could delay or prevent the exchange of information, we also consider whether any notification to the investigated taxpayer takes place at all, even if it is after the exchange of information, because the taxpayer could start taking actions (transfer assets, leave the country, etc) to obstruct the legal and economic consequences of the requesting jurisdiction's investigation or proceedings. By being made aware, taxpayers could also take precautionary measures with respect to assets, bank accounts, etc., located in other jurisdictions.

[35] In those cases when the taxpayer is not notified (either because it is not a legal requirement or because there are exceptions to this notification), we still evaluate whether the information holder has any right to appeal or to seek judicial review. In this case, we consider whether there are legally binding timeframes for the appeal procedures and appropriate confidentiality safeguards which would ensure that the exchange of information would not be delayed or prevented.

[36] The full element B.1 reads as follows: "Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of

Table 3.2. Secrecy Scoring Matrix: Secrecy Indicator 1

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Consequences of breaching banking secrecy (20 points)	
(1) Breaching banking secrecy may lead to imprisonment / custodial sentencing, or unknown	20
Component 2: Availability of relevant information (60 points)	
(2)(a) Anonymous accounts – new FATF rec. 10/ old FATF rec. 5	20
(2)(b) Keep banking records for less than five years – new FATF rec. 11/ old FATF rec. 10	20
(2)(c) Adequate regulation and supervision of virtual asset service provides (VASPs) - new FATF rec. 15/ old FATF rec. 8	20
Component 3: Effective access (20 points)	
(3)(a) Inadequate powers to obtain and provide banking information, or unknown	10
(3)(a) Inadequate powers to obtain and provide banking information, or unknown	10

addressing the first issue of powers to obtain and provide data, and we use Global Forum's element B.2[37] for the second issue of undue notification and appeal rights. Each will be attributed a 10 points secrecy score if any qualifications apply to the elements and underlying factors.[38] Where available, we also consider countries' replies to TJN-survey 2021.[39]

We consider that sufficient powers to obtain and provide banking information on request is applied if the jurisdiction's authorities are able to access banking information which is at least 5 years old. For example, for the Financial Secrecy Index 2022, if a country is not able to access banking information from 2016 but is able to do so regarding banking information from 2018, then we would consider the ability to obtain and provide banking information to be sufficient.

An overview of the rating for B.1 and B.2 is given in Table 3.3.

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such information (irrespective of any legal obligation on such person to maintain the secrecy of the information)." (OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes. *Implementing the Tax Transparency Standards: A Handbook for Assessors and Jurisdictions, Second Edition*. Paris: OECD, May 2011. URL: https://www.oecd-ilibrary.org/taxation/implementing-the-tax-transparency-standards_9789264110496-en [visited on 09/05/2022], p.27).

[37] The full element B.2 reads as follows: "The rights and safeguards (eg notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information."(OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes, *Implementing the Tax Transparency Standards*, p.28).

[38] Because under Global Forum's methodology there are no clear criteria to determine when identified problems as described in "factors" are going to affect the assessment of an "element", we refrain from assessing a secrecy score only if no problems (factors) have been identified, irrespective of the element's assessment. However, we do consider both: (i) whether the factors mentioned are related to bank information; and (ii) whether information described in the report (even if not mentioned as a factor) is also relevant to assess a jurisdiction's power to obtain and exchange bank information. See also the footnotes below for more background on this issue.

[39] Tax Justice Network. *TJN Survey*. 2021. URL: http://fsi.taxjustice.net/fsi2022/TJN-Survey-2021.pdf (visited on 11/05/2022).

Table 3.3. Assessment of Global Forum Data for Secrecy Indicator 1

"Determination" Results as in table of determinations of Global Forum B.1 / B.2	**"Factors"** Results as in table of determinations of Global Forum B.1 / B.2	**Secrecy Score**
"The element is in place."	No factor mentioned.	0
"The element is in place."	Any factor mentioned.	10
"The element is in place, but certain aspects of the legal implementation of the element need improvement."	Irrelevant.	10
"The element is not in place."	Irrelevant.	10

3.1.2 Why is this important?

For decades, factual and formal banking secrecy laws have obstructed information gathering requests from both national and international competent authorities such as tax administrations or financial regulators. Until 2005, most of the concluded double tax agreements[40] did not specifically include provisions to override formal banking secrecy laws when responding to information requests by foreign treaty partners.

This legal barrier to accessing banking data for information exchange purposes has been partially overcome with the advent of automatic information exchange.[41] Automatic exchange of information (AEOI) following the OECD's Common Reporting Standard (CRS) got underway in 2017 (see SI 18[42]). However, we consider access to information and undue notifications related to the "Upon Request" standard to be relevant still for the following reasons. First, AEOI will not take place among all countries. If AEOI takes place between countries A and B, country C (very likely a developing country) will still depend on specific information requests for accessing banking information from countries A or B. Second, AEOI will complement but not replace exchanges upon request. For example, after countries A and B exchange banking information automatically, country A may need to obtain more detailed information (eg when the account was opened, what was the highest balance account or information regarding a specific transaction). All these extra details will not be included in AEOI, but will have to be asked via specific requests. In other words, even when AEOI is fully implemented and involves all countries, exchanges upon request will remain necessary.

In addition, some jurisdictions have tightened their penalties for breaches of extant banking secrecy. For example, in September 2014, Switzerland passed a law that extended the prison sentence for whistleblowers who disclose bank data

[40] Tax Justice Network. *Tax Information Exchange Arrangements*. May 2009. URL: http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf (visited on 08/05/2022).

[41] Markus Meinzer. 'Automatic Exchange of Information as the New Global Standard: The End of (Offshore Tax Evasion) History?' *SSRN Electronic Journal* (2017). URL: http://www.ssrn.com/abstract=2924650 (visited on 06/05/2022).

[42] Tax Justice Network. *Secrecy Indicator 18: Automatic Information Exchange*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-18.pdf.

from three years to a maximum of five years. The prison terms had previously been increased with effect from 1 January 2009.[43]

Some countries even defend their banking secrecy laws by means of criminal law and concomitant prosecution. Such laws intimidate and silence bank insiders who are ideally placed to identify dubious or clearly illegal activities by customers and/or collusion by bank staff and/or management. Effective protection for whistleblowers, which allows them to report to domestic or foreign authorities, and/or to the media about a bank customer's illegal activities, is necessary to ensure that banking secrecy does not enable individuals, companies and banks to jointly and systematically break the law.

The extent to which banking secrecy has acted as a catalyst for crime became evident through recent leaks and large scale public prosecutions of banks that have engaged in and supported money laundering and tax evasion by clients. In this context, the threat of prison sentences for breaches of banking secrecy has served to effectively deter, silence, retaliate against, and prosecute whistleblowers, up to the point of issuing arrest warrants against officials from tax administrations, and deploying spies.[44] The threat of criminal prosecution for breaches of banking secrecy was, and remains, a potent means of covering up illicit and/or illegal activity.

Another fashionable way[45] of achieving de facto banking secrecy consists of not properly verifying the identity of both account holders and beneficial owners, or allowing nominees such as custodians, trustees, or foundation council members to be acceptable as the only natural persons on bank records. Furthermore, proper regulation of virtual asset service providers is also necessary to ensure these institutions are not used as a means to escape investigation.

Since most trusts, shell companies, partnerships and foundations need to maintain a bank account for their activities, the beneficial ownership information banks are required to keep is often the most effective means of identifying the natural persons behind these legal structures. Together with the recorded transfers, ownership records of bank accounts can provide key evidence of criminal or illicit activity of individuals, such as embezzlement, illegal arms trading or tax fraud. Therefore, it is of utmost importance that authorities with appropriate confidentiality provisions in place can access relevant banking data routinely without being constrained by additional legal barriers, such as

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[43] Markus Meinzer. *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*. Munich: C.H.Beck, 2015, p.17.

[44] Naomi Fowler. *Whistleblower Rudolf Elmer: Legal Opinion on Latest Ruling*. Apr. 2019. URL: https://www.taxjustice.net/2019/06/04/whistleblower-rudolf-elmer-legal-opinion-on-latest-ruling/ (visited on 03/05/2022); Der Spiegel. 'Schweizer Geheimdienst Sammelte Informationen Über Deutsche Steuerfahnder' (Feb. 2017). URL: https://www.spiegel.de/wirtschaft/soziales/schweizer-geheimdienst-sammelte-informationen-ueber-deutsche-steuerfahnder-a-1145703.html (visited on 03/05/2022).

[45] Bastian Brinkmann et al. 'Wie Einfache Bürger Billige Dienste Für Offshore-Kunden Leisten'. *Süddeutsche.de* (Apr. 2016). URL: http://www.sueddeutsche.de/politik/mittelamerika-leticia-und-die-briefkasten-oma-1.2954968 (visited on 03/05/2022); Tax Justice Network. *The UK-Swiss Tax Agreement: Doomed to Fail. Why the Deal Will Raise Little, and May Be Revenue-Negative for the UK*. Oct. 2011. URL: www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf (visited on 06/05/2022).

notification requirements, or factual barriers, such as missing or outdated records.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.4. Assessment Logic: Secrecy Indicator 1 - Banking Secrecy

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
360	Criminal sanctions, custodial sentencing or any other statutory sanctions for breaches of banking secrecy?	0: Yes, there are prison terms for disclosing client's banking data to any third party (and possibly fines); 1: Yes, there are fines for disclosing client's banking data to any third party, but no prison terms; 2: No, there are no statutory sanctions for disclosing client's banking data to any third party.	20 points unless answer is >0
352	To what extent are banks subject to stringent customer due diligence regulations ("old" FATF-recommendation 5/"new" 10)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	20 points pro rata
353	To what extent are banks required to maintain data records of their customers and transactions sufficient for law enforcement ("old" FATF-recommendation 10/"new" recommendation 11)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	20 points pro rata
643	Are virtual assets service providers (VASPs) required to identify, assess, and take effective action to mitigate their money laundering and terrorist financing risks? ("old" FATF-recommendation 8/"new" recommendation 15)	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	20 points pro rata
157	Sufficient powers to obtain and provide banking information on request?	1: Yes without qualifications; 2: Yes, but some barriers; 3: Yes, but major barriers; 4: No, access is not possible, or only exceptionally.	10 points except if answer is 1
158	No undue notification and appeal rights against bank information exchange on request?	1: Yes without qualifications; 2: Yes, but some problems; 3: Yes, but major problems; 4: No, access and exchange hindered.	10 points except if answer is 1

3.2 Secrecy Indicator 2: Trust and foundations register

3.2.1 What is measured?

This indicator analyses whether a jurisdiction has a central register which is publicly accessible via the internet at a cost not exceeding US$10, €10 or £10[46] with information on:

1. all trusts (those created according to the local law and referred here as 'domestic law trusts' as well as those created under a 'foreign law' but which have a connection to the jurisdiction because they are administered by a local trustee);

2. for all private foundations, the identities of all the parties to the foundation.

Alternatively, this indicator considers whether a jurisdiction prevents the creation of trusts or similar arrangements such as Treuhand, fideicomisos or waqfs under its domestic laws, and/or whether it blocks its residents from administering trusts created under a foreign law. This indicator, however, does not include UNIT trusts or trusts which are regulated as investment vehicles. Similarly, the indicator reviews if its legislation prohibits the creation of private purpose foundations (for example, if foundations are allowed, not for the benefit of a private person or family, but only for "public interests", such as foundations that focus on education, religion, sports, poverty, etc. in favour of the whole community).

The logic behind this indicator is that a jurisdiction may neutralise the risks embedded in the opacity of trusts and private foundations either (i) by requiring the registration and publication of relevant information relating to all the parties involved in both types of legal vehicles (trusts are not considered legal entities), or (ii) by prohibiting their creation or administration in their territories. The secrecy scoring matrix is given in Tables 3.5 and 3.6, and full details of the assessment logic can be found in Table 3.7.

There is one important distinction between the assessments of trusts and foundations. For trusts, the secrecy score depends on whether all trusts are registered and/or disclosed online, but we ignore the type and amount of information about trusts that is registered and/or published (if any). For foundations, in contrast, we go beyond this analysis by checking if all the parties of a foundation need to be registered, updated and/or disclosed online.

This distinction is made because in many countries trusts are not considered legal persons and thus their registration is incomplete, if not absent, in most jurisdictions worldwide, whereas the registration of foundations (considered legal

[46] We consider this a reasonable criterion given a) the prevalence of the internet in 2022, b) as international financial flows are now completely relying on the use of modern technology, it would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it.

persons) is widely the norm. For foundations, it is therefore appropriate to transitionally require a higher standard than for trusts.

This different standard exists for example in the European Union (EU) 2018 amendment to the 4th anti-money laundering directive, known as AMLD 5.[47] The 5th anti-money laundering directive required Member States to register the beneficial owners of all parties to an EU foundation in public registries. However, in the case of trusts, registration is required only for trusts administered or managed in the EU, or that acquire real estate or establish business relationships in the EU after 2020. In addition, access to trusts' beneficial owners will not be public, but a legitimate interest will have to be proven.[48]

In relation to the EU, the last transposition date of AMLD 5 was set for 10 January 2020 and a proper transposition of it would reduce EU countries' SI 2 secrecy score in relation to foreign law trusts with a local trustee. The 4th anti-money laundering Directive required registration of trusts' beneficial owners only in case the trust generated tax consequences. The 'tax consequences' condition prevented comprehensive registration for all foreign law trusts with a local trustee (eg those that did not generate tax consequences). Under AMLD 5, however, the 'tax consequence' condition was removed, and therefore all foreign law trusts with a local trustee would have to register their beneficial owners. As for domestic law trusts, their registration is not ensured in the EU. This is because while the 'tax consequences' condition was removed, registration of trusts' beneficial owners is still triggered by either having a local trustee or acquiring real estate or establishing a business relationship in the EU after 2020.[49] Therefore, not all trusts governed by the laws of an EU country (EU domestic law trusts) will necessarily have to register their beneficial owners.

As for private foundations, while AMLD 5 requires registration and public access to all private foundations' beneficial owners (including all relevant parties to a foundation), there is no requirement that public access has to be online. Therefore, not all EU countries which transposed the AMLD 5 will have online disclosure of information.

Disclosure should comprise appropriate information for assessing its tax and ownership implications, including updated and complete information on the identities of all parties.

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[47] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*. May 2018. URL: http://data.europa.eu/eli/dir/2018/843/oj/eng (visited on 05/04/2022).

[48] Andres Knobel. *The EU's Latest Agreement on Amending the Anti-Money Laundering Directive: At the Vanguard of Trust Transparency, but Still Further to Go*. Apr. 2018. URL: https://taxjustice.net/2018/04/09/the-eus-latest-agreement-on-amending-the-anti-money-laundering-directive-still-further-to-go/ (visited on 02/05/2022).

[49] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*, Article 1(16).

Table 3.5. Secrecy Scoring Matrix: Secrecy Indicator 2

Component 1: Trusts (50 points of secrecy score)				
Regulation			**Domestic law trusts**	
[Secrecy Score: 100 points = full secrecy; 0 points = full transparency]			**Available** (Trusts can be created according to local laws)	**Not available** (Trusts cannot be created according to local laws)
Foreign law trusts with a local trustee	**Active promotion** (Jurisdiction is a party to the Hague Convention on Trust recognition)	**No disclosure** (in all circumstances, or unknown)	50	50 (Lack of domestic law trusts is "neutralised" by active promotion)
	No active promotion (Jurisdiction is not a party to the Hague Convention on Trust recognition)	**No registration** (in all circumstances, or unknown)	50	25 (At least domestic law trusts do not create a secrecy problem)
		Registration either/or Registration (but no disclosure) of either foreign or domestic law trusts (in all circumstances)	37.5 (At least domestic or foreign law trusts are registered)	0 (No secrecy problem: no domestic law trusts and foreign law trusts are registered)
		Registration of both Registration (but no disclosure) of both foreign and domestic law trusts (in all circumstances)	25 (Although both are registered, no disclosure)	-
		Disclosure of domestic but no registration of foreign (or vice versa) Registration plus disclosure of domestic law trusts, but no registration of foreign law trusts	25 (Although domestic are disclosed, no registration of foreign – or vice versa)	-
		Disclosure of domestic & registration of foreign (or vice versa) Registration plus disclosure of domestic law trusts & registration (only) of foreign law trusts	0	-

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Component 1: Trusts (50 points of secrecy score)				
Regulation			Domestic law trusts	
[Secrecy Score: 100 points = full secrecy; 0 points = full transparency]			**Available** (Trusts can be created according to local laws)	**Not available** (Trusts cannot be created according to local laws)
	Active promotion is irrelevant	**Disclosure of both, if applicable*** Registration plus disclosure of both domestic and foreign law trusts (if applicable); or neither domestic nor foreign law trusts are allowed to be created and administered respectively	0 (Even if active promotion exists, it is "neutralised" by full disclosure of both domestic and foreign law trusts, if applicable)	

*Note: The Financial Secrecy Index includes an optional answer on trust registration (ID 206) called "trustee", to describe a situation where registration of any trust (either domestic law or foreign law trust) depends on the trust having a local trustee. However, for secrecy score purposes, the optional answer "trustee" is considered to refer to registration of only "foreign law trusts (with a local trustee)" instead of "both all domestic law trusts and foreign law trusts with a local trustee" because a country choosing this registration approach would not be covering those domestic law trusts which do not have a local trustee.

Table 3.6. Secrecy Scoring Matrix: Secrecy Indicator 2

Component 2: private purpose foundations (50 points of secrecy score)	
No online disclosure No updated online disclosure of key parties of all private foundations, irrespective of registration, or unknown	50
Partial online disclosure Updated registration of key parties of all private foundations plus partial online disclosure	25
Complete online disclosure Updated registration of key parties of all private foundations plus complete online disclosure, or no private purpose foundations law	0

Parties to a foundation, for the purposes of the foundation section are all founders, foundation council members, beneficiaries and protectors. For information on all parties to be considered updated, the relevant data should be required to be updated at least annually. For information on all parties to be considered complete, it needs to comprise specific minimal elements. It should include at least:

1. the full names of all parties of the entity; and
2. for each party:
    (a) in case of individuals, full address, or passport ID-number, birthdate (for registration) or year and month of birth (for online disclosure), or a Taxpayer Identification Number (TIN); or
    (b) in case of legal entities, company registration number plus address of principle place of business or registered address.

For founders, information must include beneficial ownership (eg if the founder is an entity or nominee, the natural person who is the beneficial owner of that entity or on whose behalf the nominee is acting[50]). However, if we were unable to determine whether a jurisdiction requires founder's information to include beneficial ownership, we exceptionally gave jurisdictions the benefit of the doubt, and the founder was assumed to be the beneficial owner, unless any evidence suggested that a legal entity may be registered as a founder. This exception to the "unknown is secrecy" principle is made for two reasons. First, this requirement has been embedded explicitly for the first time in the Common Reporting Standard (CRS) for automatic exchange of bank account information (see SI 18[51]), but is not explicitly stated in FATF standards. Second, this level of detail was not specified in most of the available current sources (eg Global Forum peer reviews).

For other parties to a foundation (eg protectors, foundation council and beneficiaries), registration of complete and updated legal ownership is sufficient to consider full registration, including the identification of a "class of beneficiaries" (instead of a pre-determined beneficiary). This provision is transitional and in future will be tightened to require complete and updated beneficial ownership of all parties to a foundation, and ruling out a "class of beneficiaries". The same will apply to trusts after a transitional period.

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[50] The FATF defines beneficial owners as the "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement" (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, page 118).

[51] According to the Commentaries to the CRS, "[w]ith a view to establishing the source of funds in the account(s) held by the trust, where the settlor(s) of a trust is an Entity, Reporting Financial Institutions must also identify the Controlling Person(s) of the settlor(s) and report them as Controlling Person(s) of the trust." The subsequent paragraph specifies that for foundations similar provisions apply. See OECD. *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.* OECD Publishing, July 2014. URL: https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en (visited on 02/05/2022), p. 199, paragraphs 134 and 136. For more information, see (Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*)

Alternatively, a zero secrecy score will be awarded in cases where a jurisdiction does not provide legislation for the creation of private foundations, and does not provide legislation for the creation of trusts while ruling out the administration of foreign law trusts by domestic trustees.

We also differentiate between situations in which countries merely by omission fail to regulate and register foreign law trusts administered by domestic lawyers, tax advisers and notaries, and other situations in which jurisdictions actively attract foreign law trusts, either by adherence to the Hague Convention on the Law Applicable to Trusts and on their Recognition[52] or by legislating equivalent domestic rules which regulate aspects of foreign law trusts for use in a domestic economic and legal context.

This indicator draws upon a variety of sources, mainly using information contained in the Global Forum peer reviews[53], but also private sector internet sources, FATF and IMF reports, the TJN-Survey 2021[54] and original legal analysis. In cases where there is indication that online registries on trusts/foundation registries are available, related websites have also been consulted.

3.2.2 Why is this important?

Trusts alter property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the property) to another person (the trustee) on condition that they apply the income and gains arising from that property for the benefit of another person or persons (the beneficiaries).

Trusts have many legitimate purposes, but they can easily be abused for the purpose of concealing illicit activity, for example, by concealing the identity of a settlor or beneficiary. Particular risks arise when the trust is a 'sham', ie the settlor is also a beneficiary and controls the activities of the trustee. This is a commonplace mechanism for evading tax since trusts can be used to conceal the actual controlling ownership of assets.

The most basic secrecy jurisdiction 'product' comprises a secrecy jurisdiction company that operates a bank account. That company is run by nominee directors on behalf of nominee shareholders who act for an offshore trust that owns the company's shares. Structures like these are created primarily to avoid disclosing the real identity of the settlor and beneficiaries who hide behind the trust: these people will be 'elsewhere'[55] in another jurisdiction as far as the

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[52] *Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition*. 1985. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=59 (visited on 01/04/2022).

[53] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: (OECD. *Global Forum on Transparency and Exchange of Information for Tax Purposes: Peer Reviews*. Text. URL: https : / / www . oecd - ilibrary . org / taxation / global - forum - on - transparency - and - exchange - of - information - for - tax - purposes - peer - reviews_2219469x [visited on 05/04/2022])

[54] Tax Justice Network, *TJN Survey*.

[55] By 'elsewhere' we mean 'An unknown place in which it is assumed, but not proven, that a transaction undertaken by an entity registered in a secrecy jurisdiction is regulated'.

secrecy jurisdiction 'secrecy providers' (the lawyers, accountants and bankers actually running this structure) are concerned. If – as is often the case – these structures are split over several jurisdictions, then any enquiries by law enforcement authorities and others about the structure can be endlessly delayed by the difficulties involved in trying to identify who hides behind the trust.

There is some compelling evidence that trusts are being used to conceal the identity of individuals. The Pandora Papers, a massive leak that took place in 2021, highlighted particularly the role played by the of US state of South Dakota. With a trust industry which quadrupled in the amount of managed assets during the last decade, this US State was singled out by the leak as an example of a "burgeoning American trust industry[which] is increasingly sheltering the assets of international millionaires and billionaires by promising levels of protection and secrecy that rival or surpass those offered in overseas tax havens."[56]

The Secret Suisse leak also brought attention to the increased use of trusts for concealing the identity of individuals. According to OCCRP, "[t]op Credit Suisse executives proposed several alternatives to numbered accounts in their presentation to the prospective client, including putting her money in a trust.[...] In the presentation, Credit Suisse indicated that its staff can act as nominee shareholders and directors in holding companies, trusts and bank accounts, which can be registered to anonymous holding companies. That service would create legal layers of ownership that would allow wealthy individuals to distance themselves from their wealth".[57]

Beyond being used to conceal identities, trusts are also employed to shield assets through the creation of an "ownerless limbo".[58] Basically, when a trust is settled, it creates an optical illusion, making it appear as if their assets are not owned by anyone. This ownerless limbo can be used by those wishing to avoid taxes, but has also been used for other purposes, such as concealing assets from former spouses or family members, shielding assets from victims of violence, and even avoiding sanctions.[59]

After four years since the AMLD 5 was implemented, the EU commission presented in July 2021 the AML Package, a proposal for amending the AML

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[56] See (ICIJ. *Suspect Foreign Money Flows into Booming American Tax Havens on Promise of Eternal Secrecy*. Oct. 2021. URL: https://www.icij.org/investigations/pandora-papers/us-trusts-offshore-south-dakota-tax-havens/ [visited on 12/04/2022]). On the Trust industry of the state of Wyoming, see (ICIJ. *The 'Cowboy Cocktail': How Wyoming Became One of the World's Top Tax Havens - ICIJ*. Dec. 2021. URL: https://www.icij.org/investigations/pandora-papers/the-cowboy-cocktail-how-wyoming-became-one-of-the-worlds-top-tax-havens/ [visited on 14/04/2022]).

[57] OCCRP and Süddeutsche Zeitung. 'Historic Leak of Swiss Banking Records Reveals Unsavory Clients' (Feb. 2022). URL: https://www.occrp.org/en/suisse-secrets/historic-leak-of-swiss-banking-records-reveals-unsavory-clients (visited on 08/05/2022).

[58] Andres Knobel. *Pandora Papers and (South Dakota) Trusts: Why Do Criminals and the Rich like Them so Much?* Oct. 2021. URL: https://taxjustice.net/2021/10/08/pandora-papers-and-south-dakota-trusts-why-do-criminals-and-the-rich-like-them-so-much/ (visited on 05/04/2022); Andres Knobel. *Trusts: Weapons of Mass Injustice?* Tax Justice Network, 2017. URL: www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf (visited on 02/05/2022).

[59] Knobel, *Pandora Papers and (South Dakota) Trusts*; Knobel, *Trusts: Weapons of Mass Injustice?*

Directive and the Regulation.[60] One of the main areas of policy failure of the legislation is how it tried to implement beneficial ownership registration for trusts. We have already presented a list of areas that would need to be fixed to close the loopholes in this framework.[61] This is a key opportunity to fix the scope of registration, improve the definition of beneficial owner of trusts and grant open access to information of beneficial ownership of trusts to the general public. The benefits of increasing access to ownership information are exemplified by the OpenLux investigation (see SI 6[62]).

Private foundations serve a similar purpose to trusts. By definition they do not have any owners, being designed to allow wealth owners to continue to control and use their wealth hidden behind the façade of the foundations. Discretionary foundations – equivalent to discretionary trusts – are a speciality of Liechtenstein, though they are also available in other secrecy jurisdictions.

Private foundations have a founder, a foundation council and beneficiaries, and may have a protector. Foundations are created around a foundation statute, often complemented by secret by-laws. In most secrecy jurisdiction contexts, private foundations need to be registered, though only very limited information, for example about a registered office or some foundation council members, is required to be held in government registries. These registries are normally subject to strict secrecy rules.

The existence of a central register recording the true beneficial ownership of trusts and foundations would break down the deliberate opacity surrounding this type of structure. The prospects of proper law enforcement would be greatly enhanced as a result.

For more information and analysis of the uses and abuses of trusts please read TJN's papers on Trusts.[63] For more background on the way discretionary trusts and foundations can be used to hide offshore wealth, read our previous work.[64]

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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[60] European Commission. *Anti-Money Laundering and Countering the Financing of Terrorism Legislative Package*. Text. URL: https : / / ec . europa . eu / info / publications / 210720 - anti - money - laundering-countering-financing-terrorism_en (visited on 12/04/2022).

[61] Andres Knobel. *How to Improve the EU's Anti-Money Laundering (AML) Package on Beneficial Ownership Registration*. Mar. 2022. URL: https : / / taxjustice . net / 2022 / 03 / 21 / how - to - improve - the - eus - anti - money - laundering - aml - package - on - beneficial - ownership - registration/ (visited on 20/04/2022).

[62] Tax Justice Network. *Secrecy Indicator 6: Transparency of Company Ownership*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-6.pdf.

[63] Knobel, *Trusts: Weapons of Mass Injustice?*; Andres Knobel and Markus Meinzer. *Drilling down to the Real Owners – Part 1. More than 25% of Ownership" & "Unidentified" Beneficial Ownership: Amendments Needed in FATF's Recommendations and in EU's AML Directive*. Tax Justice Network, May 2016. URL: http : / / www . taxjustice . net / wp - content / uploads / 2013 / 04 / TJN2016 _ BO - EUAMLD - FATF - Part1 . pdf (visited on 02/05/2022); Tax Justice Network. *In Trusts We Trust*. 2009. URL: http : //taxjustice.blogspot.com/2009/07/in-trusts-we-trust.html (visited on 02/05/2022).

[64] Tax Justice Network, *The UK-Swiss Tax Agreement: Doomed to Fail. Why the Deal Will Raise Little, and May Be Revenue-Negative for the UK*.

Table 3.7. Assessment Logic: Secrecy Indicator 2 - Trusts and Foundations Register

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
204	Are trusts available?	0: Foreign law trusts cannot be administered and no domestic trust law; 1: Foreign law trusts can be administered, but no domestic trust law; 2: Domestic trust law and administration of foreign law trusts.	Integrated assessment of domestic and foreign law trusts as per Tables 3.5 and 3.6. If both domestic and foreign law trusts are always registered and details published online, zero secrecy score. If domestic trust law exists, and/or foreign law trusts are legally endorsed, and no registration or disclosure is required, 50 secrecy score.
355	Is the jurisdiction a party to the Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition?	YN	
206	Trusts: Is any formal registration required at all?	0: NEITHER: Neither domestic law trusts nor foreign law trusts domestically managed have to register; 1: BOTH: Domestic law trusts have to register and foreign law trusts domestically managed have to register; 2: TRUSTEE: Only domestically managed trusts have to register (both foreign and domestic law trust); 3: FOREIGN, BUT NO DOMESTIC: Domestic law trusts cannot be created and foreign law trusts domestically managed have to register; 4: NEITHER, BUT NO DOMESTIC: Domestic law trusts cannot be created, but no registration of domestically managed foreign law trusts; 5: ONLY DOMESTIC: Domestic law trusts have to register, but no registration of domestically managed foreign law trusts; 6: ONLY FOREIGN: Domestic law trusts do not have to register, but foreign law trusts domestically managed have to.	
214	Trusts: Is registration data publicly available ('on public record')?	0: No, neither for foreign law trusts nor domestic law trusts (if applicable); 1: Only for domestic law trusts, but not for foreign law trusts (if applicable); 2: Yes, for both domestic and foreign law trusts (if applicable).	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
234	Are private foundations available?	YN	Integrated assessment of private foundations as per Tables 3.5 and 3.6. If private foundations do not exist, or need to disclose online all their key parties, zero secrecy score. If private foundations exist but do not make available online any information on their key parties, 50 secrecy score.
236	Foundations: Is any formal registration required at all?	YN	
237	Are the settlors/founders named?	0: No, nobody has to be named; 1: Yes, but a legal entity or nominee could be named; 2: Yes, but it is not clear if this refers to a natural person (beneficial owner); 3: Yes, a natural person (beneficial owner) has to be registered.	
393	What information has to be registered for those who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs, or incorporation numbers are always registered.	
238	Are the members of the foundation council named?	See categories for ID 237 above.	
394	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
239	Is the enforcer/protector named?	See categories for ID 237 above.	
395	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
240	Are the beneficiaries named?	0: No, nobody has to be named; 1: Yes, but a legal entity or nominee could be named, or a class of beneficiaries is identified; 2: Yes, but it is not clear if this refers to a natural person (beneficial owner), or a class of beneficiaries is identified; 3: Yes, every natural person mentioned as a trust beneficiary, and everyone who receives a payment from the foundation has to be registered, and classes of beneficiaries or undetermined/discretionary beneficiaries are not allowed.	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
396	What information has to be registered for those who need to be named (above)?	See categories for ID 393 above.	
384	Is it mandatory to update the identity of those related parties (e.g. founders, council members, etc.) that have to be registered?	YN	
244	Is registration data available online ('on public record') for up to 10€/US$?	0: No online disclosure for all private foundations; 1: Partial online disclosure for all private foundations; 2: Yes, full online disclosure of all private foundations	

3.3 Secrecy Indicator 3: Recorded company ownership

3.3.1 What is measured?

This indicator assesses whether a jurisdiction requires all available types of companies to submit information on beneficial ownership and/or on legal ownership, upon incorporation to a governmental authority, and whether it requires this information to be updated upon subsequent transfers or issuance of shares (or upon any other event or action which changes beneficial/legal ownership information), regardless of whether or not this information is made available on public record. This indicator does not consider companies that are listed on a public stock exchange or that are considered "investment entities" by the OECD's Global Forum because they are regulated by the financial supervisor.

The recorded beneficial owners must be the natural human beings who have the right to enjoy ownership or the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.[65] For this purpose, trusts, foundations, partnerships, limited liability corporations and other variants of legal persons do not count as beneficial owners.

With the adoption of the 4th EU Directive on Anti-Money Laundering on May 20th, 2015 by the European Parliament,[66] all EU member states had to legislate for a central register of beneficial ownership by 26 June 2017. Since then, progress towards central registries of beneficial ownership has accelerated not only in the European Union;[67] yet analyses have also revealed weaknesses, loopholes and slippery language as legislation is passed in more countries.[68] The 4th EU Directive on Anti-Money Laundering was amended in 2018 (referred to as AMLD 5[69]) and requires EU member states to give public access to companies'

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[65] FATF defines beneficial owners as the "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement."(Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, p. 119)

[66] *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA Relevance)*. June 2015. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849 (visited on 02/05/2022), Articles 30, 67.

[67] Moran Harari et al. *Ownership Registration of Different Types of Legal Structures from an International Comparative Perspective: State of Play of Beneficial Ownership - Update 2020*. Tax Justice Network, June 2020. URL: https://www.taxjustice.net/wp-content/uploads/2020/06/State-of-play-of-beneficial-ownership-Update-2020-Tax-Justice-Network.pdf (visited on 03/05/2022).

[68] Markus Meinzer. *Germany Rejects Beneficial Ownership Transparency*. 2017. URL: https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/ (visited on 03/05/2022); Markus Meinzer. *Stellungnahme von Netzwerk Steuergerechtigkeit Deutschland Und Tax Justice Network Zum Antrag Der Fraktion Der SPD Und Der Fraktion BÜNDNIS 90/DIE GRÜNEN (Drucksache 16/13997) "Nordrhein-Westfalen Für Steuergerechtigkeit!Steuerkriminalität Bekämpfen – Steuergerechtigkeit Herstellen – Gesellschaftlichen Zusammenhalt Fördern"*. 2017. URL: https://netzwerksteuergerechtigkeit.files.wordpress.com/2016/06/tjn-nwsg2017_stellungnahme_antrag_nrw.pdf (visited on 06/05/2022).

[69] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

beneficial ownership information. Its last transposition date was set to 10 January 2020. However, public access to beneficial ownership information is assessed under SI 6[70] and therefore is not considered for this indicator.

Because beneficial ownership registration is not yet ideal (even under domestic laws fully compliant with the FATF and the EU Directive it is easy for a company not to have any beneficial owner at all and to identify the senior manager instead), it is important to know at least whether legal ownership is properly registered. Therefore, any meaningful company ownership assessment would need to take a holistic, comprehensive perspective. Instead of reviewing only beneficial ownership (BO) in isolation, we have created a combined indicator that takes into account nuances of beneficial ownership registration requirements and combines these with legal ownership (LO) registration requirements. The secrecy scoring matrix is shown in Table 3.8, with full details of the assessment logic given in Table 3.9.

Given that most beneficial ownership registration laws are recent and even the FATF standards on the BO definition may be contradictory,[71] this indicator doesn't currently require a specific element to be present in the BO definition, but applies a reasonable test. If a definition appears reasonable, it is considered good enough. For example, this is the case if a jurisdiction requires every shareholder to be identified as a beneficial owner, even if the definition does not mention the term "control". By the same token, a definition that requires any person with 25% of the voting rights or right to appoint a Director or other means of control would be considered enough, even if there is no defined ownership threshold. On the other hand, if a jurisdiction has too high thresholds (eg more than 50% before an individual is considered a beneficial owner), or if there is no definition at all to determine who a beneficial owner is, or if the definition includes legal vehicles as beneficial owners, the definition would be considered unacceptable.

For ownership information to be considered updated, the relevant data should be required to be updated at least annually. Furthermore, bearer shares[72] should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are immobilised or registered with a government authority (including a country's Central Securities Depository, if properly regulated)[73].

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[70] Tax Justice Network, *Secrecy Indicator 6: Transparency of Company Ownership*.

[71] Andres Knobel. *Not Just about Control: One Share in a Company Should Be Enough to Be a Beneficial Owner*. Oct. 2019. URL: https://www.taxjustice.net/2019/10/02/not-just-about-control-one-share-in-company-should-be-enough-beneficial-owner/ (visited on 03/05/2022).

[72] Bearer shares are shares which are not registered, where the owner can be any person physically holding the share certificate and the transferring of the ownership involves only delivering the physical certificate.

[73] We consider that the obligation to register bearer shares exists when legal provisions establish a timeframe for immobilisation/registration of all existing bearer shares before the next publication of the Financial Secrecy Index and where the consequence for non-compliance is the loss of those shares. Provisions where the only consequence of non-compliance is the loss of voting rights or rights to dividends are not considered to be sufficient because this would involve the mere suspensions of rights. In such case, the holders of bearer shares may still transfer those shares or avoid identification until they intend to regain their rights. The same applies if there is no deadline to immobilise bearer shares, or where after the deadline holders of bearer shares are still allowed to recover their shares

Table 3.8. Secrecy Scoring Matrix: Secrecy Indicator 3

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]		Legal Ownership	
		Incomplete LO Secrecy score if not all legal owners are recorded for all types of limited companies and updated	**Complete LO** Secrecy score if for all companies all legal owners are recorded and updated (no bearer shares)
Beneficial Ownership (BO)	**Incomplete BO** Complete and updated beneficial ownership information is not always recorded, or unknown	100	90
	Complete BO @>25% Complete and updated beneficial ownership information is always recorded at a threshold of more than 25% (no bearer share risk)	75	65
	Complete BO @>10-25% Complete and updated beneficial ownership information is always recorded at a threshold of more than 10% up to 25% (no bearer share risk)	50	40
	Complete BO @>0-10% Complete and updated beneficial ownership information is always recorded at a threshold of more than 0% up to 10% (no bearer share risk)	25	15
	Complete BO @1 share% Complete and updated beneficial ownership information is always recorded for any share/influence (no bearer share risk).	0	
	Senior Manager not as BO If there is a beneficial ownership registration law but no real BO was identified (eg no individual passed the applicable thresholds), the "senior manager" is not registered as if it was a real BO. Rather, the senior manager, if registered at all, is registered as a senior manager. If, however, there is no beneficial ownership registration, then the "senior manager clause is not considered.	25	

For ownership information to be considered complete, it needs to comprise specific minimal elements. It should include:

1. the full names, and
2. full address, or a passport ID-number, or birthdates, or a Taxpayer Identification Number.

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or rights after applying to a court or disclosing their names to the company. This is treated as an unacceptable suspension of rights, rather than the cancellation that this indicator requires.

However, with respect to the completeness of the legal ownership details, we exceptionally gave jurisdictions the benefit of the doubt if we were unable to determine whether a jurisdiction requires the registration of complete ownership details. Thus, a lack of information on the completeness of legal ownership details was treated as if the details were complete for the purposes of the secrecy score. This exception to the "unknown is secrecy" principle is made mainly because the level of detail was not specified in most of the available current sources (such as the Global Forum peer reviews).

The null secrecy score (full transparency) applies only to the ideal transparency scenario where registration encompasses absolutely all natural persons who have at least one share in the company. However, secrecy scores can be reduced from a 100 points of secrecy score if jurisdictions have comprehensive beneficial ownership registration (eg covering all companies), but where the definition of beneficial ownership is triggered by thresholds of control/ownership higher than just one share (eg 25% of ownership).

A clean transposition of the 4th (or 5th) Anti-Money Laundering Directive into domestic law by EU member states would still result in a secrecy score of 65-75 points in this Secrecy Indicator (SI), because the Directive applies a minimum floor of control or ownership of "more than 25%" of the company. Under these rules, a natural person who directly or indirectly owns or controls 25% or less of a company's shares would not be identified as BO. In this instance, four members of one family could frustrate this BO registration threshold if each held 25% of the shares.[74] The recommendations of the Financial Action Task Force (FATF) suffer from the same weakness.

Both the FATF's recommendations and the EU's 4th and 5th Anti-Money Laundering Directive provide for another problematic clause in the definition of BO. Under certain conditions it allows the "relevant natural person who holds the position of senior managing official" to be registered as a BO of a company[75]. If a jurisdiction that has a law on beneficial ownership registration dispenses with a senior manager opt out clause, the quality of the BO data increases, resulting in a 25 points reduction of the secrecy score in this SI. In this better case, a company would at least disclose to have no BOs (which could raise alerts or red flags) or would disclose that the person being registered is merely the senior manager because no real BO was identified, instead of giving the appearance that the company has a regular BO, who is in reality the senior manager.

This indicator is mainly informed by five different types of sources. First, the Global Forum peer reviews[76] have been analysed to find out what sort of ownership information companies must register with a government agency. An

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[74] For full details, please read (Knobel and Meinzer, *Drilling down to the Real Owners – Part 1. More than 25% of Ownership" & "Unidentified" Beneficial Ownership: Amendments Needed in FATF's Recommendations and in EU's AML Directive*).

[75] (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, 66, 10.C.5.b.i.iii). See more details in the section below

[76] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes.

important distinction is made between beneficial ownership information which refers to the natural persons who ultimately own the company, on the one hand, and legal ownership which "refers to the registered owner of the share, which may be an individual, but also a nominee, a trust or a company, etc."[77] A governmental authority is defined so as to include "corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report"[78] and is used interchangeably here with "government agency" or "public institution".

Second, where doubts or data gaps existed, and to the extent this was possible, we have directly analysed domestic legislation that implements beneficial ownership registration. Given that many countries in and outside the EU[79] have started to regulate beneficial ownership registration and these new laws have not yet been assessed by either the Global Forum or the FATF, the Financial Secrecy Index team has assessed the laws directly, to the extent capacity and language permitted, and has relied on comments by local experts. It is possible that these assessments may change after the Global Forum or FATF conduct an in-depth review of these new laws.

The third type of source used was private sector websites (Lowtax.net, etc.), the fourth, Financial Action Task Force (FATF) peer reviews[80], and the fifth, the results of the TJN-Survey 2021 (or earlier).[81]

SI 3 resembles SI 6 relating to Transparency of Company Ownership.[82] However, SI 3 assesses only whether complete and updated beneficial and legal information needs to be recorded at a government agency.

3.3.2 Why is this important?

Absence of reliable and comprehensive ownership information obstructs law enforcement and creates a criminogenic environment, as illustrated powerfully by the Panama Papers. In essence, these revelations provided proof about the identities of beneficial owners of otherwise anonymous shell companies. The common thread in the Panama Papers was secrecy, enabling perpetrators to

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They can be viewed at: (OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes*)

[77] OECD. *Tax Co-operation 2010: Towards a Level Playing Field*. Text. Paris, 2010. URL: https://www.oecd-ilibrary.org/taxation/tax-co-operation-2010_taxcoop-2010-en (visited on 06/05/2022).

[78] OECD, *Tax Co-operation 2010*.

[79] As for the situation in the EU, we have reviewed the 4th and 5th EU Directives on Anti-Money Laundering and, to the extent possible, corresponding implementing legislation of EU member states. While in the Financial Secrecy Index 2013 no jurisdiction was considered to have any beneficial ownership registration, this has changed in the subsequent editions of the Financial Secrecy Index (2015, 2018, 2020 and 2022). The said directives entail minimum standards for the registration of adequate, accurate and current information on the beneficial owners of corporates and other legal entities. The definition of "beneficial owner" under the Directive, however, is subject to a threshold of more than 25% ownership rights. In line with various other international developments, we consider this threshold to be too high and therefore only provide a partial reduction of the secrecy score if this threshold is implemented. For examples of jurisdictions which went beyond the basic standard, see our(Harari et al., *State of Play of Beneficial Ownership - Update 2020*, p. 22)

[80] The FATF consolidated its 49 (40 plus 9 special) recommendations to a total of 40 in 2012 (the "new recommendations"). We used the latest available report for our analysis.

[81] Tax Justice Network, *TJN Survey*.

[82] Tax Justice Network, *Secrecy Indicator 6: Transparency of Company Ownership*.

launder illicit proceeds of corruption, tax evasion, drugs trafficking and much more. They depend on secrecy, very often through using shell companies, trusts and foundations available in most countries worldwide. Intermediaries such as lawyers, notaries, family offices and banks help create and handle those structures. But Panama or the British Virgin Islands are not the only problematic jurisdictions.

When a jurisdiction, such as the US state of Wyoming,[83] allows private companies to be formed without recording beneficial ownership information, the scope for domestic and foreign law enforcement agencies to look behind the corporate veil[84] is very restricted.

These so-called 'shell companies' are nothing more than letterboxes serving as conduits for financial flows in many different guises. Non-resident persons (both natural and legal) can use a shell company to shift money illicitly while claiming to their domestic government authorities that they have no ownership interest in the company. For example, the proceeds of bribery and corruption can be hidden and transferred via shell companies. The World Bank reported in 2011:

> Our analysis of 150 grand corruption cases shows that the main type of corporate vehicle used to conceal beneficial ownership is the company [...] Companies were used to hide the proceeds of corruption in 128 of the 150 cases of grand corruption reviewed.[85]

For illustrative purposes, two examples are provided below.

On March 1, 2010, BAE Systems plc. (BAE) was ordered to pay a US$400 million criminal fine following its admission of guilt, among others, of conspiracy to defraud the United States and to making false statements about its Foreign Corrupt Practices Act (FCPA) compliance programme.[86] BAE's conspiracy involved the use of offshore shell companies - most of which were owned by BAE - to conceal the role of intermediaries it had hired to assist in promoting Saudi Arabian fighter deals. One of the shell companies used by BAE was incorporated in the British Virgin Islands (BVI), where incorporation of a legal entity did not require disclosure of the physical location of the place of business nor the legal and beneficial ownership information.[87]

According to the United States District Court, for reasons related to its business interests BAE gave the US authorities inadequate information related to the

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[83] Financial Action Task Force. *Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism - United States Of America*. June 2006. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf (visited on 03/05/2022); The Economist. 'Undeclared Beneficial Ownership - Licence to Loot' (Sept. 2011). URL: https://www.economist.com/international/2011/09/17/licence-to-loot (visited on 08/05/2022), p. 236.

[84] OECD. *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*. 2001. URL: http://www.oecd.org/daf/ca/43703185.pdf (visited on 06/05/2022).

[85] Emile Van der Does de Willebois et al. *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. 2011. URL: https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf (visited on 08/05/2022), pp.20, 34.

[86] US Department of Justice. *BAE Systems Plc Pleads Guilty and Ordered to Pay $400 Million Criminal Fine*. Mar. 2010. URL: https://www.justice.gov/opa/pr/bae-systems-plc-pleads-guilty-and-ordered-pay-400-million-criminal-fine (visited on 08/05/2022).

[87] British Virgin Islands. *BVI Business Companies Act 2004*. Sections 9(1) and 41(1)(d).

identity and work of its advisers and at times avoided communicating with its advisers in writing. Furthermore, the contracts and other relevant materials related to the intermediaries were maintained by secretive legal trusts in offshore locations.[88] The use of shell entities allowed BAE to conceal the stream of payments to these agents and to circumvent laws in countries that did not allow agency relationships. It also hindered the ability of authorities to detect the schemes and trace the money.[89]

Another example is the case of Haiti's state-owned national telecommunications company ('Haiti Teleco'), which used corporate vehicles to accept bribes and launder funds. Bribes were paid to Haiti Teleco's officials, including the director of Haiti Teleco, by representatives of three international telecommunications companies, based in the US, with which Haiti Teleco contracted. In exchange, Haiti Teleco's officials provided these companies commercial advantages (eg preferential and reduced telecommunications rates), at the expense of Haiti Teleco's revenue. The representatives systematically used intermediary shell companies to funnel wire transfers and cheque payments for fake consulting services that were never rendered. The use of shell companies as intermediaries concealed the names of the individual bribe-givers and bribe-takers as direct counterparties in any transactions transferring bribe money.[90]

With respect to tax evasion, consider this hypothetical example: suppose that a Kenyan national, normally resident in Nairobi, claims that a Wyoming registered company delivers consultancy services to his Kenyan business and the Wyoming company charges US$1,000 a month for these services. As a consequence, the Kenyan national pays US$1,000 every month to the Wyoming company and claims that a) he is no longer in possession of these funds since he paid them to a foreign company for services supplied, and b) that the US$1,000 paid monthly is a business expense that he may off-set against his income in his next tax return.

In reality, however, the Wyoming company is a shell owned and controlled by the Kenyan national. While the Kenyan tax authority might have a suspicion that these fund transfers are for illicit purposes, such as tax evasion, in the absence of registered ownership information the only way for the Kenyan tax authority to

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[88] US Department of Justice. *USA v. BAE Systems Plc - Information*. URL: https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/02-01-10baesystems-info.pdf (visited on 08/05/2022).

[89] Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, pp.198-202.

[90] (Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, pp.212-217) According to the US Department of Justice, in 2010, following the admission of guilt to money laundering conspiracy by Haiti Teleco's director, he was sentenced to four years in prison and was ordered to pay US$1,852,209 in restitution and to forfeit US$1,580,771. Additional individuals involved in the bribery scheme were also sentenced to prison terms and were ordered to pay high monetary fines as a result of their convictions. As of July 2012, additional indictments were made against new defendants involved in the scheme. (US Department of Justice. *Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme*. URL: https://www.prnewswire.com/news-releases/former-haitian-government-official-pleads-guilty-to-conspiracy-to-commit-money-laundering-in-foreign-bribery-scheme-87489687.html [visited on 08/05/2022]) - See also (Department of Justice. *United States V. Robert Antoine, et al. Court Docket Number: 09-CR-21010-JEM*. June 2016. URL: https://www.justice.gov/criminal-fraud/fcpa/cases/robert-antoine [visited on 12/05/2022], pp.9-8).

confirm its suspicions may be, under certain conditions, to contact its US counterpart.

The US tax authority in turn cannot readily access the required data on behalf of the Kenyan authorities if the ownership information is not registered. In order to find out it could undertake the lengthy exercise of going through the judicial system to summon the registered company agent in Wyoming. But the due process necessary may take months to initiate and even then, a possible outcome is that the required beneficial ownership information is unavailable in the USA and is held in a third country. That third country may, of course, be a secrecy jurisdiction where a trust has been placed into the ownership structure for exactly this reason.

Faced with such time consuming and expensive obstacles to obtaining correct information on beneficial ownership of offshore companies, most national authorities seldom, if ever, pursue investigations.

Although major improvements in the area of beneficial ownership registration took place in the last decade, there is still much to be improved. The Pandora Papers, a massive leak which involved 14 offshore service providers, clearly captures the ambivalence of the progress that took place in the last decade. On the one hand, the ICIJ remarked that the files from this leak stand out in the fact that more beneficial owners are identified - due to the implementation of the Beneficial Ownership register of the British Virgin Islands.[91] However, the leak also shows several high-profile individuals involved in scandals and, particularly, it highlighted how offshore companies are being used to purchase real estate while avoiding taxes and maintaining the owners anonymity.[92] And, even if some of the information disclosed points to activities which are not illegal, it nonetheless stresses how the current status quo is still an "ATM for the rich and powerful".[93]

In addition, beneficial ownership registration alone is no guarantee for law enforcement to be able to find ownership data. Even if a jurisdiction's laws require the recording of beneficial owners controlling more than 25% of interest in a company, not a single beneficial owner might be recorded if four or more natural persons are jointly colluding to control the entity. This is well illustrated by Open Lux, an investigation conducted by Le Monde and 17 other media outlets. The investigation scrapped data from Luxembourg's public beneficial ownership register, and found that for almost a third of the companies for which information was available, the senior manager was registered as the ultimate beneficial

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[91] ICIJ. *Pandora Papers: An Offshore Data Tsunami - ICIJ*. Oct. 2021. URL: https : / / www . icij . org / investigations/pandora-papers/about-pandora-papers-leak-dataset/ (visited on 14/04/2022).

[92] ICIJ. *Secret Real Estate Purchases Are a Driving Force behind the Offshore Economy*. Nov. 2021. URL: https://www.icij.org/investigations/pandora-papers/secret-real-estate-purchases-are-a-driving-force-behind-the-offshore-economy/ (visited on 14/04/2022).

[93] Tax Justice Network. *Pandora Papers: "Global Tax System an ATM for Rich and Powerful"*. 2021. URL: https://taxjustice.net/press/pandora-papers-global-tax-system-an-atm-for-rich-and-powerful/ (visited on 14/04/2022).

owner, a number that rose to 80% for the investment industry.[94] This indicates that under current definition, almost a third of companies are exempt from registering their beneficial owners due to their shareholding structure.

Four years after the AMLD 5 was implemented, the EU commission and parliament is currently discussing the AML Package, presented in July 2021, which is a proposal for amending the AML Directive and the Regulation.[95] We have already presented a list of areas that would need to be fixed to close the loopholes in this framework.[96] This is a key opportunity to fix the scope of registration and improve the definition of beneficial owner.

If the same jurisdiction's laws fail to require registering the legal owners of that company, law enforcement might end up without any lead to follow for investigating that company. No ownership information whatsoever would be available in such a case. Therefore, a jurisdiction requiring all legal owners to register increases the chances of successfully investigating wrongdoers, and thus enhances accountability.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.9. Assessment Logic: Secrecy Indicator 3 - Recorded Company Ownership

ID	ID description	Answers	Valuation Secrecy Score
470	LO Record: Does the registration of domestic companies comprise legal owner's identity information?	0: No. Companies available without recorded legal ownership information; 2: All LO: Yes, all companies require recording of all legal owners.	Integrated assessment of BO and LO as per Table 3.8. If all beneficial owners are always registered and updated with all details at the 1 share level, zero secrecy score. If not even legal owners are always registered, or incomplete, or not updated, 100 secrecy score. Seven intermediate scores for partial compliance. Absence of a senior manager clause in the definition of the beneficial owner results in a reduction of 0.25 of the secrecy score.
472	LO Update: Is the update of information on the identity of legal owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	
486	What information has to be registered for those legal owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs, or incorporation numbers are always registered.	

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[94] Antonio Baquero et al. *Shedding Light on Big Secrets in Tiny Luxembourg*. 2020. URL: https://www.occrp.org/en/openlux/shedding-light-on-big-secrets-in-tiny-luxembourg (visited on 20/04/2022).

[95] European Commission, *Anti-Money Laundering and Countering the Financing of Terrorism Legislative Package*.

[96] Knobel, *How to Improve the EU's Anti-Money Laundering (AML) Package on Beneficial Ownership Registration*.

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ID	ID description	Answers	Valuation Secrecy Score
471	BO Record: Does the registration of domestic companies comprise beneficial owner's identity information?	0: No. Companies available without recorded beneficial ownership information; 1: Yes, more than 25%. All companies require recording of all beneficial owners at threshold of more than 25% (FATF); 2: Yes, 10%-25%: All companies require recording of all beneficial owners at threshold of more than 10%, up to 25%; 3: Yes, up to 10%. All companies require recording of all beneficial owners at threshold of more than any share/influence, up to 10%; 4: Yes all. All companies require recording of every single natural person with any share/influence ('beneficial owner').	
473	BO Update: Is the update of information on the identity of beneficial owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	
485	What information has to be registered for those beneficial owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	

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ID	ID description	Answers	Valuation Secrecy Score
388	Can a senior manager ever be registered as a beneficial owner (because no individual passed the threshold to be considered a beneficial owner)?	0: Yes, a senior manager may be registered as a beneficial owner, making it impossible to distinguish him/her from a real beneficial owner; 1: No, even if the senior manager is registered (because no individual passed the threshold to be considered a beneficial owner), he/she is registered as such, but not as an ordinary 'beneficial owner'; 2: No, if no individual has passed the threshold to be considered a beneficial owner, then the top 10 owners have to be identified as beneficial owners, or the company is struck off the registry.	

3.4 Secrecy Indicator 4: Other wealth ownership

3.4.1 What is measured?

This indicator assesses the ownership transparency of real estate and of valuable assets stored in freeports

1. **Regarding real estate**: it assesses whether a jurisdiction requires online publication of the beneficial and/or legal owners of real estate for free and in a way which enables the information to be easily copied or at a maximum cost of US$10, €10 or £10,[97];
2. **Regarding freeports**: it assesses whether a jurisdiction offers and promotes its freeports[98] (or similar venues such as bonded warehouses) for the storage of high value assets, and whether it requires the registration and cross border automatic exchange of the identities of legal and/or beneficial owners (BO) of the stored valuables.

Accordingly, we have split this indicator into two components. The overall secrecy score for this indicator is calculated by simple addition of the secrecy scores of each of these components. The secrecy scoring matrix is shown in Table 3.10, with full details of the assessment logic given in Table 3.11.

Real estate whose beneficial owners live in the actual building is exempt from the public disclosure requirement. If a beneficial owner of real estate property can provide proof that her/his tax residency is at the same address, the identities of the owners would not need to be disclosed. All other real estate ownership needs to be disclosed in a central registry run by a government agency which is publicly accessible via the internet.

To meet a reasonable standard, published ownership information must comply with minimum requirements. In the case of beneficial owners, the information must relate to the natural human beings who have the right to enjoy ownership of the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.[99] For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons or structures do not qualify as beneficial owners. Different percentage thresholds of control or ownership applied in the definition of the beneficial owner are disregarded in this indicator as long as the definition and threshold of a beneficial owner is the same or

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[97] We believe this is a reasonable criterion given the role of modern technology in finance and international illicit flows and taking into account that the people affected by these cross border financial flows are likely to be in many jurisdictions.

[98] The availability of a freeport or a special economic zone is disregarded in the case of jurisdictions without income tax. In this case, the mere promotion of storage for high value assets is considered.

[99] FATF defines beneficial owners as the "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement." See (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, p.118) and (Markus Meinzer. *Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries*. Sept. 2010. URL: http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf [visited on 06/05/2022]).

stronger than the requirements of the Financial Action Task Force (FATF) and the European Union (see SI 3[100]).[101]

A prerequisite for ownership information to be considered publicly available is that the information must be kept by a public registry maintained by a governmental authority. A governmental authority is used interchangeably here with "government agency" or "public institution". In contrast, if the registry or access to registry data is managed by a private entity we consider that it is not publicly available.[102] Furthermore, a publicly available register should include a search function that allows searching by street address of the real estate.[103] While the registry should be centralised for a jurisdiction, it does not yet need to cover its entire territory. It is sufficient if the registry is set up so as to aim at including the whole jurisdiction and it is clearly explained which areas are covered, and if no administrative subdivision holds a separate register or authority to object to data collection and provision.

For published ownership information to be considered updated, the relevant data should be required to be updated at least annually or upon any change. For ownership information to be considered complete, it needs to comprise specific minimal elements. It should include in the case of beneficial owners:

1. The full names of all beneficial owners of the real estate, where a beneficial owner is identified in line with or stricter than the requirements of the Financial Action Task Force (FATF) and the European Union;[104] and for each beneficial owner:
2. Full address, or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

In the case of legal owners, the minimum details required to be published online include:

1. The full names, and for each:
2. The full address or company registration number (for legal persons), or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

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[100] Tax Justice Network. *Secrecy Indicator 3: Recorded Company Ownership*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-3.pdf.

[101] Both the recommendations of the Financial Action Task Force (FATF) and the 5th Anti-Money Laundering Directive of the European Union apply a minimum floor of control or ownership of 'more than 25 per cent' of the company in the definition of a beneficial owner of a company. Under these rules, a natural person who directly or indirectly owns or controls 25 per cent or less of a company's shares would not be identified as a beneficial owner. Four members of one family are enough to frustrate this beneficial ownership registration threshold if each holds 25 per cent of the shares.

[102] The reasons are that the costs for accessing as well as the risks and incentives for manipulation (such as omissions or backdating changes) of ownership information remain far higher than with publicly run registers. Furthermore, privately managed registers and firms usually are not covered by freedom of information legislation, exacerbating secrecy.

[103] If the online interface of the register only allows searches using some administrative identifiers of the property (but not with street addresses or map selection), we have considered that registry information to be available only if those administrative identifiers could otherwise be linked to street addresses through officially recognised and freely available websites.

[104] See note 101.

Table 3.10. Secrecy Scoring Matrix: Secrecy Indicator 4

Regulation [Secrecy Score: 100 points = full secrecy; 0 points= full transparency]	**Online for free and in format which can be easily copied** Secrecy score if for free and in a format which can be easily copied	**Online for free, but can not be easily copied** Secrecy score if for free, but not in a format which can be easily copied	**Online at small cost** Secrecy score if provided for a cost of up to US$10, €10 or £10
Component 1: Real Estate Ownership (50 points)			
Incomplete Ownership or high cost Updated and complete real estate ownership is not available to the general public or not consistently available online for a cost of up to US$10, €10 or £10.	50		
Complete Legal Ownership Complete and updated details on legal owners of real estate are consistently available to the general public online (but no, incomplete or not updated beneficial ownership information).	35	40	45
Complete Beneficial Ownership Complete and updated details on beneficial owners of real estate are published online (but no, incomplete or not updated legal ownership information).	20	25	30
Complete Beneficial and Legal Ownership Complete and updated details on all beneficial owners and on all legal owners are published online.	0	5	10

Component 2: Freeports (50 points)		
Freeports are available and promoted for storage of high value assets	**Incomplete or No Ownership Registration** No information on legal or beneficial ownership of assets held in freeports is consistently registered by local public authorities.	50
	Legal but not Beneficial Ownership Registration – No automatic notice Updated and complete legal ownership information of stored assets is always registered, but not always sent automatically to countries of residence of the beneficial owners.	37.5
	Legal and Beneficial Ownership Registration – No automatic notice Updated and complete legal and beneficial ownership information of stored assets is always registered, but not always sent automatically to countries of residence of the beneficial owners.	25
	Complete registration and automatic notice to the owner's residence jurisdiction Updated and complete legal and beneficial ownership information of stored assets is always registered and sent automatically to countries of residence of the beneficial owners.	0
Freeports are NOT available or are available but are NOT promoted to store high value assets (or promotion is unknown)	Freeports do not exist or are not promoted for high-value asset storage, or unknown.	0

The requirements for published ownership information to be considered complete are identical to the indicators on company and partnership transparency.

If this data is available online but there is a cost to access it of up to US$10, €10 or £10, the secrecy score will be reduced but not to zero.

To obtain a zero secrecy score, this data needs to be accessible online for free and in a format which can be easily copied. To be considered easily copiable, the data has to be available through a single platform where spatial and ownership information is accessible. Even if the cost per record is low, it can be prohibitively expensive to import this information into an open data environment, which limits the uses of the data. For example, access costs create substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions. Furthermore, complex payment or user-registration arrangements for accessing the data (eg. registration of bank account, requirement of a local identification number or sending of hard-copy documents by post) should not be required.[105]

We performed a random search on each of the relevant real estate registries to ensure that the information is effectively available and that technical problems do not persistently block access.

The first component (real estate) of this indicator draws information mainly from four different types of sources. First, we incorporated the results of the TJN-Survey 2021.[106] Second, we took into consideration existing studies and research for example by the World Bank (Land Governance Assessment Framework[107]) or by the European Union (European Land Information Service[108]). Third, we performed an internet search for the relevant real estate registries in each of the reviewed jurisdictions. If data on real estate owners was accessible, we then analysed a sample for the quality of data. If doubts existed about the quality or nature of the data, we then proceeded to analyse the local legislation, on a case by case basis.

For the second component (freeports), information has been collected through the following means: first, a literature and media article review was conducted to identify high profile freeports. Second, an internet search was carried out by combining a jurisdiction's name with the following words: "freeport", "bonded warehouse", "free trade zone", "foreign trade zone", "storage", "valuable storage", "art storage" and "gold storage". Third, the resulting information about the existence of specific storage facilities was checked for consistency with data collected through the TJN-Survey 2021.[109] Fourth, for those jurisdictions with such facilities, we reviewed FATF reports. Finally, if any source indicated that

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[105] We consider that for something to be truly "on public record", prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

[106] Tax Justice Network, *TJN Survey*.

[107] World Bank. *Land Governance Assessment Framework*. Text/HTML. URL: https://www.worldbank.org/en/programs/land-governance-assessment-framework (visited on 08/05/2022).

