



Financial Secrecy Index 2020

Methodology

Tax Justice Network¹

Abstract: *This paper explains the construction of the qualitative and quantitative components of the Financial Secrecy Index (FSI) 2020. The qualitative component is composed of 20 Key Financial Secrecy Indicators. The paper explains what each measures, including any methodological changes since FSI 2018, 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 FSI 2020.*



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¹ This paper is based to some extent on materials published in 2009, 2011, 2013, 2015 and 2018 on www.financialsecrecyindex.com/ 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 FSI 2020 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, Javier Garcia-Bernardo, Leyla Ateş, Lucas Millán-Narotzky, Markus Meinzer, Michèle Andriamparany Davis, Miroslav Palanský, Moran Harari, Rachel Etter-Phoya, Shanna Lima and Verónica Grondona.

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1. 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 opaquer 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 (i.e. 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 FSI 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"². Arguably, the lack of clarity, consistency and objectivity in defining and identifying tax havens has contributed to a failure to counter the associated problems³.

The FSI 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 escape or undermine the laws, rules and regulations of other jurisdictions elsewhere, using secrecy as a prime tool"⁴.

We emphasize 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 (Key Financial Secrecy Indicators, KFSI) 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

² Sol Picciotto, *International Business Taxation. A Study in the Internationalization of Business Regulation*, Electronic Re-Publication (London, 1992), 132
<<https://taxjustice.net/cms/upload/pdf/Picciotto%201992%20International%20Business%20Taxation.pdf>> [accessed 26 April 2019].

³ Alex Cobham, Petr Janský and Markus Meinzer, 'The Financial Secrecy Index: Shedding New Light on the Geography of Secrecy', *Economic Geography*, 91/3 (2015), 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 Peter Dietsch and Thomas Rixen (Colchester, 2016), 255–88.

⁴ TJN prefers the term secrecy jurisdiction over tax haven but sometimes uses both interchangeably. See sources in footnote above for a thorough discussion of the terminology.

each jurisdiction. In FSI 2020, the compound secrecy scores vary between 37.55 points on the low end (Slovenia) and 79.83 points (Maldives) on the high end of the spectrum.

The FSI has one core objective: it measures a jurisdiction's contribution to global financial secrecy in a way that highlights harmful secrecy regulations. By doing so, the FSI 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 FSI 2020 is the sixth edition after biennial releases in 2009, 2011, 2013, 2015 and 2018.⁵ 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 Basle Anti-Money Laundering Index, to a number of private sector risk/rating agencies), and increasingly in academic research.⁶

In 2020, country coverage has increased to 133 jurisdictions. Very few changes took place since 2018, including an increase of indicators on automatic exchange of information, covering extractive contracts transparency, and minor changes in the categories of existing indicators as well as becoming stricter in some of the assessments as described below.

Overall, the changes to the content, structure and emphasis of the database and the 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 Index⁷. As we explore in more detail 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 KFSIs. Chapter 4 explains the global scale weights, underlying data sources and address some issues of data

⁵ www.financialsecrecyindex.com/archive.

⁶ For an overview of the various uses of the FSI, see: <https://www.financialsecrecyindex.com/en/research-and-analysis>.

⁷ <https://www.corporatetaxhavenindex.org/>; 30.1.2020.

consistency. Chapter 5 explains the formula for combining the secrecy scores and the global scale weights to arrive at the final FSI ranking, including some analysis of potential alternative formulas.

The annexes contain overview tables and all the underlying data of the FSI, except for full country-level details which can instead be found in country database reports, accessible and downloadable (after registration) in excel format via www.financialsecrecyindex.com/database.

It is important to note that for the FSI 2020, the copyright license of the index material and data has changed. We are no longer allowing the use of FSI materials and data for commercial purposes without a license. Therefore, anybody using the index data in a for-profit context is required to obtain a license. Academic researchers and civil society organisations as well as branches of government can continue to freely use the data subject to registration and to usual attribution requirements. For details on the copyright and licensing options, please check the [copyright page](#)⁸.

⁸ <https://www.financialsecrecyindex.com/en/introduction/copyright-license>.

2. The Qualitative Component: Secrecy Scores

2.1 Main Changes 2018-2020

2.1.1 Jurisdictions Covered

The number of jurisdictions covered by the FSI has increased gradually over time, from 60 in 2009 to 133 in 2020, reflecting the long-term ambition of global, or near-global coverage for the FSI, 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 (e.g. IMF, FATF, OECD, IBFD).⁹ 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 FSI: 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 FSI 2011, 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,¹⁰ and four countries were added because of their known or suspected provision of financial secrecy.

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

For the FSI 2015, six countries were added because of their share in the global market of offshore financial services was in the Top 40 (in the data for the FSI 2013). Seven countries were added because of indications of secrecy or financial centre ambitions. In addition to this, for the FSI 2015, we also included all OECD members, following various publications about the role these countries play in absorbing and facilitating illicit financial flows.¹¹

⁹ The selection process for the initial 60 jurisdictions is explained in detail here: https://www.financialsecrecyindex.com/Archive2009/Notes%20and%20Reports/SJ_Mapping.pdf.

¹⁰ For all details, see page 3, here: <https://www.financialsecrecyindex.com/Archive2011/Notes%20and%20Reports/SJ-Methodology.pdf>.

¹¹ Organisation for Economic Co-Operation and Development 2013: Measuring OECD Responses to Illicit Financial Flows from Developing Countries, Paris, in: <http://www.oecd.org/corruption/IFFweb.pdf>; 31.1.2014.

With the support of a large research project funded by the European Commission ("COFFERS"¹²), for the FSI 2018, nine new countries were added (covering all EU member states). In the FSI 2020, with the additional support from NORAD, 21 new countries are covered (see Table 2-A below).

Table 2-A: New jurisdictions covered in 2020

Total of 21 new jurisdictions included because of:			
Secrecy or financial centre ambitions	Top 94 GSW of FSI 2018		Other reasons
Kazakhstan	Vietnam	Kuwait	Cameroon
Rwanda	Jordan	Morocco	Tunisia
	Argentina	Nigeria	Algeria
	Bangladesh	Pakistan	Angola
	Colombia	Peru	
	Ecuador	Qatar	
	Egypt	Sri Lanka	
	El Salvador		

2.1.2 Key Financial Secrecy Indicators (KFSI)

Some small changes were made in five indicators, and a new criterion consistent with the Corporate Tax Haven Index in two indicators. The full details of each indicator, including regarding changes (if applicable), are provided in Chapter 3. See table 2-B below for an overview of the changes.

KFSI 2 (Trusts and Foundations Register) changed in relation to trusts by allocating a secrecy score to two new situations. In essence, the change involves covering the symmetric but opposite situations for two cases of trust registration.

In 2018, a secrecy score of 25 was allocated to cases of no active promotion of trusts, where there was "disclosure of domestic trusts not no registration of foreign law trusts with a local trustee". In 2020, the symmetrical but opposite situation receives the same secrecy score: "disclosure of foreign law trusts with a local trustee, but no registration of domestic law trusts". In addition, a secrecy score of 0 was allocated to

¹² www.coffers.eu

cases of no active promotion of trusts, where there was “disclosure of domestic trusts but only registration (no disclosure) of foreign law trusts with a local trustee”. In 2020, the symmetrical but opposite situation receives the same secrecy score: “disclosure of foreign law trusts with a local trustee but only registration (no disclosure) of domestic law trusts”. In essence, both situations in the scoring table were amended to include the “vice-versa” case.

KFSI 9 (Corporate Tax Disclosure) was amended to make it consistent with the Corporate Tax Haven Index. Now, under KFSI 9 extractive industries contracts are also assessed. In 2018, KFSI 9 dealt only with local filing of country by country reporting (CBCR) (50%) and unilateral cross-border tax rulings (50%). In 2020, for countries without extractive industries remains the same, but for those countries that have relevant extractive industries, unilateral cross-border tax rulings is worth 25% of the value of KFSI 9 and extractive industries contracts 25%. Local filing of CBCR is always worth 50% of the secrecy score value. Furthermore, the section on unilateral cross-border tax rulings was refined to differentiate when the name of a company benefitting from a ruling is mentioned or the ruling is published only anonymously. In addition, jurisdictions that do not have unilateral tax rulings because they do not even have an income tax (or with income tax rate of zero) are now given the highest secrecy score. The lack of unilateral tax rulings is irrelevant in this case, because tax rulings are not even necessary: any company would obtain a zero income tax and have zero income tax filing obligations.

KFSI 13 (Avoids Promoting Tax Evasion) was amended to make it consistent with the Corporate Tax Haven Index. We no longer differentiate interest between related and independent parties. This is because withholding tax rates on interest payments do not differ between related and independent party payments.

For KFSI 14 (Tax Court Secrecy), to make it consistent with the Corporate Tax Haven Index, there was a tightening of the assessment. It is now considered that there is no tax court transparency, when public access may be restricted in cases of “private information”, “respect for private life of the parts” or “respect for personal life of the defendants” and these terms are not defined (to ensure that tax matters are not automatically considered private information or the personal life of defendants).

KFSI 18 (Automatic Exchange of Information or AEOI) was amended to contextualise it with the changing situation in 2020. The main change is that the question on the timing of the Multilateral Competent Authority Agreement (MCAA) signature and start of exchanges now refers to exchanging information in or before 2019, versus in or after 2020 (instead of focusing on 2017 and 2018).

Moreover, in 2018 the indicator considered postponement to engage in AEOI with specific countries. However, given that postponement would be covered by the reduced number of activated relationships, this question was removed from this indicator.

If a country, e.g. Switzerland, was considered to impose additional conditions and refused to exchange information with other countries, but now that country exchanges information with the highest available number of relationships, those hurdles are considered not to be present anymore.

In addition, the number of activated AEOI relationships now refers to “meaningful” relationships, meaning those where information is actually being sent (at least unidirectionally). For this reason, only the number of activated relationships published by the OECD portal is considered in the 2020 edition of the FSI. Declarations by countries to exchange with all other cosignatories are no longer considered because there were discrepancies with the OECD portal: according to the OECD portal some of these “all co-signatory countries” didn’t have the highest available number of relationships, even though they are supposed to exchange with all other countries.

Lastly, this indicator now includes four additional questions on improvements for jurisdictions that signed the MCAA. These refer to implementing the wider-wider approach (that would enable the publication of CRS statistics); covering bitcoins and other cryptocurrencies; signing the Punta del Este Declaration (or otherwise allowing AEOI information to be used to tackle corruption and money laundering); and finally adopting the mandatory disclosure rules against CRS avoidance strategies and opaque structures to hide the beneficial owner.

KFSI 19 (Bilateral Treaties) was amended to contextualise it with the situation in 2019. Countries that are party to the Amended CoE/OECD Tax Convention on Mutual Legal Assistance in Tax Matters (the amended Multilateral Tax Convention), receive a secrecy score of 0 in KFSI 19, so their number of bilateral treaties is no longer collected. The number of bilateral treaties required to obtain a secrecy score of 0 by those jurisdictions that are not party to the Amended Multilateral Tax Convention was updated based on the new number of parties to that Convention: 109 by the time the data was collected. Therefore, non-parties to the Convention must have at least 108 bilateral treaties to obtain a secrecy score of 0 (one less than the total number of parties, because no country exchanges information with itself).

Table 2-B: Changes in KFSIs

Change\ Dimension KFSI Number	Ownership registration	Legal Entity Transparency	Integrity of tax and financial regulation	International Standards and Cooperation
Small Change	2	9	13	18 and 19
Criterion Change		9	14	

The KFSIs can be grouped around four dimensions of secrecy (see table 3 below): 1) ownership registration (total of five KFSIs); 2) legal entity transparency (five KFSIs); 3) integrity of tax and financial regulation (six KFSIs); and 4) international standards and cooperation (four KFSIs).

2.2 Underlying Data and Procedural Issues

The dataset underlying the 20 KFSIs is publicly available for review and exploration for non-commercial purposes through an online database ([accessible here](#)¹³) and is downloadable by jurisdiction in excel format ([after registration](#)¹⁴). 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,¹⁵ the FATF and IMF. In addition, specialist tax databases and websites such as by the IBFD,¹⁶ PwC,¹⁷ Lowtax.net and others have been consulted and in many cases, original legal analyses was undertaken to laws and regulations. Furthermore, surveys have been sent to the Ministries of Finance and the Financial Intelligence Units of all 133 reviewed jurisdictions which included targeted questions about the jurisdiction's tax and regulatory system (for more details see further below). Preliminary results were also sent to the 133 countries' authorities as well as local experts (when available).

The database contains a wide range of data beyond that which is required to compile the secrecy indicators and the secrecy score. Out of up to 152 data points ("Info IDs") available in the database for each jurisdiction, up to 126 are used to compute the secrecy score (these are detailed in Annex

¹³ www.financialsecrecyindex.com/database

¹⁴ <https://www.financialsecrecyindex.com/en/introduction/copyright-license>.

¹⁵ 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/>; 24.10.2019.

¹⁶ International Bureau of Fiscal Documentation, Amsterdam.

¹⁷ PricewaterhouseCoopers, Worldwide Tax Summaries.

B). In terms of the **cut-off date of information** in the database, we generally relied on reports, legislation, regulation and news available as of 30.09.2019. For some indicators, more recent data has been included. All jurisdictions had the opportunity to provide up-to-date information by answering the questionnaires sent out in March 2019.

Data availability and comparability are sometimes problematic. Some new indicators in particular, for example on freeport and real estate ownership (KFSI 4) or tax court transparency (KFSI 14), relate to secrecy components where there are no international comparative studies available. Hence, we needed to rely more heavily on survey responses in the questionnaires and/or primary research of legal sources. Each reviewed jurisdiction received electronic and/or hard copy questionnaires¹⁸, one addressed to the Ministries of Finance and National Audit Offices, and another one to the Financial Intelligence Units, in March 2019. Six Ministries of Finance or National Audit Offices (5%), and five Financial Intelligence Units (4%) responded to the questionnaire.

If a jurisdiction did not respond to our questionnaires and if (in some cases) follow-up enquiries with local researchers did not yield additional insights, 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 of research).

For researchers using the database, 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.

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

¹⁸ The questionnaire sent to the ministries of finance can be viewed here: www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; the questionnaire to the FIUs can be viewed here: www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-FIU.xlsx. The Spanish versions can be accessed as follows: www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO_Spanish.xlsx; www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-FIU_Spanish.xlsx.

created to double check on any data variations between FSI 2018 and FSI 2020 (where the IDs / KFSIs 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, the full finalised database reports were completed with missing data, and checked in their entirety on a jurisdiction by jurisdiction basis.

For the FSI 2020, 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.¹⁹

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 for each KFSI below).

In cases of conflicting information, we resorted to reasoned judgement – while recognising the necessary subjectivity of the 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.

¹⁹ <https://www.financialsecrecyindex.com/en/introduction/copyright-license>.

Regarding the cut-off date for the key financial secrecy indicators, we generally relied on regulatory reports, legislation, regulation and news available as of 30.09.2019. On some occasions, more recent data has been used. All jurisdictions had the opportunity to provide us with up-to-date information by answering our questionnaire and comments on the preliminary results.

2.4 Secrecy Score

Once each KFSI 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 KFSIs and divide the sum by the number of assessed KFSIs). 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). In each indicator, by default, a jurisdiction has a 100 secrecy score unless we find evidence to the contrary.

For example, if a jurisdiction was given a 0 secrecy score for all 20 indicators, the resulting overall secrecy score would be 0. No indicator being rated as transparent, in contrast, would result in a secrecy score of 100.

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

3. The 20 KFSIs 2020

Table 3 below provides a summary overview of the 20 Key Financial Secrecy Indicators (KFSI), the remaining chapter 3 discusses each indicator in full detail.

Three principles guided the design of the KFSIs. First and foremost, the selected indicators should most accurately capture a jurisdiction's status as a secrecy jurisdiction ("provides facilities that enable people or entities 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 2016²⁰ 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 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, with the database containing data on 152 variables, and by offering the disaggregated data of each KFSI through the database/in excel,²¹ 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 chapters 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.

²⁰ <https://www.taxjustice.net/2016/07/26/financial-secrecy-index-methodological-review-results-stakeholder-survey/>; 22.12.2017.

²¹ <http://www.financialsecrecyindex.com/database/>

Table 3: Overview of 20 Key Financial Secrecy Indicators²²

Ownership Registration		Legal Entity Transparency		Integrity of tax and financial regulation		International Standards and Cooperation			
1	Banking secrecy	6	Public Company Ownership	11	Tax Administration Capacity	17	Anti-Money Laundering		
	IDs 89, 157, 158, 352, 353 and 360		IDs 470 – 475, 485 and 486		IDs 317 and 400 to 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 and 566-569.		
3	Recorded Company Ownership	8	Country by Country Reporting	13	Avoids Promoting Tax Evasion	19	Bilateral Treaties		
	IDs 388, 470 - 473, 485 and 486		ID 318		552, 553, 555, 558 and 559		IDs 301 and 143		
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 407 to 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	

²² All underlying data can be accessed freely in the [Financial Secrecy Index database](#). Sources for specific indicators and jurisdictions are searchable with the corresponding **info IDs**, in the database report of the respective jurisdiction.

3.1 KFSI 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 sanction breaching of banking secrecy with prison term sentences. 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 sub-components. The secrecy scoring matrix is shown in Table 1.1, with full details of the assessment logic given in Annex B.

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 whistle-blower) 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 5 and 10.²³ Recommendation 5 states that "financial institutions should not keep anonymous accounts or accounts in obviously fictitious names". The

²³ These recommendations refer to the 49 FATF recommendations of 2003. While the FATF consolidated its recommendations to a total of 40 in 2012, the old recommendations are used here because the assessment of compliance with the new recommendations only began in 2013. The corresponding recommendations in the new 2012 set of recommendations are numbers 10 (replacing old Rec. 5) and 11 (replacing old Rec. 10). FSI 2020 takes into account the results of the new assessments. The old recommendations can be viewed at: Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 2003 <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>> [accessed 29 January 2020].; 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 2019)* (Paris, June 2019) <<https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>> [accessed 29 January 2020].

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.²⁴ If a jurisdiction fails to comply with this recommendation, this adds a 20 points of secrecy score.²⁵

FATF-recommendation 10 requires financial institutions to “maintain, for at least five years, all necessary records on transactions, both domestic and international”.²⁶ A further 20 points of secrecy score is added if a jurisdiction is non-compliant with this recommendation. We have relied on the mutual evaluation reports by the FATF, FATF-like regional bodies, or the IMF for the assessment of these two criteria.²⁷

Table 1.1: Secrecy Scoring Matrix KFSI 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)	

²⁴ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*. Also see footnote above.

²⁵ 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 for non-compliant, 13% for partially compliant, 7% for largely compliant and zero secrecy for fully compliant answers.

²⁶ Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations*. Also see footnote above.

²⁷ For the purposes of this subcomponent of the KFSI, we ignored the follow-up reports to mutual evaluations, and instead only included the results of full mutual evaluation reports. This is because only a comprehensive re-assessment of all recommendations gives a complete picture of the anti-money laundering system and offers a fair basis for comparison across jurisdictions. Otherwise, potential deteriorations in formerly compliant elements of recommendations might go unnoticed, while the improvements in formerly non-compliant criteria will be focused upon.

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
(2)(a) Anonymous accounts – FATF Recommendation 5, or unknown	20
(2)(b) Keep banking records for less than five years – FATF Recommendation 10, or unknown	20
(2)(c) No reporting of large transactions, or unknown	20
Component 3: Effective access (20 points)	
(3)(a) Inadequate powers to obtain and provide banking information, or unknown	10
(3)(b) Undue notification and appeal rights against information exchange, or unknown	10

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 89, 157, 158, 352, 353, 360**) in the database report of the respective jurisdiction.

In addition, and in order to diversify our sources, we have also used data contained in the International Narcotics Control Strategy Report (INCSR, Volume 2 on Money Laundering and Financial Crimes).²⁸ This report indicates for a wide selection of countries whether banks are required to

²⁸ While we would have liked to include the data from the 2019 INCSR report, unfortunately this report discontinued that data field (together with many others) in its reporting. Therefore, we have used the 2016 edition of the INCSR, see note below.

report large transactions²⁹. Failure to do so is assessed as an additional 20 points of secrecy score.³⁰

However, 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 notification³¹ requirements or appeal rights³² prevent effective sharing of banking data. We rely on the Global Forum's element B.1³³ for addressing the first issue at hand (powers to obtain and provide data), and we use Global Forum's element B.2³⁴ for the

²⁹ Financial institutions in some jurisdictions are required to report on large transactions above a certain threshold (INCSR, 2019: 10). Threshold based disclosures are used in addition to suspicious transactions reporting, and apply regardless of the amount involved. They can be useful, mainly because unlike suspicious transactions reporting, they are not subjective, and thus their interpretation may not vary from one country to the other. See European Parliamentary Research Service - EPRS, 'Fighting Tax Crimes: Ex-Post Evaluation of the Cooperation between Financial Intelligence Units' (2017) <[http://www.europarl.europa.eu/RegData/etudes/STUD/2017/598603/EPRS_STU\(2017\)598603_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/598603/EPRS_STU(2017)598603_EN.pdf)> [accessed 29 January 2020].

³⁰ The information is presented in the table on pages 40-50 under the column "Report Large Transactions", in: US Bureau for International Narcotics and Law and Enforcement Affairs, *International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes* (March 2016) <<https://2009-2017.state.gov/documents/organization/253983.pdf>> [accessed 29 January 2020].

³¹ While the Global Forum peer reviews assess whether a notification (to the beneficial owner) could delay or prevent the exchange of information, we also consider whether any notification to the owner takes place at all, even if it is after the exchange of information, because the owner 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, owners could also take precautionary measures with respect to assets, bank accounts, etc., located in other jurisdictions.

³² In those cases when the owner 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.

³³ 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 such information (irrespective of any legal obligation on such person to maintain the secrecy of the information)." (See page 27 in: Global Forum on Transparency and Exchange of Information for Tax Purposes 2010: Implementing the Tax Transparency Standards. A Handbook For Assessors and Jurisdictions, Paris).

³⁴ The full element B.2 reads as follows: "The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information." (See page 28, in Global Forum 2010, op. cit.).

second issue (notification requirements/appeal rights). Each will be attributed a 10 points secrecy score if any qualifications apply to the elements and underlying factors.³⁵ Where available, we also consider countries' replies to TJN-survey 2019.³⁶

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 FSI 2020, if a country is not able to access banking information from 2014 but is able to do so regarding banking information from 2016, 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 1.2:

³⁵ 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. Also see footnotes below for more background.

³⁶ Tax Justice Network, 'Financial Secrecy Index 2020 Questionnaire' <https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx> [accessed 29 January 2020].

Table 1.2: Assessment of Global Forum Data for KFSI 1

"Determination" ³⁷ Results as in table of determinations of Global Forum B.1 / B.2	"Factors" ³⁸ 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

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 89, 157, 158, 352, 353 and 360).

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 agreements³⁹ 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

³⁷ The Global Forum peer review process analyses and determines whether the ten elements considered necessary by the OECD for "upon request" information exchange are in place. A three-tier assessment is available (element "in place", "in place, but", "not in place"), and this assessment is called "determination". See footnote above and below for more details.

³⁸ Each of the "determinations" (as explained in footnotes above) of the ten elements may have underlying factors which justify the element's determination and the recommendations given. They are shown in a column next to the determination in the "table of determinations" in the corresponding peer review reports.

³⁹ Tax Justice Network, 'Tax Information Exchange Arrangements', 2009 <http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf> [accessed 24 January 2020].

information exchange⁴⁰. Automatic exchange of information (AEOI) following the OECD's Common Reporting Standard (CRS) got underway in 2017 (see KFSI 18⁴¹). 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 (e.g. when the account was opened, what was the highest balance account or 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 whistle-blowers who disclose bank data from three years to a maximum of five years. The prison terms had previously been increased with effect from 1 January 2009.⁴²

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 whistle-blowers, 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

⁴⁰ Markus Meinzer, 'Automatic Exchange of Information as the New Global Standard: The End of (Offshore Tax Evasion) History?', *SSRN Electronic Journal*, 2017 <<http://www.ssrn.com/abstract=2924650>> [accessed 29 January 2020].

⁴¹ Tax Justice Network, 'Key Financial Secrecy Indicator 18: Automatic Information Exchange', 2020 <<http://www.financialsecrecyindex.com/PDF/18-Automatic-Info-Exchange.pdf>> [accessed 29 January 2020].

⁴² See page 17, in: Markus Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen* (Munich, 2015).

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 whistle-blowers, up to the point of issuing arrest warrants against officials from tax administrations, and deploying spies.⁴³ 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 way⁴⁴ 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, the absence of or neglect in enforcing record keeping obligations for large transactions, for instance through wire transfers, is another way in which banks are complicit in aiding their clients 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 notification requirements, or factual barriers, such as missing or outdated records.

⁴³Fowler, Naomi, 'Whistleblower Rudolf Elmer: Legal Opinion on Latest Ruling', 2019 <<https://www.taxjustice.net/2019/06/04/whistleblower-rudolf-elmer-legal-opinion-on-latest-ruling/>, <https://www.taxjustice.net/2019/06/04/whistleblower-rudolf-elmer-legal-opinion-on-latest-ruling/>> [accessed 29 January 2020]. Der Spiegel, 'Schweizer Geheimdienst Sammelte Informationen Über Deutsche Steuerfahnder', 2 May 2017 <<https://www.spiegel.de/wirtschaft/soziales/schweizer-geheimdienst-sammelte-informationen-ueber-deutsche-steuerfahnder-a-1145703.html>> [accessed 29 January 2020].

⁴⁴ Bastian Brinkmann, Obermaier, Frederik and Bastian Obermayer, 'Wie Einfache Bürger Billige Dienste Für Offshore-Kunden Leisten', *Süddeutsche.De* (18 April 2016) <<http://www.sueddeutsche.de/politik/mittelamerika-leticia-und-die-briefkasten-oma-1.2954968>> [accessed 29 January 2020].; 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*, 21 October 2011 <www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf> [accessed 22 January 2020].

All underlying data can be accessed freely in the [**Financial Secrecy Index database**](#) (IDs 89, 157, 158, 352, 353, 360).

3.2 KFSI 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 £10⁴⁵ with information on:

- (i) 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); and
- (ii) 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*, *Treuhandstiftung*, *fideicomisos* or *waqfs* under its domestic laws, and/or whether it blocks its residents from administering trusts created under a foreign law. 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 arrangements (trusts are not considered legal entities), or (ii) by prohibiting their creation or administration in their territories. The Secrecy Scoring Matrix is given in Table 2.1. below, and full details of the assessment logic can be found in Table 2.5.

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

⁴⁵ We consider this a reasonable criterion given a) the prevalence of the internet in 2017, 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.

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 of trusts is incomplete, if not absent, in most jurisdictions worldwide, whereas the registration of foundations (considered legal 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 5.⁴⁶ 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.⁴⁷

In relation to the EU, the last transposition date of AMLD 5 was set to 10 January 2020 and a proper transposition of it would reduce EU countries' KFSI 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 2020.⁴⁸ Therefore, not all trusts governed by the laws of an EU country (EU domestic law trusts) will necessarily have to register their beneficial owners.

⁴⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 20.1.2020.

⁴⁷ 'The EU's Latest Agreement on Amending the Anti-Money Laundering Directive: At the Vanguard of Trust Transparency, but Still Further to Go' <<https://www.taxjustice.net/2018/04/09/the-eus-latest-agreement-on-amending-the-anti-money-laundering-directive-still-further-to-go/>, <https://www.taxjustice.net/2018/04/09/the-eus-latest-agreement-on-amending-the-anti-money-laundering-directive-still-further-to-go/>> [accessed 21 January 2020].

⁴⁸ Article 1(16), Directive (EU) 2018/843 of the European Parliament (AMLD 5).

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.

Table 2.1. Secrecy Scoring Matrix KFSI 2

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

COMPONENT 1: Trusts (50 points of Secrecy Score)				
Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]			Domestic Law Trusts	
			<u>Available</u> (Trusts can be created according to local laws)	<u>Not Available</u> (Trusts cannot be created according to local laws)
		registration of foreign law trusts		
		<u>Disclosure of domestic & registration of foreign (or vice versa)</u> Registration plus disclosure of domestic law trusts & registration (only) of foreign law trusts	0	-
	<u>Active Promotion is Irrelevant</u>	<u>Disclosure of both, if applicable*</u> 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 "neutralized" 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.

COMPONENT 2: Private Purpose Foundations (50 points of Secrecy Score)	
<u>No Online Disclosure</u> No updated online disclosure of key parties of all private foundations, irrespective of registration, or unknown	50

COMPONENT 2: Private Purpose Foundations (50 points of Secrecy Score)	
<u>Partial Online Disclosure</u> Updated registration of key parties of all private foundations plus partial online disclosure	25
<u>Complete Online Disclosure</u> Updated registration of key parties of all private foundations plus complete online disclosure, or no private purpose foundations law	0

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

Parties to a foundation, for the purposes of the foundation section are all founder(s), foundation council member(s), 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:

- a) the full names of all parties of the entity; and
- b) for each party:
 - i. 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
 - ii. 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 (e.g. 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 acting⁴⁹). 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

⁴⁹ 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." See page 113 in Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Updated in June 2019), Paris, in: Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.

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 [KFSI 18](#)⁵⁰), but is not explicitly stated in FATF standards. Second, this level of detail was not specified in most of the available current sources (e.g. Global Forum peer reviews).

For other parties to a foundation (e.g. 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.

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 Recognition⁵¹ or by legislating equivalent domestic rules which regulate

⁵⁰ <http://www.financialsecrecyindex.com/PDF/18-Automatic-Info-Exchange.pdf>; 22.1.2020. The corresponding passage in the Commentaries to the CRS is on page 199, in para 134: “With 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 136 specifies that for foundations similar provisions apply (p. 199). See OECD 2014: Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries., in: OECD, ‘Standard for Automatic Exchange of Financial Account Information in Tax Matters | READ Online’, 2014 <https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en#page1> [accessed 22 January 2020].

⁵¹ ‘Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition’, 1985 <<https://www.hcch.net/en/instruments/conventions/full-text/?cid=59>> [accessed 22 January 2020].

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,⁵² but also private sector internet sources, FATF and IMF reports, the TJN-Survey 2019⁵³ 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.

All underlying data can be accessed freely in the Financial Secrecy Index database. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 204, 206, 214, 234, 236, 237, 238, 239, 240, 244, 355, 384, 393, 395 and 396**) in the database report of the respective jurisdiction.

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', i.e. 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

⁵² 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: 'Exchange of Information Portal' <<http://www.eoi-tax.org/#default>> [accessed 21 January 2020].

⁵³ https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; 22.1.2020.

beneficiaries who hide behind the trust: these people will be 'elsewhere'⁵⁴ in another jurisdiction as far as the 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.

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. Foundations are created around a foundation statute, often complemented by secret by-laws. In all 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 here](#).⁵⁵ For more background on the way

⁵⁴ 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'. See our glossary here: <https://www.taxjustice.net/topics/more/glossary/>; 22.1.2020.

⁵⁵ Knobel, Andres 2017: *Trusts: Weapons of Mass Injustice?*, in: Andres Knobel, *Trusts: Weapons of Mass Injustice?*, 2017 <www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf> [accessed 21 January 2020]. See also Knobel, Andres and Meinzer, Markus, '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' (2016) <http://www.taxjustice.net/wp-content/uploads/2016/06/TJN2016_BO-EUAMLDFATF-Part2-Trusts.pdf> [accessed 22 January 2020]. And see also Tax Justice Network, 'In Trusts We Trust' <<http://taxjustice.blogspot.com/2009/07/in-trusts-we-trust.html>> [accessed 22 January 2020].

discretionary trusts and foundations can be used to hide offshore wealth, read [this analysis](#).⁵⁶

All underlying data can be accessed freely in the Financial Secrecy Index database (IDs 204, 206, 214, 234, 236, 237, 238, 239, 240, 244, 355, 384, 393, 395 and 396).

⁵⁶ 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*.

3.3 KFSI 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.⁵⁷ 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](#),⁵⁸ all EU member states had to legislate for a central register of beneficial ownership by 26 June 2017 (Article 30, 67). Since then, progress towards central registries of beneficial ownership has accelerated not only in the European Union⁵⁹; yet analyses have also revealed weaknesses, loopholes and slippery

⁵⁷ 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 113 in Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.

⁵⁸ European Parliament and European Council, *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)*, 2015 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>> [accessed 27 January 2020].

⁵⁹ Andres Knobel, Moran Harari and Markus Meinzer, *The State of Play of Beneficial Ownership Registration: A Visual Overview*, 2018 <<https://www.taxjustice.net/wp-content/uploads/2018/06/TJN2018-BeneficialOwnershipRegistration-StateOfPlay-FSI.pdf>> [accessed 27 January 2020].

language⁶⁰ as legislation is passed in more [countries](#).⁶¹ The 4th EU Directive on Anti-Money Laundering was amended in 2018 (referred to as AMLD 5⁶²) and requires EU member states to give public access to companies' beneficial ownership information. Its last transposition date was set to 10 January 2020. However, public access to beneficial ownership information is assessed under KFSI 6 and therefore is not considered for this KFSI 3.

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 1, with full details of the assessment logic given in Annex B.

⁶⁰ See page 21, (aa) und (ab), in: 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), 2016/0107 (COD)* <<https://data.consilium.europa.eu/doc/document/ST-5134-2019-INIT/en/pdf>> [accessed 27 January 2020]. Knobel, Andres and Meinzer, Markus, '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' (2016) <http://www.taxjustice.net/wp-content/uploads/2013/04/TJN2016_BO-EUAMLD-FATF-Part1.pdf> [accessed 27 January 2020]. Knobel, Andres and Meinzer, Markus, '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'.

⁶¹ Meinzer, Markus, 'Germany Rejects Beneficial Ownership Transparency' <<https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/>, <https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/>> [accessed 27 January 2020]. Meinzer, Markus, *Stellungnahme von Netzwerk Steuergerechtigkeit Deutschland Und Tax Justice Network Zu Dem „Entwurf Eines Gesetzes Zur Umsetzung Der Vierten EU-Geldwäscherichtlinie, Zur Ausführung Der EU- Geldtransferverordnung Und Zur Neuorganisation Der Zentralstelle Für Finanztransaktionsuntersuchungen“*, BT-Drucksache 18/11555, Öffentliche Anhörung Des Finanzausschusses Des Deutschen Bundestages Am 24. April 2017, 2017 <<https://www.bundestag.de/resource/blob/503626/549f0248366374270c293ac20cec95a7/12-data.pdf>> [accessed 27 January 2020].

⁶² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 20.1.2020.

Table 3.1: Secrecy Scoring Matrix KFSI 3

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]		Legal Ownership (LO)	
		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)	<u>Incomplete BO</u> Complete and updated beneficial ownership information is not always recorded, or unknown	100	90
	<u>Complete BO @>25%</u> Complete and updated beneficial ownership information is always recorded at a threshold of more than 25% (no bearer share risk)	75	65
	<u>Complete BO @>10-25%</u> 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
	<u>Complete BO @>0-10%</u> 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
	<u>Complete BO @1 share%</u> Complete and updated beneficial ownership information is always recorded for any share/influence (no bearer share risk).	0	
	<u>Senior Manager not as BO</u> 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	

Given that beneficial ownership registration laws are most recent and even the FATF standards on the BO definition may be contradictory⁶³, 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 mere 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 shares⁶⁴ should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are⁶⁵ immobilised or registered with a government authority (including a country's Central Securities Depository, if properly regulated).

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

- a) the full names, and

⁶³ Knobel, Andres, 'Not Just about Control: One Share in a Company Should Be Enough to Be a Beneficial Owner' <<https://www.taxjustice.net/2019/10/02/not-just-about-control-one-share-in-company-should-be-enough-beneficial-owner/>> [accessed 27 January 2020].

⁶⁴ 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.

⁶⁵ We consider that the obligation to register bearer shares exists when legal provisions establish a timeframe for immobilization/registration of all existing bearer shares before the next publication of the FSI 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 are intending 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 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.

- b)** full address, or a passport ID-number, or birthdates, or a Taxpayer Identification Number.

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” FSI principle is made mainly because the level of detail was not specified in most of the available current sources (e.g. 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 secrecy score if jurisdictions have comprehensive beneficial ownership registration (e.g. covering all companies), but where the definition of beneficial ownership is triggered by thresholds of control/ownership higher than just one share (e.g. a 25% of ownership).

