

Key Financial Secrecy Indicators

13: Tax Information Exchange Treaties

What is being measured?

This indicator examines the extent to which a jurisdiction has signed and ratified bilateral treaties conforming to the ‘upon request’ information exchange standard developed by the OECD and the Global Forum with 46 other countries, and/or whether the jurisdiction has signed and ratified the [Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters](#)¹ (“Tax Convention”). The cut-off-date is 31 May 2013².

In respect to bilateral treaties, the ‘upon request’ provisions can either be [tax information exchange agreements \(TIEAs\)](#)³ or full double taxation agreements (DTAs) whose scope extends far beyond information exchange.

The main source⁴ for this information is the table on agreements in the Exchange of Information online portal of OECD’s Global Forum⁵. This table displays the bilateral agreements allowing for information exchange upon request, broken down into various categories. We only counted those treaties that a) were in force as of 31.05.2013 and which b) met the OECD “upon request” standard (column 5 of the table). Where the OECD did not cover the jurisdiction, we consulted other private sources or the jurisdiction’s finance ministry.

A chart of the signatures and ratifications of the Tax Convention can be found on the OECD website⁶. A detailed analysis of the Convention [can be found here](#)⁷.

We have awarded a full credit for this indicator either if a jurisdiction is party to the Tax Convention or if a jurisdiction has at least 46 qualifying treaties in place, with a proportionate credit awarded where fewer agreements are in place. This number of agreements was selected because it is the average number of information exchange provisions contained in bilateral treaties a G20-country had by 31.05.2013⁸. Since many secrecy jurisdictions claim to be major financial services centres we have taken them at their word and concluded that it is fair to compare their treaty network with that of the world’s major trading nations, represented by the G20-nations.

It follows from this that the figure of 46 qualifying agreements is a moving target; when G20-nations increase or decrease their average number of treaties that are in force and meet the standard, the average we use will also change and therefore the minimum number of treaties for the purpose of this indicator will be different. Since 2011 the average number of qualifying agreements has decreased from 60 to 46, because – as confirmed by the OECD⁹ - “the assessment has become different”, reflecting “the results of the peer review process, which considers both an analysis of the international treaties and an analysis of the domestic

legal framework". For this reason, a number of agreements which used to be considered as "meeting the standard" are now considered "unreviewed"¹⁰ and others as not meeting the standard (because of domestic obstacles not reflected in the agreement itself), reducing the number of qualifying treaties.

Why is it 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 aggressive tax avoidance schemes. 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. While economic activity has become increasingly global, the tax collectors' efforts remain locally based and are frequently deliberately obstructed by secrecy jurisdictions. This barrier to information exchange undermines the rule of law and imposes huge costs on revenue authorities wanting to tackle tax dodging and on society at large who is footing the bill for missing tax revenues from mobile and international activity.

The standard for information exchange promoted by the OECD and the Global Forum is weak and largely ineffective (as we have pointed out in great detail in our ["Creeping Futility"-Report from March 2012](#)¹¹). The consequences of this weakness reach far beyond mere tax enforcement, and have huge implications for the global economy. Ultimately, it 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 policy paper \(esp. page 25\)](#)¹², this distortion creates huge imbalances in the world economy, with devastating effects on ordinary people and the environment. Moreover, as Nicholas Shaxson has argued in the book [Treasure Islands \(2011: 74-79\)](#)¹³, 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 flight capital to institute the Marshall Plan.

While the standard for information exchange promoted by the OECD has severe shortcomings, such a system may be a step forwards if a sufficient number of countries, including poorer countries, are able to effectively use the 'upon request' system to collect evidence needed to prosecute offenders. In April 2009, the OECD announced that the conclusion of just twelve bilateral agreements for information exchange is sufficient to be taken off the OECD's grey list of tax havens. This number appears to have been picked at random and there is no reason to believe that the requirement to have twelve agreements in place changes in any material way the level of secrecy found in a jurisdiction. Unfortunately, by allowing many secrecy jurisdictions to conclude just 12 agreements, often negotiating agreements between themselves, the OECD has created a ['white list' of secrecy jurisdictions](#)¹⁴ which appear to carry some form of official endorsement from the OECD itself.