[108] European Union. *European E-Justice Portal - Land Registers at European Level*. URL: https://e-justice.europa.eu/content_land_registers_at_european_level-108-en.do (visited on 03/05/2022).

[109] Tax Justice Network, *TJN Survey*.

within the freeport facilities, ownership information about those using the facilities and owning the stored assets needed to be registered, corresponding government websites, legislation and/or regulation were analysed to assess whether there are adequate mechanisms in place to enable the countries in which the free ports are located to automatically send the information to countries of residence of the owners. Where no evidence was found to confirm the existence or promotion of freeports, the jurisdiction received zero secrecy score.

Recent but insufficient transparency advancements in the EU

a) Real estate The 2018 amendment to the 4th EU Anti-Money Laundering Directive (referred to as AMLD 5[110]) introduced provisions on owners of real estate. New Article 32b of AMLD 5 states the following: "Member States shall provide FIUs and competent authorities with access to information which allows the identification in a timely manner of any natural or legal persons owning real estate, including through registers or electronic data retrieval systems where such registers or systems are available. By 31 December 2020, the Commission shall submit a report to the European Parliament and to the Council assessing the necessity and proportionality of harmonising the information included in the registers and assessing the need for the interconnection of those registers. Where appropriate, that report shall be accompanied by a legislative proposal."[111] These AMLD provisions only provide for legal ownership to be timely available to authorities. Moreover, beneficial ownership information may be exceptionally available in cases where trusts with a trustee resident outside the EU purchases real estate in an EU Member State, pursuant to Article 31.3(a).[112] Furthermore, the new AML regulation proposed by the European Commission[113] only provides for beneficial ownership registration of legal entities and arrangements that purchase real estate in the EU, creating a loophole with regards to legal entities and arrangements already owning such real estate.[114] The incapacity of legislative bodies to provide a simple obligation to systematically register and publish the legal and beneficial owners of real estates is a clear source of secrecy risks worldwide.

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[110] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

[111] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

[112] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

[113] European Commission. *Proposal for a Regulation of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing*. 2021. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0420 (visited on 20/04/2022).

[114] European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing*, Article 48.

b) Freeports While the EU Directives regulate on freeports and beneficial ownership, they are not comprehensive enough to ensure access to beneficial ownership information of stored goods in freeports.

In their paper "Money laundering and tax evasion risks in free ports" the European Parliament described that the AMLD 5, "will broaden the scope of the directive and explicitly includes freeports, freeport operators and actors in the art market: 'Persons trading or acting as intermediaries in the trade of works of art, including when this is carried out by art galleries and auction houses as well as persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports where the value of the transaction exceeds EUR 10 000', were added to the list of 'obliged entities' under the recently adopted AMLD5. These entities will then be subject to the same customer due diligence requirements as current nonfinancial obliged entities, such as real estate agents or notaries, and they will also have to report suspicious transactions to the financial intelligence units (FIUs)."[115] However, collecting information without automatically reporting this information to authorities will be of little use - the same as if a company collected information on its beneficial owners without registering with authorities.

In the EU, under the 2016 Directive on Administrative Cooperation (DAC 5),[116] tax authorities have "access upon request" to beneficial ownership information collected through customer due diligence. While intermediaries operating in freeports (exclusively in relation to works of art) will have to obtain beneficial ownership information as part of their customer due diligence, tax authorities will not be able to access this information without evidence and suspicions to support a request for information. That is why it was concluded that "it is difficult to predict how this measure would actually have systemic benefits. Unless direct tax authorities have prior information, for example a specific request received from one of their counterpart authorities abroad or information from their national FIU, the information held by the obliged entities are 'unknown-unknowns' to direct tax authorities. In this context, the chances of a foreign UBO who stores his/her assets in a freeport becoming known to his/her own tax authorities as a result of exchange of information agreements between tax authorities seems almost negligible."[117]

As for EU Customs regulations, these aren't comprehensive either in terms of beneficial ownership information. Information that Member states must require in different customs processes is dictated by European Union regulation 2015/2446,[118] and it provides no obligation to include the particulars of a party

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[115] Ron Korver. *Money Laundering and Tax Evasion Risks in Free Ports*. Oct. 2018. URL: http://www.europarl.europa.eu/cmsdata/155721/EPRS_STUD_627114_Money%20laundering-FINAL.pdf (visited on 06/05/2022).

[116] European Council. *Council Directive (EU) 2016/2258 of 6 December 2016 Amending Directive 2011/16/EU as Regards Access to Anti-Money-Laundering Information by Tax Authorities*. Dec. 2016. URL: http://data.europa.eu/eli/dir/2016/2258/oj/eng (visited on 12/05/2022).

[117] Ron Korver, *Money Laundering and Tax Evasion Risks in Free Ports*.

[118] *Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 Supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as Regards Detailed Rules Concerning*

with ownership rights (the buyer or owner) for all assets entered in Free Zone areas or other preferential regimes.[119]

Legal research suggests that EU Member States might not be able to implement stronger controls on asset ownership, given that the systematic requirement of such information is not foreseen in EU regulations, and additional measures by Member States may constitute a barrier to Single Market economic freedoms. As a result, ownership registration in free zones and other preferential regimes in EU Member States may not be comprehensive.[120]

3.4.2 Why is this important?

Component 1: Real Estate Registries

Secrecy around the ownership of real estate exacerbates the attractiveness of the real estate sector for money laundering, investing the proceeds of crime and the use of aggressive tax avoidance structures. There are a number of reasons why real estate transactions are particularly attractive for criminals seeking to conceal and/or launder their illicit wealth. First, money laundering through real estate does not require a lot of planning or expertise and therefore is relatively uncomplicated and risk free compared to other methods of money laundering.[121] Second, cash is still used often in many countries and does not leave an electronic paper trail for investigators. Third, the high unit prices involved in real estate transactions implies that large sums of illicit funds can be laundered without creating suspicion, since these are more difficult to detect in a deep and large pool of regular high value real estate transactions.[122] In addition to these factors, several recent case studies have shown that without public pressure the

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Certain Provisions of the Union Customs Code. July 2015. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R2446 (visited on 12/05/2022).

[119] Pursuant to EU Commission regulation 2015/2446 (*Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 Supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as Regards Detailed Rules Concerning Certain Provisions of the Union Customs Code*), the buyer (name and address) only needs to be declared in summary declarations for sea, inland waterways, and road/rail (pursuant to Art 127(6) and 5(9) of the UCC). The buyer does not need to be declared in the Customs good manifest, nor for entry summary declarations (air cargo), nor in the declaration for customs warehousing of Union Goods, nor in the declaration for dispatch of goods in the context of trade with special fiscal territories (Annex A, Chapter 2 (ref. 3/26)). Further, the "owner of the goods" is only required to be declared for the use of temporary admission procedure (Annex A, Chapter 1 (ref. 3/18)). The particulars of the owner (name, address) are not required, for example, for the use of end-use procedure or use of inward processing procedure. In any case, EU regulations do not require the legal owner of the goods, to be declared to public authorities in case of free zone storage of an asset. Regulation 2015/2446 is enacted by the European Commission under the authority provided by Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code [UCC]. The UCC avoids the question of ownership with the following definition: "'holder of the goods' means the person who is the owner of the goods or who has a similar right of disposal over them or who has physical control of them" (Article 5(34) of the UCC).

[120] As of February 2022, we were not able to receive clarifications from the Directorate General of Taxation and Customs Union (DG TAXUD) on this matter (email communications were made on Nov. 2021, Dec. 2021, and Feb. 2022).

[121] Australian Government - AUSTRAC. *Money Laundering through Real Estate*. 2015. URL: http://web.archive.org/web/20190520221234/http://www.austrac.gov.au/sites/default/files/sa-brief-real-estate.pdf (visited on 02/05/2022).

[122] Financial Action Task Force. *Money Laundering & Terrorist Financing through the Real Estate Sector*. June 2007. URL: https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf (visited on 03/05/2022).

willingness and motivation of governments to control and limit the influx of dirty money from abroad is very low.

Public registers with complete legal ownership as well as ultimate beneficial owners would increase the pressure for proper oversight and mitigate the high risks of illicit activity. Yet to date there is no public register of those ultimately owning and controlling real estate anywhere in the world. The absence of easily accessible information, even on legal owners of real estate, causes investigations to slow down or even fail. This is especially the case when journalists, civil society, police or public prosecutors have access to no, or only complex, uncertain, costly or time consuming information on real estate ownership.

In countries with public beneficial ownership for domestic companies, a public register on beneficial owners of real estate would also eliminate undue advantages for foreign companies and help to avoid incentives for arbitrage. Without a public beneficial ownership registry for real estate, there is an incentive for companies investing in real estate to use shell companies incorporated in secrecy jurisdictions for buying real estate as a means for disguising ultimate ownership and investors.

The mechanisms used for money laundering in the real estate sector are well known and there are many examples of real estate being abused for money laundering. The FATF described in 2007 how one of the often used structures to launder money consists in manipulating the valuation of real estate through a complex chain of transactions. First, the launderers set up shell companies to buy property. Soon after the purchase, these companies are voluntarily wound up and the criminals who set them up then repurchase the real estate at a higher price than it was originally bought. The (criminal) origin of the capital for this second purchase of the same real estate remains concealed and the money is laundered in the hand of the seller in the second real estate transaction.[123] In their 2017 report on money laundering risks in four major real estate markets, Transparency International shows that existing oversight and anti-money laundering rules don't work effectively.[124]

For example, in the corruption scandal around the Malaysian Sovereign Wealth Fund 1MDB, a US civil lawsuit alleges that over US$3.5 billion of taxpayer funds were diverted to buy, among others, luxury real estate in the US and the UK.[125] A complex and multi-layered web of accounts and companies helped disguise the source of funds and the real owners controlling the real estate. Pooled accounts by major US law firms were allegedly playing a central role to get the laundered money into the US. If a central and public register of ownership of real estate had existed in the US, the law firms involved in handling the dubious transactions and

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[123] Financial Action Task Force, *Money Laundering & Terrorist Financing through the Real Estate Sector*, pp.11-17.

[124] Transparency International. *Doors Wide Open - Corruption and Real Estate in Four Key Markets*. 2017. URL: https : / / images . transparencycdn . org / images / 2017 _ DoorsWideOpen _ EN . pdf (visited on 08/05/2022).

[125] US Department of Justice. *Attorneys for Plaintiff United States of America, United States District Court for the Central District of California. CV 16-16-5362, 20 July 2016*. July 2016. URL: https : / / www . leagle.com/decision/infdco20180309b25 (visited on 08/05/2022).

clients might have thought twice about the reputational risks of engaging with these actors. In order to address money laundering in the real estate sector, Transparency International recommended, among others:

> "Governments should require foreign companies that wish to purchase property to provide beneficial ownership information. Preferably, this information should be kept in a beneficial ownership registry and made available to competent authorities and the public in open data format".[126]

Stories about wealthy individuals from Russia, Kazakhstan and other former Soviet Union countries buying real estate in Switzerland at highly inflated prices have been viral at least since 2010. An official overseeing construction in a Swiss canton said that money did not matter for the buyers – even if a zero is added to the market price, they would still buy it.[127] Even organised crime groups, such as the Russian and Italian mafias, have been reported to use real estate for money laundering especially around the Lake Zurich, Lake Geneva and Ticino regions.[128] Concerns about money laundering in Swiss real estate persisted in 2017.[129]

The UK property market is no less an investment destination of choice for dubious characters. Global Witness revealed in 2015 how a real estate empire worth £147 million in well-known London locations appeared to be "owned by someone with ties to Rakhat Aliyev, a notorious figure from Kazakhstan, accused in the EU of money laundering and murder".[130] An investigative documentary entitled "From Russia with Cash"[131] illustrated how the London property market is awash with billions of pounds of corruptly gained money which has been laundered by criminals and foreign officials. The documentary emphasised the need for creating in the UK a central public land registry of foreign companies, setting out which land they own.[132]

Similarly, various case studies in Germany illustrate how the real estate sector of Baden-Baden, a health and casino resort town in the south of Germany, is owned by dubious Russian and former Soviet Union officials.[133] A study commissioned by

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[126] Transparency International, *Doors Wide Open - Corruption and Real Estate in Four Key Markets*, p.10.

[127] Simon Bradley. 'Concerns over Geneva's New Luxury Villa Owners'. *swissinfo.ch* (Oct. 2010). URL: https://www.swissinfo.ch/eng/concerns-over-geneva-s-new-luxury-villa-owners/28615652 (visited on 02/05/2022).

[128] Simon Bradley. *Real Estate Moves to Lower Dirty Money Risks*. Sept. 2011. URL: https://www.swissinfo.ch/eng/business/real-estate-moves-to-lower-dirty-money-risks/31137176 (visited on 02/05/2022).

[129] Matthew Allen. *Squeezing Laundered Money out of Swiss Property*. May 2017. URL: https://www.swissinfo.ch/eng/business/bricks-mortar-dirty-cash_squeezing-laundered-money-out-of-swiss-property/43200192 (visited on 27/04/2022).

[130] Global Witness. *Mystery on Baker Street. Brutal Kazakh Official Linked to £147m London Property Empire*. July 2015. URL: https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf (visited on 08/05/2022), p.1.

[131] Randeep Ramesh. 'London Estate Agents Caught on Camera Dealing with 'corupt' Russian Buyer'. *The Guardian* (July 2015). URL: https://www.theguardian.com/uk-news/2015/jul/07/london-estate-agents-caught-on-camera-russian-buyer (visited on 08/04/2022).

[132] See David Cameron's speech, 3 weeks after the broadcasting of the documentary: (Patrick Wintour. 'David Cameron Vows to Fight against "Dirty Money" in UK Property Market'. *The Guardian* [July 2015]. URL: https://www.theguardian.com/politics/2015/jul/28/david-cameron-fight-dirty-money-uk-property-market-corruption [visited on 08/04/2022]).

[133] Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, Ch.3.

the German federal crime fighting agency BKA (Bundeskriminalamt) of 2013 identified high risks of money laundering in the German real estate sector, a finding that was confirmed in 2015 in an academic study.[134]

Real estate in New York has also been reported to be linked to wealth of dubious origin. For example, in 2014, it was discovered through a leak that properties held by offshore companies in New York Central Park West were owned by a Chinese couple (Sun Min and Peter Mok Fung). However, New York Magazine reported[135] that a "[...] Hong Kong tribunal recently convicted Sun Min of trading on inside information related to Coca-Cola's failed acquisition of a Chinese juice company in 2008, the same year she and her husband made their $15 million purchase".

In countries such as Spain, where the real estate bubble drove economic growth in pre-crisis years, the opacity of real estate registries allowed illicit activities to thrive. In Spain, two examples illustrate the importance of public ownership registries for real estate.

Following a legislative change (Ley Hipotecaria de 1998) under the mandate of Jose María Aznar, the catholic church was awarded preferential treatment in registering real estates. Without proof other than a statement by the bishop of the corresponding diocese, and subject to no publicity requirements, the church was allowed to claim ownership over properties that where formerly considered property of municipalities. This ad hoc silent registration process allowed the catholic church to claim over 5000 real estates in the last two decades, setting up in several cases for profit yet tax free endeavours.[136] The investigative documentary by Jordi Evole, "Que Dios te lo Pague" (in English "may god pay you"), covers various cases of secretive real estate speculation carried out by the Archdiocese of Pamplona y Tudela (Navarra).[137]

In the coastal city of Marbella, a favoured destination for wealthy Russians,[138] the public witnessed an unprecedented money laundering scandal when in the years following the burst, police investigations uncovered a dense criminal network

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[134] Bundeskriminalamt. *Managementfassung Zur Fachstudie - Geldwäsche Im Immobiliensektor in Deutschland*. Oct. 2012. URL: https://www.bka.de/SharedDocs/Downloads/DE/UnsereAufgaben/Deliktsbereiche/GeldwaescheFIU/fiuFachstudieGeldwaescheImmobiliensektor.html (visited on 03/05/2022); Kai Bussmann. *Der Umfang Der Geldwäsche in Deutschland Und Weltweit Einige Fakten Und Eine Kritische Auseinandersetzung Mit Der Dunkelfeldstudie von Kai Bussmann*. Sept. 2016. URL: https://shop.freiheit.org/download/P2@618/74195/Geldwaesche_Web.pdf (visited on 03/05/2022).

[135] Andrew Rice. 'Why New York Real Estate Is the New Swiss Bank Account'. *New York Magazine* (June 2014). URL: http://nymag.com/news/features/foreigners-hiding-money-new-york-real-estate-2014-6/ (visited on 06/05/2022).

[136] Valero, Marina. 'Ley Hipotecaria: Las Inmatriculaciones Llegan a Bruselas y Ponen a La Iglesia Entre La Espada y La Pared'. *El Confidencial* (July 2015). URL: https://www.elconfidencial.com/economia/2015-07-19/la-amnistia-inmobiliaria-de-la-iglesia-llega-a-bruselas-y-abre-el-debate-sobre-la-seguridad-juridica_928274/ (visited on 08/05/2022); Gomez, Luis. 'La Iglesia Inscribió 4.500 Propiedades Sin Publicidad y Sin Pagar Impuestos'. *El Pais* (May 2013). URL: https://elpais.com/politica/2013/05/05/actualidad/1367768798_397124.html (visited on 03/05/2022).

[137] Jordi Évole. ''Salvados' Destapa Los Negocios Inmobiliarios de La Iglesia En Navarra'. *Público* (Apr. 2012). URL: https://www.publico.es/espana/salvados-destapa-negocios-inmobiliarios-iglesia.html (visited on 03/05/2022).

[138] Juana Viúdez. 'Los Rusos Se Apasionan Con Marbella' (Mar. 2012). URL: https://elpais.com/ccaa/2012/03/31/andalucia/1333216873_694353.html (visited on 08/05/2022); EFE. *Detenidos un capo de la mafia rusa y el presidente del Marbella por blanqueo*. Sept. 2017. URL: https://www.efe.com/efe/espana/sociedad/detenidos-un-capo-de-la-mafia-rusa-y-el-presidente-del-marbella-por-blanqueo/10004-3390574 (visited on 03/05/2022).

with tight control over local authorities. The municipality facilitated the construction of more than 16,000 illegal properties, laundering over 2400 million euros for construction companies and private individuals, while using complex legal structures to conceal effective ownership of the properties.[139]

More recently, the 2021 Pandora Papers leak shows that real estate is often the asset held at the bottom of secretive legal structures.[140] Notably, various former and current heads of government where shown to have exploited opaque arrangements to hide luxury properties in Europe.[141]

Apart from aiding money-laundering and investment of laundered money, hidden and complex ownership structures also help facilitate aggressive tax avoidance and obstruct accountability. When professional real estate investors create complex company structures to reduce their taxes and real estate registers only contain the direct legal owner – often a local special purpose company – it becomes impossible to obtain reliable information on who owns local real estate both for the purpose of statistics to inform policy making as well as to enable tenants and local residents to hold their landlords accountable. Two examples of real estate investment funds from Jersey and Luxembourg and the consequences their investments have in Germany have been documented.[142] As those investment funds are themselves owned by a multitude of different shareholders, often including trusts and other investment funds, beneficial ownership transparency will only be possible with the global application of strict requirements going far beyond the standard 25% threshold for company registers (as suggested in SI 3 on recorded company ownership[143]).

Component 2: Freeports

Freeports for storing valuable assets – especially art - are proliferating around the globe, with many new major facilities announced or completed in recent years. The latest additions are facilities in the USA (Delaware, 2015;[144] New York, 2017[145])

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[139] Paniagua, Mayka. *Casas, armas y hasta un autobús: Marbella hace caja con el lujoso imperio de Roca*. Mar. 2017. URL: https://www.vanitatis.elconfidencial.com/noticias/2017-03-14/malaya-juan-antonio-roca-subasta_1347366/ (visited on 06/05/2022); Fernando J. Pérez. 'Con Malaya empezó todo'. *El País* (Mar. 2016). URL: https://elpais.com/politica/2016/03/30/actualidad/1459325623_034369.html (visited on 06/05/2022).

[140] ICIJ, *Secret Real Estate Purchases Are a Driving Force behind the Offshore Economy*.

[141] ICIJ, *Secret Real Estate Purchases Are a Driving Force behind the Offshore Economy*.

[142] Maximilian Burkhart und Wolfgang Kerler Claudia Gürkov. 'Die Akte GBW - ein bayerischer Wirtschaftskrimi: Die Spur führt nach Luxemburg' (Oct. 2016). URL: https://www.br.de/nachricht/inhalt/akte-gbw-konstrukt-100.html (visited on 07/05/2022); Der Tagesspiegel. *Blendle – Düstere Deals*. URL: https://blendle.com/i/der-tagesspiegel/dustere-deals/bnl-tagesspiegel-20161008-0011977481 (visited on 28/01/2020).

[143] Tax Justice Network, *Secrecy Indicator 3: Recorded Company Ownership*.

[144] Graham Bowley. 'Art Collectors Find Safe Harbor in Delaware's Tax Laws'. *The New York Times* (Oct. 2015). URL: https://www.nytimes.com/2015/10/26/arts/design/art-collectors-find-safe-harbor-in-delawares-tax-laws.html (visited on 02/05/2022).

[145] Margie Fishman and Goss Scott. 'Delaware Provides Tax Shelter for Multimillion-Dollar Masterpieces'. *The News Journal* (Sept. 2017). URL: https://www.delawareonline.com/story/insider/2017/09/27/delaware-provides-tax-shelter-multi-million-dollar-masterpieces/678385001/ (visited on 03/05/2022).

and China (Shanghai, 2017[146]), which were preceded by Luxembourg (2014),[147] Beijing (2014)[148] and Monaco (2013)[149] and Singapore (2010).[150] The oldest actor still operating is the Ports Francs et Entrepots de Genève, which runs a gigantic Geneva-based freeport,[151] which has been in operation since 1888 and in 1988 opened a facility at Geneva Airport.[152]

This boom appears to be partially driven by strong growth at the top end (sales above US$ 10 million) of the art market, itself reflective of an extreme concentration of wealth in the hands of billionaires.[153] At the same time, another important reasons for the growth in demand for storage of gold bullion in such high security places was the financial crisis as well as the avoidance of new bank account reporting rules crafted from 2013 onwards.[154] Last but not least, billionaire drug lords have been known in the past to launder money through expensive art collections, including Joaquin Guzmán aka El Chapo (Mexico),[155] Héctor Beltrán Leyva (Mexico) and Pablo Escobar (Colombia).[156]

The value of assets stored in Freeports around the world is rising,[157] albeit unknown, it is believed to be in the hundreds of billions of dollars.[158] But it is not only art that is stored in Freeports. Besides art, the range of high value assets include precious stones, antiquities, cash, gold bars, wines and even classic cars.[159]

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[146] Artnet News. *Amid Yves Bouvier Scandal, Shanghai's Le Freeport West Bund Is Slated to Open in 2017*. Mar. 2015. URL: https://news.artnet.com/art-world/le-freeport-west-bund-282939 (visited on 08/04/2022).

[147] *Luxembourg High Security Hub*. URL: https://lux-hsh.com/luxembourg/ (visited on 06/05/2022).

[148] Deng Zhangyu. *Beijing Culture Free Port Poised for Art Market*. Sept. 2014. URL: https://www.chinadaily.com.cn/culture/art/2014-09/23/content_18643138.htm (visited on 08/05/2022).

[149] *SEGEM- Monaco Freeport*. URL: http://en.monaco-freeport.mc/bienvenue (visited on 08/05/2022).

[150] *InSYNC - Singapore Customs e-Newsletter*. 2010. URL: https://www.customs.gov.sg/news-and-media/publications/corporate-newsletter (visited on 12/05/2022); The Economist. *Freeports - Über-warehouses for the Ultra-Rich*. Nov. 2013. URL: https://www.economist.com/briefing/2013/11/23/uber-warehouses-for-the-ultra-rich (visited on 08/04/2022).

[151] David Segal. *Swiss Freeports Are Home for a Growing Treasury of Art*. July 2012. URL: https://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html (visited on 08/05/2022).

[152] *Ports Francs & Entrepôts de Genève SA*. URL: http://geneva-freeports.ch/fr/ (visited on 06/05/2022).

[153] Deloitte and ArtTactic. *Art & Finance Report 2014*. Luxembourg, 2014. URL: https://www2.deloitte.com/content/dam/Deloitte/es/Documents/acerca-de-deloitte/Deloitte-ES-Opera_Europa_Deloitte_Art_Finance_Report2014.pdf (visited on 03/05/2022); Deloitte and ArtTactic. *Art & Finance Report 2016*. 2016. URL: https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-en-artandfinancereport-21042016.pdf (visited on 03/05/2022).

[154] Pauly, Christoph. 'Rich Move Assets from Banks to Warehouses'. *Der Spiegel* (July 2013). URL: https://www.spiegel.de/international/business/art-as-alternative-investment-creates-storage-business-tax-haven-a-912798.html (visited on 06/05/2022); Chanjaroen Chanyaporn. 'Deutsche Bank Eröffnet Goldtresor Mit Kapazität von 200 Tonnen'. *Welt* (June 2013). URL: https://www.welt.de/newsticker/bloomberg/article116978314/Deutsche-Bank-eroeffnet-Goldtresor-mit-Kapazitaet-von-200-Tonnen.html (visited on 03/05/2022).

[155] Artnet News. *Inside Escaped Mexican Drug Lord El Chapo's Mansion—Is He an Art Collector?* July 2015. URL: https://news.artnet.com/market/inside-el-chapos-mansion-art-collector-316398 (visited on 02/05/2022).

[156] Eileen Kinsella. *We Profile 3 Famous Billionaire Drug Kingpins and the Art They Adored*. July 2015. URL: https://news.artnet.com/art-world/3-drug-kingpins-art-adored-316531 (visited on 03/05/2022).

[157] Deloitte and ArtTactic, *Art & Finance Report 2014*, p.29.

[158] The Economist, *Freeports - Über-warehouses for the Ultra-Rich*; Kessler, Manuela. *Hintergrund: Schweizer Supersafe in Singapur*. Jan. 2014. URL: https://www.tagesanzeiger.ch/leben/gesellschaft/Schweizer-Supersafe-in-Singapur/story/17946480 (visited on 03/05/2022).

[159] Pauly, Christoph, 'Rich Move Assets from Banks to Warehouses'.

Freeports are known as a "fiscal no-man's-land". They were originally created to boost trade by suspending customs duties, sales taxes and value-added tax until the final delivery of the goods outside the freeports. If no delivery is made, such taxes and customs duties will never be paid. Historically, this might not have been an issue, because goods such as grain or other commodities could not be stored indefinitely. However, artworks, gold, precious stones and other luxury goods may never leave the freeport, but can be traded within the freeport without ever leaving it. Freeports are often used to store valuable goods discreetly with a strong emphasis on high security.

This invites all sorts of shady traders and businesses who benefit from no or low tax, and the veil of secrecy resulting from an absence of, or weak, customs and tax checks. UNESCO summarised the regulatory vacuum as follows:

> In some cases it is not clear whether the government or the Customs authorities have the jurisdiction to exercise controls. The lack of control by Customs raises problems in the fields of intellectual property, valuation fraud and other non-fiscal offences. Moreover, controls are often carried out by random selection methods rather than based on risk assessment or indicators and there are no clear procedures, authority, or documentation identified to organize and carry out the investigations.[160]

Before the recent hype of freeports for the storage of high value goods, the Financial Action Task Force (FATF) published a report on "Money Laundering vulnerabilities of Free Trade Zones"(FTZ) in 2010.[161] A number of trade based money laundering cases with involvement of free trade zones were documented in that report. With respect to the checks applicable, the FATF noted:

> The scope and degree of Customs control over the goods introduced, and the economic operations carried out in FTZs, vary from one jurisdiction to another. Consistent with the purposes of establishing free trade zones, goods introduced in a FTZ are generally not subject to the usual Customs controls. There is therefore a risk of exploiting the FTZ system for commercial fraud.[162]

According to their classification, freeports and bonded warehouses are specific categories of free trade zones. We are using the two latter terms interchangeably here for any such geographical area which has an emphasis on providing storage facilities for high value goods.

Besides customs and tax exemptions, the secrecy provided by freeports is an important reason why they are attractive for kleptocrats and tax dodgers. The

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[160] UNESCO - Intergovernmental committee for promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation. *Free Ports and Risks of Illicit Trafficking of Cultural Property*. Sept. 2016. URL: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/2_FC_free_port_working_document_Final_EN_revclean.pdf (visited on 08/05/2022), p.3.

[161] Financial Action Task Force. *Money Laundering Vulnerabilities of Free Trade Zones*. Mar. 2010. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf (visited on 03/05/2022).

[162] Financial Action Task Force, *Money Laundering Vulnerabilities of Free Trade Zones*, p.16.

real ownership of valuable goods and assets can remain hidden and may not even need to rely on nominees – nobody in the freeports may ask for their identities. The operators of freeports are often not subject to anti-money laundering rules (they are not so-called obliged entities) and thus are under no obligation to identify customers, let alone beneficial owners of people renting the storage facilities.

As a result, freeports are frequently used for tax evasion and money laundering. Due to the absence of registration and information exchange about those owning the assets stored in freeports, they provide secrecy to the users and often an effective shield against investigations unless prosecutors find out about dubious operations through other leads.

For example, an organised crime, tax evasion and money laundering operation revolving around diamond trading was uncovered in 2004. Diamonds entered the freeport of Geneva from Antwerp and were officially designated for transit export to third countries. However, the diamonds in fact returned to Antwerp and were sold there on the black market.[163]

A related problem concerns the trading in blood diamonds. Switzerland's Geneva Freeport has become a turntable for the global diamond trade. While customs require a clean Kimberley certificate (proof that a diamond is not a blood diamond) for any diamond entering the freeport, checks about the veracity of the certificate are seldom, if ever, carried out. The diamonds then travel on to further customers with a clean certificate stating Swiss origin, and erasing any other origin. In just one year, Switzerland has issued 674 diamond certificates, and exported diamonds valued at €2.3 billion.[164]

Another case of potential criminal activity revolves around the owner of the Geneva Freeport and a partner facility in Singapore, Yves Bouvier, dubbed the "Freeport King", who was accused by a Russian billionaire over fraudulent pricing.[165] Courts in Hong Kong and Singapore ordered a freeze of Bouvier's assets in 2015. Bouvier has denied wrongdoing.[166]

In 2016, UNESCO published a report that identified "a high risk that the freeports are used by art dealers to store works of art from thefts, lootings or illicit excavations for resale in the black market when things have cooled down, even many years later."[167] A list of recent scandals in illegal trafficking of cultural

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[163] La., J. 'Mégafraude Diamantaire'. *La Libre* (Mar. 2011). URL: https : / / www . lalibre . be / belgique / megafraude-diamantaire-51b8d007e4b0de6db9c081b0 (visited on 06/05/2022).

[164] Agathe Duparc. *Ports francs : les derniers paradis fiscaux suisses*. Aug. 2014. URL: https : / / www . mediapart.fr/journal/international/080614/ports-francs-les-derniers-paradis-fiscaux-suisses (visited on 02/05/2022).

[165] Artnet News, *Amid Yves Bouvier Scandal, Shanghai's Le Freeport West Bund Is Slated to Open in 2017*.

[166] Milliard, Coline. 'Politician Rémy Pagani Wants to Freeze Yves Bouvier's Swiss Assets'. *ArtNet* (Mar. 2015). URL: https : / / news . artnet . com / art - world / remy - pagany - yves - bouvier - 279767 (visited on 06/05/2022); Artnet News, *Amid Yves Bouvier Scandal, Shanghai's Le Freeport West Bund Is Slated to Open in 2017*.

[167] UNESCO - Intergovernmental committee for promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation, *Free Ports and Risks of Illicit Trafficking of Cultural Property*, p.2.

heritage involving freeports include stolen Roman and Etruscan antiquities and ancient Egypt treasures, including mummies, discovered in the freeport of Geneva.

In December 2016,[168] links between Geneva Freeport and terrorist groups such as the Islamic State were disclosed as Swiss authorities confiscated stolen antiquities. These originated among others from Syria's Palmyra UNESCO world heritage site, which was devastated by the Islamic State in 2015. Further confiscated stolen antique objects came from war torn Libya and Yemen.[169]

Catering to the needs of the boom of the art and tangible asset market, in 2016 Luxembourg invented a new type of investment fund structure that is unregulated and enables investment into art and other tangible assets.[170]

Ownership registration of freeport assets and real estate is therefore essential for lifting the deliberate veil of opacity covering these particular storage hubs and the real estate market. The costs and risks for money laundering, and the prospects of successful law enforcement are likely to be greatly enhanced as a result.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.11. Assessment Logic: Secrecy Indicator 4 - Other Wealth Ownership

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
416	Real Estate Registry: Is there a central registry of domestic real estate publicly available online?	0: No, there is no central registry of real estate; 1: CENTRAL: While there is a central registry of real estate, it is not - or only exceptionally - available online to the public; 2: ONLINE: Yes, there is a central registry of real estate open to the public and accessible online; 3: FREE: Yes, there is a central registry of real estate available online for free but can not be easily copied; 4: FREE & EASILY COPIED: Yes, there is a central registry of real estate available online for free & in a format which can be easily copied.	Integrated assessment of BO and LO as per Table 3.10. If all beneficial and legal owners are always registered and updated with all details, and made available online in a format which can be easily copied, then zero secrecy score. If not even legal owners are always registered, or incomplete, or not updated, 50 secrecy score. Eight intermediate scores for partial compliance.

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[168] AFP. 'Looted Palmyra Relics Seized by Swiss Authorities at Geneva Ports'. *The Guardian* (Mar. 2016). URL: https://www.theguardian.com/world/2016/dec/03/looted-palmyra-relics-seized-by-swiss-authorities-at-geneva-ports (visited on 08/04/2022).

[169] AFP, 'Looted Palmyra Relics Seized by Swiss Authorities at Geneva Ports'; Dunn-Davies, Huw. *The Usage of Freeports in the Art Industry*. June 2017. URL: https://www.borro.com/uk/insights/blog/usage-freeports-art-industry/ (visited on 02/05/2022).

[170] Deloitte and ArtTactic, *Art & Finance Report 2016*, p.104.

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
437	Is legal ownership information of real estate available on public online record (up to US$10, €10 or £10)?	0: No, information on legal owners is not always available online (up to US$10, €10 or £10); 1: COST: Yes, legal ownership is always available but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, legal ownership is always available for free but can not be easily copied; 3: FREE & EASILY COPIED: Yes, legal ownership is always available for free & can be easily copied.	
487	Is beneficial ownership information of real estate available on public online record (up to US$10, €10 or £10)?	0: No, beneficial ownership not always available online (up to US$10, €10 or £10); 1: COST: Yes, beneficial ownership (with the exception of real estate where the beneficial owner actually resides, if applicable) is always available but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, beneficial ownership (with the exception of real estate where the beneficial owner actually resides, if applicable) is always available for free but can not be easily copied.; 3: FREE & EASILY COPIED: Yes, beneficial ownership (with the exception of real estate where the beneficial owner actually resides, if applicable) is always available for free & can be easily copied.	
418	Are freeports/free trade zones/foreign trade zones/bonded warehouses promoted as places to store valuable assets (e.g. gold bullion, art, precious stones, jewellery, cash, antiquities, wines, cigars, cars)?	YN	If answer is No or unknown: zero secrecy score; otherwise see below (ID 439)

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
439	Freeport Owners: Is information on legal and beneficial owners of assets stored in freeports/free trade zones/foreign trade zones/bonded warehouses always registered by a government agency, and sent to respective countries of residence of the owners?	0: Neither legal nor beneficial owners need to be reported in all cases to a domestic government agency (e.g. customs office, a commercial registry, tax administration, central bank or a similar body); 1: Only legal owners need to be reported in all cases to a domestic government agency (e.g. customs office, a commercial registry, tax administration, central bank or a similar body); 2: Legal and beneficial owners need to be reported in all cases to a domestic government agency (e.g. customs office, a commercial registry, tax administration, central bank or a similar body); 3: Information on legal and beneficial ownership is sent to the corresponding countries of residence of the owners.	0: 50; 1: 37.5; 2: 25; 3: 0

3.5 Secrecy Indicator 5: Limited partnership transparency

3.5.1 What is measured?

This indicator analyses two aspects of the transparency of limited partnerships:

1. Regarding beneficial ownership and/or legal ownership: it assesses whether a jurisdiction requires all types of limited partnerships to publish ownership online for free and in a format which can be easily copied, or at a maximum cost of US$10, €10 or £10;

2. Regarding annual accounts: it assesses whether all limited partnerships are required to file their annual accounts with a governmental authority/administration and to make them accessible online for free, and in an accessible format from which the data can be easily copied or at a maximum cost of US$10, €10 or £10.[171]

Accordingly, we have split this indicator into two components. The overall secrecy score for this indicator is calculated by simple addition of the secrecy scores of each of these components. The secrecy scoring matrix is shown in Table 3.12, with full details of the assessment logic given in Table 3.13.

We consider limited partnerships as any partnership where at least one partner enjoys limited liability, or where other legal entities are allowed as partners. Jurisdictions that do not offer this type of partnership obtain a zero secrecy score in this indicator.

Component 1: Ownership/ Partners' Identities (50 points)

To meet a reasonable standard, published ownership information must comply with minimum requirements. The recorded beneficial owners must be the natural human beings who have the right to enjoy ownership or the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.[172]

For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons do not count as beneficial owners. Different percentage thresholds of control or ownership applied in the definition of the beneficial owner are disregarded in this indicator as long as the definition and threshold of

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[171] We believe online accessibility for free is a reasonable requirement given a) the prevalence of the internet, b) as international financial flows are now completely relying on the use of modern technology, it would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it.

[172] FATF defines beneficial owners as the "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement." See page 118 in (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*).

Table 3.12. Secrecy Scoring Matrix: Secrecy Indicator 5

Regulation [Secrecy Score: 100 points= full secrecy; 0 points = full transparency]	**Online for free in a format which can be easily copied**	**Online for free, but not in a format which can be easily copied**	**Online at small cost** [i.e. up to US$10, €10 or £10]
Component 1: Ownership / Partners' Identities (50 points)			
Incomplete Ownership or high cost Limited partnerships do not always publish online updated and complete ownership information about all partners (including legal entities which are partners) for a cost of up to US$10, €10 or £10, or unknown.	50		
Complete Legal Ownership All types of limited partnerships are publishing online updated and complete legal ownership information about all partners (including legal entities which are partners), but no, incomplete or not updated beneficial ownership information).	35	40	45
Complete Beneficial Ownership All types of limited partnerships are publishing online updated and complete beneficial ownership information about all partners (including legal entities which are partners), but no, incomplete or not updated legal ownership information.	20	25	30
Complete Beneficial and Legal Ownership All types of limited partnerships are publishing online updated and complete legal and beneficial ownership information about all partners (and legal entities which are partners), or limited partnerships are not available in the jurisdiction.	0	5	10
Component 2: Accounts (50 points)			
Accounts not always available online at small cost Limited partnerships do not always publish their annual accounts online for a cost of up to US$10, €10 or £10, or unknown.	50		
Accounts always available online All types of limited partnerships file their annual accounts and publish them online, or limited partnerships are not available.	0	12.5	25

a beneficial owner is the same or stricter than the requirements of the Financial Action Task Force (FATF) and the European Union (see SI 3[173]).[174]

For published ownership information to be considered updated, the relevant data should be required to be updated at least annually. For ownership information to be considered complete, it needs to comprise specific minimal elements. It should include in case of beneficial owners:

[173] Tax Justice Network, *Secrecy Indicator 3: Recorded Company Ownership*.

[174] Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 5th Anti-Money Laundering Directive of the European Union apply a minimum floor of control or ownership of 'more than 25%' of the company in the definition of a beneficial owner (BO) of a company. Under these rules, a natural person who directly or indirectly owns or controls 25% or less of a company's shares would not be identified as BO. Four members of one family are able to frustrate this BO registration threshold if each holds 25% of the shares. See also (Tax Justice Network, *Secrecy Indicator 3: Recorded Company Ownership*).

1. a) the full names of all beneficial owners of the partnership, where a beneficial owner is identified in line with or stronger than the requirements of the Financial Action Task Force and the European Union; and for each beneficial owner:
2. b) full address, or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

In case of legal owners, the minimum details required to be published online include:

1. a) The full names of nominees and/or trustees and/or legal entities acting as legal owners or partners, and for each:
2. b) The full address or company registration number (for legal persons), or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

If this data is available online but there is a cost to access it, the secrecy score will be reduced but not to zero. To obtain a zero secrecy score, this data needs to be accessible online for free and in format which can be easily copied (see Table 3.12 above). This means that search mechanisms in which the information was not available in a format which is easily copied (for instance, a non-searchable PDF), received a worse score.

Even if the cost per record is low, it can be prohibitively expensive to effectively analyse the data depending on the format in which it is made available. Access costs create substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions. Furthermore, complex payment or user-registration arrangements for accessing the data (eg registration of bank account, requirement of a local identification number, requirement of a copy of passport or sending of hard-copy mails) should not be required.[175]

We performed a random search on each of the relevant corporate registries to ensure that the information is effectively available and that technical problems do not persistently block access.

In relation to this, in 2018 the 4th EU anti-money laundering Directive was amended (known as AMLD 5) requiring all EU Member states to allow public access to beneficial ownership information for companies and other legal persons.[176] The last transposition date of AMLD 5 was set to 10 January 2020. However, public access does not necessarily have to be online. Art 30 of the AMLD 5 states the following: "5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: [...] (c) any member of

[175] We consider that for something to be truly 'on public record' prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

[176] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

the general public [...] 5a. Member States may choose to make the information held in their national registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register."[177]

In addition, while both the 4th EU Directive and its amendment, AMLD 5, require beneficial owners of legal persons to be registered, it is still up to each country to decide whether all partnerships with limited liability are considered legal persons and thus subject to registration. In the UK for example, limited liability partnerships (LLPs) and Scottish limited partnerships (SLPs) have to register their beneficial owners, while English and Wales' limited partnerships need not, because they are not considered to be legal persons.[178]

Therefore, transposition of the AMLD 5 does not necessarily ensure that beneficial ownership information of limited partnerships will be publicly accessible online.

This first component of SI 5 draws information mainly from seven types of sources: first, the Global Forum peer reviews[179] have been analysed to find out what sort of ownership information partnerships must register and update with a government agency. A governmental authority is defined as including "corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report"[180] and is used interchangeably here with "government agency" or "public institution".

Second, where doubts or data gaps existed, and to the extent this was possible, we have directly analysed domestic legislation that implements beneficial ownership registration. Given that many countries in and outside the EU[181] have

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[177] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

[178] HM Government. *Summary Guide for Companies – Register of People with Significant Control*. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/621568/170622_NON-STAT_Summary_Guidance_4MLD_Final.pdf (visited on 03/05/2022).

[179] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: (Global Forum on Transparency and Exchange of Information for Tax Purposes. *Exchange of Information Portal*. URL: http://www.eoi-tax.org [visited on 07/04/2022]).

[180] OECD, *Tax Co-operation 2010*.

[181] As for the situation in the EU, we have reviewed the 4th EU Directive on Anti-Money Laundering and, to the extent possible, corresponding implementing legislation of EU member states. While in the Financial Secrecy Index 2013 no jurisdiction was considered to have any beneficial ownership registration, this has changed in the subsequent editions of the Financial Secrecy Index (2015, 2018, 2020 and 2022). The said directive entails minimum standards for the registration of adequate, accurate and current information on the beneficial owners of corporate and other legal entities to be accessed by competent authorities, FIUs, entities obliged to conduct customer due diligence (such as banks) and persons and organizations with a legitimate interest. Member States may choose to go beyond this standard and publish the information on registries accessible by the public. In a case where an EU member state has not transposed by 31 August 2017 the EU's 4th Anti-Money Laundering Directive (AMLD) into domestic law, the relevant secrecy score for not having beneficial ownership registration will be applied (if no other domestic law has been passed to that effect). The deadline to transpose the Directive into national law was 26 June 2017, so any delayed jurisdiction is or was in breach of the EU AMLD.

For instance, see the 5th EU Directive on Anti-Money Laundering which came into force on January 10, 2020: (*Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018*

started to regulate beneficial ownership registration in 2017 and some of these new laws have not yet been assessed by either the Global Forum or the FATF, the Financial Secrecy Index team has assessed the laws directly, to the extent capacity and language permitted, and has relied on comments by local experts. It is possible that these assessments may change after the Global Forum or FATF conduct an in-depth review of these new laws.

The third source was private sector websites (Lowtax.net, Ocra.com, Offshoresimple.com, Big Four accountancy firms website, etc.); the fourth, FATF peer reviews[182]; and the fifth, the results of the TJN-Survey 2021 (or an earlier Survey).[183]

Sixth, where the above sources indicated that beneficial or legal ownership information of limited partners and of partners that are legal entities is recorded by a government agency and may be made available online, we have searched for this information on the corresponding websites.

Component 2: Accounts (50 points)

The second component of SI 5 reviews the online availability of annual accounts of limited partnerships. If a jurisdiction requires all limited partnerships to publish their annual accounts online for free and in an accessible format from which data can be easily copied, it obtains a zero secrecy score. In case the information is available for free but in a non accessible format (eg a pdf from which data cannot be copied or used for data analysis), the jurisdiction obtains a 12.5 points of secrecy score. If the information is available online at a maximum cost of US$ 10, €10 or £10, a 25 points of secrecy score is given. Finally, in case a jurisdiction does not require all limited partnerships to submit and publish their accounts online, a 50 points of secrecy score is due. If any exceptions are allowed for certain types of limited partnerships, we assume that anyone intending to conceal information from public view will simply opt for types of limited partnerships where no accounts need to be published or prepared.

A precondition for a reduction in the secrecy score is that all available types of limited partnerships are required to keep accounting records and underlying documentation in the jurisdiction. Moreover, to obtain a zero secrecy score, the data must be fully downloadable from the internet in a format that can be used for data analysis (for example: XLS, XBRL and XML) or in a format that allows for

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Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)) Compare also with FATCA, where 10% of shares/capital in an entity is threshold to define a US substantial ownership: (Michael Weis and Kerstin Thinnes. 'FATCA + AML = an Equation with Too Many Variables?' [2012]. URL: https://www.agefi.lu/Mensuel-Article.aspx?date=May-2012&mens=178&rubr=1161&art=15584 [visited on 08/05/2022]). And consider (Transparency International EU et al. *European Commission Proposal on AMLD4. Questions and Answers.* 2016. URL: www.pastoral.at/dl/KKmsJKJKKmnOMJqx4KJK/QA_final.pdf [visited on 03/05/2022])].

[182] The FATF consolidated its 49 (40 plus 9 special) recommendations to a total of 40 in 2012 (the "new recommendations"). Because the mutual evaluation of compliance with the new recommendations has only begun in 2013, we are predominantly using the old evaluations.

[183] Tax Justice Network, *TJN Survey*.

copying and pasting the relevant information, and the pasted text is clear and usable.

We have drawn this information from five principal sources. First, the Global Forum peer reviews[184] have been used to find out whether a limited partnership's financial statements are required to be submitted to a government authority and if reliable accounting records need to be kept by the company. Second, private sector internet sources have been consulted (eg Lowtax.net, Ocra.com, Offshoresimple.com, Big four accountancy websites, etc.). Third, results of the TJN-Survey 2021[185] (or earlier versions of the survey) have been included. Fourth, in cases where the previous sources indicated that annual accounts are submitted and/or available online, the corresponding registry websites have been consulted and a random search has been performed to verify whether the information is effectively available online (see component I above for details).

Following the weakest link principle[186] for our Financial Secrecy Index research, a precondition for reducing the secrecy score in this component is that all available types of limited partnerships are required to publish the relevant information online and that the information is required to be updated at least annually. If any exceptions are allowed for certain types of limited partnerships, we assume that anyone intending to conceal information from public view will simply opt for limited partnerships types where information can be omitted.

3.5.2 Why is this important?

When a jurisdiction allows limited partnerships to be formed without requiring all of their partners – including their legal entity partners – to record their beneficial ownership information, the scope for domestic and foreign law enforcement agencies to look behind the corporate veil[187] is highly restricted. Absence of beneficial ownership information obstructs law enforcement and allows tax dodgers and money launderers to remain anonymous. In some jurisdictions, limited partners are not required to register, yet they are allowed to influence important management decisions, leaving the limited partnership vulnerable to misuse for illicit purposes. Where a limited partnership is not required to register the ownership of its legal partners and its legal entities' partners, the proceeds of bribery and corruption can be hidden and transferred by the partners via the limited partnership.

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[184] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Section A.2. in the reports refers, among others, to the requirement to keep underlying documentation as well as to the retention period for keeping accounting records. The reports can be viewed at: (Global Forum on Transparency and Exchange of Information for Tax Purposes, *Exchange of Information Portal*).

[185] Tax Justice Network, *TJN Survey*.

[186] The "weakest link" research principle is used synonymously with "lowest common denominator" approach. During the assessment of a jurisdiction's legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the secrecy score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator's secrecy score.

[187] OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*.

A recent example is the Azerbaijani Laundromat.[188] The four firms at its centre were limited partnerships registered in the UK. They were: Metastar Invest, based at a service address in Birmingham; Hilux Services and Polux Management, set up in Glasgow; and LCM Alliance, from Potters Bar, Hertfordshire. Their corporate "partners" were anonymous secrecy jurisdiction entities based in the British Virgin Islands, Seychelles and Belize. Furthermore, anonymous Scottish Limited Partnerships (SLPs) played a key role in a billion-dollar fraud in Moldova, uncovered by The Herald in 2015.[189]

Scottish Limited Partnerships with foreign members that do not carry out any commercial operations in the UK and receive no revenue in the UK are exempted from taxes on profits. Taxes shall be paid by the partners in their respective countries of residence or of incorporation only if provided by the relevant laws. In the case of Moldova's billion-dollar fraud, Scottish Limited Partnerships were misused by their partners for money laundering, corruption and embezzlement abroad while transferring out of the country almost 15% of Moldova's GDP from three Moldavian banks.[190]

Where online disclosure of beneficial ownership information does not exist, the availability of detailed legal ownership information may enable a foreign authority to follow up some initial suspicions on wrong-doing and may enable it to successfully file a request for information exchange with its foreign counterpart. The legal owner can be addressed by an information request and will sometimes be required to hold beneficial ownership information which it then must provide to an enquiring authority. At the same time, delays are created through the absence of beneficial ownership information, and failure to prevent tipping-off may frustrate law enforcement efforts.

If ownership information is held secretly on a government database without public access, there is little likelihood of appropriate checks being undertaken to ensure that the registry adequately performs its task of collecting and regularly updating beneficial ownership information. It is third party use that is likely to allow the scrutiny and create the pressure to ensure compliance. In a global setting of fierce regulatory and tax races to the bottom[191] in the hope of attracting capital, the likely outcome of this scenario would be registries that are not diligently maintained, containing information that is outdated or non-existent.

This does not mean that we demand that everybody must put his or her identity online for everybody else to view. Limited liability is a privilege conferred by society at large. In exchange, society can legitimately require as a very minimum

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[188] Luke Harding et al. 'UK at Centre of Secret $3bn Azerbaijani Money Laundering and Lobbying Scheme'. *The Guardian* (Sept. 2017). URL: https://www.theguardian.com/world/2017/sep/04/uk-at-centre-of-secret-3bn-azerbaijani-money-laundering-and-lobbying-scheme (visited on 02/05/2022).

[189] Gordon, Tom. 'Herald View: The Shame of Scotland's Zero-Tax Companies'. *The Herald* (July 2016). URL: https://www.heraldscotland.com/opinion/14641459.herald-view-the-shame-of-scotlands-zero-tax-companies/ (visited on 03/05/2022).

[190] Gordon, Tom, 'Herald View: The Shame of Scotland's Zero-Tax Companies'.

[191] Tax Justice Network. *What Is Tax Competition?* URL: https://www.taxjustice.net/faq/tax-competition/ (visited on 08/05/2022).

that ownership identity is made publicly available as a safeguard for the functioning of markets and the rule of law. If someone prefers to keep her financial dealings and identity confidential, she can dispense with opting for a limited partnership entity and deal in her own name, and/or through a general partnership instead. In such a case, personal identity information might not be required to be revealed online and thus the link between an individual and a business ownership could remain confidential.

The value of public beneficial ownership registers was illustrated by the OpenLux, and investigation led by Le Monde and journalist from another 17 media outlets which analysed information available in Luxembourg's Beneficial Ownership Register. Differently from previous leaks, which consisted of private information leaked by whistleblowers, OpenLux scrapped and analysed information held in Luxembourg's public beneficial ownership register [192] The investigation shed light on how the country has been employed as an entry point to Europe from non-European Business.

The benefits of publicity, however, did not stop at the information that was actually registered. In fact, one of the main merits of the investigation was highlighting the limitations of the current system. As OCCRP showed, the "administrators were listed as UBOs for almost a third of all Luxembourg companies in the register", a number which rose to 80% when focusing on the investment fund industry.[193] This result clearly indicate that the current framework is not sufficient to guarantee that ownership information is adequately registered. Thus, as we have argued previously, publicity and openness is fundamental to keeping the Registrars accountable, and to evaluate whether institutional frameworks are being effective in their intended purpose.

Regarding accounts, access to timely and accurate annual accounts is crucial for every limited partnership for a variety of reasons. First, accounts allow business and trading partners as well as clients to assess potential risks they face in trading with limited partnerships. This risk appraisal can only happen when accounts are available for public scrutiny. Second, in an era of financial globalisation, financial regulators, anti-money laundering agencies and tax authorities need to be in a position to assess the cross-border implications of the activities of limited partnerships. Unhindered access to the limited partnership's accounts empowers regulators and authorities to assess the macro-consequences of the limited partnership undertakings without imposing excessive costs. Such access is likely to deter the partners from misusing the limited partnership for money laundering, tax evasion and other crimes. Third, no limited partnership can be considered accountable to the communities where it is licensed to operate and where its partners enjoy the privilege of limited liability unless it places its accounts on public record.

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[192] Given that the registrar currently does not allow the registered data to be downloaded in its entirety, journalist had to scrape and clean the data.

[193] Baquero et al., *Shedding Light on Big Secrets in Tiny Luxembourg*.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.13. Assessment Logic: Secrecy Indicator 5 - Limited Partnership Transparency

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
476	**LO Record**: Does the registration of domestic limited partnerships comprise information on the legal ownership of all partners?	0: No, for some partnerships no legal ownership information is recorded; 2: Yes, all partnerships require recording of all partners/legal owners of all partners.	Integrated assessment of BO and LO as per Table 3.12. If all beneficial owners and all legal owners are always registered and updated with all details and made available in easily copied format, 0 points of secrecy score. If not even legal owners are always registered, or incomplete, or not updated, or not made public against a cost of up to US$10, €10 or £10, 50 points of secrecy score. Eight intermediate scores for partial compliance.
479	**LO Update**: Is the update of legal ownership information mandatory for all partners?	0: No, for some partnerships no legal ownership information is recorded; 2: Yes, all partnerships require recording of all partners/legal owners of all partners.	
483	What information has to be registered for those legal owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	
477	**BO Record**: Does the registration of domestic limited partnerships comprise information on the beneficial ownership of all partners?	0: No, for some partnerships no beneficial ownership information is recorded; 1: While some beneficial ownership information is always recorded, it is incomplete/not recorded for all partners; 2: Yes, all partnerships require recording of all partners' beneficial ownership.	
480	**BO Update**: Is the update of beneficial ownership information mandatory for all partners?	YN	
484	What information has to be registered for those beneficial owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
481	LO: Are partners/legal owners available on a public online record (up to 10 €/US$/GBP)?	0: No, information on partners/legal owners is not always available online (up to US$10, €10 or £10); 1: COST: Yes, information on partners/legal owners is always available but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, information on partners/legal owners is always available for free, but cannot be easily copied.; 3: FREE & EASILY COPIED: Yes, information on partners/legal owners is always available for free & can be easily copied.	
482	BO: Are partners' beneficial owners available on a public online record (up to US$10, €10 or £10)?	0: No, information on partners' beneficial owners is not always available online (up to US$10, €10 or £10); 1: COST: Yes, beneficial ownership information about all partners is always online, but only at a cost of up to US$10, €10 or £10; 2:FREE: Yes, beneficial ownership information about all partners is always available online for free, but cannot be easily copied.; 3: FREE & EASILY COPIED: Yes, beneficial ownership information about all partners is always available online for free & can be easily copied.	
272	Is there an obligation to keep accounting data?	YN	0: 50 points; only if answers regarding accounting data and submission are not "no": (1: 25 points; 2: 12.5 points; 3: 0 points).
273	Are annual accounts submitted to a public authority?	YN	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
274	Are annual accounts available on a public online record (up to US$10, €10 or £10)?	0: No, annual accounts are not always online (up to US$10, €10 or £10); 1: COST: Yes, annual accounts are always online but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, annual accounts are always online for free, but not easily copied.; 3: FREE & EASILY COPIED: Yes, annual accounts are always available online for free & can be easily copied.	

3.6 Secrecy Indicator 6: Transparency of company ownership

3.6.1 What is measured?

This indicator considers whether a jurisdiction requires all available types of companies with limited liability to publish updated beneficial ownership or legal ownership information on public records accessible via the internet.[194] A zero secrecy score can be achieved if both beneficial and legal ownership is published for free in a format which can be easily copied. If there are types of companies for which no or incomplete or outdated ownership information is published online, the secrecy score is 100 points. Partial reductions of the secrecy scores can be achieved by making data on either beneficial or legal ownership information publicly accessible for a fixed cost not exceeding US$10, €10 or £10. This indicator only assesses companies which are not listed on a public stock exchange.

The secrecy scoring matrix can be found in Table 3.14, and full details of the assessment logic can be found in Table 3.15.

To meet a reasonable standard, published ownership information must comply with minimum requirements. The recorded beneficial owners must be the natural human beings who enjoy the right to ownership or the rewards flowing from ownership of the entity, as prescribed by anti-money laundering standards.[195] For this purpose, trusts, foundations, partnerships, limited liability corporations and other legal persons do not count as beneficial owners. Different percentage thresholds of control or ownership applied in the definition of the beneficial owner are disregarded in this indicator as long as the definition and threshold of a beneficial owner is the same or stronger than the requirements of the Financial Action Task Force (FATF) and the European Union (see SI 3).[196]

For ownership information to be considered updated, the relevant data should be required to be updated at least annually. For ownership information to be

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[194] We believe this is a reasonable criterion given a) the prevalence of the internet in 2022, b) as international financial flows are now completely relying on the use of modern technology, it would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it. This criterion is informed by the open data movement according to which all available company registry information, including accounts, should be made available, for free, in open and machine-readable format. For more information about this, see (OpenCorporates. *The Open Database of the Corporate World*. URL: https://opencorporates.com/ [visited on 08/05/2022]).

[195] FATF defines beneficial owners as the "natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement." See (Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, p. 119).

[196] Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 5th Anti-Money Laundering Directive of the European Union apply a minimum floor of control or ownership of 'more than 25%' of the company in the definition of a beneficial owner (BO) of a company. Under these rules, a natural person who directly or indirectly owns or controls 25% or less of a company's shares would not be identified as BO. Four members of one family are able to frustrate this BO registration threshold by each holding 25% of the shares. For further details, see (Tax Justice Network, *Secrecy Indicator 3: Recorded Company Ownership*).

Table 3.14. Secrecy Scoring Matrix: Secrecy Indicator 6

Regulation [Secrecy Score: 100 points= full secrecy; 0 points = full transparency]	**Online for free in a format which can be easily copied**	**Online for free, but not in a format which can be easily copied**	**Online at small cost** [i.e. up to US$10, €10 or £10]
Incomplete ownership or high cost Complete and updated ownership information is not always published for a cost of up to US$10, €10 or £10, or unknown.	100		
Legal Ownership All companies publish updated and complete legal owners, but fail on beneficial owners.	80	85	90
Beneficial Ownership All companies publish updated and complete beneficial ownership, but fail on legal owners.	50	55	60
Beneficial and Legal Ownership All companies publish both updated and complete beneficial and legal ownership.	0	5	10

considered complete, it needs to comprise specific minimal elements. It should include in the case of beneficial owners:

1. the full names of all beneficial owners of the entity, where a beneficial owner is identified in line with or stricter than the requirements of the Financial Action Task Force (FATF) and the European Union; and for each beneficial owner:
2. full address, or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

In case of legal owners, the minimum details required to be published online include:

1. The full names of nominees and/or trustees and/or legal entities acting as legal owners or partners, and for each:
2. The full address or company registration number (for legal persons), or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

   If this data is available online but there is a cost to access it, the secrecy score will be reduced but not to zero. To obtain a zero secrecy score the data must be accessible online for free in a format which can be easily copied.

Even if the cost per record is low, it can be prohibitively expensive to effectively analyse the data depending on the format in which it is made available. For example, access costs create substantial hurdles for conducting real time network analyses, for constructing cross-references between companies and jurisdictions, and for new creative data usages. Furthermore, complex payment or user-registration arrangements for accessing the data (eg registration of bank account, submission of a copy of the passport, requirement of a local

identification number or sending of hard copy documents) should not be required.[197]

From this indicator's perspective, a zero secrecy score was granted for a search mechanism in which legal and beneficial ownership information could be freely accessed, in a format that could be easily copied. This means that search mechanisms for which the information was not available in a format which is easily copied (for instance, a non searchable PDF), received a worse score.

This indicator mainly builds on analysis undertaken in Secrecy Indicator 3 as regards company ownership registration.[198] If that analysis indicated that complete and updated beneficial or legal ownership information is recorded by a government agency and may be made available online, we have searched for this information on the corresponding websites of the company registrars. Therefore, the sources for this indicator are identical to SI 3 with the only additional sources being the results of the random searches on the respective jurisdiction's online company registry.

The only difference applies to the requirements around the registration of birthdates. Whereas in SI 3, we require the birthdate to be registered, SI 6 only requires the year and month of birth to be disclosed.

Following the weakest link principle[199] which we follow for the purposes of Financial Secrecy Index research, a precondition for reducing the secrecy score in this component is that all available types of companies are required to publish the relevant information online and that the information is required to be updated at least annually (including strict registration/immobilisation of bearer shares). If any exceptions are allowed for certain types of companies, we assume that anyone intending to conceal information from public view will simply opt for company types where information can be omitted.

In 2018 the 4th EU anti-money laundering Directive was amended (known as AMLD 5) requiring all EU Member states to allow public access to beneficial ownership information for companies and other legal persons.[200] The last transposition date of AMLD 5 was set to 10 January 2020. However, public access does not necessarily have to be online. Article 30 of AMLD 5 states the following: "5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: [...] (c) any member of the general public [...] 5a. Member States may choose to make the information held in their national

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[197] We consider that for something to be truly 'on public record' prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

[198] Tax Justice Network, *Secrecy Indicator 3: Recorded Company Ownership*.

[199] The term "weakest link" research principle is used synonymously with "lowest common denominator" approach. During the assessment of a jurisdiction's legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the secrecy score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator's secrecy score.

[200] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

registers referred to in paragraph 3 available on the condition of online registration and the payment of a fee, which shall not exceed the administrative costs of making the information available, including costs of maintenance and developments of the register."[201]

Therefore, transposition of AMLD 5 does not necessarily ensure that beneficial ownership information of companies will be publicly accessible online. In addition, access conditions may lead us to consider information to not be available online even for those cases in which it was supposed to be.

3.6.2 Why is this important?

The reasoning in favour of public registries of beneficial ownership has been laid out in great detail and through many case studies.[202] The Panama Papers[203] illustrate the abundancy of cases where the absence of beneficial ownership information has allowed the abuse of legal entities. In essence, these revelations added value by proving the identities of beneficial owners of otherwise anonymous shell companies. The secrecy provided by law firm Mossack Fonseca through shell companies, the largest number of which were registered in the British Virgin Islands, enabled criminals to launder illicit proceeds of corruption, tax evasion, drug trafficking and human trafficking as well as to finance terrorism. In a nutshell, the absence of readily available beneficial ownership information obstructs law enforcement and creates a criminogenic environment. Incentives to break laws are greatly increased when individuals can hide behind anonymity in combination with limited liability.

The value of public beneficial ownership registers was illustrated by the OpenLux investigation, led by Le Monde and journalists from another 17 media outlets

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[201] *Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 Amending Directive (EU) 2015/849 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, and Amending Directives 2009/138/EC and 2013/36/EU (Text with EEA Relevance)*.