A clean transposition of the EU 4th Anti-Money Laundering Directive into domestic law by EU member states would still result in a secrecy score of 65-75 points in this Key Financial Secrecy Indicator (KFSI), 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. Four members of one family suffice to frustrate this BO registration threshold if each held 25% of the shares.⁶⁶ The recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) suffer from the same weakness.

Both the FATF’s recommendations and the EU’s 4th Anti-Money Laundering Directive provide for another problematic clause in the definition of the 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 (FATF 2012: 60, 10.C.5.b.i.iii; see more details in section

⁶⁶ For full details, please read Knobel, Andres and Meinzer, Markus, ‘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’, op. cit.

below).⁶⁷ 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 KFSI. 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 reviews⁶⁸ have been analysed to find out what sort of ownership information companies must register with a government agency. An 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.”⁶⁹ A governmental authority is defined so as to include “corporate registries, regulatory authorities, tax authorities and authorities to which publicly traded companies report”⁷⁰ 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 EU⁷¹ have started to regulate beneficial ownership registration and

⁶⁷ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.

⁶⁸ 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: ‘| Exchange of Information Portal’ <<http://www.eoi-tax.org/#default>> [accessed 21 January 2020].

⁶⁹ OECD, *Tax Co-Operation 2010: Towards a Level Playing Field* (Paris, 2010) <https://www.oecd-ilibrary.org/taxation/tax-co-operation-2010_taxcoop-2010-en> [accessed 27 January 2020].

⁷⁰ Ibid.

⁷¹ 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, and 2020). The said directive entails minimum standards for the registration of

these new laws have not yet been assessed by either the Global Forum or the FATF, the FSI 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, Ocra.com, Offshoresimple.com, etc.), the **fourth**, Financial Action Task Force (FATF) peer reviews,⁷² and the **fifth**, the results of the TJN-Survey 2019 ⁷³(or earlier).

KFSI 3 resembles KFSI 6 relating to public company ownership information. However, KFSI 3 assesses only whether complete and updated beneficial and legal information needs to be recorded at a government agency.

All underlying data can be accessed freely in the Financial Secrecy Index database. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 388, 470, 471, 472, 473, 485 and 486**) in the database report of the respective jurisdiction.

adequate, accurate and current information on the beneficial owners of corporates 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. 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 instance, see the 5th EU Directive on Anti-Money Laundering which came into force on January 10, 2020: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 29.1.2020. Compare also with FATCA, where 10% of shares/capital in an entity is threshold to define a US substantial ownership (Weis, Michael and Thinner, Kerstin, 'FATCA + AML = an Equation with Too Many Variables?', 2012 <<https://www.agefi.lu/Mensuel-Article.aspx?date=May-2012&mens=178&rubr=1161&art=15584>> [accessed 27 January 2020]). And consider Transparency International EU, Financial Transparency Coalition and Eurodad, *European Commission Proposal on AMLD4. Questions and Answers*, 2016 <www.pastoral.at/dl/KKmsJKJKKmnmOMJqx4KJK/QA_final.pdf> [accessed 27 January 2020].

⁷² 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.

⁷³ Tax Justice Network, 'Financial Secrecy Index 2020 Questionnaire'.

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 launder illicit proceeds of corruption, tax evasion, drugs money 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 (see [here](#)⁷⁴, page 236, or [here](#)⁷⁵), 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](#)⁷⁶ 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. ([World Bank 2011: 20, 34](#))⁷⁷

⁷⁴ Financial Action Task Force, ‘Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism - United States Of America’, 2006 <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf>>.

⁷⁵ The Economist, ‘Undeclared Beneficial Ownership - Licence to Loot’, 2011 <<https://www.economist.com/international/2011/09/17/licence-to-loot>> [accessed 27 January 2020].

⁷⁶ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 2001 <<http://www.oecd.org/daf/ca/43703185.pdf>> [accessed 27 January 2020].

⁷⁷ Emile Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, 2011 <<https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>> [accessed 27 January 2020].

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.⁷⁸ 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 does not require disclosure of the physical location of the place of business nor the legal and beneficial ownership information.⁷⁹

According to the United States District Court, for reasons related to its business interests BAE gave the US authorities inadequate information related to the 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.⁸⁰ 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.⁸¹

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 U.S., with which Haiti Teleco contracted. In exchange, Haiti Teleco's officials provided these companies commercial advantages (e.g. preferential and reduced telecommunications rates), at the expense of Haiti Teleco's

⁷⁸ See US Department of Justice, 'BAE Systems Plc Pleads Guilty and Ordered to Pay \$400 Million Criminal Fine', 2010 <<https://www.justice.gov/opa/pr/bae-systems-plc-pleads-guilty-and-ordered-pay-400-million-criminal-fine>> [accessed 27 January 2020].

⁷⁹ See British Virgin Islands Bus. Co's Act § (9)(1)(2004), British Virgin Islands Bus. Co's Act § (41)(1)(d) (2004).

⁸⁰ See US Department of Justice, 'USA v. BAE Systems Plc - Information' <<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2011/02/16/02-01-10baesystems-info.pdf>> [accessed 27 January 2020].

⁸¹ Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.* (hereinafter: "The Puppet Masters"), pp.198-202.

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 money⁸².

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 e.g. tax evasion, in the absence of registered ownership information the only way for the Kenyan tax authority to 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

⁸² The Puppet Masters, pp. 212-217. According to the U.S. 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. See Press Release, US Department of Justice, 'Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme' <<https://www.prnewswire.com/news-releases/former-haitian-government-official-pleads-guilty-to-conspiracy-to-commit-money-laundering-in-foreign-bribery-scheme-87489687.html>> [accessed 27 January 2020].; See also Plea Agreement pp. 8-9, United States v. Antoine, No. 09-cr-21010 (S.D. Fla. February 19, 2010). See also The Puppet Masters, pp. 212-217.

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.

However, 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. 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 can be accessed freely in the [Financial Secrecy Index database](#) (IDs 388, 470, 471, 472, 473, 485 and 486).

3.4 KFSI 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 open data or at a maximum cost of US\$ 10, € 10 or £ 10,⁸³ updated at least on an annual basis;
2. Regarding **freeports**: it assesses whether a jurisdiction offers and promotes its freeports⁸⁴ (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 4.1, with full details of the assessment logic given in Annex B.

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

⁸³ We believe this is a reasonable criterion given a) the prevalence of the internet in 2019, 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' <<https://opencorporates.com/>> [accessed 29 January 2020].

⁸⁴ The availability of a freeport or 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.

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.⁸⁵ 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 stronger than the requirements of the Financial Action Task Force (FATF) and the European Union (see KFSI 3).⁸⁶

Table 4.1: Secrecy Scoring Matrix KFSI 4

Regulation [Secrecy Score: 100 points = full secrecy; 0 points= full transparency]	Online for free & in open data Secrecy score if for free and in open data	Online for free, no open data Secrecy score if for free, but not in open data	Online at small cost Secrecy score if against cost of up to 10€/US\$/GBP
COMPONENT 1: REAL ESTATE OWNERSHIP (50 points)			
<u>Incomplete Ownership or high cost</u> Updated and complete real estate ownership is not open to the general public or not consistently available online for a cost of up to 10€/US\$/GBP.	50		
<u>Complete Legal Ownership</u> 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
<u>Complete Beneficial Ownership</u> 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
<u>Complete Beneficial and Legal Ownership</u> 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 ⁸⁷ and promoted for storage of high value assets	<u>Incomplete or No Ownership Registration</u> No information on legal or beneficial ownership of assets held in freeports is consistently registered by local public authorities.		50
	<u>Legal but not Beneficial Ownership Registration – No automatic notice</u>		37.5

	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.	
	<u>Legal and Beneficial Ownership Registration – No automatic notice</u> 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
	<u>Complete registration and automatic notice to the owner's residence jurisdiction</u> 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

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

⁸⁵ 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 113 in Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.

⁸⁶ Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 4th 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 suffice to frustrate this BO registration threshold if each held 25% of the shares. See [KFSI 3](http://www.financialsecrecyindex.com/PDF/3-Recorded-Company-Ownership.pdf) or the note above for further details: <http://www.financialsecrecyindex.com/PDF/3-Recorded-Company-Ownership.pdf>; 22.12.2019.

⁸⁷ The availability of a freeport or 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.

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.⁸⁸ Furthermore, a publicly available register should include a search function that allows searching by street address of the real estate.⁸⁹ 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 case of **beneficial owners**:

- a) 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;⁹⁰ and for each beneficial owner:
- 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:

- a) The full names, and for each:
- 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).

⁸⁸ 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.

⁸⁹ 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.

⁹⁰ See note above.

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 10EUR/GBP/USD, 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 open data** format. 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, and for new creative data usages.⁹¹ Furthermore, complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number or sending of hard-copy mails) should not be required.⁹²

From an open data perspective, a zero secrecy score is subject to the type of license for the use of the data, and if the data is fully downloadable from the internet. In cases where data was found to be freely available, we have consulted the corresponding jurisdiction at the open company data index published online by Open Corporates.⁹³ Only if there was an open license or no license for the reuse of the data, and if the data was freely available for download, we considered it as open data.⁹⁴

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 KFSI 4 draws information mainly from four different types of sources. First, we incorporated the results of the TJN-Survey 2019. Second, we took into consideration existing studies and

⁹¹ These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. For more information about this see OpenCorporates, 'The Open Database of the Corporate World'.

⁹² 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.

⁹³ 'Open Company Data Index', 2019

<<http://web.archive.org/web/20190328011114/http://registries.opencorporates.com/>> [accessed 28 January 2020].

⁹⁴ For six principles of open data, please consult 'The International Open Data Charter', *International Open Data Charter* <<https://opendatacharter.net/>> [accessed 28 January 2020].

research for example by the World Bank (Land Governance Assessment Framework⁹⁵) or by the European Union (European Land Information Service⁹⁶). 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 2019. Fourth, for those jurisdictions with such facilities, we reviewed FATF reports. Finally, if any source indicated that 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 5⁹⁷) introduced provisions on owners of real estate. New article 32b of AMLD 5 states the following: "1. 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

⁹⁵World Bank, 'Land Governance Assessment Framework', *World Bank* <<https://www.worldbank.org/en/programs/land-governance-assessment-framework>> [accessed 27 January 2020].

⁹⁶ European Union, 'European E-Justice Portal - Land Registers at European Level' <https://e-justice.europa.eu/content_land_registers_at_european_level-108-en.do> [accessed 28 January 2020].

⁹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 20.1.2020.

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.”⁹⁸ Nevertheless, this AMLD provision does not ensure that legal or beneficial owners of real estate will be centralised and publicly accessible online.

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 2018 amendment to the 4th EU Anti-Money Laundering Directive (AMLD5), “will broaden the scope of the directive and explicitly includes free ports, free port 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).”⁹⁹ 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 to the Directive on Administrative Cooperation (DAC 5), tax authorities have ‘access upon request’ to beneficial ownership information collected by customer due diligence. While intermediaries operating in freeports 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

⁹⁸ Ibid.

⁹⁹ Ron Korver, ‘Money Laundering and Tax Evasion Risks in Free Ports’ (2018) <http://www.europarl.europa.eu/cmsdata/155721/EPRS_STUD_627114_Money%20laundering-FINAL.pdf> [accessed 28 January 2020].

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 free port becoming known to his/her own tax authorities as a result of exchange of information agreements between tax authorities seems almost negligible."¹⁰⁰

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, and it provides no obligation to include the particulars of a party with ownership rights (the buyer or owner) for all assets entered in Free Zone areas or other preferential regimes.¹⁰¹

Consequently, we conclude that asset ownership registration in free zones and other preferential regimes is not comprehensive in EU States.

All underlying data can be accessed freely in the [Financial Secrecy Index](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 416, 418, 437, 439 and 487**) in the database report of the respective jurisdiction.

¹⁰⁰ Ron Korver, 'Money Laundering and Tax Evasion Risks in Free Ports'.

¹⁰¹ Pursuant to EU Commission regulation 2015/2446, 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 (EU reg. 2015/2446: Annex A, Chapter 2 (ref. 3/26)). Also pursuant to EU regulation 2015/2446, the "owner of the goods" is only required to be declared for the use of temporary admission procedure (ibid. 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 (ibid.). 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" (Art 5(34) of the UCC).

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.¹⁰² 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.¹⁰³ In addition to these factors several recent case studies have shown that without public pressure the 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 cause investigations to slow down or even fail, if journalists, civil society, police or public prosecutors dispose of no, or only complex, uncertain, costly or time consuming, means to access real estate ownership information at home and across borders.

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

¹⁰² For more information, see Australian Government - AUSTRAC, 'Money Laundering through Real Estate', 2015 <<http://web.archive.org/web/20190520221234/http://www.austrac.gov.au/sites/default/files/sa-brief-real-estate.pdf>> [accessed 28 January 2020].

¹⁰³ See: Financial Action Task Force, 'Money Laundering & Terrorist Financing through the Real Estate Sector', 2007 <<https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>> [accessed 28 January 2020].

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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ A complex and multi-layered web of accounts and companies helped disguising 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 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

¹⁰⁴ See p. 11-17 in Financial Action Task Force, 'Money Laundering & Terrorist Financing through the Real Estate Sector'.

¹⁰⁵ Transparency International, 'Doors Wide Open- Corruption and Real Estate in Four Key Markets', 2017
<http://files.transparency.org/content/download/2121/13496/file/2017_DoorsWideOpen_EN.pdf> [accessed 28 October 2020].

¹⁰⁶ 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, 2016 <<https://www.leagle.com/decision/infdco20180309b25>> [accessed 28 January 2020].

ownership registry and made available to competent authorities and the public in open data format".¹⁰⁷

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](#).¹⁰⁸ 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](#).¹⁰⁹ Concerns about money laundering in Swiss real estate [persisted in 2017](#).¹¹⁰

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" ([page 1](#)).¹¹¹ An investigative documentary entitled '[From Russia with Cash](#)' 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.¹¹²

¹⁰⁷ See page 10, in: Transparency International, 'Doors Wide Open- Corruption and Real Estate in Four Key Markets'..

¹⁰⁸ Bradley, Simon, 'Concerns over Geneva's New Luxury Villa Owners', *SWI Swissinfo.Ch* <<https://www.swissinfo.ch/eng/concerns-over-geneva-s-new-luxury-villa-owners/28615652>> [accessed 28 January 2020].

¹⁰⁹ Bradley, Simon, 'Real Estate Moves to Lower Dirty Money Risks', *SWI Swissinfo.Ch*, 2011 <<https://www.swissinfo.ch/eng/business/real-estate-moves-to-lower-dirty-money-risks/31137176>> [accessed 28 January 2020].

¹¹⁰ Allen, Matthew, 'Squeezing Laundered Money out of Swiss Property', *SWI Swissinfo.Ch*, 2017 <https://www.swissinfo.ch/eng/business/bricks-mortar-dirty-cash_squeezing-laundered-money-out-of-swiss-property/43200192> [accessed 28 January 2020].

¹¹¹ Global Witness, *Mystery on Baker Street. Brutal Kazakh Official Linked to £147m London Property Empire*, July 2015 <https://www.globalwitness.org/documents/18036/Mystery_on_baker_street_for_digital_use_FINAL.pdf> [accessed 28 January 2020].

¹¹² See David Cameron speech, 3 weeks after the broadcasting of the documentary: Wintour, Patrick, 'David Cameron Vows to Fight against "dirty Money" in UK Property Market | Politics |', *The Guardian*, 2015 <<https://www.theguardian.com/politics/2015/jul/28/david-cameron-fight-dirty-money-uk-property-market-corruption>> [accessed 28 January 2020].

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.¹¹³ A study commissioned by 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 academic study.¹¹⁴

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](#)¹¹⁵ 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 were 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

¹¹³ See chapter 3 in: Meinzer, *Steuerparadies Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*.

¹¹⁴ Bundeskriminalamt, *Managementfassung Zur Fachstudie - Geldwäsche Im Immobiliensektor in Deutschland*, 2012
<<https://www.bka.de/SharedDocs/Downloads/DE/UnsereAufgaben/Deliktsbereiche/GeldwaescheFIU/fiuFachstudieGeldwaescheImmobiliensektor.html>> [accessed 28 January 2020]. Bussmann, Kai Bussmann, ‘Der Umfang Der Geldwäsche in Deutschland Und Weltweit Einige Fakten Und Eine Kritische Auseinandersetzung Mit Der Dunkelfeldstudie von Kai Bussmann’ (2016)
<https://shop.freiheit.org/download/P2@618/74195/Geldwaesche_Web.pdf> [accessed 28 January 2020].

¹¹⁵ Rice, Andrew, ‘Why New York Real Estate Is the New Swiss Bank Account’, *New York Magazine*, 27 June 2014 <<http://nymag.com/news/features/foreigners-hiding-money-new-york-real-estate-2014-6/>> [accessed 28 January 2020].

yet tax free endeavours.¹¹⁶ 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).¹¹⁷

In the coastal city of Marbella, a favoured destination for wealthy Russians,¹¹⁸ the public witnessed an unprecedented money laundering scandal when in the years following the burst, police investigations uncovered a dense criminal network 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.¹¹⁹

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

¹¹⁶ Valero, Marina, ‘Ley Hipotecaria: Las Inmatriculaciones Llegan a Bruselas y Ponen a La Iglesia Entre La Espada y La Pared’, *El Confidencial*, 19 July 2015 <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/> [accessed 28 January 2020].; Gomez, Luis, ‘La Iglesia Inscribió 4.500 Propiedades Sin Publicidad y Sin Pagar Impuestos’, *El País*, 5 June 2013 <https://elpais.com/politica/2013/05/05/actualidad/1367768798_397124.html> [accessed 28 January 2020].

¹¹⁷ Évole, Jordi, “‘Salvados’ Destapa Los Negocios Inmobiliarios de La Iglesia En Navarra’, *Público*, 23 April 2012 <<https://www.publico.es/espana/salvados-destapa-negocios-inmobiliarios-iglesia.html>> [accessed 28 January 2020].

¹¹⁸ Viúdez, Juana, ‘Los Rusos Se Apasionan Con Marbella’ (31 March 2012), *El País* edition <https://elpais.com/ccaa/2012/03/31/andalucia/1333216873_694353.html> [accessed 28 January 2020].

EFE, ‘Detenidos un capo de la mafia rusa y el presidente del Marbella por blanqueo’, *www.efe.com*, 2017 <<https://www.efe.com/efe/espana/sociedad/detenidos-un-capo-de-la-mafia-rusa-y-el-presidente-del-marbella-por-blanqueo/10004-3390574>> [accessed 28 January 2020].

¹¹⁹ Paniagua, Mayka, ‘Casas, armas y hasta un autobús: Marbella hace caja con el lujoso imperio de Roca’, *El Confidencial*, 2017 <https://www.vanitatis.elconfidencial.com/noticias/2017-03-14/malaya-juan-antonio-roca-subasta_1347366/> [accessed 28 January 2020].; Fernando J. Pérez, ‘Con Malaya empezó todo’, *El País* (30 March 2016), section Política <https://elpais.com/politica/2016/03/30/actualidad/1459325623_034369.html> [accessed 28 January 2020].

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 Luxemburg and the consequences their investments have in Germany are [documented here \(in German\)](#).¹²⁰ 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 [KFSI 3 company ownership](#)).

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](#)¹²¹; [New York, 2017](#)¹²²) and China ([Shanghai, 2017](#)¹²³), which were preceded by [Luxembourg \(2014\)](#), [Beijing \(2014\)](#)¹²⁴ and [Monaco \(2013\)](#)¹²⁵

¹²⁰ Exhibit #1: GBW, in: Maximilian Burkhardt und Wolfgang Kerler Claudia Gürkov, 'Die Akte GBW - ein bayerischer Wirtschaftskrimi: Die Spur führt nach Luxemburg', 2016 <<https://www.br.de/nachricht/inhalt/akte-gbw-konstrukt-100.html>> [accessed 28 January 2020]. Exhibit #2: Taliesin, in: Bizim Kiez Der Tagesspiegel, 'Blendle – Düstere Deals' <<https://blendle.com/i/der-tagesspiegel/dustere-deals/bnl-tagesspiegel-20161008-0011977481>> [accessed 28 January 2020].

¹²¹ Graham Bowley, 'Art Collectors Find Safe Harbor in Delaware's Tax Laws', *The New York Times*, 25 October 2015, section Arts <<https://www.nytimes.com/2015/10/26/arts/design/art-collectors-find-safe-harbor-in-delawares-tax-laws.html>> [accessed 28 January 2020].

¹²² Fishman, Margie and Goss, Scott, 'Delaware Provides Tax Shelter for Multimillion-Dollar Masterpieces', *The News Journal*, 27 September 2017 <<https://static1.squarespace.com/static/54aff3a8e4b0a3366e8981e3/t/59e50f54bce1762a6dd98339/1508183893069/USA+Today+Delaware+provides+tax+shelter+for+multimillion.pdf;%20https://news.artnet.com/art-world/will-new-york-get-its-own-freeport-for-art-arcis-plans-a-tax-haven-in-harlem-878165>> [accessed 28 January 2020].

¹²³ Artnet News, 'Amid Yves Bouvier Scandal, Shanghai's Le Freeport West Bund Is Slated to Open in 2017', *Artnet News*, 2015 <<https://news.artnet.com/art-world/le-freeport-west-bund-282939>> [accessed 28 January 2020].

¹²⁴ Zhangyu, Deng, 'Beijing Culture Free Port Poised for Art Market', *China Daily*, 2014 <http://www.chinadaily.com.cn/beijing/2014-09/24/content_18651539.htm> [accessed 28 January 2020].

¹²⁵ 'SEGEM- Monaco Freeport', *Segem* <<http://en.monaco-freeport.mc/bienvenue>> [accessed 28 January 2020].

and Singapore (2010).¹²⁶ The oldest actor still operating is the Ports Franks et Entrepôts de Genève, which runs a gigantic Geneva-based freeport,¹²⁷ which has been in operation since 1888 and which in 1988 opened a facility at Geneva Airport.¹²⁸

This boom appears to be partially driven by strong growth at the top end (sales above USD 10 million) of the art market, itself reflective of an extreme concentration of wealth in the hands of billionaires (Deloitte 2014: 29¹²⁹; Deloitte 2016: 104¹³⁰). 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.¹³¹ Last but not least, billionaire drug lords have been known in the past to launder money through expensive art collections, including Joaquín Guzmán aka El Chapo

¹²⁶ 'InSYNC - Singapore Customs e-Newsletter', 2010
<<https://www.customs.gov.sg/~media/cus/files/insync/issue09/features/freeport.html>> [accessed 28 January 2020].; The Economist, 'Freeports - Über-Warehouses for the Ultra-Rich', *The Economist*, 2013
<<https://www.economist.com/briefing/2013/11/23/uber-warehouses-for-the-ultra-rich>> [accessed 28 January 2020].

¹²⁷ Segal, David, 'Swiss Freeports Are Home for a Growing Treasury of Art', *The New York Times*, 2012 <<https://www.nytimes.com/2012/07/22/business/swiss-freeports-are-home-for-a-growing-treasury-of-art.html>> [accessed 28 January 2020].

¹²⁸ 'Ports Franks & Entrepôts de Genève SA' <<http://geneva-freeports.ch/fr/>> [accessed 28 January 2020].

¹²⁹ Deloitte and ArtTactic, *Art & Finance Report 2014* (Luxembourg, 2014)
<https://www2.deloitte.com/content/dam/Deloitte/es/Documents/acerca-de-deloitte/Deloitte-ES-Opera_Europa_Deloitte_Art_Finance_Report2014.pdf> [accessed 28 January 2020].

¹³⁰ Deloitte and ArtTactic, *Art & Finance Report 2016*, 2016
<<https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/financial-services/artandfinance/lu-en-artandfinancereport-21042016.pdf>> [accessed 28 January 2020].

¹³¹ Pauly, Christoph, 'Rich Move Assets from Banks to Warehouses', *Der Spiegel*, 24 July 2013, section Art as Alternative Investment Creates Storage Business Tax Haven <<https://www.spiegel.de/international/business/art-as-alternative-investment-creates-storage-business-tax-haven-a-912798.html>> [accessed 28 January 2020].; Chanjaroen, Chanyaporn, 'Deutsche Bank Eröffnet Goldtresor Mit Kapazität von 200 Tonnen', *Welt*, 6 October 2013
<<https://www.welt.de/newsticker/bloomberg/article116978314/Deutsche-Bank-eroeffnet-Goldtresor-mit-Kapazitaet-von-200-Tonnen.html>> [accessed 28 January 2020].

(Mexico).¹³² Héctor Beltrán Leyva (Mexico) and Pablo Escobar (Colombia).¹³³

The value of assets stored in Freeports around the world is rising,¹³⁴ albeit unknown, it is believed to be in the hundreds of billions of dollars.¹³⁵ 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.¹³⁶

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

¹³² Artnet News, 'Inside Escaped Mexican Drug Lord El Chapo's Mansion—Is He an Art Collector?', *Artnet News*, 2015 <<https://news.artnet.com/market/inside-el-chapos-mansion-art-collector-316398>> [accessed 28 January 2020].

¹³³ Kinsella, Eileen, 'We Profile 3 Famous Billionaire Drug Kingpins and the Art They Adored', *Artnet News*, 2015 <<https://news.artnet.com/art-world/3-drug-kingpins-art-adored-316531>> [accessed 28 January 2020].

¹³⁴ See p.29 in Deloitte and ArtTactic, *Art & Finance Report 2014*.

¹³⁵ See: The Economist, 'Freeports - Über-Warehouses for the Ultra-Rich'.¹ Kessler, Manuela, 'Hintergrund: Schweizer Supersafe in Singapur', *Tages Anzeiger*, 2014 <<https://www.tagesanzeiger.ch/leben/gesellschaft/Schweizer-Supersafe-in-Singapur/story/17946480>> [accessed 28 January 2020].

¹³⁶ Pauly, Christoph, 'Rich Move Assets from Banks to Warehouses'.

documentation identified to organize and carry out the investigations (page 3).¹³⁷

Before the recent hype of freeports for the storage of high value goods, the anti-money laundering agency Financial Action Task Force published a report on "Money Laundering vulnerabilities of Free Trade Zones" in 2010.¹³⁸ 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 (page 16)¹³⁹.

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 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

¹³⁷ 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', 2016 <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/2_FC_free_port_working_document_Final_EN_revclean.pdf> [accessed 28 January 2020].

¹³⁸ Financial Action Task Force, *Money Laundering Vulnerabilities of Free Trade Zones*, March 2010 <<http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20vulnerabilities%20of%20Free%20Trade%20Zones.pdf>> [accessed 28 January 2020].

¹³⁹ Financial Action Task Force, *Money Laundering Vulnerabilities of Free Trade Zones*.

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.¹⁴⁰

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.¹⁴¹

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. Courts in Hong Kong and Singapore ordered a freeze of Bouvier's assets in 2015. Bouvier has denied wrongdoing.¹⁴²

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" (page 2).¹⁴³ A list of recent scandals in illegal trafficking of cultural heritage involving Freeports include stolen Roman and Etruscan antiquities and ancient Egypt treasures, including mummies, discovered in the Freeport of Geneva.

¹⁴⁰ La., J., 'Mégafraude Diamantaire', *La Libre* (18 March 2011) <<https://www.lalibre.be/belgique/mega fraude-diamantaire-51b8d007e4b0de6db9c081b0>> [accessed 29 January 2020].

¹⁴¹ Agathe Duparc, 'Ports francs : les derniers paradis fiscaux suisses', *Mediapart*, 2014 <<https://www.mediapart.fr/journal/international/080614/ports-francs-les-derniers-paradis-fiscaux-suisses>> [accessed 29 January 2020].

¹⁴² Milliard, Coline, 'Politician Rémy Pagani Wants to Freeze Yves Bouvier's Swiss Assets', *ArtNet*, 22 March 2015 <<https://news.artnet.com/art-world/remy-pagany-yves-bouvier-279767>> [accessed 29 January 2020].; Artnet News, 'Amid Yves Bouvier Scandal, Shanghai's Le Freeport West Bund Is Slated to Open in 2017'.

¹⁴³ 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'.

In December 2016,¹⁴⁴ 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.¹⁴⁵

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.¹⁴⁶

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 can be accessed freely in the Financial Secrecy Index database (IDs 416, 418, 437, 439 and 487).

¹⁴⁴ AFP, 'Looted Palmyra Relics Seized by Swiss Authorities at Geneva Ports | World News | The Guardian', *The Guardian*, 3 December 2016 <<https://www.theguardian.com/world/2016/dec/03/looted-palmyra-relics-seized-by-swiss-authorities-at-geneva-ports>> [accessed 29 January 2020].

¹⁴⁵ AFP, 'Looted Palmyra Relics Seized by Swiss Authorities at Geneva Ports | World News | The Guardian'.; Dunn-Davies, Huw, 'The Usage of Freeports in the Art Industry', *Borro Private Finance*, 2017 <<https://www.borro.com/uk/insights/blog/usage-freeports-art-industry/>> [accessed 29 January 2020].

¹⁴⁶ Deloitte and ArtTactic, *Art & Finance Report 2016*, 104.

3.5 KFSI 5 – Limited Partnership Transparency

3.5.1 What is measured?

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

3. 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 open data format or at a maximum cost of US\$ 10, € 10 or £ 10;
4. 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 open data or at a maximum cost of US\$ 10, € 10 or £ 10.¹⁴⁷

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 1, with full details of the assessment logic given in Annex B.

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.

¹⁴⁷ We consider this a reasonable criterion given a) the prevalence of the internet in 2019, 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'.

Table 5.1: Secrecy Scoring Matrix KFSI 5

Regulation [Secrecy Score: 100 points= full secrecy; 0 points = full transparency]	<u>Online for free & in open data</u>	<u>Online for free, no open data</u>	<u>Online at small cost</u> [i.e. up to 10 €UR/USD/GBP]
COMPONENT 1: OWNERSHIP / PARTNERS' IDENTITIES (50 points)			
<u>Incomplete Ownership or high cost</u> 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 10€/US\$/GBP, or unknown.	50		
<u>Complete Legal Ownership</u> 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
<u>Complete Beneficial Ownership</u> 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
<u>Complete Beneficial and Legal Ownership</u> 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)			
<u>Accounts not always available online at small cost</u> Limited partnerships do not always publish their annual accounts online for a cost of up to 10€/US\$/GBP, or unknown.	50		
<u>Accounts always available online</u> All types of limited partnerships file their annual accounts and publish them online, or limited partnerships are not available.	0	12.5	25

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 269, 272, 273, 274, 476, 477, 479, 480, 481, 482, 483 and 484).

Component I: 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.¹⁴⁸

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 stricter than the requirements of the Financial Action Task Force (FATF) and the European Union ([see KFSI 3](#)).¹⁴⁹

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**:

- 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 Union¹⁵⁰; and for each beneficial owner:
- b) full address, or passport ID-number, or year and month of birth, or a Taxpayer Identification Number (TIN).

¹⁴⁸ 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 113 in Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2019)*.

¹⁴⁹ Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 4th 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 suffice to frustrate this BO registration threshold if each held 25% of the shares. See [KFSI 3](#) or the note above for further details: Tax Justice Network, 'Key Financial Secrecy Indicator 3: Recorded Company Ownership', 2020 <<http://www.financialsecrecyindex.com/PDF/3-Recorded-Company-Ownership.pdf>> [accessed 29 January 2020].

¹⁵⁰ See note above.

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

- a) The full names of nominees and/or trustees and/or legal entities acting as legal owners or partners, and for each:
- 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 open data format (see Table 5.1 above).

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, and for new creative data usages.¹⁵¹ Furthermore, complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number or sending of hard-copy mails) should not be required.¹⁵²

From an open data perspective, a zero secrecy score is subject to the type of license for the use of the data, and if the data is fully downloadable from the internet. In cases where data was found to be freely available, we have consulted the corresponding jurisdiction at the open company data index published online by open corporates.¹⁵³ We have treated data as truly open only when there is an open license or no license is required for the reuse of the data, and where the data is freely available for download.¹⁵⁴

¹⁵¹ These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. For more information about this see OpenCorporates, 'The Open Database of the Corporate World'.

¹⁵² 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.

¹⁵³ OpenCorporates, 'The Open Database of the Corporate World - Registers' <https://opencorporates.com/registers?all_registers=true> [accessed 29 January 2020].

¹⁵⁴ For six principles of open data, please consult 'The International Open Data Charter'.

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.¹⁵⁵ 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 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."¹⁵⁶

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.¹⁵⁷

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 KFSI 5 draws information mainly from seven types of sources: first, the Global Forum peer reviews¹⁵⁸ have been analysed to find out what sort of ownership information partnerships must register and

¹⁵⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 20.1.2020.

¹⁵⁶ Ibid.

¹⁵⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/55657/PSC_register_summary_guidance.pdf; 20.1.2020.

¹⁵⁸ 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' <<http://www.eoi-tax.org/#default>> [accessed 21 January 2020]..

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”¹⁵⁹ 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 EU¹⁶⁰ have 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

¹⁵⁹ OECD, *Tax Co-Operation 2010*, 189.

¹⁶⁰ 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, and 2020). The said directive entails minimum standards for the registration of adequate, accurate and current information on the beneficial owners of corporates 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: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 29.1.2020. Compare also with FATCA, where 10% of shares/capital in an entity is threshold to define a US substantial ownership (Weis, Michael and Thinnies, Kerstin, ‘FATCA + AML = an Equation with Too Many Variables?’). And consider Transparency International EU, Financial Transparency Coalition and Eurodad, *European Commission Proposal on AMLD4. Questions and Answers*.

fourth, FATF peer reviews¹⁶¹; and the **fifth**, the results of the TJN-Survey 2019 (or an earlier Survey).

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. In that case, finally, the open company data index published by open corporates has been consulted as well.¹⁶²

Component II: Accounts (50 points)

The second component of KFSI 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 open data format, it obtains a zero secrecy score. In case the information is available for free but not in open data format (i.e. there is an open license or no license for the reuse of the data, and the data is freely available for download), 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, including underlying documentation.

We have drawn this information from five principal sources. **First**, the Global Forum peer reviews¹⁶³ 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

¹⁶¹ 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.

¹⁶² OpenCorporates, 'The Open Database of the Corporate World - Registers'.

¹⁶³ 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'.

consulted (eg Lowtax.net, Ocra.com, Offshoresimple.com, Big four accountancy websites, etc.). **Third**, results of the TJN-Survey 2019¹⁶⁴ (or earlier) 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). In that case, **finally**, the open company data index published by open corporates has been consulted as well.¹⁶⁵

Following the weakest link principle¹⁶⁶ 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 veil¹⁶⁷ 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.

¹⁶⁴ Tax Justice Network, 'Financial Secrecy Index 2020 Questionnaire'.

¹⁶⁵ OpenCorporates, 'The Open Database of the Corporate World - Registers'.

¹⁶⁶ 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.

¹⁶⁷ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*.

A recent example is the Azerbaijani Laundromat.¹⁶⁸ 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” are 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 2015.¹⁶⁹

SLPs 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, SLPs 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.¹⁷⁰

Denmark offers similar types of limited liability partnerships.¹⁷¹

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

¹⁶⁸ Luke Harding, Caelainn Barr and Dina Nagapetyants, 'UK at Centre of Secret \$3bn Azerbaijani Money Laundering and Lobbying Scheme', *The Guardian*, 4 September 2017, section World news <<https://www.theguardian.com/world/2017/sep/04/uk-at-centre-of-secret-3bn-azerbaijani-money-laundering-and-lobbying-scheme>> [accessed 29 January 2020].

¹⁶⁹ Gordon, Tom, 'Herald View: The Shame of Scotland's Zero-Tax Companies', *The Herald*, 26 July 2016 <<https://www.heraldsotland.com/opinion/14641459.herald-view-the-shame-of-scotlands-zero-tax-companies/>> [accessed 29 January 2020].

¹⁷⁰

http://www.heraldsotland.com/opinion/14641459.Herald_View__The_shame_of_Scotland__39_s_zero_tax_companies/?ref=rss

¹⁷¹ HjulmandKaptain, 'Limited Liability Partnerships', *HjulmandKaptain* <<https://www.hjulmandkaptain.dk/english/corporate/company-law/establishment-corporate-form-and-company-structure/limited-liability-partnerships/>> [accessed 29 January 2020]. Alliance consultancy overseas limited, 'Danish Limited Partnerships', *Alliance Consultancy Overseas Limited* <<http://www.allian.co.uk/denmark/danish-limited-partnerships/>> [accessed 29 January 2020].