Despite having strong reservations about the operational effectiveness of the ‘upon request’ model promoted by the OECD, we have opted to set the bar far higher than 12 agreements and employ the number of tax treaties a G20-country has on average as our yardstick.

We argue that bilateralism does not and cannot tackle the issue of information exchange in an effective and efficient manner. For this reason we award a credit to any jurisdiction that participates in the Tax Convention which is open to participation to all countries, not just OECD or European ones. The [Amending Protocol entered into force on 1 June 2011](#), and in May 2013 had been ratified by 26 countries¹⁵.

Our concerns about the effectiveness of the ‘upon request’ model of information exchange also relate to the need for a ‘smoking gun’ to alert tax authorities to possible cases of tax evasion (see [KFSI number 12](#)). This explains why we regard automatic information exchange as a more effective deterrent of tax evasion, and propose a simplified system of automatic information exchange of the type proposed by Richard Murphy ([downloadable here](#)) as a means of making sense of the existing OECD structure by providing the necessary ‘smoking gun’ information to make it work. [Trust registries](#)¹⁶ would be one important pillar of such a system.

A [system of full multilateral automatic tax information exchange](#)¹⁷ should be the goal of international efforts to cooperate on tackling tax evasion. Today’s widespread use and sophistication of automatic information exchange by OECD and non-OECD member states has been analysed in a [study published in August 2012](#)¹⁸. However, many of these efforts currently are piecemeal and require multilateral integration and openness to developing countries in order to increase and share the benefits.

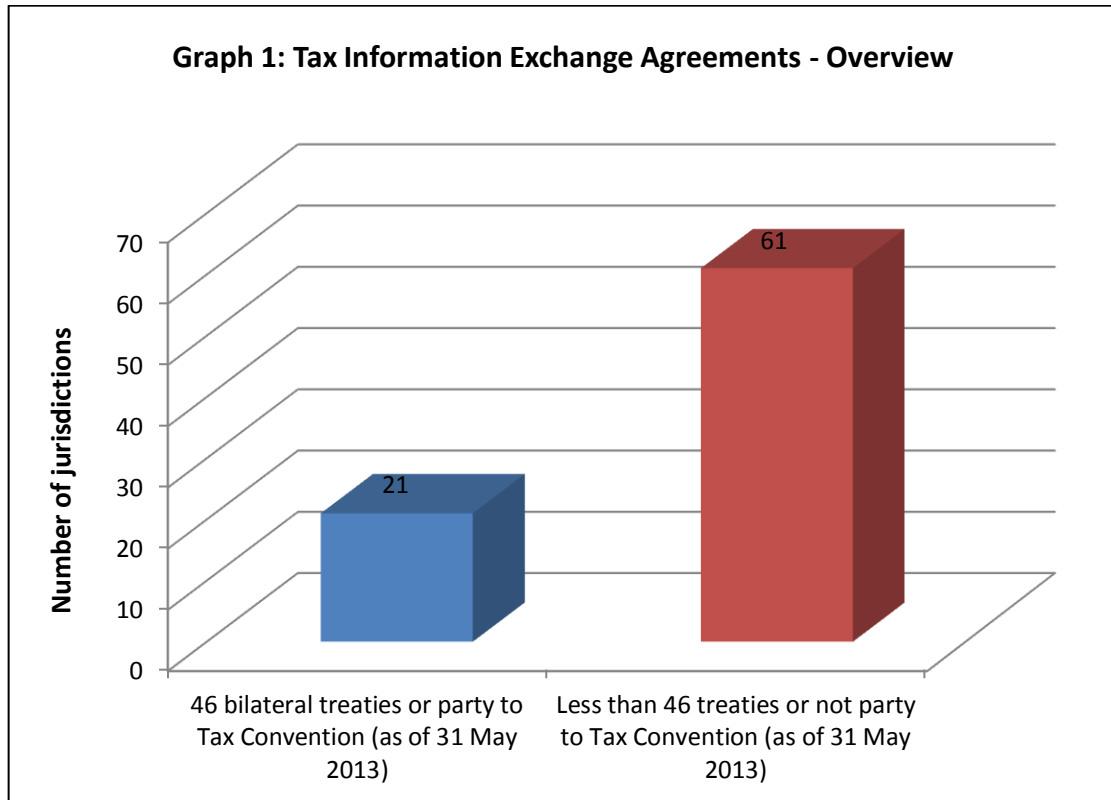
What are the crimes and abuses that might hide behind a weak network of information exchange treaties?