[202] For example see (Open Government Partnership. *Germany: Do Not Let 'personal Security' Be the Bait and Switch for Public Accountability*. 2017. URL: https://www.opengovpartnership.org/stories/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/ [visited on 20/04/2022]; Global Witness. *What Does the UK Beneficial Ownership Data Show Us?* 2016. URL: https://en/blog/what-does-uk-beneficial-ownership-data-show-us/ [visited on 20/04/2022]; Global Witness. *Anonymous Company Owners*. URL: https://www.globalwitness.org/en/campaigns/anonymous-company-owners/ [visited on 20/04/2022]). These studies provide further detail: (Global Witness and Global Financial Integrity. *Chancing It. How Secret Company Ownership Is a Risk to Investors*. 2016. URL: https://financialtransparency.org/wp-content/uploads/2016/09/04_Investors_report_AW_med_withlinks.pdf [visited on 15/05/2022]); (Global Witness. *Poverty, Corruption and Anonymous Companies: How Hidden Company Ownership Fuels Corruption and Hinders the Fight against Poverty*. 2014. URL: https://www.globalwitness.org/documents/13071/anonymous_companies_03_2014.pdf [visited on 03/05/2022]); (The B Team. *Ending Anonymous Companies: Tackling Corruption and Promoting Stability Through Beneficial Ownership Transparency. The Business Case*. 2015. URL: https://drive.google.com/uc?export=download&id=0BwNjrEEVS8DiRi1oa19MQmtNMVk [visited on 08/05/2022]); (Global Witness, *Mystery on Baker Street. Brutal Kazakh Official Linked to £147m London Property Empire*); (Knobel and Meinzer, *Drilling down to the Real Owners – Part 1. More than 25% of Ownership" & "Unidentified" Beneficial Ownership: Amendments Needed in FATF's Recommendations and in EU's AML Directive*); (Andres Knobel and Markus Meinzer. *Drilling down to the Real Owners – Part 2. Don't Forget the Trust: Amendments Needed in FATF's Recommendations and in EU's AML Directive*. June 2016. URL: http://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAMLD-FATF-Part2-Trusts.pdf [visited on 03/05/2022]).

[203] ICIJ. *The Panama Papers: Exposing the Rogue Offshore Finance Industry*. 2018. URL: https://www.icij.org/investigations/panama-papers/ (visited on 03/05/2022); James O'Donovan et al. 'The Value of Offshore Secrets Evidence from the Panama Papers'. *SSRN Electronic Journal* (2016). URL: https://www.ssrn.com/abstract=2771095 (visited on 06/05/2022).

which analysed information available in Luxembourg's Beneficial Ownership Register. Differently from previous leaks, which consisted of private information leaked by whistleblowers, the OpenLux investigation scraped and analysed information held in Luxembourg's public beneficial ownership register[204]. The investigation shed light on how the country has been employed as an entry point to Europe for non-European Business.

The benefits of publicity, however, did not stop at the information that was actually registered. In fact, one of the main merits of the investigation was highlighting the limitations of the current system. As OCCRP showed, the "administrators were listed as UBOs for almost a third of all Luxembourg companies in the register", a number which went to 80% when focusing on the investment fund industry.[205] This result clearly indicates that the current framework is not sufficient to guarantee that ownership information is adequately registered. Thus, as we have argued previously, publicity and openness is fundamental to keeping the Registrars accountable, and to evaluate whether institutional frameworks are being effective in acheiving their intended purpose.

If ownership information is only held secretly on a government database to which there is no public access, there is little likelihood of appropriate checks being undertaken to ensure that the registry actually collects and regularly updates accurate beneficial ownership information. The reliability, accuracy and timeliness of data availability cannot be checked independently.

In a global setting of fierce regulatory and tax competition for capital, the likely outcome of this scenario would be registries that are not diligently maintained, and whose data is outdated or non existent. Without public scrutiny, misleading or fraudulent data entries about the alleged owners of companies become almost impossible to detect until a criminal investigation attempts to reveal the corporate veil of such an entity – at which point it is too late, the fruits of the crime have been realised and crime prevention has failed. It is third party use that is likely to create the pressure to ensure compliance.

The Panama Papers revealed how misleading, if not fraudulent, ownership recordings were provided on a commercial basis to clients seeking secrecy. Parts of this practice might have even been legal under the EU's 4th Anti-Money Laundering Directive and in conformity with FATF's recommendations. These rules allow the registration of a company's senior manager instead of a beneficial owner under certain conditions. The Panama Papers revealed how the law firm Mossack Fonseca has provided so-called premium sham directors. By using these, the real beneficial owners could remain hidden and a premium sham director was recorded by the law firm instead: "For a five-digit sum, the law firm offered to have a person pose as the true company owner".[206] The same kind of

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[204] Given that the registrar currently does not allow the registered data to be downloaded in its entirety, journalists had to scrape and clean the data.

[205] Baquero et al., *Shedding Light on Big Secrets in Tiny Luxembourg*.

[206] Bastian Brinkmann et al. 'The Secret World Of Sham Directors'. *Süddeutsche.de* (2016). URL: http://panamapapers.sueddeutsche.de/articles/5718f882a1bb8d3c3495bcc7/ (visited on 03/05/2022).

misleading or fraudulent ownership recording is possible whenever beneficial ownership information is not made public but kept on confidential government registries.

Publishing beneficial ownership information online will maximise the deterrent effect of data transparency. In cases where a company has been used for criminal purposes and the real identity of the beneficial ownership was falsely recorded in an online directory, board members or other parties responsible for supervision of the legal entity should face scrutiny, and/or prosecution. This will greatly increase the willingness of all parties to record accurate information.

The information asymmetries resulting from non-public beneficial ownership information also distort markets, for example in public procurement. Public officials and members of the inner circle of powerful politicians can easily hide behind shell companies. When these companies then participate in public tenders and win public contracts, they will benefit, behind the scenes, the very same politicians, ministers or presidents who are responsible for overseeing the public tendering process. As a consequence, public trust in fair market competition and in government is eroding.

In Slovakia, where a new law for disclosure of beneficial owners in public procurement processes came into force on 1 January 2017, the effects are remarkable. As an opposition party source noted:

> Some notorious Slovak tycoons that were previously hidden behind foreign structures (and the public could only guess who owned them) actually admitted in the public register that they are beneficial owners of these companies. One case of particular interest is company Vahostav that builds most of Slovakia's highways and public buildings.[207]

While Panama Papers were extraordinary in scale, detail and impact, these revelations were not the first instance that revealed the problems caused by hidden ownership. The World Bank reported in 2011 how the proceeds of bribery and corruption can be hidden and transferred by anonymous shell companies:

> Our analysis of 150 grand corruption cases shows that the main type of corporate vehicle used to conceal beneficial ownership is the company [...] Companies were used to hide the proceeds of corruption in 128 of the 150 cases of grand corruption reviewed.[208]

In a joint publication of 2011 by the United Nations and the World Bank relating to stolen assets (by embezzlement, bribery, etc.), both argued that company registries should be searchable online:

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[207] Naomi Fowler. *Good News from Slovakia: Light Cast onto Shell Companies*. Mar. 2017. URL: https://taxjustice.net/2017/03/07/good-news-slovakia/ (visited on 20/04/2022).

[208] Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, pp.20, 34.

> Jurisdictions should develop and maintain publicly available registries, such as company registries, land registries, and registries of nonprofit organizations. If possible, such registries should be centralized and maintained in electronic and real-time format, so that they are searchable and updated at all times[209]

Where online disclosure of beneficial ownership information does not exist, the availability of at least detailed legal ownership information would enable a foreign authority to follow up some initial suspicions on wrong doing and enable that authority to successfully file a request for information exchange with its foreign counterpart. The legal owner can be addressed by an information request and will sometimes be required to hold beneficial ownership information which it then must provide to an enquiring authority. At the same time, delays are created through an absence of beneficial ownership information, and failure to prevent tipping off may frustrate law enforcement efforts.

However, another reason for placing the ownership information on publicly accessible online record is that tax administrations and public prosecutors do not always have the political support and freedom to investigate cases of large scale tax evasion and big ticket money laundering. This is well illustrated through the Swiss Leaks[210] investigation into secret bank accounts held at HSBC private bank. While many of the accounts were related to tax evasion and money laundering, it was revealed[211] how some authorities had failed to request access to the data, and some others did not use the information they received to investigate. Some authorities only started to take action after the data had been leaked to the media.

This does not mean that we demand that everybody must put his or her identity online for everybody else to view. Far from it: if someone prefers to keep her financial dealings and identity confidential, she can dispense with opting for limited liability status in the company type chosen and deal in her own name instead. In such a case, personal identity information would not be required to be revealed online and thus the link between an individual and a business ownership would remain confidential.

Limited liability is a privilege conferred by society at large. In exchange, the minimum safeguard it legitimately requires for the functioning of markets and the rule of law is that the identity of owners must be publicly available. This holds true especially for private companies that do not trade their shares on a stock exchange.

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[209] Kevin M. Stephenson et al. *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*. Washington, DC: World Bank, 2011. URL: https://openknowledge.worldbank.org/handle/10986/2320 (visited on 08/05/2022), p.93.

[210] Lizzie Dearden. *The HSBC Whistleblower's Email to HMRC Has Been Revealed*. Feb. 2015. URL: https://www.independent.co.uk/news/business/hsbc-leaks-email-from-whistleblower-to-hmrc-proves-authorities-were-told-of-tax-evasion-10043456.html (visited on 20/04/2022).

[211] Alex Cobham. *#SwissLeaks – Tax Transparency for Accountability*. Feb. 2015. URL: http://uncounted.org/2015/02/09/swissleaks-tax-transparency-accountability/ (visited on 20/04/2022).

In a decision of March 2017,[212] the European Court of Justice appears to support these principles in the face of counter arguments[213] based on data protection and privacy. The court denies that there is a right to be forgotten for personal data recorded in a business registry. In the press release on the verdict, the court states:

> By today's judgment, the Court notes first of all that the public nature of company registers is intended to ensure legal certainty in dealings between companies and third parties and to protect, in particular, the interests of third parties in relation to joint stock companies and limited liability companies, since the only safeguards they offer to third parties are their assets. The Court further notes that matters requiring the availability of personal data in the companies register may arise for many years after a company has ceased to exist. Having regard to (1) the range of legal rights and relations which may involve a company with actors in several Member States (even after its dissolution), and (2) the diversity of limitation periods provided for by the various national laws, it seems impossible to identify a single period after which the entry of the data in the register and their disclosure would no longer be necessary.
>
> (...) The Court considers that this interference with the fundamental rights of the persons concerned (in particular the right to respect for private life and the right to protection of personal data guaranteed by the Charter of Fundamental Rights of the Union) is not disproportionate in so far as (1) only a limited number of personal data items are entered in the company register and (2) it is justified that natural persons who choose to participate in trade through such a joint stock company or limited liability company, whose only safeguards for third parties are the assets of that company, should be required to disclose data relating to their identity and functions within that company.[214]

Two important aspects stand out in the European Court of Justice's decision. First, the court clearly endorsed the principle of requiring (more) public disclosure of the identities of those natural persons who choose to use legal entities that confer the privilege of limited liability. Second, the court ruled as commensurate and proportionate to the risks emanating from limited liability companies that the identities of those persons involved in the company should remain accessible on public record long after the dissolution of the company.

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[212] Court of Justice of the European Union. *Press Release: The Court Considers That There Is No Right to Be Forgotten in Respect of Personal Data in the Companies Register*. Mar. 2017. URL: https : / / curia . europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170027en.pdf (visited on 07/04/2022).

[213] Hera Hussain and Chris Taggart. *Germany: Do Not Let 'Personal Security' Be the Bait and Switch for Public Accountability*. Feb. 2017. URL: https://blog.opencorporates.com/2017/02/28/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/ (visited on 20/04/2022); Meinzer, *Germany Rejects Beneficial Ownership Transparency*.

[214] Court of Justice of the European Union, *Press Release: The Court Considers That There Is No Right to Be Forgotten in Respect of Personal Data in the Companies Register*.

In relation to this and as described above, AMLD 5, which was required to be transposed by 10 January 2020, requires all Member states to enable public access to beneficial owners' of companies and other legal persons such as partnerships and private foundations (and also for trusts' beneficial owners as long as they can prove a legitimate interest).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.15. Assessment Logic: Secrecy Indicator 6 - Transparency of Company Ownership

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
470	**LO Record**: Does the registration of domestic companies comprise legal owner's identity information?	0: No. Companies available without recorded legal ownership information; 2: All LO: Yes, all companies require recording of all legal owners.	Integrated assessment of BO and LO as per Table 3.14. If all beneficial owners and all legal owners are always registered and updated with all details and made available for free and in a format which can be easily copied, 0 points of secrecy score. If not even legal owners are always registered, or incomplete, or not updated, or not made public against a cost of up to US$10, €10 or £10, 100 points of secrecy score. Eight intermediate scores apply for partial compliance.
472	**LO Update**: Is the update of information on the identity of legal owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	
486	What information has to be registered for those legal owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	
471	**BO Record**: Does the registration of domestic companies comprise beneficial owner's identity information?	0: No. Companies available without recorded beneficial ownership information; 1: Yes, more than 25%. All companies require recording of all beneficial owners at threshold of more than 25% (FATF); 2: Yes, 10%-25%: All companies require recording of all beneficial owners at threshold of more than 10%, up to 25%; 3: Yes, up to 10%. All companies require recording of all beneficial owners at threshold of more than any share/influence, up to 10%; 4: Yes all. All companies require recording of every single natural person with any share/influence ('beneficial owner').	
473	**BO Update**: Is the update of information on the identity of beneficial owners mandatory?	0: No; 1: No, because bearer shares are available/circulating/not registered with a public authority (see below); 2: Yes.	

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Continuing from previous page...

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
485	What information has to be registered for those beneficial owners who need to be named (above)?	0: Only the names are always registered; 1: Only names and countries of residence are always registered; 2: All names plus countries of residence plus either addresses or TINs or birthdates, passport or personal IDs are always registered.	
475	**LO Online**: Are companies' legal owners available on a public online record (up to US$10, €10 or £10)?	0: No, information on partners/legal owners is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, information on partners/legal owners is always available but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, legal ownership is always available for free, but cannot be easily copied; 3: FREE & EASILY COPIED: Yes, legal ownership is always available for free & can be easily copied.	
474	**BO Online**: Are companies' beneficial owners available on a public online record (up to US$10, €10 or £10)?	0: No, information on legal owners is not always available online (up to US$10, €10 or £10); 1: COST: Yes, legal ownership is always available but only at a cost of up to US$10, €10 or £10; 2: FREE: Yes, beneficial ownership is always available for free, but cannot be easily copied.; 3: FREE & EASILY COPIED: Yes, beneficial ownership is always available for free & can be easily copied.	

3.7 Secrecy Indicator 7: Public company accounts

3.7.1 What is measured?

This indicator considers whether a jurisdiction requires all available types of company with limited liability to file their annual accounts with a government authority or administration and makes them accessible online for free, at a maximum cost of US$10, €10 or £10 or in an accessible format from which the data can be easily copied.[215]

The secrecy scoring matrix is shown in Table 3.16, with full details of the assessment logic given in Table 3.17.

Table 3.16. Secrecy Scoring Matrix: Secrecy Indicator 7

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Not online (at small cost) Companies do not always publish their annual accounts online for a cost of up to US$10, €10 or £10, or unknown.	100
Online at small cost All types of companies file their annual accounts and publish them online at a cost of up to US$10, €10 or £10.	50
Online for free, but not in a format which can be easily copied All types of companies file their annual accounts and publish them online for free, but not in a format which can be easily copied.	25
Online, free and in format which can be easily copied All types of companies file their annual accounts and publish them online for free and in a format which can be easily copied.	0

If not all types of limited companies publish their annual accounts online, then the secrecy score is 100 points. If the annual accounts are available online but there is a cost to access them, the secrecy score will be reduced to 50 points. In cases where the annual accounts are available online for free, the secrecy score will be further reduced to 25 points. To obtain a zero secrecy score, this data needs to be accessible online for free and in an format in which data can be easily copied and pasted, and used for data analysis. Even if the cost per record is low, it can be prohibitively expensive to import and use this information, which limits the uses of the data. Access costs create substantial hurdles for

[215] We believe online accessibility for free is a reasonable requirement given a) the prevalence of the internet in 2021 and b) the complete reliance of international financial flows on modern technology. It would be an omission not to use that technology to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence need information to be on the internet to get hold of it.

conducting real time network analyses, for constructing cross-references between companies and jurisdictions. Complex payment or user-registration arrangements for accessing the data (eg registration of an account, requirement of a local identification number or sending a hard-copy request by post) should not be required.[216]

Other requirements refer to the accessibility of the information. Data is considered accessible only when it is fully downloadable from the internet in a format that can be used for data analysis (for example: XLS, XBRL and XML) or in a format that allows for copying and pasting the relevant information, and the pasted text is clear and usable. For example, if accounts are available only in pdf, we consider the data is not accessible as it is not possible to copy and paste the data in a clear and usable way.

We performed a random search of each of the relevant corporate registries to ensure that the accounts are effectively available online and that technical problems do not persistently block access. A precondition for a reduction of the secrecy score is that all available types of companies with limited liability - including small companies[217] - are required to keep accounting records, including underlying documentation, for a period of at least five years and that they are required to submit accounts to a public authority. Given the risks involved in the absence of proper requirements for the retention of underlying documentation, we also apply these criteria for companies that are considered inactive or have ceased to exist for various reasons. An exception is made for cases of liquidation, where usually an external party, such as an insolvency practitioner, is involved and hence the risks posed by liquidated companies without sufficient records are fairly low.

We have drawn the information for this indicator from five principal sources. First, the Global Forum peer reviews[218] have been used to find out whether a company's financial statements are required to be submitted to a government authority, and if reliable accounting records need to be kept by the company in the jurisdiction. The latter is important because if the accounts are kept outside the jurisdiction, it is much more difficult – and sometimes even impossible – to enforce this legal obligation. Second, private sector internet sources have been

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[216] We consider that for something to be truly "on public record" prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

[217] This indicator is also assessed in our complementary index, the Corporate Tax Haven Index. However, unlike the Corporate Tax Haven Index, which focuses only on large companies (ie. companies with an annual turnover threshold which is higher than €10m), the scope of the Financial Secrecy Index covers all types of companies with limited liability, regardless of their size. This is because the Financial Secrecy Index assesses secrecy in a broader sense and does not focus exclusively on tax avoidance by multinational companies but rather also by smaller companies and individuals. While multinational companies are often highly regulated and supervised, this is not the case for small companies, which are thus often used as vehicles in complex tax avoidance and tax evasion schemes that obscure ownership. Therefore, we consider them relevant for the assessment of this indicator as part of the Financial Secrecy Index.

[218] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. Section A.2. in the reports refers to, among other things, the requirement to keep underlying documentation and the retention period for keeping accounting records. The reports can be viewed at: (Organisation for Economic Co-operation and Development. *Exchange of Information*. 2021. URL: https://www.oecd.org/tax/exchange-of-tax-information/ [visited on 06/05/2022]).

consulted, including Lowtax.net.[219] Third, results of the Tax Justice Network Survey of 2021 (or previous versions of the survey) have been included.[220] Fourth, in cases where the previous sources indicated that annual accounts are submitted and available online, the corresponding company registry websites have been consulted.

According to the weakest link principle[221] for our Financial Secrecy Index research, a precondition for reducing the secrecy score in this indicator is that all available types of companies are required to publish the relevant information online and that the information is required to be updated at least annually. If any exceptions are allowed for certain types of companies, we assume that anyone intending to conceal information from public view will simply opt for establishing a company where these requirements to do not apply.

3.7.2 Why is this important?

Access to timely and accurate annual accounts is crucial for every company with limited liability in every country for a variety of reasons.

First, public accounts make it possible to assess the potential risks of trading with limited liability companies. Public accounts thus help to protect the legitimate interests of a wide range of actors. These actors include consumers, clients, business partners and creditors, as well as public officials dealing with public procurement and public–private partnerships.

Second, in times of financial globalisation, financial regulators, tax authorities and anti-money laundering agencies need to be able to assess cross-border implications of the activities of companies. Unhindered access to the accounts of foreign companies and subsidiaries empowers regulators and authorities to double check the veracity and completeness of locally submitted information and to assess the macro-consequences of corporate undertakings without imposing excessive costs.

Third, no company can be considered accountable to the communities where it is licensed to operate (and where it enjoys the privilege of limited liability) unless it places its accounts on public record. Journalists and civil society groups have legitimate reasons for accessing company accounts to assess them on matters of fair trade, environmental protection, human rights protection and charitable purposes. This can be done only when accounts are available for public scrutiny.

Many multinational corporations structure their global network of subsidiaries and operations in ways that take advantage of the absence of any requirement to

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[219] Wolters Kluwer. *Lowtax - Global Tax & Business Portal*. 2021. URL: https://www.lowtax.net/ (visited on 03/05/2022).

[220] Tax Justice Network, *TJN Survey*.

[221] The "weakest link" research principle is used synonymously with the "lowest common denominator" approach. During the assessment of a jurisdiction's legal framework, the review of different types of legal entities each with different transparency levels might be necessary within one indicator. For example, to ascertain the secrecy score, a choice between two or more types of companies might have to be taken. In such a case, we choose the least transparent option available in the jurisdiction. This least transparent option will determine the indicator's secrecy score.

publish accounts on public record. Corporate tax havens or secrecy jurisdictions enable corporate and individual secrecy in this respect. If annual accounts were required to be placed online in every jurisdiction where a company operates, the resultant transparency would severely inhibit transfer mispricing and other tax avoidance techniques. We do not, however, regard this requirement as a substitute for a full country-by-country reporting standard (see SI 8[222]).

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.17. Assessment Logic: Secrecy Indicator 7 - Public Company Accounts

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
188	Is there an obligation to keep accounting data?	0: No; 1: Yes	0: 100 1: See below
189	Are annual accounts submitted to a public authority?	0: No, annual accounts are not always required to be submitted to a public authority; 1: Except for small companies, annual accounts need to be submitted to a public authority; 2: Yes, there is an obligation to submit annual accounts for all types of companies.	0 & 1: 100 2: See below
201	Are annual accounts available on a public online record (up to US$10, €10 or £10)?	0: No, company accounts are not always online (up to US$10, €10 or £10); 1: COST: Yes, company accounts are always online but only at a cost of up to US$10, €10 or £10; 2 FREE: Yes, company accounts are always available for free, but can not be easily copied.; 3 FREE & EASILY COPIED: Yes, company accounts are always available for free & can be easily copied.	0: 100 1: 50 2: 25 3: 0 (only if answers re ID 188 and ID 189 are not zero)

[222] Tax Justice Network. *Secrecy Indicator 8: Public Country by Country Reporting*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-8.pdf.

3.8 Secrecy Indicator 8: Public country by country reporting

3.8.1 What is measured?

This indicator measures whether the companies listed on the stock exchanges or incorporated in a given jurisdiction are required to publish publicly worldwide financial reporting data on a country by country reporting basis.[223]

A zero secrecy score is achieved when public country by country reporting[224] (CBCR) is required by all companies (which is not yet the case in any jurisdiction). If a jurisdiction requires no public country by country reporting for any corporation in any sector, the secrecy score is 100. A slight reduction of 10 is available for jurisdictions requiring some narrow, one-off public country by country reporting for corporations active in the extractive industries. Partial reductions of the secrecy score can be achieved by requiring some annual public country by country reporting for corporations active in the extractive industries or the banking sector, or both (a reduction of 25 for each sector). For an overview of all data fields included in various country by country reporting standards, please refer to Figure 3.2.

The scoring matrix is shown in Table 3.18, with full details of the assessment logic presented in Table 3.19.

In principle, any jurisdiction could require all companies incorporated and operating under its laws (including subsidiaries, branches and holding companies) to publish financial information in their accounts on their corporate group's global activity on a country by country basis. Appropriate reporting requirements can be implemented either through regulations issued by the stock exchange or by a legal or regulatory provision enacted by the competent regulatory or legislative body.

The key difference between the kind of country by country reporting monitored in this indicator and Action 13[225] of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) Action Plan, which introduced filing of country by country reports of large multinational companies is that the latter does not require this information to be made public. Instead, information is only disclosed to the tax authorities in the headquarter jurisdiction of a multinational company. Tax authorities in jurisdictions where the company has subsidiaries can request information through a series of different mechanisms. This limited access has been shown to exacerbate global

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[223] This indicator applies the same methodology as Haven Indicator 10 of the Corporate Tax Haven Index: (Tax Justice Network. *Haven Indicator 10: Public Country by Country Reporting*. Tax Justice Network, 2021. URL: http://cthi.taxjustice.net/cthi2021/HI-10.pdf [visited on 08/05/2022])

[224] Tax Research UK and Tax Justice Network. *Country-by-Country Reporting*. Research Briefing. Oct. 2010. URL: http://www.taxresearch.org.uk/Documents/CBC.pdf (visited on 08/05/2022).

[225] OECD. *Action 13 - Country by Country Reporting*. 2020. URL: http://www.oecd.org/tax/beps/beps-actions/action13/ (visited on 06/05/2022).

Table 3.18. Secrecy Scoring Matrix: Secrecy Indicator 8

Regulation	Secrecy Score [Secrecy Score Assessment: 100 points = full secrecy; 0 points = full transparency]
No reporting No public country by country reporting required for any corporations in any sector.	100
One-off reporting Some one-off public country by country reporting required for corporations active in the extractive industries (Extractive Industries Transparency Initiative equivalent, at least for those listed).	-10
Some annual reporting Some annual public country by country reporting required for corporations active in the extractive industries or banking sector.	-25 (for each sector covered)
Full reporting Full annual public country by country reporting required for corporations of all sectors (at least for those listed or for all above €750m turnover).	0

inequalities in taxing rights.[226] This is discussed in greater detail in Secrecy Indicator 9.[227]

Public country by country reporting for financial institutions was introduced by European Union member states in 2014 and 2015 (Capital Requirements Directive IV).[228] These European Union rules for banks include annual disclosure of turnover, number of employees, profit or loss before tax, tax on profit or loss, and public subsidies received. On these grounds, a secrecy score reduction of 25 applies to all European Union member states that have fully transposed the measures.[229] The requirement also applies to the United Kingdom, as the country

[226] Andres Knobel and Alex Cobham. 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights' (2016). URL: https : / / www . taxjustice . net / wp - content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf (visited on 03/05/2022).

[227] Tax Justice Network. *Secrecy Indicator 9: Corporate Tax Disclosure*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-9.pdf.

[228] The European Union Capital Requirements Directive IV 2013/36/EU, 2013, Article 89 (European Parliament and Council of the European Union. *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, Amending Directive 2002/87/EC and Repealing Directives 2006/48/EC and 2006/49/EC Text with EEA Relevance*. June 2013. URL: https : / / eur - lex . europa . eu / eli / dir / 2013 / 36 / oj [visited on 07/05/2022]) requires reporting. The only main item missing for full county by country reporting is capital assets. According to Article 89(1), the European Commission had to carry out an impact assessment of the envisaged publication of the data, and the Commission was empowered to defer or modify the disclosure through a so-called "delegated act" in case it identified "significant negative effects" consequences (Art. 89 (3)). In October 2014, the Commission adopted a report containing this assessment of the economic consequences of country by country reporting for banks and investment firms under CRD IV. The European Commission adopted the report's conclusion according to which: "the reporting obligation under CRD IV are not expected to have a significant negative economic impact, including on competitiveness, investment, credit availability or the stability of the financial system". For the press release, see (European Commission. *Press Release: European Commission Assesses Economic Consequences of Country-by-Country Reporting Requirements Set out in Capital Requirements Directive*. Text. Brussels, Oct. 2014. URL: https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1229 [visited on 07/05/2022]).

[229] EU member states were required to transpose the EU CRD IV by 31 December 2013. For transposition status, see: (European Commission. *Capital Requirements Directive (CRD IV) - Transposition Status*. Text. Feb. 2020. URL: https : / / ec . europa . eu / info / publications / capital - requirements - directive - crd - iv - transposition - status _ en [visited on 15/05/2022]). As of January 2019, Spain faced infringement proceedings for the country's failures in transposition. As of May 2022, the European Union indicates that all member countries have transposed the directive.

by country reporting requirements have been transposed into UK law, and have not been affected by Brexit.[230]

Another set of far narrower country by country reporting rules for the extractive industries has become law in the European Union, Ukraine, Canada, Norway and Switzerland. These go further than the voluntary, nationally-implemented Extractive Industries Transparency Initiative (EITI)[231], which prescribes the annual publishing of all "material payments" to government made by companies active in the extractive sector of that particular EITI implementing country. The threshold for the materiality of payments, which companies and government must comply with for a reporting year, is determined by a national multi-stakeholder group for each reporting cycle.

Compared to full country by country reporting and the European Directive on reporting in the banking sector, the EITI Standard (2019) is also far narrower in geographical scope because it requires disclosure of payments only in countries where the corporation actually has extractive operations and only for the countries that are part of the EITI. Payments to other country governments, for example, where holding, financing or intellectual property management subsidiaries of the same multinational group are located, are not required to be reported. This limits the data's usefulness for tackling corporate profit shifting. The standard's value for resource rich (developing) countries, however, is substantial. Yet, in our assessment, it is not sufficient for a country merely to oblige or allow extractive companies operating within their territory to publish only the payments to this country's government agencies.

For a reduction of the secrecy score by 25 for country by country reporting in the extractives, a country must require either all companies incorporated in its territory or those listed on a stock exchange to disclose payments made worldwide in countries with extractive operations (including by its subsidiaries) and not merely in the same country. Among the jurisdictions assessed in the 2022 edition of the Financial Secrecy Index, this is fully achieved in Canada, the European Union member countries, Norway, Switzerland, Ukraine and the United Kingdom.[232]

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[230] United Kingdom. *The Capital Requirements (Amendment) (EU Exit) Regulations 2018*. URL: https://www.legislation.gov.uk/ukdsi/2018/9780111174661/contents (visited on 26/04/2022).

[231] The EITI Standard (2019) Requirement 4 on revenue collection, requires "comprehensive disclosure of company payments and government revenues from the extractive industries. The EITI Requirements related to revenue collection include: (4.1) comprehensive disclosure of taxes and revenues; (4.2) sale of the state's share of production or other revenues collected in kind; (4.3) infrastructure provisions and barter arrangements; (4.4) transportation revenues; (4.5) SOE transactions; (4.6) subnational payments; (4.7) level of disaggregation; (4.8) data timeliness; and (4.9) data quality of the disclosures". Revenue streams include the host government's production entitlement (eg profit oil), national state-owned enterprise's production entitlement, profit taxes, royalties, dividends, bonuses, licence and associated concession fees, and any other significant payments/material benefit to government. (The EITI International Secretariat. *The EITI Standard 2019*. Oct. 2019. URL: https://eiti.org/collections/eiti-standard [visited on 06/05/2022]).

[232] Alex Cobham et al. *What Do They Pay?* London, 2017. URL: https://www.researchgate.net/publication/320657845_What_Do_They_Pay_Towards_a_Public_Database_to_Account_for_the_Economic_Activities_and_Tax_Contributions_of_Multinational_Corporations (visited on 07/05/2022).

- **Canada**: On 16 December 2014, Canada legislated the Extractive Sector Transparency Measures Act, which entered into force on 1 June 2015.[233] According to the Extractive Sector Transparency Measures Act, extractive companies that engage in the commercial development of oil, gas or minerals are required to report on payments on a project basis, including taxes, royalties and fees to all levels of government in Canada and abroad. The reports are available to the public, with the first reports submitted in November 2016.[234]

- **European Union**: The European Parliament and Council passed the Accounting and Transparency Directive in 2013 (Directive 2013/34/EU),[235] obliging mining, oil and gas, and logging companies over a defined size to report payments to government. Similarly, the European Parliament and Council also passed the Capital Requirements Directive IV (Directive 2013/36/EU),[236] requiring all banks to report annually on a country by country basis. All 27 member states have transposed the two directives.

- **Norway**: Norway has partial disclosure for the extractive industries. The scope of Norway's regulated country by country reporting for enterprises in the extractive industry and in logging of non-planted forestry, effective as of 1 January 2014, is broader than similar rules in the EU. Norway's rules additionally require the disclosure of sales income, production volume, acquisition of goods and services cost, and number of employees in every subsidiary.[237]

- **Switzerland**: On 19 June 2020, Switzerland's Parliament adopted a revision of the company law according to which Swiss extractive companies working in oil, gas and minerals are required to disclose payments they make to governments around the world.[238] This law applies to companies' extractive activity above CHF 100,000 a year and is in force as of 1 January 2021. According to Public Eye, Switzerland plays a major role as a commodity trading centre and is hosting many companies that operate in countries suffering with the resource curse. The new law applies to Swiss traders

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[233] Government of Canada. *Extractive Sector Transparency Measures Act*. 2014. URL: https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mining-materials/PDF/ESTMA-Guidance_e.pdf (visited on 06/05/2022).

[234] Government of Canada. *Guidance on Country-By-Country Reporting in Canada*. URL: https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4651/guidance-on-country-country-reporting-canada.html (visited on 09/05/2022).

[235] European Parliament and Council of the European Union. *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, Amending Directive 2006/43/EC of the European Parliament and of the Council and Repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA Relevance*. June 2013. URL: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0034 (visited on 07/05/2022).

[236] European Parliament and Council of the European Union, *Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, Amending Directive 2002/87/EC and Repealing Directives 2006/48/EC and 2006/49/EC Text with EEA Relevance*.

[237] Norway. *Regulations of 20 December 2013 No. 1682 on Country by Country Reporting. Amended 17.09.2021*. URL: https://lovdata.no/dokument/SF/forskrift/2013-12-20-1682 (visited on 26/04/2022).

[238] *Amendment of June 19, 2020*. URL: https://www.parlament.ch/centers/eparl/curia/2016/20160077/Texte%20pour%20le%20vote%20final%201%20NS%20F.pdf (visited on 27/04/2022).

involved in the purchase of oil, gas and minerals, which are activities particularly prone to corruption risks.[239]

- **Ukraine**: On 18 September 2018, Ukraine adopted a law to ensure transparency in the extractive industries (No. 2545-VIII) which became effective on 16 November 2018.[240] According to the DiXi Group, the law is fully in line with the European Union Directive (2013/34/EU) and has received endorsement from the European Union's Delegation to Ukraine. In September 2020, the government of Ukraine has approved the reporting forms under the Law No. 2545-VIII.[241]

- **United Kingdom**: The United Kingdom has transposed the two relevant EU directives before it withdrew from the European Union. As a result of Brexit, the relevant EU Directives that require country by country reporting for the extractive and banking industries (2013/34/EU and 2013/36/EU respectively) no longer apply in the UK. However, it appears that Brexit did not affect the country by country disclosure because these directives had already been transposed into UK law through the Capital Requirements (Amendment) (EU Exit) Regulations 2018,[242] and the Reports on Payments to Government Regulations 2014.[243]

In Hong Kong and Taiwan, there are requirements for a minimal one-off reporting in the extractive industries:

- **Hong Kong**: The requirement to disclose details about "payments made to host country governments in respect of tax, royalties and other significant payments on a country by country basis"[244] is only triggered either at the time of the extractive company's initial listing on the stock exchange or on the occasion of the company issuing new shares.

- **Taiwan**: Similar to Hong Kong's disclosure requirements, in July 2019, Taiwan introduced an amendment to Article 11-1 of the Taiwan Stock Exchange Corporation Rules Governing the Particulars to be Recorded in Prospectuses for Initial Securities Listing Applications.[245] Following the amendment,

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[239] Public Eye. *Switzerland – the Commodities Hub*. URL: https://www.publiceye.ch/en/topics/commodities-trading/switzerland/commodities-hub (visited on 26/04/2022).

[240] Ukraine. *The Law of Ukraine on Ensuring Transparency in Extractive Industries No. 2545-VIII Adopted on 18.09.2018*. URL: https://eiti.org/sites/default/files/attachments/ukraine_law_6229_on_ensuring_transparency_in_extractive_industries.pdf (visited on 26/04/2022).

[241] Cabinet of Ministers of Ukraine. *Resolution of September 23, 2020 No 858 Some Issues of Transparency in the Extractive Industries*. URL: https://zakon.rada.gov.ua/laws/show/858-2020-%D0%BF#Text (visited on 26/04/2022).

[242] United Kingdom, *The Capital Requirements (Amendment) (EU Exit) Regulations 2018*.

[243] United Kingdom. *The Reports on Payments to Governments Regulations 2014*. URL: https://www.legislation.gov.uk/ukdsi/2014/9780111122235/contents (visited on 26/04/2022).

[244] See: (Hong Kong Stock Exchange. *Chapter 18 Mineral Companies | Rulebook*. 2021. URL: https://en-rules.hkex.com.hk/rulebook/chapter-18-mineral-companies#hkex_page_header [visited on 03/05/2022]). Neither the "Continuing Obligations" section in the same chapter (applicable to extractive companies) nor other HKSE regulations require disclosure of such payments (eg. general disclosure regulations of financial information for all listed companies): (Hong Kong Stock Exchange. *Appendix 16 Disclosure of Financial Information | Rulebook*. 2021. URL: https://en-rules.hkex.com.hk/rulebook/disclosure-financial-information-0 [visited on 03/05/2022]).

[245] Taiwan Stock Exchange. *Taiwan Stock Exchange Corporation Rules Governing the Particulars to Be Recorded in Prospectuses for Initial Securities Listing Applications*. Dec. 2002. URL: https://twse-regulation.twse.com.tw/ENG/EN/law/DAT0201.aspx?FLCODE=FL022575 (visited on 03/05/2022).

Taiwan requires companies with mining rights that will start to trade shares (either on the over-the-counter market or on the stock exchange) to disclose to the public a country by country report in its prospectus.[246]

The requirement for public country by country reporting has continued to evolve across the world, including in Kenya and the USA:

- **Kenya**: In 2020, Kenya has amended its Income Tax Act to require country by country reporting, but the specifics have not yet been determined, including whether information will be made public.[247]
- **USA**: The USA's Securities Exchange Council resource extraction disclosure rule Section 13q to implement Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act was affected in September 2016.[248] However, the rule was repealed by Congress in February 2017, at which point no company had yet been required to make disclosures under the rule, as the deadline for compliance was for years ending on or after 30 September 2018.[249] Section 1504 of Dodd-Frank remains intact but can only be implemented through a Securities Exchange Council rule.

  As of November 2021, the US Congress was discussing the Disclosure of Tax Havens and Offshoring Act of 1934.[250] The proposed Act, if adopted, would introduce country by country reporting to be publicly available for multinational enterprises generating over 850 million US$ in annual revenue. However, its timing and likelihood of passing are uncertain. Therefore, at present, no form of public country by country reporting is effective in the United States.

A comparison of data included in various country by country reporting standards is provided in Figure 3.2.

The main data sources we used for this indicator have been domestic government websites and correspondences we had with relevant stakeholders,experts and organisations from Canada, the EU, Hong Kong, Norway, Switzerland, Taiwan, Ukraine and the USA. This includes interviews and/or email communication with

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[246] According to Article 11-1: "An issuer with mineral rights under the Mining Act and required by Article 22-1 of the Regulations Governing Assessment of Profit-Seeking Enterprise Income Tax on Non-Arm's-Length Transfer Pricing to submit a country-by-country report shall disclose in its prospectus that is to be submitted the country-by-country report that its enterprise group last submitted to the local tax collection authority." (Taiwan Stock Exchange, *Taiwan Stock Exchange Corporation Rules Governing the Particulars to Be Recorded in Prospectuses for Initial Securities Listing Applications*)

[247] *Email Communication with Oxfam Kenya*. Nov. 2021; Government of the Republic of Kenya. *The Income Tax Act (Country-by-Country Reporting Standard for Multinational Enterprises) Regulations, 2021*. 2021. URL: https://kra.go.ke/images/publications/Draft-Income-Tax-Act-Regulations-on-Country-by-Country-Reporting--2021.pdf (visited on 06/05/2022).

[248] See Securities and Exchange Commission for final rule 13q applying to the disclosure of payments by resource extraction issuers, (Securites and Exchange Commission. *Disclosure of Payments by Resource Extraction Issuers*. June 2016. URL: https://www.sec.gov/rules/final/2016/34-78167.pdf [visited on 06/05/2022]).

[249] David M Lynn and Scott Lesmes. 'Repeal Of Resource Extraction Disclosure Rule - Corporate/Commercial Law - United States'. *Mondaq* (Mar. 2017). URL: https://www.mondaq.com/unitedstates/corporate-governance/573904/repeal-of-resource-extraction-disclosure-rule (visited on 06/05/2022).

[250] Congress of the United States. *H.R.3007 - Disclosure of Tax Havens and Offshoring Act*. URL: https://www.congress.gov/bill/117th-congress/house-bill/3007/text (visited on 09/05/2022).

various experts from, among others, the Centre for International Corporate Tax Accountability and Research (CICTAR), the DiXi Group, Eurodad, the Financial Accountability & Corporate Transparency (FACT) Coalition, the Natural Resource Governance Institute, Oxfam Hong Kong, Oxfam Kenya, and Publish What You Pay.

3.8.2 Why is this important?

Country by country reporting helps to remove the veil of secrecy from the operations of multinational companies, which is why it has faced fierce opposition.[251] Current reporting requirements that do not require information on a country by country basis are so opaque that it is almost impossible to find even basic information, such as the countries where a corporation is operating. It is even more difficult to discover what multinational companies are doing or how much they are effectively paying in tax in any given country. This opacity helps corporations minimise their global tax rates without being sufficiently challenged anywhere.[252] Large-scale shifting of profits to low tax jurisdictions and of costs to high tax countries ensues from this lack of transparency. The State of Tax Justice 2021 report estimates US$312bn is lost from tax avoidance by multinational corporations annually.[253] These losses have the greatest impact on low and lower middle-income countries in terms of proportion of gross domestic product, as shown in Figure 3.1.

Profit shifting is largely done through transfer mispricing, internal debt financing (thin capitalisation) or artificial relocation and licensing of intellectual property rights. These transactions take place within a multinational corporation, that is, between different parts of a group of related companies. The current financial reporting standards allow such intra-group transactions to be consolidated with normal third-party trade in the annual financial statements. As a result, a corporation's international tax and financing affairs are effectively hidden from view.

Investors, trading partners, tax authorities, financial regulators, civil society organisations, and consumers would be able to make better informed decisions if such intra-group transactions were available publicly. Civil society does not have access to reliable information about a company's tax compliance record in a given country in order to question a company's policies on tax and corporate social

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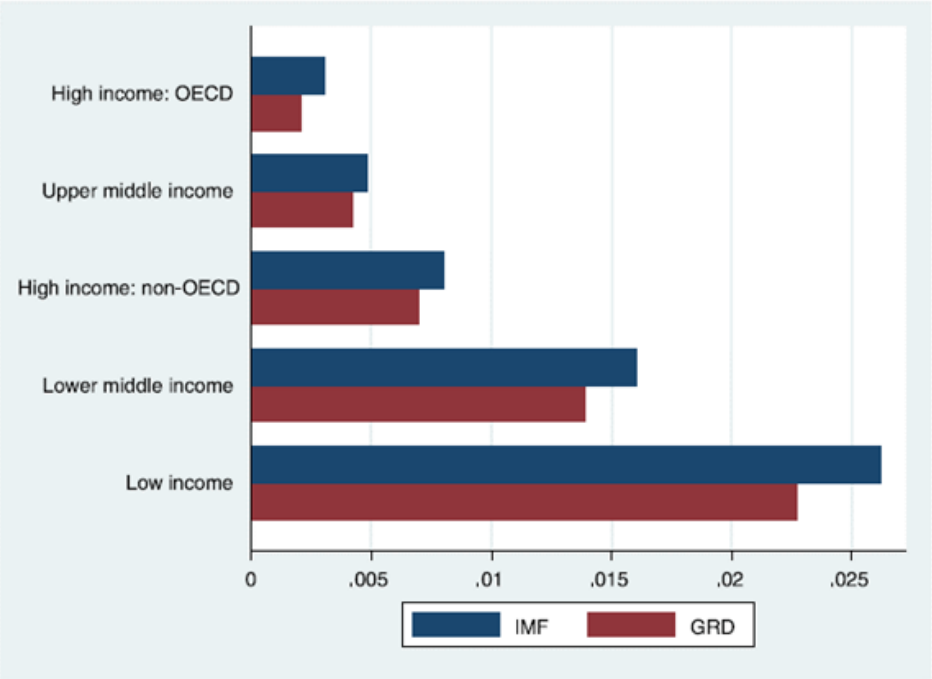
[251] Markus Meinzer and Christoph Trautvetter. *Accounting (f)or Tax: The Global Battle for Corporate Transparency*. 2018. URL: https://www.taxjustice.net/wp-content/uploads/2018/04/MeinzerTrautvetter2018-AccountingTaxCBCR.pdf (visited on 07/05/2022).

[252] Tom Bergin. 'Special Report: How Starbucks Avoids UK Taxes'. *Reuters* (Oct. 2012). URL: https://www.reuters.com/article/us-britain-starbucks-tax-idUKBRE89E0EX20121015 (visited on 07/05/2022); Tom Bergin. 'Special Report: Amazon's Billion-Dollar Tax Shield'. *Reuters* (Dec. 2012). URL: https://www.reuters.com/article/us-tax-amazon-idUSBRE8B50AR20121206 (visited on 07/05/2022); Jesse Drucker. 'Google 2.4% Rate Shows How $60 Billion Is Lost to Tax Loopholes'. *Bloomberg.com* (2010-10-21T10:00:00.002Z, 2010-10-21T10:00:00.002Z, 2010-10-21T10:00:00.002Z). URL: https://www.bloomberg.com/news/articles/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes (visited on 07/05/2022).

[253] Global Alliance for Tax Justice et al. *The State of Tax Justice: 2021*. Tax Justice Network, Nov. 21. URL: https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf (visited on 07/05/2022).

Figure 3.1. Average losses of gross domestic product per region and income



Note: IMF and GRD refer to the mean values of revenue loss estimates using IMF and GRD data, respectively. Source: Authors' calculations based on data from Crivelli et al. Base Erosion, Profit Shifting and Developing Countries (2016) and GRD.

responsibility and to make enlightened consumer choices.[254] When Oxfam reviewed data published under country by country reporting rules for banks in the European Union in 2017, the extent of the use of tax havens by the 20 biggest European banks was revealed.[255] According to their report, one in four euros of their profits was registered in tax havens (approximately €25bn) and tax havens accounted for 26 per cent of total profits. In contrast, the level of real economic activity was far lower, accounting for just 12 per cent of banks' total turnover and 7 per cent of employees.

If public country by country information was available, investors and public shareholders would be better able to evaluate if a given corporation is exposed to reputational tax risks[256] by relying on complex networks of subsidiaries in secrecy

[254] See, for example, a report showing how data from mandatory disclosures made by extractive companies in the European Union has been used (Transparency International EU. *Under the Surface: Looking into Payments by Oil, Gas and Mining Companies to Governments*. Transparency International EU, Oct. 2018. URL: http://transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf [visited on 15/05/2022]) and the potential impact on African government revenue of not having mandatory disclosure rules for Australian-listed mining companies (Lisa Lee et al. *Buried Treasure: The Wealth Australian Mining Companies Hide around the World*. Oxfam Australia; Tax Justice Network Australia; Uniting Church in Australia, July 2019. URL: https://apo.org.au/node/250226 [visited on 07/05/2022]).

[255] Manon Aubry and Thomas Dauphin. *Opening the Vaults: The Use of Tax Havens by Europe's Biggest Banks*. Oxfam, 2017. URL: https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620234/bp-opening-vaults-banks-tax-havens-270317-en.pdf;jsessionid=0C359A22BEDF90AEB8435231DC6975B1?sequence=29 (visited on 07/05/2022).

[256] Markus Meinzer. *Why the German Government's Blockade of Corporate Transparency Is Harming All of Us*. Oct. 2018. URL: https://www.taxjustice.net/2018/10/23/why-the-german-governments-blockade-of-corporate-transparency-is-harming-all-of-us/ (visited on 06/05/2022); Noam Noked. *Public Country-by-Country Reporting: The Shareholders' Case for Mandatory Disclosure*. SSRN Scholarly

jurisdictions, or whether it is heavily engaged in conflict-ridden countries. Tax authorities and government audit institutions would be better able to make risk assessments of particular sectors or companies to guide their audit activity by comparing profit levels or tax payments to sales, assets and labour employed.

Evidence suggests that routine public scrutiny of country by country reports by researchers and media would result in a tangible deterrent effect as the extent of profit shifting and potential associated political interference in tax administrations could be uncovered. In 2018, using the data published under the European Union directive on public country by country on financial institutions (2013/36/EU), a study by Overesch and Wolff, economists at the University of Cologne, checked the impact of introducing public country by country reporting in the banking sector on tax ratios by banks. Their findings spanning 2010 to 2016 suggest that banks affected by public country by country reporting significantly increased their tax payments compared to non-affected banks. This effect was stronger for banks with tax haven operations.[257] As part of their research design, they also controlled for tax ratios of non-bank multinational companies that are comparable in size and absolute profitability to the banks. For at least one of the analysed years (2016), the non-public OECD country by country reporting regulations (see Secrecy Indicator 9[258]) had already entered into force for many countries.[259] The study thus provides the first evidence that public country by country reporting increases tax ratios over and above non-public reporting. Furthermore, the study suggests that tax transparency through country by country reporting can be an effective policy tool to curb tax avoidance only if the disclosed information is exposed to public scrutiny.[260] According to the authors, such disclosure creates a deterrent effect for multinational companies, as they are more exposed to reputational damage among clients and shareholders, as well as to increasing costs of litigation (as government authorities are better informed), and regulatory costs due to policy and regulatory changes that may follow when patterns of tax avoidance are better understood.

The Tax Justice Network's proposal for public country by country reporting,[261] for which we have been campaigning since 2003,[262] would ensure comprehensive information on multinational corporate activities is in the public domain for different stakeholders. This proposal goes beyond all country by country reporting rules that currently exist. It requires multinational corporations of all sectors,

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Paper ID 3220848. Rochester, NY: Social Science Research Network, June 2018. URL: https://papers.ssrn.com/abstract=3220848 (visited on 07/05/2022).

[257] Michael Overesch and Hubertus Wolff. 'Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance'. *Contemporary Accounting Research*, 38(3) (Jan. 2021), pp. 1616–1642. URL: https://onlinelibrary.wiley.com/doi/10.1111/1911-3846.12669 (visited on 13/05/2022).

[258] Tax Justice Network, *Secrecy Indicator 9: Corporate Tax Disclosure*.

[259] OECD. *Country-Specific Information on Country-by-Country Reporting Implementation*. URL: https://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm (visited on 07/05/2022).

[260] Overesch and Wolff, 'Financial Transparency to the Rescue: Effects of Country-by-Country Reporting in the EU Banking Sector on Tax Avoidance'.

[261] Tax Research UK and Tax Justice Network, *Country-by-Country Reporting*.

[262] Tax Justice Network. *Topics: Country by Country Reporting*. 2020. URL: https://taxjustice.net/topics/country-by-country-reporting/ (visited on 10/05/2022).

listed and non-listed, to disclose key information in their annual financial statements for each country in which they operate. This information would comprise its financial performance, including:

(a) Sales, split by intra-group and third party

(b) Purchases, split the same way

(c) Financing costs, split the same way

(d) Pre-tax profit

(e) Labour costs and number of employees.

In addition, the cost and net book value of its physical fixed assets, the gross and net assets, the tax charged, actual tax payments, tax liabilities and deferred tax liabilities would be published on a country by country basis. It is worth noting that small- and medium-sized enterprises operating in only one jurisdiction are required by the nature of their business activity to report on this information in their annual financial statements, and are thus disadvantaged compared to multinational companies. At present, all multinational corporations with consolidated annual group revenue of at least €750m, operating in jurisdictions adhering to Action 13 of the OECD/G20 Base Erosion and Profit Shifting project, are required to prepare a country by country report, declaring the global allocation of income, profit and taxes paid and economic activity in each country.[263] However, these reports are not available to the public (but rather only to tax administrations in certain jurisdictions. For more information, please see SI 9[264]) and they are only applicable for multinational companies with an annual consolidated group revenue of at least €750m.[265] In addition, because the exchange requires reciprocity, most developing countries, especially low income countries, are left out and existing inequalities in taxing rights are likely to be exacerbated to the detriment of low income countries.

In July 2020, the OECD published aggregated, anonymised country by country reporting data from 26 member countries.[266] A year later, in 2021, the OECD published country by country reporting data for the second time, again in aggregated terms.[267] This second publication includes data from only 38 countries, even though over 100 countries are implementing Action 13. The publication of this data is a huge step forward and significantly contributes to the

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[263] OECD, *Action 13 - Country by Country Reporting*.

[264] Tax Justice Network, *Secrecy Indicator 9: Corporate Tax Disclosure*.

[265] According to the OECD, the threshold of €750m "will exclude approximately 85 to 90 percent of MNE [multinational enterprise] groups from the requirement to file the CbC [Country-by-Country] Report, but that the CbC Report will nevertheless be filed by MNE groups controlling 90 percent of corporate revenues",(OECD. *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*. 2015. URL: https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf [visited on 06/05/2022], p.4). See also (OECD. *Guidance on the Implementation of Country-by-Country Reporting: BEPS ACTION 13*. 2018. URL: https://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf [visited on 15/05/2022]).

[266] OECD.stats. *Corporate Tax Statistics Table I - Aggregate Totals by Jurisdiction*. URL: https://stats.oecd.org/Index.aspx?DataSetCode=CBCR_TABLEI (visited on 09/05/2022), 2016 data.

[267] OECD.stats, *Corporate Tax Statistics Table I - Aggregate Totals by Jurisdiction*, 2017 data.

comprehension of patterns of capital flows, yet the anonymity of the information remains a significant limitation. The Tax Justice Network used this information to produce the State of Tax Justice 2021[268] report, which reveals how much tax each country in the world loses to international corporate tax abuse and private tax evasion. Results show that profit shifted by multinational companies into tax havens amount to US$1.19tn worth, resulting in losses in direct tax revenue for US$312bn a year.

The European Union continues to take steps towards full public country by country reporting. In July 2017, the European Parliament adopted its draft report on public country by country reporting for multinational enterprises (amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches).[269] It was a vast improvement on the European Commission's initial legislative proposal in April 2016, but even its most recent compromise text[270] still contains significant loopholes.[271] These include a provision that allows multinational enterprises to avoid reporting so-called commercially sensitive information.[272] Further, companies required to report must meet a threshold of €750m for at least two consecutive years and would only be required to report from the second year onwards. Non-operating subsidiaries are also not required to report, which may result in the non-reporting of subsidiaries with no employees or assets but that have been set up in territories specifically for tax planning purposes.[273]

Notably, the proposal made by the Commission in 2016 was already a watered down version of a much more ambitious public country by country reporting provision that had been included as an amendment to the Shareholders' Rights Directive (Directive 2007/36/EC)[274] by the European Parliament in 2015. These provisions had been voted in plenary on 8 July 2015, where 404 members of parliament voted in support with only 127 against.[275] However, the new incoming

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[268] Global Alliance for Tax Justice et al., *The State of Tax Justice: 2021*.

[269] European Parliament and Council of the European Union. *Amendments to 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches*. July 2017. URL: http://www.europarl.europa.eu/doceo/document/TA-8-2017-0284_EN.html (visited on 06/05/2022).

[270] Council of the European Union. *Proposal for Directive of the European Parliament and the Council Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches (CBCR)*. URL: https://data.consilium.europa.eu/doc/document/ST-5134-2019-INIT/en/pdf (visited on 07/05/2022).

[271] European Public Service Union et al. *From Tax Secrecy to Tax Transparency: Introducing Public Country-by-Country Reporting (CBCR) That Is Fit for Purpose*. 2017. URL: https://www.epsu.org/sites/default/files/article/files/Joint%20Paper%20on%20CBCR%20post%20EP%20final.pdf (visited on 07/05/2022).

[272] See amendments 82 and 83: (European Parliament and Council of the European Union, *Amendments to 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches*).

[273] European Network on Debt and Development. *Directive on Disclosure of Income Tax Information by Certain Undertakings and Branches – Public Country by Country Reporting: State of Play on EU Negotiations*. Feb. 2021.

[274] European Parliament and Council of the European Union. *Directive 2007/36/EC of the European Parliament and of The Council of 11 July 2007 on the Exercise of Certain Rights of Shareholders in Listed Companies*. July 2007. URL: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF (visited on 06/05/2022).

[275] Email by Koen Roovers/FTC of 8 July 2015 and (Financial Transparency Coalition. *Press Release: European Parliament Sets the Stage for Europe to Embrace More Corporate Fiscal Transparency*. July 2015. URL: https://financialtransparency.org/european-parliament-sets-the-stage-for-europe-to-embrace-more-corporate-fiscal-transparency/ [visited on 07/05/2022]). For a version of the proposal

European Commission soon stopped this legislative proposal by issuing its own much weaker proposal in April 2016. In 2018, the German Minister of Finance made it clear that Germany would not be pushing for a more transparent system. He favoured a procedural approach to country by country reporting which gives multinational enterprises and tax havens the ability to veto[276] the reporting measures.

Consequently, the European Council failed to reach an agreement before the European elections in May 2019.[277] On 28 November 2019, the European Union Competitiveness Council missed the required qualified majority among the member states by only one vote but issued a possible general approach to amending the directive to introduce public country by country reporting.[278] Consensus among member states about the proposal is required for the Council to adopt the general approach, which would allow the commencement of trilogue negotiations between the European Parliament, Council and Commission as part of the legislative procedure. In December 2019, the Austrian parliament committed the Austrian government to vote for public country by country reporting at the European level. The shift in Austria's position meant that a majority in the European Union's Council was in sight.[279] In February 2021, the deadlock came to an end, and the Council was called on to adopt its position by a clear majority of ministers and to begin negotiations on legislation with the European Parliament.[280] Negotiations between the co-legislators started in March 2021 and resulted in a provisional agreement released on 1 June 2021.

In November 2021, the European Parliament passed the new Accounting Directive, containing requirements for multinational enterprises with a turnover above €750m a year. The Directive is required to be transposed before the 22 June 2023, and the reporting obligations will begin from the financial year starting after

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as of 10 June 2015, see (European Parliament. *Report on the Proposal for a Directive of the European Parliament and of the Council Amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement and Directive 2013/34/EU as Regards Certain Elements of the Corporate Governance Statement*. May 2015. URL: https://www.europarl.europa.eu/doceo/document/A-8-2015-0158_EN.html [visited on 07/05/2022]). For a more extended explanation on the planned revision, see (European Commission. *Company Law and Corporate Governance*. Text. 2021. URL: https://ec.europa.eu/info/business-economy-euro/doing-business-eu/company-law-and-corporate-governance_en [visited on 07/05/2022]).

[276] Markus Meinzer. *Why Is Germany Siding with the Tax Havens against Corporate Transparency?* July 2018. URL: https://taxjustice.net/2018/07/13/why-is-germany-siding-with-the-tax-havens-against-corporate-transparency/ (visited on 07/05/2022); Nicholas Shaxson. *Is Germany's Finance Minister the Puppet of Big Finance?* Sept. 2018. URL: https://taxjustice.net/2018/09/05/is-germanys-finance-minister-the-puppet-of-big-finance/ (visited on 08/05/2022).

[277] Council of the European Union, *Proposal for Directive of the European Parliament and the Council Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches (CBCR)*.

[278] Council of the European Union. *Proposal for a Directive of the European Parliament and of the Council Amending Directive 2013/34/EU as Regards Disclosure of Income Tax Information by Certain Undertakings and Branches. - (Poss) General Approach - Joint Statement by Cyprus, the Czech Republic, Estonia, Hungary, Ireland, Latvia, Luxembourg, Malta, Slovenia and Sweden*. Nov. 2019. URL: https://data.consilium.europa.eu/doc/document/ST-14038-2019-ADD-1/en/pdf (visited on 07/05/2022).

[279] Attac et al. *Erfolg: Parlament Bindet Regierung Zu Steuertransparenz Für Konzerne*. Dec. 2019. URL: https://www.attac.at/news/details/erfolg-parlament-bindet-regierung-zu-steuertransparenz-fuer-konzerne (visited on 07/05/2022).

[280] Raluca Enache. 'Euro Tax Flash from KPMG's EU Tax Centre'. *KPMG* (Feb. 2021). URL: https://home.kpmg/xx/en/home/insights/2021/02/etf-443-ministers-discuss-public-country-by-country-reporting-proposal.html (visited on 07/05/2022).

22nd June 2024. Unfortunately, the passed legislation with its many loopholes represents once again a watered down measure, and does not require companies to report in every country they operate. The directive is limited in scope, as it determines that companies must only report on activities they have in EU member states as well as in jurisdictions included in the EU list of non-cooperative jurisdictions, while data on the multinationals' activity in countries outside the EU and that list will only be published in an aggregated form. One of the major limitations of the EU list of non-cooperative jurisdictions is that it continues to ignore the role of tax havens of major economies. In their article, Dean and Harris effectively illustrate the cultural and racial bias that lies behind the development of such lists.[281]

The struggle for corporate transparency in the United Nations dates back to 1970, when advocates of transparency have faced intense lobbying by business sectors and schemes deployed by OECD governments.[282] In 2019 the African group at the United Nations called for a UN Convention on Tax, and stressed this was a necessary step to tackle illicit financial flows. In February 2021, the proposal of a UN Tax Convention also featured as a key recommendation in the UN High Level Panel on International Financial Accountability Transparency and Integrity (FACTI Panel) report. Building on the momentum for the UN to take a more central role in tax policy design, given the lack of inclusivity and solutions to date proposed by the OECD, in March 2022, the European Network on Debt and Development (Eurodad) released the proposed wording for a UN Tax Convention, including public country by country reporting as one of the key measures to be introduced as a tax transparency standard at the international level. The aim of the proposed convention is to grant access to all countries and the public to the country by country reports, considering the relevance of this data in detecting large scale tax avoidance and assessing the effectiveness of international tax rules and policies.[283]

There are several voluntary initiatives that include different permutations of country by country reporting. These are described below.

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[281] Steven Dean and Attiya Waris. 'Ten Truths About Tax Havens: Inclusion and the 'Liberia' Problem' (Apr. 2021). URL: https://papers.ssrn.com/abstract=3822421 (visited on 07/05/2022).

[282] These processes are analysed in detail in an article published in the United Nations Conference on Trade and Development journal *Transnational Corporations* (Alex Cobham et al. 'A Half-Century of Resistance to Corporate Disclosure'. *Transnational Corporations - Investment and Development*. Special Issue on Investment and International Taxation. Part 2, 25(3) [2018], p. 160).

[283] According to the proposal each party to the Convention "shall take appropriate legislative measures to ensure that all Multinational Corporations operating within their jurisdictions submit country by country reports on an annual basis to the secretariat of the Convention, containing at least the following information: (a) Name, description and tax residence of all entities; (b) Revenues of all entities of the corporation on a country by country basis, distinguishing between transactions with associated entities and non-associated entities; (c) Profit or loss before income tax on a country by country basis; (d) Income tax paid on a cash basis, for each jurisdiction in which the corporation is present or operates, distinguishing between corporate income tax paid and withholding tax paid; (e) Income tax accrued for the year of reporting, for each jurisdiction in which the corporation is present or operates; (f) Stated capital on a country by country basis; (g) Accumulated earnings on a country by country basis; (h) Number of employees on a full-time equivalent basis for each jurisdiction in which the corporation is present or operates; (i) Tangible assets other than cash and cash equivalents on a country by country basis; (j) Public subsidies received; and (k) Explanations for any difference between corporate income tax accrued on profit/loss and the tax due if the statutory tax rate is applied to profit/loss before tax." (Tove Ryding. *Proposal for a United Nations Convention on Tax*. Brussels, Belgium: Eurodad, Mar. 2022. URL: https://www.globaltaxjustice.org/sites/default/files/un-tax-convention-mar09-final_0.pdf [visited on 27/03/2022])

In December 2019, the Global Reporting Initiative (the global standard setter for sustainability reporting), recognised the key role tax plays in funding the world's development challenges. It published a tax reporting standard (known as GRI 207: 2019) requiring full public disclosure of comprehensive country by country reporting of multinational companies that subscribe to the initiative.[284] The first full year for reporting companies was 2021. Among the early adopters of the standard already implementing tax disclosure at the country level are: Allianz, BP, Newmont, Orsted and Philips.[285] This standard requires the publication of country by country data and the data must be reconciled with a company's consolidated financial statements. Yet the Global Reporting Initiative standard is limited by it being a voluntary standard which may result in companies avoiding disclosure.