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 bottom¹⁷² 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 that ownership identity is made publicly available as a safeguard for the functioning of markets and the rule of law. If somebody 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.

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.

¹⁷² Tax Justice Network, 'Tax "Competition" and Tax Wars' <<https://www.taxjustice.net/faq/tax-competition/>, <https://www.taxjustice.net/faq/tax-competition/>> [accessed 29 January 2020].

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.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 269, 272, 273, 274, 476, 477, 479, 480, 481, 482, 483 and 484**) in the database report of the respective jurisdiction.

3.6 KFSI 6 – Public 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 for free via the internet.¹⁷³ A zero secrecy score can be achieved if both beneficial and legal ownership is published for free in open data format. 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 6.1 below, and full details of the assessment logic can be found in Annex B.

Table 6.1: Secrecy Scoring Matrix KFSI 6

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]	<u>Online for free & in open data</u>	<u>Online for free, no open data</u>	<u>Online at small cost</u> [i.e. up to 10€/US\$/GBP]
<u>Incomplete ownership or high cost</u> Complete and updated ownership information is not always published for a cost of up to 10€/US\$/GBP, or unknown.	100		
<u>Legal Ownership</u> All companies publish updated and complete legal owners, but fail on beneficial owners.	80	85	90
<u>Beneficial Ownership</u> All companies publish updated and complete beneficial ownership, but fail on legal owners.	50	55	60

¹⁷³ We believe this is a reasonable criterion given a) the prevalence of the internet in 2019, 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'.

Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]	<u>Online for free & in open data</u>	<u>Online for free, no open data</u>	<u>Online at small cost</u> [i.e. up to 10€/US\$/GBP]
<u>Beneficial and Legal Ownership</u> All companies publish both updated and complete beneficial and legal ownership.	0	5	10

All underlying data can be accessed freely in the **Financial Secrecy Index database** (IDs 470, 471, 472, 473, 475 and 486).

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.¹⁷⁴ 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 KFSI 3](#)).¹⁷⁵

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

¹⁷⁴ 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, 113
<<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html>>.

¹⁷⁵ Both the recommendations of the international anti-money laundering agency Financial Action Task Force (FATF) and the 4th 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 suffice to frustrate this BO registration threshold if each held 25% of the shares. See [KFSI 3](#) or the note above for further details:
<http://www.financialsecrecyindex.com/PDF/3-Recorded-Company-Ownership.pdf>; 22.12.2019.

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

- c) 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 Union¹⁷⁶; and for each beneficial owner:
- d) 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:

- c) The full names of nominees and/or trustees and/or legal entities acting as legal owners or partners, and for each:
- d) 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.

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, and for new creative data usages.¹⁷⁷ Furthermore, complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number or sending of hard-copy mails) should not be required.¹⁷⁸

From an open data perspective, a zero secrecy score is subject to the type of license for the use of the data, and whether the data is fully downloadable from the internet. In cases where data was found to be

¹⁷⁶ See note above.

¹⁷⁷ These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. For more information about this see OpenCorporates, 'The Open Database of the Corporate World'.

¹⁷⁸ 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.

freely available, we have consulted the corresponding jurisdiction at the open company data index published online by open corporates.¹⁷⁹ Only if there was an open license or no license for the reuse of the data, and if the data was freely available for download, we considered it as open data.¹⁸⁰

This indicator mainly builds on analysis undertaken in [KFSI 3 as regards company ownership registration](#).¹⁸¹ 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 KFSI 3 with the only additional sources being a) the results of the random searches on the respective jurisdiction's online company registry; and b) the open company data index published by open corporates.¹⁸²

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

Following the weakest link principle¹⁸³ which we follow for the purposes of FSI 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

¹⁷⁹ OpenCorporates, 'The Open Database of the Corporate World - Registers'.

¹⁸⁰ For six principles of open data, please consult <https://opendatacharter.net/>; 22.12.2019

¹⁸¹ <http://www.financialsecrecyindex.com/PDF/3-Recorded-Company-Ownership.pdf>.

¹⁸² OpenCorporates, 'The Open Database of the Corporate World - Registers'.

¹⁸³ 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.

beneficial ownership information for companies and other legal persons.¹⁸⁴ 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 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."¹⁸⁵

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

All underlying data can be accessed freely in the **Financial Secrecy Index database**. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (IDs 470 – 475, 485 and 486) in the database report of the respective jurisdiction.

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.¹⁸⁶ The

¹⁸⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843>; 20.1.2020.

¹⁸⁵ Ibid.

¹⁸⁶ For example, consider these websites:

<https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/anonymous-company-owners/>; <https://www.globalwitness.org/en/blog/what-does-uk-beneficial-ownership-data-show-us/>; <https://www.opengovpartnership.org/es/stories/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/>; 22.12.2019.

Furthermore, these studies provide further detail: Global Witness, *Chancing It- How Secret Company Ownership Is a Risk to Investors*, 2016

<https://financialtransparency.org/wp-content/uploads/2016/09/04_Investors_report_AW_med_withlinks.pdf>.. Global Witness, *Poverty, Corruption and Anonymous Companies: How Hidden Company Ownership Fuels Corruption and Hinders the Fight against Poverty.*, 2014

<https://www.globalwitness.org/documents/13071/anonymous_companies_03_2014.pdf> [accessed 23 February 2017]. The B Team, *Ending Anonymous Companies: Tackling Corruption and Promoting Stability Through Beneficial Ownership Transparency. The Business Case*, 2015

<<https://drive.google.com/uc?export=download&id=0BwNjrEEVS8DiRi1oa19MQm>

Panama Papers¹⁸⁷ illustrate the abundance 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, drugs money 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.

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 realized 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

tNMV> [accessed 23 February 2017]. Global Witness, *Mystery on Baker Street. Brutal Kazakh Official Linked to £147m London Property Empire*. Knobel, Andres and Meinzer, Markus, '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'. Knobel, Andres and Meinzer, Markus, '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'.

¹⁸⁷ <https://panamapapers.icij.org/>; 28.8.2017. James O'Donovan, Hannes F. Wagner and Stefan Zeume, 'The Value of Offshore Secrets Evidence from the Panama Papers', *SSRN Electronic Journal*, 2016 <<https://www.ssrn.com/abstract=2771095>> [accessed 18 December 2018].

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".¹⁸⁸ The same kind of 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 making 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.¹⁸⁹

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

¹⁸⁸ <http://panamapapers.sueddeutsche.de/articles/5718f882a1bb8d3c3495bcc7/>; 22.12.2019.

¹⁸⁹ <http://www.taxjustice.net/2017/03/07/good-news-slovakia/>; 22.12.2019.

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 ([World Bank 2011: 20, 34](#)).¹⁹⁰

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:

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 ([UNODC/World Bank 2011: 93](#)).¹⁹¹

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 wrongdoing 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 [Swiss Leaks](#)¹⁹² about secret bank accounts held at

¹⁹⁰ Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It.*

¹⁹¹ Kevin M. Stephenson and others, *Barriers to Asset Recovery. An Analysis of the Key Barriers and Recommendations for Action*, StAR - World Bank / UNODC (Washington, DC, 2011)
<http://www1.worldbank.org/finance/star_site/documents/barriers/barriers_to_asset_recovery.pdf> [accessed 6 December 2012].

¹⁹² <https://www.independent.co.uk/news/business/hsbc-leaks-email-from-whistleblower-to-hmrc-proves-authorities-were-told-of-tax-evasion-10043456.html>; 22.12.2019

HSBC private bank. While many of the accounts were related to tax evasion and money laundering, [it was revealed](#)¹⁹³ 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.

In a [decision of March 2017](#),¹⁹⁴ the European Court of Justice appears to support these principles in the face of counter arguments based on data protection and privacy.¹⁹⁵ 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

¹⁹³ <http://uncounted.org/2015/02/09/swissleaks-tax-transparency-accountability/>; 22.12.2019.

¹⁹⁴ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170027en.pdf>; 22.12.2019.

¹⁹⁵ <http://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency/>; 22.12.2019. See also <https://blog.opencorporates.com/2017/02/28/germany-do-not-let-personal-security-be-the-bait-and-switch-for-public-accountability/>; 22.12.2019.

(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.¹⁹⁶

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.

In relation to this and as described above, AMLD 5, which was required to be transposed by 10 January 2020, require 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 can be accessed freely in the [Financial Secrecy Index database](#) (IDs 470, 471, 472, 473, 475 and 486).

¹⁹⁶ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170027en.pdf>; 22.12.2019.

3.7 KFSI 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 governmental authority/administration and to make them accessible online for free or at a maximum cost of US\$ 10, € 10 or £ 10.¹⁹⁷

The secrecy scoring matrix is shown in Table 7.1, with full details of the assessment logic given in Annex B.

Table 7.1 Secrecy Scoring Matrix KFSI 7

Regulation	Secrecy Score [100 points = full secrecy; 0 points = full transparency]
<u>Not online (at small cost)</u> Companies do not always publish their annual accounts online for a cost of up to 10€/US\$/GBP, or unknown.	100
<u>Online at small cost</u> All types of companies file their annual accounts and publish them online at a cost of up to 10€/US\$/GBP.	50
<u>Online for free, but not in open data</u> All types of companies file their annual accounts and publish them online for free, but not in open data format.	25
<u>Online, free & in open data</u> All types of companies file their annual accounts and publish them online for free and in open data format.	0

If not all types of companies publish their annual accounts online, then the secrecy score is 100. If the annual accounts are available online but there is a cost to access them, the secrecy score will be reduced to 50. In cases where the annual accounts are available online for free, the secrecy score

¹⁹⁷ We believe online accessibility for free is a reasonable requirement given a) the prevalence of the internet in 2019 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. This requirement 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 <http://opencorporates.com/>; 2.12.2019.

will be further reduced to 25. To obtain a zero secrecy score, this data needs to be accessible online for free and in open data format. 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. 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.¹⁹⁸ Complex payment or user-registration arrangements for accessing the data (e.g. registration of an account, requirement of a local identification number or sending a hard-copy request by post) should not be required.¹⁹⁹

Other requirements from an open data perspective for obtaining a zero secrecy score relate to the type of license for data use, and if the data is fully downloadable from the internet. In cases where data was found to be freely available, we have consulted the corresponding jurisdiction at the Open Company Data Index published by Open Corporates.²⁰⁰ Data is considered open only if there is an open license or no license required for the reuse of the data and if the data was freely available for download.

We performed a random search of each of the relevant corporate registries to ensure that the accounts are effectively available 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 – are required to keep accounting records, including underlying documentation for a period of at least 5 years; and that they are required to submit accounts to a public authority. Given the risks involved in the absence of proper requirement of retention of underlying documentation, we apply these criteria also for companies that are considered inactive or which ceased to exist from various reasons (except for liquidated companies, where the risks posed are fairly lower due to the involvement of an external party, eg insolvency practitioner).

¹⁹⁸ These innovative ways to exploit the data are both widespread in the open data community and would greatly increase the likelihood of identifying illicit activity hidden behind corporate vehicles. For more information about this, see <http://opencorporates.com/>; 2.12.2019.

¹⁹⁹ 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.

²⁰⁰ <http://registries.opencorporates.com/>; 2.12.2019.

We have drawn this information from five principal sources.²⁰¹ First, the Global Forum peer reviews²⁰² 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 consulted, including Lowtax.net²⁰³ and Ocra.com²⁰⁴. Third, results of the Tax Justice Network Survey of 2019 (or earlier) have been included.²⁰⁵ Fourth, in cases where the previous sources indicated that annual accounts are submitted or available online, or both, the corresponding company registry websites have been consulted. Fifth, in that case, the Open Company Data Index published by Open Corporates has been consulted as well.²⁰⁶

Following the weakest link principle²⁰⁷ for our 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. If any exceptions are allowed for certain types of

²⁰¹ To see the sources used for particular jurisdictions, please check the corresponding information in our database, available at <http://www.financialsecrecyindex.com/database/menu.xml>.

²⁰² 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: <http://www.eoi-tax.org/>; 2.12.2019.

²⁰³ <https://www.lowtax.net/>; 2.12.2019.

²⁰⁴ <https://www.ocra.com/jurisdictions/>; 2.12.2019.

²⁰⁵ The survey was conducted by the Tax Justice Network in early 2019. The questionnaire sent out to Ministries of Finance and National Audit Offices can be viewed here: https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; and the questionnaire sent to Financial Intelligence Units can be downloaded here:

https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-FIU.xlsx

²⁰⁶ <http://registries.opencorporates.com/>; 2.12.2019.

²⁰⁷ 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.

companies, we assume that anyone intending to conceal information from public view will simply opt for establishing a company where these requirements do not apply.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 188, 189 and 201**) in the database report of the respective jurisdiction.

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 allow to assess potential risks when trading with limited liability companies. Public accounts thus help to protect the legitimate interests of a wide range of actors. These actors include consumers and 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 foreign companies' and subsidiaries' accounts 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 thus have a legitimate reason and need for accessing company accounts in order to assess them on matters of fair trade, environmental protection, the realisation of human rights and similar charitable purposes. This can be done only when accounts are available for public scrutiny.

Many transnational corporations structure their global network of subsidiaries and operations in ways that take advantage of the absence of any requirement to publish accounts on public record. Secrecy jurisdictions enable and encourage corporate 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 indicator 8](#)).

All underlying data can be accessed freely in the [**Finanacial Secrecy Index database**](#) (IDs 188, 189 and 201).

3.8 KFSI 8 – 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.

A zero secrecy score can be achieved when public country by country reporting²⁰⁸ (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 per cent. A slight reduction of 10 per cent 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 banking sector, or both (a reduction of 25 per cent for each sector). For an overview of all data fields included in various country by country reporting standards, please refer to Annex 8.1 below.

The scoring matrix is shown in table 8.1, with full details of the assessment logic presented in Annex B.

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.

Table 8.1: Secrecy Scoring Matrix Key Financial Secrecy Indicator 8

Regulation	Secrecy Score [100 points = full secrecy; 0 points = full transparency]
<u>No reporting</u> No public country by country reporting required for any corporations in any sector.	100

²⁰⁸ Tax Research UK and Tax Justice Network, *Country-by-Country Reporting*, October 2010 <<http://www.taxresearch.org.uk/Documents/CBC.pdf>> [accessed 17 May 2019].

Regulation	Secrecy Score [100 points = full secrecy; 0 points = full transparency]
<u>One-off reporting</u> 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
<u>Some annual reporting</u> Some annual public country by country reporting required for corporations active in the extractive industries or banking.	-25 (for each sector covered)
<u>Full reporting</u> 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

The key difference between the kind of country by country reporting monitored in this indicator and Action 13²⁰⁹ 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 inequalities in taxing rights.²¹⁰ This is discussed in greater detail in Key Financial Secrecy Indicator 9.²¹¹

Public country by country reporting for financial institutions was introduced by European Union member states in 2014 and 2015 (Capital

²⁰⁹ <https://www.oecd.org/tax/beps/country-by-country-reporting.htm>; 22.12.2019.

²¹⁰ Andres Knobel and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <<https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf>> [accessed 9 February 2017].

²¹¹ <http://www.corporatetaxhavenindex.org/PDF/11-CBCR-Local-Filing.pdf>; 22.12.2019.

Requirements Directive IV).²¹² 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 per cent applies to all European Union member states that have fully transposed the measures.²¹³

Another set of far narrower country by country reporting rules for the extractives industries has become law in the European Union, Ukraine, Canada and Norway. These complement the voluntary, nationally-implemented Extractive Industries Transparency Initiative (EITI)²¹⁴, 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,

²¹² The European Union *Capital Requirements Directive IV 2013/36/EU*, 2013, Article 89 <<https://eur-lex.europa.eu/eli/dir/2013/36/oj>> [accessed 17 May 2019] requires reporting. The only main item missing for full country-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: http://europa.eu/rapid/press-release_IP-14-1229_en.htm; [accessed 16 October 2017].

²¹³ EU member states were required to transpose the EU CRD IV by 31 December 2013. For transposition status, see: https://ec.europa.eu/info/publications/capital-requirements-directive-crd-iv-transposition-status_en; [accessed 24 January 2019]. As of January 2019, Spain faced infringement proceedings for the country’s failures in transposition. As of May 2019, the European Union indicates that all member countries have transposed the directive.

²¹⁴ 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 (e.g. 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’, 2019 <https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf> [accessed 21 January 2020].

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 payments to this country's government agencies.

Instead, for a reduction of the secrecy score by 25 per cent 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. This is achieved, at present, in only the Ukraine, Canada and European Union member countries.²¹⁵

- **European Union:** The European Parliament and Council passed the Accounting and Transparency Directive in 2013 (Directive 2013/34/EU)²¹⁶, obliging mining, oil and gas, and logging companies over a defined size to report payments to government. All 28-member states have transposed this directive.²¹⁷

²¹⁵ Alex Cobham, Jonathan Gray and Murphy, Richard, *What Do They Pay?*, CIYPERC Working Paper Series 2017/01 (London, 2017) <www.city.ac.uk/__data/assets/pdf_file/0004/345469/CITYPERC-WPS-201701.pdf> [accessed 6 June 2017].

²¹⁶ European Parliament and Council of the European Union, *Accounting Directive 2013/34/EU*, 2013 <<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32013L0034>> [accessed 17 May 2019].

²¹⁷ For Accounting Directive (2013/34/EU) transposition status (last updated 25 May 2018), see: https://ec.europa.eu/info/publications/accounting-directive-transposition-status_en; [accessed 5 October 2017].

- **Ukraine:** On 18 September 2018,²¹⁸ Ukraine adopted a law to ensure transparency in the extractive industries (No. 2545-VIII) and this has been effective since 16 Nov 2018. According to the DiXi Group,²¹⁹ the law is fully compliant with the European Union Directive (2013/34/EU) and has received endorsements from the European Union's Delegation to Ukraine.²²⁰ As of January 2020,²²¹ no reports have been issued to government because reporting forms are yet to be approved by cabinet.²²²
- **Norway:** The scope of Norway's regulated country by country reporting for enterprises in the extractive industry and in logging of non-planted forestry,²²³ effective as of 1 January 2014, is broader than similar rules in the European Union. Norway's rules additionally require the disclosure of sales income, production volume, costs,

²¹⁸ *Law of Ukraine on Ensuring Transparency in the Extractive Industries, No 2545-VIII*, 2018 <<https://zakon.rada.gov.ua/go/2545-19>> [accessed 17 May 2019] and <http://eiti.org.ua/wp-content/uploads/2018/11/eng-pereklad-6229.pdf> (translation)

²¹⁹ Email communication with the DiXi Group, 21 February 2019.

²²⁰ The DiXi Group highlighted a number of differences: The law is applicable to all companies with rights to use subsoil, and all companies with licenses are obliged to report regardless of their size or classification. The law is also applicable to all minerals classified as being of national significance and to the transportation of hydrocarbons through pipelines. The definition of a project is restricted to license which does not allow for project aggregation. Furthermore, materiality levels are defined by the Ukrainian EITI multi-stakeholder group to cover more payments and reporting is compulsory for government entities that receive payments – such that both the reciprocity principle and fast reconciliation are in place. Compulsory EITI reporting has been introduced with options of online reporting and principles and procedures for MSG functioning and procedures for reporting have been set. Additionally, there is a mandatory disclosure of essential terms of contracts and licenses with subsoil use agreements. Lastly, the law is only applicable to companies operating in Ukraine only – it is not mandatory to disclose payments to other governments and the requirements for third country reporting are not applied.

²²¹ Email communication with the DiXi Group, 23 January 2020.

²²² Ministry of Energy and Coal Industry of Ukraine, *Information Notice on Submission to the Ministry of Energy and Coal of Economic Entities Operating in the Extractive Industries Payment Reports for the Benefit of the State*, 28 August 2019 <http://mpe.kmu.gov.ua/minugol/control/uk/publish/article?art_id=245392057&cat_id=244967519> [accessed 27 January 2020].

²²³ The regulations can be viewed here: Finansdepartementet, 'Forskrift om land-for-land rapportering', *Regjeringen.no*, 2013 <<https://www.regjeringen.no/no/dokumenter/forskrift-om-land-for-land-rapportering/id748525/>> [accessed 17 May 2019]. The announcement of the Norwegian Ministry of Finance can be viewed here: <https://www.regjeringen.no/nb/aktuelt/forskrift-om-land-for-land-rapportering/id748537/>; [accessed 21 June 2015].

and number of employees in every subsidiary.²²⁴ However, Norwegian companies are only required to report data for countries “where there is a physical withdrawal of natural resources”²²⁵ and do not have report data for their activities in countries where payments to authorities exceeds NOK 800,000, which is usually not required in third countries, which the Norwegian Ministry of Finance calls “supportive functions”.²²⁶ The result is that companies in practice do not need to report key information on their activities in tax havens.²²⁷ While as of 21 June 2015, the Norwegian parliament has decided the government should review the current country-by-country reporting regulations,²²⁸ no implementation date has been set for the Parliament's decision. Therefore, we consider the current exemption for “supportive functions” to be too material to award Norway a reduced secrecy score.

- **Canada:** On 16 December 2014, Canada legislated the Extractive Sector Transparency Measures Act,²²⁹ which entered into force on 1 June 2015. 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

²²⁴ Publish What You Pay Norway, ‘Briefing’, 2014

<https://www.publishwhatyoupay.no/sites/all/files/PWYP_PolicyBriefing_Eng_Web_0.pdf> [accessed 17 May 2019].

²²⁵ For an analysis of Norway’s country-by-country reporting, see Publish What You Pay Norway, ‘Briefing: What Statoil Reported and What Statoil Should Have Reported’, 2016

<https://www.publishwhatyoupay.no/sites/all/files/PWYP_Briefing_As_Is_vs_Should_Have_Eng_Web.pdf> [accessed 17 May 2019].

²²⁶ While the definition for the term ‘Supportive functions’ is missing in the Norwegian regulations, it is explained in the remarks for the Finance Committee's proposal, available here: <https://www.stortinget.no/nn/Saker-og-publikasjoner/Publikasjoner/Innstillingar/Stortinget/2013-2014/inns-201314-004/30/#a1>; [accessed 17 October 2017].

²²⁷ PWYP Norway, <http://www.publishwhatyoupay.no/en/node/17140>; [accessed 24 October 2017].

²²⁸ <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Lose-forslag/?p=61783>; [accessed 17 October 2017].

²²⁹ See Government of Canada’s FAQs on the Extractive Sector Transparency Measures Act: <http://www.nrcan.gc.ca/mining-materials/estma/18802>; [accessed 5 October 2017].

available to the public, with the first reports submitted in November 2016.²³⁰

- **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 2016²³¹. 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 2018²³². Section 1504 of Dodd-Frank remains intact but can only be implemented through a Securities Exchange Council rule. As a result, a reduced secrecy score remains out of reach for the USA.
- **Hong Kong:** An even weaker requirement applies in 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"²³³ 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 fresh shares. Because one-off disclosure is better than no disclosure, but nonetheless unlikely to deter bribery or tax evasion, we only reduce Hong Kong's secrecy score by 10 per cent.

A comparison of data included in various country-by-country reporting standards is provided in Annex 1.²³⁴

The main data sources we used for this indicator were original sources from the EU, Canada, Norway, USA and Hong Kong, and interviews and/or email-exchanges with various experts from, among others, the DiXi Group,

²³⁰ All reports submitted under the Extractive Sector Transparency Measures Act are available online: <https://www.nrcan.gc.ca/mining-materials/estma/18198>; [accessed 5 October 2017].

²³¹ See Securities and Exchange Commission for final rule 13q applying to the disclosure of payments by resource extraction issuers, <https://www.sec.gov/rules/final/2016/34-78167.pdf>; [accessed 5 October 2017].

²³² <http://www.mondaq.com/unitedstates/x/573904/Corporate+Governance/Repeal+Of+Resource+Extraction+Disclosure+Rule>; [accessed 5 October 2017].

²³³ See chapter 18.05(6)(c), in: http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/chapter_18.pdf; [accessed 16 October 2017]. Neither the "Continuing Obligations" section in the same chapter (applicable to extractive companies) nor other HKSE regulations require disclosure of such payments (e.g. general disclosure regulations of financial information for all listed companies): http://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/appendix_16.pdf; [accessed 17 October 2017].

²³⁴ Cobham, Gray and Murphy, Richard, *What Do They Pay?*

Eurodad, the Natural Resource Governance Institute, Oxfam Hong Kong, and Publish What You Pay.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we use for particular jurisdictions, please consult the assessment logic in Annex B and search for the corresponding info ID (**ID 318**) in the database report of the respective jurisdiction.

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.²³⁵ Current reporting requirements 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 successfully challenged anywhere.²³⁶ Large-scale shifting of profits to low tax jurisdictions and of costs to high tax countries ensues from this lack of transparency. A recent re-estimation²³⁷ of revenue loss from tax avoidance puts the annual figure at around US\$500bn. Losses have the greatest impact in terms of proportion of gross domestic product for low and lower middle-income countries, as the graph below shows.²³⁸

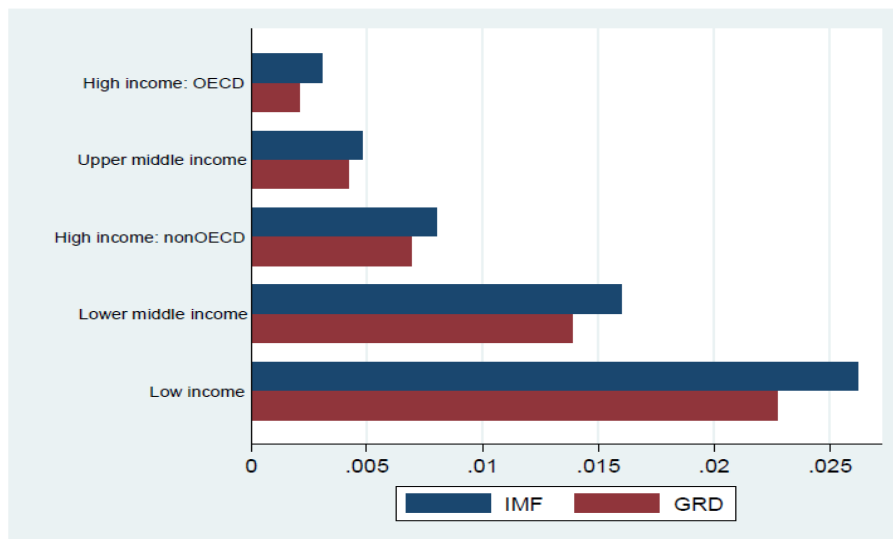
Figure 8.1. Average losses of gross domestic product per region and income

²³⁵ Markus Meinzer and Christoph Trautvetter, *Accounting (f)or Tax: The Global Battle for Corporate Transparency*, 2018 <<https://www.taxjustice.net/wp-content/uploads/2018/04/MeinzerTrautvetter2018-AccountingTaxCBCR.pdf>> [accessed 23 May 2018].

²³⁶ For instance: <http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015>; 22.12.2019 and <http://www.reuters.com/article/2012/12/06/us-tax-amazon-idUSBRE8B50AR20121206>; 22.12.2019 and <http://www.bloomberg.com/news/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html>; 22.12.2019.

²³⁷ Alex Cobham and Petr Janský, 'Global Distribution of Revenue Loss from Corporate Tax Avoidance: Re-Estimation and Country Results', *Journal of International Development*, 30/2 (2018), 206–32.

²³⁸ Alex Cobham and Petr Janský, *Global Distribution of Revenue Loss from Tax Avoidance. Re-Estimation and Country Results*, WIDER Working Paper 2017/55, 2017, 19 <<https://www.wider.unu.edu/sites/default/files/wp2017-55.pdf>> [accessed 29 May 2017].



Note: Means of IIMF and IIGRD 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. (2016) and the GRD.

Profit shifting is largely done through transfer mispricing, internal debt financing (thin capitalisation) or reinsurance operations, 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. Today's financial reporting standards allow such intra-group transactions to be consolidated with normal third-party trade in the annual financial statements. Therefore, 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 information was 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 responsibility and to make enlightened consumer choices.²³⁹ When the charity Oxfam reviewed data published under country by country reporting rules for banks in the European Union in 2017, the

²³⁹ 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* (October 2018) <http://transparency.eu/wp-content/uploads/2018/10/Under-the-Surface_Full_Report.pdf> [accessed 6 August 2019]; and the potential impact on African government revenue of not having mandatory disclosure rules for Australian-listed mining companies Lisa Lee and others, *Buried Treasure: The Wealth Australian Mining Companies Hide around the World* (29 July 2019) <<https://apo.org.au/node/250226>> [accessed 6 August 2019].

extent of the use of tax havens by the 20 biggest European banks was revealed. 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.²⁴⁰

If public country by country information were available, investors and public shareholders would be better able to evaluate if a given corporation is exposed to reputational tax risks²⁴¹ by relying on complex networks of subsidiaries in secrecy jurisdictions, or whether it is heavily engaged in conflict-ridden countries. Tax authorities and supreme 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.

At present, even tax authorities often hardly know where to start looking for suspicious activity because corporate tax returns reveal only a partial view of corporate activity.²⁴² Cases exposed in the LuxLeaks²⁴³ have shown that it may not be enough for tax administrations to have access to such data, since tax administrations may enter into special and tailored tax arrangements with corporations. For example, in 2016, the European Commissioner for Competition ruled that Apple had to pay up to €13bn in taxes plus interest to Ireland after it found that two tax rulings by Irish tax authorities on the tax treatment of Apple's corporate profits constitute

²⁴⁰ Manon Aubry and Dauphin, Thomas, *Opening the Vaults: The Use of Tax Havens by Europe's Biggest Banks* (2017) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620234/bp-opening-vaults-banks-tax-havens-270317-en.pdf;jsessionid=0C359A22BEDF90AEB8435231DC6975B1?sequence=29>> [accessed 6 February 2017].

²⁴¹ See Markus Meinzer, 'Why the German Government's Blockade of Corporate Transparency Is Harming All of Us', 2018 <<https://www.taxjustice.net/2018/10/23/why-the-german-governments-blockade-of-corporate-transparency-is-harming-all-of-us/>> [accessed 22 January 2019]; Noam Noked, *Public Country-by-Country Reporting: The Shareholders' Case for Mandatory Disclosure* (Rochester, NY, 25 June 2018) <<https://papers.ssrn.com/abstract=3220848>> [accessed 6 August 2019].

²⁴² For an explanation of why this is very likely to remain the case even after introduction of OECD's non-public country-by-country reporting at least for most developing countries, please read: Knobel and Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights'.

²⁴³ The relevant articles are available at: <http://www.icij.org/project/luxembourg-leaks>; [accessed 17 October 2017]. See also: <https://www.taxjustice.net/2017/03/15/luxleaks-appeal-verdict-tax-justice-heroes-convicted/>; [accessed 17 October 2017].

illegal state aid under EU law.²⁴⁴ The European Commission's findings on another sweetheart tax deal are similar: Amazon is required to pay about €250m in back taxes in Luxembourg on grounds the company benefited from illegal state aid.²⁴⁵ These decisions are currently challenged by the respective EU member state governments.²⁴⁶

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, economists at the University of Cologne published their research findings on 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.²⁴⁷ 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 Key Financial Secrecy Indicator 9)²⁴⁸ had already entered into force for many countries.²⁴⁹ Thus, this study provides the first evidence supporting the hypothesis that public country by country reporting increases tax ratios over and above non-public reporting. This finding warrants further, more thorough research in future.²⁵⁰

The Tax Justice Network's proposal for public country by country reporting²⁵¹ 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

²⁴⁴ <http://www.taxjustice.net/2016/08/30/apple/>; [accessed 31 October 2017].

²⁴⁵ <https://www.ft.com/content/69ee1da6-a8ed-11e7-93c5-648314d2c72c>; [accessed 31 October 2017].

²⁴⁶ <https://mnetax.com/luxembourg-fight-amazon-state-aid-case-eu-court-25180>; [accessed 23 May 2019].

²⁴⁷ Michael Overesch and Hubertus Wolff, *Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance? Evidence from the European Banking Sector* (Rochester, NY, 1 July 2018) <<https://papers.ssrn.com/abstract=3075784>> [accessed 25 September 2018].

²⁴⁸ <https://www.financialsecrecyindex.com/PDF/9-Corporate-Tax-Disclosure.pdf>

²⁴⁹ <http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>; [accessed 24 January 2019].

²⁵⁰ Overesch and Wolff, *Does Country-by-Country Reporting Alleviate Corporate Tax Avoidance?*

²⁵¹ Tax Research UK and Tax Justice Network, *Country-by-Country Reporting*.

exist. It requires multinational corporations of all sectors, 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 that operate in only one country are required by the nature of their business activity to report information in their annual financial statements that is proposed for multinational companies. The present rules of the game therefore disadvantage smaller enterprises.

The Tax Justice Network along with partners in the movement for Open Data in Tax Justice²⁵² is working towards a public database to bring together all information disclosed under country by country reporting²⁵³, ultimately to capture the full extent of profit misalignment. This database would provide an opportunity for companies to unilaterally publish their own disclosures and to resolve data consistency and quality issues in county-by-country reporting. Data would cover four main areas: 1) identity of a multinational group, 2) activity (scale of sales, assets, employment for each jurisdiction of operations, 3) intra-group transactions (sales, purchases, royalties and interest), and 4) key financial data (declared pre-tax profit or loss and tax accrued and paid). In comparison, OECD reporting rules include some significant variances: payroll costs and intragroup transactions for purchases, royalties and interest are omitted and a financial capital approximation is included instead of tangible asset investment.

The Global Reporting Initiative (the global standard setter for sustainability reporting) has built on this proposal. In December 2019, it published a tax reporting standard (known as GRI 207: 2019) requiring full public disclosure of comprehensive country by country reporting of multinational

²⁵² <http://datafortaxjustice.net/>; [accessed 19 October 2017].

²⁵³ Cobham, Gray and Murphy, Richard, *What Do They Pay?*

companies that subscribe to the initiative.²⁵⁴ This draft standard requires public disclosure of country by country reports and that these reports are reconciled with a company's consolidated financial statements, which enhances the reliability of the data compared to the OECD's approach that dispenses with the need for reconciliation. Yet the Global Reporting Initiative standard it is limited by it being a voluntary standard which may result in companies avoiding disclosure.

In contrast to this and our original proposal, variations that have been presented by the European Union and OECD as well as the extractives related rules are less comprehensive and often not public. Under the Base Erosion and Profit Shifting project, all OECD and G20 countries committed to implement country by country reporting for fiscal periods commencing 1 January 2016; many countries have implemented this.²⁵⁵ This country by country reporting "requires multinational enterprises (MNEs) to report annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. It also requires MNEs to report their total employment, capital, retained earnings and tangible assets in each tax jurisdiction" (Action 13: 2014 Deliverable).²⁵⁶ However, these requirements do not include publication of any data and they are only applicable for multinational companies with an annual consolidated group revenue of at least €750m.²⁵⁷ In addition, most developing countries, especially low income

²⁵⁴ Global Reporting Initiative, 'GRI 207: Tax 2019', 2019 <<https://www.globalreporting.org/standards/gri-standards-download-center/gri-207-tax-2019/>> [accessed 21 January 2020].

²⁵⁵ For country-by-country reporting implementation status, see: <https://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm>; [accessed 17 October 2017].

²⁵⁶ See, OECD, *Guidance on Transfer Pricing Documentation and Country-by-Country Reporting*, OECD/G20 Base Erosion and Profit Shifting Project, 2014, 9 <<https://www.oecd-ilibrary.org/docserver/9789264219236-en.pdf?expires=1558067924&id=id&accname=guest&checksum=5F5482CF687BE5CCC443E16E617590EE>> [accessed 17 May 2019]. For more information see also: <http://www.taxresearch.org.uk/Blog/2014/09/16/the-era-of-country-by-country-reporting-is-arriving/>; 22.12.2019.

²⁵⁷ 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*, OECD/G20 Base Erosion and Profit Shifting Project, 2014, 4 <<https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf>> [accessed 17 May 2019].

countries, are left out and existing inequalities in taxing rights are likely to be exacerbated to the detriment of low income countries. Recipients of confidential country by country reports are constrained by OECD regulations that rule out adjusting profit levels based on this data. This is discussed in greater detail in Key Financial Secrecy Indicator 9.²⁵⁸

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).²⁵⁹ It is a vast improvement on the European Commission's initial proposal in April 2016, but it still contains a significant loophole.²⁶⁰ A provision allows multinational enterprises to avoid reporting so-called "commercially sensitive information".²⁶¹ This proposal has been negotiated over the course of 2018 during the so-called trialogue negotiations between the European Union's Council, the European Commission and the European Parliament.