The bilateral treaties under scrutiny here deal only with tax matters. Therefore the relevant crimes are tax related, such as tax evasion, tax avoidance (which is now targeted as unacceptable by the OECD and many countries) and transfer pricing manipulation. However, indirectly, other crimes could be detected by spontaneous information exchange permitted under the Tax Convention.

Results Overview

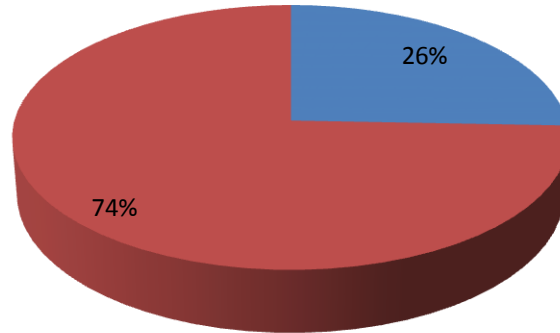
Table 1: Tax Information Exchange Agreements - Overview

Number of jurisdictions with full transparency credit	21
Number of jurisdictions with partial or no transparency credit	61



Results Detail

Graph 2: Tax Information Exchange Agreements - Details



■ 46 bilateral treaties or party to Tax Convention (as of 31 May 2013): AU; BZ; CA; CR; DE; DK; ES; FR; GB; GH; IE; IN; IT; KR; MT; NL; NO; PT; SE; US; VI

■ Less than 46 treaties or not party to Tax Convention (as of 31 May 2013): All other jurisdictions

Table 2: Bilateral treaties of Tax Convention - Details			
Country	ISO	46 Bilateral Treaties	Tax Convention
Australia	AU	X	X
Belize	BZ		X
Canada	CA	X	
Costa Rica	CR		X
Denmark	DK	X	X
France	FR	X	X
Germany	DE	X	
Ghana	GH		X
India	IN	X	X
Ireland	IE	X	X
Italy	IT		X
Korea	KR		X
Malta	MT		X
Netherlands	NL	X	X
Norway	NO	X	X
Portugal (Madeira)	PT	X	
Spain	ES	X	X
Sweden	SE	X	X
United Kingdom	GB	X	X
US Virgin Islands	VI	X	
USA	US	X	

