

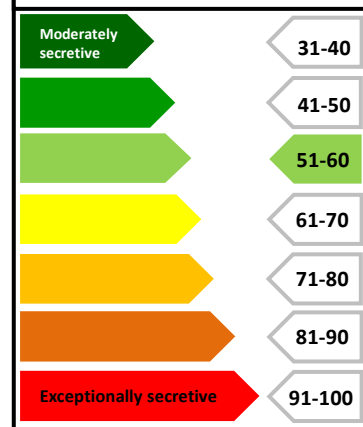
Narrative Report on Brazil

Brazil is ranked at 29th position on the 2013 Financial Secrecy Index. This ranking is based on a combination of its secrecy score and a scale weighting based on its share of the global market for offshore financial services.

Brazil has been assessed with 52 secrecy points out of a potential 100, which places it in the lower mid-range of the secrecy scale (see chart 1).

Brazil accounts for less than 1 per cent of the global market for offshore financial services, making it a tiny player compared with other secrecy jurisdictions (see chart 2).

Chart 1 - How Secretive?



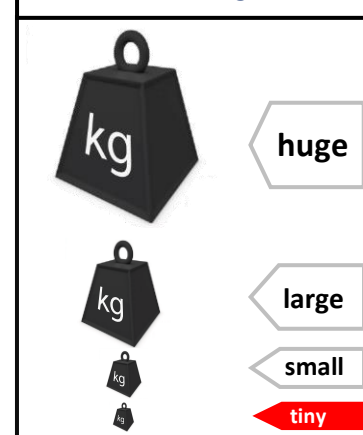
Part 1: Telling the story

30 September 2013

Overview

Brazil is a long way away from being a classic tax haven or secrecy jurisdiction - but not far enough away to avoid being influenced by them. Brazil has close “commercial” ties with tax havens: they are, in fact, major “commercial partners”. Brazil is a recipient of investments through secrecy jurisdictions. The main reason is the preferential treatment given to foreign capital which is not taxed on its profits remitted abroad. That is one important reason why an estimated \$520 billion of Brazilian assets lie in such jurisdictions¹.

Chart 2 - How Big?



Brazilian Economy

From the 1950s to the 1980s, Brazil was one of the three countries that most developed their economies, growing at an annual average 7.7 percent. The debt crisis of the 80s then helped provoke stagnation and high inflation, currency devaluations, and disarray in public finances. The ‘Real Plan’ and a subsequent economic boom from 2004-2010, reinforced by commodities demand from China in particular, caused the Brazilian currency, the Real, to appreciate, with Dutch Disease effects, a stark problem given that 2010 commodities made up some 65% of Brazil’s exports in 2010.

Major new “pre-Salt” oil discoveries are expected to increase the use of tax havens; it is notable that Petrobrás, the state’s co-owned oil company, has been using Austria to

incorporate its oil offshore platforms. This has lowered Petrobrás' costs, while weakening public finances both through dollar outflows and through tax avoidance.

Tax Administration and the international arena

The *Secretaria da Receita Federal do Brasil – RFB* (Secretariat of the Federal Revenue) has issued a positive list of low-tax jurisdictions and privileged regimes². All those that do not tax capital income or tax it at a rate lower than 20% are considered “tax havens”. (Ironically, Brazil has several situations where it taxes capital earnings at less than 20%).

Brazil's transfer pricing rules are considered unusual, and have been attacked by the OECD, which has been jealously guarding its arm's length method (ALM) for computing trading prices within TNCs (the OECD's ALM has, in turn, been [heavily criticised](#) by the Tax Justice Network and by many others.) This [memorandum](#) prepared by Brazilian transfer pricing expert Tatiana Falcão for the Tax Justice Network explains the system, which has many complexities but generally avoids the often insurmountable stumbling-block of having to search for 'comparable' transactions to ensure tax fairness. As Tatiana says:

“The Brazilian transfer pricing system is unique in that Brazil has developed an objective method that allows the taxpayer to mathematically determine and prove its pricing benchmark without having to go through a search for comparables. The Brazilian transfer pricing rules provide a viable alternative to the OECD guidelines. The search for comparables is one of the main concerns of developing countries.”

Brazilian transfer pricing rules, which rely quite heavily on assessing fixed profit margins for transactions, certainly need adjustments and improvements, but are far easier to apply than the OECD rules. Note that after the 2008-2010 crises even OECD has admitted shortcomings in its system, and its Base Erosion Profits Shifting report acknowledges the systemic problems associated with trying to tax TNCs under the existing guidelines: what is not yet clear is whether the OECD will be able to develop comprehensive solutions under the 15 point action plan announced by the OECD in July 2013.

Sources

- Falcão, T, Brazilian Transfer Pricing Memorandum, available at http://www.taxjustice.net/cms/upload/pdf/Tatiana_2012_Falcao_.pdf
- TJN criticisms of the ALM, available at http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf

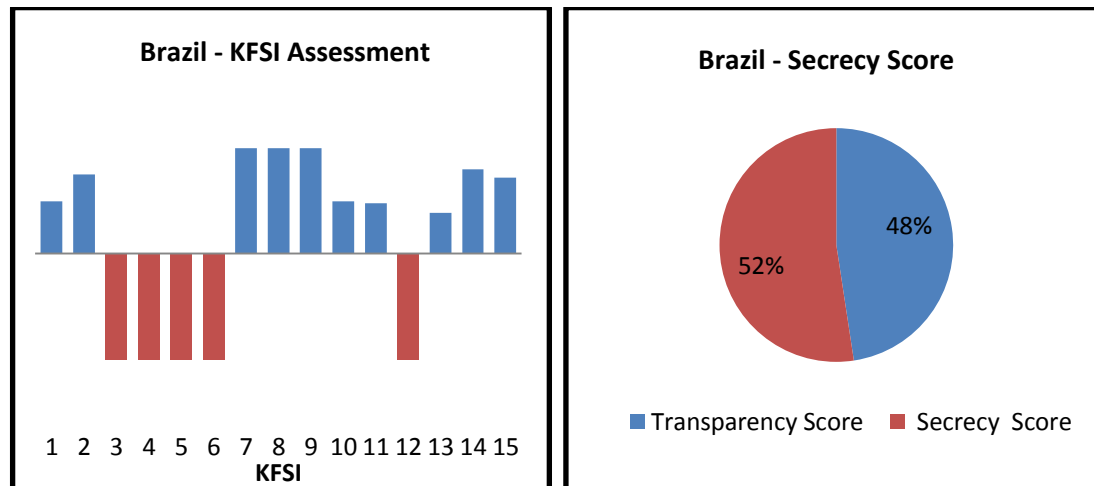
With thanks to Marcelo Oliveira for his help with this article.

Next steps for Brazil

Brazil's 52 per cent secrecy score shows that it must still make major progress in offering satisfactory financial transparency. If it wishes to play a full part in the modern financial community and to impede and deter illicit financial flows, including flows originating from tax evasion, aggressive tax avoidance practices, corrupt practices and criminal activities, it should take action on the points noted where it falls short of acceptable international standards. See part 2 below for details of Brazil's shortcomings on transparency. See this link <http://www.financialsecrecyindex.com/kfsi> for an overview of how each of these shortcomings can be fixed.

Part 2: Secrecy Scores

The secrecy score of 52 per cent for Brazil has been computed by assessing the jurisdiction's performance on the 15 Key Financial Secrecy Indicators, listed below.



The numbers on the horizontal axis of the bar chart on the left refer to the Key Financial Secrecy Indicators (KFSI). The presence of a **blue** bar indicates a positive answer, as does **blue** text in the KFSI list below. The presence of a **red** bar indicates a negative answer as does **red** text in the KFSI list. Where the jurisdiction's performance partly, but not fully complies with a Key Financial Secrecy Indicator, the text is coloured **violet** in the list below (combination of red and blue).

This paper draws on key data collected on Brazil. Our data sources include regulatory reports, legislation, regulation and news available at 31.12.2012³. The full data set is available [here](#)⁴. Our assessment is based on the 15 Key Financial Secrecy Indicators (KFSIs, below), reflecting the legal and financial arrangements of Brazil. Details of these indicators are noted in the following table and all background data can be found on the [Financial Secrecy Index website](#)⁵.

The Key Financial Secrecy Indicators and the performance of Brazil are:

TRANSPARENCY OF BENEFICIAL OWNERSHIP – Brazil	
1.	Banking Secrecy: Does the jurisdiction have banking secrecy? Brazil does not adequately curtail banking secrecy
2.	Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented? Brazil partly discloses or prevents trusts and private foundations
3.	Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies? Brazil does not maintain company ownership details in official records
KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Brazil	
4.	Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for less than US\$10/€10? Brazil does not require that company ownership details are publicly available online
5.	Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for a fee of less than US\$10/€10? Brazil does not require that company accounts be available on public record
6.	Country-by-Country Reporting: Are all companies required to comply with country-by-country financial reporting? Brazil does not require country-by-country financial reporting by all companies

EFFICIENCY OF TAX AND FINANCIAL REGULATION – Brazil	
7.	<p>Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents?</p> <p>Brazil requires resident paying agents to tell the domestic tax authorities about payments to non-residents</p>
8.	<p>Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit?</p> <p>Brazil uses appropriate tools for efficiently analysing tax related information</p>
9.	<p>Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments?</p> <p>Brazil avoids promoting tax evasion via a tax credit system</p>
10.	<p>Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses?</p> <p>Brazil partly allows harmful legal vehicles</p>
INTERNATIONAL STANDARDS AND COOPERATION – Brazil	
11.	<p>Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations?</p> <p>Brazil does not comply with international anti-money laundering standards</p>
12.	<p>Automatic Information Exchange: Does the jurisdiction participate fully in Automatic Information Exchange such as the European Savings Tax Directive?</p> <p>Brazil does not participate fully in Automatic Information Exchange</p>
13.	<p>Bilateral Treaties: Does the jurisdiction have at least 46 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?</p> <p>As of 31 May, 2012, Brazil had less than 46 tax information sharing agreements complying with basic OECD requirements</p>
14.	<p>International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?</p> <p>Brazil has partly ratified relevant international treaties relating to financial transparency</p>

15.	<p>International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues?</p> <p>Brazil partly cooperates with other states on money laundering and other criminal issues</p>
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¹ HENRY, James S. *The price of offshore revisited: new estimates for “missing” private wealth, income, inequality and lost taxes*. Tax Justice Network, 2012. at

http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore_Revisited_120722.pdf

² Instrução Normativa nº 1037 (04-06-2010) available at

<http://www.receita.fazenda.gov.br/Legislacao/Ins/2010/in10372010.htm>

³ With the exception of KFSI 13 for which the cut-off date is 31.05.2013. For more details, look at the endnote number 2 in the corresponding KFSI-paper here:

<http://www.financialsecrecyindex.com/PDF/13-Bilateral-Treaties.pdf>.

⁴ That data is available here: <http://www.financialsecrecyindex.com/database/menu.xml>.

⁵ <http://www.financialsecrecyindex.com>.