Importantly, 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)²⁶² 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

2019]. See also, OECD, *Guidance on the Implementation of Country-by-Country Reporting: BEPS ACTION 13*, 2018 <<https://www.oecd.org/tax/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>> [accessed 17 May 2019].

²⁵⁸ <https://www.financialsecrecyindex.com/PDF/9-Corporate-Tax-Disclosure.pdf>

²⁵⁹ 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*, 2017 <http://www.europarl.europa.eu/doceo/document/TA-8-2017-0284_EN.html> [accessed 17 May 2019].

²⁶⁰ European Public Service Union and others, 'From Tax Secrecy to Tax Transparency: Introducing Public Country-by-Country Reporting (CBCR) That Is Fit for Purpose', 2017 <<https://www.epsu.org/sites/default/files/article/files/Joint%20Paper%20on%20BCR%20post%20EP%20final.pdf>> [accessed 17 May 2019].

²⁶¹ 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*.

²⁶² European Parliament and Council of the European Union, *Shareholders' Rights Directive 2007/36/EC*, 2007 <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>> [accessed 17 May 2019].

against.²⁶³ However, the new incoming 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 will 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 veto²⁶⁴ the reporting measures.

Consequently, the European Council failed to reach an agreement before the European elections in May 2019.²⁶⁵ 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 on country by country reporting.²⁶⁶ However, 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 means that a majority in the European Union's Council is getting closer.²⁶⁷

The struggle for corporate transparency started as early as 1970 at the United Nations. Advocates of transparency have faced intense lobbying by business sectors and schemes deployed by OECD governments. These processes are analysed in detail in an article published in the United

²⁶³ Email by Koen Roovers/FTC of 8 July 2015 and <https://financialtransparency.org/european-parliament-sets-the-stage-for-europe-to-embrace-more-corporate-fiscal-transparency/>; [accessed 23 October 2017]. For a version of the proposal as of 10 June 2015, see: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2bA8-2015-0158%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>; [accessed 23 October 2017]. For a more extended explanation on the planned revision, see: http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm; [accessed 23 October 2017].

²⁶⁴ See <https://www.taxjustice.net/2018/07/13/why-is-germany-siding-with-the-tax-havens-against-corporate-transparency/>; [accessed 25 January 2019] and see also: <https://www.taxjustice.net/2018/09/05/is-germanys-finance-minister-the-puppet-of-big-finance/>; [accessed 25 January 2019].

²⁶⁵ 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)*, 2016/0107 (COD) <<https://data.consilium.europa.eu/doc/document/ST-5134-2019-INIT/en/pdf>> [accessed 18 May 2019].

²⁶⁶ <https://data.consilium.europa.eu/doc/document/ST-14038-2019-ADD-1/en/pdf>; [accessed 20 January 2020].

²⁶⁷ Attac, KOO and VIDC, 'Erfolg: Parlament Bindet Regierung Zu Steuertransparenz Für Konzerne', 2019 <<https://www.attac.at/news/details/erfolg-parlament-bindet-regierung-zu-steuertransparenz-fuer-konzerne>> [accessed 21 January 2020].

Nations Conference on Trade and Development journal Transnational Corporations.²⁶⁸

While much narrower in scope than our proposal, the Extractive Industries Transparency Initiative (EITI)²⁶⁹ has succeeded in raising awareness about the importance of transparency of payments made by companies to governments. 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 extractive industry companies and companies submit records of payments made to 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, investigate and address the causes of any discrepancies".²⁷⁰ Mismatches can be, but are not necessarily, indicative of illicit activity, such as bribery or embezzlement.

The information provided under the Extractive Industries Transparency Initiative requirements is of special interest because it may reveal for the first time in a given country information on tax payments made by companies to the respective government. It may help trigger further questions that could result in greater transparency, such as full country by country reporting. Without such information, citizens, civil society and consumers cannot make informed choices and bribe paying and transfer mispricing remains largely unchallenged. The cost is borne by the most vulnerable people in society. 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 can be accessed freely in the Financial Secrecy Index database (ID 318).

²⁶⁸ Alex Cobham, Petr Janský and Markus Meinzer, '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), 160.

²⁶⁹ For the current EITI Standard (2019) governing EITI implementation, see, The EITI International Secretariat, 'The EITI Standard 2019'.

²⁷⁰ See EITI Standard Requirement 7.3 'Discrepancies and recommendations from EITI Reports': <https://eiti.org/document/eiti-standard-2019#r7-3> ; [accessed 20 January 2020].

3.9 KFSI 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: **global country by country reports** related to OECD's BEPS Action 13: it assesses whether a jurisdiction ensures its own access to the country by country reports of any relevant²⁷¹ foreign multinational enterprises with domestic operations. Such access is ensured if the jurisdiction - going beyond the legal framework proposed by the OECD in the Model domestic legislation for country by country reporting - requires the local filing of the country by country reports (by the local subsidiary or branch of a foreign multinational enterprise), whenever the jurisdiction cannot obtain it via automatic exchange of information [Instead, the OECD 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, or if some are made available upon payment of a fee.
3. Component 3: **extractive industries contracts**: we assess whether a jurisdiction publishes extractive industries (mining and petroleum) contracts online for free.

Accordingly, we have split this indicator into three components. For all jurisdictions, the first component (local filing of country by country reports) contributes 50% to the overall secrecy score. For jurisdictions with a substantial extractive industry (as defined by the Natural Resource Governance Institute²⁷²), components 2 (unilateral cross-border tax

²⁷¹ Relevant in this instance refers to Multinationals with over 750 million Euro global consolidated turnover, that are required to produce and file the country by country reporting according to BEPS Action 13.

²⁷² The Natural Resource Governance Institute's (<https://resourcegovernance.org>) Contract Disclosure Practice and Policy Tracker (<<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>>, updated 30 April 2019) includes 147 entries for 101 jurisdictions (this includes 3 sub-national regions). For 23

jurisdictions, there are two entries, one for petroleum and one for mining. For all the others, there is a single entry either for petroleum or for mining contract disclosure.

The countries included in the tracker are a) those included in Natural Resource Governance Institute's most recent Resource Governance Index 2017, b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including those that have withdrawn membership (for example, Azerbaijan, Niger and the United States of America) 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; email communication with Rob Pitman, Natural Resource Governance Institute, 28.01.2019).

In terms of coverage under a), i.e. countries included in the Resource Governance Index 2017, 81 resource-producing countries are included. According to the Method Paper (2017), this is based on 58 countries assessed in the 2013 index, and "countries in the top-80 earners for natural resource rents, measured as a percentage of GDP averaged over 2009-2014 where 'natural resource' includes oil, natural gas and minerals but excluded coal and forestry" and "with a population of more than one million" (4). The Natural Resource Governance Institute made some exceptions to these criteria due to the future resource potential of certain countries and their priorities as an organisation. Ethiopia and Madagascar were included even though they did not meet these criteria and Albania, Armenia, Macedonia FYR, Pakistan and Thailand met the criteria but were removed. In addition, for federal countries with decentralised resource governance, the index assessed the largest resource-producing regions: the Gulf of Mexico in the United States of America, Alberta in Canada and Western Australia in Australia. In India, the federally-managed gas sector was assessed. The World Bank's World Development Indicators were used to determine the contribution of the extractive industries and sectors to gross domestic product.

In the Contract Disclosure Practice and Policy tracker, information is provided for either mining or petroleum contract disclosure in 78 of the 101 jurisdictions. For countries taken from the Resource Governance Index, this is because the index typically looks at only one sector (see following paragraph). For Extractive Industries Transparency Initiative countries, this is because the Extractive Industries Transparency Initiative reporting might only cover one sector. For remaining countries, it is because the tracker is filled out on an ad hoc basis (email communication with Rob Pitman, Natural Resource Governance Institute, 30.01.2019).

Of the 89 assessed countries in the Resource Governance Index of 2017, mining or petroleum was assessed in 73 countries (the petroleum sector in 47 countries and the mining sector in 26 countries) and both sectors were measured in eight countries. For new countries included in the 2017 edition of the index, the sector was chosen based on which sector was more significant in terms of earnings from natural resource rents between 2009 and 2014. Exceptions were made based on future resource potential and priorities set by the Natural Resource Governance Institute.

As a result, in the Financial Secrecy Index 2020, 50 countries have been assessed. For further information, see Natural Resource Governance Institute, 'Resource Governance Index 2017: Method Paper', 2017, 4–6

<https://www.resourcegovernanceindex.org/system/documents/documents/000/000/074/original/2017_Resource_Governance_Index_method_paper.pdf?1498601280> [accessed 1 March 2019].

rulings) and 3 (extractive industries contract disclosure) each contribute 25% to the overall secrecy score. For countries without a substantial extractive sector, the secrecy score of component 2 contributes 50% to the overall secrecy score for this indicator. Table 9.1 below summarises the applicable assessment components.

Table 9.1. Applicable Scoring Logic - Key Financial Secrecy Indicator 9

Substantial extractive sector? ²⁷³	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.

The secrecy scoring matrix is shown in Table 9.2 below, with full details of the assessment logic given in Annex B.

Table 9.2: Secrecy Scoring Matrix KFSI 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)	
<u>Access to country by country reports is not ensured</u> The jurisdiction abides by the OECD legal framework and requires local filing of the country by country reports only when authorised by the OECD, if local filing is required at all; or unknown.	50
<u>Access to country by country reports is ensured (comprehensive local filing)</u> The jurisdiction goes beyond the legal framework proposed by the OECD and requires local filing of the country by country reports (by the local subsidiary or branch of a foreign multinational enterprise), whenever the jurisdiction cannot	0

²⁷³ See note 272 above.

obtain it through the automatic exchange of information.	
Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 2: Unilateral cross-border tax rulings (25 points if component 3 is also assessed; otherwise 50 points)	
<u>Tax rulings are issued but not published online</u> Unilateral cross-border tax rulings cannot 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
<u>Tax rulings published online against a cost</u> Unilateral cross-border tax rulings are available online only against a cost (irrespective of whether all or only some are available) Or <u>Only some tax rulings are published online for free</u> While some unilateral cross-border tax rulings are available online free of cost, not all are available online.	Where both components 2 and 3 are assessed: 18.75 Where component 3 is not assessed: 37.5
<u>All tax rulings are published online for free, but anonymised</u> All unilateral cross-border tax rulings are published online free of cost, but without the name of the company concerned.	Where both components 2 and 3 are assessed: 12.5 Where only component 3 is not assessed: 25
<u>All tax rulings published online for free with the company's name</u> All unilateral cross-border tax rulings are published online free of cost, including the name of the company concerned.	Where both components 2 and 3 are assessed: 6.25 Where component 3 is not assessed: 12.5
<u>No tax rulings issued</u> No unilateral cross-border tax rulings are available in the jurisdiction and the jurisdiction applies income tax.	0

Regulation		Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 3: Extractive industries contract disclosure (25 points where applicable): petroleum or mining (where both sectors exist, the assessment of most secretive sector is considered)		
	<u>Contract disclosure not required by law</u> No legal requirement exists that requires contract disclosure	<u>Contract disclosure required by law</u> A legal requirement exists that requires contract disclosure
<u>No extractive industries contracts published</u> Extractive industries contracts cannot be accessed online, or unknown	25	22.5
<u>Only some²⁷⁴ extractive industries contracts published</u> While some extractive industries contracts are available online, not all or nearly all are available online	15	10
<u>All or nearly all²⁷⁵ extractive industries contracts published</u>	5	0

²⁷⁴ 'Some' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019). 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).

²⁷⁵ 'All or nearly all' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019) 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.

All or nearly all extractive industries contracts as available publicly online		
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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 zero secrecy score 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 of secrecy score is given if the jurisdiction abides by the OECD legal framework or if country by country report is not even required to be filed in any circumstance, or if the domestic legal framework is unknown.

The main source for this indicator are the two "Country-by-Country Reporting – Compilation of Peer Review Reports"²⁷⁶ published by the OECD on 24 May 2018 and 3 September 2019. The domestic legal frameworks of 95 jurisdictions in 2018 and 116 jurisdictions in 2019 are reviewed in the report. Part A (Section C) of the reports refers to the "Limitation on local filing obligation". If the peer review report describes that a jurisdiction's domestic law goes beyond the OECD model legislation (i.e., requiring local filing in more cases than those authorised by the OECD) but the report confirms that the jurisdiction will respect the OECD restrictions²⁷⁷, 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 domestic law has been analysed or an external assessment of domestic law, such as by one of the big four, may have been used as a source.

²⁷⁶ OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 2018 <<http://www.oecd.org/tax/beps/country-by-country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm>> [accessed 26 February 2019]; OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2): Inclusive Framework on BEPS: Action 13, OECD/G20 Base Erosion and Profit Shifting Project* (Paris, 2019) <<https://doi.org/10.1787/f9bf1157-en>> [accessed 15 November 2019].

²⁷⁷ Even though, as assessed by the 2018 edition of the Financial Secrecy Index, 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 eventually 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".²⁷⁸ The tax rulings covered

²⁷⁸ 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 (2015), 47 <https://www.oecd-ilibrary.org/taxation/countering-harmful-tax-practices-more-effectively-taking-into-account-transparency-and-substance-action-5-2015-final-report_9789264241190-en> [accessed 26 March 2019].

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 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN>> [accessed 22 May 2019].

(b) The following points are added:

14. "advance cross-border ruling" means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;

(b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;

(c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;

(d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place. The cross-border transaction may involve, but is not restricted to, the making of investments, the

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.²⁷⁹

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.

provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling; [...]

16. For the purpose of point 14 "cross-border transaction" means a transaction or series of transactions where:

- (a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;
- (b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;
- (c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or
- (d) such transactions or series of transactions have a cross border impact.

²⁷⁹ OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*, OECD/G20 Base Erosion and Profit Shifting Project (2017), 9 <http://www.oecd-ilibrary.org/taxation/harmful-tax-practices-peer-review-reports-on-the-exchange-of-information-on-tax-rulings_9789264285675-en> [accessed 12 April 2018].

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 jurisdictions involved in a cross-border transaction for which the agreement is sought.²⁸⁰ In contrast, unilateral cross-border tax rulings or

²⁸⁰ 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* (Paris, 2010), 169–72 <<http://www.oecd.org/ctp/transferpricing/transferpricingguidelinesformultinationaenterprisesandtaxadministrations.htm>> [accessed 27 February 2013]. 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 Department of Economic & Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)* (New York, 2011), 447 <https://www.un.org/esa/ffd/documents/UN_Model_2011_Update.pdf> [accessed 17 April 2014]. The relevant article in the UN Model Tax Convention allowing for Advance pricing arrangements is Art. 25.3:

The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. United Nations Department of Economic & Social Affairs, *United Nations Model Double Taxation Convention between Developed and Developing Countries (2011 Update)*, 31.

Art. 25 (3) of the OECD Model Tax Convention of 2008 contains exactly the same wording OECD, *OECD Model Tax Convention on Income and on Capital - an Overview of Available Products* (Paris, 2008), 37 <<http://www.oecd.org/tax/treaties/oecdmtcavailableproducts.htm>> [accessed 28 July 2013]. This “permits countries to enter into Advance Pricing Agreements (Hereafter APAs)” European Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU*, COM(2007) 71 Final (Brussels, 26 February 2007), 9.

The definition we use is also fully in line with the definition used by the Joint Transfer Pricing Forum of the European Commission in 2007:

An APA is an agreement between tax administrations over the way in which certain transfer pricing transactions between taxpayers will be taxed in the future.” European Commission, *Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of*

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. The documented possibility to engage in informal discussions with tax administrations with non-binding outcomes is not considered to qualify as unilateral cross-border tax rulings for the purposes of this indicator. Jurisdictions that do not issue unilateral cross-border tax rulings receive the lowest secrecy score of zero, unless there is no income tax in the jurisdiction, in which case the secrecy score will be 50 (or 25 where both components 2 and 3 are assessed).

Jurisdictions that issue unilateral cross-border tax rulings, but do not make these available online, receive the highest secrecy score of 50 (or 25 where both components 2 and 3 are assessed). If only some are accessible online or are accessible only for a fee, jurisdictions are scored 37.5 (or 18.25 where both components 2 and 3 are assessed). Where all tax rulings are available online for free but are anonymised, that is, companies’ and individuals’ names involved are redacted, then the score is 25 (or 12.5 where both components 2 and 3 are assessed). In cases where tax rulings that include company information are available online for free, jurisdictions get a lower secrecy score of 12.5 (or 6.25 where both components 2 and 3 are assessed).

Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 5.

An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.” European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 9.

An APA application should typically have four distinct stages: (a) Pre-filing stage/Informal application (b) Formal application (c) Evaluation and negotiation of the APA (d) Formal agreement.” European Commission, Communication from the Commission to the Council, the European Parliament, and the European Economic and Social Committee on the Work of the EU Joint Transfer Pricing Forum in the Field of Dispute Avoidance and Resolution Procedures and on Guidelines for Advance Pricing Agreements within the EU, 11.

The data for this component was collected from several sources including country analyses and country surveys in the International Bureau of Fiscal Documentation's database²⁸¹, the OECD's peer review on harmful tax practices²⁸² and studies commissioned by the European Union.²⁸³ 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 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.²⁸⁴ This indicator is not concerned with the contracts that are signed between 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.²⁸⁵ This includes 147 entries for 101 jurisdictions. For 23 jurisdictions there are two entries, one for petroleum and one for mining. The tracker has information for a) countries included in the Natural Resource Governance Institute's most recent Resource Governance Index of 2017²⁸⁶, b) all countries reported in the Extractive Industries Transparency Initiative since December 2016 including those that have withdrawn membership (for

²⁸¹ IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2018-2019, 2018 <<https://research.ibfd.org/>> [accessed 9 May 2019].

²⁸² OECD, *Harmful Tax Practices – Peer Review Results on Preferential Regimes*, January 2019 <<https://www.oecd-ilibrary.org/docserver/9789264311480-en.pdf?expires=1552638135&id=id&accname=guest&checksum=C4EEE3F55F4E6C17D62674F36049D20F>> [accessed 15 March 2019].

²⁸³ European Commission, 'State Aid - Tax Rulings', 2018 <http://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html> [accessed 8 August 2018]; Elly Van de Velde, 'Tax Rulings' in the EU Member States, ECON Committee EU Parliament (Brussels, 2015) <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA\(2015\)563447_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/563447/IPOL_IDA(2015)563447_EN.pdf)> [accessed 20 October 2017].

²⁸⁴ Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (New York, NY, 2009), 19.

²⁸⁵ The Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR510XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019)

²⁸⁶ Resource Governance Index, <https://resourcegovernanceindex.org/>.

example, Azerbaijan, Nigeria and the United States of America) and those that have since joined (for example, Armenia, Guyana, Suriname), and c) several other countries that were added on an ad hoc basis, including new and upcoming producers or countries that the Natural Resource Governance Index is working in.²⁸⁷ 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 and reports from the Extractive Industries Transparency Initiative. For further information, see Footnote 272.

Jurisdictions that disclose all or nearly all contracts²⁸⁸ 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 0%. 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, jurisdiction get a slightly higher secrecy score of 5%.

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%. 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%.

Jurisdictions that disclose only some contracts²⁸⁹ 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.

²⁸⁷ Email communication with Rob Pitman, Natural Resource Governance Institute, 28.01.2019.

²⁸⁸ 'All or nearly all' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019) 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.

²⁸⁹ 'Some' is the categorisation used in the Natural Resource Governance Institute's Contract Disclosure Practice and Policy tracker (<https://docs.google.com/spreadsheets/d/1FXEeD43jw6VYHV8yS-8KJ5-rR5l0XtKxVQZBWzr-ohY/edit#gid=0>; updated 30 April 2019). 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.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources, we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 363, 419, 421, 561, 562, 563 and 564**) in the database report of the respective jurisdiction.

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.²⁹⁰ 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 template²⁹¹ to report multinational's country by country information.

As assessed and explained by Key Financial Secrecy Indicator 8²⁹² country by country reports should be public to ensure that all foreign authorities, as well as civil society organisations 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 report data cannot be made public is because the underlying data is designated as tax data. An article published in 2018

²⁹⁰ <https://www.taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/>; 22.12.2019.

²⁹¹ OECD, *Transfer Pricing Documentation and Country by country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 29–31 <http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en> [accessed 12 June 2017].

²⁹² <https://www.financialsecrecyindex.com/PDF/8-C-b-C-Reporting.pdf>; 13.01.2020

traces²⁹³ nearly 50 years of international political manoeuvres by business lobbyists and captured states in successful efforts to requalify country by country report 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 reports as they see fit to tackle tax avoidance.

Rather than promoting this approach, the OECD has, among other concerns²⁹⁴, established a complex scheme for accessing country by country reports²⁹⁵ through the automatic exchange of information. This is illustrated in Figure 9.1 below. The OECD's approach hinders access by developing 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

²⁹³ Alex Cobham, Petr Janský and Markus Meinzer, '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), 160.

²⁹⁴ Andres Knobel and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <<https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf>> [accessed 9 February 2017].

²⁹⁵ To see more details about country-by-country reporting and its uses, please refer to [KFI 8: Country-by-Country Reporting](#).

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.²⁹⁶

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 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 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 November 2019, only 83²⁹⁷ jurisdictions had signed the Multilateral Competent Authority Agreement (MCAA) required to automatically exchange country by country reports.²⁹⁸ The first exchanges started in 2018²⁹⁹, but some jurisdictions started/will start later. Indeed, as of December 2019, the highest number of activated relationships³⁰⁰ was 75 jurisdictions for some European countries, meaning that out of the 83 current signatories, a country may be exchanging country by country reports with 75 jurisdictions at most.

²⁹⁶ OECD, *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*, 2017 <<http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf>> [accessed 1 April 2019].

²⁹⁷ <https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf>; 21.1.2020.

²⁹⁸ OECD, *Multilateral Competent Authority Agreement on the Exchange of for Country by country Reports*, 2016 <<http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf>> [accessed 29 March 2019].

²⁹⁹ <https://www.oecd.org/tax/exchange-of-tax-information/country-by-country-reporting-update-on-exchange-relationships-and-implementation.htm>; 22.12.2019.

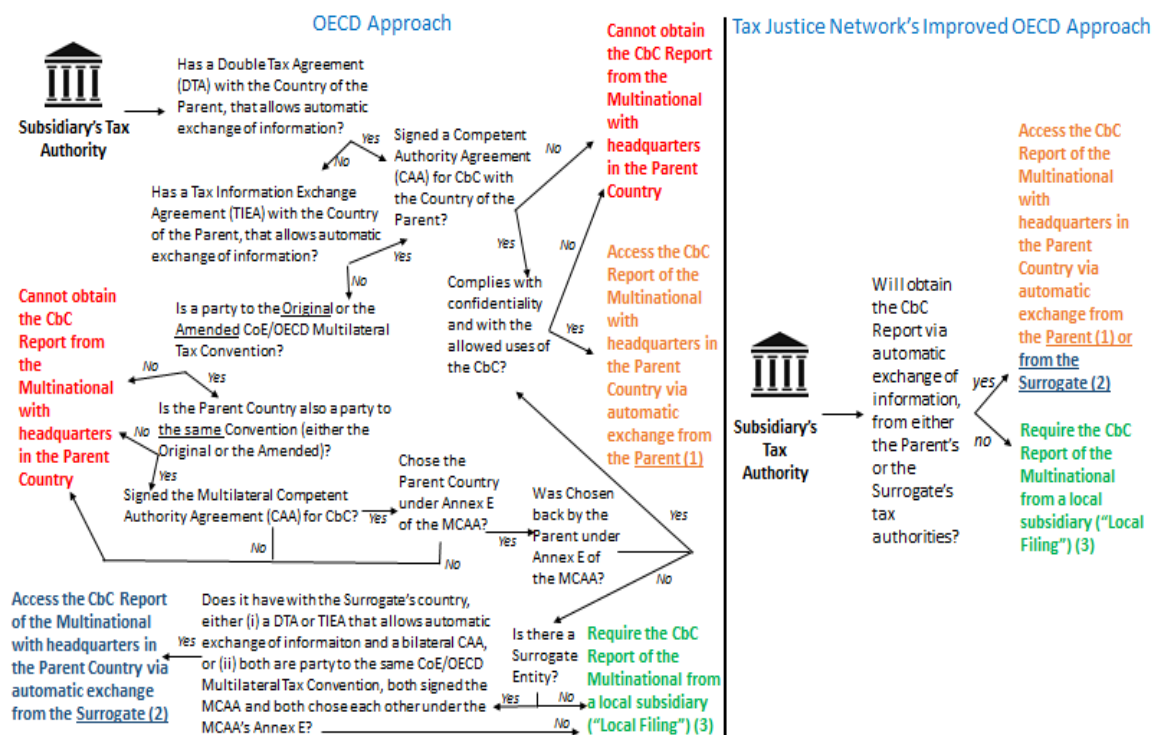
³⁰⁰ <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm>; 21.1.2020.

While the framework and its alternatives are complex (see Figure 9.1), the key condition imposed by the OECD framework to access the country by country report is to have an international agreement³⁰¹ 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 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.

³⁰¹ 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 9.1 A comparison of approaches to accessing country by country reports



Source: <https://www.taxjustice.net/2018/07/17/country-by-country-reports-why-automatic-is-no-replacement-for-public/> ; <http://www.taxjustice.net/2017/03/07/19628/>; 22.12.2019.

While as of December 2017, 19 countries had implemented legislation that requires local filing beyond the situations allowed by the OECD (as described by our 2018 Financial Secrecy Index edition), the OECD peer reviews published in 2018 and 2019 started to mark these countries as requiring amendments to their laws.³⁰²

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:

*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.*³⁰³

³⁰² OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 682.

³⁰³ OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 682.

As of December 2019, of those 19 jurisdictions that had implemented legislation which goes beyond the OECD's requirements, 10 jurisdictions have now changed their laws to comply with OECD guidance. These include, among others, the UK, Hong Kong and Jersey.³⁰⁴

This approach taken by the OECD appears to restrict a country's tax sovereignty while pushing for 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.

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. During the subsequent investigations by the European Commissioner for Competition, it was determined that some of these rulings conflicted with the European Union's state aid rules and therefore were illegal.³⁰⁵ These decisions are currently being appealed by European Union member states, such as Ireland which was ordered by the European Commission to collect additional taxes.³⁰⁶

This episode has revealed that 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. This is on top of the profit-shifting tricks used by multinational corporations such as Google, FIAT, Starbucks, BASF, SAP or Amazon to reduce their tax bill. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13bn in taxes due through a complex tax manoeuvre agreed with the Irish tax agency.³⁰⁷ Estimates put global tax avoidance by multinationals at around US\$500bn per year.³⁰⁸

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. Beyond concerns around fair market competition, a core tenet

³⁰⁴ For detailed results see the figures above.

³⁰⁵ https://ec.europa.eu/competition/state_aid/tax_rulings/index_en.html; 22.12.2019.

³⁰⁶ <https://www.irishtimes.com/business/technology/state-recovers-14-3bn-from-apple-over-alleged-state-aid-1.3633191>; 22.12.2019.

³⁰⁷ <http://www.zeit.de/wirtschaft/unternehmen/2016-09/apple-steuern-eu-kommission-transparenz>; 22.12.2019.

³⁰⁸ <https://www.wider.unu.edu/publication/global-distribution-revenue-loss-tax-avoidance>; 22.12.2019.

for the rule of law is jeopardised if there is an exit option from equal treatment before the (tax) law.

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 continues to be) made public in 1977 after the non-government 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.³⁰⁹ However, since 1991, the US has provided the option of so-called “unilateral advance pricing arrangements” which may include cross-border transfer pricing issues and are not public.³¹⁰ In contrast, in Argentina, Belgium, Brazil, Iceland, Kenya, and Mauritius all unilateral cross-border tax rulings are published in anonymised form.³¹¹ Ecuador is the only country that publishes excerpts of the formal tax rulings, online and for free with identifying information.³¹²

Furthermore, attracting profits on paper shrinks the tax base accordingly in jurisdictions elsewhere. 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.

³⁰⁹ See Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, 184–85. See also, Thomas R. III Reid, ‘Public Access to Internal Revenue Service Rulings’, *George Washington Law Review*, 41 (1972), 23 and Yehonatan Givati, *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings* (Rochester, NY, 30 June 2009)

<<https://papers.ssrn.com/abstract=1433473>> [accessed 22 May 2019]. In the USA, there are also so-called unilateral APAs.

³¹⁰ Although the IRS states a “Preference for Bilateral and Multilateral APAs” over unilateral ones (Rev. Proc. 2015-41, Section 2.4.d, <https://www.irs.gov/pub/irs-drop/rp-15-41.pdf>), 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. See 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 (2000), 160, footnote 52 and Givati, *Resolving Legal Uncertainty*, 174, footnote 130. In our classification (see above), 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.

³¹¹ Meinzer, *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*, 185.

³¹² <https://www.sri.gob.ec/web/guest/extractos-de-consultas>; 20.01.2020

The European Union has subsequently introduced automatic information exchange between Member States on these rulings, which is an important step towards transparency.³¹³ 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.³¹⁴ Yet, even if all countries participated, exchange mechanisms can only capture the tip of 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 scandal³¹⁵ 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

³¹³ 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*.

³¹⁴ OECD, *Harmful Tax Practices - Peer Review Reports on the Exchange of Information on Tax Rulings*.

³¹⁵ 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*, 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).

Member States, or that tax savings may result from artificial transfers of profits within groups,[...]. (Para. 86)³¹⁶

Ultimately, even if all tax rulings were exchanged without exception with all relevant jurisdictions, 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 on affected governments to counteract tax avoidance embedded in aggressive unilateral tax rulings.

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 2018.³¹⁷ Corporate executives are on trial in Milan accused of bribery in relation to this deal, with conclusion of the trial expected in 2020³¹⁸:

The case brought by the Milan Public Prosecutor alleges that \$520 million from the deal was converted into cash and intended to be paid to then Nigerian President Goodluck Jonathan and other Nigerian government officials. The prosecutors further allege that money was also channelled to Eni and Shell executives as kickbacks.³¹⁹

The citizens of many other countries with some of the largest deposits of precious minerals worldwide are ripped off in a similar way. 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,

³¹⁶ https://www.europarl.europa.eu/doceo/document/A-8-2015-0317_EN.html; 19.12.2019.

³¹⁷ Global Witness, *Take The Future: Shell's Scandalous Deal for Nigeria's Oil* (November 2018) <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/take-the-future/>> [accessed 1 April 2019]. See also on this website: <https://shellandenitrial.org/> 2.12.2019.

³¹⁸ Global Witness, 'Timeline: The Corporate Corruption Trial of the Century', *Global Witness* <<https://www.globalwitness.org/en/blog/timeline-corporate-corruption-trial-century/>> [accessed 27 January 2020].

³¹⁹ 'Shell and Eni on Trial', *Global Witness*, 2019, para. 11 <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-eni-trial/>> [accessed 1 April 2019].

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”.³²⁰

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 confidential as well as the information that flows from them (such as revenue payments made by a company to government).³²¹

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.³²² 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

³²⁰ Rosenblum and Maples, *Contracts Confidential*, 16.

³²¹ 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, this general confidentiality clauses does 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*, 27).

³²² Rosenblum and Maples, *Contracts Confidential*.

deviations that ultimately undervalue the resource.³²³ 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.³²⁴

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".³²⁵ 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".³²⁶ Financial terms that are always found in deals are often already known within the industry or released on stock exchanges for the shareholders of listed companies. Most countries disclose contracts without redaction.³²⁷

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.³²⁸ In fact, some companies have taken a lead in disclosing contracts signed with governments in countries where contracts are not typically disclosed. In Oxfam's survey, 18 of the 40 assessed companies had made statements supporting contract disclosure.

³²³ Rosenblum and Maples, *Contracts Confidential*.

³²⁴ Isabel Munilla and Kathleen Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, Oxfam Briefing Paper (2018), 64.

³²⁵ Rosenblum and Maples, *Contracts Confidential*, 36.

³²⁶ Robert Pitman, *Mongolia's Missing Oil, Gas and Mining Contracts* (January 2019), 6

<<https://resourcegovernance.org/sites/default/files/documents/mongolias-missing-oil-gas-and-mining-contracts.pdf>> [accessed 2 April 2019].

³²⁷ Don Hubert and Rob Pitman, *Past the Tipping Point? Contract Disclosure within EITI* (March 2017), 48.

³²⁸ Munilla and Brophy, *Contract Disclosure Survey 2018: A Review of the Contract Disclosure Policies of 40 Oil, Gas and Mining Companies*, 14.

Kosmos Energy³²⁹ and Tullow Oil³³⁰ go further. They have public contract disclosure policies and disclose 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 2018.³³¹ Indeed, significant progress has been made in recent years.³³²

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.³³³ In February 2019, the EITI Board agreed on changes to the EITI Standard. From 1 January 2021, all implementing countries will be required to make public contracts signed going forward. In the meantime, they must develop a plan to ensure compliance with the new contract disclosure requirement.³³⁴

In practice, 29 EITI implementing countries, just over half of EITI countries (including one subnational region), already have disclosed some agreements and three-quarters of countries globally that have disclosed contracts are part of the EITI.³³⁵ According to this 2017 study published by

³²⁹ Sophie Durham, ‘Contract Transparency Builds Trust and Mitigates Risk Says Kosmos’, *Extractive Industries Transparency Initiative*, 11 December 2018 <<https://eiti.org/blog/contract-transparency-builds-trust-mitigates-risk-says-kosmos>> [accessed 5 March 2019].

³³⁰ Tullow Oil PIC, ‘Transparency’, 2019 <<https://www.tulloil.com/sustainability/shared-prosperity/transparency>> [accessed 5 March 2019].

³³¹ *Fiscal Transparency Initiative: Integration of Natural Resource Management Issues* (28 December 2018), 7 <<https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/01/29/pp122818fiscal-transparency-initiative-integration-of-natural-resource-management-issues>> [accessed 18 February 2019].

³³² Rob Pitman and Isabel Munilla, ‘It’s Time for EITI to Require Contract Transparency. Here Are Four Reasons Why.’, *Natural Resource Governance Institute*, 22 February 2019 <<https://resourcegovernance.org/blog/its-time-eiti-require-contract-transparency-here-are-four-reasons-why>> [accessed 1 March 2019].

³³³ Dyveke Rogan and Gisela Granado, *Contract Transparency in EITI Countries: A Review on How Countries Report on Government’s Contract Transparency Policy* (August 2015), 36.

³³⁴ Extractive Industries Transparency Initiative International Secretariat, ‘The Board Agreed in Principle to the Proposals Made on Clarifications and Changes to the EITI Requirements.’, *Extractive Industries Transparency Initiative*, 2019 <<https://eiti.org/BD/2019-25>> [accessed 5 March 2019].

³³⁵ Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 48.

the Natural Resource Governance Institute, there is, however, discrepancy between policy and practice in some jurisdictions. For example, the Central African Republic, Ivory Coast and Tanzania require disclosure by law but have not followed through in practice.³³⁶ Further, in only 16 EITI countries, all or nearly all contracts have been disclosed in at least one sector (mining or petroleum). Without a comprehensive list of what contracts actually exist in a jurisdiction it is often difficult to assess the extent of disclosure.

Yet disclosing contracts is just part of necessary transparency throughout the contracting process, from planning and assessment of applications to the award, negotiation, implementation and monitoring of contracts.³³⁷ 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 creates a more level playing field for smaller companies.³³⁸

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 363, 419, 421, 561, 562, 563 and 564)

³³⁶ Hubert and Pitman, *Past the Tipping Point? Contract Disclosure within EITI*, 18.

³³⁷ Rob Pitman and others, *Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice* (26 June 2018) <<https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>> [accessed 12 February 2019]; Open Contracting Partnership, 'Global Principles', *Open Contracting Partnership* <<https://www.open-contracting.org/implement/global-principles/>> [accessed 5 March 2019].

³³⁸ Stephen Knack, Nataliya Biletska and Kanishka Kacker, *Deterring Kickbacks and Encouraging Entry in Public Procurement Markets: Evidence from Firm Surveys in 88 Developing Countries*, Policy Research Working Papers (2017) <<http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-8078>> [accessed 5 March 2019].

3.10 KFSI 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.³³⁹

The LEI is a 20-character, alpha-numeric code and all entities using a LEI can be searched on their website for free.³⁴⁰ 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.³⁴¹ From May 2017 onwards additional information on the direct and ultimate accounting consolidating parents is required for each LEI record upon annual renewal.³⁴² The accuracy of any LEI record can be challenged online.