Another voluntary initiative is the Fair Tax Foundation's 'Global Multinational Business Standard' launched on 25 November 2021. This standard evaluates companies based on several factors, including whether companies pay tax where activities happen, whether they are not involved in tax avoidance schemes, and whether they adhere to transparency requirements and publish sufficient information on their beneficial ownership, and their tax conduct across the world. Companies that meet the standard receive the Fair Tax Mark for their responsible tax conduct.[286] Originally, the standard was only relevant to companies headquartered in the UK, but with the launch of the new standard, the Fair Tax Mark is now assessing also companies outside the UK. The trend to include tax in voluntary initiatives reflects the increasing public acknowledgement that the tax conduct of multinational companies is central to their responsibility to society.

The Extractive Industries Transparency Initiative (EITI)[287] is a specific voluntary standard for the mining, oil and gas, and forestry sectors. It has succeeded in raising awareness about the importance of transparency of payments made by companies to governments in the extractives. If a country voluntarily commits to the initiative, it is required after a transitional period to annually publish details on the activities of extractive companies active in the country at the project level. For a reporting period, among other data collected, government entities submit records of payments received from companies and companies submit records of payments made to the government to an independent administrator, typically an audit firm. In the process of producing a report under the initiative, the independent administrator reconciles and investigates discrepancies between reported government receipts and company payments. The multi-stakeholder group, made up of government, industry and civil society, which governs the process, is "required to take steps to act upon lessons learned; to identify,

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[284] Global Reporting Initiative. *GRI 207: Tax 2019*. Dec. 2019. URL: https://www.globalreporting.org/search/?query=GRI+207 (visited on 07/05/2022).

[285] Global Reporting Initiative. *Momentum Gathering behind Public Country-by-Country Tax Reporting*. Mar. 2021. URL: https://www.globalreporting.org/about-gri/news-center/momentum-gathering-behind-public-country-by-country-tax-reporting/ (visited on 06/05/2022).

[286] Fair Tax Foundation. *Global Multinational Business Standard*. URL: https://fairtaxmark.net/why-get-the-mark/criteria-and-standards/global-multinational/ (visited on 26/04/2022).

[287] For the current EITI Standard (2019) governing EITI implementation, see (The EITI International Secretariat, *The EITI Standard 2019*).

investigate and address the causes of any discrepancies".[288] Mismatches can be, but are not necessarily, indicative of illicit activity, such as bribery or embezzlement.

Increasingly, institutional investors and asset managers are also starting to pay attention to the tax practices of companies in their portfolios. In fact, businesses themselves can benefit from greater transparency, and public country by country reporting data can be a valuable tool for investors, as it offers economic, risk and social impact insights that assist investors in making informed and sustainable decisions.[289] It is in this context that an increasing number of investors of all sizes are actively advocating for mandatory public country by country reporting to be introduced by decision makers in the EU, the OECD and the US.[290] For example, in 2017 Norway's sovereign wealth fund, one of the world's largest investors, issued a document that was distributed to the boards of the companies where it invested, and that contained expectations on tax transparency. In October 2020, the fund divested from seven companies, due to the fact that these engaged in aggressive tax planning or refused to provide information on where and how they pay tax.[291]

Similarly, in December 2021, the Greater Manchester Pension Fund and the Oblate International Pastoral (OIP) Investment Trust, have filed a shareholder proposal urging Amazon to adopt public country by country reporting and to implement the Global Reporting Initiative tax standards. The two shareholders' motivation for the proposal was that public country by country reporting will allow investors to better understand Amazon's business model and tax planning strategies.[292] The proposal has been backed by more than 20 of Amazon's institutional investors, who collectively administer assets evaluated at US$1.2tn.[293] Further, in March 2022, several groups of investors, collectively holding assets for US$3.6tn, filed a petition to the United States Securities Economic Commission (SEC) to allow the issue of public country by country reporting to be put to a vote at the Amazon's Annual General Meeting. In a historical decision made a month later, the SEC ruled in favour of Amazon's shareholders. The motivation for the SEC's decision was the "developments in global tax reform [which] will increase risks for companies operating at the limits of the law" and the claim that "Investors'

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[288] *EITI Standard 7.3: Recommendations from EITI Implementation*. URL: https://eiti.org/documents/eiti-standard-2019-0#r7-3 (visited on 14/05/2022).

[289] Eurodad and Financial Transparency Coalition. *Why Mandatory Public Country by Country Reporting Is Good for Business*. Briefing Paper. July 2021. URL: https://d3n8a8pro7vhmx.cloudfront.net/eurodad/pages/2490/attachments/original/1629289642/CBCR-briefing-aug09_%281%29.pdf?1629289642 (visited on 07/05/2022).

[290] Eurodad and Financial Transparency Coalition, *Why Mandatory Public Country by Country Reporting Is Good for Business*.

[291] Eurodad and Financial Transparency Coalition, *Why Mandatory Public Country by Country Reporting Is Good for Business*; Reuters. *For First Time, Norway's Wealth Fund Ditches Firms over Tax Transparency*. Feb. 2021. URL: https://www.reuters.com/article/us-norway-swf-idUSKBN2A11TR (visited on 06/05/2022).

[292] Reuters. *Amazon Shareholders Call for Tax Disclosures - Adviser*. Dec. 2021. URL: https://www.reuters.com/markets/europe/amazon-shareholders-call-tax-disclosures-adviser-2021-12-17/ (visited on 26/04/2022).

[293] Financial Times. *SEC Rules against Amazon in Dispute with Investors over Tax Transparency*. Apr. 2022. URL: https://www.ft.com/content/99481159-0f9a-416b-96cd-0012d0f2428e (visited on 26/04/2022).

understanding of a company's relative risk profile and appetite is hampered by a lack of transparency."[294] As a result, in May 2022, Amazon's shareholders are expected to vote on the adoption of public country by country reporting by the company.

This surge in shareholder activism constitutes a significant contribution in the normalisation of the idea of adopting public county by country reporting, demonstrating that enhanced transparency benefits society and investors alike.

In general, the latest developments and the rise of voluntary initiatives indicate the growing recognition of the importance of public country by county reporting for tackling financial secrecy. Public reporting has the potential to reveal information on tax payments made by companies to the respective government in a given country. Without such information, it would be difficult for civil society to make informed choices and hold companies to account and the cost is usually borne by the most vulnerable people. It is against this backdrop that public country by country reporting is included as an important indicator in the Financial Secrecy Index.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.19. Assessment Logic: Secrecy Indicator 8 - Public Country by Country Reporting

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
318	Public 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?	0: No public country-by-country reporting at all. 1: No, except one-off EITI-style disclosure for new listed companies. 2: No, except for partial disclosure in either extractives or banking sector. 3: Yes, partial disclosure for both extractives and banking sector. 4: Yes, full public country by country reporting for all sectors.	0: 100 1: 90 2: 75 3: 50 4: 0

[294] Financial Times, *SEC Rules against Amazon in Dispute with Investors over Tax Transparency*.

Figure 3.2. Comparison of data fields in country by country reporting standards

	Civil Society Proposal	OECD CbCR	CRD IV	Dodd-Frank	Canada	EITI	EU
Identity	Group name	Group name	Group name	Group name	Payee name	Payee name	Group name
	Countries	Countries	Countries	Countries	Countries	Legal and institutional framework	Countries
	Nature of activities	Nature of activities	Nature of activities	Projects (as in: by contract)	Same data required by project as well as by country	Allocation of contracts and licenses	Projects (as in: by contract)
	Names of constituent companies	Names of constituent companies		Receiving body in government	Subsidiaries, if qualifying reporting entities	Exploration and production	
	Third-party sales	Third-party sales				Social and economic spending	
	Turnover	By the process of addition	Turnover				
	Number of employees FTE	Number of employees FTE	Number of employees				
	Total employee pay						
	Tangible assets	Tangible assets other than cash and cash equivalents					
Intra-group transactions	Intra-group sales	Intra-group sales					
	Intra-group purchases						
	Intra-group royalties received						
	Intra-group royalties paid						
	Intra-group interest received						
	Intra-group interest paid						
Key financials	Profit or loss before tax	Profit or loss before tax	Profit or loss before tax				
Payments to/from governments	Tax accrued	Tax accrued					
	Tax paid	Tax paid	Tax paid	Income taxes paid	Tax paid	Profits taxes	Taxes levied on the income, production or profits of companies
	Any public subsidies received		Any public subsidies received				

Adapted from Alex Cobham et al. What Do They Pay? (2017)

3.9 Secrecy Indicator 9: Corporate tax disclosure

3.9.1 What is measured?

This indicator assesses three aspects of a jurisdiction's rules on corporate tax disclosure:

1. **Component 1**: local filing of country by country reports: we assess whether a jurisdiction ensures its own access to the country by country reports of any relevant[295] foreign multinational enterprises with domestic operations. This is set within the context of country by country reporting related to the OECD's Base Erosion and Profit Shifting (BEPS) project Action 13.[296] Access is ensured if the jurisdiction requires the local subsidiary or branch of a foreign multinational enterprise to file country by country reports locally whenever the jurisdiction cannot obtain these reports through the automatic exchange of information. This goes beyond the legal framework proposed by the OECD in the model domestic legislation for country by country reporting. The OECD's framework allows a jurisdiction to require local filing only in specific circumstances.

2. **Component 2**: Unilateral cross-border tax rulings: we assess whether a jurisdiction dispenses with issuing unilateral cross-border tax rulings; or failing that, if at least all unilateral cross-border tax rulings are published online for free, with full text and the names of the taxpayers, or if some are made available upon payment of a fee, in a redacted form or anonymised.

3. **Component 3**: extractive industries contracts: we assess whether a jurisdiction publishes extractive industries (mining and petroleum) contracts online for free.

For all jurisdictions, the first component (local filing of country by country reports) contributes 50 points to the overall secrecy score. For jurisdictions with a substantial extractive industry (as defined by the Natural Resource Governance Institute[297]), components 2 (unilateral cross-border tax rulings) and 3 (extractive industries contract disclosure) each contribute 25 points to the overall secrecy score. For countries without a substantial extractive sector, the secrecy score of component 2 contributes 50 points to the overall secrecy score for this indicator.

Table 3.20 summarises the applicable assessment components.

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[295] Here 'relevant' refers to multinational enterprises with over €750m global consolidated turnover that are required to produce and file the country by country reports according to BEPS Action 13.

[296] OECD, *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*.

[297] The Natural Resource Governance Institute maintains a Contract Disclosure Practice and Policy Tracker (The Natural Resource Governance Institute. *Contract Disclosure Practice and Policy Tracker*. Mar. 2021. URL: https : / / docs . google . com / spreadsheets / d / 1FXEeD43jw6VYHV8yS - 8KJ5 - rR5l0XtKxVQZBWzr - ohY / edit # gid = 0 [visited on 22/04/2022]) that includes 151 entries for 103 jurisdictions (this includes 3 sub-national regions).

Table 3.20. Applicable Scoring Logic: Secrecy Indicator 9

Substantial extractive sector?	Components for Assessment
No	Components 1 and 2 only are considered, and each component contributes 50% each to secrecy score.
Yes	Components 1, 2 and 3 are all considered. The overall secrecy score is based on 50% of component 1 and 25% of both components 2 and 3.

Component 1: Local filing of country by country reports

One half of this indicator focuses on the local filing of country by country reports. A secrecy score of zero is given if all relevant foreign multinational enterprises with domestic operations are required to file a local country by country report whenever the jurisdiction cannot obtain the country by country report through the automatic exchange of information. A 50 points secrecy score is given if the jurisdiction abides by the OECD's legal framework or if the country by country report is not required to be filed in every circumstance, or if the domestic legal framework is unknown.

The main sources for this indicator are the four "Country by Country Reporting – Compilation of Peer Review Reports" published by the OECD in phases on 24 May 2018, 3 September 2019, 17 October 2020 and 18 October 2021.[298] In the most recent review report, the domestic legal framework of 132 jurisdictions is reviewed in the report. In reports published prior to 2021, Part A (Section C) of the report referred to the "Limitation on local filing obligation" and in the 2021 report, the OECD referred to specific recommendations relating to local filing. If the peer review report describes that a jurisdiction's domestic law goes beyond the OECD model legislation (ie requiring local filing in more cases than those authorised by the OECD) but the report confirms that the jurisdiction will respect the OECD restrictions[299], then a jurisdiction is rated in this indicator as abiding by the OECD model legislation.

In cases where a jurisdiction's domestic laws have not been reviewed by the OECD, then the actual law or an external assessment of that domestic law, such as by one of the accounting big four, may have been used as a source.

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[298] OECD. *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*. May 2018. URL: http://www.oecd.org/tax/beps/country-by-country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm (visited on 06/05/2022); OECD. *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2)*. Sept. 2019. URL: https://www.oecd-ilibrary.org/docserver/f9bf1157-en.pdf?expires=1612261177&id=id&accname=guest&checksum=52A877B9AD4C69EC8E9FDC279EF44491 (visited on 06/05/2022); OECD. *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 3)*. Oct. 2020. URL: https://www.oecd-ilibrary.org/docserver/fa6d31d7-en.pdf?expires=1612261402&id=id&accname=guest&checksum=D8EEB92B8A62617AB6944ABC1B1F48F6 (visited on 06/05/2022); OECD. *Country-by-Country Reporting – Compilation of 2021 Peer Review Reports: Inclusive Framework on BEPS: Action 13 | En | OECD*. Oct. 2021. URL: https://www.oecd.org/tax/country-by-country-reporting-compilation-of-2021-peer-review-reports-73dc97a6-en.htm (visited on 27/04/2022).

[299] Even though, as assessed by the Financial Secrecy Index in 2022, some jurisdictions had legislation that required local filing under more circumstances than those authorised by the OECD model legislation, upon being reviewed by the OECD, some jurisdictions adopted the guidance or additional regulation, or stated that they would ensure their laws are consistent with the OECD regulations.

Component 2: Unilateral cross-border tax rulings

A tax ruling is understood broadly in line with the OECD's definition, which includes "any advice, information or undertaking provided by a tax authority to a specific taxpayer or group of taxpayers concerning their tax situation and on which they are entitled to rely".[300] The definition of cross-border tax rulings is similar to, but not entirely the same as, the European Union's definition in its directive on administrative assistance. This directive provides for the automatic information exchange of advance cross-border rulings and advance pricing arrangements. For a comparison with the actual text in the directive amending the relevant directive on administrative cooperation (EC 2011/16/EU), see Art. 1(1)(b)(14 and 16), European Parliament and Council of the European Union, Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation, 2015.[301] The tax rulings covered by the scope of this indicator are a subset of these rulings, as they only comprise those with a cross-border element and those issued to specific taxpayers (rather than to the public at large). The scope of our indicator covers the following six categories of rulings included under the spontaneous information exchange framework of the OECD's Base Erosion and Profit Shifting Project Action 5:

> ... (i) rulings relating to preferential regimes; (ii) unilateral advance pricing agreements (APAs) or other cross-border unilateral rulings in respect of transfer pricing; (iii) cross-border rulings providing for a downward adjustment of taxable profits; (iv) permanent establishment (PE) rulings; (v) related party conduit rulings; and (vi) any other type of ruling agreed by the FHTP [Forum on Harmful Tax Practices] that in the absence of spontaneous information exchange gives rise to BEPS concerns.[302]

Unilateral cross-border tax rulings refer to private rulings applicable to individual taxpayers and singular cases. These are not the same as generally applicable decisions, guidance notes or other types of binding interpretation of tax law issued publicly by the tax administration through circulars, regulations or similar administrative acts.

It is important to differentiate unilateral cross-border tax rulings from bi- or multi-lateral advance pricing arrangements. Bi- or multi-lateral advance pricing arrangements involve a priori agreement by all tax administrations of all

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[300] OECD. *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD, Oct. 2015. URL: https://www.oecd-ilibrary.org/docserver/9789264241190-en.pdf?expires=1614877067&id=id&accname=guest&checksum=C393A092E4E891081A3EF1E1C25A4A40 (visited on 03/05/2022).

[301] European Parliament and Council of the European Union. *Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation*. Dec. 2015. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN (visited on 03/05/2022).

[302] OECD. *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Dec. 2017. URL: http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-peer-review-reports-on-the-exchange-of-information-on-tax-rulings_9789264285675-en (visited on 07/05/2022), p.9.

jurisdictions involved in a cross-border transaction for which the agreement is sought.[303] In contrast, unilateral cross-border tax rulings or unilateral advanced pricing agreement (hereinafter together referred to as "unilateral cross-border tax rulings") do not require, per se, prior agreement. Consequently, only unilateral cross-border tax rulings are considered, as these represent the highest risk for abusive tax practices.

Whenever there is no formal system available for the issuance of unilateral cross-border tax rulings, we consider that these are not available, unless we found more evidence that issuance of rulings is an established practice. Jurisdictions that do not issue unilateral cross-border tax rulings (but impose income tax) receive the lowest secrecy score of zero.

To assess if unilateral cross-border tax rulings are available, we consider the OECD's peer reviews on harmful tax practices[304] as the prevailing source. If the OECD states that cross-border tax rulings exist, we assess the jurisdiction as being able to issue rulings. This assessment is made regardless of what other sources say. This is because jurisdictions are motivated to disclose the status of rulings for the OECD peer review. So if the government claims that it has a binding ruling or a ruling that it has to honour, then it is likely to be so. In cases where the OECD states that there are no binding rulings, we do not necessarily apply the OECD assessment if we find another source that states rulings are available. In this case, the assessment will be left as "unknown" due to conflicting information. In cases where the OECD does not assess a jurisdiction, then we have carried out additional research. If the International Bureau of Fiscal Documentation[305] indicates that there are rulings, this is applied and where there is a contradictory source, the score is unknown.

Where a jurisdiction issues unilateral cross-border rulings, the jurisdiction is assessed as being able to issue rulings, whether these rulings are considered binding or not. This is because the binding nature of tax rulings is a grey area. Even if rulings are claimed not to be strictly binding there may be sufficient legal certainty for private sector tax advisers to market the tax positions because of the low risks of litigation about those tax positions. In the absence of full

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[303] Advance pricing arrangements have their roots in international tax norms for the avoidance of double taxation. Here, we define an advance pricing arrangement as always involving all affected jurisdictions. That is, advance pricing arrangements always involve bi- or multi-lateral negotiation. This definition is similar, but not identical to the definition used by the OECD in its Transfer Pricing Guidelines as updated in 2010.(OECD. *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*. Aug. 2010. URL: https://www.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2010_tpg-2010-en [visited on 12/05/2022], pp.169-172) While no explicit reference to advance pricing arrangements is made in the OECD Model Convention of 2008 (including the commentary), the Commentary to the UN Model Convention of 2011 refers to advance pricing arrangements with respect to information exchange(United Nations. *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)*. New York, 2011. URL: https://www.un.org/esa/ffd/wp-content/uploads/2014/09/UN_Model_2011_Update.pdf [visited on 12/05/2022]).

[304] OECD. *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*. Dec. 2021. URL: https://www.oecd.org/tax/beps/harmful-tax-practices-2020-peer-review-reports-on-the-exchange-of-information-on-tax-rulings-f376127b-en.htm (visited on 27/04/2022).

[305] IBFD. *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*. 2019. URL: https://research.ibfd.org/ (visited on 03/05/2022).

disclosure of all rulings, we cannot assess the impact of rulings or the legal effect and therefore a jurisdiction is scored as being able to issue rulings.

Jurisdictions that issue unilateral cross-border tax rulings, but do not make these available online in all cases (for instance, they make available only some tax rulings), receive the highest secrecy score of 50 points (or 25 points where all three of the indicator's components are assessed). If only minimal information is available online (eg a summary or a redacted version of the text), jurisdictions are scored 40 points (or 20 where all three components are assessed). Where all tax rulings are available online in full text but are anonymised, that is, the name(s) of the taxpayer(s) involved are redacted; or when the opposite situation happens, ie the published tax rulings include the name(s) of the taxpayer(s) but not the full text of the tax ruling, then the score is 30 points (or 15 where all three components are assessed). In cases where the full text of all tax rulings is available online and all tax rulings include the name(s) of the taxpayer(s) concerned, then the jurisdiction receives a lower secrecy score of 10 points (or 5 where both components are assessed).

The data for this component was collected from several sources including country analyses and country surveys in the International Bureau of Fiscal Documentation's database,[306] the OECD's peer review on harmful tax practices,[307] studies commissioned by the European Union,[308] jurisdictions' relevant regulations and where available, the responses to the survey the Tax Justice Network has circulated to Ministries of Finance.[309] In some instances, we have also consulted additional websites and reports of accountancy firms, academic journals and other local websites.

Component 3: Extractive industries contract disclosure

Extractive industries contracts include contracts for both mining and petroleum. The focus of this indicator is on the contracts that are signed between governments or state-owned companies for publicly held natural resources and companies (individual companies or those working in a consortium). Sometimes referred to as "primary contracts", these contracts can take several forms or a combination: concession, licence, production sharing and service agreements, along with shareholders' agreements where government has an equity stake.[310] This indicator is not concerned with the contracts that are signed between

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[306] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[307] OECD. *Harmful Tax Practices – Peer Review Results on Preferential Regimes*. Jan. 2019. URL: https://www.oecd-ilibrary.org/docserver/9789264311480-en.pdf?expires=1552638135&id=id&accname=guest&checksum=C4EEE3F55F4E6C17D62674F36049D20F (visited on 06/05/2022); OECD, *Harmful Tax Practices – 2020 Peer Review Reports on the Exchange of Information on Tax Rulings*.

[308] European Commission. *State Aid: Tax Rulings*. 2021. URL: https://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html (visited on 03/05/2022); Elly Van de Velde. *'Tax Rulings' in the EU Member States*. Brussels, 2015. URL: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf (visited on 08/05/2022).

[309] Tax Justice Network, *TJN Survey*.

[310] Peter Rosenblum and Susan Maples. *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. New York, NY: Revenue Watch Institute, 2009, p.19.

private parties, such as between the oil company and a company providing transport services.

Contract disclosure is assessed for either mining or petroleum as per the Natural Resource Governance Institutes' contract disclosure tracker, last updated in March 2021.[311] This includes 151 entries for 103 jurisdictions. For 48 jurisdictions there are two entries, one for petroleum and one for mining. The tracker includes information for a) countries included in the Natural Resource Governance Institute's Resource Governance Index 2017, the following and most recent index, published in 2021, assessed only 18 jurisdictions, but this has not affected the countries included in the tracker, and b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including some that have withdrawn membership or were delisted (for example, Azerbaijan, Equatorial Guinea, the United States of America and Yemen) and those that have since joined (for example, Armenia, Guyana, Suriname). Finally, c) several other countries are included in the tracker that are added on an ad hoc basis, including new and upcoming producers or countries that the Natural Resource Governance Index is working in (for example Lebanon[312]). The inclusion of information for either petroleum or mining or both for jurisdictions is also based on the information included in the Resource Governance Index.

Jurisdictions that disclose all or nearly all contracts[313] online and for free with a requirement for disclosure in law are considered to be fully transparent and to pose a minimum tax spillover risk. They receive the lowest secrecy score of zero. It is important for contract disclosure to be backed up by a legal requirement for disclosure; this can take the form of a clause in legislation or regulations, or a ministerial decree. To reflect this, where all or nearly all contracts are disclosed in practice but there is no requirement in the law to disclose contracts, a jurisdiction receives a slightly higher secrecy score of 5 points.

At the other end of the spectrum, jurisdictions pose the greatest tax avoidance risk where contracts are not available for free online and there is no legal requirement for disclosure. These jurisdictions receive the highest secrecy score of 25 points. Jurisdictions that have a legal requirement for contract disclosure but in practice do not disclose any contracts online receive a slightly lower secrecy score of 22.5 points.

Jurisdictions that disclose only some contracts[314] receive a reduced secrecy score of 10 points if disclosure is required by law and 15 points if there is no legal requirement for contract disclosure.

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[311] The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*.

[312] Email communication with Rob Pitman, Natural Resource Governance Institute, 28.01.2019

[313] 'All or nearly all' is the categorisation used by the Natural Resource Governance Institute (The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*) as not every contract online has been checked (email communication with Rob Pitman, Natural Resource Governance Institute, 25.01.2019). This would also require countries to publish a comprehensive list of all contracts and licences issued.

[314] 'Some' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (The Natural Resource Governance Institute, *Contract Disclosure Practice and Policy Tracker*). It is used to refer to jurisdictions where at least one contract has been disclosed (email communication with Rob Pitman, Natural Resource Governance Institute, 25.01.2019).

Finally, where the assessment is made for both mining and petroleum, the weakest link practice is applied. For example, if a country discloses all or nearly all petroleum contracts in practice and this is required by law but does not disclose mining contracts or require this by law, the country is assessed as having no extractive industries contracts disclosed in practice or by law and therefore would receive a secrecy score of 25 points.

The secrecy scoring matrix is shown in Table 3.21, with full details of the assessment logic given in Table 3.22.

Table 3.21. Secrecy Scoring Matrix: Secrecy Indicator 9

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Local filing of country by country reports (50 points)	
Access to country by country reports is not ensured The jurisdiction abides by the OECD's legal framework and requires local filing of country by country reports only when authorised by the OECD, if local filing is required at all; or unknown.	50
Access to country by country reports is ensured (comprehensive local filing) The jurisdiction goes beyond the legal framework proposed by the OECD and requires local filing of country by country reports (by the local subsidiary or branch of a foreign multinational enterprise) whenever the jurisdiction cannot obtain it through the automatic exchange of information.	0
Component 2: Unilateral cross-border tax rulings (25 points if component 3 is also assessed; otherwise 50 points)	
Not all tax rulings are published online (if any) Only some or no unilateral cross-border tax rulings can be accessed online, or unknown, or the jurisdiction does not apply income tax.	Where both components 2 and 3 are assessed: 25 each. Where only component 2 is assessed: 50
Minimal information on tax rulings published online All unilateral cross-border tax rulings are published online, but in a reduced version and without the names of the taxpayers concerned.	Where both components 2 and 3 are assessed: 20 Where only component 2 is assessed: 40

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Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
All tax rulings are published in full text, but anonymised All unilateral cross-border tax rulings are published online in their full text, but without the name(s) of the taxpayer(s) concerned. **OR** **All tax rulings are published with the name(s) of the taxpayer(s), but not in full text** All unilateral cross-border tax rulings are published online, including the name(s) of the taxpayer(s) concerned but only in a reduced version.	Where both components 2 and 3 are assessed: 15 Where only component 2 is assessed: 30
All tax rulings published online in full text with the name(s) of the taxpayer(s) All unilateral cross border tax rulings are published online, in full text, including the name(s) of the taxpayer(s) concerned.	Where both components 2 and 3 are assessed: 5 Where only component 2 is assessed: 10
No tax rulings issued No unilateral cross-border tax rulings are available in the jurisdiction and the jurisdiction applies income tax.	0

Component 3: Extractive industries contract disclosure (25 points where applicable): petroleum or mining (where both sectors exist, only the assessment of most secretive sector is considered)		
	Contract disclosure not required by law No legal requirement exists that requires contract disclosure	**Contract disclosure required by law** A legal requirement exists that requires contract disclosure
No extractive industries contracts published Extractive industries contracts cannot be accessed online, or unknown	25	22.5
Only some extractive industries contracts published While some extractive industries contracts are available online, not all or nearly all are available online	15	10
All or nearly all extractive industries contracts published All or nearly all extractive industries contracts are publicly available online	5	0

3.9.2 Why is this important?

Component 1: Local filing of country by country reports

Country by country reporting requires multinational corporations to provide a jurisdiction-level breakdown of activities, profits declared and tax paid. The practice clarifies where corporations are conducting real business activity and where they are reporting their profits, making it easier to identify risks of profit shifting for tax avoidance. It also helps to identify the jurisdictions that are attracting profit shifting at the expense of other countries.[315] While the first draft international accounting standard for country by country reporting was created in 2003 by Richard Murphy, the recent OECD's BEPS Action 13 has established a less ambitious template[316] to report multinational's country by country information.

Since we published the previous edition of the Financial Secrecy Index in 2020, four jurisdictions have worsened their secrecy score for this indicator. Germany, Spain, Taiwan and Vietnam now comply with the OECD standard. According to the OECD's most recent review and Germany's response to the Tax Justice Network's 2020 survey, Germany complies with, rather than surpasses, the OECD standard for the filing of local country by country reports, and the OECD's monitoring point on local filing was removed. Legislative changes in Spain and Vietnam brought the countries in line with the OECD standard according to the most recent review. In Taiwan, the introduction of a safe harbour provision exempts multinational enterprises below a new threshold from filing the group master file and by extension the country by country report. On the basis of the exemption, Taiwan is assessed as not having a local filing requirement. In the past, while Taiwan's legal framework had not been reviewed by the OECD, Taiwan was assessed as going beyond OECD legislation because local filing would be required even if there was no international agreement with the parent's jurisdiction. Thailand and Morocco join four other jurisdictions in requiring local filing of country by country reports that goes beyond the OECD standard.

As assessed and explained by Secrecy Indicator 8 on public country by country reporting,[317] country by country reports should be public to ensure that all foreign authorities, as well as campaigners and investigative journalists, can access this basic accounting information that is key to revealing tax avoidance schemes. One of the reasons why OECD members claim that its country by country reporting data cannot be made public is because the underlying data is designated as tax data. An article published in 2018 traces[318] nearly 50 years of international political manoeuvres by business lobbyists and captured states in successful

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[315] Mark Bou Mansour. *GRI Invites Feedback on Its First Global Tax Transparency Standard*. Dec. 2018. URL: https://taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/ (visited on 06/05/2022).

[316] OECD. *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*. OECD/G20 Base Erosion and Profit Shifting Project. OECD Publishing, Oct. 2015. URL: http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en (visited on 06/05/2022), pp.29-31.

[317] Tax Justice Network, *Secrecy Indicator 8: Public Country by Country Reporting*.

[318] Cobham et al., 'A Half-Century of Resistance to Corporate Disclosure'.

efforts to re-qualify country by country reporting as tax data rather than accounting data.

However, a second best scenario to public reporting is assessed by this indicator. It assesses whether country by country reports are at least locally filed so that authorities of all countries where a multinational has operations can access reports in cases where these reports cannot be obtained through automatic exchanges, regardless of the reason. Local filing ensures authorities can use the country by country report as they see fit to tackle tax avoidance.

Rather than promoting this approach the OECD has, among other concerns,[319] established a complex scheme for accessing country by country reports[320] through the automatic exchange of information. This is illustrated in Figure 3.3. The OECD's approach hinders the access of lower income countries that cannot implement automatic exchanges. By promoting the access of country by country reports through the exchange of information and not through local filing requirements, the OECD has also imposed restrictions on the use of reports. This means that any authority using the received country by country report for additional purposes could be penalised by preventing it from receiving any other report from foreign authorities. That is, exchange of information with that jurisdiction would be suspended.

Specifically, the OECD restricts the use of the country by country report as follows:

> Appropriate use is restricted to: high level transfer pricing risk assessment, assessment of other base erosion and profit shifting related risks, economic and statistical analysis, where appropriate [...]. The information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report.[321]

The OECD approach, in essence, requires each multinational enterprise's headquarters to produce and file the country by country report with their local authority. The local authority is then supposed to automatically exchange this

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[319] Knobel and Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights'.

[320] To see more details about country by country reporting and its uses, please refer to Secrecy Indicator 8: (Tax Justice Network, *Secrecy Indicator 8: Public Country by Country Reporting*).

[321] OECD. *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*. 2017. URL: http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf (visited on 06/05/2022), p.5.

country by country report with authorities of all countries where the multinational enterprise has operations. In other words, all other jurisdictions where a multinational enterprise has operations should receive the country by country report from the country where the multinational enterprise is headquartered through the automatic exchange of information.

However, the automatic exchange of information requires those countries willing to receive the country by country report from the headquarters' jurisdiction to have the necessary legal framework. This includes international agreements with the headquarters' jurisdiction that allow the automatic exchange of information as well as compliance with confidentiality provisions and the appropriate use of the received country by country report. For example, as of 31 January 2022, only 92[322] jurisdictions had signed the Multilateral Competent Authority Agreement (MCAA) required to automatically exchange country by country reports.[323] The first exchanges started in 2018,[324] but some jurisdictions will start later. Indeed, as of March 2022, the highest number of activated relationships was 85 jurisdictions for some European countries, meaning that out of the 92 current signatories, a country may be exchanging country by country reports with 84 other jurisdictions at most.[325]

While the framework and its alternatives are complex (see Figure 3.3), the key condition imposed by the OECD framework to access the country by country report is to have an international agreement[326] between the country where the multinational enterprise has operations (O) and where it is headquartered (HQ). If this condition is met, there are three possible ways to access the country by country report for O under the OECD framework: (i) automatic exchange of information with HQ, (ii) automatic exchange of information with another country, called "Surrogate" (S); or if neither (i) or (ii) apply, then (iii) by local filing (a subsidiary of the multinational enterprise resident in O would file the country by country report directly with O's authorities).

Countries that comply with the OECD legal framework for country by country reporting do not ensure access to the country by country report. Instead, they first need to have an international agreement with HQ, subject to HQ's discretion to sign one or not. Countries that go beyond the OECD proposed legislation will ensure access in all cases because, if they cannot obtain the country by country report through the automatic exchange of information (for example, because they

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[322] OECD. *Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) and Signing Dates*. Jan. 2022. URL: https://www.oecd.org/tax/beps/CbC-MCAA-Signatories.pdf (visited on 07/05/2022).

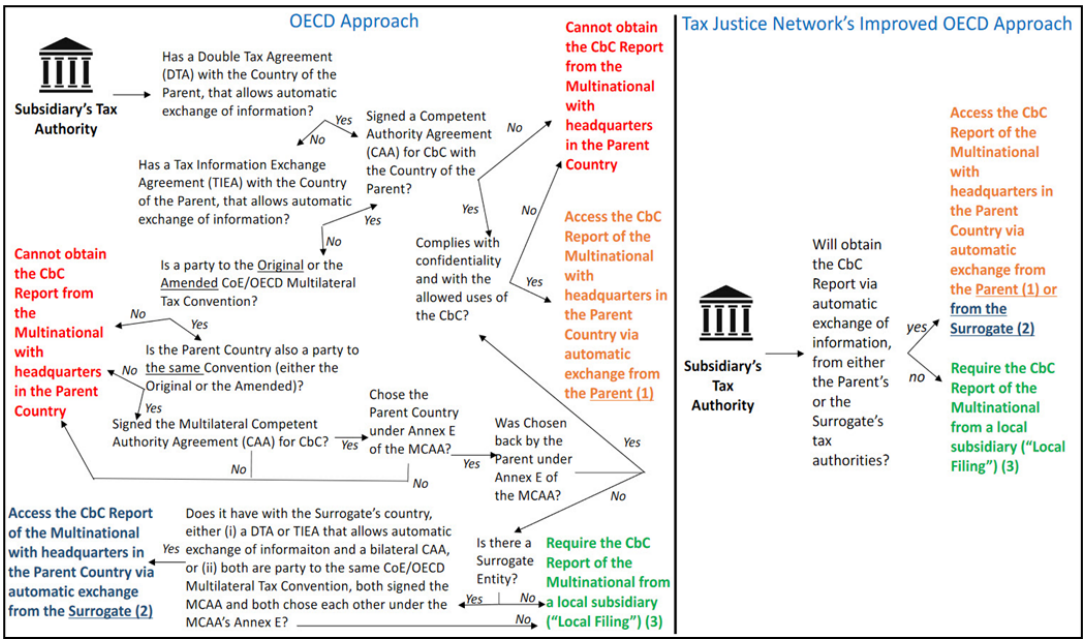
[323] OECD. *Multilateral Competent Authority Agreement on the Exchange of Country-by-country Reports*. 2016. URL: http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf (visited on 20/04/2022).

[324] OECD. *Country-by-Country Reporting: Update on Exchange Relationships and Implementation*. Feb. 2019. URL: https://www.oecd.org/tax/beps/country-by-country-reporting-update-on-exchange-relationships-and-implementation.htm (visited on 06/05/2022).

[325] OECD. *Activated Exchange Relationships for Country-by-Country Reporting - OECD*. Mar. 2022. URL: https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm (visited on 28/04/2022).

[326] There are three possible international agreements: 1) The Multilateral Convention on Administrative Assistance in Tax Matters, 2) Double Tax Agreements, and 3) Tax Information Exchange Agreements.

Figure 3.3. A comparison of approaches to accessing country by country reports



See: Andres Knobel. Access to Country by Country Reports. (2013) and
Andres Knobel. The OECD - Penalising Developing Countries for Trying to Tackle Tax Avoidance. (2017)

lack an international agreement with HQ), they will require the local subsidiary of a multinational enterprise to file the report with local authorities ("local filing"). Local filing also means that countries can use the country by country report as they see fit (to tackle tax avoidance) without the threat of preventing access in the future if the automatic exchange of information with foreign countries is suspended.

While some countries had implemented legislation that requires local filing beyond the situations allowed by the OECD, the OECD peer reviews published in 2018, 2019, 2020 and 2021 started to mark these countries as requiring amendments to their laws.

For example, Spain was one of the few countries that kept its regulations requiring local filing of the country by country beyond the OECD model legislation. It received a "recommendation for improvement" from the OECD and has since amended legislation to align with the OECD standard.

> It is recommended that Spain amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.[327]

This approach taken by the OECD appears to restrict a country's tax sovereignty by imposing a monopolistic ambition of the OECD. A jurisdiction should be free to go beyond OECD rules to use domestic legislation without the OECD's interference to require the filing of any data it wishes by the entire corporate group doing business within its territory.

[327] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, p.682.

Component 2: Unilateral cross-border tax rulings

The inherently problematic nature of unilateral cross-border tax rulings was exposed widely during the Lux Leaks scandal in 2014. As part of the subsequent investigations by the European Commission for Competition, it was determined that some of these rulings conflicted with the European Union's state aid rules and therefore were illegal.[328] European Union member states, including Belgium, Luxembourg, Ireland, and the Netherlands, later appealed the European Commission's decision.[329] In the case of Luxembourg, the European General Court upheld the Commission's decision on state aid rules. However, in February 2020, Ireland has appealed the state aid ruling for Luxembourg with the Court of Justice "because of its relevance to the European Commission's ruling against Ireland for its tax treatment of Apple".[330] The European Court of Justice is yet to rule on the appeal.[331]

In contrast, the European General Court ruled in favour of Belgium,[332] Ireland[333] and the Netherlands[334] in their appeals. The Commission is appealing the General Court's decision for Belgium and Ireland at the European Court of Justice. In September 2021, the European Court of Justice ruled that the Commission correctly found that there was a state aid scheme so "sets aside the judgment delivered on 14 February 2019 by the General Court and refers the case back to the latter for it to rule on other aspects of the case".[335]

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[328] European Commission, *State Aid: Tax Rulings*.

[329] Peter Hamilton. 'State Recovers €14.3bn from Apple over Alleged State Aid'. *The Irish Times* (Sept. 2018). URL: https://www.irishtimes.com/business/technology/state-recovers-14-3bn-from-apple-over-alleged-state-aid-1.3633191 (visited on 03/05/2022).

[330] Colm Ó Mongáin. 'Ireland Appeals ECJ State Aid Ruling against Luxembourg' (Feb. 2020). URL: https://www.rte.ie/news/business/2020/0219/1116376-ireland-appeals-ecj-state-aid-ruling-against-luxembourg/ (visited on 06/05/2022).

[331] CMS Francis Lefebvre Avocats-Eleni Moraïtou and Ariane Rolin. 'Application of State Aid Law to Tax Measures: 2021 Review and 2022 Outlook'. *Lexology* (Mar. 2022). URL: https://www.lexology.com/library/detail.aspx?g=a96ccb81-df9e-42b8-abbb-338e3025d2e7 (visited on 28/04/2022); EU InfoCuria. *Appeal Brought on 25 September 2020 by European Commission against the Judgment of the General Court (Seventh Chamber, Extended Composition) Delivered on 15 July 2020 in Joined Cases T-778/16 and T-892/16, Ireland and Others v Commission*. Sept. 2020. URL: https://curia.europa.eu/juris/document/document.jsf?docid=237178&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=1&cid=2631279 (visited on 28/04/2022).

[332] General Court of the European Union. *Press Release: The General Court Annuls the Commission's Decision Concerning Tax Exemptions Granted by Belgium by Means of Rulings*. Luxembourg, Feb. 2019. URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-02/cp190014en.pdf (visited on 03/05/2022).

[333] Daniel Boffey. 'Apple Does Not Need to Pay €13bn Irish Tax Bill, EU Court Rules'. *The Guardian* (July 2020). URL: https://www.theguardian.com/technology/2020/jul/15/apple-does-not-need-to-pay-13bn-irish-tax-bill-court-rules (visited on 02/05/2022).

[334] General Court of the European Union. *Press Release: The General Court Annuls the Commission's Decision on the Aid Measure Implemented by the Netherlands in Favour of Starbucks*. Luxembourg, Sept. 2019. URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190119en.pdf (visited on 04/05/2022).

[335] Court of Justice of the European Union. *Press Release 158/21: Tax Exemptions Granted by Belgium to Multinational Companies by Way of Rulings: The Commission Correctly Found That There Was an Aid Scheme*. Sept. 2021. URL: https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210158en.pdf (visited on 28/04/2022).

In September 2020, the European Commission appealed against the decision regarding Ireland and Apple.[336] The appeal is still in progress as of April 2022.[337] In the statement released by Executive Vice President of the European Commission Margrethe Vestager, on announcing the appeal against the decision regarding Ireland, she said:

> Making sure that all companies, big and small, pay their fair share of tax remains a top priority for the Commission. The General Court has repeatedly confirmed the principle that, while Member States have competence in determining their taxation laws, they must do so in respect of EU law, including State aid rules. If Member States give certain multinational companies tax advantages not available to their rivals, this harms fair competition in the European Union in breach of State aid rules. We have to continue to use all tools at our disposal to ensure companies pay their fair share of tax. Otherwise, the public purse and citizens are deprived of funds for much needed investments – the need for which is even more acute now to support Europe's economic recovery.[338]

The Commission has not appealed the case with the Netherlands. This decision seems based more on the comparatively high costs for legally countering the arguments of the General Court in an appeal and on the relatively small amount of disputed tax revenue, rather than on the chances of winning the case by proving the level of royalties agreed was inappropriate.[339]

These episodes have revealed that some tax authorities, which are often sanctioned if not mandated by their respective finance ministers, help companies to avoid tax if not illegally, then at least questionably. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13 billion, although still in the courts as explained earlier, in taxes due through a complex tax manoeuvre agreed with the Irish tax agency.[340] Estimates put losses at $312 billion per year in cross-border tax abuse.[341]

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[336] Josh White. 'European Commission Accuses EU Court of 'Errors' in Apple Case'. *International Tax Review* (Feb. 2021). URL: https://www.internationaltaxreview.com/article/b1qd6b9qjyp73x/european-commission-accuses-eu-court-of-errors-in-apple-case (visited on 08/05/2022).

[337] EU InfoCuria. *CURIA - List of Results*. Apr. 2022. URL: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-465/20%20P&jur=C (visited on 28/04/2022).

[338] European Commission. *Statement by EVP Margrethe Vestager: Apple State Aid Case*. Sept. 2020. URL: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1746 (visited on 03/05/2022).

[339] William Hoke. 'EU to Forgo Appeal of Starbucks State Aid Decision'. *Tax Analysts* (Dec. 2019), p. 928. URL: https://www.taxnotes.com/tax-notes-international/competition-and-state-aid/eu-forgo-appeal-starbucks-state-aid-decision/2019/12/09/2b60j (visited on 03/05/2022); Dimitrios Kyriazis. 'Why the EU Commission Won't Appeal the Starbucks Judgment'. *MNE Tax* (Dec. 2019). URL: https://mnetax.com/why-the-eu-commission-wont-appeal-the-starbucks-judgment-37043 (visited on 06/05/2022).

[340] Markus Meinzer. 'Apple: Aufstand gegen das Steuerdiktat der USA'. *Die Zeit* (Sept. 2016). URL: https://www.zeit.de/wirtschaft/unternehmen/2016-09/apple-steuern-eu-kommission-transparenz (visited on 06/05/2022); Diego Arribas et al. *The Commission Appeals the Judgment Annulling Apple's Obligation to Repay 13 Billion Euros*. Mar. 2021. URL: https://www.cuatrecasas.com/en/latam/article/the-commission-appeals-the-judgment-annulling-apples-obligation-to-repay-13-billion-euros (visited on 29/04/2022).

[341] The Tax Justice Network reported in November 2021 that countries around the world are losing over US$483 billion in tax each year to international corporate tax abuse and private tax evasion,

As the Lux Leaks scandal has made amply clear, the practice of unilaterally issuing binding tax rulings for individual taxpayers distorts the market by benefiting specific large companies over other often smaller competitors who neither can obtain nor know about the possibility of obtaining similar treatment. It appears that beyond concerns around fair market competition, a core tenet for the rule of law is jeopardised if there is an exit option from equal treatment before the (tax) law. More recently, the LuxLetters[342] demonstrated that Luxembourg is still attempting to bypass transparency rules:

> Luxembourg began efforts in 2014 to meet EU and OECD rules on exchanging information with other countries about its corporate tax rulings. However, it is now revealed that shortly after this, many of Luxembourg's accounting and law firms engaged with the tax authority to establish "information letters" about the tax planning of multinational corporations. These information letters effectively fulfil the same purpose as tax rulings – but crucially, were deemed to be outside of the scope of the information exchange rules and so were not reported as rulings, according to sources familiar with the practice.
>
> Importantly, however, this too is prohibited under EU rules and is likely illegal also under OECD rules. Any type of tax agreements – even if not demonstrably legally binding – must be exchanged with European tax authorities.[343]

The discussion around the publicity of tax rulings has a historical precedent. Similar to tax rulings, so-called private letter rulings issued by the US tax administration were (and continue to be) made public in 1977 after the non-governmental organisation Tax Analysts took the Internal Revenue Service to court over this practice in 1972. Private letter rulings gained traction in the 1940s and were criticised for facilitating favouritism. A few privileged law firms were effectively guardians of this kind of privatised law, which allowed them to build libraries of privatised tax law and interpretation, giving them an edge over smaller firms.[344] However, since 1991, the US has provided the option of so-called "unilateral advance pricing arrangements" which may include cross-border

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which would have covered the cost of fully vaccinating the world's entire population against Covid-19 more than three times over. Of the US$483 billion lost in tax, US$312 billion is directly lost to cross-border corporate tax abuse by multinational corporations and US$171 billion to private tax evasion. Multinational corporations paid US$312 billion less in tax than they should have by shifting US$1.19 trillion worth of profit out of the countries where it was generated and into tax havens, where corporate tax rates are extremely low or non-existent (Global Alliance for Tax Justice et al., *The State of Tax Justice: 2021*).

[342] Maxine Vaudano et al. '« LuxLetters » : la nouvelle astuce pour contourner la transparence fiscale au Luxembourg'. *Le Monde.fr* (July 2021). URL: https : / / www . lemonde . fr / evasion - fiscale / article / 2021 / 07 / 01 / luxletters - la - nouvelle - astuce - pour - contourner - la - transparence - fiscale - au - luxembourg_6086592_4862750.html (visited on 29/04/2022).

[343] Tax Justice Network. *EU and OECD Half-Measures Fail to Detect Luxembourg's Shadow Tax Rulings*. July 2021. URL: https : / / taxjustice . net / press / eu - and - oecd - half - measures - fail - to - detect - luxembourgs-shadow-tax-rulings/ (visited on 29/04/2022).

[344] See (Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*). See also (Thomas R. III Reid. 'Public Access to Internal Revenue Service Rulings'. *George Washington Law Review*, 41 [1972], p. 23. URL: https://heinonline.org/HOL/Page?handle=hein.journals/gwlr41&id=35&div=&collection=) and (Yehonatan Givati. *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*. SSRN Scholarly Paper ID 1433473. Rochester, NY: Social Science Research Network, June 2009. URL: https://papers.ssrn.com/abstract=1433473 [visited on 03/05/2022]).

transfer pricing issues and are not public.[345] In contrast, as of January 2022, in nine jurisdictions (Argentina, Australia, Belgium, Mauritius, Netherlands, Pakistan, Philippines, Portugal and Thailand), all unilateral cross-border tax rulings are published online, although they contain minimal information. Brazil and Paraguay are the only countries that publish the rulings in full text but without the name of the taxpayer concerned. Ecuador is the only country that publishes excerpts of the formal tax rulings with identifying information.[346]

We do not consider it acceptable if jurisdictions publish no or only some tax rulings because this gives discretion to the tax authorities about what to disclose. At the same time, while we recognise that publishing some information on all tax rulings allows users to know the number of rulings issued by each jurisdiction and maybe also the concerned taxpayers, anything short of publishing the full text of a tax ruling is of limited use. This is because with just an extract or summary of the ruling it is difficult to understand the ruling itself and the decision-making and planning that went into agreeing the tax ruling. The European Court of Auditors confirms the problem with regard to the summary tax rulings that are exchanged between member states: "the summary of uploaded rulings sometimes lacked sufficient detail for a proper understanding of the underlying information; it was difficult for Member States to know when to request further information and, if they did so, to demonstrate that it was needed for purposes of tax assessment".[347]

These unilateral rulings usually negatively impact the tax base of other nations at least to the extent that they go unnoticed or unchallenged by the tax administration. Therefore, developing countries are likely to be hardest hit by the tax base poaching impact of unilateral tax rulings.

The European Union has subsequently introduced automatic information exchange between Member States on these rulings, which is an important step towards transparency.[348] However, this does not necessarily guarantee access to rulings by affected third party countries. The OECD has introduced a broader framework for mandatory spontaneous information exchange of tax rulings.[349] Yet even if all countries participated, exchange mechanisms only capture the tip of

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[345] Although the IRS states a "Preference for Bilateral and Multilateral APAs" over unilateral ones (Rev. Proc. 2015-41, Section 2.4.d. URL: https://www.irs.gov/pub/irs-drop/rp-15-41.pdf (visited on 10/05/2022)), the latter may nonetheless be available under certain conditions. After a lawsuit brought by BNA for disclosure of APAs, legislative action in December 1999 led to preventing disclosure of APAs. (Diane Ring. 'On the Frontier of Procedural Innovation: Advance Pricing Agreements and the Struggle to Allocate Income for Cross Border Taxation'. *Michigan Journal of International Law*, 21(2) [Jan. 2000], pp. 143–234. URL: https : / / repository . law . umich . edu / mjil / vol21 / iss2 / 1 [visited on 14/05/2022], p.160, footnote 52) and (Givati, *Resolving Legal Uncertainty*, p.174, footnote 130). In our classification, these so-called "unilateral APAs" would be considered to be unilateral tax rulings despite the name suggesting that it is an APA and thence involving at least two tax administrations.

[346] Government of Ecuador. *Extracts of Formal Tax Consultations - Intersri - Internal Revenue Service*. 2022. URL: https://www.sri.gob.ec/extractos-de-consultas (visited on 29/04/2022).

[347] European Court of Auditors. *Exchanging Tax Information in the EU: Solid Foundation, Cracks in the Implementation*. 2021. URL: https://www.eca.europa.eu/Lists/ECADocuments/SR21_03/SR_Exchange_tax_inform_EN.pdf (visited on 03/05/2022), p.35.

[348] European Parliament and Council of the European Union, *Council Directive (EU) 2015/2376 of 8 December 2015 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation*.

[349] OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*.

the iceberg. This is because it is difficult to define a unilateral cross-border tax ruling, and it is even more difficult, if not outright impossible, to monitor compliance with any obligation to report and exchange those rulings without making them public.

Various examples document the failure of reporting and exchange mechanisms around tax rulings. First, the inconsistent and misleading reporting practice of unilateral rulings by Luxembourg within the European Commission's Joint Transfer Pricing Forum prior to the Lux Leaks scandal[350] bears witness to the unreliability of confidential data. This data is only reported by the tax administration without any way to verify the content of the data more publicly. Second, the TAXE Committee, the European Parliament's Special Committee on Tax Rulings, explains decades of non-compliance with requirements under the EU directives on reporting of tax rulings:

> The European Parliament [...] Concludes [...] Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not and continue not to spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups[...].[351]

Lastly, publishing the full text of all rulings (disclosing the name(s) of the concerned taxpayer(s)) or at least exchanging them without exception with all relevant jurisdictions is much better than publishing only some rules or extracts from them. However, full transparency on tax rulings does not neutralise all the risks created by tax rulings in the first place. Accessing the text of a tax ruling is very different from understanding the consequences in practical terms, such as how much money will not be paid in tax, or where profits will be shifted to. In other words, the issuance of tax rulings adds to the current overwhelming problems faced by tax authorities worldwide. The lack of capacity in tax administrations, especially in lower income countries, the complex nature of multinational's cross-border transactions, and weak international transfer pricing regulations add further constraints to affected governments' efforts to counteract tax avoidance embedded in aggressive unilateral tax rulings. For this reason, the only case in which tax rulings are not considered to pose risk, and in

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[350] Luxembourg had reported only 2 unilateral APAs to be in force in 2012, while reporting 119 in 2013. In contrast, more than 500 unilateral tax rulings were disclosed through LuxLeaks which were reported to have been agreed mainly between 2002 and 2010. These appear not to have been captured by the EU Joint Transfer Pricing Forum statistic which builds on information submitted by member states such as Luxembourg. See (Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, pp.178-79). Within the context of the OECD transparency regime on tax rulings under BEPS Action 5, Luxembourg reportedly issued 1,922 rulings between 1 April 2016 and 31 December 2016, published annually in a summarised and anonymised form in the tax administration's annual report (OECD, Harmful Tax Practices – Peer Review Results on Preferential Regimes, 289).

[351] Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect. *Report on Tax Rulings and Other Measures Similar in Nature or Effect: (2015/2066(INI))*. European Parliament, Nov. 2015. URL: https://www.europarl.europa.eu/doceo/document/A-8-2015-0317_EN.html (visited on 08/05/2022), Paragraph.86.

which jurisdictions can obtain a secrecy score of zero, is when countries directly do not issue any tax ruling at all.

Component 3: Extractive industries contract disclosure

Nigeria gave away nearly $6 billion in future oil revenues to Shell and Eni in a very generous, veiled deal that Global Witness analysed in 2018.[352] Corporate executives have been on trial in Milan and Italy, accused of bribery in relation to this deal, however, they were since acquitted.[353] Italian prosecutors were investigating the possibility of the obstruction of justice in this case by Eni, but it appears they may not proceed with prosecution.[354]

The citizens of many other countries with some of the largest deposits of precious minerals worldwide are ripped off. Government coffers and citizens often lose out because of hidden agreements, weak laws and aggressive corporate tax practices. In most jurisdictions, non-renewable mineral resources are managed by the state on behalf of the public. States typically extend the right to corporate entities to explore, extract and often sell mineral resources in exchange for revenue or a share of the mineral. The contract outlines the rights, duties and obligations of the parties, including fiscal terms and provisions. These contracts can span decades and have far-reaching and long-lasting impacts. Everything from taxes and infrastructure arrangements to environmental performance, social obligations and employment rules may be set out in contracts. Where contracts are used by jurisdictions, they form part of the legal framework; they are "essentially the law of a public resource project, and a basic tenet of the rule of law is that laws shall be publicly available".[355]

Contracts vary greatly between and within jurisdictions in terms of complexity, length and the degree of deviation from general legislation or a model contract. Contracts may be standard for every company with the only difference found in the name of companies involved and the area of land granted by the state through a formal legal title. Some contracts may just make one or few changes to general legislation or a model contract while in other contracts everything may be up for negotiation. In cases where many terms can be negotiated, contracts can establish new provisions on tax, environmental, social and other investment obligations, such as local procurement and employment, and so-called "stabilisation periods". None, any or all of these provisions in a contract may be

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[352] Global Witness. *Take The Future: Shell's Scandalous Deal for Nigeria's Oil*. Nov. 2018. URL: https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/ (visited on 22/04/2022); The Corner House et al. *Shell and Eni on Trial*. URL: https://shellandenitrial.org/ (visited on 22/04/2022).

[353] Reuters Staff. 'Italy Prosecutors Ask for JPMorgan Documents to Be Admitted in Eni, Shell Nigeria Case'. *Reuters* (Jan. 2021). URL: https://www.reuters.com/article/uk-eni-shell-nigeria-jpmorgan-idUSKBN29Q0OT (visited on 08/05/2022).

[354] Emilio Parodi and Stephen Jewkes. 'Italy Prosecutors to Drop Obstruction of Justice Case for Eni, CEO - Sources'. *Reuters* (Dec. 2021). URL: https://www.reuters.com/business/finance/italy-prosecutors-drop-obstruction-justice-case-eni-ceo-sources-2021-12-10/ (visited on 29/04/2022).

[355] Rosenblum and Maples, *Contracts Confidential*, p.16.

confidential as well as the information that flows from them (such as revenue payments made by a company to government).[356]

Governments stand to gain from ensuring all contracts are public. Contract disclosure helps governments compare their own contracts with contracts in other jurisdictions, enables improved intra-governmental coordination in the enforcement of contracts, and can positively influence the trust of citizen's in the state.[357] There are already great asymmetries in information that put governments at a disadvantage in negotiations with companies. In turn, citizens can use the contracts to hold government and companies accountable on their obligations. Disclosure may be an additional incentive for governments to ensure as many constituents as possible are satisfied, contributing to more durable contracts that are less likely to be renegotiated or subject to corrupt influence for special deviations that ultimately undervalue the resource.[358] In Oxfam's 2018 Contract Disclosure Survey, secrecy is described as being short-lived because where companies have negotiated windfall deals by exploiting secrecy or through bribery, subsequent government administrations have grounds and choose to renegotiate contracts.[359]

Those who defend contract secrecy often claim it protects so-called commercially sensitive information. There is no consensus technical definition of this type of information, but being generous with the term, even if information is deemed to be commercially sensitive, this "is only one consideration among many when determining whether information should be made publicly available".[360] Under freedom of information principles, information that is likely to cause harm to a company's competitive position, such as trade secrets or information about future transactions, would be redacted. However, this information is unlikely to be found in contracts. As a study of publicly available contracts in Mongolia shows, trade secrets are not included, often because they are signed by a consortium of companies that may change over time: "it is highly unlikely that any company would risk writing trade secrets into any contract".[361] Financial terms that are always found in deals are often already known within the industry

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[356] In one of the earliest surveys of contracts, Rosenblum and Maples (2009) observed that confidentiality clauses in 150 mining and oil contracts were largely uniform with confidentiality applying to all information, with some exceptions for public disclosure of certain information by law, such as to the stock exchange, or information in the public interest. The similarity in clauses across different extractive contracts seems to be an exception when compared to other commercial contracts. According to Rosenblum and Maples, these general confidentiality clauses do not actually prevent contracts from being disclosed: "If the government and the company, or consortium of companies, agree to disclose the contract, the confidentiality clause poses no impediment, except possibly a procedural one — written consent of the parties. [...] On the other hand, procedural requirements may serve as a pretext to mask the unwillingness of one or both parties to disclose" (Rosenblum and Maples, *Contracts Confidential*, p.27).

[357] Rosenblum and Maples, *Contracts Confidential*.

[358] Rosenblum and Maples, *Contracts Confidential*.

[359] Isabel Munilla and Kathleen Brophy. *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*. Oxfam International, 2018, p. 64.

[360] Rosenblum and Maples, *Contracts Confidential*, p.36.

[361] Robert Pitman. *Mongolia's Missing Oil, Gas and Mining Contracts*. Jan. 2019. URL: https://resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf (visited on 22/04/2022), p.6.

or released on stock exchanges for the shareholders of listed companies. Most countries disclose contracts without redaction.[362]

To date, there is no evidence to suggest public disclosure of contracts has harmed companies. For companies, disclosure can help dispel suspicion, build trust and "temper unrealistic expectations and correct misconceptions that may skew communities' perceptions" especially when the signing of contracts is often associated with great celebration by governments and companies.[363] In fact, some companies have taken a lead in disclosing contracts signed with governments in countries where contracts are not typically disclosed. By 2018, Kosmos Energy[364] and Tullow Oil[365] adopted public contract disclosure policies and disclosed contracts on their websites or stock exchanges.

Publication of contracts along with the project-level disclosure of revenues "are now established as international norms", according to an International Monetary Fund briefing at the end of 2018.[366] Indeed, significant progress has been made in recent years.[367] In September 2021, the International Council on Mining and Metals, established two decades ago to improve industry performance on sustainable development, adopted a contract disclosure principle for all members,[368] signalling the normalisation of contract transparency.

Civil society movements, especially through the convening network Publish What You Pay, have demanded that governments and companies commit to contract disclosure. From 2013, the Extractive Industries Transparency Initiative (EITI) has "encouraged" implementing countries to publish contracts and has required countries to publish their government's position and practice on contract transparency.[369] In February 2019, the EITI Board agreed on changes to the EITI Standard. From 1 January 2021, all implementing countries are required to make public any new contracts they sign.[370]

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[362] Don Hubert and Rob Pitman. *Past the Tipping Point? Contract Disclosure within EITI*. Natural Resource Governance Institute, Mar. 2017, p. 48. URL: https://eiti.org/sites/default/files/attachments/past-the-tipping-point-contract-disclosure-within-eiti.pdf (visited on 22/04/2022), p.48.

[363] Munilla and Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, p.14.

[364] Sophie Durham. 'Contract Transparency Builds Trust and Mitigates Risk Says Kosmos'. *Extractive Industries Transparency Initiative* (Dec. 2018). URL: https://eiti.org/blog/contract-transparency-builds-trust-mitigates-risk-says-kosmos (visited on 03/05/2022).

[365] Tullow Oil. *Equality and Transparency*. 2022. URL: https://www.tullowoil.com/sustainability/equality-and-transparency/ (visited on 29/04/2022).

[366] International Monetary Fund. *Fiscal Transparency Initiative: Integration of Natural Resource Management Issues*. Jan. 2019. URL: https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues (visited on 22/04/2022), p.7.

[367] Rob Pitman and Isabel Munilla. 'It's Time for EITI to Require Contract Transparency. Here Are Four Reasons Why.' *Natural Resource Governance Institute* (Feb. 2019). URL: https://resourcegovernance.org/blog/its-time-eiti-require-contract-transparency-here-are-four-reasons-why (visited on 06/05/2022).

[368] ICMM. *Transparency of Mineral Revenues: Position Statements*. Sept. 2021. URL: https://www.icmm.com/en-gb/about-us/member-requirements/position-statements/mineral-revenues (visited on 29/04/2022).

[369] Dyveke Rogan and Gisela Granado. *Contract Transparency in EITI Countries: A Review on How Countries Report on Government's Contract Transparency Policy*. Extractive Industries Transparency International International Secretariat, Aug. 2015, p. 36.

[370] Extractive Industries Transparency Initiative. *EITI International Secretariat: The Board Agreed in Principle to the Proposals Made on Clarifications and Changes to the EITI Requirements*. Feb. 2019.

Yet disclosing contracts is just one part of the transparency measures needed throughout the contracting process, from planning and assessment of applications to the award, negotiation, implementation and monitoring of contracts.[371] Lessons from transparency in public procurement illustrate the potential of open contracting. A 2017 World Bank study using data from 88 countries on almost 34,000 firms shows that countries with more transparent public procurement systems have fewer and smaller kickbacks and create a more level playing field for smaller companies.[372]

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.22. Assessment Logic: Secrecy Indicator 9 - Corporate Tax Disclosure

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
419	Country by country report: 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?	0: No; 1: 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 country by country report); 2: Beyond OECD Legislation: Secondary mechanism is not subject to restrictions imposed by OECD model legislation: any domestic subsidiary of a group would have to file the country by country report in all cases in which the jurisdiction cannot obtain the country by country report via automatic exchange of information.	If answer is 2: 0 points; otherwise 50 points.

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URL: https://eiti.org/documents/board-agreed-principle-proposals-made-clarifications-and-changes-eiti-requirements (visited on 22/04/2022).