Table 3: Tax Information Exchange Agreement Details - Transparency Credits

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.3	42	Korea	KR	1
2	Anguilla	AI	0.22	43	Latvia	LV	0
3	Antigua & Barbuda	AG	0.33	44	Lebanon	LB	0
4	Aruba	AW	0.46	45	Liberia	LR	0.2
5	Australia	AU	1	46	Liechtenstein	LI	0.39
6	Austria	AT	0.3	47	Luxembourg	LU	0.5
7	Bahamas	BS	0.46	48	Macau	MO	0.17
8	Bahrain	BH	0.52	49	Malaysia (Labuan)	MY	0.24
9	Barbados	BB	0.41	50	Maldives	MV	0
10	Belgium	BE	0.98	51	Malta	MT	1
11	Belize	BZ	1	52	Marshall Islands	MH	0.15
12	Bermuda	BM	0.57	53	Mauritius	MU	0.37
13	Botswana	BW	0	54	Monaco	MC	0.41
14	Brazil	BR	0.39	55	Montserrat	MS	0.15
15	British Virgin Islands	VG	0.33	56	Nauru	NR	0
16	Brunei	BN	0	57	Netherlands	NL	1
17	Canada	CA	1	58	New Zealand	NZ	0.89
18	Cayman Islands	KY	0.5	59	Norway	NO	1
19	Cook Islands	CK	0.26	60	Panama	PA	0.15
20	Costa Rica	CR	1	61	Philippines	PH	0.57
21	Curacao	CW	0.35	62	Portugal (Madeira)	PT	1
22	Cyprus	CY	0.57	63	Russia	RU	0.67
23	Denmark	DK	1	64	Samoa	WS	0.26
24	Dominica	DM	0	65	San Marino	SM	0.57
25	Dominican Republic	DO	0	66	Saudi Arabia	SA	0.3
26	France	FR	1	67	Seychelles	SC	0.28
27	Germany	DE	1	68	Singapore	SG	0.54
28	Ghana	GH	1	69	South Africa	ZA	0.93
29	Gibraltar	GI	0.37	70	Spain	ES	1
30	Grenada	GD	0.2	71	St Kitts and Nevis	KN	0.37
31	Guatemala	GT	0	72	St Lucia	LC	0.33
32	Guernsey	GG	0.63	73	St Vincent & Grenadines	VC	0.41
33	Hong Kong	HK	0.33	74	Sweden	SE	1
34	Hungary	HU	0.87	75	Switzerland	CH	0.17
35	India	IN	1	76	Turks & Caicos Islands	TC	0.24
36	Ireland	IE	1	77	United Arab Emirates (Dubai)	AE	0.46
37	Isle of Man	IM	0.61	78	United Kingdom	GB	1
38	Israel	IL	0.63	79	Uruguay	UY	0.26
39	Italy	IT	1	80	US Virgin Islands	VI	1
40	Japan	JP	0.8	81	USA	US	1
41	Jersey	JE	0.59	82	Vanuatu	VU	0

¹ <http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>; 01.08.2013.

² While the cut-off date is many months before the publication of the Financial Secrecy Index, there is no reason to believe that the *relative* amount of treaties in November 2013 dramatically deviated from the situation on 31.05.2013.

³ http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf; 22.07.2013.

⁴ To see the sources we are using for particular jurisdictions please check out the assessment logic table in Annex C here <http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> and the corresponding information for individual countries in our database, available at www.financialsecrecyindex.com/database/menu.xml.

⁵ 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: <http://www.eoi-tax.org/>; 22.07.2013. For the purpose of our research, we relied on a dataset sent by the OECD secretariat on 30.05.2013.

⁶ www.oecd.org/ctp/exchangeofinformation/Status_of_convention.pdf; 22.07.2013.

⁷ www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf; 22.07.2013.

⁸ The exact average per G20-nation is 46.52 as of 31 May 2013, according to the dataset provided by the OECD secretariat on 30 May 2013.

⁹ Communication with OECD of 8 March, 2013.

¹⁰ According to the Communication with OECD of March 8, 2013, “unreviewed” means that:

- “The text of the agreement is not reviewed as both parties have not been reviewed under the Peer Review process; or
- The text of the agreement is considered to be meeting the standard, the legal framework of the reviewed jurisdiction is sufficient, but we have no information on the treaty partner as the other partner is not a GF member (or it has recently joined the GF)”.

On the contrary, “Not meeting the standard” means that:

- “The text of the agreement is not to the standard; or
- The text of the agreement is good, but one of the two treaty partners’ domestic legal framework does not allow for effective EOI (e.g. TIEA between Australia and Vanuatu is not meeting the standard due to lack of access power in Vanuatu); or
- Both the text of the agreement and the domestic legal framework of the two jurisdictions (or just one of them) are not sufficient to meet the standard”.

¹¹ See the full report here: www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf;

22.07.2013. International Tax Review broadly reported about this study here:

<http://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html>; 22.07.2013.

¹² http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 22.07.2013.

¹³ <http://treasureislands.org/>; 22.07.2013.

¹⁴ <http://www.oecd.org/tax/transparency/progress%20report%20december%202012.pdf>;

01.08.2013.

¹⁵ www.oecd.org/ctp/exchangeofinformation/Status_of_convention.pdf; 22.07.2013.

¹⁶ www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf; 22.07.2013.

¹⁷ http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 22.07.2013.

¹⁸ www.taxjustice.net/cms/upload/pdf/AIE2012-TJN-Briefing.pdf; 22.07.2013.

<http://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html>; 22.07.2013.