Some jurisdictions have required the use of a LEI in some segments of financial markets.³⁴³ 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.³⁴⁴

³³⁹ See for examples prices here:

https://www.lei.direct/fileadmin/user_upload/LEI-direct-Price-list-LEI.pdf; 22.1.2020.

³⁴⁰ <https://search.gleif.org/#/search/>; 22.1.2020.

³⁴¹ <https://www.gleif.org>; 22.1.2020.

³⁴² 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, in <https://www.gleif.org/en/lei-data/gleif-concatenated-file>; 22.1.2020

See also <https://www.gleif.org/en/about-lei/common-data-file-format/parent-reference-data-format/>; 22.1.2020

³⁴³ <https://www.gleif.org/en/about-lei/regulatory-use-of-the-lei>; 22.1.2020.

³⁴⁴ OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters. The CRS Implementation Handbook*, 2014, p.97
<<https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>> [accessed 22 January 2020].

For a jurisdiction to obtain a zero secrecy score, it must require all legal entities created under its laws to use an annually updated LEI by 15 September 2019. Otherwise, a 100 points secrecy score is applied.

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 some financial market operators and/or asset classes; and/or
- for the identification of reporting financial institutions (pursuant to the CRS Implementation Handbook, CRS commentaries, section I, subpara A(3)).³⁴⁵

The Secrecy Scoring Matrix (Table 10.1 below) provides an overview of KFSI 10, and the full details of the assessment logic can be found in Annex B.

Table 10.1: Secrecy Scoring Matrix KFSI 10

Regulation	Secrecy Score
[Secrecy Score: 100 points = fully secretive; 0 points= full transparency]	[Simple addition / Subtraction]
<p><u>No mandatory and updated LEI for all companies</u></p> <p>The use of an annually updated Legal Entity Identifier (LEI) is not mandatory for all domestic companies</p>	100 points
<p><u>Mandatory and updated LEI for one type of operators/asset classes</u></p> <p>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.</p> <p>Or</p> <p><u>Mandatory and updated LEI for two types of operators/asset classes</u> The use of an annually updated LEI is mandatory both for trading in "Over the Counter" (OTC)</p>	<p>-25 points</p> <p>Or</p> <p>-50 points</p>

³⁴⁵ Ibid. p.97.

Regulation	Secrecy Score
[Secrecy Score: 100 points = fully secretive; 0 points= full transparency]	[Simple addition / Subtraction]
derivatives and for some financial market operators and/or asset classes beyond trading in OTC derivatives.	
<u>Mandatory and updated LEI for automatic exchange of tax information</u>	
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)) ³⁴⁶	-25 points
<u>Mandatory and updated LEI for all companies</u>	
The use of an annually updated Legal Entity Identifier (LEI) is mandatory for all domestic companies	0 points

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic table in Annex B and search for the corresponding info IDs (**IDs 414, 415 and 420**) in the database report of the respective jurisdiction.

This indicator is largely derived from two sources. First, the GLEIF website has been reviewed, especially the page "Regulatory Use of the LEI"³⁴⁷, as well as the LEI ROC website which has an updated table of LEI progress updated as of June 30, 2019³⁴⁸. Second, the results of TJN-Survey 2019³⁴⁹ and earlier have been taken into account.

³⁴⁶ Ibid. p.97.

³⁴⁷ 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 mandatory LEI requirement were analysed in depth.

See <https://www.gleif.org/en/about-lei/regulatory-use-of-the-lei>; 22.1.2020.

³⁴⁸ An updated version of the table as of 30 June 2019 is accessible in: <https://www.leiroc.org/lei/uses.htm>; 22.1.2020

³⁴⁹ https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; 22.12.2019.

3.10.2 Why is this important?

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”.³⁵⁰ 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 institution 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.³⁵¹

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 2012.³⁵² 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.³⁵³ As a consequence, it can be “freely used, reused, and redistributed by anyone, anytime, anywhere”, thus enabling it to play a role far beyond financial market regulation.

³⁵⁰ Financial Stability Board, *A Global Legal Entity Identifier for Financial Markets*, 2012, 1 <https://www.leiroc.org/publications/gls/roc_20120608.pdf> [accessed 30 August 2017].

³⁵¹ Financial Stability Board, *A Global Legal Entity Identifier for Financial Markets*, 2.

³⁵² <http://www.fsb.org/what-we-do/policy-development/additional-policy-areas/legalentityidentifier/>; 22.1.2020.

³⁵³ <https://www.gleif.org/en/about/open-data>; 22.1.2020.

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.³⁵⁴ Many secrecy jurisdictions have specialised in fast and cheap production and dissolution of shell companies. Among those specialist offers feature

- ready-made shelf companies³⁵⁵ including nominee directors or shareholders,³⁵⁶ which may allow backdating the existence of a company and misleading law enforcement;
- so-called Series LLCs³⁵⁷ which enable the creation of dozens or even hundreds of separate legal entities at very low costs;
- tailored private trust companies³⁵⁸ 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.³⁵⁹

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

³⁵⁴ See for example: OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 2001 <<http://www.oecd.org/daf/ca/43703185.pdf>> [accessed 27 January 2020]; Emile Van der Does de Willebois and others, *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*, 2011

<<https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf>> [accessed 27 January 2020]; O'Donovan, Wagner and Zeume, 'The Value of Offshore Secrets Evidence from the Panama Papers'. .

³⁵⁵ <https://companiesinc.com/aged-shelf-corporations/>; 22.1.2020.

³⁵⁶ Bastian Brinkmann, Obermaier, Frederik and Bastian Obermayer, 'The Secret World Of Sham Directors', *Süddeutsche.De* (2016) <<http://panamapapers.sueddeutsche.de/articles/5718f882a1bb8d3c3495bcc7/>> [accessed 22 August 2017].

³⁵⁷ <https://ct.wolterskluwer.com/resource-center/articles/series-llcs-wise-option-or-risky-strategy>; 22.8.2017.

³⁵⁸ <https://www.careyolsen.com/briefings/cayman-islands-private-trust-companies>; 22.8.2017.

³⁵⁹ <https://www.bedellcristin.com/insights/briefings/striking-off-dissolution-and-restoration-under-the-bvi-business-companies-act-2004/>; 22.1.2020.

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 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.³⁶⁰

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 e.g. through tax administrations or the 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.³⁶¹ However, because of taxpayer confidentiality these taxpayer IDs and identities are not routinely exchange 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

³⁶⁰ For a list of more than 700 business registers on the globe, please visit: <https://www.gleif.org/en/about-lei/gleif-registration-authorities-list>; 22.1.2020.

³⁶¹ OECD, 'Tax Administration in OECD and Selected Non OECD Countries: Comparative Information Series (2008)', 2009, 154–55
<<https://www.oecd.org/tax/forum-on-tax-administration/publications-and-products/comparative/CIS-2008.pdf>> [accessed 29 January 2020].

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 identify the source of the information reported and subsequently exchanged in order to, e.g. 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),⁶ or Global Intermediary Identification Number (GIIN).⁷ 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.³⁶²

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 414, 415 and 420).

³⁶² See: OECD, *Standard for Automatic Exchange of Financial Information in Tax Matters. The CRS Implementation Handbook*, 2014, 97 <<https://www.oecd.org/tax/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-information-in-tax-matters.pdf>> [accessed 22 January 2020], FN 6 and 7, CRS Commentaries.

3.11 KFSI 11 – Tax Administration Capacity

3.11.1 What is measured?

This indicator considers the capacity of jurisdictions' tax administration 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 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.

As concerns organisational features, two aspects are considered:

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): it assesses whether a jurisdiction has one centralised unit for HNWIs.

With respect to informational data processing preconditions, the prevalence of taxpayer identifiers is considered:

1. Regarding taxpayer identifiers: the indicator assesses whether a) all natural persons subject to personal income tax and/or b) 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.

As for rules for targeted collection of intelligence about complex and risky tax avoidance activities, two types are analysed:

1. Regarding tax avoidance schemes: the indicator reviews whether a) taxpayers and/or b) tax advisers are required to report at least annually on certain tax avoidance schemes they have used/sold/marketed.
2. Regarding uncertain tax positions: it assesses whether a) taxpayers and/or b) 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.

Accordingly, we have split this indicator into five 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 11.1, with full details of the assessment logic given in Annex B.

Table 11.1: Secrecy Scoring Matrix KFSI 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. ³⁶³	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

³⁶³ We consider that a jurisdiction has a large taxpayer units only if the unit is entirely dedicated to large taxpayers because otherwise the number of taxpayers increases considerably and prevents the unit from sufficiently concentrating in the complexities of large business. For this reason, a jurisdiction that has a combined large and medium taxpayer office (LMTU), such as Dominica and Grenada (See Stephane Schlotterbeck, *Tax Administration Reforms in the Caribbean: Challenges, Achievements, and Next Steps*, IMF Working Paper (Washington, DC, 2017), 17

<<https://www.imf.org/~media/Files/Publications/WP/2017/wp1788.ashx>> [accessed 13 November 2017] or that its general Tax Auditing Division is also responsible for auditing large corporations is not considered to have a large taxpayer unit for this indicator.

COMPONENT 4: Reporting on tax avoidance schemes (25 points)	
Taxpayers reporting schemes Taxpayers are required to report at least annually on certain tax avoidance schemes they have used.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 15
Tax Advisers reporting schemes Tax advisers (who help companies and individuals to prepare tax returns) are required to report at least annually on certain tax avoidance schemes they have sold/marketed.	
No reporting by taxpayers or tax advisers	25
COMPONENT 5: Reporting on uncertain tax positions (25 points)	
Taxpayers reporting uncertain tax positions Taxpayers are required to report at least annually on details of uncertain tax positions for which reserves have been created in the annual accounts.	Reporting by both taxpayers and advisers: 0 Reporting by either taxpayers or advisers: 15
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.	
No reporting by taxpayers or tax advisers	25

For assessing the indicator, our research draws on several sources: a) the TJN-Survey 2019³⁶⁴; b) the OECD publication entitled "Tax Administration 2017"³⁶⁵; c) OECD's portal on Tax identification numbers³⁶⁶ within its Automatic Exchange Portal; d) local websites of jurisdictions' tax authorities; d) local tax legislation of jurisdictions; e) the OECD publication entitled "Mandatory Disclosure Rule. Action 12: 2015 Final Report"³⁶⁷; f) the International Bureau of Fiscal Documentation (IBFD) database³⁶⁸; g) in

³⁶⁴ https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; 22.1.2020.

³⁶⁵ Table A.69, in http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/tax-administration-2017_tax_admin-2017-en#.WldJJK6nHIU; 2.12.2019.

³⁶⁶ <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>; 2.12.2019.

³⁶⁷ OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report* (Paris, 2015) <<https://www.oecd-ilibrary.org/docserver/9789264241442-en.pdf?expires=1558684255&id=id&accname=guest&checksum=AD69BFF7976DA14EC68E1CD7708DB17B>> [accessed 24 May 2019].

³⁶⁸ IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*, Accessed 2018-2019, 2019 <<https://research.ibfd.org/>> [accessed 30 September 2019].

some instances, we have also consulted additional websites and reports of accountancy firms and other local websites.

All underlying data can be accessed freely in the Financial Secrecy Index database. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 317 and 400 to 406**) in the database report of the respective jurisdiction.

3.11.2 Why is this important?

National tax administrations face a globalising domestic economy with increasing shares of value added and income received from external sources. Scale effects realised through cross-border economic activity are among the most relevant factors for strategic business investment decisions and among the chief reasons for the existence of transnational corporations. A tax administration that does not adapt to this increasingly complex environment through organisational and technical innovations will rapidly lose its 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.

Components 1 and 2: Large Taxpayer Unit and Unit for High Net Worth Individuals

In the case of large taxpayers units (LTUs), the OECD argues in their favour because of the high concentration of revenue in the hands of a small number of taxpayers, the high degree of complexity of their business and tax affairs, major compliance risks from the viewpoint of the tax authority and the use of professional tax advisers by large taxpayers.³⁶⁹

LTUs and units dedicated to the taxation of high net worth individuals (HNWIs) make sense on the grounds of efficiency for a number of reasons. The taxpayers dealt with by these units share common characteristics which require highly specialist and skilled expertise that can hardly be mobilised in a context of a decentralised tax administration.

We would not argue that these specialist units are a panacea to tax evasion and aggressive tax avoidance, but their absence might indicate a

³⁶⁹ OECD, 'The Organisation of Revenue Bodies', in *Tax Administration 2015*, by OECD (2015), 85–86 <https://www.oecd-ilibrary.org/taxation/tax-administration-2015/the-organisation-of-revenue-bodies_tax_admin-2015-6-en> [accessed 26 January 2020].

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/wealth in their hands. But recent research also 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/those with lower levels of income and/or wealth.³⁷⁰

These risks are significantly exacerbated by the fact that both large corporations and high net wealth individuals are usually represented by teams of highly specialised lawyers, accountants and tax advisers. Therefore, dedicated units that foster cooperation among highly skilled tax experts in the tax administration increase the chances to match the expertise mustered by the private sector to ensure that tax laws will be strictly applied and complex disputes resolved in an evenhanded way.

Furthermore, if 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.

³⁷⁰ Regarding individuals, see: Gabriel Zucman, Niels Johannesen and Annette Alstadsaeter, *Tax Evasion and Inequality*, 2017 <gabriel-zucman.eu/files/AJZ2017.pdf> [accessed 31 May 2017].. With respect to companies, see: Heinz Gebhardt and Lars-HR Siemers, 'Volkswirtschaftliche Diskussionsbeiträge Discussion Papers in Economics', 2016 <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> [accessed 14 September 2017]. And: Peter Egger, Wolfgang Eggert and Hannes Winner, 'Saving Taxes through Foreign Plant Ownership', *Journal of International Economics*, 81/1 (2010), 99–108.

Component 3: Taxpayer Identifiers

With respect to the taxpayer identifiers, the OECD³⁷¹ 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 analyzing 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 and intermediaries (eg tax advisors, accountants and lawyers) to report on the schemes they have sold to their client.³⁷²

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.³⁷³ **Second**, providing the tax administration with early information about tax avoidance schemes allows it to assess the risks schemes pose before the tax assessment is made and to focus audits more efficiently. This is significant mainly because, in many jurisdictions, tax administrations do not have sufficient capacity to fully audit a large number of the tax files. Thus, flagging certain files that carry a greater risk of tax avoidance is likely to increase the efficiency of tax administrations

³⁷¹ OECD, *Tax Administration 2015: Comparative Information on OECD and Other Advanced and Emerging Economies*. (Paris, 2015)
<http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/tax-administration-2015_tax_admin-2015-en#page1> [accessed 21 January 2020].p. 290.

³⁷² Leyla Ates, 'More Transparency Rules, Less Tax Avoidance', *The Progressive Post*, 2018 <<https://progressivepost.eu/debates/more-transparency-rules-less-tax-avoidance/%20>> [accessed 24 May 2019].

³⁷³ <https://www.ato.gov.au/Business/Large-business/Compliance-and-governance/Reportable-tax-positions/Reportable-tax-position-schedule/>; 2.12.2019.

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 of their providers because a) they will be more exposed to claims of promoting aggressive tax schemes, increasing the risk of reputational damage, and b) their profits and rate of return on the promotion of these schemes is likely to be reduced because schemes are closed down more quickly. This is all the more true if contingency fees are part of contracts.

Mandatory disclosure rules were first introduced by the US in 1984 and several countries, including EU member states (the UK, Ireland, Portugal, Canada, South Africa, South Korea and Israel)³⁷⁴, have followed suit. The revelations of Lux Leaks³⁷⁵ and Panama Papers scandals³⁷⁶ and the EU State Aid cases³⁷⁷ have demonstrated the role of intermediaries in using tax planning schemes for tax avoidance and further pushed governments to take action. As a result, 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).³⁷⁸

The difficulty in imposing mandatory reporting rules for tax avoidance schemes is the potential for 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 not apply only to the taxpayer who uses the tax scheme or only to the promoter (tax advisers) of the scheme, but rather to both. This kind of

³⁷⁴ OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*. p. 23.

³⁷⁵ <https://www.icij.org/investigations/luxembourg-leaks/>; 2.12.2019.

³⁷⁶ <https://www.icij.org/investigations/panama-papers/>; 2.12.2019.

³⁷⁷ http://ec.europa.eu/competition/state_aid/register/; 2.12.2019.

³⁷⁸ Council Directive 2018/822/EU (Official Journal of European Union, L 139, 5 June 2018). According to Article 3, the Directive came into force on the twentieth day following its publication in the EU Official Journal i.e. 25 June 2018. The new directive requires the automatic exchange of information among other EU members through a **central directory**. **As opposed to a** similar database within the OECD called the “aggressive tax planning depository” which is only available to the members of the Aggressive Tax Planning Expert Group that is a sub-group of OECD Working Party No. 11, the new directive is likely to will create a level playing field for all EU member countries in terms of access to such relevant information.” For further information see: <http://www.oecd.org/ctp/aggressive/co-operation-and-exchange-of-information-on-atp.htm>; 2.12.2019; and Ates, ‘More Transparency Rules, Less Tax Avoidance’.

double obligation is imposed in the United States.³⁷⁹ If both are obliged to report independently on the marketed/used tax avoidance schemes, the chances that tax administration 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/advisers on the interpretation of tax laws, it should be expected that many tax schemes will be designed in grey areas which certain promoters might chose to interpret as not being subject to the remit of the reporting obligation. Third party reporting obligations increase the detection risk of these dubious schemes and thereby incentivises the reporting of a broader set of schemes. One of the ways to apply a third party reporting is to oblige the tax adviser to provide the taxpayers with a scheme reference number to include in their tax return, as in the case of the United Kingdom or South Africa. That way, the tax administration can track disclosures made by tax advisers and link them to the taxpayer while creating red flags.³⁸⁰

The EU Directive 2018/822/EU imposes the disclosure obligation primarily on the intermediaries who design and sell the aggressive tax planning schemes whereas 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.

Component 5: Reporting of uncertain tax positions

To further mitigate the risk of a taxpayer or tax adviser's failure to define and report properly all relevant tax avoidance schemes, mandatory rules should require uncertain tax positions to be reported in annual financial accounts. 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.³⁸¹ Under these International Financial Reporting Standards, prudence³⁸² 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

³⁷⁹ J.G. Rienstra, United States - Corporate Taxation sec. 1., Country Analyses IBFD, 2019, https://research.ibfd.org/#/doc?url=/document/gtha_ec_s_1 ; 2.12.2019.

³⁸⁰ OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report*, 10.

³⁸¹ <https://blogs.pwc.de/accounting-aktuell/ifrs/bewertung-einer-steuerrisikoposition-uncertain-tax-position/685/>; 2.12.2019.

³⁸² <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/financial-reporting/tech-tp-prudence.pdf>; 2.12.2019.

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.

Suitable data was not available for some jurisdictions. In these instances the jurisdiction has been classified as if no reporting takes place because the relevant Ministries of Finance were given ample time and opportunity to respond to our questionnaires.³⁸³

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 317 and 400 to 406).

³⁸³ 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>; 22.12.2019; and the corresponding information for individual countries in our database, available at: <http://www.financialsecrecyindex.com/database/>; 22.12.2019.

3.12 KFSI 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 PIT: it assesses if there is any PIT 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 etc.); and if it is complete (including capital gains; no exemption or exclusion of specific types of income).
- 2) Tight citizenship and/or residency:** it assesses whether (i) citizenship (passports) can be acquired against a passive investment or payment only after a period of more than two years of physical presence in the jurisdiction (instead of obtaining citizenship against any investment or payment made by the person within a period of 2 years or less); and (ii) a certificate of "residency" can be acquired against a passive investment or payment.

For the purpose of this KFSI, a zero points secrecy score [full transparency] will be awarded to jurisdictions which levy a PIT 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 12.1, with full details of the assessment logic given in Annex B.

Table 12.1: Secrecy Scoring Matrix KFSI 12

		Citizenship/Residency	
		<u>Tight Citizenship/ Residency acquisition</u> Citizenship (by investment) only after at least 2 years of physical presence and resident status is not granted against investment	<u>Lax Citizenship/ Residency acquisition</u> Citizenship (by investment) within 2 years of physical presence or resident status can be purchased
Regulation [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]			
Personal Income Tax Regime	<u>No Personal Income Tax (PIT)</u> PIT does not exist or is not applied or a jurisdiction is part of Annex A under the MCAA (voluntary secrecy)	75	100
	<u>Incomprehensive PIT Regime</u> 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, etc.)	37.5	75
	<u>Comprehensive PIT Regime</u> There is one single uniform PIT that taxes worldwide income (and the jurisdiction has not chosen voluntary secrecy under MCAA's Annex A)	0	

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 374, 435 and 489).

For a personal income tax to be considered **comprehensive in its scope**, there needs to be one **single uniform PIT** 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, e.g. through lump sum tax regimes for new residents, or residents considered to be non-domiciled for tax purposes, would imply that the jurisdiction does not have a single uniform PIT.

Furthermore, the single uniform PIT's 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 only applies a territorial tax base or taxes on a remittance and/or accrual basis only, the PIT would not be considered comprehensive. For the question of a comprehensive PIT, the top personal income tax rate is disregarded.

In addition, the PIT needs to be **complete** in terms of the income covered. All capital gains earned worldwide should be part of PIT or be taxed separately – either as part of another tax, e.g. wealth tax, or independently – for the PIT 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. For example, a jurisdiction that does not tax income, dividends, capital gains derived from foreign sources is therefore considered as having an incomplete PIT. 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 PIT 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 PIT 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 PIT assessment.

For **citizenship programs to be considered tight**, citizenship and passports by 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 resident permit is different from a simple tourist visa if it allows the individual to stay longer than one year in the jurisdiction. Permits that

need to be renewed by a simple formal procedure after one year are also considered.

Consequently, jurisdictions that issue passports or residency permits to individuals who only purchase real estate or other financial assets in the country or show proof of high-net-worth 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)³⁸⁴ 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 Portal³⁸⁵; b) A database of residency and citizenship programmes entitled: "Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs"³⁸⁶; c) Results of TJN Survey 2019³⁸⁷; d) Publication entitled: "Buying in: Residence and Citizenship by Investment"³⁸⁸; d) European Parliament publication entitled: "Citizenship by investment (CBI) and residency by investment (RBI) schemes in the EU"³⁸⁹; e) 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.

³⁸⁴ <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>; 22.12.2019.

³⁸⁵ <https://www.oecd.org/tax/automatic-exchange/>; 22.12.2019.

³⁸⁶ Leila Adim, 'Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs', 2019 <https://www.researchgate.net/publication/336746472_Residence_and_Citizenship_by_Investment_an_updated_database_on_Immigrant_Investor_Programs> [accessed 23 January 2020].

³⁸⁷ https://www.financialsecrecyindex.com/PDF/FSI2020_Questionnaire-MOF-NAO.xlsx; 22.12.2019.

³⁸⁸ Allison Christians, *Buying in: Residence and Citizenship by Investment* (Rochester, NY, 26 September 2017) <<https://papers.ssrn.com/abstract=3043325>> [accessed 23 January 2020].

³⁸⁹ 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 <<https://data.europa.eu/doi/10.2861/10673>> [accessed 23 January 2020].

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 374, 435 and 489**) in the database report of the respective jurisdiction.

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 revenues³⁹⁰. 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 lump sum taxation, exempt some types of income, or do not use any income tax at all are therefore attractive for individuals wishing to escape law enforcement, to avoid taxation or wishing to avoid the assessment of their worldwide income. Without assessment of their worldwide income, the information available on any individual's finances is severely constrained. If an individual is engaged in illicit financial activity in another jurisdiction, relevant financial information available for answering requests for information exchange may not exist, shielding that individual from effective prosecution and facilitating the escape from accountability.

But also for a jurisdiction applying the residence principle, 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 incomprehensive income tax regimes and/or jurisdictions that provide passports or residency status against investment. The reasoning for the way lax citizenship and residence by investment programs may lead to secrecy spill-overs 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 KFSI 19 on bilateral treaties for information exchange upon request³⁹¹). But if a jurisdiction does not tax worldwide income (or if worse- it does not levy any income tax) it will

³⁹⁰ Dietsch, P., & Rixen, T. (2014). Tax competition and global background justice. *Journal of Political Philosophy*, 22(2), 150-177., p. 159

³⁹¹ <http://www.financialsecrecyindex.com/PDF/19-Bilateral-Treaties.pdf>; 22.12.2019.

collect only insufficient (or no) tax information on its residents. Therefore, such jurisdictions are especially attractive for any individual who does not wish 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, i.e. jurisdictions that have signed the Multilateral Competent Authority Agreement (MCAA). As of November 2019, 105 jurisdictions have signed the MCAA,³⁹² although not every signatory exchanges data with every other signatory (see KFSI 18 for details³⁹³).

Financial institutions (FIs) in jurisdictions that have signed up to the CRS (i.e. 'participating jurisdictions'), will be required to collect and report account information about, among other, any (natural person) account holder or any natural person controlling some types³⁹⁴ 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.³⁹⁵ 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".³⁹⁶ Table 12.2 underneath provides an overview of the

³⁹² <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/crs-mcaa-signatories.pdf>; 22.12.2019.

³⁹³ <http://www.financialsecrecyindex.com/PDF/18-Automatic-Info-Exchange.pdf>

³⁹⁴ 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 (e.g. interests, dividends, royalties, etc.).

³⁹⁵ 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, since this is not always easy to assess and since it 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.

process and indicia determining tax residency depending on the type of account.

Table 12.2: 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 rep. jurisdiction; "Hold-mail" or "In care of"-address in rep. 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 ³⁹⁷	Source: CRS Section III, §10	Source: CRS Section IV, FATF rec. R.5 ³⁹⁸

For a financial institution's pre-existing accounts of lower value (less than 1 Million USD), an individual is only required to self-certify its residence with a government document containing a current address (for example an ID, passport, driving license, residence certificate) or a utility bill or tax

³⁹⁷ OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries.*, July 2014
http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en [accessed 14 February 2017].

³⁹⁸ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - the FATF Recommendations.*

assessment containing the individual's name and address.³⁹⁹ However, the Common Reporting Standard requires the financial institution in the case of higher value accounts (more than 1 Million USD) 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.⁴⁰⁰ If the financial institution found contradicting indicia (there is indicia about more than one jurisdiction or the indicia does 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 FI receives no explanation or if it is not satisfied with the explanation, the FI would need to send information to any jurisdiction that it finds indicia for.⁴⁰¹ 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.⁴⁰²

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.⁴⁰³ In

³⁹⁹ Model Competent Authority Agreement and Common Reporting Standard, Section III, B; Commentaries on the Model Competent Authority Agreement and Common Reporting Standard, Section III, B.

⁴⁰⁰ Model Competent Authority Agreement and Common Reporting Standard, Section III, B, C.

⁴⁰¹ 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.*, 15–16.

⁴⁰² 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 situation. In such case, information is sent to 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.*, 129–46.

⁴⁰³ 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), 138–63. A broader discussion of the issue is available by: Xin Xu, Ahmed El-Ashram and Judith Gold,

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 passports⁴⁰⁴ or residency permits by paying money into a state fund, investing in financial assets or real estate, renting an apartment in the jurisdiction or else.⁴⁰⁵

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 FI, there is a greater probability that the person will be considered a non-reportable person.⁴⁰⁶

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:

- a) falsely declaring residence in a jurisdiction which doesn't have a comprehensive personal income tax and providing a passport or

Too Much of a Good Thing? Prudent Management of Inflows under Economic Citizenship Programs, 15–93 (2015)

<www.imf.org/~media/Websites/IMF/imported-full-text-pdf/external/pubs/ft/wp/2015/_wp1593.ashx> [accessed 5 October 2017].

⁴⁰⁴ https://www.theguardian.com/commentisfree/2017/sep/18/peak-injustice-world-without-borders-super-rich-buying-citizenship-migration?CMP=share_btn_tw; 23.01.2020. See also Karl Küpper and Oliver von Schweinitz, 'The Definition of "Residency" Under the Common Reporting Standard', *International Journal for Financial Services*, 2, 2015, 119–25.

⁴⁰⁵ See for example: Leila Adim, 'Residence and Citizenship by Investment: An Updated Database on Immigrant Investor Programs'; and Christians, *Buying In*. Examples of current citizenship by investment schemes, please consider [Cyprus](#), [Montenegro](#), [Dominica](#), [Malta](#), [Antigua and Barbuda](#), [Vanuatu](#).

⁴⁰⁶ <https://francisweyzig.com/2017/09/24/defying-the-oecd-crackdown-on-tax-evasion/>; 23.01.2020.

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 (i.e. jurisdictions which only send, but 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.

And even if an individual was found guilty of tax evasion or other financial crimes, citizenship-by-investment or residency-by-investment could play another role. 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".*⁴⁰⁷

All underlying data can be accessed freely in the Financial Secrecy Index database (IDs 374, 435 and 489).

⁴⁰⁷ <https://www.globalwitness.org/en/blog/red-notice-golden-visas/>; 23.01.2020.

3.13 KFSI 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 less 10%).
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 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; the overall secrecy score for this indicator is calculated by simple addition of these components. The secrecy scoring matrix is shown in Table 13.1, with full details of the assessment logic given in Annex B.

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) or
 - ii. specific legal entities (such as International Business Companies);
 - c) deferral rules which disable taxation unless income is remitted;

- d)** zero or near zero tax rates (e.g. on corporate income);⁴⁰⁸
- 2.** only offers the option to **deduct** foreign payments from the tax base;
 - 3.** provides **no unilateral double taxation relief** whatsoever.

Table 13.1: Secrecy Scoring Matrix KFSI 13

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points= full secrecy; 0 points= full transparency]
COMPONENT 1: DIVIDENDS (50 points)	
<u>No unilateral double taxation relief through a tax credit system</u>	50
<u>Unilateral double taxation relief through a tax credit system for one payment scenario</u> (if recipient is either an independent or related legal person, or natural person)	40
<u>Unilateral double taxation relief through a tax credit system for two payment scenarios</u> (if recipient is either an independent and/or related legal person, and/or natural person)	30
<u>Unilateral double taxation relief through a tax credit system for all three payment scenarios</u> (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)	
<u>No unilateral double taxation relief through a tax credit system</u>	50

⁴⁰⁸ 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 exemption of income except if remitted (c) include the USA and Liberia; 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.

<u>Unilateral double taxation relief through a tax credit system for one payment scenario</u> (if recipient is either a legal person or a natural person)	40
<u>Unilateral double taxation relief through a tax credit system for both payment scenarios</u> (recipients always receive a unilateral tax credit, no matter if it is a legal person or a natural person)	0

The data has been collected primarily through the International Bureau for Fiscal Documentation's (IBFD) database (country analyses and country surveys).⁴⁰⁹ In some instances, additional websites and reports of the Big 4 accountant firms have also been consulted.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 552, 553, 555, 558, 559**) in the database report of the respective jurisdiction.

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 (i.e. at source), or taxing it where its recipient resides.⁴¹⁰ 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,⁴¹¹ 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).

⁴⁰⁹ IBFD, *Tax Research Platform: Country Surveys, Country Analyses, Country Key Features*.

⁴¹⁰ *Tax Justice Network Briefing. Source and Residence Taxation.*, 2005
<http://www.taxjustice.net/cms/upload/pdf/Source_and_residence_taxation_-_SEP-2005.pdf> [accessed 30 January 2020].

⁴¹¹ Sol Picciotto, *Unitary Taxation: Our Responses to the Critics*, 2013, 3, 7
<www.taxjustice.net/cms/upload/pdf/Unitary_Taxation_Responses-1.pdf> [accessed 30 January 2020].

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.⁴¹² Even though the G20 declared that "Profits should be taxed where economic activities deriving the profits are performed and where value is created"⁴¹³, which could be interpreted as a mandate to treat the corporate group of MNE as a single firm and ensure that its tax base is attributed according to its activities in each country,⁴¹⁴ the OECD's BEPS⁴¹⁵ project 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 are expensive to negotiate, and often impose a cost on the weaker negotiating partner which is frequently required to concede lower tax rates in return for the prospect of more investment.⁴¹⁶

⁴¹² 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., 2016), 289–306.

⁴¹³ G20 Leaders' Declaration, September 6, 2013, St Petersburg, <http://www.g20.utoronto.ca/2013/2013-0906-declaration.html#beeps>

⁴¹⁴ BEPS Monitoring Group, *The BEPS Monitoring Group Overall Evaluation of the G20/OECD Base Erosion and Profit Shifting (BEPS) Project*, 2015 <<https://bepsmonitoringgroup.files.wordpress.com/2015/10/general-evaluation.pdf>> [accessed 30 January 2020].

⁴¹⁵ OECD, *Action Plan on Base Erosion and Profit Shifting* (Paris, 2013) <<http://www.oecd.org/ctp/BEPSActionPlan.pdf>> [accessed 19 July 2013].

⁴¹⁶ See, for instance: 1) Martin Hearson, 'Measuring Tax Treaty Negotiation Outcomes: The Actionaid Tax Treaties Dataset', 2016 <<https://core.ac.uk/download/pdf/46172854.pdf>> [accessed 30 August 2019]; 2) a comprehensive analysis of the Netherlands double tax treaty network, here: Katrin McGauran, *Should the Netherlands Sign Tax Treaties with Developing Countries?* (June 2013) <<https://www.somo.nl/wp-content/uploads/2013/06/Should-the-Netherlands-sign-tax-treaties-with-developing-countries.pdf>> [accessed 28 May 2019]; 3) the example of Switzerland renegotiating its DTAs with developing countries, here: Meinzer, Markus, 'The Creeping Futility of the Global Forum's Peer Reviews' (2012), 23–24 <<http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf>>

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.⁴¹⁷

[accessed 24 January 2020], or for more details on this case (in German): <http://www.alliancesud.ch/de/publikationen/downloads/dokument-24-2013.pdf> ; 12.05.2015; 4) Eric Neumayer, 'Do Double Taxation Treaties Increase Foreign Direct Investment to Developing Countries?', *The Journal of Development Studies*, 43/8 (2007), 1501–19; and 5) Tsilly Dagan, *The Tax Treaties Myth* (Rochester, NY, 28 March 2003) <<https://papers.ssrn.com/abstract=379181>> [accessed 14 May 2019]. A full literature review on the relationship between DTAs, development, growth and FDI can be found (in German) here: www.suz.uzh.ch/herkenrath/publikationen/workingpapers/FDI_EL-Forschungsnotiz-01-10.pdf; 12.05.2015.

⁴¹⁷ 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." (See: Sol Picciotto, *Unitary Taxation: Our Responses to the Critics*, 3; 30.01.2020). This

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 relief from double taxation. It allows deducting from foreign income (e.g. 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 (see Note 8 above).

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 (see [here](#)⁴¹⁸ for ways to address these issues and the various reports of the [various reports of the BEPS Monitoring Group](#)⁴¹⁹). 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.⁴²⁰

“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 non-sense and reveals the dubious and theoretically flawed nature of the concept of double taxation.

⁴¹⁸ Sol Picciotto, *TOWARDS UNITARY TAXATION OF TRANSNATIONAL CORPORATIONS* (2012) <http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf> [accessed 20 January 2020].

⁴¹⁹ <https://bepsmonitoringgroup.wordpress.com/tag/bmg/>; 12.05.2015.

⁴²⁰ 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 (see endnote 11 above for details). For 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*, 19–22 <<https://www.un.org/esa/ffd/wp-content/uploads/2019/06/manual-bilateral-tax-treaties-update-2019.pdf>> [accessed 30 January 2020].

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 inwards 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:

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).⁴²¹ 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

⁴²¹ For a background on the terminology around tax competition and tax wars, see: <http://foolsgold.international/fools-gold-rethinking-competition/>; 30.10.2020.

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".⁴²²

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),⁴²³ all EU member states must either implement the exemption method or allow an indirect credit-next to the direct credit provided for foreign withholding taxes- for taxes levied on the level of the subsidiary and lower-tier companies to eliminate economic double taxation of cross-border intercompany dividends.⁴²⁴ Indirect credit means to continue to implement world-wide taxation and credit method. Even if the Directive gives member states two options, only Ireland continues to implement the credit method. The rest started to implement exemption sooner or later.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 552, 553, 555, 558, 559**) in the database report of the respective jurisdiction.

⁴²² Reuven S Avi-Yonah, 'Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State', *Harvard Law Review*, 113/7 (2000), 1573–1676.