[371] Rob Pitman et al. *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice*. Open Contracting Partnership; Natural Resource Governance Institute, June 2018. URL: https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf (visited on 06/05/2022); Open Contracting Partnership. *Open Contracting Global Principles*. URL: https://www.open-contracting.org/what-is-open-contracting/global-principles/ (visited on 22/04/2022).

[372] Stephen Knack et al. *Deterring Kickbacks and Encouraging Entry in Public Procurement Markets: Evidence from Firm Surveys in 88 Developing Countries*. Policy Research Working Papers. The World Bank, May 2017. URL: http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-8078 (visited on 07/05/2022).

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
363	Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) available in laws or regulations, or in administrative practice?	0: No; 1: Yes	If components 2 and 3 are assessed (otherwise the scores are doubled here): ID363=1 & ID421=0: 25 ID363=1 & ID421=1: 20 ID363=1 & ID421=2 or 3: 15 ID363=1 & ID421=4: 5 ID363=0: 0 points unless the jurisdiction does not apply income tax (then 25).
421	Tax Rulings: Are all unilateral cross border tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?	0: NONE OR SOME: None or only some of the unilateral cross border tax rulings are published online. 1: MINIMAL (ANONYMISED AND NOT FULL TEXT): All unilateral cross-border tax rulings are published online, but in a reduced version and without the name(s) of the taxpayer(s) concerned. 2: ANONYMISED (FULL TEXT BUT ANONYMISED): All unilateral crossborder tax rulings are published online in their full text, but without the name(s) of the taxpayer(s) concerned. 3: SUMMARY (NAMED BUT NOT FULL TEXT): All unilateral cross border tax rulings are published online, including the name(s) of the taxpayer(s) concerned but only in a reduced version of the text. 4: COMPLETE (NAMED AND FULL TEXT): All unilateral cross border tax rulings are published online, in full text, including the name(s) of the taxpayer(s) concerned	

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
561	Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?	0: No or unknown; 1: Yes	**Mining contracts**: ID561=-3 & ID562=-3: consider petroleum values, and if petroleum also –3, consider only tax rulings and local country by country reporting. ID561=0 & ID562=0: 25 points ID561=1 & ID562=0:22.5 points ID561=0 & ID562=1: 15 points ID561=1 & ID562=1: 10 points ID561=0 & ID562=2: 5 points ID561=1 & ID562=2: 0 points
562	Mining contracts in practice: Are all extractive industries mining contracts published online in practice?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	
563	Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	**Petroleum contracts**: ID563=-3 & ID564=-3: consider mining values, and if petroleum also –3, consider only tax rulings and local country by country reporting. ID563=0 & ID564=0: 25 points ID563=1 & ID564=0: 22.5 points ID563=0 & ID564=1: 15 points ID563=1 & ID564=1: 10 points ID563=0 & ID564=2: 5 points ID563=1 & ID564=2: 0 points
564	Petroleum contracts in practice: Are all extractive industries petroleum contracts published online in practice	0: No, contracts are not available online; 1: Yes, but only some contracts are available online; 2: Yes, all or nearly all contracts are available online.	

3.10 Secrecy Indicator 10: Legal entity identifier

3.10.1 What is measured?

This indicator reviews the extent to which a jurisdiction requires domestic legal entities to use the Legal Entity Identifier (LEI). A global LEI system has been developed under the guidance of the Financial Stability Board (FSB) and provides a unique identification number for legal entities engaging in financial transactions. Sometimes labelled a global business card for legal entities, all legal entities incorporated in any country can apply for and use a LEI. The cost for obtaining a LEI has fallen and stands currently at about €90 for first registrations, and about €60 for annual renewal.[373]

The LEI is a 20-character, alpha-numeric code and all entities using a LEI can be searched on their website for free.[374] In essence, the information contained in any LEI record is currently limited to the name(s), legal jurisdiction and legal form of the entity, its address, as well as date and details of registration.[375] From May 2017 onwards additional information on the direct and ultimate accounting consolidating parents is required for each LEI record upon annual renewal.[376] The accuracy of any LEI record can be challenged online.

Some jurisdictions have required the use of a LEI in different segments of financial markets, beginning with the "Over the Counter" (OTC) derivatives market.[377] In addition, the global system for automatic exchange of tax information (Common Reporting Standard, CRS) allows jurisdictions to use the LEI as an identifier for the reporting financial institutions.[378]

For a jurisdiction to obtain a zero secrecy score, it must require[379] all legal entities created under its laws to use an annually updated LEI by the end of 2021. Otherwise, a 100 points secrecy score is applied.

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[373] See for example the prices listed here: https://www.lei.direct/fileadmin/user_upload/LEI-direct-Price-list-LEI.pdf (visited on 10/05/2022).

[374] *LEI Search*. URL: https://search.gleif.org (visited on 04/05/2022).

[375] *Global Legal Identifier Foundation - Homepage*. URL: https : / / www . gleif . org/ (visited on 04/05/2022).

[376] The data required to be provided on accounting consolidating parents for parents without a LEI is limited to legal name, legal address, headquarter address and business register information (identification of register and registry number). The concatenated files are available for download free of charge on the GLEIF website: (*GLEIF Concatenated Files*. URL: https : / / www . gleif . org / en / lei - data/gleif-concatenated-file [visited on 08/04/2022]). See also (*About LEI: Common Data File Formats*. URL: https://www.gleif.org/en/about-lei/common-data-file-format [visited on 08/04/2022]).

[377] *Regulatory Use of the LEI*. URL: https://www.gleif.org/en/lei-solutions/regulatory-use-of-the-lei (visited on 08/04/2022).

[378] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.* p.97.

[379] In this regard, an important nuance must be noted: various jurisdictions merely "request" a LEI in certain circumstances. According to the LEI Regulatory Oversight Committee, if the LEI is "requested" it means that "The LEI is mandated only if the relevant entity already has one".(LEIROC. *Progress Report by the Legal Entity Identifier Regulatory Oversight Committee (LEI ROC): The Global LEI System and Regulatory Uses of the LEI*. Apr. 2018. URL: https://www.leiroc.org/publications/gls/roc_20180502-1.pdf [visited on 20/04/2022]) Thus, in these cases we consider there is no real obligation to use a LEI.

However, the 100 points secrecy score can also be reduced by 25 points for each specific purpose for which the jurisdiction requires, by the same date, annually updated LEIs:

- for financial market operators trading in "Over the Counter" (OTC) derivatives; and/or
- for financial market operators and/or asset classes beyond "Over the Counter" (OTC) derivatives; and/or
- for the identification of reporting financial institutions (pursuant to the CRS Implementation Handbook, CRS commentaries, section I, subpara A(3)[380]).

The secrecy scoring matrix is shown in Table 3.23, and full details of the assessment logic can be found in Table 3.24.

Table 3.23. Secrecy Scoring Matrix: Secrecy Indicator 10

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]	**Secrecy Score Assessment** [Simple addition / subtraction]
No mandatory and updated LEI for all companies The use of an annually updated Legal Entity Identifier (LEI) is not mandatory for all domestic companies	100 points
Mandatory and updated LEI for one type of operators/asset classes The use of an annually updated LEI is mandatory either for trading in "Over the Counter" (OTC) derivatives, or for financial market operators and/or asset classes beyond (OTC) derivatives. **OR** **Mandatory and updated LEI for two types of operators/asset classes** The use of an annually updated LEI is mandatory both for trading in "Over the Counter" (OTC) derivatives and for some financial market operators and/or asset classes beyond trading in OTC derivatives.	-25 points **OR** -50 points
Mandatory and updated LEI for automatic exchange of tax information The use of an annually updated LEI is mandatory for the identification of reporting financial institutions (pursuant to the Common Reporting Standard (CRS), as referred to in the CRS commentaries, section I, subpara A (3))	-25 points
Mandatory and updated LEI for all companies The use of an annually updated Legal Entity Identifier (LEI) is mandatory for all domestic companies	0 points

This indicator is largely derived from two sources. First, the GLEIF website has been reviewed, especially the page "Regulatory Use of the LEI"[381], as well as the LEI ROC website which has an updated table of LEI progress[382]. Second, the results of TJN-Survey 2021[383] and earlier have been taken into account.

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[380] OECD. *Standard for Automatic Exchange of Financial Account Information in Tax Matters - First Edition*. July 2014. URL: http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm (visited on 07/05/2022), p.97.

[381] While this website provides for a list of mandatory regulatory uses, it does not specify if these include a requirement to annually update the LEI. Therefore, those regulations of jurisdictions which were classified as having a a mandatory LEI requirement were analysed in depth. See (*Regulatory Use of the LEI*)

[382] An updated version of the table as of 31 January 2021 is accessible at: (*LEI Uses (Including LEI ROC Progress Reports)*. URL: https://www.leiroc.org/lei/uses.htm [visited on 04/05/2022]).

[383] Tax Justice Network, *TJN Survey*.

3.10.2 Why is this important?

A modern multinational bank or company consists of hundreds of subsidiaries (or legal entities), many of which are subject to different laws and jurisdictions. Relevant data on multinational banks and companies is often as patchy and dispersed over many jurisdictions worldwide as the web of their subsidiaries is. As a consequence, systemic risks to financial stability and integrity are easily hidden from the view of regulators, shareholders and civil society. By requiring an open access unique legal entity identifier for each legal entity and its parent company worldwide, it would become far easier for legitimate interests to connect the subsidiaries and legal entities in real time ("interconnectivity") and to identify and address systemic risks early on.

In response to the global financial crisis, the LEI has been developed originally to increase transparency in financial markets and to "uniquely identify parties to financial transactions".[384] However, there are more reasons why the use of an updated and globally unified legal entity identifier is curtailing financial secrecy.

The crisis had evidenced flaws and failures in financial data systems, in risk assessment and mitigation as well as in fraud detection and prevention, all of which were exacerbated, if not caused, by the absence of a unique and public identification system of legal entities engaging in financial transactions. For example, the critical issue of derivatives reporting and aggregation has been hampered in the past by failures of automated systems to aggregate data correctly to a single financial institution because of different spellings or codings of that same financial institution. As a result, regulators may have incomplete or misleading information about the critical risk exposure of financial institutions and might therefore fail to take appropriate actions. Therefore, the development and provision of a global LEI system has been conceived as a public good which provides collective benefits.[385]

In June 2012, the Financial Stability Board, an international body promoting financial stability, published a report "A Global Legal Entity Identifier for Financial Markets". This report was endorsed by the G20 at the Los Cabos Summit in June 2012.[386] A non-for-profit foundation (Global Legal Entity Identifier Foundation, GLEIF) and an oversight committee (Regulatory Oversight Committee, LEI ROC) were established to implement the global LEI system. Meanwhile, the scope of the LEI has been widened and it is open also to any legal entity that engages in financial transactions. Adhering to the Open Data Charter as of January 2016, the GLEIF is committed to providing data in open data format by default.[387] As a consequence, it can be "freely used, reused, and redistributed by anyone,

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[384] Financial Stability Board. *A Global Legal Entity Identifier for Financial Markets*. 2012. URL: https://www.leiroc.org/publications/gls/roc_20120608.pdf (visited on 02/05/2022).

[385] Financial Stability Board, *A Global Legal Entity Identifier for Financial Markets*.

[386] Financial Stability Board. *Legal Entity Identifier (LEI)*. Nov. 2020. URL: https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/post-2008-financial-crisis-reforms/legalentityidentifier/ (visited on 11/05/2022).

[387] *About GLEIF: Open Data*. URL: https://www.gleif.org/en/about/open-data (visited on 11/05/2022).

anytime, anywhere", thus enabling it to play a role far beyond financial market regulation.

There are good reasons for mandating LEI usages beyond the financial markets. Legal entities are the vehicles of choice for large scale embezzlement, money laundering, tax evasion and other forms of corruption.[388] Many secrecy jurisdictions have specialised in fast and cheap production and dissolution of shell companies. Among those specialist offers feature:

- ready-made shelf companies[389] including nominee directors or shareholders,[390] which may allow backdating the existence of a company and misleading law enforcement;
- so-called Series LLCs[391] which enable the creation of dozens or even hundreds of separate legal entities at very low costs;
- tailored private trust companies[392] for the secretive administration of high net worth individuals' wealth;
- creation of companies only for a few days followed by them being struck off the Register, and subsequently dissolved.[393]

These features of companies can make it very difficult for legitimate interests such as law enforcement, market regulators, Financial Intelligence Units, public procurers, clients, business partners, tax officials, civil society, journalists and all those in charge of undertaking anti-money laundering due diligence to understand the background, nature and network of legal entities.

One key obstacle in accessing relevant data is the lack of interconnectivity of existing data sets and records. Taken together, the information about a legal entity available on all public records worldwide may offer very important insights and reveal connections that could prove pivotal for the above mentioned legitimate interests. For example, a legal entity may be recorded in public corporate registers of several jurisdictions. However, the functions in which the same company is registered may differ. Often the company will be publicly registered in the jurisdiction of incorporation, but may be recorded as well in other jurisdictions for example if it is a shareholder or a director of a local company, or if it is bidding in public procurement tenders. In addition, not all

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[388] See for example: (OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*); (Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*); (O'Donovan et al., 'The Value of Offshore Secrets Evidence from the Panama Papers').

[389] *Companies Incorporated: Shelf Corporations, Aged Companies and LLCs For Sale*. URL: https://www.companiesinc.com/shelf-corporation-llc/ (visited on 11/05/2022).

[390] Brinkmann et al., 'The Secret World Of Sham Directors'.

[391] Sarah Feldman. *The Series LLC: An Organizational Structure That Can Help Mitigate Risk*. 2020. URL: https://www.wolterskluwer.com/en/expert-insights/the-series-llc-an-organizational-structure-that-can-help-mitigate-risk (visited on 07/04/2022).

[392] *Cayman Islands Private Trust Companies*. Mar. 2017. URL: https://www.careyolsen.com/briefings/cayman-islands-private-trust-companies (visited on 11/05/2022).

[393] *Striking off, Dissolution and Restoration under the BVI Business Companies Act, 2004*. URL: https://www.bedellcristin.com/insights/briefings/striking-off-dissolution-and-restoration-under-the-bvi-business-companies-act-2004/ (visited on 08/04/2022).

jurisdictions require the same information to be recorded and/or made available online or on hard copy record. Some jurisdictions may require the publication of accounts or of beneficial ownership information, while other jurisdictions might publish only the name and business number, or a registered business address – possibly a mere letter box. And only some public registers deliver free of charge access to the corporate data, inhibiting further the access on information. Therefore, the interconnection of information in existing databases and public records is of paramount importance.[394]

While the interconnectivity of existing data records often fails because the data of company registers is not provided in open data format, another related problem consists of the lack of a unique global identifying number for each company. A unique and uniform number with established data verification procedures is an important condition for matching data records from different sources, because company names can be misspelled and might change over time. Similarly, if each jurisdiction provides its own identifier numbers (eg. through tax administrations or business registries) these numbers are specific to that jurisdiction and will therefore not allow the linking of another jurisdiction's records on that same legal entity. Furthermore, if the data quality is not regularly checked and linked back to local registers, the data identifiers may soon be outdated or could be abused.

For tax purposes, the OECD has long been exploring introduction of a unique taxpayer reference number and has confirmed in the past the benefits of a unique taxpayer ID system.[395] However, because of taxpayer confidentiality these taxpayer IDs and identities are not routinely exchanged across borders and, even if they are, they are not harmonised. The taxpayer ID from country A is of little use to country B if it does not match the ID country B had given the same legal entity. Furthermore, legal entities can be set up precisely to avoid paying taxes in other jurisdictions, including by avoiding local registration. Therefore, taxpayer IDs are not suitable to serve as a basis for universal matching of public domain data on corporate entities.

For the global automatic exchange of tax information pursuant to the OECD's Common Reporting Standard, the reporting financial institutions need to be identified uniquely to efficiently collect, administer and exchange data with partner jurisdictions. The LEI is explicitly mentioned as one possible identifying number for reporting financial institutions. The respective passage in the Commentaries to the CRS (Subparagraph A (3)) reads as follows:

> The Reporting Financial Institution must report its name and identifying number (if any). Identifying information on the Reporting Financial Institution is intended to allow Participating Jurisdictions to easily

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[394] For a list of more than 700 business registers on the globe, please visit: (*GLEIF Registration Authorities List*. URL: https://www.gleif.org/en/about-lei/code-lists/gleif-registration-authorities-list [visited on 08/04/2022]).

[395] OECD. *Tax Administration in OECD and Selected Non OECD Countries: Comparative Information Series (2008)*. Jan. 2009. URL: https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/comparative/CIS-2008.pdf (visited on 08/04/2022), pp.154-55.

identify the source of the information reported and subsequently exchanged in order to, eg follow-up on an error that may have led to incorrect or incomplete information reporting. The "identifying number" of a Reporting Financial Institution is the number assigned to a Reporting Financial Institution for identification purposes. Normally this number is assigned to the Reporting Financial Institution by its jurisdiction of residence or location, but it could also be assigned globally. Examples of identifying numbers include a TIN, business/company registration code/number, Global Legal Entity Identifier (LEI), or Global Intermediary Identification Number (GIIN). Participating Jurisdictions are expected to provide their Reporting Financial Institutions with guidance with respect to any identifying number to be reported. If no such number is assigned to the Reporting Financial Institution, then only the name and address of the Reporting Financial Institution are required to be reported.[396]

By conclusion, any country can contribute to global financial transparency by requiring updated LEIs from all of its domestic legal entities and by all parties to financial market transactions.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.24. Assessment Logic: Secrecy Indicator 10 - Legal Entity Identifier

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
414	Is the use of an annually updated Legal Entity Identifier (LEI, developed under the guidance of the Financial Stability Board, FSB) mandatory for all companies?	YN	If Y: 0; otherwise 100; All of following scores below are added/subtracted. If sum is above 100 = 100, below 0 = 0.
415	Is the use of an annually updated Legal Entity Identifier (LEI, developed under the guidance of the Financial Stability Board, FSB) mandatory for some financial market operators and/or asset classes?	0: No; 1: Yes, but only for trading in "Over the Counter" (OTC) derivatives; 2: Yes, but only for some financial market operators and/or asset classes beyond "Over the Counter" (OTC) derivatives; 3: Yes, both for trading in "Over the Counter" (OTC) derivatives and for some financial market operators and/or asset classes beyond trading in OTC derivatives.	If answer 1 or 2: -25; 3: -50.
420	Is the use of an annually updated LEI mandatory for identification of reporting financial institutions (pursuant to the Common Reporting Standard (CRS), as referred to in the CRS commentaries, page 97, section I, subpara A (3))?	YN	If Y: -25.

[396] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.* p.97.

3.11 Secrecy Indicator 11: Tax administration capacity

3.11.1 What is measured?

This indicator considers the capacity of tax administrations to collect and process data for investigating and ultimately taxing those people and companies who usually have most means and opportunities to escape their tax obligations. The indicator is comprised of five components and assesses organisational capacity, informational data processing preconditions as well as the availability of rules for targeted collection of intelligence about complex and risky tax avoidance activities.

Two aspects are considered to assess organisational features of a jurisdiction's tax administration:

1. **Regarding Large Taxpayers**: the indicator assesses whether a jurisdiction has one centralised unit for large (corporate) taxpayers within the tax administration;
2. **Regarding High Net Worth Individuals (HNWIs)**: the indicator assesses whether a jurisdiction has one centralised unit for HNWIs.

To assess informational data processing preconditions, the prevalence of taxpayer identifiers is considered:

3. **Regarding taxpayer identifiers**: the indicator assesses whether unique and mandatory Taxpayer Identifier Numbers (TINs), which are mandatory for filing tax returns, are provided for a) all natural persons subject to personal income tax and/or b) all legal persons subject to corporate income tax.

Two types of rules for targeted collection of intelligence about complex and risky tax avoidance activities are analysed:

4. **Regarding the reporting of tax avoidance schemes**: the indicator assesses whether a jurisdiction requires taxpayers to report on tax avoidance schemes they have used and tax advisers to report on any tax avoidance schemes they have sold or marketed in the course of assisting companies and individuals prepare tax returns.
5. **Regarding the reporting of uncertain tax positions**: the indicator assesses whether a jurisdiction requires corporate taxpayers and tax advisers to report on uncertain tax positions for which reserves have been created in annual corporate accounts.[397]

The overall secrecy score for this indicator is calculated by simple addition of the secrecy scores across each of these five components. The secrecy scoring matrix is shown in Table 3.25, with full details of the assessment logic given in Table 3.26.

[397] The reporting can be done either as part of the corporations' annual accounts or separately.

Table 3.25. Secrecy Scoring Matrix: Secrecy Indicator 11

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Large Taxpayer Unit (12.5 points)	
Large Taxpayer Unit (LTU) There is one centralised unit for large (corporate) taxpayers within the tax administration.	0
There is no LTU.	12.5
Component 2: High Net Worth Individuals Unit (12.5 points)	
High Net Worth Individuals Unit (HNWI) There is one centralised unit for HNWIs within the tax administration	0
There is no HNWI Unit.	12.5
Component 3: Taxpayer Identification Numbers (25 points)	
TINs for both natural persons and legal entities All natural persons subject to personal income tax are provided with unique and mandatory Taxpayer Identifier Numbers (TINs) which are mandatory for filing their tax returns. **AND** All legal persons subject to corporate income tax are provided with unique and mandatory Taxpayer Identifier Numbers (TINs) which are mandatory for filing their tax returns.	0
TINs for either natural persons or legal entities, but not both.	12.5
No TINs for legal entities or natural persons.	25
Component 4: Reporting on tax avoidance schemes (25 points)	
Taxpayers reporting schemes Taxpayers are required to report on uncertain tax avoidance schemes they have used. **AND / OR** **Tax Advisers reporting schemes** Tax advisers are required to report on any tax avoidance schemes they have sold or marketed in the course of assisting companies and individuals prepare tax returns.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 15
No reporting by taxpayers or tax advisers.	25
Component 5: Reporting on uncertain tax positions (25 points)	

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Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Corporate taxpayers reporting schemes Corporate taxpayers are required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts. **AND / OR** **Tax Advisers reporting uncertain tax positions** Tax advisers are 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.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 15
No reporting by taxpayers or tax advisers.	25

For assessing the indicator, our research draws on several sources: a) the Tax Justice Network's survey of 2021[398] and earlier years where relevant; b) the OECD publication entitled "Tax Administration 2021";[399] c) the OECD's portal on tax identification numbers[400] within its Automatic Exchange Portal; d) domestic websites of jurisdictions' tax authorities; e) domestic tax legislation of jurisdictions; f) the OECD publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report";[401] g) the International Bureau of Fiscal Documentation (IBFD) database;[402] and h) in some instances, we have also consulted additional websites and reports of accountancy firms and other domestic websites.

3.11.2 Why is this important?

Cross-border economic activity and financial flows, driven by scale effects, means that national tax administrations have an increased share of value added and income received from non-domestic sources. Tax administrations must adapt to this increasingly complex environment through organisational and technical innovations, otherwise they risk rapidly losing the ability to effectively assess and collect taxes.

The absence of adequate organisational and technical capacity of a tax administration, whether by accident or design, can attract wealthy individuals and corporations wanting to escape taxation.

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[398] Tax Justice Network, *TJN Survey*.

[399] OECD. *Tax Administration 2021: Comparative Information on OECD and Other Advanced and Emerging Economies*. OECD, 2021. URL: https://read.oecd-ilibrary.org/taxation/tax-administration-2021_cef472b9-en (visited on 22/04/2022).

[400] OECD. *Tax Identification Numbers*. URL: https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/ (visited on 08/05/2022).

[401] OECD. *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*. Paris: OECD Publishing, 2015. URL: https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1558684255&id=id&accname=guest&checksum=AD69BFF7976DA14EC68E1CD7708DB17B (visited on 06/05/2022).

[402] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

Components 1 and 2: Large Taxpayers Unit and Unit for High Net Worth Individuals

Effective units for large taxpayers and high net worth individuals improve a tax administration's capacity to assess and collect tax from some of the largest taxpayers in a jurisdiction. The OECD mentions several reasons for the importance of large tax units, namely, the high concentration of revenue in the hands of a small number of taxpayers, the high degree of complexity in the business and tax affairs of large taxpayers, major compliance risks from the viewpoint of the tax authority, and the use of professional tax advisers by large taxpayers.[403]

Units dedicated to the taxation of large tax payers and high net worth individuals make sense on the grounds of efficiency. The taxpayers dealt with by these units share common characteristics which require highly specialist expertise that would be much harder to mobilise in the context of a decentralised tax administration.They provide a better opportunity for tax administrations with limited human and financial capacity to target risk assessment and audit.

These special units may not be a panacea to tax evasion and aggressive tax avoidance, but their absence might indicate a willingness on the part of a jurisdiction to tolerate such practices by large taxpayers and wealthy individuals. Such permissiveness on the part of governments effectively contributes to financial opacity.

While the threshold for defining a high net worth individual or a large taxpayer may vary between jurisdictions, there is undoubtedly a high concentration of revenue in the hands of a small number of taxpayers and their tax affairs are complex and often require a more in-depth analysis of relevant tax laws. In absolute terms, this group poses the greatest risks for tax losses because of the high concentration of taxable income and/or wealth in their hands. Research further suggests that in relative terms, both (large and multinational) corporations and wealthy individuals are more likely to engage in tax evasion and/or avoidance than their smaller competitors or those with lower levels of income and/or wealth.[404]

These risks are significantly exacerbated by the team of highly specialised lawyers, accountants and tax advisers that usually represent both large corporations and high net worth individuals. Therefore, dedicated units that

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[403] OECD. *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies*. Paris, 2015. URL: https://read.oecd-ilibrary.org/taxation/tax-administration-2015_tax_admin-2015-en (visited on 07/05/2022).

[404] Regarding individuals, see: (Gabriel Zucman et al. *Tax Evasion and Inequality*. 2017. URL: https://gabriel-zucman.eu/files/AJZ2017.pdf [visited on 08/05/2022]). With respect to companies, see: (Heinz Gebhardt and Lars-HR Siemers. 'Volkswirtschaftliche Diskussionsbeiträge Discussion Papers in Economics' [2016]. URL: https://www.researchgate.net/profile/Heinz_Gebhardt/publication/313420303_Die_relative_Steuerbelastung_mittelstandischer_Kapitalgesellschaften_Evidenz_von_handelsbilanziellen_Mikrodaten/links/5899d5a9a6fdcc32dbdeaccd/Die-relative-Steuerbelastung-mittelstaendischer-Kapitalgesellschaften-Evidenz-von-handelsbilanziellen-Mikrodaten.pdf [visited on 03/05/2022]). And: (Peter Egger et al. 'Saving Taxes through Foreign Plant Ownership'. *Journal of International Economics*, 81(1) [May 2010], pp. 99–108. URL: http://linkinghub.elsevier.com/retrieve/pii/S0022199609001573 [visited on 03/05/2022]).

foster cooperation among highly skilled tax experts in the tax administration increase the chances of matching the expertise mustered by the private sector to ensure that tax laws will be strictly applied and complex disputes resolved in an evenhanded way. Even in contexts where units use low tech methods, having dedicated staff appears to improve revenue collection from large taxpayers through close monitoring of taxpayers and risk-based audit approaches.[405]

In cases where a jurisdiction operates several regional specialist units without central management, this could potentially create incentives for tax wars and lax and uneven enforcement of tax laws between the different subnational regions. In addition, multiple parallel institutions might create opacity through (unnecessary) complexity, interagency rivalry and restricted cooperation.

Component 3: Taxpayer Identifiers

Taxpayer identifiers are important for ensuring financial transparency. The OECD[406] notes:

> "Regardless of whether the identification and numbering of taxpayers is based on a citizen number or a unique TIN, many revenue bodies also use the number to match information reports received from third parties with tax records to detect instances of potential non-compliance, to exchange information between government agencies (where permitted under the law), and for numerous other applications."

Unique and mandatory taxpayer identifiers are a basic building block for data mining and other tools for efficiently analysing risks, detecting instances of non-compliance and improving information exchange between government agencies. They are therefore an effective deterrent to cross-border tax evasion.

Component 4: Reporting of tax avoidance schemes

Mandatory disclosure rules require taxpayers to report to the tax administration on aggressive tax planning schemes they have used. They also require intermediaries, such as tax advisors, accountants and lawyers, to report on the schemes they have sold or marketed to their clients.[407]

There are several reasons to support the imposition of mandatory reporting of tax avoidance schemes. **First**, the reporting requirements help tax administrations to identify areas of uncertainty in the tax law that may need clarification or legislative improvements, regulatory guidance, or further research.[408] **Second**, providing the tax administration with early information about tax avoidance

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[405] Waziona Ligomeka. *Assessing the Performance of African Tax Administrations: A Malawian Puzzle*. IDS, Sept. 2019. URL: https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/14699 (visited on 20/04/2022).

[406] OECD, *Tax Administration 2015*.

[407] Leyla Ates. *More Transparency Rules, Less Tax Avoidance*. Nov. 2018. URL: https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/%20 (visited on 07/05/2022).

[408] *Reportable Tax Position Schedule Instructions 2020*. 2020. URL: https://www.ato.gov.au/Forms/Reportable-tax-position-schedule-instructions-2020/ (visited on 06/05/2022).

schemes allows it to assess the risks that schemes pose before the tax assessment is made and to focus audits more efficiently. This is significant mainly because tax administrations in many jurisdictions do not have sufficient capacity to fully audit a large number of tax files. Thus, flagging certain files that carry a greater risk of tax avoidance is likely to increase the efficiency of tax administrations and their ability to increase tax revenues. **Third**, requiring mandatory reporting of tax schemes is likely to deter taxpayers from using these tax schemes because they know there are higher chances that files will be flagged, exposed and assessed accordingly. **Fourth**, such mandatory reporting may reduce the supply of these schemes by altering the economics of tax avoidance for their providers because they will be more exposed to claims of promoting aggressive tax schemes, increasing the risk of reputational damage. Further, their profits and rate of return on the promotion of these schemes are likely to be reduced because schemes can be closed down more quickly by tax authorities. The impact on the bottom line for tax advisers is all the more true if contingency fees are part of contracts with clients.

Mandatory disclosure rules were first introduced by the US in 1984 and several other countries, including EU member states, the UK, Ireland, Portugal, Canada, South Africa, South Korea and Israel,[409] have followed suit. The revelations of the Lux Leaks[410] and the Panama Papers[411] along with the EU State Aid cases[412] have demonstrated the role of intermediaries in using tax planning schemes for tax avoidance. These have further pushed governments to take action.

In the wake of these scandals, the European Council required all EU member states to create mandatory disclosure rules no later than 31 December 2019, and even obliged the tax authorities of the states to automatically exchange reportable cross-border arrangements as of 1 July 2020 (Directive 2018/822/EU).[413] Due to Covid-19, member states have been given the option to defer the filing information on these reportable cross-border arrangements by up to six months, as per the directive. Most member states have opted for the

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[409] OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*, p.23.

[410] ICIJ. *Luxembourg Leaks: Global Companies' Secrets Exposed*. 2014. URL: https : / / www . icij . org / investigations/luxembourg-leaks/ (visited on 03/05/2022).

[411] ICIJ, *The Panama Papers: Exposing the Rogue Offshore Finance Industry*.

[412] European Commission. *State Aid Cases*. Jan. 2019. URL: https://ec.europa.eu/competition/state_aid/register/ (visited on 03/05/2022).

[413] (Council of the European Union. *Council Directive 2018/822/EU of 25 May 2018 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements*. June 2018. URL: https://eur-lex.europa.eu/legal-content / EN / TXT / ?uri = celex % 3A32018L0822 [visited on 07/05/2022]). The Directive, in force since 25 June 2018, requires the automatic exchange of information on cross-border arrangements among other EU members through a central directory. There is a similar database within the OECD called the aggressive tax planning depository; however, it is only available to the members of the Aggressive Tax Planning Expert Group, which is a sub-group of OECD Working Party No. 11. The directive aims to create a level playing field for all EU member countries in terms of access to such relevant information. For further information see, (Organisation for Economic Co-operation and Development. *Co-Operation and Exchange of Information on ATP*. 2021. URL: http://www.oecd.org/ctp/aggressive/co-operation - and - exchange - of - information - on - atp . htm [visited on 06/05/2022]) and (Ates, *More Transparency Rules, Less Tax Avoidance*).

six-month deferral, with the exceptions of Austria (three-month deferral), and Finland and Germany (no deferral).[414]

Imposing mandatory reporting rules for tax avoidance schemes is difficult because of the potential ambiguity of whether the scheme is considered a tax avoidance scheme within the mandatory disclosure rules. In order to mitigate against this risk, the reporting obligation should apply to both the taxpayer who uses the tax scheme and the promoter (tax advisers) of the scheme. This kind of double obligation is imposed in the United States.[415] If both taxpayers and advisers are obliged to report independently on the used or marketed tax avoidance schemes (respectively), the chances that tax administrations will be able to detect hidden dubious schemes are significantly higher. Precisely because there are numerous and regular conflicts between the tax administration and taxpayers and advisers on the interpretation of tax laws, many tax schemes will be designed in grey areas. Certain promoters or taxpayers might chose to interpret these schemes as not being subject to the remit of the reporting obligation. One way to increase the detection risks of these schemes is to oblige the tax adviser to provide the taxpayers with a scheme reference number to include in their tax returns as some countries (eg United Kingdom) have already applied. This way, the tax administration can track disclosures made by tax advisers and link them to the taxpayer while creating red flags.[416]

However, the EU Directive 2018/822/EU is limited because it imposes the disclosure obligation primarily on the intermediaries who design and sell the aggressive tax planning schemes. In contrast, taxpayers are required to report on such schemes only in some limited instances. Nonetheless, EU member states are still free to extend the scope and impose a similar disclosure obligation on taxpayers.[417]

Component 5: Reporting of uncertain tax positions

To further mitigate the risk of failure by a taxpayer or tax adviser to define and report properly on all relevant tax avoidance schemes, mandatory rules should require uncertain tax positions for which reserves have been created in the annual corporate account to be reported (either as part of the financial accounts or separately). Such best practice has been endorsed, for example, by the OECD's voluntary co-operative tax compliance programme, in which participating

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[414] 'European Union: Government and Institution Measures in Response to COVID-19 (Taxation Measures)'. *KPMG* (Nov. 2020). URL: https://home.kpmg/xx/en/home/insights/2020/04/european-union-government-and-institution-measures-in-response-to-covid.html (visited on 07/05/2022).

[415] John G. Rienstra. *United States - Corporate Taxation*. International Bureau of Fiscal Documentation, Jan. 2021. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_us (visited on 06/05/2022).

[416] OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*.

[417] For example, Portugal obliges both intermediaries and taxpayers to report on certain tax avoidance schemes. Article 15 of the Portuguese Decree Law No. 29/2008 also requires the Portuguese fiscal authority to publicly disclose the reported schemes which are considered abusive by Portuguese authorities. However, as of October 2021, we were not able to find an online database of those schemes. For more information, see (*Portal Das Finanças: Destaques*. Mar. 2021. URL: https://info.portaldasfinancas.gov.pt/pt/Pages/homepage.aspx [visited on 06/05/2022]; Ana Valente Vieira. *Portugal - Corporate Taxation*. International Bureau of Fiscal Documentation, Nov. 2020. URL: https://research.ibfd.org/#/doc?url=/linkresolver/static/cta_pt [visited on 05/03/2021]).

jurisdictions require multinational enterprises to bring uncertain tax positions and other problematic tax positions to their attention.[418]

The International Financial Reporting Standards, which most multinational companies adhere to in their annual financial reporting, require the reporting of uncertain tax positions. Whenever a tax payment related to a tax risk is "probable", these positions need to be included in their financial accounts.[419] Under these International Financial Reporting Standards, prudence[420] is an important principle for the preparation of accounts. In fact, shareholders may hold management accountable for prudential reporting. Therefore, it is likely that even more tax avoidance schemes would be reported to tax administrations if there was a consistent requirement to report details on uncertain tax positions. Similarly, if both tax advisers and taxpayers are obliged to annually report on any uncertain tax positions of accounts they prepared or submitted, the detection risks of errors in reporting or failures to report increases.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.26. Assessment Logic: Secrecy Indicator 11 - Tax Administration Capacity

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
317	Large Taxpayer Unit: Does the tax administration operate one central unit for large taxpayers (large taxpayer unit, LTU)?	0: No; 1: Yes	If 1 (Yes): -12.5
400	HNWI Unit: Does the tax administration operate one central unit dedicated to the taxation of High Net Worth Individuals (HNWI)?	0: No; 1: Yes	If 1 (Yes): -12.5
401	Individual TIN: Are all natural persons subject to personal income tax provided with unique and mandatory Taxpayer Identifier Numbers (TINs) which are mandatory for filing their tax returns?	0: No; 1: Yes	If 1 (Yes): -12.5

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[418] OECD iLibrary. *Co-Operative Tax Compliance: Building Better Tax Control Frameworks*. 2016. URL: http://dx.doi.org/10.1787/9789264253384-en (visited on 06/05/2022).

[419] PricewaterhouseCoopers. *IFRIC 23 - Putting some certainty into uncertain tax positions*. 2021. URL: https://www.pwc.com/ph/en/accounting-buzz/accounting-client-advisory-letters/ifric-23-putting-some-certainty-into-uncertain-tax-positions.html (visited on 06/05/2022).

[420] *Prudence and IFRS*. ACCA, 2014. URL: http://www.accaglobal.com/content/dam/acca/global/PDF-technical/financial-reporting/tech-tp-prudence.pdf (visited on 06/05/2022).

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
402	Corporate TIN: Are all legal persons subject to corporate income tax provided with unique and mandatory Taxpayer Identifier Numbers (TINs) which are mandatory for filing their tax returns?	0: No; 1: Yes	If 1 (Yes): -12.5
403	Taxpayers reporting schemes: Are taxpayers required to report at least annually on certain tax avoidance schemes they have used?	0: No; 1: Yes, but the schemes are only reported to the tax administration, and are not published; 2: Yes, and the schemes are made publicly available.	if answer is 1 or 2: -10 for each If both answers are 1 or 2: additional -5.
404	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)?	0: No; 1: Yes, but the schemes are only reported to the tax administration (they are not published); 2: Yes, and the schemes are made publicly available.	
405	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?	0: No; 1: Yes, but the details are only reported to the tax administration (they are not published); 2: Yes, and the details are made publicly available.	if answer is 1 or 2: -10 for each If both answers are 1 or 2: additional -5.
406	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?	See categories above.	

3.12 Secrecy Indicator 12: Consistent personal income tax

3.12.1 What is measured?

This indicator analyses whether a jurisdiction applies a Personal Income Tax (PIT) regime which is compatible with the (progressive) income tax systems of most jurisdictions worldwide, or if its laws provide laxity around citizenship and/or residency, and if its personal income tax legislation is narrow in scope, resulting in financial secrecy sinks for tax dodgers and criminals.

Two dimensions of a jurisdiction's legal framework are jointly analysed:

1. **Comprehensive scope of a personal income tax**: we assess if there is any personal income tax at all; if worldwide income is subject to this tax (instead of a territorial or remittance system); if a uniform tax regime applies (no opt-outs through lump sum taxation or special expatriate regimes etc); and if the scope is complete (including capital gains; no exemption or exclusion of specific types of income).
2. **Tight citizenship and/or residency**: we assess whether (i) citizenship (passports) can be acquired against a passive investment or payment only after meeting a minimum physical presence requirement (instead of obtaining citizenship against passive investment or payment made by the person without meeting a minimum physical presence requirement); and (ii) a certificate of "residency" can be acquired against a passive investment or payment, as long as the minimum physical presence requirement in the jurisdiction is maintained.

For the purpose of this SI, a zero points secrecy score (full transparency) will be awarded to jurisdictions which levy a personal income tax with a comprehensive scope, regardless of the citizenship or residency rules. Jurisdictions that fail on the comprehensive worldwide personal income tax receive a partial secrecy score, depending on their scope and the tight or lax citizenship and residency rules. The highest 100 point secrecy score (full opacity) applies to jurisdictions that provide lax citizenship or residency rules while not levying any personal income tax. These jurisdictions export financial secrecy by creating incentives for non-residents to abuse passports/citizenship and residency certificates to circumvent tax information exchange and to escape litigation and law enforcement.

The secrecy scoring matrix is shown in Table 3.27, with full details of the assessment logic given in Table 3.29.

For a personal income tax regime to be considered comprehensive in its scope, there needs to be one single uniform personal income tax that applies the same tax base rules and a rate above zero percent equally to all natural persons considered tax residents. Any opt out from the general tax regime in a certain jurisdiction, eg through lump sum taxation or tax exemption on foreign-sourced

Table 3.27. Secrecy Scoring Matrix: Secrecy Indicator 12

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]		Citizenship/Residency	
		Tight Citizenship/ Residency acquisition Citizenship and/or residency are granted in exchange for passive investment or payment **with** the need to meet minimum physical presence requirements	**Lax Citizenship/ Residency acquisition** Citizenship and/or residency are granted in exchange for passive investment or payment **without** the need to meet minimum physical presence requirements
Personal Income Tax Regime	**No Personal Income Tax (PIT)** PIT does not exist or is not applied or a jurisdiction is part of Annex A under the MCAA (voluntary secrecy) or otherwise not compliant with basic confidentiality requirements to receive information	75	100
	Incomprehensive PIT Regime While there is a PIT regime, any of the subsequent limitations apply: **Territorial scope**: Only domestic source income is included, or worldwide income only on a remittance basis **OR** **Incomplete scope**: capital gains are not taxed, or specific types of income are exempt or excluded **OR** **Opt Out Available**: (covering worldwide income), there is an opt out from the overall PIT regime (e.g. lump sum taxation, non-domiciled regime, special expatriate regime etc.)	37.5	75
	Comprehensive PIT Regime There is one single uniform PIT that taxes worldwide income (and the jurisdiction has not chosen voluntary secrecy under MCAA's Annex A and compliant with basic confidentiality requirements to receive information)	0	

income for new residents (ie a special expatriate regime), or residents considered to be non-domiciled for tax purposes,[421] would imply that the jurisdiction does not have a single uniform personal income tax.

Furthermore, the single uniform personal income tax base would need to include all income a tax resident is entitled to or paid anywhere in the world (worldwide income criterion). If (some or all) overseas income can remain untaxed, either because the jurisdiction, fully or partially, applies a territorial tax base or taxes on

[421] Jurisdictions use different terms, such as foreign resident, resident alien, short-term resident, temporary resident, non-permanent resident or non-habitual resident, to exempt foreign income of individual taxpayers that reside in the jurisdiction but do not have to pay tax in the jurisdiction on income and capital gains earned overseas.

a remittance and/or accrual basis, the personal income tax would not be considered comprehensive.

In addition, the personal income tax needs to be complete in terms of the income covered. All capital gains earned worldwide should be part of personal income tax or be taxed separately – either as part of another tax, eg wealth tax, or independently – for it to be considered complete. The same applies for any specific types of income, especially investment income: any investment income should not be exempt nor excluded from the overall tax base, or it should be taxed independently. A jurisdiction that does not tax income, dividends, capital gains derived from foreign sources is therefore considered as having an incomplete personal income tax. Many jurisdictions, however, allow for tax exemption on capital gains from the sale of a private home or from real estate held longer than a certain number of years. We consider the personal income tax to be complete as long as the exemption from capital gains taxation on real estate applies after holding it for longer than 3 years or if it only applies to a privately held home.

In circumstances where jurisdictions exempt dividends paid by domestic companies or capital gains derived from the sales of domestic companies' shares, we do not consider the personal income tax as incomplete, given that these exemptions are limited to income derived from domestic sources. By the same token, exemptions on employment income are out of scope of this indicator and are not taken into account in the personal income tax assessment.

For citizenship programs to be considered tight, citizenship and passports by passive investment or monetary payment should not be provided without a requirement to reside at least 2 years in the jurisdiction (whereby a year of residency means a physical presence of at least 183 days).

For residency programs to be considered tight, residency permits should not be available in exchange for passive investments, payments or on financial grounds only. If permits are available under such conditions, these should be revoked if the individual does not maintain a significant physical presence (more than 183 days in a year) in the jurisdiction. A residence permit is different from a simple tourist visa if it allows the individual to stay longer than one year in the jurisdiction. Temporary residency permits are also considered.

Citizenship or residency permits which are granted against active investments are not within the scope of this indicator.[422] In contrast, we do consider the discretionary granting of nationality on the grounds of the "economic interest of

[422] The following example might be used as a criteria to assess an active investment scheme: "the applicant is typically expected to prove a track record in business, submit a viable business plan for evaluation, and be involved in the company's day-to-day activities."(Meenakshi Fernandes et al. *Avenues for EU Action on Citizenship and Residence by Investment Schemes - European Added Value Assessment*. 2021. URL: https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2021)694217 [visited on 04/05/2022], p.10)

the State" within the scope of this indicator, given that passive investment might be regarded as being in favour of the State's interests.[423]

Consequently, jurisdictions that issue passports or residency permits to individuals against the purchasing of real estate or other financial assets in the country or the showing of proof of high-net-worth assets, will be considered as having lax citizenship and residency rules.

Jurisdictions identified by the OECD as having residency/citizenship programmes that potentially pose a high-risk to the integrity of the Common Reporting Standard (CRS)[424] are automatically considered for this indicator as having a lax citizenship/residency acquisition.

The information for this indicator was drawn mainly from the following sources: a) OECD Automatic Exchange Portal;[425] b) A database of residency and citizenship programmes entitled: "Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs";[426] c) Results of TJN Survey 2021[427] and previous versions; d) The publication entitled: "Buying in: Residence and Citizenship by Investment";[428] e) European Parliament publication entitled: "Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU";[429] f) European Parliament publication entitled: "Avenues for EU action on citizenship and residence by investment schemes";[430] g) in some instances, we have also consulted additional relevant websites or the local legislation of jurisdictions.

Whenever we did not find any information online about residency/citizenship by investment programmes in a certain jurisdiction, we assumed these programmes do not exist and thus citizenship/residency acquisition is considered tight for that jurisdiction.

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[423] Examples of discretionary programmes are Austria, Bulgaria, Slovenia, and Slovakia (Fernandes et al., *Avenues for EU Action on Citizenship and Residence by Investment Schemes - European Added Value Assessment*, p.7).

[424] OECD. *Residence/Citizenship by Investment - Organisation for Economic Co-operation and Development*. URL: https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/ (visited on 04/05/2022).

[425] OECD, *Residence/Citizenship by Investment - Organisation for Economic Co-operation and Development*.

[426] Leila Adim. *Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs (2021)*. 2021. URL: https://www.researchgate.net/publication/354224352_Residence_and_Citizenship_by_Investment_an_updated_database_on_Immigrant_Investor_Programs_2021 (visited on 04/05/2022).

[427] Tax Justice Network, *TJN Survey*.

[428] Allison Christians. *Buying in: Residence and Citizenship by Investment*. SSRN Scholarly Paper ID 3043325. Rochester, NY: Social Science Research Network, Sept. 2017. URL: https://papers.ssrn.com/abstract=3043325 (visited on 02/05/2022).

[429] Amandine Scherrer and Elodie Thirion. *Citizenship by Investment (CBI) and Residency by Investment (RBI) Schemes in the EU: State of Play, Issues and Impacts*. 2018. URL: https://data.europa.eu/doi/10.2861/10673 (visited on 06/05/2022).

[430] Fernandes et al., *Avenues for EU Action on Citizenship and Residence by Investment Schemes - European Added Value Assessment*.

3.12.2 Why is this important?

Most jurisdictions have adopted the residence principle with regards to the taxation of individuals. A jurisdiction levies taxes on the worldwide income received by an individual who resides within its boundaries. The underlying logic is that individuals who are resident in one country will make use of the country's public services, which are funded by tax revenues.[431] It is not decisive where an individual derives their income from, therefore their worldwide income should be taken into account.

Jurisdictions that only tax income on a territorial basis, apply special expatriate regimes,[432] exempt some types of income, or do not use any income tax at all are therefore attractive for individuals wishing to escape law enforcement, or to avoid the assessment of their worldwide income. However, without the ability to assess individuals' worldwide income, the available information is severely constrained. If individuals are engaged in illicit financial activity in another jurisdiction, relevant financial information available for answering requests for information exchange may not exist, shielding them from effective prosecution and facilitating their escape from accountability.

But also for a jurisdiction applying a tight residency regime, its enforcement relies on a tax administration's capacity to correctly assess the worldwide income of the jurisdiction's residents. This might be hampered by other jurisdictions with non comprehensive income tax regimes and/or by jurisdictions that provide passports or residency permits through investment. The reasoning for the way lax citizenship and residence by investment programs may lead to secrecy spillovers, resulting in lower or no taxation elsewhere, is explained below.

Until recently, tax administrations have relied almost exclusively on information exchange upon request. If a jurisdiction suspected an individual of tax evasion, it could request information from the tax administrations of other jurisdictions (see SI 19 on information exchange upon request[433]). However, if a jurisdiction does not tax worldwide income (or worse, does not levy any income tax) it will collect only insufficient (or no) tax information on its residents. Therefore, such

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[431] Peter Dietsch and Thomas Rixen. 'Tax Competition and Global Background Justice'. *The Journal of Political Philosophy*, 22(2) (2014), pp. 150–177. URL: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-9760.2012.00419.x (visited on 08/04/2022), p159.

[432] Such regimes offer favorable treatment mainly to high-net-worth individuals, qualifying individuals earning foreign pension income, and professional artists and sportspeople who wish to relocate their residency. As part of granting such individuals a favorable treatment, jurisdictions apply a lump-sump taxation or exclude foreign-sourced income from their tax base. Spain has a unique role as the first mover for offering this type of regime to professional sportspeople. Spain has implemented a special tax regime for "inpatriates", that is an elective expatriation regime for foreign residents in Spain. Even though they are residents in Spain, Spain treats them as if they are non-residents and taxes them only on their Spanish-source income for five years from the moment they move to Spain. (International Bureau of Fiscal Documentation. *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*. 2021. URL: https://research.ibfd.org/ [visited on 07/05/2022]). This special regime is also known as "the Beckham Law", after the well-known English football player David Beckham, who was one of the first celebrities to benefit from this regime to play for the famous Spanish football team "Real Madrid" (Alvaro de la Cueva González-Cotera and Adrian Arroyo Ataz. *Spain - Individual Taxation*. 2021).

[433] Tax Justice Network. *Secrecy Indicator 19: Exchange of Information on Request*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-19.pdf.

jurisdictions are especially attractive for individuals who do not wish their financial information to be collected.

To address some of these deficiencies and to rely less on the jurisdictions' specific tax systems, the Common Reporting Standard (CRS) for automatic exchange of information for tax purposes was devised and published by the OECD in February 2014. It provides a multilateral framework for exchanging details of accounts owned or controlled by individuals between participating jurisdictions, ie jurisdictions that have signed the Multilateral Competent Authority Agreement (MCAA). As of 31 January 2022, 115 jurisdictions have already signed the MCAA,[434] although not every signatory exchanges data with every other signatory (see SI 18 for more details[435]).

Financial institutions (FIs) in jurisdictions that have signed up to the CRS (ie "participating jurisdictions"), are required to collect and report account information about, among others, any (natural person) account holder or any natural person controlling some types[436] of companies, trusts or foundations, as long as any of these individuals (natural persons) are resident in any jurisdiction with which the former jurisdiction has an activated exchange relationship. The account holders and controlling persons are thus considered "reportable persons".

However, even a jurisdiction which has signed and implemented the CRS and has activated exchange relationships, can still contribute to financial secrecy. A crucial part of the CRS is the correct determination of an individual's residence for tax purposes because the tax residency determines to which jurisdiction the collected information will be sent.[437] In order to ascertain tax residency pursuant to the CRS, financial institutions of a participating jurisdiction need to collect specific information of any "reportable person". Table 3.28 provides an overview of the process and indicia for determining tax residency depending on the type of account.

For a financial institution's pre-existing accounts of lower value (less than US$1 million), an individual is only required to self-certify their residence with a government document containing a current address (for example an ID, passport, driving license, residence certificate) or a utility bill or tax assessment containing

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[434] OECD. *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date - Status as of November 2021*. 2021. URL: http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/crs-mcaa-signatories.pdf (visited on 01/04/2022).

[435] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*.

[436] Controlling persons will only be identified if the entity (company, trust or foundation) through which they hold an account is considered "passive" because most of its income is passive (eg interests, dividends, royalties, etc).

[437] In principle, the only parameter that could quite clearly attribute tax residency of an individual to one jurisdiction and thus avoid both double-taxation and double-non-taxation is the test whether the individual effectively spends 183 days or more in the jurisdiction. However, given it is not always easy to assess and it is also theoretically possible that a frequently moving individual does not spend 183 days in a year in any jurisdiction, most jurisdictions use several indicators to determine tax residency, such as the disposal of a permanent home and the center of economic and personal interests of an individual.

Table 3.28. Determination of tax residence under the CRS

Pre-existing account		New account
Lower value (Less than 1 M USD)	**Higher value (More than 1 M USD)**	**Any value**
Residence address based on documentary evidence. Acceptable documentary evidence: Any government ID containing a current address such as identity card; driving license; voting card; certificate of residence **OR** When those do not contain a current address or any address: Formal notifications or assessments by a tax administration; electricity bill; water bill; landline bill; gas/oil bill **OR** Self-declaration under penalty of perjury	Residence address based on documentary evidence (see left column). **AND** Search for indicia indicating residence in reportable jurisdiction in bank's records Indicia are: Former residence address; mailing address; telephone numbers; standing instructions of fund transfer to an account in reportable jurisdiction; power of attorney to a person with address in reportable jurisdiction; "Hold-mail" or "In care of" address in reportable jurisdiction **AND** Enquiry with relationship manager	Residence address based on documentary evidence (see left column). **AND** Comparison with data obtained under Anti-Money-Laundering and Know-Your-Customer procedures for other regulatory purposes which generally also require a documented permanent address and a proof of identity through passport
Source: CRS commentary on Section III	Source: CRS Section III, §10	Source: CRS Section IV, FATF recommendation R.5

the individual's name and address.[438] However, the Common Reporting Standard requires the financial institution in the case of higher value accounts (more than US$1 million) to search its records for indicia (such as former residence addresses, other mailing addresses, telephone numbers, or instructions to transfer funds) that could also suggest a residence in another jurisdiction.[439] If the financial institution found contradicting indicia (there are indicia about more than one jurisdiction or the indicia do not match what the account holder declares as his/her residency) the financial institution has to obtain an explanation from the account holder. If the Financial Institution receives no explanation or if it is not satisfied with the explanation, the Financial Institution would need to send information to any jurisdiction that it finds indicia for.[440] Moreover, in the case of new accounts, a financial institution must test the residence information provided by the client for reasonableness, notably based on information obtained through Anti-Money-Laundering and Know-Your-Customer procedures.[441]

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[438] OECD. *Common Reporting Standard and Related Commentaries - Organisation for Economic Co-operation and Development*. 2017. URL: https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/common-reporting-standard-and-related-commentaries/ (visited on 04/05/2022), Section III, B..

[439] OECD, *Common Reporting Standard and Related Commentaries - Organisation for Economic Co-operation and Development*, Section III, B.C..

[440] For pre-existing individual accounts: "A self-certification (and/or documentary evidence) would be needed in case of conflicting indicia, in the absence of which reporting would be done to all reportable jurisdictions for which indicia have been found."(OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.* pp.15-16).

[441] As for new accounts, information collected pursuant to the anti-money laundering due diligence procedures is taken into account as part of a reasonableness test for determining the residency, but multiple reporting is not foreseen. For new accounts, sending information to multiple jurisdictions happens when there is a change of circumstances and the account holder does not explain the

This is where citizenship-by-investment or residency-by-investment comes into play. Economic citizenship programmes, passports of convenience, certificates of residence and similar phenomena and associated challenges of governance and integrity have been debated for a long time.[442] In recent years, however, several countries have started to loosen the criteria for obtaining citizenship and/or residency and provided various "economic citizenship programmes" where foreign individuals can acquire passports[443] or residency permits by paying money into a state fund, investing in financial assets or real estate, renting an apartment in the jurisdiction[444] or even investing in cryptocurrencies.[445]

An account holder living in country A (but trying to remain hidden from country A's authorities) could thus use a passport or a certificate of residency from country X to convince the financial institution that he/she is resident (for CRS purposes) in country X, even if in reality that person resides and works in country A. For example, if the client can produce a passport indicating citizenship or a certificate of residency indicating residency in the same jurisdiction as the Financial Institution, there is a greater probability that the person will be considered a non-reportable person.[446]

Therefore, citizenship-by-investment and residency-by-investment programmes constitute a significant obstacle for the automatic exchange of information for tax purposes. Obviously, an individual wishing to evade taxes has an incentive to falsely declare tax residency in a jurisdiction that only applies a territorial income tax system, other kinds of incomprehensive income taxation or (worse) does not levy income tax at all.

Therefore, even if all jurisdictions become "participating jurisdictions" to the CRS, the selling of passports or residency certificates by a jurisdiction could enable tax dodgers to avoid their information being reported to their relevant jurisdiction of residence by either:

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situation. In such cases, information is sent to the jurisdiction of original self-certification, and to the jurisdiction that is resulting from the "change of circumstances" (OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.* pp.129-46).

[442] For the "passports of convenience" debate prior to 2007 see: (Anthony Van Fossen. 'Citizenship for Sale: Passports of Convenience from Pacific Island Tax Havens'. *Commonwealth & Comparative Politics*, 45(2) [2007], pp. 138–163. URL: http : / / www . tandfonline . com / doi / full / 10 . 1080 / 14662040701317477 [visited on 08/05/2022]). A broader discussion of the issue is also available: (Xin Xu et al. *Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs*. 15-93. International Monetary Fund, 2015. URL: www . imf . org / ~ / media / Websites / IMF / imported-full-text-pdf/external/pubs/ft/wp/2015/_wp1593.ashx [visited on 08/05/2022]).

[443] Hugh Muir. 'We've Hit Peak Injustice: A World without Borders, but Only for the Super-Rich'. *The Guardian* (Sept. 2017). URL: https : / / www . theguardian . com / commentisfree / 2017 / sep / 18 / peak - injustice - world - without - borders - super - rich - buying - citizenship - migration (visited on 04/05/2022); Karl Küpper and Oliver von Schweinitz. 'The Definition of "Residency" Under the Common Reporting Standard'. *International Journal for Financial Services*, (2) (2015), pp. 119–125.

[444] Adim, *Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs (2021)*; Christians, *Buying In*.

[445] For example, El Salvador offers permanent residency to anyone who spends three Bitcoin in the jurisdiction (around 125,000 US$ at the time of the introduction of the program) (Clara Nugent. *El Salvador Is Betting on Bitcoin to Rebrand the Country — and Strengthen the President's Grip*. 2021. URL: https://time.com/6103299/bitcoin-el-salvador-nayib-bukele/ [visited on 04/05/2022]).

[446] Francis Weyzig. *Defying the OECD's Crackdown on Tax Evasion*. Sept. 2017. URL: https : / / francisweyzig . com / 2017 / 09 / 24 / defying - the - oecds - crackdown - on - tax - evasion/ (visited on 03/05/2022).

(a) falsely declaring residence in a jurisdiction which doesn't have a comprehensive personal income tax and providing a passport or certificate of residence by the same jurisdiction. This way, the account information will end up being transmitted to the tax haven jurisdiction which will then ignore it or parts of it, given the account holder will not be liable for worldwide income tax there;

(b) falsely declaring residence in a jurisdiction which is listed in Annex A of the MCAA[447] (ie jurisdictions which only send, but do not receive any account information) or in a jurisdiction which is not committed to the CRS. This way, information will not be collected nor reported on those account holders.

Moreover, jurisdictions that provide passports or residency permits through investment may also serve individuals engaged in other illicit financial activities.[448] In February 2022, shortly after the Russian-Ukraine war had erupted, the United Kingdom abolished its golden visa program with immediate effect. According to the BBC News: "the route to residency is now being closed with immediate effect, with the government saying it 'failed to deliver for the UK people and gave opportunities for corrupt elites to access the UK'".[449]

Citizenship-by-investment or residency-by-investment could also play another role of hiding individuals that were already found guilty of tax evasion or other financial crimes. As Global Witness put it: "After all, if the passport makes you a citizen of a country that has a non-extradition treaty with your country and enjoys strong rule of law you can sleep safe and sound in your luxury home".[450]

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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[447] OECD. *Multilateral Competent Authority Agreement On Automatic Exchange Of Financial Account Information*. 2014. URL: http://www.oecd.org/ctp/exchange-of-tax-information/multilateral-competent-authority-agreement.pdf (visited on 01/04/2022).

[448] Such programs also have a negative spillover effect other than serving illicit financial flows. Citizenship or residency against real estate investment may create a housing price boom and a crisis in the jurisdiction to the detriment of ordinary citizens/residents (Beatriz Ramalho da Silva. 'Luxury Homes, Short Lets and Shacks: Inside Lisbon's Housing Crisis'. *Guardian* [Dec. 2021]. URL: https://www.theguardian.com/world/2021/dec/22/luxury-homes-short-lets-and-shacks-inside-lisbons-housing-crisis [visited on 06/05/2022]).

[449] 'UK Scraps Rich Foreign Investor Visa Scheme'. *BBC News* (Feb. 2022). URL: https://www.bbc.com/news/uk-politics-60410844 (visited on 04/05/2022).

[450] Global Witness. *Red Notice on Golden Visas*. Oct. 2017. URL: https://www.globalwitness.org/en/blog/red-notice-golden-visas/ (visited on 03/05/2022).

Table 3.29. Assessment Logic: Secrecy Indicator 12 - Consistent Personal Income Tax

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
435	Personal Income Taxation: Is there a personal income tax with a comprehensive scope?	0: No, there is no personal income tax; 1: No, personal income tax is levied, either fully or partially, only on a territorial or remittance basis; 2: No, lump sum/flat charge/exemption of taxes are available instead of regular personal income taxation; 3: Yes, there is a uniform personal income tax regime with a worldwide income tax base.	Integrated assessment of Personal Income Tax and Citizenship- or Residency-by-Investment Schemes. If there is a comprehensive personal income tax with worldwide scope, zero secrecy score. If no PIT or Annex A in CRS (see SI 18[451]), and lax residency- or citizenship-by-investment rules: 100 secrecy score. Three intermediate scores for partial compliance (see Table 3.27).
374	CRS MCAA Voluntary Secrecy: Has the jurisdiction chosen "voluntary secrecy" (listed under the MCAA's Annex A to prevent receiving information) or is otherwise not compliant with basic confidentiality requirements to receive information?	YN	
489	Citizenship-By-Investment and Residency-By-Investment Schemes: Can individuals acquire citizenship, passports or residency status in exchange for an investment or another payment without the need to meet minimum physical presence requirements?	YN	

[451] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*.

3.13 Secrecy Indicator 13: Avoids promoting tax evasion

3.13.1 What is measured?

This indicator assesses whether a jurisdiction includes worldwide capital income in its income tax base and if it grants unilateral tax credits for foreign tax paid on certain foreign capital income. The types of capital income included are interest and dividend payments.

In the case of dividends, three different payment scenarios are considered.

1. Dividends received by an independent legal person.
2. Dividends received by a related legal person (shareholders hold at least 10 per cent).
3. Dividends received by a natural person.

For interests, no distinction is made between an independent and related legal person (because no differences were found in regulations for this type of capital income payments). Thus, two different payment scenarios are considered.

1. Interest payments received by a legal person.
2. Interest payments received by a natural person.

A zero secrecy score is given if a jurisdiction grants unilateral tax credits for all payment scenarios and for both type of payments (dividends and interest). A secrecy score of 50 applies to jurisdictions which grant unilateral tax credits for all payment scenarios for one type of payment (dividend or interest). If unilateral tax credits are granted only in some payment scenarios, for each single payment scenario with a tax credit, the secrecy score is reduced by 10.

Accordingly, we have split this indicator into two components and the overall secrecy score for this indicator is calculated by simple addition of these components. The secrecy scoring matrix is shown in Table 3.30, with full details of the assessment logic given in Table 3.31.

The secrecy score is not reduced where a jurisdiction does any of the following:

1. effectively exempts foreign income from domestic taxation, be it through:
    (a) a pure territorial tax system;
    (b) or through exemptions for
        i. specific payments (such as dividends)
        ii. specific legal entities (such as international business companies)
        iii. specific individuals (such as non-doms or inward expatriates);
    (c) exemption of income
        i. unless income is remitted or

ii. if income is remitted;

(d) zero or near zero tax rates (eg on corporate income);[452]

2. only offers the option to deduct foreign payments from the tax base;

3. provides no unilateral double taxation relief whatsoever.