⁴²³ 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', 2011 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0096&from=EN>> [accessed 2 September 2019].

⁴²⁴ Georg Kofler, 'Indirect Credit versus Exemption: Double Taxation Relief for Intercompany Distributions', *Bulletin for International Taxation*, 66/2 (2012), 77–89.

3.14 KFSI 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 two relevant aspects.

1. **Openness of court proceedings/lawsuits/trials:** it assesses for a) criminal and b) civil/administrative tax matters⁴²⁵, whether the public always has the right to attend the full proceedings and cannot be ordered to leave the court room even if a party invokes tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules.
2. **Public online availability of verdicts/judgements/sentences:** it assesses for a) criminal and b) civil/administrative tax matters, whether all written judgments are published online for free or at a cost of no more than EUR/GBP/USD 10. 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, could 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 anonymised⁴²⁶.

Regarding the openness of court proceedings/lawsuits/trials, we consider **acceptable** justifications for exceptions from the principle of public access that include (subject to contextual analysis): against moral, involvement of a minor, public order, national security, administration of justice, business or trade secrets or exceptional circumstances. **Unacceptable exceptions** include: discretion by the judge (if it refers to a general discretion), the taxpayer requesting privacy or the involvement of, for example, a trustee. The discretion of the judge is unacceptable only if it refers to a general discretion, where the judge can decide for holding closed proceedings in any circumstance. We do not increase the secrecy score of the jurisdiction if the discretion is limited to exceptional circumstances.

We consider the answer as unknown when exceptions to the principle of public access include: a) personal privacy or the protection of private or

⁴²⁵ Civil and administrative tax matters are treated synonymously throughout this document. They refer to any dispute between a taxpayer and the tax administration which is not governed by criminal law/procedures.

⁴²⁶ This indicator has been refined since our last assessment for the Financial Secrecy Index (2018 edition) to consider cases where the names of the parties were removed or anonymised in some or all cases.

family life, because it is not clear if these provisions are used in extraordinary circumstances or if they can be abused to exclude the public from proceedings on tax matters; b) professional secrecy, because it is not clear if this provision is limited to relationships such as doctor-patient or attorney-client in the context of a trial, or if it is more comprehensive to include all relationships between accountants or legal professionals and their clients⁴²⁷.

Furthermore, the indicator is considered not applicable for jurisdictions with no income taxes. The six jurisdictions that fall in this case – Anguilla, Bermuda, Bahamas, Cayman Islands, Turks and Caicos and British Virgin Islands – received the full secrecy score (100 points) for the indicator.

If court proceedings are openly accessible, this indicator's secrecy score is reduced by 25 points for each criminal and civil tax matters. By the same token, the secrecy score will be reduced by 25 points of secrecy score if all judgments in criminal tax matters are published online for free; and likewise, by another 25 points for judgements in civil tax matters. However, the score is reduced only by 12.5 points (instead of 25) if judgments are available online only against a cost of no more than EUR/GBP/USD 10 or if judgments are published online for free in anonymised form.

Thus, for instance, a jurisdiction with public and comprehensively accessible criminal and civil tax proceedings, will have a secrecy score of zero if all the judgements/verdicts resulting from those proceedings are published online for free. The jurisdiction would have a 25 points secrecy score if the judgements resulting from both criminal and civil tax proceedings are available online against a cost of up to EUR/GBP/USD 10 each or if judgements are available online for free, but at least some of them in an anonymised form.

The information for this indicator has been drawn from the following sources: a) results of the TJN-Survey 2019; b) Thomson Reuters Practical Law Tax Litigation Global Guide⁴²⁸ or similar online sources; c) in certain cases we searched for and analysed the local legislation of jurisdictions to

⁴²⁷ This indicator has been refined since our last assessment for the Financial Secrecy Index (2018 edition) to consider cases where privacy or professional secrecy were mentioned as reasons to prevent public access. For more information, see our blog post on attorney-client privilege:

<https://www.taxjustice.net/2019/07/24/protecting-enablers-attorney-client-privilege-is-just-the-tip-of-the-iceberg-in-facilitating-illicit-financial-flows/>

⁴²⁸

[https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=\(sc.Default\)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk](https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=(sc.Default)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk); 18.12.2017.

find out whether there are any limitations to public access embedded in the laws; and d) in cases where the above sources indicated that written judgments of both criminal and civil tax court cases are published online, the corresponding local court website or other government agencies' websites were consulted to ensure that both criminal and civil tax judgments are effectively available and that technical problems do not prevent access to information.

If we were unable to find supporting evidence (either any (i) academic article or source, such as Thomson Reuters Practical Law Tax Litigation Global Guide, or (ii) a Law plus Section/Article/Paragraph), we concluded the answer to be "unknown", and described the situation in a note (e.g. "while the Ministry of Finance said X, we could not verify this").

For practical purposes, 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 (e.g. registration of bank account, requirement of a local identification number, or sending a request by post).⁴²⁹ Accordingly, we have split this indicator into two components. The overall secrecy score for this indicator is calculated by simply addition of the secrecy scores of each of these components. The secrecy scoring matrix is shown in Table 14.1, with full details of the assessment logic given in Annex B.

Table 14.1: Secrecy Scoring Matrix KFSI 14

Regulation		Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Component 1: Public access to tax court proceedings (50 points)		
<u>Court proceedings on criminal tax matters</u>	No or restricted access to criminal tax proceedings	25
	Public access to criminal tax proceedings	0
<u>Court proceedings on civil tax matters</u>	No or restricted access to civil tax proceedings	25
	Public access to civil tax proceedings	0
Component 2: Online publication of tax judgements/verdicts (50 points)		

⁴²⁹ We consider that for something to be truly available 'on public record' prohibitive cost constraints must not exist, be they financial or in terms of time lost or unnecessary inconvenience caused.

<u>Criminal tax judgements/verdicts</u>	Not available online	25
	Always available up to 10 EUR/GBP/USD, or available for free but in anonymised form	12,5
	Always available online for free	0
<u>Civil tax judgements/verdicts</u>	Not available online	25
	Always available up to 10 EUR/GBP/USD, or available for free but in anonymised form	12,5
	Always available online for free	0

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info **IDs (IDs 407 to 410)** in the database report of the respective jurisdiction.

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.⁴³⁰ Open court proceedings and public availability of verdicts are often considered to be important pillars 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.

The "Rule of Law Department" of the Organisation for Security and Co-operation in Europe (OSCE) makes a direct connection between the Universal Declaration of Human Rights and public access to court judgements:

"The obligation of states to 'make public' the decisions of their courts is found within the provisions on 'the right to a fair trial'. This right stems from Article 10 of the Universal Declaration of Human Rights (1948) and has been elaborated and set down in binding form in the International Covenant on Civil and Political

⁴³⁰ Randall S. Bockock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers' (presented at the 5th International Assembly of Tax Judges, Washington, D.C, 2014), 6
<http://www.iatj.net/congresses/documents/Protection_Bocock.pdf> [accessed 13 March 2019].

Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR)".⁴³¹

Governments and private actors alike abide by court decisions at least in part because the openness of the process allows the public to monitor if it meets requirements of procedural justice. These requirements include the transparency of the process, thereby building confidence in the non-arbitrary application of the law. The transparency of the process safeguards the independence and impartiality of courts.

Closely linked to the fundamental human rights of the freedom of expression and freedom of the press,⁴³² open courts not only allow the scrutiny of judicial decisions, but also are a prerequisite for the accountability of governments (in the form of the public prosecutor and/or tax administration).⁴³³ Furthermore, open courts are essential in ensuring compliance with both the letter of the law and its spirit.⁴³⁴ Thus, open courts are an important element in protecting the integrity of the entire judicial system and of the administration.

If any exceptions are allowed for certain types of civil and/or criminal tax matters, governments and private sector actors may misuse these exceptions for sweetheart deals, questionable out of court settlements or political vendettas. Generally speaking, the possibility of allowing exceptions to public access to proceedings may invite powerful lobbyists and/or defendants to exert pressure on judges not to grant access to court proceedings or verdicts in order to avoid public scrutiny.

While specific exceptions to this open court principle are widely seen to be legitimate with respect to "the protection of children or victims of sexual

⁴³¹ Organisation for Security and Co-operation in Europe, 'Access to Court Decisions: A Legal Analysis of Relevant International and National Provisions', 2008, 5
<https://www.right2info.org/resources/publications/publications/OSCE_AnalysisAccessstoCourtDecisions17092008.pdf> [accessed 13 March 2019].

⁴³² United Nations, 'Universal Declaration of Human Rights', 1948
<http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> [accessed 13 March 2019].

⁴³³ An example of relevant research being enabled through tax court transparency is the study of "Corporate Shams": Joshua D. Blank and Nancy Staudt, 'Corporate Shams', *New York University Law Review*, 87/6 (2012), 1641–1712.. Another example for the potential impact of open tax court judgements on policy decisions and public trust in government are the changes at the US tax administration IRS in response to large scale tax avoidance cases, as reported here: Forbes, 'IRS Brings "A Team" To Crush Transfer Pricing Abuse', *Forbes*, 2012
<<https://www.forbes.com/sites/kellyphillips/2012/03/27/irs-brings-a-team-to-crush-transfer-pricing-abuse/>> [accessed 13 March 2019].

⁴³⁴ Cecelia Burgman and others, *Our Rights Our Information: Empowering People to Demand Rights through Knowledge* (2007).

crimes”⁴³⁵, the holding of closed sessions of a court (‘in camera’) should be restricted to such specific situations.

Nonetheless, in practice, in some countries tax proceedings are typically conducted behind closed doors and/or 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 the exclusion of the public or non-disclosure of verdicts.

This practice creates fundamental conflicts with the rule of law. While all tax proceedings 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.⁴³⁶ 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 proceedings. However, 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, is acceptable, anonymisation of all or most decisions may create obstacles for the process of researching and analysing decisions.

Preventing public access to tax court judgments may result in important court decisions that have an impact on the public’s revenue, being made without the public’s knowledge. This denies the public the information required to exercise the right to protest or criticise decisions, to determine the need for a policy change, or to engage the court through an “amicus curiae” process. In some jurisdictions, all “important” or “relevant” court verdicts are said to be chosen by judges or others to be made public. However, this selection process of relevant cases for the public 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 precedent and therefore provide clarity among citizens about the right way to interpret the law. They are also

⁴³⁵ Randall S. Bocock, ‘Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers’, 7.

⁴³⁶ Sujoy Chatterjee, ‘Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?’, *Dalhousie Journal of Legal Studies*, 23 (2014), 91.

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- and law-makers. It may lead over time to flawed legislation as well as to a low deterrence effect and impaired law enforcement by prosecutorial authorities and tax administration's 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. Consequently, sweetheart deals at court and undue political interference in the administration can neither be detected nor ruled out.

The secrecy emanating from a lack of open tax court proceedings 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 frustrate that exchange at court in silence.

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 *KFSI 9*⁴³⁷), 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 open, unpaid data access lies in the enhanced utility in open data environments when data is available free of cost. If relevant data can only be accessed by paying a fee, it can be prohibitively expensive to import this data into an open data environment 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.⁴³⁸

⁴³⁷ <http://www.financialsecrecyindex.com/PDF/9-Corporate-Tax-Disclosure.pdf>

⁴³⁸ For more information about this see <http://opencorporates.com/> [accessed 28 November 2016].

All underlying data can be accessed freely in the [**Financial Secrecy Index database**](#) (IDs 407 to 410).

3.15 KFSI 15 – Harmful Structures

3.15.1 What is 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 200 EUR/GBP/USD);
2. Regarding Bearer Shares: it assesses whether companies are available with unregistered bearer shares. Either bearer shares⁴³⁹ should not be available in the jurisdiction or, if available, there should be mechanisms to ensure that all existing bearer shares are⁴⁴⁰ 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

⁴³⁹ 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.

⁴⁴⁰ We consider that the obligation to register bearer shares exists when legal provisions establish a timeframe for immobilization/registration of all existing bearer shares before the next publication of the FSI 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 are intending 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 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.

shown in Table 15.1, with full details of the assessment logic given in Annex B.

The main sources for this information are the Global Forum peer reviews⁴⁴¹ 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 or advertisement. 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 clauses are prohibited. In some cases, the TJN-Survey 2019 provided useful information. Main sources for the issuance and circulation of large cash bills were studies by the [Financial Action Task Force](#) and the [European Police Office's Financial Intelligence Group](#), as well as [Peter Sands'](#) (Harvard Kennedy School) case for their elimination. We have also referred to local regulators' and central banks' websites.

Table 15.1: Secrecy Scoring Matrix KFSI 15

Regulation	Secrecy Score Assessment [Secrecy Score: 100 = full secrecy; 0 = full transparency]
COMPONENT 1: LARGE BANK NOTES (25 points)	
<u>Large banknotes are accepted as legal tender and/or issued</u> Own currency banknote of value greater than 200 EUR/GBP/USD.	25
<u>Large banknotes neither accepted as legal tender nor issued</u> No own currency banknote with a value of, or greater than, 200 EUR/GBP/USD.	0
COMPONENT 2: BEARER SHARES (25 points)	
<u>Bearer shares available</u> Companies with unregistered bearer shares are available.	25
<u>Bearer shares not available</u> Bearer share companies are not available, or all bearer shares are registered with a public authority.	0
COMPONENT 3: SERIES LLCs/PCCs (25 points)	
<u>Series LLCs or PCCs are available</u>	25

⁴⁴¹ 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/>; 21.07.2015.

Domestic legislation provides for the creation of Series Limited Liability Companies or of Protected Cell Companies.	
<u>Neither Series LLCs nor PCCs are available</u> 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)	
<u>Administration of trusts with flee clauses is not effectively prevented</u> Domestic and/or Foreign Law trusts administered by domestic trustees can include flee clauses in their deeds.	25
<u>Trusts with flee clauses cannot be administered or created</u> Domestic and Foreign Law trusts administered by domestic trustees are prevented from including flee clauses in their deeds.	0

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 172, 184, 224 and 488**) in the database report of the respective jurisdiction.

3.15.2 Why is this important?

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.⁴⁴² The Financial Action Task Force's 2015 study of over 60 jurisdictions on money laundering through the transportation of cash shows that "criminally derived cash physically transported across international borders originates from an extremely wide range of predicate offences", including drug and human trafficking, terrorism, corruption, and tax fraud (page 30).⁴⁴³

In many instances, where concealment is necessary for smuggling, large cash bills or high denomination banknotes are used because they are

⁴⁴² European Police Office Financial Intelligence Group (EUROPOL) (2015), Why is cash still king?: A strategic report on the use of cash by criminal groups as facilitator for money laundering. <https://www.europol.europa.eu/sites/default/files/documents/europolcik%20%281%29.pdf> [Accessed 28 September 2017].

⁴⁴³ FATF and MENAFATF (2015), Money laundering through the physical transportation of cash: p.30, www.fatf-gafi.org/publications/methodsandtrends/documents/ml-through-physical-transportation-of-cash.html [Accessed 25 September 2017].

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.⁴⁴⁴ The EUR 500 also takes up far less space than the largest US dollar note, the USD 100. A 2016 Harvard University study showed that carrying USD 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.⁴⁴⁵

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.⁴⁴⁶ 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.⁴⁴⁷ 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 90% of the demand for it within the UK was from

⁴⁴⁴ Holden, M. (13 May 2010), UK stops selling 500 euro notes over crime fears. *Reuters UK*. <http://uk.reuters.com/article/uk-britain-euro/uk-stops-selling-500-euro-notes-over-crime-fears-idUKTRE64C1JN20100513> [Accessed 2 October 2017].

⁴⁴⁵ Sands, P. (February 2016), Making it harder for the bad guys: The case for eliminating high denomination notes. M-RCBG Associate Working Paper Series No. 52. Mossavar-Rahmani Centre for Business and Government, Harvard Kennedy School: p.11, Figure 3. <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/Eliminating%20BDNfinalXYZ.pdf> [Accessed 25 September 2017].

⁴⁴⁶ EUROPOL (2015): p.7, 49. Op. cit.

⁴⁴⁷ Sands, P. (February 2016): p.12. Op. cit.

criminals.⁴⁴⁸ As a result, the EUR 500 was voluntarily withdrawn from circulation by the private sector.⁴⁴⁹ 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 organized by an Angolan General and it amounted to EUR 8 million, almost all denominated in EUR 500 notes.⁴⁵⁰ 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' (page 20).⁴⁵¹

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,⁴⁵² and the UK's National Crime Agency⁴⁵³ suggests that EUR 200 and EUR 100 notes are likely to be increasingly used in criminal activity. Similarly, Canada discontinued its CAD 1,000 banknote in 2000, but the notes remain in circulation⁴⁵⁴, and the largest banknote in the world, the Singapore Dollar 10,000 (approx. USD 7,400), was discontinued in 2014, but remains legal tender indefinitely, and Brunei continues to issue its BND 10,000 which is worth the same and can be used in Singapore.⁴⁵⁵

⁴⁴⁸ <http://news.bbc.co.uk/2/hi/8678979.stm>; 5.10.2017.

⁴⁴⁹ Serious and Organised Crime Agency (2011), Annual report and accounts 2010/2011: p.15. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/247328/1241.pdf# [Accessed 28 September 2017].

⁴⁵⁰ EUROPOL (2015): p.16. Op. cit.

⁴⁵¹ EUROPOL (2015): p.20. Op. cit.

⁴⁵² European Central Bank (4 May 2016), ECB ends production and issuance of €500 banknote.

<https://www.ecb.europa.eu/press/pr/date/2016/html/pr160504.en.html> [Accessed 28 September 2017].

⁴⁵³ National Crime Agency (2017), National strategic assessment of serious and organised crime: p.24. <http://www.nationalcrimeagency.gov.uk/publications/807-national-strategic-assessment-of-serious-and-organised-crime-2017/file> [Accessed 2 October 2017].

⁴⁵⁴ Bank of Canada (8 May 2000), Bank of Canada to stop issuing \$1000 note. <http://www.bankofcanada.ca/2000/05/bank-canada-stop-issuing-1000-note/>; Humphreys, A. (15 November 2012), The hunt for Canada's \$1,00 bills: There are nearly a million left, most in the hands of criminal elites. <http://nationalpost.com/news/canada/the-hunt-for-canadas-1000-bills-there-are-nearly-a-million-left-most-in-the-hands-of-criminal-elites> [Accessed 28 September 2017]

⁴⁵⁵ Monetary Authority of Singapore (2017), Frequently Asked Questions: Currency notes and coins, ten thousand dollar note. http://www.ifaq.gov.sg/MAS/TOPICS/CURRENCY_NOTES_AND_COINS/Ten_Thousand_Dollar_Note/8456#FAQ_65788 [Accessed 28 September 2017].

Singapore chose to discontinue the issuance of the SGD 10,000 to mitigate money laundering risks, especially associated with its popular gambling industry.⁴⁵⁶

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 USD 15 and 7, respectively) at the end of 2016 as part of a demonetization and remonetization process, requiring people to swap this money at banks and post offices for legal tender.⁴⁵⁷

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.⁴⁵⁸ Therefore, in particular the elimination of the highest banknotes with values above 200 EUR/GBP/USD 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, CAD 1,000, EUR 500, ANG 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”.⁴⁵⁹

⁴⁵⁶ Singapore to stop issuing \$10,000 banknote to prevent money laundering, (2 July 2014). *Reuters*. <https://www.reuters.com/article/singapore-regulations/singapore-to-stop-issuing-s10000-banknote-to-prevent-money-laundering-idUSL4N0PD2M120140702> [Accessed 2 October 2017].

⁴⁵⁷ Remonetisation process almost complete: Arun Jaitley, (16 February 2017). *Times of India*. <http://timesofindia.indiatimes.com/business/india-business/remonetisation-process-almost-complete-arun-jaitley/articleshow/57190069.cms> [Accessed 2 October 2017]. Midthanpally, Raja Shekhar 2017: Demonetisation and Remonetisation in India: State-Induced Chaos or Responsible Governance?, in: *South Asia Research* 37: 2, 213-227.

⁴⁵⁸ Sands, P. (February 2016). Op. cit.

⁴⁵⁹ Page 113, in: Financial Action Task Force 2012: The FATF Recommendations. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (Updated in October 2016), Paris, in: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; 31.8.2017.

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 one of the most challenging obstacles to overcome"⁴⁶⁰. 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

⁴⁶⁰ Page 154, in: van der Does de Willebois, Emile/Halter, Emily M./Harrison, Robert A./Park, Ji Won/Sharman, J. C. 2011: *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (StAR - World Bank / UNODC), Washington, DC, in: <http://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>; 22.7.2013.

⁴⁶⁰ Pages 88-89, in FATF 2012, op. cit.

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 directors and bearer shares and a Luxembourg company interposed— shows that the whole operation was to hide things.⁴⁶¹

Because of the international consensus about the enormous risks associated with bearer shares (e.g. 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,⁴⁶² 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. Or 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

⁴⁶¹ Pages 42-43, in: van der Does de Willebois et al., op. cit.

⁴⁶² Pages 88-89, in FATF 2012, op. cit.

incentives for manipulation (such as backdating changes) of the ownership remain far higher than with publicly registered shares.

Component 3: Series LLCs/PCCs

Protected Cell Companies are a rare type of corporate entity found almost exclusively in secrecy jurisdictions. Essentially a PCC 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 PCC.

Series LLCs serve similar purposes as PCCs and have originated in Delaware,⁴⁶³ but are now available in other US states.⁴⁶⁴ They are frequently used by hedge funds, venture capital funds and real estate investors.⁴⁶⁵ 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.⁴⁶⁶ The cost for setting up 100 companies therefore could be as low as 5700 USD.⁴⁶⁷

PCCs 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. We are also aware that PCCs are now readily available in locations such as the Seychelles and that they may now 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

⁴⁶³ <http://www.delawarellc.com/learning/Series-LLC.htm>; 21.07.2015. See also <http://www.gerardfoxlaw.com/news/legal-perspectives/series-llcs-the-next-generation-of-passthrough-entities/>; 10.10.2017.

⁴⁶⁴ <https://ct.wolterskluwer.com/resource-center/articles/series-llcs-wise-option-or-risky-strategy>; 29.9.2017.

⁴⁶⁵ Griffith, Cara 2015: Series LLCs: The Next Generation Of Passthrough Entities?, Forbes, in: <https://www.forbes.com/sites/taxanalysts/2015/02/16/series-llcs-the-next-generation-of-passthrough-entities/>; 10.10.2017.

⁴⁶⁶ <https://www.thebalance.com/series-llc-is-it-right-for-your-business-398447>; 10.10.2017.

⁴⁶⁷ <http://www.gardilaw.com/does-your-business-need-a-series-llc-in-illinois/>; 10.10.2017. This assumes a cost of setting up the master LLC of 750 USD, plus 50 USD per series/cell.

of PCCs⁴⁶⁸, thus exacerbating the risks stemming from the hypercomplex investment fund industry.⁴⁶⁹ The level of asset protection and ambiguity of ownership and control that a PCC 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 PCCs 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 PCC might work in practice.

It is uncertain how current mutual legal assistance agreements will apply to PCCs, and if regulators and law enforcement agencies are able to obtain all necessary information across borders from PCCs. There are vast possibilities for using PCCs for misleading the public, financial institutions and their customer due diligence processes, investors, tax authorities, financial regulators and law enforcement agencies. For example, individuals can use PCCs 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.

Component 4: Trusts with Flee Clause

Some trusts⁴⁷⁰ contain a flee clause (or flight clause) in their trust deeds or agreements obliging the trustee to change the trust address, its governing

⁴⁶⁸ <https://www.weareguernsey.com/news/2015/protected-cell-companies-for-fund-and-non-fund-structures/>; 30.1.2020.

⁴⁶⁹ Andres Knobel, ‘Beneficial Ownership in the Investment Industry: A Strategy to Roll Back Anonymous Capital’, *SSRN Electronic Journal*, 2019 <<https://www.ssrn.com/abstract=3470358>> [accessed 5 November 2019].

⁴⁷⁰ For a comprehensive introduction to trusts and their associated risks read: Knobel, Andres 2017: Trusts: Weapons of Mass Injustice?, in: www.taxjustice.net/wp-content/uploads/2017/02/Trusts-Weapons-of-Mass-Injustice-Final-12-FEB-2017.pdf; 15.2.2017.

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.⁴⁷¹

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 can be accessed freely in the [Financial Secrecy Index database](#) (IDs 172, 184, 224 and 488).

⁴⁷¹ 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” (Tanzi, William 2013: Foreign Situs Asset Protection/Estate Planning Structure (Basic Elements), in: <http://static1.1.sqspcdn.com/static/f/1397518/18536698/1364242367820/Foreign+Situs+Trust+Investments+RC+William+Tanzi.pdf?token=IVQ9JnRjDQvJ69q4Ex7FPmU4fOQ%3D>; 10.10.2017).

A similar scheme was described in LoPucki, Lynn M. 2000: The Death of Liability (SSRN Scholarly Paper ID 7589), Rochester, NY, in: <https://papers.ssrn.com/abstract=7589>; 10.10.2017.

3.16 KFSI 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 KFSI 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 16.1: Secrecy Scoring Matrix KFSI 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) Financial services trade (component of IMF Balance of Payment Statistics)	10
		Merchanting or transit trade	(4) Bilateral Merchanting/Transit trade of services (national level, e.g. Hong Kong)	10
Investment	Portfolio		(5) Portfolio Investment (IMF Coordinated Portfolio Investment Survey, CPIS)	10

Component			Sub-Component / Source(s)	Secrecy Score Assessment (Sum; 100 = full secrecy; 0 = full transparency)
Stock or flow	Sub-category	Sub-sub-category		
	Direct		(6) Direct Investment (IMF Coordinated Direct Investment Survey, CDIS)	10
Bank assets	BIS locational		(7) Cross-Border Banking Liabilities, BIS (Bank for International Settlements locational reporting , table a2.1)	10
	National Bilateral		(8) National bilateral country level breakdown of Cross-Border Banking Liabilities) (data equivalent to A5-A7 in locational banking , e.g. Germany on pages 63 and 65 of Assets and liabilities of banks in Germany vis-à-vis non-residents, by country)	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

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 425 to 434**) in the database report of the respective jurisdiction.

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 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 **merchandising 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 (i.e. the key indicator for deriving the global scale weight used in the compilation of the Financial Secrecy Index).

There are then a further four variables related to financial positions: **bilateral statistics on portfolio (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. As of December 2019, to our knowledge, no jurisdiction publishes aggregates of the data collected under CRS. Some countries are, however, already implementing laws that should ensure access to this data in the future. In Australia, for example, Section 396-136 of the Tax Laws Amendment (Implementation of the Common Reporting Standard) Act 2016 required a report (including some CRS statistics) to be prepared for the Minister and tabled in Parliament by December 31, 2019.⁴⁷² In a number of countries, some limited information about ongoing automatic information exchange is available. In Uruguay, for example, while the government is not publishing CRS statistics, a local news outlet obtained data using a Freedom of Information Request and published in January 2019 the total number of accounts sent by Uruguay to other countries, and the number of accounts held by Uruguay residents in each foreign country that sent information to Uruguay.⁴⁷³ Partial information on automatic information exchange has also emerged in the UK⁴⁷⁴, Switzerland⁴⁷⁵, or Argentina⁴⁷⁶, however, none of these sources provide information on the volumes of assets held by a country's citizens in other jurisdictions which are subject to automatic information exchange.

The **last measure** assesses whether jurisdictions publish **aggregate information (i.e. not company level) from country-by-country reports of multinational companies (ID 434)**. Currently, only the United States⁴⁷⁷ are publishing this data, however, other countries are to join soon. For example, Germany has recently passed a law according to which aggregated statistics on country-by-country reporting data is required to be published on an annual basis. The law was published in the Federal Law Gazette on 17th December 2019 and the first public statistics should be reported in 2020 (BGBl. I Nr. 48, Page 2480, Art. 20.1.b).⁴⁷⁸

⁴⁷² <https://www.legislation.gov.au/Details/C2016A00023>; 10.1.2020.

⁴⁷³ <https://www.busqueda.com.uy/nota/dgi-recibio-datos-de-18585-cuentas-en-el-exterior-de-residentes-en-uruguay-mas-de-la-cuarta>; 10.1.2020.

⁴⁷⁴ <https://www.gov.uk/government/publications/no-safe-havens-2019/no-safe-havens-2019-leading-internationally>; 10.1.2020.

⁴⁷⁵ <https://www.blick.ch/news/politik/fast-5000-amtshilfe-gesuche-an-die-schweiz-irland-an-der-spitze-tausenden-steuersuendern-auf-den-fersen-id15265526.html>; 10.1.2020.

⁴⁷⁶ <https://www.lanacion.com.ar/economia/la-afip-analiza-mas-de-175000-cuentas-bancarias-de-argentinos-en-el-exterior-nid2201963>; 10.1.2020.

⁴⁷⁷ <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>; 10.1.2020.

⁴⁷⁸ https://www.bgbl.de/xaver/bgbl/text.xav?SID=&tf=xaver.component.Text_0&ocf=&qmf=&hlf=xaver.component.Hitlist_0&bk=bgbl&start=%2F%2F%5B%40no de_id%3D%27447338%27%5D&skin=pdf&tlevel=-2&nohist=1; 10.1.2020.

The measures that form this KFSI 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 can be accessed freely in the [Financial Secrecy Index](#) (IDs 425 to 434).

3.17 KFSI 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 years cycles. The studies are conducted by either the FATF, or analogous regional bodies, or the IMF. The resulting comprehensive mutual evaluation reports are mostly published online⁴⁷⁹. 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 17.1 below, and full details of the assessment logic can be found in Annex B.

Table 17.1: Secrecy Scoring Matrix KFSI 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
<u>FATF 2012, Methodology 2013/2017</u> [NEW]	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

⁴⁷⁹ [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))

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
<u>FATF 2003, Methodology 2004 [OLD]</u>	FATF recommendations (40), Special Recommendations (9)	49	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).

All underlying data can be accessed freely in the Financial Secrecy Index database (ID 338).

In 2003, the FATF adopted its 49 recommendations⁴⁸⁰ and corresponding mutual evaluation reports have been published for all jurisdictions included in the Financial Secrecy Index. For many jurisdictions (70 out of the 133 jurisdictions assessed by the FSI), this is the most recent type of report available for use in the FSI.

In 2012, the FATF reviewed and updated its 49 recommendations (hereinafter: the "old recommendations") and consolidated them to a total of 40⁴⁸¹ (hereinafter: the "new recommendations"). The new methodology (published 2013, updated 2017⁴⁸²) for assessing compliance with the FATF 40 recommendations also included guidelines for assessment of the

⁴⁸⁰ The (old) 2003 recommendations can be downloaded at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendation%202003.pdf>; 23.01.2020. The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and referred to jointly as the FATF Recommendations. For the methodology on assessing compliance with the FATF Recommendations see: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/methodologyforassessingcompliancewiththefatf40recommendationsandfatf9specialrecommendations.html>; 23.01.2020.

⁴⁸¹ The (new) 2012 recommendation can be viewed at: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>; 23.01.2020.

⁴⁸² Financial Action Task Force (FATF) 2017: Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems, in: www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf; 23.01.2020.

effectiveness of the entire anti-money laundering system of a given jurisdiction.⁴⁸³ Eleven indicators, so called “Immediate Outcomes”, have been devised for measuring effectiveness.

The compliance assessment process based on the new recommendations and immediate outcomes began in 2013. At the cut-off date for this KFSI (20 January 2020), a total of 89 jurisdictions had been assessed on this basis, of which 63 were reviewed in the Financial Secrecy Index 2020.⁴⁸⁴ For those jurisdictions we have adjusted our calculation of this KFSI’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 our indicator, we have calculated the overall non-compliance score using a linear scale giving each old recommendation, new recommendation and immediate outcome equal weight⁴⁸⁵. 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, 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. This is because for these jurisdictions, the ratings of the follow-up reports are not available in open data format⁴⁸⁶

⁴⁸³ <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatfissuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html>; 23.01.2020.

⁴⁸⁴ www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.xlsx; 23.01.2020.

⁴⁸⁵ To see the sources we are using for particular jurisdictions please check out the corresponding information in our database, available at www.financialsecrecyindex.com/database/menu.xml.

⁴⁸⁶ www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.xlsx; 23.01.2020

and due to time and capacity constraints, we could not assess them.

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 (e.g. 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 the USA, the resulting secrecy around bank customers increases the risk of money laundering.

The United States assessment arises because of several shortcomings, one of which is a "[I]ack of CDD [customer due diligence] requirements to ascertain and verify the identity of BO [beneficial owners] (except in very limited cases)"⁴⁸⁷. In other words, under US law there is no obligation for US-based bank employees to identify those who control bank accounts through companies and trusts. The Financial service providers and their affiliates are thus allowed to operate bank accounts whose real controlling persons can conceal their identity. This level of secrecy contravenes the FATF recommendations.

In February 2015, Swiss Leaks⁴⁸⁸ 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 in a mutual evaluation report of Switzerland. 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:

⁴⁸⁷ FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures. United States Mutual Evaluation Report* (2016), 255 <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>> [accessed 23 January 2020].

⁴⁸⁸ <http://www.icij.org/project/swiss-leaks/banking-giant-hsbc-sheltered-murky-cash-linked-dictators-and-arms-dealers>; 7.6.2015

There is no general obligation on financial intermediaries to identify the purpose and envisaged nature of the business relationship desired by the customer.⁴⁸⁹

Since banks have been assessed as not being obliged to enquire about the purpose and nature of a new client requesting financial services, important details of a new customers' background could be ignored, thus enabling the management of accounts with money of illicit origin.

In the latest evaluation of Switzerland, that same recommendation (now recommendation 10) on customer due diligence has still been rated only as "partially compliant". One among many deficiencies identified, 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.⁴⁹⁰

Similar to the situation in the US, this implies that banks can stop short of checking and storing ID documents of the supposed beneficial owners of companies, trusts or foundations that operate bank accounts.

We consider the swift and thorough implementation of all FATF recommendations by all jurisdictions as crucial to global financial transparency, 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 (e.g. [here](#)⁴⁹¹), the FATF has developed ways

⁴⁸⁹ FATF-GAFI, *Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism. Switzerland*, 2005, 13–14 <<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/mer%20switzerland%20resume%20english.pdf>> [accessed 23 January 2020].

⁴⁹⁰ Financial Action Task Force, *Anti-Money Laundering and Counter-Terrorist Financing Measures, Switzerland, Fourth Round Mutual Evaluation Report* (Paris, December 2016), 237 <<http://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf>> [accessed 23 January 2020].

⁴⁹¹ Michael Levi, Terence Halliday and Peter Reuter, 'Global Surveillance of Dirty Money: Assessing Assessments of Regimes to Control Money-Laundering and Combat the Financing of Terrorism', 2014 <http://orca.cf.ac.uk/88168/1/Report_Global%20Surveillance%20of%20Dirty%20Money%201.30.2014.pdf> [accessed 14 July 2017].

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 KFSI 17 alongside the 40 FATF technical recommendations for the first time in the Financial Secrecy Index 2018.

All underlying data can be accessed freely in the in the Financial Secrecy Index database. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search **for info ID 338** in the database report of the respective jurisdiction.

3.18 KFSI 18 – Automatic Information Exchange

3.18.1 What is measured?

This indicator assesses **(1)** whether jurisdictions have signed the Multilateral Competent Authority Agreement⁴⁹² (MCAA) which provides the multilateral legal framework to engage in automatic exchange of information (AEOI) pursuant to OECD's Common Reporting Standard⁴⁹³ (CRS), **(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 to assist developing countries.

As of November 2019, 105 jurisdictions have signed the MCAA,⁴⁹⁴ 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, in Table 18.1 - A and 18.1- B, as follows:

Table 18.1-A: Secrecy Scoring Matrix KFSI 18

Criteria	Secrecy Score	Source
Whether the jurisdiction has signed the MCAA	50 points if yes 100 points if no	<u>OECD's list of MCAA signatories</u>
Whether it will start exchanging information pursuant to the MCAA in or before 2019, or in or after 2020	+0 points if 2019 +25 points if 2020	<u>OECD's list of MCAA signatories</u>

⁴⁹² OECD, 'Multilateral Competent Authority Agreement: 61 Jurisdictions Sign Multilateral Agreement Implementing the Standard on Automatic Exchange' <<http://www.oecd.org/tax/exchange-of-tax-information/multilateral-competent-authority-agreement.htm>> [accessed 30 January 2020].

⁴⁹³ OECD, 'Standard for Automatic Exchange of Financial Account Information in Tax Matters - First Edition', 2014 <<http://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>> [accessed 30 January 2020].

⁴⁹⁴ OECD, 'Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date - Status as of 24 December 2019', 2019 <<http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/crs-mcaa-signatories.pdf>> [accessed 30 January 2020].

Criteria	Secrecy Score	Source
<u>Pilot projects</u> : Whether it engaged in Pilot Projects to assist developing countries (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	<u>Global Forum 2019 AEOI Implementation Report</u>

For jurisdictions that have signed the MCAA we also consider the following matters:

Table 18.1-B: Secrecy Scoring Matrix KFSI 18

Criteria	Secrecy Score	Source
The number of "meaningful" activated AEOI relationships (under the MCAA ⁴⁹⁵) 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 October 2019). Less reduction pro-rata according to the actual number of "meaningful" activated AEOI relationships.	<u>OECD's list of activated AEOI relationships</u>
Obstacles ⁴⁹⁶		
Whether it <u>refused to engage</u> 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

⁴⁹⁵ The OECD publishes the full list of activated AEOI relationships here: OECD, 'First Automatic Common Reporting Standard Exchanges between 49 Jurisdictions Set to Take Place This Month; Now over 2000 Bilateral Exchange Relationships in Place', 2017 <<http://www.oecd.org/tax/exchange-of-tax-information/first-automatic-crs-exchanges-between-49-jurisdictions-to-take-place-over-2000-bilateral-exchange-relationships-in-place.htm>> [accessed 30 January 2020].

⁴⁹⁶ Postponement (deliberately choosing to postpone AEOI with specific countries which are already exchanging information with other signatories of the MCAA) is no longer considered in this KFSI because it is implicitly covered by the number of activated relationships (which would be lower if the country decided to postpone exchanges with certain countries).

Criteria	Secrecy Score	Source
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 <u>activated AEOI relationships</u>
Whether it imposed <u>additional conditions</u> 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
Improvements		
Whether entities issuing, trading or exchanging <u>bitcoins</u> and other cryptocurrencies are covered by AEOI	-10 points if yes	FSI Survey or declaration by a country's authorities
Whether the jurisdiction signed the Punta del Este Declaration or is otherwise allowing AEOI information to be <u>used beyond tax purposes</u> to tackle corruption or money laundering.	-10 points if yes	<u>Signatories of the Punta del Este Declaration</u> , FSI Survey or declaration by a country's authorities
Whether the jurisdiction is applying the <u>wider-wider approach</u> (requiring information on all non-residents to be collected and reported to local authorities) ⁴⁹⁷	-10 points if yes	FSI Survey or declaration by a country's authorities
Whether the jurisdiction is implementing the OECD Model <u>Mandatory Disclosure Rules</u> on schemes to circumvent the CRS or hide the beneficial owner	-10 points if yes	Local laws, or declaration by a country's authorities

⁴⁹⁷ The difference between the wider approach and the wider-wider (or widest) approach is that the former only requires information on all non-residents to be collected by financial institutions, while the latter also requires this information to be reported to local authorities (although information will not be sent to foreign countries until they engage in AEOI).

Note: 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.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 150, 371, 372, 374, 376, 377 and 566-569).

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 a secrecy score is obtained.

Since the Global Forum has undertaken an initial assessment⁴⁹⁸ 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 here the number of countries that a jurisdiction (i) sends information to, and (ii) receives information from (because they both chose each other).⁴⁹⁹ 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 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

⁴⁹⁸ Global Forum on Transparency and Exchange of Information for Tax Purposes, *Tax Transparency 2016. Report on Progress*, 2016 <www.oecd.org/tax/transparency/GF-annual-report-2016.pdf> [accessed 30 January 2020].

⁴⁹⁹ <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>; 22.1.2020.

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 (e.g. market access for a country’s financial industry) or that protect the interests of tax evaders (e.g. 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 [KFSI 12 on Consistent Personal Income Tax](#)⁵⁰⁰ for more details). While in 2019 the Global Forum published a list of jurisdictions choosing voluntary secrecy (see page 3, footnote 2 [here](#)), 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.⁵⁰¹ 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).

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. The CRS lets each jurisdiction decide whether cryptocurrency firms will be covered 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 financial account with a commercial bank. While many types of assets aren't covered by the CRS (e.g. 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 (see #34 [here](#)) refers to the speciality constraint, limiting the use of AEOI information to tax purposes only. 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

⁵⁰⁰ Tax Justice Network, 'Key Financial Secrecy Indicator 12: Consistent Personal Income Tax', 2020 <<http://www.financialsecrecyindex.com/PDF/12-Consistent-Personal-Income-Tax.pdf>> [accessed 30 January 2020].

⁵⁰¹ OECD, *The 2019 AEOI Implementation Report* (2019) <<https://www.oecd.org/tax/transparency/aeoi-implementation-report-2019.pdf>> [accessed 30 January 2020].

funds, regardless of any taxes owed.⁵⁰² 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 restrict 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.⁵⁰³ 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.

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.⁵⁰⁴ In addition, sanctions included in the model rules are hard to enforce and the sanctions may not be enough to incentivise disclosure.⁵⁰⁵ 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 on

⁵⁰² Knobel, Andres and Meinzer, Markus, *"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* (24 November 2014) <<http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf>> [accessed 30 January 2020].

⁵⁰³ Knobel, Andres, 'The Use of Banking Information to Tackle Corruption and Money Laundering: A Low-Hanging Fruit the OECD Refuses to Harvest', *Tax Justice Network*, 2019 <<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/>> [accessed 30 January 2020].

⁵⁰⁴ OECD, *Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures*, 9 March 2018 <<http://www.oecd.org/tax/exchange-of-tax-information/model-mandatory-disclosure-rules-for-crs-avoidance-arrangements-and-opaque-offshore-structures.pdf>> [accessed 30 January 2020].

⁵⁰⁵ Knobel, Andres, 'OECD Rules vs CRS Avoidance Strategies: Not Bad, but Short of Teeth and Too Dependent on Good Faith', *Tax Justice Network*, 2018 <<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/>, <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/>> [accessed 30 January 2020].

Administrative Cooperation (known as DAC 6) 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.⁵⁰⁶

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 who also apply the wider approach, where financial institutions collect information on all non-residents (regardless if resident in a participating jurisdiction or not). 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. The potential uses of CRS statistics are explained here⁵⁰⁷, here⁵⁰⁸

⁵⁰⁶ 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', 2018
<https://ec.europa.eu/taxation_customs/sites/taxation/files/dac-6-council-directive-2018_en.pdf> [accessed 30 January 2020].

⁵⁰⁷ 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*, 2 March 2017 <www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf> [accessed 30 January 2020].

⁵⁰⁸ Knobel, Andres, 'How to Assess the Effectiveness of Automatic Exchange of Banking Information?', *Tax Justice Network*, 2018
<<https://www.taxjustice.net/2018/12/20/how-to-assess-the-effectiveness-of-automatic-exchange-of-banking-information/>,
<https://www.taxjustice.net/2018/12/20/how-to-assess-the-effectiveness-of-automatic-exchange-of-banking-information/>> [accessed 30 January 2020].

and [here](#)⁵⁰⁹. The OECD doesn't publish information about jurisdictions implementing the wider-wider approach, so local laws or FSI-Surveys are used to obtain this data.

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 2019 or 2020. 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](#)⁵¹⁰ for developing countries' participation in AEOI. 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 and engaged in AEOI.

The data sources used for collating KFSI 18 are: (i) the OECD's list of jurisdictions which signed the MCAA⁵¹¹, (ii) the OECD list of activated AEOI relationships, (iii) the FSI Survey, (iv) relevant laws or declarations by countries' authorities (if any), and (v) the 2019 Global Forum AEOI Implementation which provides the most up-to-date list of pilot programmes.

⁵⁰⁹ Knobel, Andres, 'Statistics on Automatic Exchange of Banking Information and the Right to Hold Authorities (and Banks) to Account', *Tax Justice Network* <<https://www.taxjustice.net/2019/06/21/statistics-on-automatic-exchange-of-banking-information-and-the-right-to-hold-authorities-and-banks-to-account/>, <https://www.taxjustice.net/2019/06/21/statistics-on-automatic-exchange-of-banking-information-and-the-right-to-hold-authorities-and-banks-to-account/>> [accessed 30 January 2020].

⁵¹⁰ Global Forum, *Automatic Exchange of Information: A Roadmap for Developing Country Participation*, Final Report to the G20 Development Working Group, 5 August 2014 <<http://www.oecd.org/ctp/exchange-of-tax-information/global-forum-AEOI-roadmap-for-developing-countries.pdf>> [accessed 30 January 2020].

⁵¹¹ OECD, 'Signatories of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information and Intended First Information Exchange Date - Status as of 24 December 2019'.

Please note that as for the hurdles to information exchange (IDs 372 and 377) we deviate from the “unknown is secrecy”-principle because previous research only revealed one country imposing such additional conditions.⁵¹²

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, KFSI 18 does not consider participation in FATCA for two reasons. First, FATCA does not entail multilateral AEOI but only agreements between the U.S. 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.⁵¹³

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 Singapore⁵¹⁴ and

⁵¹² See for example Knobel, Andres, *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 <https://financialtransparency.org/wp-content/uploads/2017/01/Knobel2017_AEOI-Survey-Report.pdf> [accessed 30 January 2020].; and Knobel, Andres and Meinzer, Markus, *Automatic Exchange of Information: An Opportunity for Developing Countries to Tackle Tax Evasion and Corruption* (June 2014) <<http://www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf>> [accessed 30 January 2020].

⁵¹³ Knobel, Andres, *The Role of the US as a Tax Haven: Implications for Europe* (Brussels, 11 May 2016) <https://www.greens-efa.eu/legacy/fileadmin/dam/Documents/Studies/Taxation/The_US_as_a_tax_haven_Implications_for_Europe_11_May_FINAL.pdf> [accessed 30 January 2020].

⁵¹⁴ Inland Revenue Authority of Singapore-IRAS, ‘Singapore and the United Kingdom Sign Agreement for Automatic Exchange of Financial Account

Hong Kong⁵¹⁵ 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 FSI 2018

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 2019, versus in or after 2020 (instead of focusing on 2017 and 2018).

Moreover, in 2018 the indicator considered postponement to engage in AEOI with specific countries. However, given that postponement would be covered by the reduced number of activated relationships, this question was removed from this indicator.

If a country, e.g. Switzerland, was considered to impose additional conditions and refused to exchange information with other countries, but now that country exchanges information with the highest available number of relationships, those hurdles are considered not to be present anymore.

In addition, the number of activated AEOI relationships now refers to “meaningful” relationships, meaning those where information is actually being sent (at least unidirectionally). For this reason, only the number of activated relationships published by the OECD portal is considered in the 2020 edition of the FSI. Declarations by countries to exchange with all other cosignatories are no longer considered because there were discrepancies with the OECD portal: according to the OECD portal some of these “all co-signatory countries” didn’t have the highest available number of relationships, even though they are supposed to exchange with all other countries.

Information’, *IRAS*, 2016 <<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/>> [accessed 30 January 2020].

⁵¹⁵ 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’, 2016 <<https://www.info.gov.hk/gia/general/201610/26/P2016102600614.htm>> [accessed 30 January 2020].

Lastly, this indicator now includes four additional questions on improvements for jurisdictions that signed the MCAA. These refer to implementing the wider-wider approach (that would enable the publication of CRS statistics); covering bitcoins and other cryptocurrencies; signing the Punta del Este Declaration (or otherwise allowing AEOI information to be used to tackle corruption and money laundering); and finally adopting the mandatory disclosure rules against CRS avoidance strategies and opaque structures to hide the beneficial owner.

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”-report here](#),⁵¹⁶ in a shorter [briefing paper here](#)⁵¹⁷ and [time and time again in our blog here](#).⁵¹⁸ The [Financial Times has also addressed this here](#)⁵¹⁹). For identifying unknown cases of tax evasion, which are by far the majority of all cases (see [page 12-13, here](#)⁵²⁰), the upon-request Global Forum process is useless.

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 and undeclared offshore wealth was estimated in 2012 to stand at US\$ 21-32tn (see [our study here](#)⁵²¹). These distortions imply, for instance, that:

⁵¹⁶ Meinzer, Markus, ‘The Creeping Futility of the Global Forum’s Peer Reviews’.

⁵¹⁷ Tax Justice Network, ‘Tax Information Exchange Arrangements’.

⁵¹⁸ Tax Justice Network, ‘OECD Whitewashes Another Tax Haven’, 2009 <<http://taxjustice.blogspot.com/2009/08/oecd-whitewashes-another-tax-haven.html>> [accessed 30 January 2020].

⁵¹⁹ Financial Times, ‘Time to Black-List the Tax Haven Whitewash’ <<https://www.ft.com/content/0f687dee-5eea-11e0-a2d7-00144feab49a#axzz1PtjiCeHN>> [accessed 30 January 2020].

⁵²⁰ Meinzer, Markus, ‘The Creeping Futility of the Global Forum’s Peer Reviews’.

⁵²¹ Tax Justice Network, ‘The Price of Offshore Revisited and Inequality Underestimated’, 2012 <<http://taxjustice.blogspot.com/2012/07/the-price-of-offshore-revisited-and.html>> [accessed 30 January 2020].

[...] a large number of countries, which are traditionally regarded as debtors, are in fact creditors to the rest of the world. For our focus group of 139 mostly low-middle income countries, traditional data shows they had aggregate external debts of \$4.1 trillion at the end of 2010. But once you take their foreign reserves and the offshore private holdings of their wealthiest citizens into account, the picture flips into reverse: these 139 countries have aggregate net debts of **minus US\$10.1-13.1tn**. [...] 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. (The Price of Offshore Revisited: Key Issues⁵²² – 19th July 2012).

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 policy paper,⁵²³ 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.

Moreover, as Nicholas Shaxson has argued in the book Treasure Islands (2011: 74-79),⁵²⁴ 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 focussed 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

⁵²² Tax Justice Network, 'The Price of Offshore Revisited: Key Issues', 2012 <http://www.taxjustice.net/cms/upload/pdf/The_Price_of_Offshore_Revisited_Key_Issues_120722.pdf> [accessed 30 January 2020].

⁵²³ Meinzer, Markus, 'Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries', 2010 <http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf> [accessed 24 January 2020].

⁵²⁴ Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World* (London, 2011) <<http://treasureislands.org/>> [accessed 24 January 2020].

on maintaining 'financial privacy' in spite of tax information exchange treaties and of exchanging information reluctantly under these agreements ([click here for the example of Jersey](#)). They go to great lengths to reassure their criminal clientele that they will block 'fishing trips' by foreign tax authorities.

While the peer review process of the Global Forum did not originally require statistical disclosure of a country's performance in responding to requests for information and therefore does little to reveal the effectiveness of the "upon request" model, France nationally disclosed such data. The resulting [picture broadly confirms](#)⁵²⁵ the analysis provided so far:

"The report said, among other things, that in 2011 France made 1922 information requests of its partners, including 308 requests to jurisdictions with which France has some kind of information exchange agreement. Of these 308, only 195 responses had been received by the end of the year [2012], and 113 had not replied - 84 of which concerned Switzerland and Luxembourg. The less transparent countries include Belgium, and Antigua and Barbuda (0% responses); Luxembourg (45%); Cayman Islands and Switzerland (55% each) and BVI (75%)." ([source here](#))⁵²⁶

Few bilateral Tax Information Exchange Agreements have been concluded between secrecy jurisdictions and the world's poorer countries. We are concerned that even when such agreements are negotiated, they prove ineffective in practice due to the practical barriers imposed by the cost and effort involved in making 'on request' applications. In addition, there is evidence that developing countries may be forced to pay a high price in terms of lowered withholding tax rates in exchange for "exchange upon request"-clauses being introduced in Double Taxation Conventions (see pages 23-24 on Switzerland, [here](#),⁵²⁷ and these recent reports in German on [Switzerland](#)⁵²⁸ and [Germany](#)⁵²⁹).

⁵²⁵ Tax Justice Network, 'French Updates: Hollande Supports Full Country-by-Country Reporting, plus, Data on Information Exchange' <<http://taxjustice.blogspot.com/2013/02/french-updates-hollande-supports-full.html>> [accessed 30 January 2020].

⁵²⁶ Ibid.

⁵²⁷ Meinzer, Markus, 'The Creeping Futility of the Global Forum's Peer Reviews'.

⁵²⁸ Alliance Sud, 'Schweizer Steuerabkommen Mit Entwicklungsländern: Fragwürdiger Druck Auf Quellensteuern', 2013 <<https://www.alliancesud.ch/de/publikationen/downloads/dokument-24-2013.pdf>> [accessed 30 January 2020].

⁵²⁹ Henn, Markus, 'Neue Verhandlungsgrundlage für Steuerabkommen: Entwicklungsländer bleiben außen vor', *Blog Netzwerk Steuergerechtigkeit*, 2013 <<https://www.blog-steuergerechtigkeit.de/2013/04/neue-verhandlungsgrundlage-fur/>> [accessed 30 January 2020].

Multilateral automatic information exchange would help 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 [here](#).⁵³⁰

Implementing the CRS will have reputational consequences (implementation will be reviewed by the Global Forum) and will be one of the three criteria to avoid being included in the OECD's blacklist.

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 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."⁵³¹

⁵³⁰ Knobel, Andres and Meinzer, Markus, *"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*.

⁵³¹ Beer, Sebastian, Delgado Coelho, Maria and Leduc, Sebastien, 'Hidden Treasure: The Impact of Automatic Exchange of Information on Cross-Border Tax Evasion' (2019) <<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>> [accessed 30 January 2020].

All underlying data can be accessed freely in the Financial Secrecy Index database. To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B at the end of this document and search for the corresponding info IDs (**IDs 150, 371, 372, 374, 376, 377 and 566-597**) in the database report of the respective jurisdiction.

3.19 KFSI 19 – Bilateral Treaties

3.19.1 What is measured?

This indicator examines the extent to which a jurisdiction has entered into 108 effective information exchange relationships conforming to the ‘upon request’ standard developed by the OECD and the Global Forum. The number of 108 stems from the total number of jurisdictions minus one that as of November 2019 are parties to the multilateral Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters⁵³² (“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 (e.g. the US) which are only party to the original Convention (which among other changes, was not open to non-OECD countries) are not considered in this indicator. As of November 2019, the Tax Convention has 109⁵³³ parties, meaning that each of these parties would have bilateral relationships with the other 108 jurisdictions party to the Tax Convention.

A jurisdiction that has signed and ratified the Tax Convention is given a zero secrecy score and its number of exchange of information relationships is not considered. Other jurisdictions are scored according to the number of effective bilateral information exchange relationships they’ve entered into expressed as a proportional share of 108. For a bilateral information exchange relationship to be considered effective it must be (i) in force, and (ii) considered ‘compliant with the standard’ according to the Global Forum table of treaties published for every Global Forum member. To arrive at the secrecy score, the transparency score is subtracted from 100. The cut-off-date for the number of bilateral treaties is November 2019.

The Secrecy Scoring Matrix can be found in Table 19.1. below, and full details of the assessment logic can be found in Annex B underneath.

⁵³² OECD and Council of Europe, ‘Convention on Mutual Administrative Assistance in Tax Matters’, 1988 <<http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>> [accessed 24 January 2020].; OECD, ‘Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters’, 2019 <http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf> [accessed 24 January 2020].

⁵³³ Montenegro Ministry of Finance communicated in December of 2019 that they have approved the ratification of the Convention, so it is assumed that the Convention will enter into force for Montenegro before the next edition of the Financial Secrecy Index in 2022.

Table 19.1. Secrecy Scoring Matrix KFSI 19

Regulation	Secrecy Score [100 points = full secrecy; 0 points = full transparency]
<u>No Tax Convention Adherence</u> Jurisdiction has not joined the Tax Convention as of November 2019. In this case the number of bilateral treaty exchange relationships are counted and expressed as a proportion of 108 (which is equivalent to the number of relationships available to each party to the Tax Convention).	0-100
<u>Tax Convention Adherence</u> Jurisdiction has joined the Tax Convention as of November 2019 and thus has effective upon request information exchange relationships with all other cosignatories.	0

All underlying data and sources relative to specific jurisdictions can be accessed freely in the [Financial Secrecy Index database](#) (IDs 309 and 143).

In respect to bilateral treaties, the upon request provisions can either be tax information exchange agreements (TIEAs)⁵³⁴ or full double taxation agreements (DTAs) whose scope extends far beyond information exchange. The source for this information is the table on agreements in the Exchange of Information online portal of OECD's Global Forum⁵³⁵. This table displays the bilateral agreements allowing for information exchange upon request, broken down into various categories. We have included those treaties that a) were in force as of November 2019 and which b) met the OECD upon request standard (column 5 of the table).

⁵³⁴ Tax Justice Network, 'Tax Information Exchange Arrangements'.

⁵³⁵ 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'. For the purpose of our research, we relied on a website scraping carried out on 5 October 2017 – with thanks to Wouter Lips for the code.

With respect to the adherence of the Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters,⁵³⁶ the published document of ratifications has been analysed (accessed in November 2019).⁵³⁷ All jurisdictions whose entry into force date as listed in the last column was on or November 2019 were counted as having Article 5 in force. A detailed analysis of the Convention can be found here.⁵³⁸ Unlike KFSI 20, which considers adherence by jurisdictions to the other provisions of the Tax Convention excluding article 5 ('exchange of information on request'), for KFSI 19, we assess only the adherence of jurisdictions to article 5 of the Tax Convention.

Since this indicator assesses active upon request bilateral relationships (the possibility for two jurisdictions to exchange information with each other upon request), we provide the combined number of DTAs and TIEAs because this eliminates double counting where a pair of jurisdictions had both a valid TIEA and DTA.

In a context of largely unrestricted cross-border financial flows, this Tax Convention provides a minimum backstop to guard against proliferation of cross border tax crimes and offences through adherence to a network of information exchange relationships. Hence, the figure of 108 qualifying agreements is a moving target; when the average number of jurisdictions adhering to the Convention increases, the number of bilateral treaties required to obtain a zero secrecy score will change accordingly.

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. While economic activity has become increasingly global, the tax collectors' efforts 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

⁵³⁶ OECD and Council of Europe, 'Convention on Mutual Administrative Assistance in Tax Matters'.; OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters'.

⁵³⁷ OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters'.

⁵³⁸ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010', 2012
<<http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>> [accessed 24 January 2020].

revenue authorities wanting to tackle tax dodging and on society at large which is footing the bill for missing tax revenues from mobile and international activity.

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 (as we have pointed out in our "Creeping Futility"- Report from March 2012⁵³⁹). 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. As we have argued in our policy paper (esp. page 25),⁵⁴⁰ this distortion creates 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),⁵⁴¹ 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 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 poorer 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 KFSI 18). 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

⁵³⁹ See the full report here: Meinzer, Markus, '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', 14 March 2012 <<https://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html>> [accessed 24 January 2020].

⁵⁴⁰ Meinzer, Markus, 'Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries'.

⁵⁴¹ Nicholas Shaxson, *Treasure Islands: Tax Havens and the Men Who Stole the World*.

registries of the beneficial owners of companies, trusts and foundations are an important pillar of such a system.

Yet, while jurisdictions may now become party to the OECD's Common Reporting Standard (CRS) for Automatic Exchange of Information (AEOI), many loopholes and obstacles for the inclusion of developing countries have been identified.⁵⁴² Therefore, the upon request standard will be the only mechanism whereby some countries can obtain at least some information. Moreover, even countries able to implement AEOI 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.

As for the expansion of the 'upon request' information exchange network, the most cost efficient and quickest way for (developing) 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 a multilateral framework, weaker jurisdictions are likely to remain excluded from the benefits of exchange relationships,⁵⁴³ most of which flow from the collective bargaining clout of a large group of nations. Instead of incurring high costs and facing risks 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.

For this reason, we argue that bilateralism does not and cannot tackle the issue of information exchange in an effective and efficient manner. Accordingly, a jurisdiction that participates in the Tax Convention is given a zero secrecy score. This Tax Convention is open to all countries, not just OECD or European ones. The Amending Protocol entered into force on 1

⁵⁴² Knobel, Andres, 'OECD's Handbook for Implementation of the CRS: TJN's Preliminary Observations' (2015) <<http://www.taxjustice.net/wp-content/uploads/2013/04/OECD-CRS-Implementation-Handbook-FINAL.pdf>> [accessed 24 January 2020]. 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, Andres, *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*..

⁵⁴³ Alex Cobham, 'OECD Country-by-Country Reporting: Only for the Strong?', *Uncounted*, 2015 <<http://uncounted.org/2015/09/14/oecd-country-by-country-reporting-only-for-the-strong/>> [accessed 24 January 2020].

June 2011.⁵⁴⁴ Any jurisdiction not wishing to participate in the Tax Convention, possibly because of suspicion of OECD's dominance,⁵⁴⁵ has to be measured nonetheless by its commensurate engagement in information exchange relationships by other means (e.g. bilateral TIEAs or DTAs with exchange clauses). That is why 108 effective bilateral exchange relationships is the bar for any jurisdiction which has not ratified the Tax Convention.

This number is far higher than the original number of twelve exchange relationships which the OECD announced in April 2009 as the threshold for removal from 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 twelve agreements, often negotiating agreements among themselves, the OECD created a 'white list' of secrecy jurisdictions⁵⁴⁶ which offered some form of official endorsement from the OECD itself.

All underlying data and sources relative to specific jurisdictions can be accessed freely on the [Financial Secrecy Index database](#) (IDs 309 and 143).

⁵⁴⁴ OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters'.

⁵⁴⁵ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010'.

⁵⁴⁶ OECD, *Promoting Transparency and Exchange of Information for Tax Purposes*, 19 January 2010 <<http://www.oecd.org/newsroom/44431965.pdf>>.

3.20 KFSI 20 – International Legal Cooperation

3.20.1 What is measured?

KFSI 20 measures the extent to which a jurisdiction participates in international transparency commitments⁵⁴⁷ 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 KFSI 20. The Secrecy Scoring Matrix is shown in Table 20.1 below, and full details of the assessment logic can be found in Annex B.

Component I: International Transparency Commitments (50 points)

In the case of the 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 subcomponents⁵⁴⁸, a failure to ratify the relevant international legal instruments results in a secrecy score of 10 points for each, which are simply added to result in the component's secrecy score.

Subcomponent 1: The Tax Convention 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”⁵⁴⁹. The 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

⁵⁴⁷ Signature alone is insufficient, ratification is required.

⁵⁴⁸ As of FSI 2018, we do not include as a sub-component the [Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#).⁵⁴⁸ This is because by 2018, the convention had already been ratified by all FSI assessed jurisdictions.

⁵⁴⁹ <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>; 28.01.2020.

upon request information exchange. A detailed analysis of this Tax Convention can be found here.⁵⁵⁰

Subcomponent 2: The 2003 UN Convention against Corruption (UNCAC) aims to promote the prevention, detection and sanctioning of corruption, as well as cooperation between State Parties on these matters⁵⁵¹. Relevant provisions include the prohibition of tax deductibility of bribe payments (Art. 14, Para. 4), a requirement to include bribery within the context of an effective anti-money laundering framework (Art. 23 and 52), and to rule out bank secrecy as a reason to object against investigations in relation to bribery (Art. 40).

Subcomponent 2: The 2003 UN Convention against Corruption (UNCAC) aims to promote the prevention, detection and sanctioning of corruption, as well as cooperation between State Parties on these matters⁵⁵². Relevant provisions include the prohibition of tax deductibility of bribe payments (Art. 14, Para. 4), a requirement to include bribery within the context of an effective anti-money laundering framework (Art. 23 and 52), and to rule out bank secrecy as a reason to object against investigations in relation to bribery (Art. 40).

⁵⁵⁰ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010', 2012
<<http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>> [accessed 24 January 2020].

⁵⁵¹ The official site of the convention is here:
<http://www.unodc.org/unodc/en/treaties/CAC/index.html>; 28.01.2020. A succinct summary of the convention's measures can be found here:
<http://www.uncaccoalition.org/about-the-uncac>; 28.01.2020.

⁵⁵² The official site of the convention is here:
<http://www.unodc.org/unodc/en/treaties/CAC/index.html>; 28.01.2020. A succinct summary of the convention's measures can be found here:
<http://www.uncaccoalition.org/about-the-uncac>; 28.01.2020.

Table 20.1: Secrecy Scoring Matrix KFSI 20

Regulation	Secrecy Score Assessment (Sum; 100 points= full secrecy; 0 points = full transparency)
Component I: International transparency commitments (50 points)	
(1) <u>Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters</u> ⁵⁵³ ("Tax Convention")	12.5
(2) <u>2003 UN Convention against Corruption (UNCAC)</u> ⁵⁵⁴	12.5
(3) <u>1999 UN International Convention for the Suppression of the Financing of Terrorism</u> ⁵⁵⁵	12.5
(4) <u>2000 UN Convention against Transnational Organised Crime</u> ⁵⁵⁶	12.5

⁵⁵³ <http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>; 27.01.2020.

⁵⁵⁴ <http://www.unodc.org/unodc/en/treaties/CAC/index.html>; 28.01.2020.

⁵⁵⁵ <http://www.un.org/law/cod/finterr.htm>; 27.01.2020.

⁵⁵⁶ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>; 28.01.2020.

Component II: 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 37)?	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

All underlying data can be accessed freely in the [Financial Secrecy Index database](#) (IDs 33, 35, 36, 309 – 314 and 469)

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.⁵⁵⁷

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

⁵⁵⁷<http://www.un.org/law/cod/finterr.htm>; 27.01.2020.

promotion of training and technical assistance for building or upgrading the capacity of national authorities.⁵⁵⁸

The United Nations Treaty Collection served as a source for all three UN conventions.⁵⁵⁹ A chart of the signatures and ratifications of the Tax Convention can be found on the OECD website.⁵⁶⁰

Component II: International Judicial Cooperation (50 points)

The second component of KFSI 20 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) recommendations⁵⁶¹ 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 KFSI 17 on Anti-Money Laundering.⁵⁶²

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

⁵⁵⁸ <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>; 28.01.2020.

⁵⁵⁹ <https://treaties.un.org/>; 28/01.2020. The specific source for each jurisdiction and convention can be found in the corresponding database report for each jurisdiction, here: <http://www.financialsecrecyindex.com/database/>.

⁵⁶⁰ https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 28.01.2020.

⁵⁶¹ The (new) 2013/2017 recommendations and corresponding methodology to assess compliance can be viewed at: <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>; 28.01.2020. The (old) 2003 recommendations can be viewed at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf>; 28.01.2020. The 2003 recommendations include 40 recommendations and 9 special recommendations on terrorist financing, and referred to jointly as the FATF Recommendations. For the methodology for assessing compliance with the FATF Recommendations, see: <http://www.fatf-gafi.org/topics/fatfrecommendations/documents/methodologyforassessingcompliancewiththefatf40recommendationsandfatf9specialrecommendations.html>; 28.01.2020.

⁵⁶² <http://www.financialsecrecyindex.com/PDF/17-Anti-Money-Laundering.pdf>; 21.7.2017.

content of the old recommendations. We provide a quick comparison of the main content of the new and the old recommendation below.

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 FSI 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.⁵⁶³

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 36⁵⁶⁴ 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 37⁵⁶⁵ (formerly old recommendation 36 combined with old special recommendation 5) exhorts countries to

⁵⁶³ In order to keep the measurement in line with KFSI 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.

⁵⁶⁴ Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10.

⁵⁶⁵ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT*

“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 [...]”.

Subcomponent 2: Old recommendation 37⁵⁶⁶ 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 KFSI 17 on Anti-Money Laundering.⁵⁶⁷

Subcomponent 3: Old recommendation 38⁵⁶⁸ 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

Systems, 2017, 27–28 <www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf> [accessed 28 January 2020]. While old recommendation 37 was officially omitted, most of its content was merged to new recommendation 37.

⁵⁶⁶ Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10.

⁵⁶⁷ <http://www.financialsecrecyindex.com/PDF/17-Anti-Money-Laundering.pdf>; 21.7.2017.

⁵⁶⁸ Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10.

arrangements in place for coordinated action and sharing of confiscated assets.

New recommendation 38⁵⁶⁹ (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 39⁵⁷⁰ 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 39⁵⁷¹ (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 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 40⁵⁷² 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”.

⁵⁶⁹ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 28.

⁵⁷⁰ Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 10–11.

⁵⁷¹ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 29.

⁵⁷² Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations.*, 11.

New recommendation 40⁵⁷³ (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. Against this background, it is 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 to 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.⁵⁷⁴

⁵⁷³ Financial Action Task Force (FATF), *Methodology For Assessing Technical Compliance With The FATF Recommendations And The Effectiveness Of AML/CFT Systems*, 29–30.

⁵⁷⁴ <http://www.uncaccoalition.org/uncac-review/uncac-review-mechanism>; 28.01.2020.

Regarding the second component of KFSI 20, i.e. 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."⁵⁷⁵

Compliance with old recommendations 36 through 40, and with new recommendations 37 through 40 and IO 2, respectively, can be seen as indicators of the minimum threshold of judicial cooperation required to take part in the international financial system.

All underlying data can be accessed freely in the [Financial Secrecy Index database](#). To see the sources we are using for particular jurisdictions please consult the assessment logic in Annex B and search for the corresponding info IDs (**IDs 33, 35, 36, 309 – 314 and 469**) in the database report of the respective jurisdiction.

⁵⁷⁵ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes*, 66.

4. Quantitative component: Global Scale Weights

The second component of the FSI 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 build on a methodology pioneered at the IMF⁵⁷⁶ to extrapolate from stock measures in order to generate flow estimates. 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 GSWs are combined with SSs to form the Financial Secrecy Index in Section 5.

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)⁵⁷⁷, which provides, for each jurisdiction, data on exports of financial services. For this edition of the GSW, we use data for 2018 which is the most recent year included in the dataset as of 1 November 2019. The IMF BOPS cover 179 jurisdictions for exports of financial services, of which 142 had already reported the data for 2018 when we accessed the database. Of these 142, 94 are included in FSI 2020 and for these jurisdictions we thus use, in the first step, their 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 4 further steps which are summarized in Table 4-B. In each step of the extrapolation, we use different data on variables that are highly correlated with exports of financial

⁵⁷⁶ Ahmed Zoromé, *Concept of Offshore Financial Centers: In Search of an Operational Definition*, IMF Working Paper (Washington DC, USA, 2007) <<http://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf>> [accessed 31 January 2020].

⁵⁷⁷ The BOPS data was downloaded on 1 November 2019 from <http://data.imf.org/BOPS>

services. We report the correlation coefficients for these variables in Table 4-B and discuss the choice of these variables below.

After using reported data on exports of financial services for 2018 (for the 94 jurisdictions where this is available) in Step 1, we proceed to step 2 in which we extrapolate from reported data on exports of financial services in the IMF BOPS for the year 2017. There are 11 jurisdictions assessed in the FSI 2020 for which data on exports of financial services is not yet available for 2018 but it is available for 2017 – and we thus extrapolate from that, using an ordinary least squares regression with 1 497 observations and an R-squared of 0.992. The resulting extrapolation coefficient (i.e. the number by which we multiply the 2017 value of exports of financial services to derive an extrapolated 2018 value of exports of financial services) is 1.0258.

In step 3, we use the same procedure as above in Step 2, but using data on inward assets which we source from the International Investment Position (IIP) statistic which is part of the IMF BOPS. This data is filtered (again following Zoromé 2007) to exclude foreign direct investment, reserve assets, and all assets belonging to general government and monetary authorities. We run the regression with 1 464 observations and an R-squared of 0.839, resulting in an extrapolation coefficient of 0.0036.

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).⁵⁷⁸ The CPIS data for 2018 covers 83 jurisdictions for total portfolio assets, and 234 jurisdictions for total portfolio liabilities, which are derived from data on outward assets that are reported by other countries. Using the inward assets data, we extrapolate the value of exports of financial services for additional 6 jurisdictions, and for the remaining 18 jurisdictions, we extrapolate from derived liabilities data. All 5 steps are summarized in Table 4-A.