Table 3.30. Secrecy Scoring Matrix: Secrecy Indicator 13

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Dividends (50 points)	
No unilateral double taxation relief through a tax credit system	50
Unilateral double taxation relief through a tax credit system for one payment scenario (if recipient is either an independent or related legal person, or natural person)	40
Unilateral double taxation relief through a tax credit system for two payment scenarios (if recipient is either an independent and/or related legal person, and/or natural person)	30
Unilateral double taxation relief through a tax credit system for all three payment scenarios (recipients always receive a unilateral tax credit, regardless of whether s/he is an independent or related legal person, or a natural person)	0
Component 2: Interest (50 points)	
No unilateral double taxation relief through a tax credit system.	50
Unilateral double taxation relief through a tax credit system for one payment scenario (if recipient is either a legal person or a natural person)	40
Unilateral double taxation relief through a tax credit system for both payment scenarios (recipients always receive a unilateral tax credit, no matter if it is a legal person or a natural person)	0

[452] Examples of pure territorial tax systems (a) include Panama and Hong Kong; examples of selective payment exemptions (b-i) include Cyprus and the United Kingdom; examples of specific legal entity exemption (b-ii) include Luxembourg and Saint Kitts and Nevis; examples of specific individual exemption (b-iii) include the UK and Ireland for non-doms and Spain and Italy for inward expatriates; examples of exemption of income except if remitted (c-i) include Barbados and Liberia; examples of exemption of income if remitted (c-ii) include Sri Lanka and Bangladesh; examples of countries applying a zero or near zero tax rate resulting in exemption (d) include Jersey and Guernsey. In practice, some of the aforementioned mechanisms may be combined to achieve non-taxation of foreign income.

The data has been collected primarily through the International Bureau for Fiscal Documentation's (IBFD) database (country analyses and country surveys).[453] In some instances, additional websites and reports of the "Big 4" accountancy firms have also been consulted.

3.13.2 Why is this important?

In a world of integrated international economic activity and cross-border financial flows, the question about who taxes what portion of income has become increasingly complex. A conflict exists between the emphasis on taxing the income where it arises (ie at source), or taxing it where its recipient resides.[454] A mixture of both principles is implemented in practice.

However, this may lead to instances of so-called double taxation, when both countries claim the right to tax the same income (tax base). While the concept of "double taxation" is theoretically plausible, evidence for real life occurrence is exceptionally rare,[455] especially since many countries have adopted unilateral relief provisions to avoid double taxation. In addition, countries also negotiate bilateral treaties to avoid double taxation, so-called double taxation avoidance agreements (DTA).

A potential third option to ensure single taxation, would be a multilateral agreement on the definition of the formula for apportioning transnational corporations' global income.[456] The G20 has declared that "Profits should be taxed where economic activities deriving the profits are performed and where value is created".[457] While this could have been interpreted as a mandate to treat the corporate group of a transnational corporation as a single firm and ensure that its tax base is attributed according to its activities in each country,[458] the OECD's BEPS project[459] has continued to follow the independent entity principle and refused to consider unitary taxation and formulary apportionment to tax transnational corporations. Thus, this option is unlikely to come into effect in the foreseeable future.

Assuming that cross-border trade and investment can be mutually beneficial, the problem of overlapping tax claims (double taxation) needs to be addressed in one of both ways because it hinders cross-border economic activity. Bilateral treaties

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[453] IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

[454] Tax Justice Network. *Tax Justice Briefing. Source and Residence Taxation.* Sept. 2005. URL: http://www.taxjustice.net/cms/upload/pdf/Source_and_residence_taxation_-_SEP-2005.pdf (visited on 08/05/2022).

[455] Tax Justice Network. *Unitary Taxation: Our Responses to the Critics*. Feb. 2013. URL: https://www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf (visited on 08/05/2022), p.3.

[456] Reuven S. Avi-Yonah. 'A Proposal for Unitary Taxation and Formulary Apportionment (UT+FA) to Tax Multinational Enterprises'. In: *Global Tax Governance: What Is Wrong With It and How to Fix It*. P. Dietsch and T. Rixen. Colchester, U.K: ECPR Press, 2016, pp. 289–306.

[457] G20. *G20 Leaders' Declaration, September 2013*. Sept. 2013. URL: http://www.g20.utoronto.ca/2013/2013-0906-declaration.html (visited on 27/04/2022), para.50.

[458] BEPS Monitoring Group. *The BEPS Monitoring Group Overall Evaluation of the G20/OECD Base Erosion and Profit Shifting (BEPS) Project*. 2015. URL: https://bepsmonitoringgroup.files.wordpress.com/2015/10/general-evaluation.pdf (visited on 02/05/2022).

[459] OECD. *Action Plan on Base Erosion and Profit Shifting*. Paris, 2013. URL: http://www.oecd.org/ctp/BEPSActionPlan.pdf (visited on 06/05/2022).

are expensive to negotiate, and often impose a cost on the weaker negotiating country, which is frequently required to concede lower tax rates in return for the prospect of more investment.[460]

Home countries of investors or transnational companies usually offer unilateral relief from double taxation because they want to support outward investment.

They do this primarily through two different mechanisms:

(a) By exempting all foreign income from tax liability at home (exemption);

(b) By offering a credit for the taxes paid abroad on the taxes due at home (credit).

As the graphs below indicate, in most cases it is a myth that bilateral treaties are necessary to provide relief from double taxation. Countries that are home to investors and transnationals typically offer provisions in their own laws to prevent or reduce double taxation.[461]

There is a third mechanism called "deduction" which is sometimes used to offer relief from double taxation. However, the deduction method does not offer full

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[460] See, for instance: 1) (Martin Hearson. *Measuring Tax Treaty Negotiation Outcomes: The ActionAid Tax Treaties Dataset*. Brighton, 2016. URL: https://core.ac.uk/download/pdf/46172854.pdf [visited on 10/04/2022]); 2) a comprehensive analysis of the Netherlands double tax treaty network, here: (Katrin McGauran. *Should the Netherlands Sign Tax Treaties with Developing Countries?* SOMO Centre for Research on Multinational Corporations, June 2013. URL: https://www.somo.nl/wp-content/uploads/2013/06/Should-the-Netherlands-sign-tax-treaties-with-developing-countries.pdf [visited on 03/05/2022]); 3) the example of Switzerland renegotiating its DTAs with developing countries, here: (Markus Meinzer. *The Creeping Futility of the Global Forum's Peer Reviews*. Tax Justice Network, Mar. 2012. URL: http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf [visited on 01/04/2022], pp.23-24), or for more details on this case (in German): (Alliance Sud. *Schweizer Steuerabkommen Mit Entwicklungsländern: Fragwürdiger Druck Auf Quellensteuern*. Mar. 2013. URL: https://www.alliancesud.ch/de/publikationen/downloads/dokument-24-2013.pdf [visited on 03/05/2022]); 4) (Eric Neumayer. 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?' *The Journal of Development Studies*, 43(8) [Nov. 2007], pp. 1501–1519. URL: http://www.tandfonline.com/doi/full/10.1080/00220380701611535 [visited on 06/05/2022]); and 5) (Tsilly Dagan. *The Tax Treaties Myth*. SSRN Scholarly Paper ID 379181. Rochester, NY: Social Science Research Network, Mar. 2003. URL: https://papers.ssrn.com/abstract=379181 [visited on 02/05/2022]). A full literature review on the relationship between DTAs, development, growth and FDI can be found (in German) here: (Angelika Lorenz. *Meine Zeit, Mein Leben. Ein Kulturwissenschaftlicher Blick Auf Das Spannungsfeld von Zeitspielräumen*. 2014. URL: https://unipub.uni-graz.at/obvugrhs/content/titleinfo/243042/full.pdf [visited on 16/05/2022]).

[461] It must be conceded, however, that unilateral provisions to avoid double taxation are not as effective at preventing double taxation as double tax treaties. For instance, there may be cases in which the rules determining the residency of taxpayers conflict between countries, leading to both claiming residence and full tax liability of one legal entity or taxpayer. However, for a number of reasons this argument is of limited relevance: a) these cases are the exception rather than the rule; b) pure economic "single taxation" is a theoretical concept derived from economic modelling that is only of limited value in real life. In many countries different types of taxes are levied on the same economic activity, for instance VAT is levied on the turnover of a company, then the profits stemming from the turnover are taxed through federal and state corporate income taxes, and in a third stage the investment income in form of dividends is again taxed in the hands of the shareholders. Nobody would reasonably speak about "triple taxation" in such a case. In a similar way, it is dubious to speak about double taxation in a cross-border context. To paraphrase Professor Sol Picciotto: "But double taxation is a dubious concept. First, it does not mean companies' tax bills doubling: it means that there may (rarely) be some overlap between states' taxing claims (think of this in terms of the overlap in a Venn diagram). Any overlap may result in a modestly higher overall effective tax rate, not a 'double' rate." (Tax Justice Network, *Unitary Taxation: Our Responses to the Critics*). This "modestly higher overall effective tax rate" could be higher than the corporate tax rate of one particular country, but it may still be lower than another country's corporate tax rate. If one called this situation double taxation, then this implies speaking about double taxation also in situations in which two unrelated companies operate in two different countries, with one country levying twice as high a corporate tax rate as the other country. This, of course, is nonsense and reveals the dubious and theoretically flawed nature of the concept of double taxation.

relief from double taxation. It allows deducting from foreign income (eg as a business expense) any taxes paid abroad before including this income in the domestic tax base. Therefore, we consider deduction to be similar to offering no mechanism for double taxation relief, since the incentives to conclude DTAs remain largely in place.

Where (especially capital exporting) countries refrain from providing unilateral relief, or only provide deduction of foreign taxes from the domestic tax base, they contribute to a problem of double taxation and thus indirectly exert pressure on capital importing countries to conclude bilateral treaties with the other country. These treaties in turn can expose capital importing countries to risks and disadvantages.

In addition, with more than 3000 double tax treaties currently in operation, the system has become overly complex and permissive, encouraging corporations to engage in profit shifting, treaty shopping and other practices at the margins of tax evasion.[462] This is the context in which we review unilateral mechanisms to avoid double taxation in the first place. However, not all such mechanisms are equally useful.[463]

When using a unilateral exemption mechanism to exempt all foreign income from liability to tax at home, the residence country may be forcing other jurisdictions to compete for inward investment by lowering their tax rates. Because investors or corporations will not need to pay any tax back home on the profit they declare in the foreign jurisdiction (source), they will look more seriously at the tax rates offered. This encourages countries to reduce tax rates on capital income paid to non-residents, such as withholding taxes on payments of dividends and interest.

Many countries provide tax exemption on capital income payable to non-residents, especially on interest payments on bank deposits and government debt obligations, or dividends. This may have an important collateral effect: countries not offering an exemption mechanism to their residents nonetheless may see their resident taxpayers move their assets and legal structures (such as holding companies) into those countries where capital income is not taxed or taxed lowly. By doing so, and because information sharing between states is weak, taxpayers can easily evade the taxes due at home on their foreign income. As a consequence, a country offering low or no taxes to non-residents promotes tax evasion in the rest of the world.

To summarise the logic:

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[462] See (Sol Picciotto. *Towards Unitary Taxation of Transnational Corporations*. Tax Justice Network, 2012. URL: http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf [visited on 08/05/2022]). For ways to address these issues, and the various reports of the BEPS Monitoring Group: (BEPS Monitoring Group. *The BEPS Monitoring Group*. URL: https : / / www . bepsmonitoringgroup . org [visited on 02/05/2022]).

[463] We are not looking at deduction in more detail because deduction of foreign taxes from domestic tax bases only provides partial relief from double taxation whereas the credit and exemption method both have in principle the capacity to completely avoid double taxation. For more details about the exemption and credit method, see for instance: (United Nations. *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries 2019*. URL: https : / / www . un . org / esa / ffd / wp - content / uploads / 2019 / 06 / manual - bilateral - tax - treaties - update - 2019 . pdf [visited on 08/05/2022], pp.19-22).

First, unilateral tax exemption on foreign income puts pressure on source countries to reduce tax rates on investments by non-residents in a process of tax war (or competition).[464] Second, citizens and corporations from other countries make use of the low tax rates by shifting assets into these low-tax countries for the purpose of committing tax evasion. Third, in the medium term, the tax exemption of foreign income acts as an incentive for ruinous tax wars that will eventually lead to the non-taxation of capital income.

In contrast, a unilateral tax credit system does not promote tax evasion and does not incentivise the host countries of investments to lower their tax rates. A tax credit system requires that income earned abroad must be taxed at home as if it was earned at home, unless it has already been taxed abroad. In the latter case, the effective amount of tax paid abroad on the income will be subtracted from the corresponding amount of tax due at home.

Therefore, for an investor the tax rate in a host country is no longer relevant to her investment decisions. Countries wishing to attract foreign investment will not feel compelled to lower the tax rates in the hope of increasing their stock of foreign investment. As a result, the tax evading opportunities of investors are reduced because fewer countries offer zero or very low taxation on capital income. Reuven Avi-Yonah describes how the USA's adoption of a unilateral tax credit in 1918 has "led to a cooperative outcome that prevents double taxation and maximizes world welfare".[465]

Nonetheless, for example, Ireland is the only EU member that applies the credit method for substantial corporate shareholders while other member states apply the exemption method. According to the EU's Parent-Subsidiary Directive (2011/96/EU),[466] all EU member states must either implement the exemption method or allow for an indirect credit, along with the direct credit to eliminate economic double taxation of cross-border intercompany dividends (along with the direct credit).[467] Indirect credit means to continue to implement worldwide taxation and credit method. Even if the Directive provides EU Member States with two options, only Ireland continues to implement the credit method. The rest started to implement exemption sooner or later.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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[464] For a background on the terminology around tax competition and tax wars, see: (Nicholas Shaxson. *Tax Havens Meet Monopoly Power: Why National Competitiveness Harms Competition*. Aug. 2021. URL: https : / / taxjustice . net / 2021 / 08 / 12 / tax - havens - meet - monopoly - power-why-national-competitiveness-harms-competition/ [visited on 16/05/2022]).

[465] Reuven S Avi-Yonah. 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State'. *Harvard Law Review*, 113(7) (2000), pp. 1573–1676. URL: https : / / repository . law . umich . edu / cgi / viewcontent.cgi?article=1049&context=articles (visited on 02/05/2022).

[466] Council of the European Union. *Council Directive 2011/96/EU of 30 November 2011 on the Common System of Taxation Applicable in the Case of Parent Companies and Subsidiaries of Different Member States*. Dec. 2011. URL: https://eur-lex.europa.eu/eli/dir/2011/96/oj/eng (visited on 02/05/2022).

[467] Georg Kofler. 'Indirect Credit versus Exemption: Double Taxation Relief for Intercompany Distributions'. *Bulletin for International Taxation*, 66(2) (2012), pp. 77–89. URL: https : / / www . jku . at / fileadmin/gruppen/150/Team/Georg_Kofler/Aufsaetze_in_Fachzeitschriften/Indirect_Credit_versus_Exemption_139.pdf (visited on 06/05/2022).

Table 3.31. Assessment Logic: Secrecy Indicator 13 - Avoids Promoting Tax Evasion

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
552	Legal Person, Resident, Independent Party: Dividends	0: None. There is no unilateral relief from double taxation. 1: Deduction. 2: Credit. 3: Exemption.	Answer preset 2 is chosen: 3x: 0 points 2x: 30 points 1x: 40 points 0x: 50 points
555	Legal Person, Resident, Related Party: Dividends	0: None. There is no unilateral relief from double taxation. 1: Deduction. 2: Credit. 3: Exemption.	
558	Natural Person, Resident (UR): Dividends	0: None. There is no unilateral relief from double taxation. 1: Deduction. 2: Credit. 3: Exemption.	
553	Legal Person, Resident: Interest	0: None. There is no unilateral relief from double taxation. 1: Deduction. 2: Credit. 3: Exemption.	Answer preset 2 is chosen: 2x: 0 points 1x: 40 points 0x: 50 points
559	Natural Person, Resident (UR): Interest	0: None. There is no unilateral relief from double taxation. 1: Deduction. 2: Credit. 3: Exemption.	

3.14 Secrecy Indicator 14: Tax court secrecy

3.14.1 What is measured?

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. It assesses separately the availability for criminal and civil/administrative tax matters and whether all written judgments are published online for free or at a cost of no more than US$10, €10 or £10.[468] For a judgement to be considered published, only personal details which are not relevant for assessing the tax matter in question, such as personal addresses and account numbers, can be redacted. Tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules are not acceptable as the basis for exceptions from public disclosure. This component also assesses if the names of the parties are anonymised.

If verdicts, judgements and sentences are published online for free, this indicator's secrecy score is reduced by 50 points each for both criminal and civil tax matters. However, the score is reduced only by 25 points (instead of 50 points) if judgments are available online only with a fee of no more than US$10, €10 or £10 or if judgments are published online for free but in anonymised form.

Thus, for instance, a jurisdiction will have a zero haven score if all the judgements and verdicts resulting from criminal and civil tax proceedings are published online for free and not anonymised. The jurisdiction would have a 50 points secrecy score if the judgements resulting from both criminal and civil tax proceedings are available online for a fee of up to US$10, €10 or £10 each or if judgements are available online for free, but at least some of them are in an anonymised form.

Furthermore, jurisdictions with no income taxes are assessed as not applicable and receive the full secrecy score (100 points) for the indicator.

The information for this indicator has been drawn from the jurisdictions' judiciary website or other government agencies' websites and from the results of the Tax Justice Network's 2021 Survey and earlier surveys.[469] Government websites were consulted to ensure that both criminal and civil tax judgments are effectively available with full text and that technical problems do not prevent access to information.

We have concluded that judgments are available online for free only when we were able to download a sample of judgments from different courts. If we were not able to download a sample of judgments or if it appeared that only a few

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[468] In the previous edition of the Financial Secrecy Index of 2020, the secrecy score also comprised an analysis of the openness of court proceedings, lawsuits and trials for criminal and civil or administrative tax matters. The assessment considered whether the public had the right to attend the full proceedings of courts and could not be ordered to leave the court room even if a party invoked tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. This component of the indicator has been removed because it was often unclear and very time consuming to determine for each country included in the index which exceptions for public access are available and whether or not they can be justified.

[469] Tax Justice Network, *TJN Survey*.

judgments were published but not all of them, we have considered that not all judgments are available online in full.

Moreover, to ensure that no obstacles can hinder the online availability of the data, we consider court judgments to be publicly available online when it is not necessary to establish complex payment or user registration arrangements for accessing the data (eg registration of bank account, requirement of a local identification number or sending a request by post). The secrecy scoring matrix is shown in Table 3.32, with full details of the assessment logic given in Table 3.33.

Table 3.32. Secrecy Scoring Matrix: Secrecy Indicator 14

Regulation		Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Criminal tax judgements/verdicts	Not available online	50
	Always available up to US$10, €10 or £10, or available for free but in anonymised form	25
	Always available online for free	0
Civil tax judgments/verdicts	Not available online	50
	Always available up to US$10, €10 or £10, or available for free but in anonymised form	25
	Always available online for free	0

3.14.2 Why is this important?

The public's right to open courts is well established in most countries, regardless of whether the legal system is rooted in common law or civil law.[470] Public availability of verdicts is often considered to be an important pillar of a modern democratic state, directly derived from a jurisdiction's constitution and/or the principle of the rule of law, on which the legitimacy of the entire judicial process hinges.

Preventing public access to tax court judgments may result in important court decisions that have an impact on public revenue being made without the public's knowledge. As such, it limits the access to information required to exercise the right to protest or criticise decisions, to determine the need for a policy change, or to engage with the court through an "amicus curiae" process. In some jurisdictions, only "important" or "relevant" court verdicts are said to be chosen

[470] Randall S. Bocock. *Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers*. Washington, D.C, Oct. 2014. URL: https : / / iatj . net / content / congresses/washington2014/Protection_Bocock.pdf (visited on 07/05/2022).

by judges or others to be made public. However, this selection process of relevant cases is inevitably subjective and, thus, rife with risk that cases considered to be relevant by some parts of the public remain out of reach of legitimate scrutiny.

Furthermore, court adjudications usually provide an essential part of the application of the laws by setting precedents and, therefore, provide clarity among citizens about the right way to interpret the law. They are also often an important driver of policy changes and legislative action by exposing gaps and loopholes in, or unintended consequences of, laws and regulations. Not disclosing judgements therefore cuts off an important feedback loop for policy-makers. It may lead over time to flawed legislation as well as to a low deterrence effect, impaired law enforcement by prosecutorial authorities, and tax administrations' failure to collect taxes as intended by parliament. Without public access to all tax verdicts, meaningful empirical research about the outcomes of tax trials, especially with respect to large taxpayers, is near impossible; and sweetheart deals at court and undue political interference in the administration can neither be detected nor ruled out.

Nonetheless, in practice, in some countries tax judgements are not published. Privacy arguments or official "tax secrecy" legislation, which may have the power to override the open court principle, are sometimes used as justification for non-disclosure of verdicts. This practice creates fundamental conflicts with the rule of law. While all tax verdicts should be public, to address data protection concerns, specific personal data of taxpayers (dates of birth, addresses, names of children, bank account numbers, etc.) could be redacted from verdicts, and their reporting could be restricted. These details are not required for judicial decision making and hence removing them does not conflict with the open court principle.[471] This approach balances the taxpayer's right to privacy over their personal affairs and to informational self-determination, and the public's right to transparent judicial tax verdicts. Nonetheless, we consider that public availability of the names of the parties (plaintiff, defendant) is relevant for contextual research and media purposes, to ensure accountability. While anonymisation in exceptional circumstances, such as to protect victims' lives or minors (as for example, in Estonia[472] and Taiwan[473]) is acceptable, anonymisation of all or most

[471] Sujoy Chatterjee. 'Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?' *Dalhousie Journal of Legal Studies* (2014).

[472] In Estonia, according to the Code of Criminal Procedure, §408.1(2): "A published decision shall disclose the name and personal identification code or, in the absence of the personal identification code, date of birth of the accused. The personal identification code and name or date of birth of an accused who is a minor are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor is convicted in a criminal offence. A court shall replace the names and other personal data of other persons with initials or characters. A decision shall not disclose the residence of a person".

[473] According to Taiwan's Judicial Yuan, pursuant to Article 83 of the Court Organic Act: "all levels of courts' judgement/verdicts are, in principle, publicly available. Exceptions may apply to the extent that when there are certain special provisions under laws to stipulate restrictions on the judgments to be made available to public, those laws may include but not be limited to the Protection of Children and Youth Welfare and Rights Act, the Juvenile Delinquency Act, the Sexual Assault Crime Prevention Act, the Sexual Harassment Prevention Act, the Classified National Security Information Protection Act, and the Intellectual Property Court Organization Act. Judgments may stay unavailable to the public or be published by deleting any related personal information when meeting those special provisions

decisions may create obstacles for the process of researching and analysing decisions.

The secrecy emanating from not publishing tax judgements and verdicts shields both domestic and non-resident actors involved in domestic economic activity who seek to aggressively minimise their tax payments from public scrutiny. For example, any non-resident individual or multinational company fearing spontaneous tax information exchange with home jurisdiction authorities may feel reassured to invest in jurisdictions with strict tax secrecy provisions that allow them to intervene to postpone or even prevent that exchange from happening while keeping the decision far from the public eyes.

Similarly, in the context of tax wars (or "tax competition"), non-resident individuals and companies may be given special tax deals by local administrations in the race to the bottom which may not withstand legal or public scrutiny. While limited access to information about special tax deals brokered between taxpayers and the tax administration is a different problem to tax court secrecy (and is dealt with in Secrecy Indicator 9[474]), the latter can act as an important backstop for the former in case for some reason a non-resident is taken to court.

Therefore, without public scrutiny, the risk of (undetected) biases by tax administrations and courts in favour of non-resident investors increases.

The reason why we place emphasis on free data access is because if relevant data can only be accessed by paying a fee, it can be prohibitively expensive to import this data or to access sufficient cases for research/media purposes, even when the cost per record is low. This creates substantial hurdles for making comparisons between jurisdictions and new creative data usages.[475]

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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under laws. That is, judgments which were issued by criminal tax courts not meeting the above-mentioned exceptions may be kept publicly available." Correspondence with Taiwan's Judicial Yuan, 08.07.2020.

[474] Tax Justice Network, *Secrecy Indicator 9: Corporate Tax Disclosure*.

[475] For more information about this see: (OpenCorporates. *Open Company Data Index*. 2021. URL: http://registries.opencorporates.com/ [visited on 08/05/2022]).

Table 3.33. Assessment Logic: Secrecy Indicator 14 - Tax Court Secrecy

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
409	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$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10 €/U$/GBP, or it is always available for free but in anonymised form; 2: Yes, full text of verdicts is always online for free.	<=0: 50 points 1: 25 points 2: 0 points
410	Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10 €/US$/GBP, or it is always available for free but in anonymised form; 2: Yes, full text of verdicts is always online for free.	<=0: 50 points 1: 25 points 2: 0 points

3.15 Secrecy Indicator 15: Harmful structures

3.15.1 What is being measured?

This indicator assesses the availability of four harmful instruments and structures within the legal and regulatory framework of a jurisdiction:

1. **Regarding Large Banknotes (or high denomination cash bills)**: it assesses whether a jurisdiction issues or accepts the circulation of large banknotes of its own currency (of value greater than US$200, €200 or £200);

2. **Regarding Bearer Shares**: it assesses whether companies are available with unregistered bearer shares. Either bearer shares[476] should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are[477] immobilised or registered with a government authority (including a country's Central Securities Depository, if properly regulated);

3. **Regarding "Series limited liability companies" (Series LLCs) and/or "Protected cell companies" (PCC)**: it assesses whether a jurisdiction allows the creation of Series LLCs and/or PCCs in its territory. The latter is also known as an "incorporated cell company" or "segregated account company";

4. **Regarding trusts with flee clauses**: it assesses whether a jurisdiction prohibits the administration of (foreign or domestic law) trusts with flee clauses for any trustee within its territory.

Accordingly, we have split this indicator into four components. The overall secrecy score for this indicator is calculated by simple addition of the secrecy scores of each of these components. The secrecy scoring matrix is shown in Table 3.34, with full details of the assessment logic given in Table 3.35.

The main sources for this information are the Global Forum peer reviews[478] and private internet websites such as www.offshoreinvestment.com, www.ocra.com and www.lowtax.net, or directly searching the specific features by name on the internet for their availability. Some of the aforementioned sources display the availability of Series LLCs and/or protected cell companies either in a tabular or textual format. They have also helped us determine whether trusts with flee

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[476] Bearer shares are shares which are not registered, where the owner can be any person physically holding the share certificate and where the transferring of the ownership involves only delivering the physical certificate.

[477] We consider that the obligation to register bearer shares exists when legal provisions establish a timeframe for immobilisation/registration of all existing bearer shares before the next publication of the Financial Secrecy Index and where the consequence for non-compliance is the loss of those shares. Provisions where the only consequence of non-compliance is the loss of voting rights or rights to dividends are not considered to be sufficient because this would involve the mere suspensions of rights. In such case, the holders of bearer shares may still transfer those shares or avoid identification until they intend to regain their rights. The same applies if there is no deadline to immobilise bearer shares, or where after the deadline holders of bearer shares are still allowed to recover their shares or rights after applying to a court or disclosing their names to the company. This is treated as an unacceptable suspension of rights, rather than the cancellation that this indicator requires.

[478] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at:(OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes*).

clauses are prohibited. In some cases, the TJN-Survey 2021 provided useful information.[479] Main sources for the issuance and circulation of large cash bills were the Central bank's website of each jurisdiction, studies by the Financial Action Task Force[480] and the European Police Office's Financial Intelligence Group,[481] as well as Peter Sands' (Harvard Kennedy School) case for their elimination.[482] We have also referred to local regulators' and central banks' websites.

Table 3.34. Secrecy Scoring Matrix: Secrecy Indicator 15

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Large Bank Notes (25 points)	
Large banknotes are accepted as legal tender and/or issued Own currency banknote of value greater than US$200, €200 or £200.	25
Large banknotes neither accepted as legal tender nor issued No own currency banknote with a value of, or greater than, US$200, €200 or £200.	0
Component 2: Bearer Shares (25 points)	
Bearer shares available Companies with unregistered bearer shares are available.	25
Bearer shares not available Bearer share companies are not available, or all bearer shares are registered with a public authority.	0
Component 3: Series LLCs/PCCs (25 points)	
Series LLCs or PCCs are available Domestic legislation provides for the creation of Series Limited Liability Companies or of Protected Cell Companies.	25
Neither Series LLCs nor PCCs are available Domestic legislation does not provide for the creation of Series Limited Liability Companies nor of Protected Cell Companies.	0
Component 4: Trusts with Flee Clause (25 points)	
Administration of trusts with flee clauses is not effectively prevented Domestic and/or Foreign Law trusts administered by domestic trustees can include flee clauses in their deeds.	25
Trusts with flee clauses cannot be administered or created Domestic and Foreign Law trusts administered by domestic trustees are prevented from including flee clauses in their deeds.	0

3.15.2 Why is this important?

[479] Tax Justice Network, *TJN Survey*.

[480] FATF and MENAFATF. *Money Laundering Through the Physical Transportation of Cash*. 2015. URL: https://www.fatf-gafi.org/publications/methodsandtrends/documents/ml-through-physical-transportation-of-cash.html (visited on 06/04/2022).

[481] European Police Office's Financial Intelligence Group. *Why Is Cash Still King?* 2015. URL: https://www.europol.europa.eu/sites/default/files/documents/europolcik%20%281%29.pdf (visited on 06/04/2022).

[482] Peter Sands. 'Making It Harder for the Bad Guys: The Case for Eliminating High Denomination Notes'. 2016. URL: https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Eliminating%2BHDNfinalXYZ.pdf (visited on 06/04/2022).

Component 1: Large Banknotes

Cash is anonymous, does not leave an audit trail and is universally accepted, which is why it is often used in illicit activities. Cash is almost always used by criminals at some stage in the money laundering process. The Financial Action Task Force's 2015 study on money laundering through the transportation of cash has shown that criminally derived cash usually originates from an extremely wide range of predicate offences, including drug and human trafficking, terrorism, corruption, and tax fraud.[483]

In many instances, where concealment is necessary for smuggling, large cash bills or high denomination banknotes are used because they are easier to hide than mixed or lower denomination notes, making it harder for law enforcement authorities to intercept. The existence of large banknotes enables the transportation of higher values of currency at one time, but also increases the size of loss if discovered. The EUR 500, also known as the "bin Laden" after the former Al Qaeda leader Osama bin Laden and the second largest note in circulation in Europe after the CHF 1,000, is particularly popular for illicit activity for its ease in concealment. For example, EUR 20,000 in EUR 500 notes can be hidden in one cigarette packet and an adult male cash courier – or "mule" – can stuff and swallow EUR 150,000 using these large banknotes.[484] The EUR 500 also takes up far less space than the largest US dollar note, the US$100. A 2016 Harvard University study showed that carrying US$1 million in new 100 dollar bills weighs 10 kilograms and would fill most of a 15-litre briefcase, while carrying the same amount in EUR 500 would weigh just 2.2 kilograms and could be carried in a small bag.[485]

Large banknotes are used infrequently in the legitimate cash economy. Most consumers do not make payments with these high denomination notes, preferring electronic payment options for high value purchases and transactions. The European Police's (EUROPOL) Financial Intelligence Group queried the purpose of the EUR 500 because it is not commonly used for payments but accounted for one-third of EUR notes in circulation; some of which could be hoarded, but even if only a small amount is used in criminal activity and money laundering, it is still substantial in absolute terms.[486] Many businesses do not accept these large notes due to security and fraud risks. Rather, as the denomination and value of cash increases, the balance of benefits with risks and costs deteriorates.[487] Various studies and anecdotes reveal the extent to which large banknotes are used for criminal purposes.

For example, the United Kingdom's Serious and Organised Crime Agency carried out an 8-month assessment on the use of the EUR 500 banknote, revealing that

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[483] FATF and MENAFATF, *Money Laundering Through the Physical Transportation of Cash*, p. 30.

[484] Michael Holden. 'UK Stops Selling 500 Euro Notes over Crime Fears'. *Reuters* (May 2010). URL: https://www.reuters.com/article/uk-britain-euro-idUKTRE64C1JN20100513 (visited on 06/04/2022).

[485] Sands, 'Making It Harder for the Bad Guys: The Case for Eliminating High Denomination Notes', p.11, Figure 3.

[486] European Police Office's Financial Intelligence Group, *Why Is Cash Still King?*, p.7, 49.

[487] Sands, 'Making It Harder for the Bad Guys: The Case for Eliminating High Denomination Notes', p.12.

90% of the demand for it within the UK was from criminals.[488] As a result, the EUR 500 was voluntarily withdrawn from circulation by the private sector.[489] Other European countries have also had similar experiences with this large note. The biggest ever cash seizure in Portugal was made following investigations into suspected money laundering organised by an Angolan General and it amounted to EUR 8 million, almost all denominated in EUR 500 notes.[490] EUROPOL even reports that certain law enforcement agencies have observed that the "EUR 500 notes trade hands at above their face value in the criminal environment, so important is their role in cash transportation for money laundering".[491]

Following concerns over the illicit use of the EUR 500 banknote, the European Central Bank announced in May 2016 that it would discontinue production of the EUR 500. However, it remains legal tender and retains value,[492] and the UK's National Crime Agency suggests that EUR 200 and EUR 100 notes are likely to be increasingly used in criminal activity.[493] Similarly, the largest banknote in the world, the Singapore Dollar 10,000 (approx. US$7,400), was discontinued in 2014, but remains legal tender indefinitely.[494] Singapore chose to discontinue the issuance of the SGD 10,000 to mitigate money laundering risks, especially associated with its popular gambling industry.[495] In 2020, Brunei discontinued its BND 10,000 (which is worth like SGD 10,000 and can be used in Singapore), but existing banknotes will remain legal tender.[496] Canada discontinued its CAD 1,000 banknote already in 2000, but the notes remain in circulation[497] up until 2021, from which it is no longer considered as legal tender.[498]

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[488] Dominic Casciani. 'Why Criminals Love the 500 Euro Note' (May 2010). URL: http://news.bbc.co.uk/2/hi/8678979.stm (visited on 06/04/2022); Serious Organised Crime Agency. *Annual Report and Accounts*. 2010. URL: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/247328/1241.pdf (visited on 06/04/2022).

[489] Serious Organised Crime Agency, *Annual Report and Accounts*.

[490] European Police Office's Financial Intelligence Group, *Why Is Cash Still King?*, pp.16, 49.

[491] European Police Office's Financial Intelligence Group, *Why Is Cash Still King?*, p.20.

[492] European Central Bank. *ECB Ends Production and Issuance of €500 Banknote*. May 2016. URL: https://www.ecb.europa.eu/press/pr/date/2016/html/pr160504.en.html (visited on 06/04/2022); *Old Euro Banknotes, Are They Still Valid, Till When, How to Exchange? | Winngie*. URL: https://winngie.com/2019/12/08/old-euro-banknotes-are-they-still-valid-till-when-how-to-exchange/ (visited on 08/04/2022).

[493] National Crime Agency. *National Strategic Assessment of Serious and Organised Crime*. 2017. URL: https://www.nationalcrimeagency.gov.uk/who-we-are/publications/32-national-strategic-assessment-of-serious-and-organised-crime-2017/file (visited on 06/04/2022).

[494] Monetary Authority of Singapore. *Circulation Currency: Notes*. URL: https://www.mas.gov.sg/currency/circulation-currency/circulation-currency-notes (visited on 08/04/2022).

[495] 'Singapore to Stop Issuing S$10,000 Banknote to Prevent Money Laundering'. *Reuters* (July 2014). URL: https://www.reuters.com/article/singapore-regulations-idUSL4N0PD2M120140702 (visited on 06/04/2022).

[496] Xinhua. *Brunei to Cease Issuing, Circulation of Biggest Currency Notes*. 2020. URL: http://www.xinhuanet.com/english/2020-10/01/c_139411893.htm (visited on 08/05/2022).

[497] Bank of Canda. *Bank of Canada to Stop Issuing $1000 Note*. May 2000. URL: https://www.bankofcanada.ca/2000/05/bank-canada-stop-issuing-1000-note/ (visited on 06/04/2022); Adrian Humphreys. 'The Hunt for Canada's $1,000 Bills: There Are Nearly a Million Left, Most in the Hands of Criminal Elites'. *National Post* (Nov. 2012). URL: https://nationalpost.com/news/canada/the-hunt-for-canadas-1000-bills-there-are-nearly-a-million-left-most-in-the-hands-of-criminal-elites (visited on 06/04/2022).

[498] Mark Montgomery. 'Old Canadian Banknotes Lose Legal Tender Status' (Jan. 2021). URL: https://www.rcinet.ca/en/2021/01/05/old-canadian-banknotes-lose-legal-tender-status/ (visited on 12/05/2022).

Cash, and therefore large banknotes, can also help facilitate tax evasion through enabling the hoarding of cash outside the banking system and the payment for transactions without a paper trail. To tackle tax evasion and counterfeit money, the Indian government withdrew its two largest notes from circulation INR 1,000 and INR 500 (equivalent to just over US$ 15 and 7, respectively) at the end of 2016 as part of a demonetisation and remonetisation process, requiring people to swap this money at banks and post offices for legal tender.[499]

As Sands points out, the impact of ending the issuance of large denomination notes on money laundering is limited as long as large banknotes issued by different jurisdictions remain legal tender and in circulation.[500] Therefore, in particular the elimination of the highest banknotes with values above US$200, €200 or £200 would curtail the secrecy in financial transactions that enables illicit financial flows. Those currencies and the corresponding banknotes are, in order of diminishing value: BND 1,000, SGD 1,000, CHF 1,000, EUR 500 and AED 1,000. Ending their circulation by ending the status of legal tender of those banknotes would not negatively affect licit uses of cash, but increase the cost and risk of detection of criminal cash transactions.

Component 2: Bearer Shares

The Financial Action Task Force defines bearer shares as referring to "negotiable instruments that accord ownership in a legal person to the person who possesses the bearer share certificate".[501]

Ordinarily, joint stock companies issue registered shares. On a registered share certificate, the name of the shareholder is spelled out. In addition, the identities and names of the shareholders are recorded at registers held by the company, and are often reported to public registries run by the government. This ensures in principle that ownership of the company can be verified by third parties at any time.

In contrast, on bearer shares, the names of the shareholders are not written, nor is a record kept at company level or elsewhere about the identities of the shareholders. Instead, any person who literally holds the share certificates in his or her hands, is for legal purposes the owner of the share and of the company (if all shares are held). They are used to preserve anonymity on the part of owners because they are effectively untraceable.

In their landmark joint report on grand corruption "The Puppet Masters", the World Bank and UNODC argue that investigators found bearer shares "[...] to be

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[499] Arun Jaitley. *Remonetisation Process Almost Complete:* 2017. URL: https://timesofindia.indiatimes.com/business/india-business/remonetisation-process-almost-complete-arun-jaitley/articleshow/57190069.cms (visited on 06/04/2022).

[500] Sands, 'Making It Harder for the Bad Guys: The Case for Eliminating High Denomination Notes'.

[501] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, p.118.

one of the most challenging obstacles to overcome".[502] In the same report, a case is described in detail on how bearer shares have been abused:

> The Case of Former President Frederick Chiluba (Zambia): Iqbal Meer, a London-based solicitor, was among the defendants in a private civil asset recovery action brought by the Zambian attorney general in the U.K. High Court against his law firm and others for their role in assisting President Frederick Chiluba and his director general of the Zambian Security and Intelligence Services (ZSIS), X. F. Chungu, to funnel funds stolen from the Zambian government. In his judgment delivered on May 4, 2007, Mr. Justice Peter Smith held that Meer had incorporated a British Virgin Islands International Business Company, Harptree Holdings Ltd., with the company's bearer shares held in trust by a nominee at Bachmann Trust Company Ltd. Harptree Holdings had been formed to purchase real estate in Belgium—a block of flats and an apartment hotel—to pay off one of the co-conspirators in the case, Faustin Kabwe, who was identified in the court's judgment as a close friend and financial adviser to Chiluba and Chungu. This involved the transfer of funds from Zambia's ministry of finance to an account in London (referred to as the Zamtrop account) and from that account to a Zambian financial services company, in which Kabwe was one of the main controlling officers. Suspicions of Meer's involvement in this Zamtrop conspiracy (as it later became known) resulted in the U.K. Office for the Supervision of Solicitors paying Meer a visit in April 2003. They asked him specifically about the ownership of Harptree. He responded, "I have no idea whether Kabwe is holding the bearer shares in his hands or whether somebody else is holding [the] bearer shares"—demonstrating clearly how a bearer-share construction can allow someone to easily and accurately deny knowledge of ownership of a legal entity.
>
> Mr. Justice Smith concluded: "In my view it is obvious. The [...] purchase was FK's [Faustin Kabwe's] payoff for his role in the conspiracy. IM [Iqbal Meer], whilst he did not know the overarching conspiracy details, took instructions from FK on behalf of Harptree, because he believed it belonged to him beneficially. Yet he knew that the purchase was funded by government monies via the Zamtrop account but did not question FK's entitlement to them. That failure (even if his case that it was a ZSIS purchase is to be believed) and the failure to record that matter in any document are actions again which an honest solicitor would not do. Such a large purchase of a block of flats and an apartment hotel cannot conceivably have been regarded as a purchase for ZSIS operations. Equally, the labyrinthine routing of the ownership of the properties—via a BVI holding company with nominee

[502] Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, p.154.

directors and bearer shares and a Luxembourg company interposed—shows that the whole operation was to hide things."[503]

Because of the international consensus about the enormous risks associated with bearer shares (eg. among FATF, UNODC, World Bank), many jurisdictions have legislated for ending the issuance of bearer shares in the future. Following recommendation 24 by the FATF,[504] some jurisdictions have added a requirement to convert existing bearer shares into registered shares, or to immobilise and/or register existing bearer shares with a custodian or public registry. However, these policies have not always been successful. Whilst some countries might require by law that bearer shares are converted into registered shares, a deadline might not have been set. Other countries require the shares to be registered only by some company service provider or professional, without reporting the shareholders and beneficial owners to a registry. In this case, the risk and incentives for manipulation (such as backdating changes) of the ownership remain far higher than with publicly registered shares.

Component 3: Series LLCs/Protected Cell Companies

Protected Cell Companies are a rare type of corporate entity found almost exclusively in secrecy jurisdictions. Essentially it is a legal entity that contains within itself, but not legally distinct from it, a number of cells which behave as if they are companies in their own right, but are not. Every cell has its own share capital, assets and liabilities and the income and costs of each cell may be kept separate. Moreover, each cell is assigned its own share of the overall company share capital so that each owner can be the sole owner of one cell but owns only a percentage of the overall Protected Cell Companies.

Series LLCs serve similar purposes as Protected Cell Companies and originated in Delaware, but are now available in other US states.[505] They are frequently used by hedge funds, venture capital funds and real estate investors.[506] Series LLCs are a cheap way for producing hundreds of companies within an umbrella company. Depending on the state law, each of those series/cells needs to prepare a separate annual account, but needs to file only one tax return.[507] The cost for setting up 100 companies therefore could be as low as 5700 US$.[508]

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[503] Van der Does de Willebois et al., *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, pp.42-43.

[504] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*, pp. 91–96.

[505] Delaware Inc. *Delaware Series LLC: Pros & Cons | Harvard Business Services, Inc.* URL: https://www.delawareinc.com/ourservices/series-limited-liability-company/ (visited on 06/04/2022); Cara Griffith. *Series LLCs: The Next Generation Of Passthrough Entities?* URL: https : / / www . forbes . com / sites / taxanalysts / 2015 / 02 / 16 / series - llcs - the - next - generation - of - passthrough - entities/ (visited on 06/04/2022); Feldman, *The Series LLC*.

[506] Griffith, *Series LLCs*.

[507] Jenn Murray. *Series LLC - Is It Right for Your Business?* URL: https : / / www . thebalancesmb . com / series-llc-is-it-right-for-your-business-398447 (visited on 07/04/2022).

[508] This assumes a cost of setting up the master LLC of 750 US$, plus 50 US$ per series/cell. (Gardi, Haught, Fischer & Bhosale LTD et al. *Does Your Business Need a Series LLC in Illinois?* Mar. 2014. URL: https://www.gardilaw.com/does-your-business-need-a-series-llc-in-illinois/ [visited on 06/04/2022]).

Protected Cell Companies originated in Guernsey in 1997 with the intention of providing a cost-saving mechanism for the reinsurance sector where many deals look much like one another, and where assets and liabilities need to be ring fenced to prevent inappropriate exposure to claims. Protected Cell Companies may however be used for other, illicit, purposes rather than that for which they were originally created. The proliferation of investment funds, including of hedge and private equity funds, appears to be supported by the availability of Protected Cell Companies,[509] thus exacerbating the risks stemming from the hypercomplex investment fund industry.[510] The level of asset protection and ambiguity of ownership and control that a Protected Cell Company provides might allow illicit financial flows to escape the attention of law enforcement authorities. We therefore question whether the potential benefits these structures might allow to the reinsurance sector justify the broader risks and costs they impose on society at large.

The structure of Protected Cell Companies has been compared to a house with a lock at the entrance and many rooms inside, each room locked separately with its own key, but also with an escape tunnel only accessible from inside the room. If an investigator seeks to find out what is going on in one room inside the house, she first needs to unlock the main outer door. But imagine that by opening that first door everybody inside the building is alerted to the fact that someone has entered the house. Anybody seeking to flee the investigator will be given enough time to do so thanks to the second lock at the individual room door. While the investigator tries to unlock the second door (by filing a costly and time-consuming information request), the occupant of that particular room has plenty of time to erase evidence and escape through the secret tunnel. This colourful metaphor neatly illustrates how a Protected Cell Company might work in practice.

It is uncertain how current mutual legal assistance agreements will apply to Protected Cell Companies, and if regulators and law enforcement agencies are able to obtain all necessary information across borders from these companies. There are vast possibilities for using Protected Cell Companies for misleading the public, financial institutions and their customer due diligence processes, investors, tax authorities, financial regulators and law enforcement agencies. They can easily be used by individuals to conceal their ownership of assets and their identities by hiding their full control and ownership over one cell within the "wrapper" behind the artificial shell in which these individuals only appear to be invested in a minority investment position.

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[509] Joe Truelove. *Protected Cell Companies for Fund and Non-Fund Structures*. 2015. URL: https://www.weareguernsey.com/news/2015/protected-cell-companies-for-fund-and-non-fund-structures/ (visited on 06/04/2022).

[510] Andres Knobel. *Beneficial Ownership in the Investment Industry. A Strategy to Roll Back Anonymous Capital*. 2019. URL: https://www.taxjustice.net/wp-content/uploads/2019/10/The-transparency-risks-of-investment-entities-working-paper-Tax-Justice-Network-Oct-2019.pdf (visited on 03/05/2022).

Component 4: Trusts with Flee Clause

Some trusts[511] contain a flee clause (or flight clause) in their trust deeds or agreements obliging the trustee to change the trust address, its governing law, or the trustee itself under certain circumstances. Flight is commonly triggered as soon as the trust becomes subject to, say, an investigation by a foreign authority, or a change of laws that could affect the trust, like a new tax. This clause is incredibly simple yet hard to detect. It only requires the trustee to state on a piece of paper that the trust is now governed by X jurisdiction's laws, or that the trustee is now Y person, and – voilà – the trust has relocated to a jurisdiction thousands of kilometres away, with no registration or external approval.[512]

Flee clauses allow trusts to remain under the radar. A settlor may choose the law of a supposedly "respectable" jurisdiction (like New Zealand) that would not tend to raise suspicion by any authority. Flee clauses typically relocate the trust so that it is governed under the laws of a debtor-protecting jurisdiction, such as the Cook Islands or Belize. This mechanism allows the settlor or beneficiary to remain one step ahead of law enforcement authorities or private investigators and therefore boosts secrecy to users of trusts.

Trust flee clauses are particularly obstructive of law enforcement. There are few situations in which flee clauses cannot be deployed for some kind of evasion of the consequences of illegal actions. The marketing and use of trusts as "asset protection" facilities including flee clauses often advertise the advantages in terms of "shielding" corporate assets from creditors, fleeing bankruptcy orders, spouses or inheritance provisions of the resident state of the settlor and/or beneficiary.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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[511] For a comprehensive introduction to trusts and their associated risks, please read: (Knobel, *Trusts: Weapons of Mass Injustice?*).

[512] An example of a flee clause reads as follows: "The assets will [...] be removed to a separate foreign jurisdiction which is deemed suitable for maintaining investments. At the same time, the individual domestic trustee would resign (subject to reinstatement by the foreign trustee) and, under the terms of the trust agreement, the foreign trustee would be unable to comply with any instructions as may be communicated by the grantor or trust protector (if given under duress)... in the event of a creditor's claim, the assets of the foreign trust will have become so undesirable to the creditor (in terms of the cost of pursuing an action in one or more foreign jurisdictions, with limited expectations for a favorable result), that the creditor will have the incentive to settle the matter for a much-reduced sum. When the threat of creditor claims has subsided, the design would revert to the original structure in order to again provide the client with direct access to the trust income and principal as a trust beneficiary"(William Tanzi. 'Favorable Restructuring of Administration of Foreign Situs Trust Investments' [2013]. URL: http://static1.1.sqspcdn.com/static/f/1397518/18536698/1364242367820/Foreign+Situs+Trust+Investments+RC+William+Tanzi.pdf?token=lVQ9JnRjDQvJ69q4Ex7FPmU4fOQ%3D [visited on 06/04/2022]). A similar scheme was described in (Lynn M. LoPucki. 'The Death of Liability' [May 2000]. URL: https://papers.ssrn.com/abstract=7589 [visited on 06/04/2022]).

Table 3.35. Assessment Logic: Secrecy Indicator 15 - Harmful Structures

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
488	Does the jurisdiction issue or accept circulation of large banknotes/cash bills of its own currency (of value greater than 200 EUR/GBP/USD)?	YN	If answer N: 0 points; otherwise 25 points
172	Are bearer shares available?	0: No, bearer shares are not available/not circulating; 1: No, bearer shares are always immobilised/registered by a public authority; 2: Yes, but status is unknown; 3: Yes, unregistered bearer shares are available/circulating or registered by a private custodian.	If answer 0 or 1: 0; otherwise 25
184	Companies - Available Types: Protected Cell Companies/Series LLCs?	YN	If answer N: 0; otherwise 25
224	Trusts - Are trusts with flee clauses prohibited?	YN	If answer Y: 0; otherwise 25

3.16 Secrecy Indicator 16: Public statistics

3.16.1 What is measured?

This indicator measures the degree to which a jurisdiction makes publicly available ten relevant statistical datasets about its international financial, trade, investment and tax position. Accordingly, we have split this indicator into ten equally weighted subcomponents. Public availability of data on each of these statistics (or equivalent data) in a timely fashion reduces the overall secrecy score on SI 16 by 10 points.

Note that in each case we identify the standard international data source; but this indicates only the level of disclosure expected, not the means. Jurisdictions will receive equal credit for making equivalent data available through alternative channels, provided it is equally readily available to the public.

Table 3.36. Secrecy Scoring Matrix: Secrecy Indicator 16

Component			Sub-Component / Source(s)	Secrecy Score Assessment [Sum; 100 = full secrecy; 0 = full transparency]
Stock or flow	**Sub-category**	**Sub-sub-category**		
Trade	Goods		(1) Bilateral trade in goods (UN Comtrade or equivalent, and/or more disaggregated version)	10
	Services		(2) Bilateral trade in services (in UNCTADstat, and/or more disaggregated version)	10
		Financial services	(3) Trade in financial services (component of IMF Balance of Payments Statistics)	10
		Merchanting or transit trade	(4) Bilateral Merchanting/Transit trade of services (national level)	10
Investment	Portfolio		(5) Portfolio Investment (IMF Coordinated Portfolio Investment Survey, CPIS)	10
	Direct		(6) Direct Investment (IMF Coordinated Direct Investment Survey, CDIS)	10
Bank assets	BIS locational		(7) Cross-border bank deposits (Bank for International Settlements Locational Banking Statistics, Table A2.1)	10

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Component		Sub-Component / Source(s)	Secrecy Score Assessment [Sum; 100 = full secrecy; 0 = full transparency]
	National Bilateral	(8) National bilateral country level breakdown of cross-border bank deposits (Bank for International Settlements Locational Banking Statistics, Table A6.2)	10
	AEoI aggregates (CRS)	(9) CRS Aggregates (data on information exchanged under the Common Reporting Standard (CRS) equivalent to that described on pages 8-12 in TJN's statistics template)	10
CBCR	OECD standard	(10) CBCR Aggregates (Aggregates of all domestically filed country by country reports (CBCR) filed by multinational companies under OECD BEPS Action 13, see Annex III of Chapter V, pages 29-30)	10

3.16.2 Why is this important?

The public statistics being assessed here provide, in total, a comprehensive overview of a jurisdiction's economic and financial engagement with the wider world. Crucially, bilateral disaggregation ensures that the data offers valuable insights broken down for every partner jurisdiction. In that way, the data can be considered the most basic quid pro quo for access to the benefits of economic and financial globalisation: a minimum level of transparency, to affirm that each jurisdiction is committed to acting properly and not taking advantage of its global neighbours.

Of the ten statistics, four relate to trade. First among these is the long-established international bilateral series on physical trade in goods (ID 426), by commodity, including price and quantity (typically through UN Comtrade). While falling short of transaction-level data, this variable allows tracking of major anomalies in import and export values and supports a clear understanding of global patterns of trade. Similar data for trade in services (ID 427) is available from UNCTADstat, albeit with more limited details.

Important complementary data for trade in goods is that on merchanting and transit trade (ID 428) – the provision of services in support of trade between jurisdictions (requiring bilateral breakdown for major partners covering at least the majority of trade), ensuring transparency both about ultimate destinations and about any profit-stripping or other price abnormalities at this stage. In addition, aggregate data specifically on the exports of financial services (ID 429)

provides insight into the respective importance of jurisdictions in the provision of financial services to non-residents (ie the key indicator for deriving the Global Scale Weight used in the compilation of the Financial Secrecy Index).

There are four further variables related to financial positions: bilateral statistics on portfolio investment stocks (ID 430) and direct investment stocks (ID 431), plus total (ID 432) and bilaterally disaggregated cross-border banking liabilities (ID 433). Together, these statistics provide a comprehensive overview of the positions of jurisdictions in relation to inward and outward investment and bank holdings.

The last two statistics relate to the degree of public information around two key measures of financial transparency. The first measure assesses whether jurisdictions provide aggregate information about the (bilateral) volumes of assets about which they cooperate in the automatic exchange of information under the Common Reporting Standard (CRS) of the OECD (ID 425). This aggregate information would not breach any privacy laws as no information would be published on individual accounts – aggregate numbers of this kind are already published by some countries' central banks and by the Bank for International Settlements.

The last measure assesses whether jurisdictions publish aggregate information from country-by-country reports of multinational companies (ID 434). The OECD has first published this data in July 2020, and released a second set of this data in July 2021.[513] While this data is subject to a number of important data limitations,[514] it represents an important new source of data on the global tax and economic activities of multinational enterprises. We give credit to all countries that are included in this dataset, even if the reported data is zero (there might be some countries, like Seychelles,[515] who might not host any large multinational corporations that would report into this dataset, however, we would still expect these jurisdictions to report zeros (which is valuable information) rather than not publishing anything (in which case there is no way of knowing whether there are no multinational corporations or whether the country has chosen not to publish the data at all).

The measures that form this SI identify the bare minimum transparency around the statistics that are currently purely private transparency mechanisms – so that the public and researchers can have both an overall perspective on progress, and the means to hold individual jurisdictions and/or tax authorities to account for their performance.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

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[513] OECD. *Corporate Tax Statistics Database*. URL: https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-database.htm (visited on 05/03/2022).

[514] Javier Garcia-Bernardo et al. 'Multinational Corporations and Tax Havens: Evidence from Country-by-Country Reporting'. *International Tax and Public Finance* (2021). URL: https://doi.org/10.1007/s10797-020-09639-w (visited on 08/05/2022).

[515] Tax Justice Network, *TJN Survey*.

Table 3.37. Assessment Logic: Secrecy Indicator 16 - Public Statistics

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
426	**Trading goods**: Is data on bilateral trade in goods (equivalent to UN Comtrade, and/or more disaggregated version) published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10
427	**Trading services**: Is data on bilateral trade in services (equivalent to UNCTADstat, and/or more disaggregated version) published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10
428	**Trading financial services**: Is data on trade in financial services (equivalent to IMF's balance of payment statistics, and/or more disaggregated) published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10
429	**Offshore trade**: Is bilateral data on transit/merchanting trade (similar to Hong Kong's offshore trade in goods) published in a timely fashion online for free?	YN	If answer Y: 0; otherwise 10
430	**IMF CPIS**: Does the jurisdiction participate in the Coordinated Portfolio Investment Survey (CPIS) of the IMF and is the data published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10
431	**IMF CDIS**: Does the jurisdiction participate in the Coordinated Direct Investment Survey (CDIS) of the IMF and is the data published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
432	**BIS Locational**: Does the jurisdiction participate in the locational banking statistics of the Bank for International Settlements (BIS), and is the data published in a timely fashion online for free through the relevant international organisation?	YN	If answer Y: 0; otherwise 10
433	**National Bilateral BIS**: Is data on national bilateral banking liabilities published with country level breakdowns of the countries of origin (equivalent to Bank for International Settlements (BIS) locational banking statistics, tabla A6.2)?	YN	If answer Y: 0; otherwise 10
434	**CBCR Aggregates**: Are global country-by-country reporting aggregates pursuant to OECD BEPS Action 13 (Annex III of Chapter V, pages 29-30) of all multinational corporate groups with domestic headquarters, published in a timely fashion online for free?	YN	If answer Y: 0; otherwise 10
425	**CRS Aggregates**: Are aggregates of the data reported under CRS published in a timely fashion (without identifying any specific person or account) online for free?	0: No; 1: Yes, but without country level breakdown; 2: Yes, broken down by country of origin.	If answer is >0, 0; otherwise 10

3.17 Secrecy Indicator 17: Anti-Money Laundering

3.17.1 What is measured?

This indicator examines the extent to which the anti-money laundering regime of a jurisdiction is failing to meet the recommendations of the Financial Action Task Force (FATF), the international body dedicated to counter money laundering.

Since 2003, the FATF has issued recommendations concerning the laws, institutional structures, and policies deemed necessary to counter money laundering and terrorist financing. Since then the extent to which jurisdictions comply with these recommendations has been assessed through peer review studies on five to ten year cycles. The studies are conducted by either the FATF, or similar regional bodies, or the IMF. The resulting comprehensive mutual evaluation reports are mostly published online.[516] The FATF also publishes follow up reports, which is a result of the monitoring of the recommendations set in the mutual evaluation reports.

The published assessments include tables with the level of compliance with each of the recommendations, on a four-tiered scale. For the Financial Secrecy Index, we calculate the overall non-compliance score with all recommendations, using a linear scale giving each recommendation equal weight. The secrecy scoring matrix is shown in Table 3.38 and full details of the assessment logic can be found in Table 3.39.

In 2003, the FATF adopted its 49 recommendations[517] and corresponding mutual evaluation reports have been published for all jurisdictions we assess in the Financial Secrecy Index. For many jurisdictions (47 out of the 141 jurisdictions assessed by the Financial Secrecy Index), this is the most recent type of report available for use in the index.

In 2012, the FATF reviewed and updated its 49 recommendations (hereinafter: the "old recommendations") and consolidated them to a total of 40 recommendations (hereinafter: the "new recommendations"). The new methodology (published in 2013, and updated in 2017)[518] for assessing compliance with the FATF 40 recommendations also included guidelines for assessment of the effectiveness of the entire anti-money laundering system of a given jurisdiction. Eleven indicators, so called "Immediate Outcomes", have been devised for measuring effectiveness.

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[516] Financial Action Task Force (FATF). *Mutual Evaluations*. 2022. URL: https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate) (visited on 04/05/2022).

[517] The (old) 2003 recommendations can be downloaded at (Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*). The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and are referred to jointly as the FATF Recommendations. For the methodology on assessing compliance with the FATF Recommendations see (Financial Action Task Force (FATF). *Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special Recommendations*. Feb. 2004. URL: https://www.fatf-gafi.org/media/fatf/documents/reports/methodology.pdf [visited on 10/04/2022]).

[518] Financial Action Task Force (FATF). *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*. 2017. URL: www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf (visited on 12/04/2022).

Table 3.38. Secrecy Scoring Matrix: Secrecy Indicator 17

Type of most recent full mutual evaluation report	Categories of indicators (number of Indicators)	Maximum total number of indicators	Secrecy Score Assessment (Transformation of FATF assessments) [100 points = fully secretive]
FATF 2012, New Methodology 2013/2017	FATF Recommendations (40), Immediate Outcomes (11)	51	**1.** Coding of FATF ratings (x) as follows: 0=compliant; 1=largely compliant; 2=partially-compliant; 3=non-compliant; analogously for levels of effectiveness in immediate outcomes (high, significant, moderate, low). **2.** Average overall non-compliance score of all FATF-recommendations and immediate outcomes in percentage, each given an equal weight (100 points = all indicators rated non-compliant or low level of effectiveness; 0 points = all indicators rated compliant or highly effective).
FATF 2003, Old Methodology 2004	FATF recommendations (40), Special Recommendations (9)	49	

The compliance assessment process based on the new recommendations and immediate outcomes began in 2013. As of 1 February 2022, 94 out of the 141 Financial Secrecy Index jurisdictions were assessed on this basis.[519] For those jurisdictions, we have adjusted our calculation of this indicator's secrecy score to include the 11 immediate outcome assessments alongside the 40 new recommendations.

FATF's assessment methodology for both old and new recommendations rates compliance with every recommendation on a four-tiered scale, from "compliant" to "largely compliant" to "partially compliant" to "non-compliant". Analogously, the assessment of the immediate outcomes ranges from "high-level of effectiveness" to "substantial level of effectiveness" to "moderate level of effectiveness" to "low level of effectiveness".

For this indicator, we have calculated the overall non-compliance score using a linear scale giving each old recommendation, new recommendation and immediate outcome equal weight. A 100 points secrecy score rating indicates that all recommendations have been rated as "non-compliant" or "low level of effectiveness", whereas a zero rating indicates that the jurisdiction is entirely compliant/highly effective.

The FATF periodically monitors jurisdictions' compliance to the recommendations set in the mutual evaluation reports. The results of the monitoring process are published in follow-up reports, which may inform of changes in jurisdictions' ratings. For jurisdictions assessed according to the new methodology, we have used the most recent rating published on the FATF's consolidated table of assessment ratings,[520] be it a mutual evaluation report or a follow-up report. However, for jurisdictions assessed according to the old methodology, we considered only the ratings of the mutual evaluation reports published before 1st February 2022 and we did not take into account any updated ratings that may

[519] Financial Action Task Force, *FATF Consolidated Table of Assessment Ratings*.
[520] Financial Action Task Force, *FATF Consolidated Table of Assessment Ratings*.

have appeared in the follow up reports. There are two main reasons for this. **First**, the follow-up reports for these jurisdictions are not fully consistent in their assessment ratings across the various regional bodies of the FATF; in some cases they only contain suggestions for updated ratings and the wording in these instances often leaves room for interpretation.[521] Moreover, there are cases in which the follow up reports only provide qualitative reviews of the progress made in relation to certain recommendations, but they do not contain updated ratings for specific recommendations.[522] **Second**, for these jurisdictions, the ratings of the follow-up reports are not available in a consolidated form as in the case of the new methodology ratings[523] and due to time and capacity constraints, we could not collect this data manually for every relevant jurisdiction.

3.17.2 Why is this important?

Many of FATF's anti-money laundering recommendations touch upon minimal financial transparency safeguards within the legal and institutional fabric of a jurisdiction. Through low compliance ratios with anti-money laundering recommendations, a jurisdiction knowingly invites domestic money launderers and criminals from around the world to deposit and launder the proceeds of crime (eg. drug trafficking, tax evasion) through their own financial system.

For instance, recommendation ten (equivalent to old recommendation five, with minor changes) sets out minimal standards for identifying customers of financial institutions such as banks and foreign exchange dealers. If this recommendation is rated "partially compliant", as is the case with Switzerland, the resulting secrecy around bank customers increases the risk of money laundering.

In 2015, Swiss Leaks[524] revealed that HSBC private bank provided services to clients engaged in a spectrum of illegal behaviours. These client relationships were facilitated by various acts of negligence revealed, both before and after the leaks, in two mutual evaluation reports of Switzerland, published in 2005 and 2016. In 2005, the country was rated "partially compliant" on the old recommendation five which relates to customer due diligence. The FATF report specified a long list of deficiencies in customer due diligence procedures, including:

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[521] For example, in the 2015 follow-up report of Belize, with regards to Recommendation 1, the report states that "While the implementation deficiency is still outstanding, measures have been put in place to address it. The level of compliance is comparable to an LC"(Caribbean Financial Action Task Force (FATF). *Anti-Money Laundering and Counter-Terrorist Financing Measures, Belize, 8th Enhanced Follow-up Report & Technical Compliance Re-Rating*. 2015. URL: https://www.cfatf-gafic.org/member-countries/belize [visited on 11/05/2022], p.8). Therefore, it remains unclear if this is an actual re-rating or a preliminary suggestion.

[522] Middle East and North Africa Financial Action Task Force. *7th Follow-Up Report for Algeria Anti-Money Laundering and Combating the Financing of Terrorism*. 2016. URL: https://www.menafatf.org/sites/default/files/Algeria_Exit_FUR_EN.pdf (visited on 10/05/2022); Intergovernmental Action Group Against Money Laundering in West Africa. *8th Mutual Evaluation Follow-Up Report , The Gambia*. 2014. URL: https://www.giaba.org/media/f/847_8th%20FUR%20The%20Gambia%20-%20English.pdf (visited on 10/05/2022).

[523] Financial Action Task Force, *FATF Consolidated Table of Assessment Ratings*.

[524] ICIJ. *Swiss Leaks: Murky Cash Sheltered by Bank Secrecy*. 2018. URL: https://www.icij.org/investigations/swiss-leaks/ (visited on 03/05/2022).

> There is no general obligation on financial intermediaries to identify the purpose and envisaged nature of the business relationship desired by the customer.[525]

Given that banks had been assessed as not being obliged to enquire about the purpose and nature of a new client requesting for financial services, they could ignore important details of a new customers' background, thus enabling the management of accounts with money of illicit origin.

In the latest mutual evaluation of Switzerland in 2016, that same recommendation (now recommendation 10) on customer due diligence was still rated only as "partially compliant". One among many deficiencies identified by the FATF mentions that:

> There is no general and systematic obligation to take reasonable measures to verify the identity of the beneficial owners of customers.[526]

In 2020, the FATF follow-up report identified that some of these gaps had been addressed. However, given that the revision of the law on anti-money laundering was still in progress, Switzerland remained as "partially compliant" on recommendation ten.[527]

In the United States, for example, the rating for recommendation 10 has improved with the 2020 follow up report, shifting from "partially compliant" to "largely compliant". This was a result of new CDD (customer due diligence) requirements for financial institutions, including the ongoing monitoring of customer relationships to identify and report suspicious transactions.[528] However, some gaps remain, such as "the lack of explicit BO [Beneficial Ownership] requirements, mainly in relation to other trust relevant parties for legal arrangements".[529] The Unites States 2020 assessment points to other shortcomings, such as the lack of transparency on beneficial ownership of legal persons and legal arrangements, assessed under recommendations 24 and 25. The FATF concludes that the measures to ensure adequate, accurate and updated information on beneficial ownership are unsatisfactory and do not ensure that information is obtained in a timely manner.[530]

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[525] FATF-GAFI. *Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism. Switzerland*. 2005. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/mer/mer%20switzerland%20resume%20english.pdf (visited on 10/05/2022).

[526] Financial Action Task Force. *Anti-Money Laundering and Counter-Terrorist Financing Measures, Switzerland, Fourth Round Mutual Evaluation Report*. Paris, Dec. 2016. URL: http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf (visited on 03/05/2022).

[527] Financial Action Task Force (FATF). *Anti-Money Laundering and Counter-Terrorist Financing Measures, Switzerland 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating*. 2020. URL: https://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Switzerland-2020.pdf (visited on 20/04/2022).

[528] FATF-GAFI. *United States' Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing*. 2020. URL: https://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-united-states-2020.html (visited on 03/05/2022).

[529] FATF-GAFI, *United States' Progress in Strengthening Measures to Tackle Money Laundering and Terrorist Financing*, p.3, square brackets added.

[530] FATF. *Anti-Money Laundering and Counter-Terrorist Financing Measures. United States Mutual Evaluation Report*. FATF, 2016. URL: http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf (visited on 03/05/2022).

In our view, a swift and thorough implementation of all FATF recommendations by all jurisdictions is crucial to global financial transparency, in order to prevent the undermining of democracies by organised and financial crime, and to curb tax evasion and illicit financial flows.

While there has been some debate about the merits and costs of the FATF recommendations and the peer review mechanism, the quality of the most recent (4th) round of evaluation reports has increased significantly. In response to criticisms of past evaluation methodologies, including for applying what some described as a mechanistic approach of measuring compliance by checking boxes,[531] the FATF has developed ways for measuring a jurisdiction's overall effectiveness in achieving ultimate goals. The FATF uses eleven so-called "immediate outcome indicators" for that purpose.

Even though the immediate outcome indicators rely more heavily on subjective criteria than the technical compliance assessments, there is a clear assessment methodology that provides coherent and detailed guidance. Furthermore, the indicators are all backed up by a detailed narrative. Therefore, for those jurisdictions that have already undergone the 4th round of FATF evaluation report, these indicators have been included in SI 17 alongside the 40 FATF technical recommendations.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.39. Assessment Logic: Secrecy Indicator 17 - Anti-Money Laundering

ID	ID description	Valuation Secrecy Score
335	FATF Performance: Overall Non-Compliance Score of FATF-standards in Percentage (100 points = all indicators rated non-compliant/low level of effectiveness; 0 points = all indicators rated compliant or highly effective).	1. Coding of ratings (x) as follows: 0: compliant; 1: largely compliant; 2: partially-compliant; 3: non-compliant; analogously for levels of effectiveness in immediate outcomes (high, significant, moderate, low). 2. Define actual number of indicators: i (up to 49 or 51) 3. Define maximum secrecy: i*3 4. Define minimum secrecy: i*0 5. Calculate yi = [(x)1+(x)2+...(x)i] 6. Overall Non-Compliance Percentage: [yi]*100/(i*3)

[531] Michael Levi et al. 'Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism' (2014). URL: http://orca.cf.ac.uk/88168/1/Report_Global%20Surveillance%20of%20Dirty%20Money%201.30.2014.pdf (visited on 03/05/2022).

3.18 Secrecy Indicator 18: Automatic information exchange

3.18.1 What is being measured?

This indicator assesses (1) whether jurisdictions have signed the Multilateral Competent Authority Agreement (MCAA)[532] which provides the multilateral legal framework to engage in automatic exchange of information (AEOI) pursuant to the OECD's Common Reporting Standard (CRS),[533] (2) with how many other jurisdictions information exchange takes place under the MCAA, (3) to what extent hurdles are placed in the way of effective information exchange under the MCAA, (4) to what extent it is improving the transparency and use of AEOI data, and (5) whether a jurisdiction engages in a pilot project between a developed and a developing country.

As of November 2021, 107 jurisdictions have signed the MCAA,[534] although not every signatory exchanges data with every other signatory.

The full score for this indicator consists of various components, which are aggregated by simple addition, as shown in Tables 3.40 and 3.41. After adding and subtracting all secrecy scores, negative values will be considered a zero secrecy score and values above 100 points will be considered 100 secrecy score.

Table 3.40. Secrecy Scoring Matrix (Part A): Secrecy Indicator 18 - All jurisdictions

Criteria	Secrecy Score	Source
Whether the jurisdiction has signed the MCAA	50 points if yes 100 points if no	OECD's list of MCAA signatories
Whether it will start exchanging information pursuant to the MCAA in or before 2021, or in or after 2022	+0 points if 2021 +25 points if 2022	OECD's list of MCAA signatories
Pilot projects: Whether it showed interest in a pilot project between a developed and a developing country (as long as the pilot project is still ongoing and the assisted developing country hasn't started to engage in AEOI)	-50 points (reduction) if yes	2020 OECD Tax Transparency and Exchange of Information in Times of COVID-19 Report, and the 2021 Global Forum Capacity Building report

[532] OECD, *Multilateral Competent Authority Agreement On Automatic Exchange Of Financial Account Information*.

[533] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.*

[534] OECD, *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date - Status as of November 2021*.

Table 3.41. Secrecy Scoring Matrix (Part B): Secrecy Indicator 18 - Jurisdictions that have signed the MCAA

Criteria	Secrecy Score	Source
The number of "meaningful" activated AEOI relationships (under the MCAA) published by the OECD	-50 points (reduction) if the jurisdiction has "meaningful" activated AEOI relationships with the highest available number of "meaningful" relationships as of November 2021). Less reduction pro-rata according to the actual number of "meaningful" activated AEOI relationships.	OECD's list of activated AEOI relationships
Obstacles		
Whether it refused to engage in AEOI with any co-signatory of the MCAA even though the latter complies with domestic law and confidentiality provisions to engage in AEOI	+10 points if yes	FSI Survey and/or declaration by a country's authority
Whether it chose "voluntary secrecy" (to be listed under the MCAA's Annex A to prevent receiving information, or is otherwise not compliant with basic confidentiality requirements to receive information)	+10 points if yes	OECD's list of activated AEOI relationships
Whether it imposed additional conditions to engage in AEOI (beyond those required by the MCAA) such as amnesty programs, market access, etc.	+10 points if yes	Declaration by a country's authorities
Whether the country complies with the domestic requirements for automatic exchange of information pursuant to the Common Reporting Standard (Core 1 of Global Forum AEOI peer review)	+10 points if no + 5 points if yes, but needs improvements	Global Forum Peer Review report on Automatic Exchange of Information
Whether the country complies with the international requirements for automatic exchange of information pursuant to the Common Reporting Standard (Core 2 of Global Forum AEOI peer review)	+10 points if no + 5 points if yes, but needs improvements	Global Forum Peer Review report on Automatic Exchange of Information
Improvements		
Whether entities issuing, trading or exchanging bitcoins and other cryptocurrencies are covered by AEOI	-10 points if yes	FSI Survey or declaration by a country's authorities

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Criteria	Secrecy Score	Source
Whether the jurisdiction signed the Punta del Este Declaration or is otherwise allowing AEOI information to be used beyond tax purposes to tackle corruption or money laundering.	-10 points if yes	Signatories of the Punta del Este Declaration, FSI Survey or declaration by a country's authorities
Whether the jurisdiction is applying the wider-wider approach (requiring information on all non-residents to be collected and reported to local authorities)	-10 points if yes	FSI Survey or declaration by a country's authorities
Whether the jurisdiction is implementing the OECD Model Mandatory Disclosure Rules on schemes to circumvent the CRS or hide the beneficial owner	-10 points if yes	Local laws, or declaration by a country's authorities

This indicator considers all available measurable data surrounding the Common Reporting Standard that either promotes transparency with all other countries, or affects it. In principle, the secrecy score is reduced more the earlier AEOI takes place, the more countries a jurisdiction chooses to engage in AEOI with, and the more improvements it undertakes. By the same token, the later AEOI takes place and the more obstacles are imposed to prevent AEOI among all countries, the higher the secrecy score will be.

Since the Global Forum has undertaken an initial assessment[535] of jurisdiction's compliance with domestic law and confidentiality provisions to implement the CRS, there should be no reason why a country refuses to engage in AEOI with another one considered "compliant" by the Global Forum. Therefore, all countries should opt to exchange information with all other cosignatories of the MCAA under Annex E.

Number of "meaningful" activated relationships

Unfortunately, the OECD keeps Annex E (with the list of countries chosen by each jurisdiction) confidential. The OECD only publishes the number of countries that a jurisdiction (i) sends information to, and (ii) receives information from (because they both chose each other).[536] This means that if country A chose country B, but country B didn't choose country A back, the OECD portal will show no relationship

[535] Global Forum on Transparency and Exchange of Information for Tax Purposes. *Tax Transparency 2016. Report on Progress*. 2016. URL: www.oecd.org/tax/transparency/GF-annual-report-2016.pdf (visited on 01/04/2022).

[536] OECD. *Activated Exchange Relationships for CRS Information*. URL: https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/ (visited on 01/04/2022).

between countries A and B, and it will not be possible to know who is to blame for that.

Given that AEOI has to be reciprocal under the OECD's system (which prevents many developing countries from joining, because they cannot send information), the number of countries that a jurisdiction sends information to and receives information from, should in principle be the same. However, this is not the case because the MCAA allows countries to choose "voluntary secrecy" by being listed under Annex A. These countries choose to send but not to receive information. The presence of countries choosing voluntary secrecy (or who fail to comply with confidentiality provisions) means that all countries receive information from more countries than the number of countries that they send information to. For example, a reciprocal country (one not choosing voluntary secrecy) will receive information from (i) other reciprocal countries and (ii) voluntary secrecy countries. On the other hand, the same reciprocal country will only send information to (i) other reciprocal countries. This indicator considers the highest number, and thus for reciprocal countries, the indicator considers the number of countries a jurisdiction is receiving information from (the number of countries that send information to that jurisdiction).

However, the number of countries sending information to a voluntary secrecy jurisdiction is zero (they choose not to receive any information). For this reason, the indicator considers the other figure for voluntary secrecy countries: to how many countries a voluntary secrecy jurisdiction is sending information to. As explained above, this number excludes relationships with other voluntary secrecy countries, simply because they also refuse to receive information.

Consequently, even if two voluntary secrecy countries chose each other under Annex E, the OECD portal will not show such a relationship. Nevertheless, this is useful because it means the OECD is only showing "meaningful" relationships, understood as relationships in which information actually flows, at least unidirectionally. Otherwise, "theoretical" relationships would be considered between two voluntary secrecy countries, where no exchanges take place.

Hurdles

If a country decides to impose additional conditions to engage in AEOI, it is restricting AEOI beyond the CRS' own conditions (compliance with domestic laws and confidentiality). It also encourages other countries to impose their own arbitrary conditions. Examples of these conditions are requirements that either have nothing to do with AEOI (eg. market access for a country's financial industry) or that protect the interests of tax evaders (eg. requiring amnesty programs, even if called in a different way, such as "regularisation" programmes). The same applies if a country refuses to engage with another cosignatory of the MCAA for arbitrary reasons.

Moreover, countries are given a higher secrecy score when they opt for "voluntary secrecy". Annex A makes little sense because no country is forced to do anything with the received information, they are allowed to discard it or not use it.

However, by refusing to obtain information, countries are sending a signal to potential criminals and tax dodgers that they will guarantee secrecy. This is problematic because any resident of an Annex A jurisdiction will become a non-reportable person, so their information will not even be collected by financial institutions. This may be abused, especially if these jurisdictions provide lenient residency and citizenship rules (passports or residency certificates for sale) in exchange for money, allowing persons to pretend to be resident in those countries, while still living and working in their real countries of residence (see SI 12 on Consistent Personal Income Tax for more details[537]). While in 2019 the Global Forum published a list of jurisdictions choosing voluntary secrecy,[538] this indicator still considers discrepancies between the number of activated AEOI relationships about the number of jurisdictions (i) from which a country receives AEOI information and (ii) to which it sends information. This way, this indicator covers cases of voluntary secrecy as well as lack of compliance with confidentiality or other unexplained reasons for which a jurisdiction sends information to others, but receives nothing in return (or not from as many countries).

In addition, since 2020, the Global Forum began publishing the Peer Reviews of the Automatic Exchange of Financial Account Information, which is currently on its second edition.[539] These reports provide information on whether the assessed countries have a domestic and international legal framework that allows them to automatically exchange information for CRS purposes. In this edition, we are including such evaluations in this indicator. Countries which have not been assessed by such reports, however, are not penalised by our assessment.

Improvements

On the other hand, since 2020 we are also considering improvements to AEOI that tackle loopholes. Firstly, we consider whether bitcoins and other cryptocurrencies are covered by AEOI, especially if any firm issuing, trading or exchanging cryptocurrencies is considered a reporting financial institution and required to report information. Although the OECD opened a consultation in April of 2022 on amendments to the Common Reporting Standard and on a special framework for cryptoassets (the cryptoasset reporting framework or CARF),[540] the CRS currently allows each jurisdiction to decide whether cryptocurrency firms are covered by the Common Reporting Standard or not. If bitcoins and other cryptoassets are not considered within the scope of the CRS, anyone trying to circumvent the CRS could easily hold and transfer bitcoins instead of using a

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[537] Tax Justice Network. *Secrecy Indicator 12: Consistent Personal Income Tax*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-12.pdf.

[538] OECD. *The 2019 AEOI Implementation Report*. Global Forum, 2019. URL: https://www.oecd.org/tax/transparency/aeoi-implementation-report-2019.pdf (visited on 02/04/2022), p.3, Footnote 2.

[539] OECD. *Peer Review of the Automatic Exchange of Financial Account Information 2021*. Text. OECD Publishing, 2021. URL: https://www.oecd-ilibrary.org/taxation/peer-review-of-the-automatic-exchange-of-financial-account-information-2021_90bac5f5-en (visited on 06/05/2022).

[540] OECD. *OECD Seeks Input on New Tax Transparency Framework for Crypto-Assets and Amendments to the Common Reporting Standard - OECD*. URL: https://www.oecd.org/ctp/exchange-of-tax-information/oecd-seeks-input-on-new-tax-transparency-framework-for-crypto-assets-and-amendments-to-the-common-reporting-standard.htm (visited on 04/04/2022).

financial account with a commercial bank. While many types of assets aren't covered by the CRS (eg. real estate, gold and other hard assets), bitcoins and similar cryptoassets allow much more mobility than hard assets and thus expose them to higher risks for abuse for cross-border illicit purposes.

A second identified loophole refers to the speciality constraint, limiting the use of AEOI information to tax purposes only.[541] While foreign bank account data may be relevant to detect tax evasion, it may also be related to corruption or money laundering, for example if the person holding the foreign bank account cannot explain the origin of the funds, regardless of any taxes owed. Therefore, financial account information obtained via AEOI should be used and shared among authorities to tackle all illicit financial flows, not only tax related ones. The OECD, through the MCAA and the Multilateral Tax Convention, restricts the use of received information to tax purposes, unless the recipient jurisdiction allows information to be used beyond tax, and the sending jurisdiction allows this extra use.[542] To address this, Latin American countries signed the Punta del Este Declaration, calling on more cooperation to use AEOI information to tackle corruption and money laundering. While the Punta del Este Declaration isn't binding, it shows an intention to create synergies and cooperation to tackle more than tax issues. Therefore, countries signatories to the Punta del Este Declaration or whose laws allow AEOI information to be used to tackle crimes beyond tax matters reduce their secrecy score in this component for showing leadership towards a comprehensive use of AEOI information[543].

A third improvement relates to the OECD Model Disclosure Rules on CRS Avoidance Arrangements and Opaque Offshore Structures that could be used to either circumvent the CRS or to hide the beneficial owner. While the OECD published these rules, they aren't mandatory, but it is up to each country to implement them.[544] In addition, sanctions included in the model rules are hard to enforce and the sanctions may not be enough to incentivise disclosure.[545] Nevertheless, any country adopting these rules or similar ones reduces its secrecy score in this indicator for showing leadership to ensure enforcement of the CRS and sanctioning of circumvention strategies. The EU amendment to the Directive

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[541] Andres Knobel and Markus Meinzer. *"The End of Bank Secrecy"? Bridging the Gap to Effective Automatic Information Exchange - An Evaluation of OECD's Common Reporting Standard (CRS) and Its Alternatives*. Tax Justice Network, Nov. 2014. URL: http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf (visited on 04/05/2022), See #34.

[542] Andres Knobel. *The Use of Banking Information to Tackle Corruption and Money Laundering: A Low-Hanging Fruit the OECD Refuses to Harvest*. Apr. 2019. URL: https://www.taxjustice.net/2019/04/30/the-use-of-banking-information-to-tackle-corruption-and-money-laundering-a-low-hanging-fruit-the-oecd-refuses-to-harvest/ (visited on 02/04/2022).

[543] It is important to stress, however, that the practical effect of a country unilaterally including a provision to allow uses beyond tax purposes on its domestic legislation is not the same as the Punta Del Leste declaration, as it is not necessarily envisioned to be reciprocal. We are, nonetheless, still rewarding the countries which allow non-tax uses under their domestic legislation.

[544] OECD. *Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures*. Sept. 2018. URL: http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf (visited on 01/04/2022).

[545] Andres Knobel. *OECD Rules vs CRS Avoidance Strategies: Not Bad, but Short of Teeth and Too Dependent on Good Faith*. Mar. 2018. URL: https://www.taxjustice.net/2018/03/27/oecd-rules-vs-crs-avoidance-strategies-not-bad-but-short-of-teeth-and-too-dependent-on-good-faith/ (visited on 04/05/2022).

on Administrative Cooperation (known as DAC 6[546]) includes these rules under Category D, and therefore EU countries, required to transpose these rules into domestic legislation by July 2020, are considered to have this improvement.

A last improvement involves the wider-wider approach. In principle, the CRS requires financial institutions to collect and report information on account holders who are resident in a participating jurisdiction and whose account information will be sent to the corresponding authority. The OECD AEOI portal lists jurisdictions which apply the wider approach, where financial institutions collect information on all non-residents (regardless if resident in a participating jurisdiction or not).[547] Financial institutions favour this to save time and other costs, so that due diligence to identify the residence of each account holder is determined once for all account holders (instead of running the due diligence again every time a new jurisdiction joins the CRS). However, the wider approach does not improve the transparency of a country's financial system because information stays with the financial institutions. An improved version is the wider-wider approach where information on all non-residents is also sent to the local authorities (although these local authorities will only be able to exchange information with participating jurisdictions). The importance of the wider-wider approach is that if local authorities already hold information on all non-residents, although unable to exchange that information, they would still be able to publish statistics on the total accounts and values held by residents of each country. This would enable authorities from developing countries unable to join the CRS as well as journalists, academics and civil society organisations to monitor and obtain basic data about foreign bank accounts. We have explained previously the potential uses of CRS statistics.[548] The OECD doesn't publish information about jurisdictions implementing the wider-wider approach, so local laws or TJN-Surveys were used to obtain this data.

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[546] Council of the European Union. *Council Directive (EU) 2018/822 of 25 May 2018 Amending Directive 2011/16/EU as Regards Mandatory Automatic Exchange of Information in the Field of Taxation in Relation to Reportable Cross-Border Arrangements*. May 2018. URL: http://data.europa.eu/eli/dir/2018/822/oj/eng (visited on 01/04/2022).

[547] OECD. *CRS by Jurisdiction - Organisation for Economic Co-operation and Development*. URL: https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/ (visited on 01/04/2022).

[548] Andres Knobel and Markus Meinzer. *Delivering a Level Playing Field for Offshore Bank Accounts. What the New OECD/Global Forum Peer Reviews on Automatic Information Exchange Must Not Miss*. Mar. 2017. URL: www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf (visited on 07/05/2022); Andres Knobel. *How to Assess the Effectiveness of Automatic Exchange of Banking Information?* Dec. 2018. URL: https://www.taxjustice.net/2018/12/20/how-to-assess-the-effectiveness-of-automatic-exchange-of-banking-information/ (visited on 03/05/2022); Andres Knobel. *Statistics on Automatic Exchange of Banking Information and the Right to Hold Authorities (and Banks) to Account*. 2019. URL: https://www.taxjustice.net/2019/06/21/statistics-on-automatic-exchange-of-banking-information-and-the-right-to-hold-authorities-and-banks-to-account/ (visited on 07/05/2022); Andres Knobel. *Isle of Man Banking Data Leak Reveals How Sharing Data Can Identify Offshore Strategies and Improve Beneficial Ownership*. Sept. 2021. URL: https://taxjustice.net/2021/09/29/isle-of-man-banking-data-leak-reveals-how-sharing-banking-data-can-identify-offshore-strategies-and-improve-beneficial-ownership-transparency/ (visited on 04/04/2022); Andres Knobel. *Penguins Hold Millions in Australian Banks: Revealing Trends from Australian and German Banking Statistics*. Dec. 2021. URL: https://taxjustice.net/2021/12/14/penguins-hold-millions-in-australian-banks-revealing-trends-from-australian-and-german-banking-statistics/ (visited on 30/03/2022).

Developing countries unable to join the CRS

We are aware that many developing countries lack capacity to implement AEOI and hence have not yet signed the MCAA nor committed to exchange information either in 2021 or 2022. Therefore, we still provide a 50 points reduction in the secrecy score for developing countries that have declared their interest in joining the Global Forum's Pilot Program, which consists of partnering with a developed country to start exchanging some kind of information and prepare for AEOI. This pilot programme is part of the Global Forum's roadmap for developing countries' participation in AEOI.[549] At the same time, developed countries that joined a pilot project to partner with a developing country also obtain a reduction of 50 points in the secrecy score. This pilot project assessment however, is only considered as long as the pilot is ongoing and the developing country hasn't signed the MCAA to engage in AEOI.

The data sources used for collating SI 18 are: (i) the OECD's list of jurisdictions which signed the MCAA,[550] (ii) the OECD list of activated AEOI relationships, (iii) the TJN-Survey 2021[551] and previous editions, (iv) relevant laws or declarations by countries' authorities (if any), and (v) the 2020 OECD Tax Transparency and Exchange of Information in Times of COVID-19 Report,[552] and the 2021 Global Forum Capacity Building report[553] which provide the most up-to-date list of pilot programmes (vi) the Peer Review of the Automatic Exchange of Financial Account Information 2021.[554]

Please note that as for the hurdles to information exchange (IDs 372, 377, 641 and 642) we deviate from the "unknown is secrecy" principle because previous research only revealed one country imposing such additional conditions.[555]

Disregard of FATCA agreements

While the CRS has its origins in the United States' Foreign Account Tax Compliance Act (FATCA) and its Inter-Government Agreements (IGAs) to receive, and in some cases exchange, information, SI 18 does not consider participation in

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[549] Global Forum on Transparency and Exchange of Information for Tax Purposes. *Automatic Exchange of Information: A Roadmap for Developing Country Participation*. Aug. 2014. URL: http://www.oecd.org/ctp/exchange-of-tax-information/global-forum-AEOI-roadmap-for-developing-countries.pdf (visited on 03/05/2022).

[550] OECD, *Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date - Status as of November 2021*.

[551] Tax Justice Network, *TJN Survey*.

[552] OECD. *Tax Transparency and Exchange of Information in Times of COVID-19*. Paris: OECD Publishing, 2020. URL: http://www.oecd.org/tax/transparency/documents/global-forum-annual-report-2020.pdf (visited on 05/04/2022).

[553] OECD. *2021 Global Forum Capacity Building Report - OECD*. Paris: OECD Publishing. URL: https://www.oecd.org/tax/transparency/documents/capacity-building-report-2021.htm (visited on 04/04/2022).

[554] OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2021*.

[555] Andres Knobel. *Findings of the 2nd TJN Survey on Automatic Exchange of Information (AEOI). Sanctions against Financial Centres, AEOI Statistics and the Use of Information beyond Tax Purposes*. 2017. URL: https://financialtransparency.org/wp-content/uploads/2017/01/Knobel2017_AEOI-Survey-Report.pdf (visited on 01/05/2022); Andres Knobel and Markus Meinzer. *Automatic Exchange of Information: An Opportunity for Developing Countries to Tackle Tax Evasion and Corruption*. Tax Justice Network, June 2014. URL: http://www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf (visited on 04/05/2022).

FATCA for two reasons. First, FATCA does not entail multilateral AEOI but only agreements between the US and other countries, though the latter cannot exchange any information with each other under FATCA.

Second, out of all the IGAs signed between the US and other countries, only IGAs 1 A entail a minimum level of reciprocity, while all other IGAs request information to be sent to the US only. On top of this, even IGAs 1 A do not require full reciprocity but much less information being sent from the US.[556]

In contrast to FATCA, the CRS allows for multilateral AEOI between all countries on a reciprocal basis.

There is another factor that may affect a global implementation of the CRS, relating to the bilateral approach. Signing the MCAA (multilateral approach) is the easiest way to engage in multilateral AEOI, while bilateral CAAs (bilateral approach) create obstacles because they require each country to spend time and resources to negotiate and sign a CAA with every other country. Some secrecy jurisdictions, such as Singapore[557] and Hong Kong,[558] had originally chosen the bilateral approach, making it harder for other countries to engage in AEOI with them. However, since then all countries started signing the MCAA. There is one exception though. Taiwan, despite its intention, has been unable to join the MCAA for international political reasons. Therefore, in the case of Taiwan, the bilateral treaties signed by Taiwan and partner jurisdictions are considered for this indicator.

Changes since Financial Secrecy Index 2020

The main contextual change is that the question on timing of the MCAA signature and start of exchanges now refers to exchanging information in or before 2021, versus in or after 2022 (instead of focusing on 2019 and 2020). In addition, this indicator now considers the Peer Review of the Automatic Exchange of Financial Account Information, which are published by the Global Forum.[559] These reports provide information on whether the country has a domestic and international legal framework in place for automatically exchanging information. Following this new valuable information, we decided to include in SI 18 two IDs as follows: the first ID reflects the country's compliance with the required legal framework and due diligence procedures ("Core Requirement 1"); the second reflects on whether its network of exchange relationships is compliant with the requirement to enter

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[556] Andres Knobel. *The Role of the US as a Tax Haven : Implications for Europe*. Brussels: The Greens/EFA Group in the European Parliament, Nov. 2016. URL: https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Studies/Taxation/The_US_as_a_tax_haven_Implications_for_Europe_11_May_FINAL.pdf (visited on 02/04/2022).

[557] Inland Revenue Authority of Singapore-IRAS. *Singapore and the United Kingdom Sign Agreement for Automatic Exchange of Financial Account Information*. Sept. 2016. URL: https://www.iras.gov.sg/irashome/News-and-Events/Newsroom/Media-Releases-and-Speeches/Media-Releases/2016/Singapore-and-the-United-Kingdom-Sign-Agreement-for-Automatic-Exchange-of-Financial-Account-Information/ (visited on 02/04/2022).

[558] The Government of the Hong Kong Special Administrative Region. *Hong Kong to Commence Automatic Exchange of Financial Account Information in Tax Matters with Japan and UK in 2018*. Oct. 2016. URL: https://www.info.gov.hk/gia/general/201610/26/P2016102600614.htm (visited on 02/04/2022).

[559] OECD, *Peer Review of the Automatic Exchange of Financial Account Information 2021*.

into agreements with all "Interested Appropriate Partners" ("Core Requirement 2"). Countries which were not yet assessed by the OECD's assessments will get an "unknown" answer which – unlike previous versions of the index - will not grant them high secrecy score.

3.18.2 Why is this important?

Tax authorities around the world face immense difficulties with identifying cases of tax evasion committed through bank accounts held abroad. To a lesser extent, obtaining foreign-country based evidence when investigating already identified cases of suspected domestic tax evasion and/or aggressive tax avoidance is also a problem. The latter issue is partly addressed by the international standard for information exchange "upon request" promoted by OECD's Global Forum. But even for this limited purpose, the Global Forum peer review process remains riddled with problems (as we have pointed out in great detail in our "Creeping Futility",[560] in a shorter briefing paper[561] and time and time again in our blog.[562] The Financial Times has also addressed this issue[563]). For identifying unknown cases of tax evasion, which are by far the majority of all cases, the upon-request Global Forum process is useless.[564]

The consequences of this difficulty in identifying offshore assets reach far beyond mere tax enforcement, but have huge implications for the global economy. For instance, the scale of privately held offshore wealth was estimated to stand at US$9,9tn in 2018,[565] and we estimate that offshore tax abuse is currently costing the world US$171 billion a year to offshore tax evasion related to financial wealth alone.[566] These distortions imply, for instance, that:

> ... a large number of countries, which are traditionally regarded as debtors, are in fact creditors to the rest of the world. [...] The problem here is that their assets are held by a small number of wealthy individuals, while their debts are shouldered by their ordinary people through their governments.[567]

Ultimately, the failure to automatically exchange taxpayer data among responsible governments incentivises a distorted pattern of global financial flows and investment that is known best in terms of capital flight. As we have argued in our

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[560] Meinzer, *The Creeping Futility of the Global Forum's Peer Reviews*.

[561] Tax Justice Network, *Tax Information Exchange Arrangements*.

[562] Tax Justice Network. *OECD Whitewashes Another Tax Haven*. Aug. 2009. URL: http://taxjustice.blogspot.com/2009/08/oecd-whitewashes-another-tax-haven.html (visited on 02/04/2022).

[563] Financial Times. *Time to Black-List the Tax Haven Whitewash*. URL: https://www.ft.com/content/0f687dee-5eea-11e0-a2d7-00144feab49a#axzz1PtjiCeHN (visited on 05/04/2022).

[564] Meinzer, *The Creeping Futility of the Global Forum's Peer Reviews*, pp.12-13.

[565] European Commission. Directorate General for Taxation and Customs Union and ECORYS. *Monitoring the Amount of Wealth Hidden by Individuals in International Financial Centres and Impact of Recent Internationally Agreed Standards on Tax Transparency on the Fight against Tax Evasion: Final Report*. LU: Publications Office, 2021. URL: https://data.europa.eu/doi/10.2778/647791 (visited on 11/05/2022), p.108.

[566] Global Alliance for Tax Justice et al., *The State of Tax Justice: 2021*.

[567] Tax Justice Network. *The Price of Offshore Revisited: Key Issues*. July 2012. URL: http://www.taxjustice.net/cms/upload/pdf/The_Price_of_Offshore_Revisited_Key_Issues_120722.pdf (visited on 08/05/2022).

policy paper, this distortion creates huge imbalances in the world economy and impacts both southern and northern countries with devastating effects on all citizens and on the environment.[568]

Moreover, as Nicholas Shaxson has argued in the book Treasure Islands,[569] the root of this scandal dates back to at least the mid-1940s when the USA blocked the newly created IMF from requiring international cooperation to stem capital flight, and instead used European flight capital to institute the Marshall Plan.

While tax authorities domestically often have the powers to cross-check data obtained through tax returns, for instance through access to bank account information, this does not hold true internationally. While economic activity has globalised, the tax collector's efforts remain nationally focused and are obstructed by secrecy jurisdictions.

The previous, but still existing, OECD standard for information exchange consists of bilateral treaties that rely on information exchange 'upon request' only. However, the power to judge what constitutes an appropriate request rests with the secrecy jurisdictions' tax authorities, financial ministries and/or courts. Secrecy jurisdictions pride themselves on maintaining "financial privacy" in spite of tax information exchange treaties and of exchanging information reluctantly under these agreements.

Multilateral automatic information exchange helps overcome both problems. Such a system should exchange data about the financial accounts of natural persons and disregard legal entities and arrangements such as shell companies and trusts and foundations, which today are often used to hide the identity of the real owners of assets. This system should cover all types of capital income. Participation in such a scheme would need to be open to any responsible requesting country (with appropriate confidentiality and human rights safeguards) and, where needed, technical assistance should be provided to build capacity to make use of this scheme. While the CRS is indeed a first big step towards a truly global framework for multilateral AEOI, it is filled with loopholes which will prevent its effectiveness, as we have identified.[570]

Implementing the CRS also has reputational consequences (implementation is reviewed by the Global Forum) and will be one of the three criteria to avoid being included in the OECD's blacklist.[571] Therefore, some jurisdictions may attempt to achieve a good reputation and avoid being blacklisted by only engaging in AEOI with a limited number of countries, while refusing to exchange information with others, and even impact their future involvement: if it becomes the norm that

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[568] Meinzer, *Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries*.

[569] Nicholas Shaxson. *Treasure Islands: Uncovering the Damage of Offshore Banking and Tax Havens*. St. Martin's Griffin, Sept. 2012, pp.74-79.

[570] Knobel and Meinzer, *"The End of Bank Secrecy"? Bridging the Gap to Effective Automatic Information Exchange - An Evaluation of OECD's Common Reporting Standard (CRS) and Its Alternatives*.

[571] OECD. *OECD Tax Talks #1 - OECD*. 2016. URL: https://www.oecd.org/tax/oecd-tax-talks-june-2016.htm (visited on 04/04/2022).

secrecy jurisdictions impose arbitrary conditions, postpone AEOI or sign bilateral CAAs, many other countries, especially developing countries when they are ready to implement the CRS, will find it harder to engage in AEOI with everyone else. That is why a detailed analysis of the fine print of jurisdiction's commitments is necessary in order not to be misled.

To support the relevance of AEOI over exchanges upon request, in 2019 the IMF published the paper "Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion" which concluded "based on bilateral deposit data for 39 reporting countries and more than 200 counterparty jurisdictions, we find that recent automatic exchange of information frameworks reduced foreign-owned deposits in offshore jurisdictions by an average of 25 percent. This effect is statistically significant and, as expected, much larger than the effect of information exchange upon request, which is not significant".[572]

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.42. Assessment Logic: Secrecy Indicator 18 - Automatic Information Exchange

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
150	CRS MCAA Signed: Has the jurisdiction signed the Multilateral Competent Authority Agreement (MCAA) to implement the OECD's Common Reporting Standard (CRS) (the CRS-MCAA)?	0: Did not sign the MCAA; 1: Signed the MCAA, but committed to exchange information in 2022; 2: Signed the MCAA and committed to exchange information in 2021.	If answer (2): 50 points; (1): 75 points; (0): 100 points; All of following scores are added/subtracted. If sum is above 100 = 100 points, below 0 = 0 points.
376	CRS Pilot: Has the jurisdiction engaged (or expressed interest in participating) in any Pilot Project, that involves partnering up a developed country with a developing country to assist implementing the CRS?	YN	If yes, then -50 points
371	CRS MCAA Dating Number: Number of meaningful Activated AEOI relationships (under the MCAA) published by the OECD as of November 2021?	Number	If number is 100 of possible #co-signatories / relationships: -50 points; otherwise pro rata

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[572] Sebastian Beer et al. *Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion*. International Monetary Fund, Dec. 2019. URL: https://www.imf.org/en/Publications/WP/Issues/2019/12/20/Hidden-Treasure-The-Impact-of-Automatic-Exchange-of-Information-on-Cross-Border-Tax-Evasion-48781 (visited on 02/05/2022).

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
372	CRS MCAA Refusal: Has the jurisdiction refused to engage in AEOI with any co-signatory of the MCAA even though that co-signatory complies with domestic law and confidentiality provisions?	YN	+10 points if answer is Yes
374	CRS MCAA Voluntary Secrecy: Has the jurisdiction chosen "voluntary secrecy" (listed under the MCAA's Annex A to prevent receiving information) or is otherwise not compliant with basic confidentiality requirements to receive information?	YN	+10 points if answer is Yes
377	CRS Additional Conditions: Has the jurisdiction imposed additional conditions to engage in AEOI (beyond those required by the MCAA) such as amnesty programs, market access, etc.?	YN	+10 points if answer is Yes
641	Whether the country complies with the domestic requirements for automatic exchange of information pursuant to the Common Reporting Standard (Core 1 of Global Forum AEOI peer review)	5 Yes; 6 Yes, but they need improvement; 7 No	+10 points if no + 5 points if yes, but needs improvements
642	Whether the country complies with the international requirements for automatic exchange of information pursuant to the Common Reporting Standard (Core 2 of Global Forum AEOI peer review)	5 Yes; 6 Yes, but they need improvement; 7 No	+10 points if no + 5 points if yes, but needs improvements
566	OECD's Model Mandatory Disclosure Rules: Has the jurisdiction implemented the OECD's model mandatory disclosure rules for CRS avoidance arrangements and opaque offshore structures published in 2018?	YN	-10 points if answer is Yes

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
567	Wider-wider approach: Is the jurisdiction applying the "wider-wider" approach (information is collected and reported to local authorities about all non-residents, regardless if resident in a participating jurisdiction or not)?	YN	-10 points if answer is Yes
568	Bitcoins within CRS scope: Does the jurisdiction include entities issuing, trading, exchanging or holding crypto-currencies (eg bitcoins) as "financial institutions" that are required to report information pursuant to the CRS?	YN	-10 points if answer is Yes
569	Use beyond tax: Has the jurisdiction signed the Global Forum's Punta del Este Declaration of November 2018, or is it authorising to use the information received pursuant to the CRS for non-tax purposes (eg corruption, money laundering)?	YN	-10 points if answer is Yes

3.19 Secrecy Indicator 19: Information exchange upon request

3.19.1 What is measured?

This indicator examines exchange of information (EOI) upon request under the multilateral amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters[573] ("Tax Convention") which enables information exchange via different methods including 'upon request', among adherent country pairs. Importantly, only parties to the amended Convention are considered. Countries (eg. the US) which are parties to the original Convention (which was only open to OECD countries) are not considered in this indicator. The amended Tax Convention is open to all countries, not just OECD or European ones. The Amending Protocol entered into force on 1 June 2011.[574] As of December 2021, the Tax Convention has 144 signatory parties, of which 135 have followed up with the ratification of the legal instrument, effectively making it applicable under domestic law. This means that each of the parties having ratified the Tax Convention benefits from information exchange upon request relationships with the other 134 jurisdictions party to the Tax Convention.[575] A detailed analysis of the Tax Convention can be found on the Tax Justice Network website.[576]

In this indicator, a jurisdiction that has signed and ratified the amended Tax Convention is given a zero secrecy score while a jurisdiction that hasn't will get a full (100) secrecy score. In the past editions of the Financial Secrecy Index a different approach was used, and in cases in which a jurisdiction had not signed or ratified the amended Tax Convention, we assessed the number of effective bilateral information exchanges.[577]

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[573] OECD and Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters*.

[574] OECD. *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*. Dec. 2021. URL: http : / / www . oecd . org / tax / exchange - of - tax - information / Status _ of _ convention.pdf (visited on 06/05/2022).

[575] OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*.

[576] Markus Meinzer. *Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010*. Feb. 2012. URL: http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf (visited on 03/05/2022).

[577] To be considered effective, the relationship had to be (i) in force, and (ii) considered "compliant with the standard" set under Article 5 of the Tax Convention, according to the Global Forum table of treaties published for every Global Forum member. However, in recent years the Global Forum is no longer publishing those tables. As of this 2022 edition of the Financial Secrecy Index, the methodology has changed to consider the adherence to the Tax Convention as a sole criterion for Secrecy Indicator 19. Over and above the unavailability of the data source previously used to assess bilateral information exchange relationships outside the Tax Convention, two considerations further support the methodology change. First, the cumulative implementation of bilateral information exchange treaties is a substantially weaker policy than the adherence to the multilateral Tax Convention. As mentioned above, the ratification of the Tax Convention directly makes information exchange upon request possible with regards to all other parties to the multilateral treaty. In contrast, the negotiation, signature and ratification of one bilateral treaty only allows for information exchange between the two treaty partners involved, making it an ineffective and costly legal instrument to attain administrative tax information exchange for countering illicit financial flows. Second, the signature of bilateral treaties to fulfill the same purpose outside the Tax Convention poses an undue burden on lower income countries, which do not have the resources to negotiate many treaties and which are usually pressured to make tax concessions in those treaties in addition to any exchange of information provision.

The secrecy scoring matrix can be found in Table 3.43, and full details of the assessment logic can be found in Table 3.44.

Table 3.43. Secrecy Scoring Matrix: Secrecy Indicator 19

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
No adherence to the amended Tax Convention Jurisdiction has not signed and ratified the amended Tax Convention as of November 2021.	100
Adherence to the amended Tax Convention Jurisdiction has signed and ratified the amended Tax Convention as of November 2021.	0

In a context of largely unrestricted cross-border financial flows, the amended Tax Convention provides a minimum backstop to guard against proliferation of cross border tax crimes and offences through adherence to a network of administrative cooperation. Although the adherence to the amended Tax Convention is assessed in this indicator for its role in facilitating information exchange upon request, the Convention is considered again for SI 20 on International Legal Cooperation.[578] This is because in addition to information exchange upon request under Article 5 of the amended Tax Convention, the multilateral treaty is an essential tool to address other important cooperation policies, such as spontaneous exchange of information (Article 7), recovery of tax claims (Article 11), and a range of international assistance safeguards (see for instance Articles 12 to 17).[579]

3.19.2 Why is this important?

Tax authorities around the world face immense difficulties when trying to secure foreign country based evidence relating to suspected domestic tax evasion and/or tax avoidance. While tax authorities domestically often have powers to cross-check data obtained through tax returns, for instance through access to bank account information, this does not hold true internationally. Although economic activity has become increasingly global, tax collectors' efforts often remain nationally based and are frequently obstructed by secrecy jurisdictions. Barriers to effective information exchange undermine the rule of law and impose huge costs on revenue authorities wanting to tackle tax dodging and on society at large which is footing the bill for missing tax revenues from international activity.

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[578] Tax Justice Network. *Secrecy Indicator 20: International Legal Cooperation*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-20.pdf.

[579] OECD and Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters*.

As we have pointed out already in March 2022 in our "Creeping Futility" report[580], the upon request standard for information exchange, promoted in isolation by the OECD and the Global Forum up until 2013, is insufficient to stem tax driven illicit financial flows and has many shortcomings. The consequences of this weakness reach far beyond mere tax enforcement, and have huge implications for the global economy. Ultimately, it has incentivised a distorted pattern of global financial flows and investment that is known best in terms of capital flight.[581] This distortion creates imbalances in the world economy, with devastating effects on ordinary people and the environment. Moreover, as Nicholas Shaxson has argued in his book Treasure Islands,[582] the root of this scandal dates back to at least 1944 when lobbying by special interests in the USA blocked attempts to require the new IMF to enforce international cooperation to stem capital flight, and instead used European capital flight to institute the Marshall Plan.

While the upon request standard for information exchange promoted by the OECD has severe shortcomings, such a system may be a step forwards especially if combined with automatic information exchange processes, and if a sufficient number of countries, including lower income countries, are able to effectively use the upon request model to collect evidence needed to prosecute offenders.

As for the automatic information exchange, a concern about the effectiveness of the 'upon request' model of information exchange relates to the need for a 'smoking gun' to alert tax authorities to possible cases of tax evasion (see Secrecy Indicator 18[583]). This explains why we regard automatic information exchange as a necessary complement for 'upon request' information exchange and a more effective deterrent of tax evasion. Public registries of the beneficial owners of companies, trusts and foundations are an important pillar of such a system.

By virtue of Article 6 of the Tax Convention, which mandates the parties to mutually agree on the scope and procedures relating to automatic exchange of information, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA) was developed, concerning the automatic exchange of financial account information pursuant to the Common Reporting Standard (for more information see Secrecy Indicator 18[584]).

Yet, while jurisdictions may now become party to the OECD's Common Reporting Standard (CRS) for Automatic Exchange of Information, many loopholes and

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[580] See the full report here: (Meinzer, *The Creeping Futility of the Global Forum's Peer Reviews*). International Tax Review broadly reported about this study here: (Salman Shaheen. 'Exclusive: Why Tax Justice Campaigners and the OECD Are Not Seeing Eye to Eye'. *International Tax Review* [Mar. 2012]. URL: https://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html [visited on 12/04/2022]).

[581] Meinzer, *Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries*.

[582] Shaxson, *Treasure Islands*, pp.74-79.

[583] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*.

[584] Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*.

obstacles for the inclusion of developing countries have been identified.[585] In absence of automatic exchange of information, the upon request standard remains the only mechanism for countries that are not in a position to receive data automatically.

Moreover, even countries able to implement Automatic Exchange of Information will depend on the upon request model: after automatically receiving large records of bulk information, many countries will depend on subsequent specific requests to obtain more detailed proof and evidence about a particular taxpayer for administrative or criminal proceedings.

Therefore, access to information exchange upon request remains a crucial pillar for countering cross-border illicit financial flows. As for the expansion of the 'upon request' information exchange network, by far the quickest and most efficient and equitable way for lower income countries to obtain vital information access to a maximum number of relevant and notorious destinations of illicit financial flows would be through a multilateral tax agreement enabling (bilateral) upon request information exchange among all state parties. Without such a multilateral framework, weaker jurisdictions are disadvantaged and often remain excluded from the benefits of exchange relationships,[586] most of which flow from the collective bargaining clout of a large group of nations. Instead of incurring high costs and facing risks[587] or insurmountable barriers during bilateral negotiations, a multilateral option holds the potential for a "big bang" boost to the prosecution of offshore tax crimes and offences.

In absence of such a truly global framework covering all countries, the amended Tax Convention currently offers the only suitable alternative for achieving multilateral information exchange upon request. As mentioned above, the ratification of the amended Tax Convention directly makes information exchange upon request possible with regards to all other parties to the multilateral treaty. In contrast, the negotiation, signature and ratification of one bilateral treaty only allows for information exchange between the two treaty partners involved, making it an ineffective and costly legal instrument to attain administrative tax information exchange for countering illicit financial flows. Furthermore, the signature of bilateral treaties to fulfill the same purpose outside the Tax Convention poses an undue burden on lower income countries, who do not have the resources to negotiate many treaties and who are usually pressured to make

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[585] Andres Knobel. *OECD's Handbook for Implementation of the CRS: TJN's Preliminary Observations*. Sept. 2015. URL: http://www.taxjustice.net/wp-content/uploads/2013/04/OECD-CRS-Implementation-Handbook - FINAL . pdf (visited on 03/05/2022); Knobel and Meinzer, *Delivering a Level Playing Field for Offshore Bank Accounts. What the New OECD/Global Forum Peer Reviews on Automatic Information Exchange Must Not Miss*; Knobel, *Findings of the 2nd TJN Survey on Automatic Exchange of Information (AEOI). Sanctions against Financial Centres, AEOI Statistics and the Use of Information beyond Tax Purposes*.

[586] Alex Cobham. *OECD Country-by-Country Reporting: Only for the Strong?* Sept. 2015. URL: http : / / uncounted . org / 2015 / 09 / 14 / oecd - country - by - country - reporting - only - for - the - strong/ (visited on 02/05/2022).

[587] Lucas Millán-Narotzky et al. *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?* ICTD Working Paper 125. Tax Justice Network / ICTD, 2021. URL: https://opendocs.ids.ac.uk/opendocs/bitstream / handle / 20 . 500 . 12413 / 16940 / ICTD _ WP125 . pdf ? sequence = 1 & isAllowed = y (visited on 03/05/2022).

tax concessions in those treaties[588] in addition to any exchange of information provision.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.44. Assessment Logic: Secrecy Indicator 19 - Information Exchange Upon Request

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
309	Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters (Tax Convention)	1; No, jurisdiction is not party to the Convention; 2: Yes, but only party to the original Convention; 3: Yes, party to the Amended Convention.	If answer (3): 0 points; otherwise: 100 points

[588] Millán-Narotzky et al., *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?*

3.20 Secrecy Indicator 20: International legal cooperation

3.20.1 What is measured?

This indicator measures the extent to which a jurisdiction participates in international transparency commitments[589] and engages in international judicial cooperation on money laundering and other criminal matters.

Both components are worth an equal 50 points of the secrecy score, and each component is subdivided into four or five subcomponents. Each of the four subcomponents of international transparency commitments is given a maximum 12.5 points of the secrecy score. Each of the five subcomponents of international judicial cooperation is given a maximum 10 points of the secrecy score. All subcomponents are combined by simple addition to arrive at the secrecy score of SI 20. The secrecy scoring matrix is shown in Table 3.45, and full details of the assessment logic can be found in Table 3.46.

Component 1: International transparency commitments (50 points)

In the case of International Transparency Commitments, we have focused on the extent to which a jurisdiction adheres to widespread international legal conventions which support transparency in international financial and tax matters. For the first four subcomponents[590], a failure to ratify the relevant international legal instruments results in a secrecy score of 12.5 points for each, which are simply added to result in the component's secrecy score.

Subcomponent 1: The OECD Tax Convention of 1988 aims to promote "administrative co-operation between states in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion".[591] The 2010 amending protocol stipulates that bank secrecy cannot be deployed as grounds for denying the exchange of information upon request and opened the Convention up to countries which are not members of either the Council of Europe or the OECD. It allows for spontaneous and automatic information exchange, but requires the signatory parties only to implement upon request information exchange. A detailed analysis of this Tax Convention is available on the Tax Justice Network website.[592]

Subcomponent 2: The 2003 UN Convention against Corruption (UNCAC) aims to promote the prevention, detection and sanctioning of corruption, as well as

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[589] Signature alone is insufficient, ratification is required.

[590] As of Financial Secrecy Index 2018, we do not include as a subcomponent the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. This is because by 2018, the convention had already been ratified by all jurisdictions we assess.

[591] OECD and Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters*.

[592] Meinzer, *Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010*.

cooperation between State Parties on these matters[593]. Relevant provisions include the prohibition of tax deductibility of bribe payments (Article 14, Paragraph 4), a requirement to include bribery within the context of an effective anti-money laundering framework (Articles 23 and 52), and to rule out bank secrecy as a reason to object investigations in relation to bribery (Article 40).

Table 3.45. Secrecy Scoring Matrix: Secrecy Indicator 20

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: International transparency commitments (50 points)	
(1) Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters ("Tax Convention")	12.5
(2) 2003 UN Convention against Corruption (UNCAC)	12.5
(3) 1999 UN International Convention for the Suppression of the Financing of Terrorism	12.5
(4) 2000 UN Convention against Transnational Organised Crime	12.5
Component 2: International Judicial Cooperation (50 points)	
(1) Will mutual legal assistance be given for investigations, prosecutions, and proceedings (old FATF-recommendation 36/ New FATF 2013/2017 methodology, recommendation)?	10
(2) International co-operation delivers appropriate information,financial intelligence, and evidence, and facilitates action against criminals and their assets (New FATF 2013/2017 methodology, Immediate Outcome 2 of the effectiveness assessments)? **OR** Is mutual legal assistance given without the requirement of dual criminality (old FATF methodology, recommendation 37)?	10
(3) Is mutual legal assistance given concerning identification, freezing, seizure and confiscation of property (FATF recommendation 38)?	10
(4) Is money laundering considered to be an extraditable offense (FATF recommendation 39)?	10
(5) Is the widest possible range of international co-operation granted to foreign counterparts beyond formal legal assistance on anti-money laundering and predicate crimes (FATF recommendation 40)?	10

[593]The official site of the convention is here: (United Nations Office on Drugs and Crime. *United Nations Convention against Corruption*. URL: https://www.unodc.org/unodc/en/corruption/uncac.html [visited on 27/04/2022]). A succinct summary of the convention's measures can be found here: (*About the UNCAC*. URL: https://uncaccoalition.org/the-uncac/about-the-uncac/ [visited on 27/04/2022]).

Subcomponent 3: The 1999 UN Terrorist Financing Convention requires its parties to prevent and counteract financing of terrorists. The parties must identify, freeze and seize funds allocated to terrorist activities.[594]

Subcomponent 4: The UN Convention Against Transnational Organised Crime seeks to prevent and combat transnational organised crime, notably by obliging the State Parties to adopt new frameworks for extradition, through mutual legal assistance and law enforcement cooperation, the promotion of training and technical assistance for building or upgrading the capacity of national authorities.[595]

The United Nations Treaty Collection served as a source for all three UN conventions.[596] A chart of the signatures and ratifications of the Tax Convention can be found on the OECD website.[597]

Component 2: International judicial cooperation (50 points)

The second component examines the extent to which a jurisdiction engages in international judicial cooperation on anti-money laundering and other criminal matters. We use the level of compliance with five of the Financial Action Task Force (FATF) recommendations[598] as the appropriate measures. These recommendations review the laws, institutional structures, and policies deemed necessary to counter money laundering and terrorist financing. For more details on the FATF and its recommendations, please read SI 17 on Anti-Money Laundering.[599]

Depending on whether a jurisdiction has been assessed according to the old or to the new FATF recommendations (which took effect from 2013 onwards), this component's methodology is adjusted in two main ways. First, the contents of the recommendations reflecting judicial cooperation have changed slightly. We reflect these changes by selecting those new recommendations for assessment which most closely match with the content of the old recommendations. We provide a quick comparison of the main content of the new and the old recommendation below.

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[594] United Nations. *International Convention for the Suppression of the Financing of Terrorism*. Dec. 1999. URL: https://www.un.org/law/cod/finterr.htm (visited on 12/04/2022).

[595] United Nations. *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. Nov. 2000. URL: https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html (visited on 12/04/2022).

[596] United Nations. *United Nations Treaty Collection*. URL: https://treaties.un.org/ (visited on 12/04/2022).

[597] OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*.

[598] The (new) 2013/2017 recommendations and corresponding methodology to assess compliance can be viewed at: (Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*). The (old) 2003 recommendations can be viewed at (Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*). The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and are referred to jointly as the FATF Recommendations. For the methodology for assessing compliance with the FATF Recommendations, see: (Financial Action Task Force (FATF), *Methodology for Assessing Compliance with the FATF 40 Recommendations and FATF 9 Special Recommendations*).

[599] Tax Justice Network. *Secrecy Indicator 17: Anti-Money Laundering*. Tax Justice Network, 2022. URL: https://fsi.taxjustice.net/fsi2022/KFSI-17.pdf.

Second, for one of the five subcomponents a different type of recommendation is applied to jurisdictions for which there is already a report available prepared under the new FATF methodology. This is because the total number of recommendations dealing with international judicial cooperation has reduced from five to four in the new FATF recommendations. However, eleven effectiveness measures, so-called "immediate outcomes" (IO), have been added. One of these IO measures reviews effectiveness of judicial cooperation in practice. This is the indicator we have adopted under the new methodology. In both the old and new methodology, the total number of subcomponents thus remains at five.

FATF's assessment methodology for both old and new recommendations rates compliance with every recommendation on a four-tiered scale, from "compliant" to "largely compliant" to "partially compliant" to "non-compliant". Analogously, the assessment of the immediate outcomes ranges from "high-level of effectiveness" to "substantial level of effectiveness" to "moderate level of effectiveness" to "low level of effectiveness". These four tiers are linearly scaled to values between 0 and 10 points.[600]

Thus, a non-compliant rating will result in a secrecy score of 10 points for each subcomponent. All subcomponents are simply added to result in the overall component's secrecy score.

Subcomponent 1: The old recommendation 36[601] encourages countries to "provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings".

The new recommendation 37[602]While old recommendation 37 was officially omitted, most of its content was merged to new recommendation 37. (formerly old recommendation 36 combined with old special recommendation 5) exhorts countries to "provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings". In addition, countries must "Maintain the confidentiality of mutual legal assistance requests they receive, and the information contained in them [...]". Furthermore, countries should "make best efforts to provide complete factual and legal information that will allow for timely and efficient execution of requests [...]". Finally, they should ensure that their authorities "maintain high professional standards, including standards concerning confidentiality [...]".

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[600] In order to keep the measurement in line with SI 1 (where we are including some recommendations from the FATF), we attribute a 10% secrecy score for non-compliant, 6.5% for partially compliant, 3.5% for largely compliant and zero secrecy for fully compliant answers.

[601] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*

[602] Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*.

Subcomponent 2: Old recommendation 37[603] requires that countries "to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality". Extradition or mutual legal assistance should take place irrespective of legal technicalities as long as the underlying conduct is treated as a criminal offence (is a predicate offence) in both countries.

This old recommendation has no direct correspondent in the new recommendations. As a substitute, as explained above, for jurisdictions assessed under the new recommendations/methodology, we include the effectiveness assessment of immediate outcome 2 (IO2). It requires that "International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets". For a discussion of these new effectiveness measures, please read SI 17 on Anti-Money Laundering.[604]

Subcomponent 3: Old recommendation 38[605] requires a country to have "authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value". In addition, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

New recommendation 38[606] (formerly old recommendation 38) requires a country to have "authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value". In addition, countries' authority should be "able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures [...]" as well as to "have effective mechanisms for managing such property [...]". Finally, there should also be arrangements in place for coordinated action and sharing of confiscated assets.

Subcomponent 4: Old recommendation 39[607] asks a country to "recognise money laundering as an extraditable offence". It further details the grounds on which extradition is to take place, and in what manner.

New recommendation 39[608] (formerly old recommendation 39) requires a country to "ensure money laundering and terrorist financing are extraditable offences". It further details the grounds on which extradition must take place, and in what

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[603] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.* p.10.

[604] Tax Justice Network, *Secrecy Indicator 17: Anti-Money Laundering*.

[605] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.* p.10.

[606] Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, p.28.

[607] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.* pp.10-11.

[608] Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, p.29.

manner. It also calls on countries to "take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations".

Subcomponent 5: Old recommendation 40[609] prompts countries to "ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts". The competent authority denotes "all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors".

New recommendation 40[610] (formerly old recommendation 40) prompts countries to ensure that their competent authorities "provide the widest range of international co-operation in relation to money laundering, associated predicate offences and terrorist financing". The competent authorities "should have clear and efficient processes for the prioritisation and timely execution of requests, and for safeguarding the information received".

3.20.2 Why is this important?

In today's globalised world, organised crime, bribery, terrorism and large-scale tax evasion are essentially international problems that easily cross national borders. Some jurisdictions aim to attract substantial amounts of that criminal money by offering a thin fabric of weak national rules and regulations or by an absence of cross-border cooperation.

Lack of international cooperation in preventing financial secrecy can bear heavy consequences, such as social polarisation, human rights violations, and underfunding of essential services such as health or education. In 2022, the cost of financial secrecy has been tragically brought again to the public attention, this time as a result of the Russian invasion to Ukraine. The security related costs became more evident as western governments in Europe and the United States, among others, have attempted to block the financing of the war by imposing financial sanctions on Russian oligarchs. In essence, the same loopholes that were previously enabled by governments have ended up tying their hands and preventing them from effectively identifying the ownership of many targeted assets.

It is against this background that a series of initiatives and taskforces have been launched. In March 2022, the US launched the KleptoCapture Task Force, staffed with prosecutors, agents, and AML experts among others. The KleptoCapture TaskForce is planned to complement the transatlantic Task Force that has been jointly proclaimed by the US, the European Commission, France, Germany, Italy, the United Kingdom and Canada.[611]

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[609] Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.* p.11.

[610] Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, pp.29-30.

[611] United States Department of Justice. *Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture*. Mar. 2022. URL: https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture (visited on 13/04/2022).

It is thus important to verify to what extent a jurisdiction is committed to certain principles.

Regarding the jurisdiction's international transparency commitments, while the ratification of international conventions does not necessarily translate into commitment to take positive actions, it is certainly a step in the right direction. It signals to treaty partners as well as to offenders a willingness to cooperate internationally and a proactive stance with respect to national legislation and policing.

The Conventions will contribute in varying degrees to solving the problems they are intended to address. They have already, or are likely to, become means through which civil society within the countries concerned can begin to hold governments and others to account. Similarly, they are likely to improve the chances of government authorities, such as tax administrations, public prosecuting offices, financial crime investigative police, and counter terror agencies, to successfully request cooperation from a foreign counterpart.

As with all commitments, however, implementation is what ultimately matters. Out of the three international Conventions, only one (UNCAC) has started to implement a systematic and partly transparent review process of adherence to commitments made under that Convention.[612]

Regarding the second component of SI 20, the jurisdiction's international judicial cooperation on money laundering and other criminal matters, it is crucial that judicial cooperation across borders is as seamless as the criminal money flowing between two companies or bank accounts. Otherwise law enforcement agencies, such as public prosecutors or police, inevitably remain one step behind the criminals.

From the stages of investigation and prosecution to extradition of perpetrators and the confiscation and repatriation of criminal assets, law enforcement processes are fragile and require cross-border cooperation at every stage. Without established means of cooperation, a judge may only have letters of rogatory as a last resort, which is a time-consuming, costly and uncertain process:

> "In terms of efficiency, exchange of information through letters of rogatory may take months or years since some requests may have to be processed through diplomatic channels."[613]

Compliance with old recommendations 36 through 40, and with new recommendations 37 through 40 and IO2, can be seen as indicators of the minimum threshold of judicial cooperation required to take part in the international financial system.

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[612] UNCAC Coalition. *UNCAC Review Mechanism*. URL: https://uncaccoalition.org/uncac-review/uncac-review-mechanism (visited on 08/05/2022).

[613] OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, p.66.

All underlying data, including the sources we use for each jurisdiction, can be viewed in the country profiles on the Financial Secrecy Index website.

Table 3.46. Assessment Logic: Secrecy Indicator 20 - International Legal Cooperation

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
309	Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters (Tax Convention)	1: No, jurisdiction is not part to the Convention; 2: Yes, but only part to the original Convention; 3: Yes, part to the Amended Convention.	1: 12.5 points; 2: 12.5 points; 3: 0 points
33	UN Convention Against Corruption	YN	Y: 0 points; N: 12.5 points
35	UN International Convention for the Suppression of the Financing of Terrorism UN Convention Against Corruption	YN	Y: 0 points; N: 12.5 points
36	UN Convention Against Transnational Organized Crime	YN	Y: 0 points; N: 12.5 points
310	Will mutual legal assistance be given for investigations, prosecutions, and proceedings (FATF-recommendation 36)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
311	Is mutual legal assistance given without the requirement of dual criminality (old FATF recommendation 37)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	if old FATF: 0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
312	Is mutual legal assistance given concerning identification, freezing, seizure and confiscation of property (FATF recommendation 38)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
313	Is money laundering considered to be an extraditable offense (FATF recommendation 39)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points
314	Is the widest possible range of international co-operation granted to foreign counterparts beyond formal legal assistance on anti-money laundering and predicate crimes (FATF recommendation 40)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points

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ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
469	International co-operation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets (Immediate Outcome 2 of the effectiveness assessments under new FATF 2013 methodology)?	0: Fully; 1: Largely; 2: Partially; 3: Not at all.	if new FATF: 0: 0 points; 1: 3.5 points; 2: 6.5 points; 3: 10 points

Global scale weights

The second component of the Financial Secrecy Index is the global scale weight (GSW) attributed to each jurisdiction. It is based on an assessment of the size of each jurisdiction's share of the global market for financial services provided to non-resident clients, which we use as a measure of risk. The more cross-border financial services a jurisdiction provides, the greater the potential threat if the jurisdiction is not fully transparent. We explain how the scale assessment is made, before considering potential criticisms of the approach.

The global scale weights are based on publicly available data about the trade in international financial services of each jurisdiction. Where necessary because of missing data, we extrapolate from stock measures of assets and portfolio investment in order to generate flow estimates of exports of financial services. This allows us to create a comprehensive ranking of jurisdictions' share in the total global cross-border trade in financial services. When this is subsequently combined with the secrecy scores, it creates a ranking of each jurisdiction's contribution to the ultimate global problem of financial secrecy: this ranking is the Financial Secrecy Index. We describe how the GSWs are combined with secrecy scores to form the Financial Secrecy Index in Section 4.2.

To construct the global scale weights, we begin with the best data available on an internationally comparable basis. The preferred source is the IMF's Balance of Payments Statistics (BOPS)[614], which provides, for each jurisdiction, data on exports of financial services. For this edition of the GSW, we use data for 2020 and 2019, which are the two most recent years included in the dataset as of 7 January 2022. The IMF BOPS cover 174 jurisdictions for exports of financial services, of which 144 had already reported the data for 2020 when we accessed the database, 159 reported for 2019, and 160 reported for at least one of the two years. Of these 160, 111 are included in the Financial Secrecy Index 2022 and for these jurisdictions we thus use their latest (but not earlier than 2019) reported data on exports of financial services to construct the GSW. For jurisdictions for which this data is not available, we extrapolate an estimate of the value of exports of financial services. In doing so, we proceed in three further steps which are summarised in Table 4.1. In steps (3)-(5) of the approach, we use different data on variables that are highly correlated with exports of financial services. We

[614] The BOPS data was downloaded on 7 January 2022 from https://data.imf.org/BOPS.

report the correlation coefficients for these variables in Table 4.2 and discuss the choice of these variables below.

After using reported data on exports of financial services for 2020 (for the 105 jurisdictions where this is available) in Step 1, we proceed to Step 2 in which we use reported data on exports of financial services in the IMF BOPS for the year 2019. There are 6 jurisdictions assessed in the Financial Secrecy Index 2022 for which data on exports of financial services was not yet available for 2020 but it was available for 2019 – and we thus use 2019 data for these countries. In previous editions of the Financial Secrecy Index, as part of this step, we have calculated the average change between previous and current year in all countries for which both years had been reported and applied that average change to the data from countries which had not yet reported for the current year. In this edition, we use directly the previous year's data, as we prefer to use actual reported data, albeit a year older, rather than to assume that the development of exports of financial services in these countries was equal to the global average. In any case, we have tested that the differences are negligible and would not affect the ranking for any country.

In Step 3, for countries where data on exports of financial services is not available for neither 2020 nor 2019, we extrapolate that value using data on inward assets, which we source from the International Investment Position (IIP) statistics which is part of the IMF BOPS. This data is filtered[615] to exclude foreign direct investment, reserve assets, and all assets belonging to general government and monetary authorities. We run an ordinary least squares regression with 1,509 observations and an R-squared of 0.8403, resulting in an extrapolation coefficient of 0.00373. We multiply the value of inward assets by this extrapolation coefficient to arrive at an estimate of exports of financial services from each country.

In steps 4 and 5, we use data on reported inward portfolio assets and derived outward portfolio liabilities from the IMF's Coordinated Portfolio Investment Survey (CPIS). The CPIS data was downloaded on 7 January 2022 from the IMF's website. The CPIS data for 2020 covers 83 jurisdictions for total portfolio assets, and 229 jurisdictions for total portfolio liabilities, which are derived from data on outward assets that are reported by other countries. Using the assets data, we extrapolate the value of exports of financial services for an additional 7 jurisdictions (3 from IMF BOPS data, 4 from IMF CPIS data), and for the remaining 23 jurisdictions, we extrapolate from derived liabilities data. All 5 steps are summarised in Table 4.1.

The reasons why we use these data sources in this order are twofold. First, they are all highly correlated with data on exports of financial services (at least for countries which report both data) - as reported in Table 4.2, the correlation coefficients are very high. In Steps 3 and 4, we use data on portfolio assets: in

[615] Following the methodology in: (Ahmed Zoromé. *Concept of Offshore Financial Centers: In Search of an Operational Definition*. Washington DC, USA: International Monetary Fund, 2007. URL: http://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf [visited on 08/05/2022]).

Table 4.1. Summary of the 5-step derivation of the exports of financial services

Data source	No. of jurisdictions assessed in Financial Secrecy Index 2022	All	No. of observatio	R-squared	Extrapolation coefficient
(1) Reported exports of financial services data, 2020 (BXSOFI_BP6_USD, IMF BOPS)	105	144			
(2) Reported exports of financial services data, 2019 (BXSOFI_BP6_USD, IMF BOPS)	6	159			
(3) Extrapolated from asset data, 2020 (IA_BP6_USD, IMF BOPS, filtered following[616])	3	139	1,509	0.8403	0.0037292
(4) Extrapolated from asset data, 2020 (I_A_T_T_USD_BP6_USD, IMF CPIS)	4	83	796	0.7930	0.0102122
(5) Extrapolated from derived liability data, 2020 (I_L_T_T_T_BP6_DV_USD, IMF CPIS)	23	229	1,633	0.7921	0.0105253
TOTAL	**141**				

Step 3, to arrive at portfolio assets, we filter the total asset data as reported in IMF BOPS[617]; and in Step 4, we use portfolio assets as reported in IMF CPIS. The reason is that we believe that the value of inward portfolio assets (ie portfolio assets held in a jurisdiction by non-residents) is likely to be a good proxy variable for the value of financial services that are charged to the owners of these assets. This is confirmed by the high correlation coefficients between these variables and exports of financial services, as reported in Table 4.2. In Step 5, we use data on jurisdictions' portfolio liabilities, ie assets of non-residents held in a given jurisdiction, which is derived from numbers for outward assets that are reported by other countries. While disparities between derived outward liabilities data and reported inward assets data are well-known[618] and TJN has made some critical comments on this approach,[619] we use this data in the fifth step despite these limitations due to its wide coverage which includes all 23 remaining jurisdictions that are assessed in the Financial Secrecy Index 2022.

In total, we obtain data on exports of financial services (true or extrapolated) for 239 jurisdictions in the total amount of $US 560 billion. Of this, the 141 jurisdictions assessed in the 2022 index cover 99.75%.

Finally, then, we calculate, for each jurisdiction, the share of their exports of financial services on the global total. This creates a global scale weight reflecting the relative importance of each jurisdiction. The global scale weight for jurisdiction i, GSW_i, is thus defined as:

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[617] Following (Zoromé, *Concept of Offshore Financial Centers: In Search of an Operational Definition*).

[618] For example, see (Gabriel Zucman. 'The Missing Wealth of Nations: Are Europe and the US Net Debtors or Net Creditors?' *The Quarterly Journal of Economics*, 128(3) [2013], pp. 1321–1364. URL: http://qje.oxfordjournals.org/content/128/3/1321.short [visited on 08/05/2022])

[619] James S. Henry. *The Price of Offshore Revisited: New Estimates for "Missing" Global Private Wealth, Income, Inequality, and Lost Taxes*. Tax Justice Network, 2012. URL: http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_26072012.pdf (visited on 07/05/2022).

$$\text{GSW}_i = \frac{\text{ExpFinSer}_i}{\sum_i \text{ExpFinSer}_i},$$

where ExpFinSer_i are the exports of financial services from country i, either true (ie, reported in the IMF's Balance of Payments Statistics) or extrapolated from other sources, as described above.

It is important to note that this weighting alone does not imply harbouring or supporting inappropriate behaviour by the jurisdictions in question. Arguably, those near the top should be congratulated on their success in the field of international trade in financial services (although in light of recent examples such as Iceland, Ireland and Cyprus, they may of course also want to consider the extent of their reliance on this risky sector). Rather, the global scale weight is an indicator of the potential for a jurisdiction to contribute to the global problem of financial secrecy, if secrecy is chosen in the range of policy areas discussed within this document. The higher the global scale weight of a given jurisdiction, the greater the risk posed to others if secrecy is chosen, and so the greater its responsibility to be transparent.

Table 4.2. Correlation coefficients matrix for data sources from which we extrapolate in case data on exports of financial services for 2020 or 2019 is not available. Number of observations is 1,714.

	(1)	(2)	(3)	(4)	(5)
(1) Exports of financial services, 2020 (IMF BOPS)	1				
(2) Exports of financial services, 2019 (IMF BOPS)	0.9975	1			
(3) Inward assets, 2020 (IMF BOPS)	0.9174	0.9132	1		
(4) Inward assets, 2020 (IMF CPIS)	0.8862	0.8791	0.9478	1	
(5) Outward derived liabilities, 2020 (IMF CPIS)	0.8878	0.884	0.9249	0.9626	1

One important caveat when comparing the Global Scale Weights over time is that as some countries become more transparent, and more data becomes available, the data source used to calculate the Global Scale Weight might change, which can lead to artificial developments of this measure over time. For example, in this 2022 edition, the Cayman Islands have, for the first time, available data on exports of financial services indicating the true scale of the financial services it provides to non-residents – revealing it to be significantly lower than previously estimated. In the absence of self-reported data from the Cayman authorities in the IMF Balance of Payments database, previous indexes utilised data from the IMF Coordinated Portfolio Investment Survey database (from Step 4). However, Cayman's highly disproportionate hosting of cross-border portfolio investments made it uniquely placed to see significant discrepancies in estimated financial activity arising from the two databases, and its Global Scale Weight consequently dropped significantly between the 2020 index and Financial Secrecy Index 2022.

It is then only in the subsequent step described in Section 4.2, where these global scale weights are combined with the secrecy scores, that we create the Financial Secrecy Index value which reflects the potential global harm done by each jurisdiction.

We believe that this methodology represents the most robust possible use of the available data as a means to evaluate the relative contribution of different jurisdictions to the global total of financial services provided to non-residents. Nonetheless, the fact that researchers must follow such a convoluted path to reach this point is further evidence of the failure of policymakers to ensure that global financial institutions and national regulators have access to the necessary data to track and understand international finance.

One reasonable criticism of this approach to global scale weights is that a large part, perhaps even the majority, of illicit financial flows may occur through trade in goods rather than through financial flows.[620] Illicit flows, including corporate tax evasion, laundering of criminal proceeds and cross-border flows related to bribery and the theft of public assets, represent a primary reason for concern about financial secrecy. A broad literature[621] highlights the potential for illicit flows to occur through trade. However, trade mispricing is not thought to occur simply to shift profits or income to random jurisdictions: rather it is likely to be specifically for the purpose of ensuring the resulting assets are held in secrecy jurisdictions (providing, of course, a resulting flow of financial services exports for the Swiss or other economies). As such, the approach taken here is likely to identify important jurisdictions also with respect to trade mispricing, at least as destination countries of illicit financial flows. Nonetheless, future work could consider a reweighting with trade flows.

Another relevant criticism of this approach relates to a lack of clarity around what kinds of services are included or left out in the computation of the exports of financial services in the Balance of Payments Statistics. While fees and costs associated with holding assets and related custodian services ought to be captured, it is not clear, for instance, if fees for the provision of supporting legal services are included as well. More importantly, while costs directly associated with assets may be covered, the fees associated with hosting and managing the legal structures which in turn hold those assets, such as trusts, shell companies and foundations, are likely not to be captured by financial services. This may result in underestimating the scale of activity in some secrecy jurisdictions, such as British Virgin Islands or Liechtenstein, in which the management of shell companies and foundations is arguably the most important business segment. Until better data becomes available, however, it is not obvious how the current approach could be substantially strengthened.

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[620] For Sub-Saharan Africa, trade mispricing does not account for the majority of illicit financial outflows, and is more pronounced in countries with important natural resource extraction sectors, as documented in (Léonce Ndikumana and James K. Boyce. 'Capital Flight from Sub-Saharan Africa: Linkages with External Borrowing and Policy Options'. *International Review of Applied Economics*, 25(2) [2011], pp. 149–170, pp.50-51).

[621] See, for example (Maria E. De Boyrie et al. 'Estimating the Magnitude of Capital Flight Due to Abnormal Pricing in International Trade: The Russia–USA Case'. *Accounting Forum*, 29(3) [2005], pp. 249–270. URL: http://www.sciencedirect.com/science/article/pii/S0155998205000268 [visited on 02/05/2022]; Raymond Baker. *Capitalism's Achilles Heel. Dirty Money and How to Renew the Free-Market System*. Hoboken: Wiley, 2005; Ndikumana and Boyce, 'Capital Flight from Sub-Saharan Africa'; Dev Kar and Sarah Freitas. *Illicit Financial Flows from Developing Countries Over the Decade Ending 2009*. Washington DC: Global Financial Integrity, 2011. URL: https://gfintegrity.org/report/illicit-financial-flows-from-the-developing-world-over-the-decade-ending-2009/#:~:text=This%20December%202011%20report%20from,US%24903%20billion%20in%202009. [visited on 03/05/2022]).

A related question, given the extent of their activity in both the provision of services associated with financial secrecy and in lobbying jurisdictions to provide secrecy, is the role played by major professional firms in law, banking and accounting.[622] This is a potentially fruitful research area, in which early work suggests there may be consistent patterns of activity.[623]

[622] Alex Cobham. *Panama Papers: Who Were the Big Players?* Apr. 2017. URL: https://www.taxjustice.net/2017/04/03/panama-papers-big-players/ (visited on 15/05/2022).

[623] Moran Harari et al. *Key Data Report: Financial Secrecy, Banks and the Big 4 Firms of Accountants*. Tax Justice Network, 2012. URL: https://www.taxjustice.net/cms/upload/pdf/FSI2012_BanksBig4.pdf (visited on 15/05/2022).

Combining secrecy scores and global scale weights

The final step in the creation of the Financial Secrecy Index is to combine the global scale weights with the secrecy scores, to generate a single number by which jurisdictions can be ranked, reflecting the potential global harm done by each jurisdiction. As with the choice of secrecy indicators and their relative weighting in the secrecy score, and with the focus on financial services exports to determine the relative global scale weight, the choice of method to combine secrecy and scale is necessarily subjective. In each case, however, the approach taken is transparent and reflects the expertise of a wide group of stakeholders over many years.

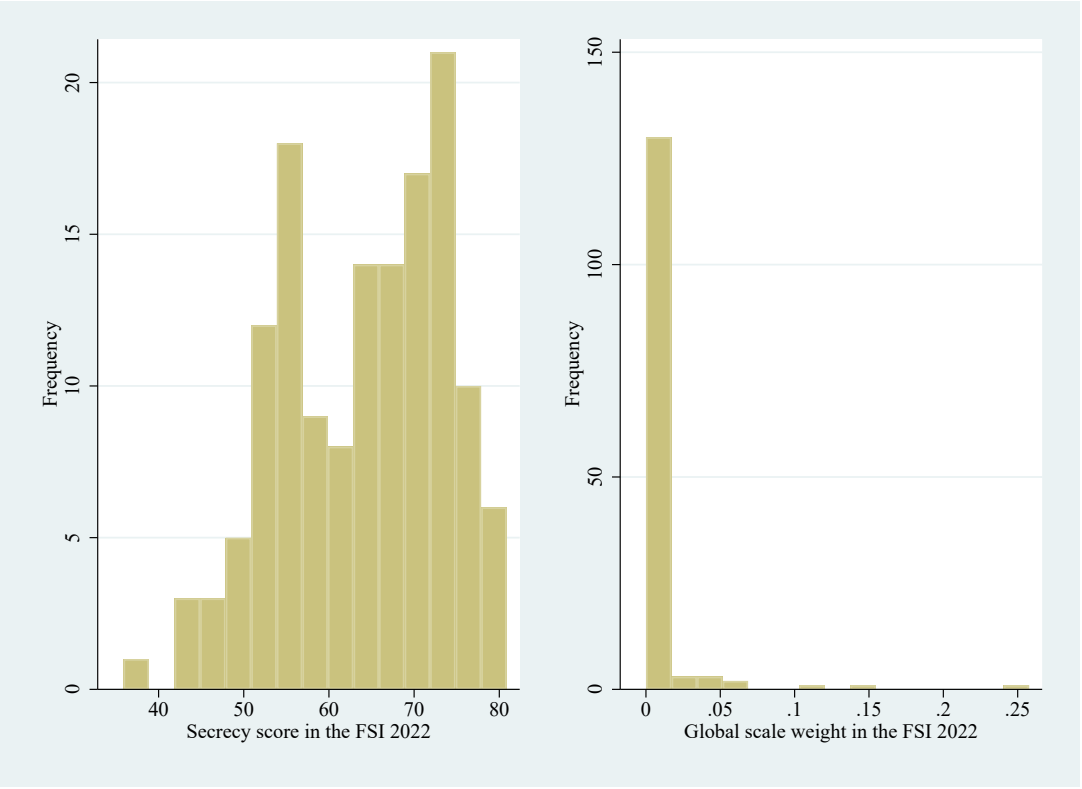
In the choice of how to combine secrecy scores with global scale weights we are led by the core objective of the Financial Secrecy Index: to measure a jurisdiction's contribution to global financial secrecy in a way that highlights harmful secrecy regulations. By doing so, the index contributes to and encourages research by collecting data and providing an analytical framework to show how jurisdictions facilitate illicit financial flows. Second, it focuses policy debates among media and public interest groups by encouraging and monitoring policy change globally towards greater financial transparency.

For the Financial Secrecy Index 2022, we use the same formula as in the previous editions of the index. The formula that defines the FSI value in the 2022 edition for jurisdiction i thus looks as follows:

$$\text{FSI 2022}_i = \text{Secrecy Score}_i^3 * \text{Global Scale Weight}_i^{1/3}$$

Therefore, in line with the core objective of the index, relative to a simple multiplicative combination of the two entities, by cubing the secrecy score and taking a cube root of the global scale weight, we highlight the importance of harmful secrecy regulations in contributing to global financial secrecy. A number of other alternatives for the combining formula have been explored. The most straightforward way to combine the two entities would be a simple multiplication formula, whereby each jurisdiction's secrecy score would be multiplied by the jurisdiction's global scale weight, without any prior scaling. The problem with this alternative is best described by Figure 5.1, which shows the histograms of both distributions. We recognise three main problems.

Figure 5.1. Histograms of Secrecy Scores and Global Scale Weights



First, both the theoretical and empirical ranges of both variables are fundamentally different. While secrecy scores range theoretically from 0 to 100 and empirically, in FSI 2022, from 35.875 (Slovenia) to 80.875 (Vietnam), global scale weights range theoretically from 0 to 0.9975 (because, as described in Section 3.46, the 141 jurisdictions considered for the FSI 2022 cover 99.75% of all global exports of financial services) and empirically from $1.95 * 10^(-9))$ (Montserrat) to 0.2578 (United States).

Second, the distribution of global scale weights is heavily skewed to the left, leaving little space for secrecy scores to play a significant role for the vast majority of jurisdictions if we were to use simple multiplication. As a result, the correlation between the global scale weights and the FSI would be 0.9904, and thus would tell a story driven almost entirely by the GSW.

Third, while the global scale weights are constrained to sum up to 0.9975, the secrecy scores are not constrained from above nor below.[624]

After careful consideration of several alternatives to combine secrecy score and global scale weight, we prefer the cube/cubic-root formula because of its specific

[624] Obviously, the secrecy scores could, in theory, sum up to the minimum of 0 and a maximum of 141*100=14,100, however, such secrecy scores would mean that each and every considered jurisdiction is as secretive as possible, or as transparent as possible. It is reasonable to assume that such a case is not even theoretically possible, because if such scores were to result from a pre-defined methodology, the methodology to construct the individual components of the secrecy scores would have been changed in the first place.

characteristics that were highlighted by the Joint Research Centre of the European Commission in their statistical audit of Financial Secrecy Index 2018:[625]

> The gradient of the surface varies quite substantially over the space of countries—for example, the gradient is quite high in corner of high SS and low GSW, meaning that in this area, a small increase in GSW results in a very sharp increase in the FSI. The implication is that countries that have a similar SS can have markedly different FSIs as a result in relatively small differences in GSW. On the other hand, countries with low SS and low GSW will only experience a small increase in FSI if the GSW were to be increased. Overall, for countries with small GSW, their FSI is driven much more by their GSWs than by their SSs. The opposite is true for countries with large GSW: here countries are differentiated mainly on their secrecy scores. (p.178)

This particular feature of the cube/cube-root formula matches very well the revised core objective of the index to measure a jurisdiction's contribution to global financial secrecy while highlighting harmful secrecy regulations. If a jurisdiction's secrecy score is on the high end of the spectrum, we do expect even a small GSW increase to imply a disproportional increase of global financial secrecy (and accompanying responsibility). If, on the other hand, a jurisdiction's secrecy score is relatively low, a small change in the jurisdiction's GSW should not add much to the global financial secrecy overall.

Another reason to favour a somewhat disproportionate impact of the global scale weight at the high end of the secrecy spectrum is the "race to the bottom" effect that those jurisdictions on the high end of the secrecy spectrum have on other countries; the responsibility of such countries is higher than what we measure strictly speaking in our two components, because these jurisdictions act as accelerators in a global "race to the bottom" towards regulatory laxity and secrecy (in a context of perceived competition among jurisdictions).

Once decided on the cubed/cubed-root formula to combine the secrecy scores with the global scale weights, we proceed with one additional step to arrive at the final number that best matches the objective of the FSI – taking the share of each jurisdiction's FSI on the total sum of FSI scores for all jurisdictions. Assuming that the sum of FSI scores for all 133 jurisdictions in the FSI 2022 can be considered as the total amount of financial secrecy supplied in the world, the constructed shares will represent each jurisdiciton's contribution, in percentage terms, to global financial secrecy. This contribution to global financial secrecy, CGFS, of jurisdiction i is thus defined as follows:

$$\text{CGFS}_i = \frac{\text{FSI}_i}{\sum_i^{141} \text{FSI}_i} * 100\%$$

[625] William Becker and Michaela Saisana. *The JRC Statistical Audit of the Financial Secrecy Index 2018 and TJN's Response to JRC Audit*. Joint Research Centre, European Commission; Tax Justice Network, 2018. URL: https://composite-indicators.jrc.ec.europa.eu/sites/default/files/JRC%20Statistical%20Audit%20of%20the%20Financial%20Secrecy%20Index%202018.pdf (visited on 02/05/2022).

We present the key results of the FSI 2022 in four parts: Secrecy Scores, Global Scale Weights, Financial Secrecy Index value, and the contribution to financial secrecy. The full results for all 141 jurisdictions are reported in Annex A.

A special methodological consideration concerns the aggregation of jurisdictions which are controlled by and dependent upon another jurisdiction. Most importantly, this question arises with respect to the large network of satellite jurisdictions associated with the United Kingdom. In the UK's Overseas Territories (OTs) and Crown Dependencies (CDs) the Queen is head of state; powers to appoint key government officials rest with the British Crown; laws must be approved in London; and the UK government holds various other powers.[626] Arguably, political responsibility for the secrecy scores of OTs and CDs rests with the United Kingdom.

Therefore, we seek to compute an FSI for the entire group of OTs and CDs. To do so, we first need to calculate the group's joint secrecy score and joint global scale weight. Calculating the joint global scale weight is straightforward - we just sum up each jurisdiction's individual global scale weight to arrive at 16.11% (or 1.97% excluding the UK).

To combine the secrecy scores, however, we see at least four relevant options. First, and most consistent with the overall FSI approach of applying the weakest-link principle, is to search across all relevant dependencies for the highest secrecy score in each of the SIs separately. This secrecy score is then allocated to the whole group, and the set of highest secrecy scores is averaged to arrive at the group secrecy score. The resulting secrecy score for the UK sphere of influence then would be 83.65 and the UK's network would top the FSI by a very large margin with a FSI value of 3,184.9 (excluding the UK, the FSI value of the group would be 1,580.8).

Second, we could use the highest secrecy score of any of these jurisdictions, 75.65 (for Turks and Caicos Islands), to arrive at an FSI of 2,355.7 (or 1,169.27 excluding the UK), again resulting in the whole group topping the list. Third, we could take a simple arithmetic average of the group's members' secrecy scores to arrive at 68.3 (or 70.41 excluding the UK), resulting in an FSI of 1,733.65 (or 942.84 excluding the UK). Fourth, using average secrecy scores weighted by each jurisdiction's global scale weight, which emphasises the relative transparency of the UK over its secrecy network, we arrive at a secrecy score of 49.81 (68.7 excluding the UK), resulting in an FSI of 672.38 (or 875.52 excluding the UK).

[626] Tax Justice Network. *Narrative Report of the United Kingdom*. Tax Justice Network, 2020. URL: https://fsi.taxjustice.net/PDF/UnitedKingdom.pdf (visited on 08/03/2021).

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Annex A: FSI 2022 - Ranking of 141 jurisdictions

Rank	Jurisdiction	FSI value	FSI share	Secrecy score	Global scale weight
1	United States	1,951	5.74%	67.43	25.78%
2	Switzerland	1,167	3.43%	70.05	3.91%
3	Singapore	1,167	3.43%	67.25	5.64%
4	Hong Kong	927	2.73%	64.95	3.87%
5	Luxembourg	804	2.36%	54.98	11.32%
6	Japan	765	2.25%	63.13	2.81%
7	Germany	681	2.00%	56.70	5.21%
8	United Arab Emirates	648	1.91%	79.23	0.22%
9	British Virgin Islands	621	1.83%	70.65	0.55%
10	Guernsey	610	1.79%	70.65	0.52%
11	China	578	1.70%	66.45	0.76%
12	Netherlands	556	1.63%	64.63	0.87%
13	United Kingdom	547	1.61%	47.18	14.14%
14	Cayman Islands	516	1.52%	72.63	0.25%
15	Cyprus	510	1.50%	61.53	1.05%
16	South Korea	499	1.47%	63.80	0.71%
17	Taiwan	482	1.42%	60.13	1.09%
18	Panama	474	1.40%	72.73	0.19%
19	Jersey	459	1.35%	63.45	0.58%
20	Qatar	412	1.21%	73.58	0.11%
21	Italy	393	1.16%	54.85	1.35%
22	Bahamas	385	1.13%	75.48	0.07%
23	Thailand	380	1.12%	69.83	0.14%
24	Vietnam	375	1.10%	80.88	0.04%
25	Saudi Arabia	360	1.06%	68.95	0.13%
26	Belgium	359	1.06%	52.53	1.52%
27	Ireland	357	1.05%	47.20	3.92%
28	Canada	349	1.03%	51.15	1.77%
29	Spain	346	1.02%	56.58	0.70%
30	France	343	1.01%	47.88	3.05%

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Rank	Jurisdiction	FSI value	FSI share	Secrecy score	Global scale weight
31	Macao	341	1.00%	63.10	0.25%
32	Israel	336	0.99%	59.30	0.42%
33	Angola	336	0.99%	79.45	0.03%
34	Algeria	335	0.99%	79.08	0.03%
35	Kuwait	334	0.98%	74.58	0.05%
36	India	318	0.94%	54.73	0.73%
37	Australia	318	0.94%	56.15	0.58%
38	Malta	309	0.91%	54.55	0.69%
39	Malaysia	296	0.87%	65.75	0.11%
40	Liberia	286	0.84%	73.25	0.04%
41	Kenya	282	0.83%	66.70	0.09%
42	Nigeria	271	0.80%	64.78	0.10%
43	Russia	270	0.80%	59.60	0.21%
44	Austria	270	0.79%	54.63	0.46%
45	Guatemala	265	0.78%	74.75	0.03%
46	South Africa	261	0.77%	60.05	0.18%
47	Oman	256	0.75%	73.50	0.03%
48	Norway	252	0.74%	53.30	0.46%
49	Bermuda	245	0.72%	70.13	0.04%
50	Sri Lanka	241	0.71%	75.75	0.02%
51	Marshall Islands	236	0.69%	71.25	0.03%
52	Bangladesh	232	0.68%	74.63	0.02%
53	New Zealand	230	0.68%	62.95	0.08%
54	Liechtenstein	217	0.64%	72.18	0.02%
55	Mauritius	216	0.64%	70.13	0.02%
56	Egypt	211	0.62%	68.25	0.03%
57	Portugal	201	0.59%	56.88	0.13%
58	Anguilla	200	0.59%	75.45	0.01%
59	Turkey	200	0.59%	61.13	0.07%
60	Bahrain	191	0.56%	68.20	0.02%
61	Isle of Man	190	0.56%	65.00	0.03%
62	Romania	178	0.52%	59.38	0.06%
63	Barbados	177	0.52%	73.73	0.01%
64	Puerto Rico	176	0.52%	78.30	0.00%
65	Jordan	170	0.50%	71.93	0.01%
66	Indonesia	170	0.50%	55.80	0.09%

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Rank	Jurisdiction	FSI value	FSI share	Secrecy score	Global scale weight
67	Sweden	168	0.50%	44.63	0.68%
68	St. Kitts and Nevis	168	0.49%	77.23	0.00%
69	Venezuela	168	0.49%	71.93	0.01%
70	Ghana	167	0.49%	52.68	0.15%
71	Uruguay	163	0.48%	57.98	0.06%
72	Philippines	162	0.48%	67.10	0.02%
73	Chile	161	0.47%	59.78	0.04%
74	Pakistan	159	0.47%	66.35	0.02%
75	Aruba	159	0.47%	70.93	0.01%
76	Hungary	156	0.46%	55.20	0.08%
77	Lebanon	149	0.44%	64.60	0.02%
78	Kazakhstan	147	0.43%	62.90	0.02%
79	Morocco	146	0.43%	65.98	0.01%
80	Denmark	140	0.41%	48.95	0.17%
81	Cameroon	140	0.41%	70.25	0.01%
82	Mexico	139	0.41%	53.08	0.08%
83	Brazil	135	0.40%	49.15	0.15%
84	Dominican Republic	126	0.37%	64.73	0.01%
85	Ukraine	125	0.37%	58.88	0.02%
86	Poland	122	0.36%	46.05	0.20%
87	US Virgin Islands	120	0.35%	71.93	0.00%
88	Finland	119	0.35%	51.80	0.06%
89	Seychelles	118	0.35%	72.18	0.00%
90	Curacao	117	0.35%	76.05	0.00%
91	Maldives	117	0.34%	75.20	0.00%
92	Czechia	114	0.34%	50.00	0.08%
93	Tanzania	113	0.33%	68.85	0.00%
94	Namibia	113	0.33%	71.30	0.00%
95	Latvia	113	0.33%	55.28	0.03%
96	Gibraltar	110	0.32%	66.78	0.00%
97	El Salvador	107	0.32%	60.50	0.01%
98	Rwanda	106	0.31%	72.13	0.00%
99	Greece	103	0.30%	52.83	0.03%
100	Croatia	102	0.30%	53.13	0.03%
101	Slovakia	102	0.30%	53.18	0.03%
102	Tunisia	101	0.30%	59.58	0.01%

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Rank	Jurisdiction	FSI value	FSI share	Secrecy score	Global scale weight
103	Lithuania	97	0.28%	50.95	0.04%
104	Samoa	93	0.27%	73.03	0.00%
105	Costa Rica	91	0.27%	55.80	0.01%
106	Bulgaria	90	0.26%	52.78	0.02%
107	Peru	89	0.26%	54.08	0.02%
108	Colombia	88	0.26%	54.33	0.02%
109	Bolivia	87	0.26%	79.25	0.00%
110	Serbia	84	0.25%	54.38	0.01%
111	Argentina	82	0.24%	49.13	0.03%
112	Vanuatu	81	0.24%	76.00	0.00%
113	Botswana	80	0.24%	56.80	0.01%
114	Andorra	80	0.24%	54.95	0.01%
115	Belize	76	0.22%	75.10	0.00%
116	Ecuador	73	0.21%	52.23	0.01%
117	Paraguay	72	0.21%	66.23	0.00%
118	Monaco	66	0.19%	73.55	0.00%
119	Montenegro	61	0.18%	60.68	0.00%
120	Turks and Caicos Islands	59	0.17%	75.65	0.00%
121	Fiji	58	0.17%	70.30	0.00%
122	St. Vincent and the Grenadines	53	0.15%	66.50	0.00%
123	Albania	47	0.14%	54.45	0.00%
124	North Macedonia	47	0.14%	61.95	0.00%
125	Estonia	47	0.14%	44.20	0.02%
126	Iceland	46	0.13%	42.45	0.02%
127	Antigua and Barbuda	45	0.13%	76.98	0.00%
128	Dominica	44	0.13%	65.18	0.00%
129	Kosovo	41	0.12%	68.90	0.00%
130	Trinidad and Tobago	39	0.12%	68.95	0.00%
131	Cook Islands	39	0.11%	69.75	0.00%
132	Grenada	36	0.11%	65.90	0.00%
133	St. Lucia	33	0.10%	72.23	0.00%
134	Guam	32	0.09%	70.30	0.00%
135	American Samoa	30	0.09%	69.30	0.00%
136	Brunei	28	0.08%	73.30	0.00%
137	Slovenia	25	0.07%	35.88	0.02%
138	Gambia	21	0.06%	72.73	0.00%

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Rank	Jurisdiction	FSI value	FSI share	Secrecy score	Global scale weight
139	Nauru	13	0.04%	59.08	0.00%
140	San Marino	12	0.03%	60.35	0.00%
141	Montserrat	5	0.01%	73.75	0.00%

Annex B: Detailed breakdown of results for 20 Secrecy Indicators

Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
Albania	47	25	75	50	50	100	100	100	55	100	62.5	0	40	100	50	50	42	19	0	23.5	54.45
Algeria	93	25	100	50	100	100	100	100	100	100	62.5	37.5	100	100	50	60	71	100	100	32.5	79.08
American Samoa	41	50	75	50	0	100	100	100	100	100	75	0	80	100	25	90	36	100	100	64	69.30
Andorra	50	0	40	50	0	100	100	100	100	100	75	75	40	50	50	80	34	25	0	30	54.95
Angola	67	25	100	50	100	100	100	100	100	100	62.5	37.5	100	100	50	70	68	100	100	59	79.45
Anguilla	51	100	100	50	100	100	100	100	100	100	100	100	100	100	50	70	39	33	0	16	75.45
Antigua and Barbuda	61	100	75	100	100	100	100	100	100	100	87.5	100	100	100	75	70	39	15	0	17	76.98
Argentina	66	25	0	100	100	100	100	100	95	100	25	0	0	0	25	40	77	0	0	29.5	49.13
Aruba	67	25	100	50	100	100	100	100	100	100	75	75	100	100	25	50	77	39	0	35.5	70.93
Australia	20	50	100	100	100	100	100	100	95	100	30	75	80	0	25	10	38	0	0	0	56.15
Austria	30	37.5	75	100	80	100	50	50	100	50	65	75	40	100	75	20	31	0	0	14	54.63
Bahamas	50	100	75	50	100	100	100	100	100	100	100	100	100	100	75	70	34	35	0	20.5	75.48
Bahrain	27	37.5	15	100	100	100	100	100	100	100	100	100	100	100	50	50	37	30	0	17.5	68.20
Bangladesh	47	50	100	50	100	100	100	100	75	100	62.5	75	90	100	25	50	38	100	100	30	74.63
Barbados	60	50	100	100	100	100	100	100	100	100	62.5	75	100	100	50	80	46	18	0	33	73.73
Belgium	17	50	75	100	100	100	0	50	90	50	52.5	37.5	90	100	75	20	26	0	0	17.5	52.53
Belize	73	87.5	100	50	100	100	100	100	50	100	87.5	100	100	100	50	70	69	38	0	27	75.10
Bermuda	20	50	75	100	100	100	100	100	100	100	100	100	100	100	50	50	18	29	0	10.5	70.13

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
Bolivia	73	50	100	50	90	100	100	100	100	100	75	37.5	100	100	50	50	74	100	100	35.5	79.25
Botswana	47	37.5	0	50	0	80	100	100	100	100	62.5	75	30	100	25	60	52	100	0	17	56.80
Brazil	57	25	75	50	100	100	100	100	90	100	50	0	0	0	50	20	52	0	0	14	49.15
British Virgin Islands	33	50	75	50	100	100	100	100	100	100	100	75	100	100	75	90	33	32	0	0	70.65
Brunei	73	50	90	50	100	100	100	100	100	100	87.5	75	100	100	50	60	72	35	0	23.5	73.30
Bulgaria	43	25	75	100	12.5	100	25	50	100	50	52.5	100	70	100	50	50	35	14	0	3.5	52.78
Cameroon	60	0	100	50	100	100	100	100	97.5	100	62.5	37.5	100	100	25	70	73	100	0	29.5	70.25
Canada	21	50	100	100	100	100	100	75	100	75	25	0	70	0	25	20	35	13	0	14	51.15
Cayman Islands	14	100	50	100	100	100	100	100	100	100	100	100	100	100	50	70	29	26	0	13.5	72.63
Chile	57	37.5	90	100	100	100	100	100	100	100	50	37.5	80	50	25	20	38	0	0	10.5	59.78
China	34	50	100	100	100	100	100	100	100	100	62.5	37.5	90	100	50	40	45	3	0	17	66.45
Colombia	46	25	0	100	100	100	100	100	85	100	62.5	0	30	100	25	60	39	0	0	14	54.33
Cook Islands	51	87.5	100	50	100	100	100	100	100	100	100	37.5	70	100	50	90	37	8	0	14	69.75
Costa Rica	27	25	15	100	100	100	100	100	100	100	50	75	100	0	25	50	35	7	0	7	55.80
Croatia	33	0	100	40	90	100	100	50	100	50	37.5	37.5	40	100	50	60	51	0	0	23.5	53.13
Curacao	50	87.5	100	95	100	100	100	100	100	100	75	75	100	100	75	70	47	20	0	26.5	76.05
Cyprus	60	50	65	100	100	100	100	50	100	50	52.5	75	90	100	50	50	31	0	0	7	61.53
Czechia	27	50	75	40	12.5	100	25	50	100	50	52.5	37.5	100	100	75	50	38	0	0	17.5	50.00
Denmark	47	50	50	50	100	100	100	50	100	50	52.5	0	30	100	25	20	37	0	0	17.5	48.95
Dominica	80	50	100	50	0	100	100	100	50	100	62.5	100	70	100	50	70	74	30	0	17	65.18
Dominican Republic	34	25	40	50	100	100	100	100	75	100	75	75	70	100	25	70	35	100	0	20.5	64.73
Ecuador	76	25	0	50	50	0	25	100	65	100	50	75	100	100	25	70	78	9	0	46.5	52.23
Egypt	67	37.5	65	100	100	100	100	100	100	100	62.5	0	30	100	25	60	38	50	100	30	68.25

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
El Salvador	53	37.5	90	50	100	100	100	100	100	100	62.5	75	0	0	25	50	50	100	0	17	60.50
Estonia	37	50	40	45	35	10	50	50	100	50	65	75	100	25	50	50	38	0	0	14	44.20
Fiji	27	50	100	100	0	100	100	100	100	100	62.5	75	100	0	50	70	39	100	100	32.5	70.30
Finland	40	0	75	100	95	100	100	50	100	50	40	0	40	100	75	20	37	0	0	14	51.80
France	41	25	50	100	70	50	50	50	50	50	65	37.5	100	100	50	20	35	0	0	14	47.88
Gambia	73	100	100	50	100	100	100	100	50	100	62.5	0	0	100	25	80	69	100	100	45	72.73
Germany	37	87.5	75	100	95	100	100	50	97.5	50	62.5	0	30	100	75	10	47	0	0	17.5	56.70
Ghana	27	50	15	50	0	100	100	100	100	100	50	75	0	100	25	70	39	32	0	20.5	52.68
Gibraltar	24	100	50	100	80	60	100	100	100	100	65	75	100	100	50	80	28	4	0	19.5	66.78
Greece	27	0	75	50	100	100	100	50	75	50	40	75	80	100	75	20	29	0	0	10.5	52.83
Grenada	77	50	100	50	0	100	100	100	100	100	75	75	100	100	25	70	71	18	0	7	65.90
Guam	41	50	75	50	100	100	100	100	100	100	75	0	0	100	25	90	36	100	100	64	70.30
Guatemala	47	50	100	100	100	100	100	100	100	100	62.5	75	100	100	50	60	33	100	0	17.5	74.75
Guernsey	37	100	50	100	100	100	100	100	100	100	100	75	100	100	50	70	18	6	0	7	70.65
Hong Kong	61	50	90	100	100	90	100	90	100	75	75	37.5	100	100	50	20	32	11	0	17.5	64.95
Hungary	67	25	100	100	85	100	100	50	100	50	52.5	0	40	100	25	50	42	0	0	17.5	55.20
Iceland	33	75	40	50	70	50	25	100	75	50	75	37.5	40	0	25	50	31	5	0	17.5	42.45
India	47	50	0	100	100	100	100	100	50	50	52.5	37.5	70	100	25	40	47	8	0	17.5	54.73
Indonesia	41	25	75	50	100	100	100	100	100	100	50	37.5	90	0	50	40	38	2	0	17.5	55.80
Ireland	31	37.5	40	100	100	10	100	50	100	50	25	75	90	0	75	20	30	0	0	10.5	47.20
Isle of Man	17	100	50	45	95	100	100	100	100	100	87.5	37.5	100	100	50	70	29	5	0	14	65.00
Israel	44	50	100	50	95	100	100	100	100	100	52.5	37.5	90	0	50	60	25	18	0	14	59.30
Italy	34	50	90	50	100	100	50	50	100	50	52.5	75	90	100	50	20	25	0	0	10.5	54.85

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
Japan	21	37.5	100	100	100	100	100	100	100	100	50	37.5	80	100	50	20	44	5	0	17.5	63.13
Jersey	30	75	15	50	100	100	100	100	100	100	100	37.5	100	100	50	70	26	5	0	10.5	63.45
Jordan	61	50	40	100	85	80	100	100	100	100	62.5	75	100	100	25	70	57	100	0	33	71.93
Kazakhstan	77	100	90	50	100	100	100	100	100	100	87.5	0	40	0	50	50	69	21	0	23.5	62.90
Kenya	83	50	0	100	100	100	100	100	100	100	75	37.5	100	0	25	70	86	75	0	32.5	66.70
Kosovo	40	25	100	50	100	100	100	100	100	100	62.5	37.5	50	50	50	90	59	100	0	64	68.90
Kuwait	87	25	100	100	100	100	100	100	100	100	100	75	100	100	25	50	73	36	0	20.5	74.58
Latvia	61	25	50	100	85	50	100	50	100	50	52.5	37.5	100	100	50	40	37	0	0	17.5	55.28
Lebanon	63	50	40	50	100	100	100	100	50	100	62.5	100	100	100	25	50	55	29	0	17.5	64.60
Liberia	53	100	100	50	100	100	100	100	60	100	62.5	37.5	100	100	50	80	86	50	0	36	73.25
Liechtenstein	66	75	75	100	100	100	100	100	100	50	75	37.5	100	100	100	90	49	3	0	23	72.18
Lithuania	20	50	75	50	100	100	100	50	100	50	40	37.5	90	0	50	50	39	0	0	17.5	50.95
Luxembourg	63	50	75	100	70	100	25	50	100	50	52.5	75	40	50	100	20	65	0	0	14	54.98
Macao	30	25	100	100	100	100	100	100	50	100	75	75	100	50	50	30	24	39	0	14	63.10
Malaysia	37	100	100	100	100	100	100	100	100	100	75	37.5	100	0	75	40	26	4	0	20.5	65.75
Maldives	100	25	100	50	100	100	100	100	50	100	75	100	100	100	25	70	91	75	0	43	75.20
Malta	34	75	40	100	60	10	100	50	100	50	50	75	100	75	75	50	33	0	0	14	54.55
Marshall Islands	37	37.5	100	50	100	100	100	100	50	100	100	75	100	100	75	90	55	32	0	23.5	71.25
Mauritius	40	100	90	100	100	100	100	100	90	100	50	75	100	100	50	50	32	5	0	20.5	70.13
Mexico	51	50	100	50	100	100	100	100	97.5	50	52.5	0	0	100	25	20	42	0	0	23.5	53.08
Monaco	57	50	25	100	100	100	100	100	100	100	100	100	80	100	50	100	52	18	0	39	73.55
Montenegro	67	25	90	50	100	100	100	100	50	100	62.5	0	0	100	50	60	45	100	0	14	60.68
Montserrat	73	50	100	50	100	100	100	100	50	100	100	100	100	100	50	70	47	30	0	55	73.75

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
Morocco	57	37.5	75	100	100	100	100	100	50	100	62.5	0	100	100	50	60	51	50	0	26.5	65.98
Namibia	100	37.5	100	50	0	100	100	100	100	100	87.5	37.5	100	100	50	60	80	100	0	23.5	71.30
Nauru	60	50	0	50	0	100	100	100	50	100	75	75	100	100	25	90	57	26	0	23.5	59.08
Netherlands	57	100	75	95	100	100	100	50	85	50	40	75	100	100	75	20	44	0	0	26.5	64.63
New Zealand	21	50	90	100	100	80	100	100	75	100	50	75	90	100	25	50	38	1	0	14	62.95
Nigeria	33	50	75	50	100	100	100	100	75	100	62.5	75	100	100	25	60	56	10	0	24	64.78
North Macedonia	46	75	50	40	80	60	100	100	100	100	62.5	75	40	50	25	50	65	100	0	20.5	61.95
Norway	7	75	65	100	100	80	100	75	100	50	62.5	0	40	100	25	40	28	1	0	17.5	53.30
Oman	80	25	90	100	100	100	100	100	100	100	87.5	100	70	100	25	80	52	40	0	20.5	73.50
Pakistan	40	50	100	50	100	100	100	100	90	100	62.5	75	70	100	50	50	46	10	0	33.5	66.35
Panama	44	100	100	100	100	100	100	100	100	100	75	75	100	100	50	50	33	7	0	20.5	72.73
Paraguay	86	37.5	0	50	100	100	100	100	80	100	62.5	37.5	70	100	25	60	83	100	0	33	66.23
Peru	44	37.5	65	50	100	100	100	100	80	100	62.5	0	0	100	25	60	32	15	0	10.5	54.08
Philippines	50	50	15	50	100	100	100	100	80	100	62.5	75	80	100	25	30	42	50	100	32.5	67.10
Poland	47	0	100	100	50	100	0	50	100	50	37.5	0	80	50	50	40	49	0	0	17.5	46.05
Portugal	44	0	75	100	100	100	100	50	70	50	25	75	80	100	75	50	33	0	0	10.5	56.88
Puerto Rico	41	37.5	75	50	100	100	100	100	100	100	75	37.5	100	100	50	100	36	100	100	64	78.30
Qatar	66	87.5	25	50	100	100	100	100	100	100	87.5	100	100	100	50	80	67	32	0	26.5	73.58
Romania	46	37.5	50	100	95	100	100	50	100	50	40	75	100	100	25	40	49	23	0	7	59.38
Russia	14	75	90	100	85	100	100	100	50	100	62.5	0	80	100	25	50	34	9	0	17.5	59.60
Rwanda	93	25	90	50	100	100	100	100	50	100	62.5	37.5	0	100	50	60	79	100	100	45.5	72.13
Samoa	40	100	75	50	100	100	100	100	100	100	75	100	100	100	50	70	54	29	0	17.5	73.03
San Marino	40	50	40	50	0	100	100	100	100	100	75	75	90	100	50	90	28	3	0	16	60.35

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
Saudi Arabia	27	37.5	100	100	100	100	100	100	100	100	75	100	100	100	25	60	30	4	0	20.5	68.95
Serbia	67	75	15	100	12.5	0	25	100	100	100	62.5	75	0	100	25	70	40	100	0	20.5	54.38
Seychelles	57	75	75	50	100	100	100	100	100	100	75	75	100	100	75	60	54	11	0	36.5	72.18
Singapore	30	50	75	95	95	100	100	100	100	100	62.5	75	100	100	75	40	27	3	0	17.5	67.25
Slovakia	57	25	75	40	0	100	100	50	100	50	52.5	75	100	50	75	50	50	0	0	14	53.18
Slovenia	40	0	40	40	12.5	50	0	50	100	50	52.5	0	40	100	50	40	35	0	0	17.5	35.88
South Africa	40	37.5	100	100	100	100	100	100	100	100	25	75	50	50	25	20	57	1	0	20.5	60.05
South Korea	37	50	100	100	100	100	100	100	100	100	75	75	70	50	50	20	34	1	0	14	63.80
Spain	37	0	75	100	100	100	100	50	100	50	40	75	90	100	75	20	16	0	0	3.5	56.58
Sri Lanka	67	37.5	100	100	0	100	100	100	100	100	62.5	75	80	100	50	60	47	100	100	36	75.75
St. Kitts and Nevis	63	87.5	100	50	100	100	100	100	100	100	87.5	100	100	100	75	70	48	31	0	32.5	77.23
St. Lucia	63	50	100	50	100	100	100	100	100	100	75	75	100	100	50	70	69	13	0	29.5	72.23
St. Vincent and the Grenadines	80	50	100	50	0	100	100	100	50	100	75	75	100	100	75	70	59	30	0	16	66.50
Sweden	14	75	40	40	100	100	50	50	100	50	52.5	0	40	100	25	20	29	0	0	7	44.63
Switzerland	60	100	100	87.5	100	100	100	75	100	75	75	75	100	100	75	20	35	0	0	23.5	70.05
Taiwan	14	50	100	100	100	100	100	90	100	100	75	75	0	0	50	50	32	49	0	17.5	60.13
Tanzania	53	50	65	50	0	100	100	100	97.5	100	62.5	37.5	70	100	25	70	67	100	100	29.5	68.85
Thailand	61	25	100	100	47.5	100	25	100	40	100	62.5	75	90	100	50	50	44	100	100	26.5	69.83
Trinidad and Tobago	40	50	75	100	0	100	100	100	75	100	62.5	37.5	70	100	50	60	30	100	100	29	68.95
Tunisia	34	0	15	50	100	100	100	100	65	100	87.5	37.5	100	100	25	70	41	50	0	16.5	59.58
Turkey	47	50	75	100	100	100	100	100	100	100	62.5	0	30	100	50	50	41	10	0	7	61.13
Turks and Caicos Islands	46	50	65	100	100	100	100	100	100	100	100	100	100	100	50	80	44	33	0	45	75.65
Ukraine	30	25	75	50	50	100	100	75	90	100	75	0	100	50	50	50	37	100	0	20.5	58.88

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Country	SI1	SI2	SI3	SI4	SI5	SI6	SI7	SI8	SI9	SI10	SI11	SI12	SI13	SI14	SI15	SI16	SI17	SI18	SI19	SI20	Secrecy score
United Arab Emirates	47	100	100	100	100	100	100	100	100	100	100	100	100	100	75	80	37	25	0	20.5	79.23
United Kingdom	24	50	40	100	100	50	0	50	100	75	27.5	37.5	90	100	50	20	19	0	0	10.5	47.18
United States	31	100	75	100	100	100	100	100	90	75	15	0	30	100	50	20	36	100	100	26.5	67.43
Uruguay	54	25	15	100	100	100	100	100	50	100	62.5	37.5	80	100	25	60	30	0	0	20.5	57.98
US Virgin Islands	31	50	75	50	100	100	100	100	100	100	40	0	80	100	50	100	36	100	100	26.5	71.93
Vanuatu	41	100	100	50	100	100	100	100	100	100	100	100	100	100	75	70	37	30	0	17	76.00
Venezuela	69	37.5	100	50	100	100	100	100	90	100	62.5	0	0	100	50	90	60	100	100	29.5	71.93
Vietnam	86	25	100	100	100	100	100	100	100	100	62.5	75	40	100	50	80	63	100	100	36	80.88

Annex C: Secrecy Scores, alphabetical order

Jurisdiction	Secrecy score	Jurisdiction	Secrecy score	Jurisdiction	Secrecy score
Albania	54.45	Cook Islands	69.75	Ireland	47.20
Algeria	79.08	Costa Rica	55.80	Isle of Man	65.00
American Samoa	69.30	Croatia	53.13	Israel	59.30
Andorra	54.95	Curacao	76.05	Italy	54.85
Angola	79.45	Cyprus	61.53	Japan	63.13
Anguilla	75.45	Czechia	50.00	Jersey	63.45
Antigua and Barbuda	76.98	Denmark	48.95	Jordan	71.93
Argentina	49.13	Dominica	65.18	Kazakhstan	62.90
Aruba	70.93	Dominican Republic	64.73	Kenya	66.70
Australia	56.15	Ecuador	52.23	Kosovo	68.90
Austria	54.63	Egypt	68.25	Kuwait	74.58
Bahamas	75.48	El Salvador	60.50	Latvia	55.28
Bahrain	68.20	Estonia	44.20	Lebanon	64.60
Bangladesh	74.63	Fiji	70.30	Liberia	73.25
Barbados	73.73	Finland	51.80	Liechtenstein	72.18
Belgium	52.53	France	47.88	Lithuania	50.95
Belize	75.10	Gambia	72.73	Luxembourg	54.98
Bermuda	70.13	Germany	56.70	Macao	63.10
Bolivia	79.25	Ghana	52.68	Malaysia	65.75
Botswana	56.80	Gibraltar	66.78	Maldives	75.20
Brazil	49.15	Greece	52.83	Malta	54.55
British Virgin Islands	70.65	Grenada	65.90	Marshall Islands	71.25
Brunei	73.30	Guam	70.30	Mauritius	70.13
Bulgaria	52.78	Guatemala	74.75	Mexico	53.08
Cameroon	70.25	Guernsey	70.65	Monaco	73.55
Canada	51.15	Hong Kong	64.95	Montenegro	60.68
Cayman Islands	72.63	Hungary	55.20	Montserrat	73.75
Chile	59.78	Iceland	42.45	Morocco	65.98
China	66.45	India	54.73	Namibia	71.30
Colombia	54.33	Indonesia	55.80	Nauru	59.08

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Jurisdiction	Secrecy score	Jurisdiction	Secrecy score	Jurisdiction	Secrecy score
Netherlands	64.63	Rwanda	72.13	Switzerland	70.05
New Zealand	62.95	Samoa	73.03	Taiwan	60.13
Nigeria	64.78	San Marino	60.35	Tanzania	68.85
North Macedonia	61.95	Saudi Arabia	68.95	Thailand	69.83
Norway	53.30	Serbia	54.38	Trinidad and Tobago	68.95
Oman	73.50	Seychelles	72.18	Tunisia	59.58
Pakistan	66.35	Singapore	67.25	Turkey	61.13
Panama	72.73	Slovakia	53.18	Turks and Caicos Islands	75.65
Paraguay	66.23	Slovenia	35.88	Ukraine	58.88
Peru	54.08	South Africa	60.05	United Arab Emirates	79.23
Philippines	67.10	South Korea	63.80	United Kingdom	47.18
Poland	46.05	Spain	56.58	United States	67.43
Portugal	56.88	Sri Lanka	75.75	Uruguay	57.98
Puerto Rico	78.30	St. Kitts and Nevis	77.23	US Virgin Islands	71.93
Qatar	73.58	St. Lucia	72.23	Vanuatu	76.00
Romania	59.38	St. Vincent and the Grenadines	66.50	Venezuela	71.93
Russia	59.60	Sweden	44.63	Vietnam	80.88

Annex D: Secrecy Scores, descending order

Jurisdiction	Secrecy score	Jurisdiction	Secrecy score	Jurisdiction	Secrecy score
Vietnam	80.88	St. Lucia	72.23	Gibraltar	66.78
Angola	79.45	Liechtenstein	72.18	Kenya	66.70
Bolivia	79.25	Seychelles	72.18	St. Vincent and the Grenadines	66.50
United Arab Emirates	79.23	Rwanda	72.13	China	66.45
Algeria	79.08	Jordan	71.93	Pakistan	66.35
Puerto Rico	78.30	US Virgin Islands	71.93	Paraguay	66.23
St. Kitts and Nevis	77.23	Venezuela	71.93	Morocco	65.98
Antigua and Barbuda	76.98	Namibia	71.30	Grenada	65.90
Curacao	76.05	Marshall Islands	71.25	Malaysia	65.75
Vanuatu	76.00	Aruba	70.93	Dominica	65.18
Sri Lanka	75.75	British Virgin Islands	70.65	Isle of Man	65.00
Turks and Caicos Islands	75.65	Guernsey	70.65	Hong Kong	64.95
Bahamas	75.48	Fiji	70.30	Nigeria	64.78
Anguilla	75.45	Guam	70.30	Dominican Republic	64.73
Maldives	75.20	Cameroon	70.25	Netherlands	64.63
Belize	75.10	Bermuda	70.13	Lebanon	64.60
Guatemala	74.75	Mauritius	70.13	South Korea	63.80
Bangladesh	74.63	Switzerland	70.05	Jersey	63.45
Kuwait	74.58	Thailand	69.83	Japan	63.13
Montserrat	73.75	Cook Islands	69.75	Macao	63.10
Barbados	73.73	American Samoa	69.30	New Zealand	62.95
Qatar	73.58	Saudi Arabia	68.95	Kazakhstan	62.90
Monaco	73.55	Trinidad and Tobago	68.95	North Macedonia	61.95
Oman	73.50	Kosovo	68.90	Cyprus	61.53
Brunei	73.30	Tanzania	68.85	Turkey	61.13
Liberia	73.25	Egypt	68.25	Montenegro	60.68
Samoa	73.03	Bahrain	68.20	El Salvador	60.50
Gambia	72.73	United States	67.43	San Marino	60.35
Panama	72.73	Singapore	67.25	Taiwan	60.13

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Jurisdiction	Secrecy score	Jurisdiction	Secrecy score	Jurisdiction	Secrecy score
Cayman Islands	72.63	Philippines	67.10	South Africa	60.05
Chile	59.78	Italy	54.85	Lithuania	50.95
Russia	59.60	India	54.73	Czechia	50.00
Tunisia	59.58	Austria	54.63	Brazil	49.15
Romania	59.38	Malta	54.55	Argentina	49.13
Israel	59.30	Albania	54.45	Denmark	48.95
Nauru	59.08	Serbia	54.38	France	47.88
Ukraine	58.88	Colombia	54.33	Ireland	47.20
Uruguay	57.98	Peru	54.08	United Kingdom	47.18
Portugal	56.88	Norway	53.30	Poland	46.05
Botswana	56.80	Slovakia	53.18	Sweden	44.63
Germany	56.70	Croatia	53.13	Estonia	44.20
Spain	56.58	Mexico	53.08	Iceland	42.45
Australia	56.15	Greece	52.83	Slovenia	35.88
Costa Rica	55.80	Bulgaria	52.78		
Indonesia	55.80	Ghana	52.68		
Latvia	55.28	Belgium	52.53		
Hungary	55.20	Ecuador	52.23		
Luxembourg	54.98	Finland	51.80		
Andorra	54.95	Canada	51.15		

Annex E: Global Scale Weights, alphabetical order

Jurisdiction	Global scale weight	Jurisdiction	Global scale weight	Jurisdiction	Global scale weight
Albania	0.00%	Cook Islands	0.00%	Ireland	3.92%
Algeria	0.03%	Costa Rica	0.01%	Isle of Man	0.03%
American Samoa	0.00%	Croatia	0.03%	Israel	0.42%
Andorra	0.01%	Curacao	0.00%	Italy	1.35%
Angola	0.03%	Cyprus	1.05%	Japan	2.81%
Anguilla	0.01%	Czechia	0.08%	Jersey	0.58%
Antigua and Barbuda	0.00%	Denmark	0.17%	Jordan	0.01%
Argentina	0.03%	Dominica	0.00%	Kazakhstan	0.02%
Aruba	0.01%	Dominican Republic	0.01%	Kenya	0.09%
Australia	0.58%	Ecuador	0.01%	Kosovo	0.00%
Austria	0.46%	Egypt	0.03%	Kuwait	0.05%
Bahamas	0.07%	El Salvador	0.01%	Latvia	0.03%
Bahrain	0.02%	Estonia	0.02%	Lebanon	0.02%
Bangladesh	0.02%	Fiji	0.00%	Liberia	0.04%
Barbados	0.01%	Finland	0.06%	Liechtenstein	0.02%
Belgium	1.52%	France	3.05%	Lithuania	0.04%
Belize	0.00%	Gambia	0.00%	Luxembourg	11.32%
Bermuda	0.04%	Germany	5.21%	Macao	0.25%
Bolivia	0.00%	Ghana	0.15%	Malaysia	0.11%
Botswana	0.01%	Gibraltar	0.00%	Maldives	0.00%
Brazil	0.15%	Greece	0.03%	Malta	0.69%
British Virgin Islands	0.55%	Grenada	0.00%	Marshall Islands	0.03%
Brunei	0.00%	Guam	0.00%	Mauritius	0.02%
Bulgaria	0.02%	Guatemala	0.03%	Mexico	0.08%
Cameroon	0.01%	Guernsey	0.52%	Monaco	0.00%
Canada	1.77%	Hong Kong	3.87%	Montenegro	0.00%
Cayman Islands	0.25%	Hungary	0.08%	Montserrat	0.00%
Chile	0.04%	Iceland	0.02%	Morocco	0.01%
China	0.76%	India	0.73%	Namibia	0.00%
Colombia	0.02%	Indonesia	0.09%	Nauru	0.00%

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Jurisdiction	Global scale weight	Jurisdiction	Global scale weight	Jurisdiction	Global scale weight
Netherlands	0.87%	Samoa	0.00%	Tanzania	0.00%
New Zealand	0.08%	San Marino	0.00%	Thailand	0.14%
Nigeria	0.10%	Saudi Arabia	0.13%	Trinidad and Tobago	0.00%
North Macedonia	0.00%	Serbia	0.01%	Tunisia	0.01%
Norway	0.46%	Seychelles	0.00%	Turkey	0.07%
Oman	0.03%	Singapore	5.64%	Turks and Caicos Islands	0.00%
Pakistan	0.02%	Slovakia	0.03%	Ukraine	0.02%
Panama	0.19%	Slovenia	0.02%	United Arab Emirates	0.22%
Paraguay	0.00%	South Africa	0.18%	United Kingdom	14.14%
Peru	0.02%	South Korea	0.71%	United States	25.78%
Philippines	0.02%	Spain	0.70%	Uruguay	0.06%
Poland	0.20%	Sri Lanka	0.02%	US Virgin Islands	0.00%
Portugal	0.13%	St. Kitts and Nevis	0.00%	Vanuatu	0.00%
Puerto Rico	0.00%	St. Lucia	0.00%	Venezuela	0.01%
Qatar	0.11%	St. Vincent and the Grenadines	0.00%	Vietnam	0.04%
Romania	0.06%	Sweden	0.68%		
Russia	0.21%	Switzerland	3.91%		
Rwanda	0.00%	Taiwan	1.09%		