⁵⁷⁸ The CPIS data was downloaded on 1 November 2019 from <http://data.imf.org/CPIS>

Table 4-A: Summary of the 5-step extrapolation for the exports of financial services

Data source	No. of jurisdictions assessed in FSI 2020	All	No. of observations	R ²	Extrapolation coefficient
(1) Reported exports of financial services data, 2018 (BXSOFI_BP6_USD, IMF BoP)	94	142			
(2) Extrapolated from exports of financial services data, 2017 (BXSOFI_BP6_USD, IMF BoP)	11	165	1 497	0.992	1.0257543
(3) Extrapolated from asset data, 2018 (IA_BP6_USD, IMF BoP)	6	128	1 464	0.839	0.0036040
(4) Extrapolated from asset data, 2018 (I_A_T_T_USD_BP6_USD, IMF CPIS)	6	83	784	0.774	0.0102399
(5) Extrapolated from derived liability data, 2018 (I_L_T_T_T_BP6_DV_USD, IMF CPIS)	18	234	1 624	0.793	0.0114527
TOTAL	133				

Source: Authors

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-B, the correlation coefficients are very high. In step 2, using previous year's data is a straightforward choice, as exports of financial services are highly autocorrelated. In steps 3 and 4, we use data on portfolio assets (from IMF BOPS, i.e. in step 3, to arrive at portfolio assets, we filter the asset data following Zoromé (2007), while in IMF CPIS, portfolio assets are directly reported). The reason is that we believe that the value of inward portfolio assets (i.e. 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. In step 5, we use data on jurisdictions' portfolio liabilities, i.e. 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-known⁵⁷⁹ and TJN has made some critical comments on this approach⁵⁸⁰, we use this data in the fifth step despite these limitations due to its wide coverage which includes all 18 remaining jurisdictions that are assessed in FSI 2020.

Table 4-B: Correlation coefficients matrix for data sources from which we extrapolate in case data on exports of financial services for 2018 is not available. N=1 272

	(1)	(2)	(3)	(4)	(5)
(1) Exports of financial services, 2018 (IMF BOPS)	1				
(2) Exports of financial services, 2017 (IMF BOPS)	0.996	1			
(3) Inward assets, 2018 (IMF BOPS)	0.912	0.906	1		
(4) Inward assets, 2018 (IMF CPIS)	0.879	0.869	0.953	1	
(5) Outward derived liabilities, 2018 (IMF CPIS)	0.889	0.883	0.950	0.967	1

Source: Authors.

In total, we obtain data on exports of financial services (true or extrapolated) for 239 jurisdictions in the total amount of a little over USD 524 billion. Of this, the 133 jurisdictions assessed in FSI 2020 cover 99.83% (for comparison, the 112 jurisdictions covered by FSI 2018 accounted for 99.33% of the global total).

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:

$$GSW_i = \frac{\text{Exports of financial services (true or extrapolated)}_i}{\text{Sum of global exports of financial services (true or extrapolated)}}$$

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

⁵⁷⁹ 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), 1321–1364.

⁵⁸⁰ www.taxjustice.net/wp-content/uploads/2014/06/The-Price-of-Offshore-Revisited-notes-2014.pdf; accessed 31 January 2020.

contribute to the global problem of financial secrecy, *if* secrecy is chosen in the range of policy areas discussed above. The higher the global scale weight of a given jurisdiction, the greater the risk posed to others if secrecy is chose, and so the greater its responsibility to be transparent.

It is then only in the subsequent step described in Section 5, where these global scale weights are combined with the secrecy scores, that we create a Financial Secrecy Index 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.⁵⁸¹ 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 literature⁵⁸² 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

⁵⁸¹ 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 on pages 50-51 of 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), 149-170.

⁵⁸² See, for example, Maria E. De Boyrie, Simon J. Pak and John S. Zdanowicz, 'Estimating the Magnitude of Capital Flight Due to Abnormal Pricing in International Trade: The Russia-USA Case', *Accounting Forum*, 29/3 (2005), 249-270; R. W. Baker, *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System*; 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), 149-170; Dev Kar and Sarah Freitas, *Illicit Financial Flows from Developing Countries: 2001-2010. A December 2012 Report from Global Financial Integrity* (Washington, DC, 2012).

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.

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 accounting⁵⁸³. This is a potentially fruitful research agenda, in which early work suggests there may be consistent patterns of activity.⁵⁸⁴

⁵⁸³ <http://www.taxjustice.net/2017/04/03/panama-papers-big-players/>; accessed 31 January 2020.

⁵⁸⁴ Moran Harari, Markus Meinzer and Richard Murphy, 'Key Data Reports 4: Number of Banks and the Big 4 Firms of Accountants' (2012).

5. The FSI – 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 FSI's core objective (stated above): the FSI measures a jurisdiction's contribution to global financial secrecy in a way that highlights harmful secrecy regulations. By doing so, the FSI 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 FSI 2020, we use the same formula as in the previous editions of the FSI. The formula that defines the FSI 2020 for jurisdiction i thus looks as follows:

$$FSI\ 2020_i = Secrecy\ Score_i^3 * \sqrt[3]{Global\ Scale\ Weight_i}$$

Therefore, in line with the core objective of the FSI, 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 has 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-A, which shows the histograms of both distributions. We recognize three main problems.

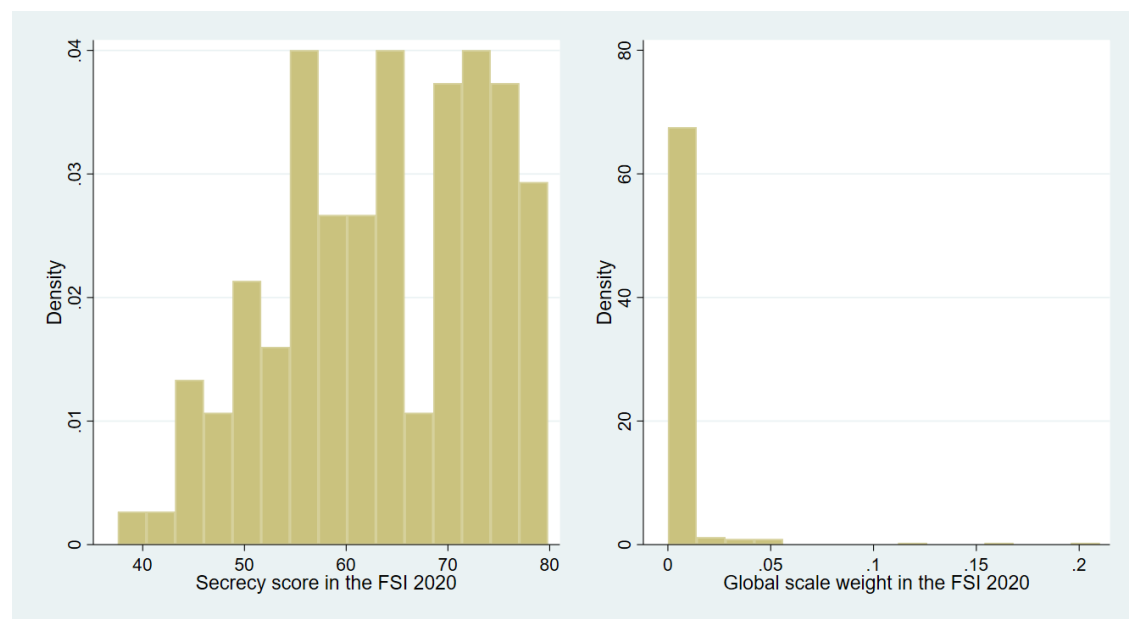
First, both the theoretical and empirical ranges of both variables are fundamentally different. While secrecy scores range theoretically from 0 to 100 and empirically, in FSI 2020, from 33.55 to 79.83, global scale weights range theoretically from 0 to 0.9983 (because, as described in the previous chapter, the 133 jurisdictions considered for the FSI 2020 cover 99.83% of

all global exports of financial services) and empirically from $4 * 10^{(-8)}$ (St. Lucia) to 0.2137 (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 98% and thus would tell a story driven almost entirely by the GSW.

Third, while the global scale weights are constrained to sum up to 0.9983, the secrecy scores are not constrained nor from above nor below.⁵⁸⁵

Figure 5-A: Histograms of secrecy score and global scale weights



Source: Authors.

After careful consideration of several alternatives to combine SS and GSW, we prefer the cubed formula because of its specific characteristics that were highlighted by the Joint Research Centre of the European Commission in their statistical audit of FSI 2018⁵⁸⁶:

⁵⁸⁵ Obviously, the secrecy scores could, in theory, sum up to the minimum of 0 and a maximum of $133 * 100 = 13,300$, 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 previously defined methodology, the methodology to construct the individual components of the secrecy scores would have been changed in the first place.

⁵⁸⁶ William Becker and Michaela Saisana, 'The JRC Statistical Audit of the Financial Secrecy Index 2018' (2018).

"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 FSI 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 SS 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 2020 can be considered as the total amount of financial secrecy supplied in the world, the constructed shares will represent each jurisdiction's contribution, in percentage terms, to global financial secrecy. This contribution to global financial secrecy, CGFS, of jurisdiction i is thus defined as follows:

$$CGFS_i = \frac{FSI_i}{\sum_{i=1}^{133} FSI_i} * 100\%$$

We present the results of the FSI 2020 in four parts: secrecy scores, global scale weights, financial secrecy index value, and the contribution to financial secrecy. The full results for all 133 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 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.⁵⁸⁷ 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 22.26% (or 6.33% 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 KFSIs 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 94.75 and the UK's network would top the FSI by a very large margin with a FSI value of 5 156.1 (or 3 389.7 excluding the UK).

Second, we could use the highest secrecy score of any of these jurisdictions, 78.3 (for Brunei), to arrive at an FSI of 2 909.5 (or 1 912.8 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 70.88 (or 72.06 excluding the UK), resulting in an FSI of 2 158.3 (or 1 490.9 excluding the UK), putting the whole group again at first place.

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 54.17 (74.25 excluding the UK), resulting in an FSI of 963.4 (or 1 631 excluding the UK), putting the whole group at fifth place (or first excluding the UK).

⁵⁸⁷ www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf

**For further information please
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The full references for each jurisdiction are provided in the database report of each jurisdiction. Online news articles and website sources are referenced separately for each info-ID in the database report. The full bibliography for each database report including academic articles, books, reports by international organisations, law firms or others, can be found in the section "References" of each database report. All database reports can be accessed under www.financialsecrecyindex.com/database

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Annexes

Annex A: FSI 2020 - Ranking of 133 Jurisdictions

Rank	Jurisdiction ¹	ISO-3	ISO-2	FSI Value	FSI Share	Secrecy Score	Global Scale Weight
1	Cayman Islands	CYM	KY	1575.19	4.62%	76.08	4.58%
2	United States	USA	US	1486.96	4.36%	62.89	21.37%
3	Switzerland	CHE	CH	1402.10	4.11%	74.05	4.12%
4	Hong Kong	HKG	HK	1035.29	3.04%	66.38	4.44%
5	Singapore	SGP	SG	1022.12	3.00%	64.98	5.17%
6	Luxembourg	LUX	LU	849.36	2.49%	55.45	12.36%
7	Japan	JPN	JP	695.59	2.04%	62.85	2.20%
8	Netherlands	NLD	NL	682.20	2.00%	67.40	1.11%
9	British Virgin Islands	VGB	VG	619.14	1.82%	71.30	0.50%
10	United Arab Emirates	ARE	AE	605.20	1.78%	77.93	0.21%
11	Guernsey	GGY	GG	564.56	1.66%	70.65	0.41%
12	United Kingdom	GBR	GB	534.65	1.57%	46.20	15.94%
13	Taiwan	TWN	TW	507.57	1.49%	65.50	0.59%
14	Germany	DEU	DE	499.72	1.47%	51.73	4.71%
15	Panama	PAN	PA	479.51	1.41%	71.88	0.22%
16	Jersey	JEY	JE	466.81	1.37%	65.53	0.46%
17	Thailand	THA	TH	448.86	1.32%	73.25	0.15%
18	Malta	MLT	MT	442.20	1.30%	61.75	0.66%
19	Canada	CAN	CA	438.38	1.29%	55.84	1.60%
20	Qatar	QAT	QA	433.05	1.27%	77.00	0.09%
21	South Korea	KOR	KR	411.06	1.21%	61.58	0.55%
22	Bahamas	BHS	BS	407.28	1.20%	75.38	0.09%
23	Algeria	DZA	DZ	400.56	1.18%	79.63	0.05%
24	Kenya	KEN	KE	398.19	1.17%	75.95	0.08%
25	China	CHN	CN	397.25	1.17%	59.85	0.64%
26	Lebanon	LBN	LB	385.52	1.13%	63.98	0.32%
27	Cyprus	CYP	CY	383.38	1.12%	61.08	0.48%
28	Kuwait	KWT	KW	369.17	1.08%	70.58	0.12%
29	Ireland	IRL	IE	363.80	1.07%	48.15	3.46%
30	Gibraltar	GIB	GI	359.89	1.06%	69.48	0.12%
31	Macao	MAC	MO	356.53	1.05%	65.00	0.22%
32	Malaysia	MYS	MY	352.69	1.03%	69.53	0.12%
33	France	FRA	FR	350.53	1.03%	49.90	2.25%
34	Nigeria	NGA	NG	348.53	1.02%	70.15	0.10%
35	Angola	AGO	AO	345.45	1.01%	79.73	0.03%
36	Austria	AUT	AT	317.00	0.93%	56.50	0.54%
37	Vietnam	VNM	VN	299.30	0.88%	74.33	0.04%
38	Israel	ISR	IL	291.49	0.86%	58.68	0.30%
39	Sri Lanka	LKA	LK	290.64	0.85%	72.18	0.05%
40	Bermuda	BMU	BM	289.07	0.85%	72.73	0.04%

Rank	Jurisdiction ¹	ISO-3	ISO-2	FSI Value	FSI Share	Secrecy Score	Global Scale Weight
41	Italy	ITA	IT	287.80	0.84%	50.38	1.14%
42	Jordan	JOR	JO	260.39	0.76%	78.30	0.02%
43	Russia	RUS	RU	258.38	0.76%	57.20	0.26%
44	Isle of Man	IMN	IM	258.34	0.76%	64.68	0.09%
45	Saudi Arabia	SAU	SA	245.47	0.72%	66.68	0.06%
46	Egypt	EGY	EG	241.93	0.71%	71.38	0.03%
47	India	IND	IN	238.68	0.70%	47.84	1.04%
48	Australia	AUS	AU	238.07	0.70%	50.09	0.68%
49	Marshall Islands	MHL	MH	236.43	0.69%	70.10	0.03%
50	Belgium	BEL	BE	236.21	0.69%	45.05	1.72%
51	Mauritius	MUS	MU	234.59	0.69%	71.40	0.03%
52	Turkey	TUR	TR	231.46	0.68%	60.00	0.12%
53	Liechtenstein	LIE	LI	229.68	0.67%	74.98	0.02%
54	Cameroon	CMR	CM	229.23	0.67%	71.48	0.02%
55	Bangladesh	BGD	BD	228.79	0.67%	72.73	0.02%
56	Romania	ROU	RO	224.13	0.66%	62.63	0.08%
57	New Zealand	NZL	NZ	219.00	0.64%	59.20	0.12%
58	South Africa	ZAF	ZA	218.59	0.64%	56.24	0.19%
59	Poland	POL	PL	212.10	0.62%	55.55	0.19%
60	Philippines	PHL	PH	201.18	0.59%	62.85	0.05%
61	Venezuela	VEN	VE	197.00	0.58%	69.03	0.02%
62	Anguilla	AIA	AI	192.99	0.57%	78.20	0.01%
63	Barbados	BRB	BB	192.86	0.57%	74.00	0.01%
64	Sweden	SWE	SE	182.86	0.54%	45.65	0.71%
65	Latvia	LVA	LV	182.83	0.54%	59.13	0.07%
66	Puerto Rico	PRI	PR	171.76	0.50%	76.43	0.01%
67	Spain	ESP	ES	164.30	0.48%	43.95	0.72%
68	Czechia	CZE	CZ	163.30	0.48%	55.40	0.09%
69	St. Kitts and Nevis	KNA	KN	162.25	0.48%	75.18	0.01%
70	Guatemala	GTM	GT	162.15	0.48%	73.50	0.01%
71	Ukraine	UKR	UA	160.45	0.47%	64.90	0.02%
72	Norway	NOR	NO	157.88	0.46%	44.30	0.60%
73	Morocco	MAR	MA	157.49	0.46%	67.75	0.01%
74	Brazil	BRA	BR	157.21	0.46%	51.68	0.15%
75	Maldives	MDV	MV	155.39	0.46%	79.83	0.00%
76	Hungary	HUN	HU	151.52	0.44%	53.80	0.09%
77	Portugal	PRT	PT	151.18	0.44%	54.03	0.09%
78	Tunisia	TUN	TN	147.48	0.43%	66.48	0.01%
79	Indonesia	IDN	ID	143.84	0.42%	51.08	0.13%
80	Mexico	MEX	MX	139.81	0.41%	52.75	0.09%
81	Bahrain	BHR	BH	137.99	0.40%	62.40	0.02%
82	Chile	CHL	CL	135.12	0.40%	55.79	0.05%
83	Costa Rica	CRI	CR	132.24	0.39%	62.33	0.02%
84	Iceland	ISL	IS	129.31	0.38%	57.38	0.03%

Rank	Jurisdiction ¹	ISO-3	ISO-2	FSI Value	FSI Share	Secrecy Score	Global Scale Weight
85	El Salvador	SLV	SV	123.12	0.36%	64.10	0.01%
86	Samoa	WSM	WS	120.86	0.35%	74.63	0.00%
87	Finland	FIN	FI	119.34	0.35%	52.13	0.06%
88	Paraguay	PRY	PY	117.59	0.35%	77.45	0.00%
89	US Virgin Islands	VIR	VI	117.03	0.34%	73.89	0.00%
90	Uruguay	URY	UY	115.47	0.34%	57.00	0.02%
91	Bolivia	BOL	BO	114.74	0.34%	79.10	0.00%
92	Turks and Caicos Islands	TCA	TC	114.32	0.34%	77.83	0.00%
93	Croatia	HRV	HR	112.33	0.33%	55.08	0.03%
94	Argentina	ARG	AR	109.37	0.32%	54.98	0.03%
95	Seychelles	SYC	SC	108.53	0.32%	70.44	0.00%
96	Curacao	CUW	CW	103.60	0.30%	74.85	0.00%
97	Denmark	DNK	DK	103.52	0.30%	45.33	0.14%
98	Tanzania	TZA	TZ	100.62	0.30%	70.78	0.00%
99	Rwanda	RWA	RW	100.47	0.29%	63.00	0.01%
100	Pakistan	PAK	PK	97.92	0.29%	55.05	0.02%
101	Peru	PER	PE	96.18	0.28%	57.00	0.01%
102	Colombia	COL	CO	92.25	0.27%	56.48	0.01%
103	Greece	GRC	GR	91.65	0.27%	51.48	0.03%
104	Slovakia	SVK	SK	91.29	0.27%	50.93	0.03%
105	Lithuania	LTU	LT	89.83	0.26%	50.30	0.04%
106	Vanuatu	VUT	VU	88.59	0.26%	76.30	0.00%
107	Dominican Republic	DOM	DO	86.68	0.25%	58.73	0.01%
108	Kazakhstan	KAZ	KZ	82.30	0.24%	64.48	0.00%
109	Monaco	MCO	MC	79.90	0.23%	70.30	0.00%
110	Belize	BLZ	BZ	78.07	0.23%	73.93	0.00%
111	Liberia	LBR	LR	77.59	0.23%	78.24	0.00%
112	Aruba	ABW	AW	76.65	0.22%	73.28	0.00%
113	Botswana	BWA	BW	58.37	0.17%	62.24	0.00%
114	St. Vincent and the Grenadines	VCT	VC	57.72	0.17%	65.65	0.00%
115	Bulgaria	BGR	BG	57.53	0.17%	49.45	0.01%
116	North Macedonia	MKD	MK	54.86	0.16%	64.05	0.00%
117	Ghana	GHA	GH	54.47	0.16%	51.70	0.01%
118	Dominica	DMA	DM	53.75	0.16%	73.65	0.00%
119	Montenegro	MNE	ME	53.65	0.16%	60.03	0.00%
120	Ecuador	ECU	EC	50.66	0.15%	47.21	0.01%
121	Estonia	EST	EE	46.03	0.14%	43.05	0.02%
122	Antigua and Barbuda	ATG	AG	39.05	0.11%	76.08	0.00%
123	Andorra	ADO	AD	38.84	0.11%	58.33	0.00%
124	Gambia	GMB	GM	37.72	0.11%	74.88	0.00%
125	Brunei	BRN	BN	34.62	0.10%	78.30	0.00%
126	Grenada	GRD	GD	34.56	0.10%	70.55	0.00%
127	Trinidad and Tobago	TTO	TT	29.63	0.09%	64.65	0.00%

Rank	Jurisdiction ¹	ISO-3	ISO-2	FSI Value	FSI Share	Secrecy Score	Global Scale Weight
128	Slovenia	SVN	SI	27.48	0.08%	37.55	0.01%
129	San Marino	SMR	SM	20.82	0.06%	60.45	0.00%
130	Montserrat	MSR	MS	15.43	0.05%	74.60	0.00%
131	Nauru	NRU	NR	13.79	0.04%	59.95	0.00%
132	St. Lucia	LCA	LC	12.25	0.04%	71.03	0.00%
133	Cook Islands	COK	CK	12.09	0.04%	70.30	0.00%

Footnote 1: The territories marked in dark grey are Overseas Territories (OTs) and Crown Dependencies (CDs) where 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 (see here for more details: www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf). Territories marked in light grey are British Commonwealth territories which are not OTs or CDs but whose final court of appeal is the Judicial Committee of the Privy Council in London (see here for more details: http://www.taxjustice.net/cms/upload/pdf/Privy_Council_and_Secrecy_Scores.pdf).

To compute an FSI for the entire group of OTs and CDs (or also including the UK), 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 22.26% (or 6.3% excluding the UK). To combine the Secrecy Scores, we see at least four relevant options. Three of the four options result in the UK and its satellite network of secrecy jurisdictions to top the FSI by a large margin (read more in Section 5 above). Note that our list excludes many British Commonwealth realms where the Queen remains head of state.

Annex B: Assessment Logic of 20 KFSIs, all details**Table I: Assessment Logic KFSI 1 – Banking Secrecy**

Info_ID	Text_Info_ID	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
89	Are banks and/or other covered entities required to report large transactions in currency or other monetary instruments to designated authorities?	Y/N	20 points if N, or -2
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

Table II: Assessment Logic KFSI 2 – Trusts and Foundations Register

Info_ID	Text_Info_ID	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 assessment matrix in KFSI 2, table 1 (see FSI-methodology or KFSI 2 paper). 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).	
234	Are Private Foundations available?	YN	Integrated assessment of private foundations as per assessment matrix in KFSI 2, table
236	Foundations: Is any formal registration required at all?	YN	

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
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.	2.1. (see above). 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.
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.	
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	YN	

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	(e.g. founders, council members, etc.) that have to be registered?		
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	

Table III: Assessment Logic KFSI 3 – Recorded Company Ownership

Info ID	Text_Info_ID	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 assessment matrix in KFSI 3, Table 1 (see FSI-methodology or KFSI 3 paper). 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.	
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').	

Info ID	Text_Info_ID	Answers	Valuation Secrecy Score
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.	
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.	

Table IV: Assessment Logic KFSI 4 – Other Wealth Ownership

Info_ID	Text_Info_ID	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; 4: OPEN: Yes, there is a central registry of real estate available online for free & in open data format.	Integrated assessment of BO and LO as per assessment matrix in KFSI 4, Table 1 (see FSI-methodology or KFSI 4 paper). If all beneficial and legal owners are always registered and updated with all details, and

Info_ID	Text_Info_ID	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 10 EUR/GBP/USD)?	0: No, information on legal owners is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, legal ownership is always available but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, legal ownership is always available for free but not in open data format; 3: OPEN: Yes, legal ownership is always available for free & in open data format.	made available online in open data format, then zero secrecy score. If not even legal owners are always registered, or incomplete, or not updated, 50 secrecy score.
487	Is beneficial ownership information of real estate available on public online record (up to 10 EUR/GBP/USD)?	0: No, beneficial ownership not always available online (up to 10 EUR/GBP/USD); 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 10 EUR/GBP/USD; 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 not in open data format; 3: OPEN: Yes, beneficial ownership (with the exception of real estate where the beneficial owner actually resides, if applicable) is always available for free & in open data format.	Eight intermediate scores for partial compliance.
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)
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	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	0: 50; 1: 37.5; 2: 25; 3: 0

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	respective countries of residence of the owners?	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.	

Table V: Assessment Logic KFSI 5 – Limited Partnership Transparency

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
269	Available Types: Partnerships with Limited Liability?	YN	If answer is No: 0 points of secrecy score; otherwise see below
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 assessment matrix in KFSI 5, Table 1 (see FSI-methodology or KFSI 5 paper). If all beneficial owners and all legal owners are always registered and updated with all details and made available in open data 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 10 EUR/GBP/USD, 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?	YN	
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.	

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
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.	
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 10 EUR/GBP/USD); 1: COST: Yes, information on partners/legal owners is always available but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, information on partners/legal owners is always available for free, but not in open data format; 3: OPEN: Yes, information on partners/legal owners is always available for free & in open data format.	
482	BO: Are partners' beneficial owners available on a public online record (up to 10 €/US\$/GBP)?	0: No, information on partners' beneficial owners is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, beneficial ownership information about all partners is always online, but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, beneficial ownership information about all partners is always available online for free, but not in open data format; 3: OPEN: Yes, beneficial ownership information about all partners is always available online for free & in open data format.	
272	Is there an obligation to keep accounting data?	YN	0: 50 points; only if answers re accounting data and submission are not "no": (1: 25 points;
273	Are annual accounts submitted to a public authority?	YN	

Info_ID	Text_Info_ID	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 10 €/US\$/GBP)?	0: No, annual accounts are not always online (up to 10 EUR/GBP/USD); 1: COST: Yes, annual accounts are always online but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, annual accounts are always online for free, but not in open data format; 3: OPEN: Yes, annual accounts are always available online for free & in open data format.	2: 12.5 points; 3: 0 points).

Table VI: Assessment Logic KFSI 6 – Public Company Ownership

Info_ID	Text_Info_ID	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 assessment matrix in KFSI 6, Table 1 (see FSI-methodology or KFSI 6 paper). If all beneficial owners and all legal owners are always registered and updated with all details and made available for free and in open data 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 10 EUR/GBP/USD, 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.	
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 10 €/US\$/GBP)?	0: No, information on legal owners is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, legal ownership is always available but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, legal ownership is always available for free, but not in open data format; 3: OPEN: Yes, legal ownership is always available for free & in open data format.	
474	BO Online: Are companies' beneficial owners available on a public online record (up to 10 €/US\$/GBP)?	0: No, beneficial ownership is not always available online (up to 10 EUR/GBP/USD); 1: COST: Yes, beneficial ownership is always available but only at a cost of up to 10 EUR/GBP/USD; 2: FREE: Yes, beneficial ownership is always available for free, but not in open data format; 3: OPEN: Yes, beneficial ownership is always available for free & in open data format.	

Table VII: Assessment Logic KFSI 7 – Public Company Accounts

Info_ID	Text_Info_ID	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 10 €/US\$/GBP)?	0: No, company accounts are not always online (up to 10 €/US\$/£); 1: COST: Yes, company accounts are always online but only at a cost of up to 10€/10\$/10£; 2: FREE: Yes, company accounts are always online for free, but not in open data format; 3: OPEN: Yes, company accounts are always online for free & in open data format.	0: 100 1: 50 2: 25 3: 0 (only if answers re accounting data and submission are not "no")

Table VIII: Assessment Logic KFSI 8 – Country-by-Country Reporting

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
318	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 points; 1: 90 points; 2: 75 points; 3: 50 points; 4: zero points.

Table IX: Assessment Logic KFSI 9 – Corporate Tax Disclosure

Info_ID	Text_Info_ID	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.
363	Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions)	0: No; 1: Yes	If components 2 and 3 are assessed (otherwise the

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	available in laws or regulations, or in administrative practice?		scores are doubled here): ID363=1 & ID421=0: 25 points
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: No; 1: SOME FOR FREE: Some unilateral cross-border tax rulings are published online for free; 2: COST: Unilateral cross-border tax rulings are published online only against a cost (irrespective of if all or only some are available online); 3: ALL FOR FREE BUT ANONYMISED: All unilateral cross-border tax rulings are published online for free but without the name of the taxpayer concerned; 4: ALL FOR FREE AND NAMED: All unilateral cross border tax rulings are published online for free, including the name of the taxpayer concerned.	ID363=1 & ID421=2 Or ID363=1 & ID421=1: 18.75 points ID363=1 & ID421=3: 12.5 points ID363=1 & ID421=4: 6.25 points ID363=0: 0 points unless the jurisdiction does not apply income tax (then 25).
561	Mining contracts in law: Are all extractive industries mining contracts required by law to be disclosed?	0: No; 1: Yes	Mining contracts: ID561=0 & ID562=0: 25 points ID561=1 & ID562=0: 22.5 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.	ID561=0 & ID562=1: 15 points ID561=1 & ID562=1: 10 points ID561=0 & ID562=2: 5 points ID561=1 & ID562=2: 0 points

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
563	Petroleum contracts in law: Are all extractive industries petroleum contracts required by law to be disclosed?	0: No; 1: Yes	Petroleum contracts: ID563=0 & ID564=0: 25 points ID563=1 & ID564=0: 22.5 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.	ID563=0 & ID564=1: 15 points ID563=1 & ID564=1: 10 points ID563=0 & ID564=2: 5 points ID563=1 & ID564=2: 0 points

Table X: Assessment Logic KFSI 10 – Legal Entity Identifier

Info_ID	Text_Info_ID	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	0: No; 1: Yes, but only for trading in "Over the Counter" (OTC) derivatives; 2: Yes, but only for some financial market operators	If answer 1 or 2: -25; 3: -50.

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	Board, FSB) mandatory for some financial market operators and/or asset classes?	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.	
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.

Table XI: Assessment Logic KFSI 11 – Tax Administration Capacity

Info_ID	Text_Info_ID	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	0: No; 1: Yes	If 1 (Yes): -12.5

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	Identifier Numbers (TINs) which are mandatory for filing their tax returns?		
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: -10 for each. If both answers are 1: bonus of -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: -10 for each. If both answers are 1: bonus of -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.	

Table XII: Assessment Logic KFSI 12 – Consistent Personal Income Tax

Info_ID	Text_Info_ID	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 only levied 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 KFSI 18), and lax residency- or citizenship-by-investment rules: 100 secrecy score. Three intermediate scores for partial compliance (see Table 12.1: Secrecy Scoring Matrix KFSI 12).
374	*CRS MCAA Voluntary Secrecy: Has the jurisdiction chosen "voluntary secrecy" (listed under the MCAA's Annex A to prevent receiving 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 a prior requirement to spend more than 2 years in the jurisdiction?	YN	

Table XIII: Assessment Logic KFSI 13 – Avoids Promoting Tax Evasion

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy [Secrecy Score: 100 points = full secrecy; 0 points= full transparency]
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.	

Table XIV: Assessment Logic KFSI 14 – Tax Court Secrecy

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
407	Are all court proceedings on criminal tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	ID407<=0 & ID408<=0: 50 points
408	Are all court proceedings on civil tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	ID407<=0 & ID408=1 Or ID407=1 & ID408<=0: 25 points

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
			ID407=1 & ID408=1: 0 points
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 €/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: 25 points 1: 12.5 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: 25 points 1: 12.5 points 2: 0 points

Table XV: Assessment Logic KFSI 15 – Harmful Structures

Info_ID	Text_Info_ID	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

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
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%

Table XVI: Assessment Logic KFSI 16 – Public Statistics

Info_ID	Text_Info_ID	Answers (-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/merchandise 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	YN	If answer Y: 0; otherwise 10

Info_ID	Text_Info_ID	Answers (-2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	fashion online for free through the relevant international organisation?		
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
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, tables A5-A7)?	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

Table XVII: Assessment Logic KFSI 17 – Anti-Money Laundering

Info_ID	Text_Info_ID	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).	<ol style="list-style-type: none"> 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 $y_i = [(x)1+(x)2+...(x)i]$ 6. Overall Non-Compliance Percentage: $[y_i]*100/(i*3)$

Table XVIII: Assessment Logic KFSI 18 – Automatic Information Exchange

Info_ID	Text_Info_ID	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 2018; 2: Signed the MCAA and committed to exchange information in 2017.	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 October 2019?	Number	If number is 100 of possible #co-signatories/relationships: -50 points; otherwise pro rata
372	CRS MCAA Refusal: Has the jurisdiction refused to	YN	+10 points if answer is Yes

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	engage in AEOI with any co-signatory of the MCAA even though that co-signatory complies with domestic law and confidentiality provisions?		
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
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
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	YN	-10 points if answer is Yes

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
	required to report information pursuant to the CRS?		
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

Table XIX: Assessment Logic KFSI 19 – Bilateral Treaties

Info_ID	Text_Info_ID	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: see ID 143
143	Bilateral Treaties for Information Exchange Upon Request: Number of Double Tax Agreements (DTA) or Tax Information Exchange Agreements (TIEAs) with provisions for 2002 OECD-style information exchange?	Number	inverse score of 108

Table XX: Assessment Logic KFSI 20 – International Legal Cooperation

Info_ID	Text_Info_ID	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	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
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

Annex C: Detailed breakdown of results for 20 Key Indicators (KI) of the Financial Secrecy Index

Jurisdiction	ISO 2	KI 1	KI 2	KI 3	KI 4	KI 5	KI 6	KI 7	KI 8	KI 9	KI 10	KI 11	KI 12	KI 13	KI 14	KI 15	KI 16	KI 17	KI 18	KI 19	KI 20	Final SS
Andorra	AD	57	0	65	50	0	100	100	100	87.5	100	75	75	30	100	50	90	35	22	0	30	58.33
United Arab Emirates	AE	47	100	75	100	100	100	100	100	75	100	100	100	100	100	75	80	57	26	0	23.5	77.93
Antigua and Barbuda	AG	74	100	75	50	100	100	100	100	100	100	100	100	100	100	75	70	44	7	0	26.5	76.08
Anguilla	AI	70	100	100	50	100	100	100	100	100	100	100	100	100	100	75	80	41	32	0	16	78.20
Angola	AO	60	25	100	50	100	100	100	100	100	100	75	37.5	100	100	50	70	68	100	100	59	79.73
Argentina	AR	53	25	90	50	100	100	100	100	87.5	100	62.5	0	0	50	25	50	77	0	0	29.5	54.98
Austria	AT	50	62.5	100	100	100	100	50	50	100	75	52.5	0	40	100	75	30	31	0	0	14	56.50
Australia	AU	20	50	100	50	100	100	100	100	93.8	100	40	0	30	25	25	30	38	0	0	0	50.09
Aruba	AW	47	25	100	50	100	100	100	100	100	100	75	100	100	100	50	80	77	26	0	35.5	73.28
Barbados	BB	27	87.5	100	100	100	100	100	100	100	100	62.5	75	100	100	50	80	53	9	0	36	74.00
Bangladesh	BD	47	50	100	50	100	100	100	100	75	100	62.5	0	90	100	50	60	40	100	100	30	72.73
Belgium	BE	10	50	50	50	100	100	0	50	75	75	65	37.5	40	75	50	30	26	0	0	17.5	45.05
Bulgaria	BG	30	50	65	100	35	85	0	50	50	75	52.5	100	70	100	25	50	35	13	0	3.5	49.45
Bahrain	BH	47	37.5	0	50	100	100	100	100	75	100	100	100	100	75	50	30	37	29	0	17.5	62.40
Bermuda	BM	67	50	75	100	100	100	100	100	100	100	100	75	100	100	50	40	57	30	0	10.5	72.73
Brunei	BN	63	50	100	50	100	100	100	100	100	100	87.5	75	100	100	75	70	72	100	0	23.5	78.30
Bolivia	BO	60	50	100	50	100	100	100	100	100	100	75	37.5	100	100	50	50	74	100	100	35.5	79.10
Brazil	BR	50	25	75	50	100	100	100	100	87.5	100	50	0	0	50	50	30	52	0	0	14	51.68
Bahamas	BS	57	100	75	50	100	100	100	100	100	100	100	100	100	100	75	60	42	28	0	20.5	75.38
Botswana	BW	40	50	0	50	0	100	100	100	75	100	62.5	75	30	100	25	60	59	100	88.9	29.5	62.24
Belize	BZ	73	87.5	100	50	100	100	100	100	50	100	75	100	100	100	50	70	69	27	0	27	73.93
Canada	CA	14	50	100	100	100	100	100	75	93.8	75	25	0	70	75	50	30	41	4	0	14	55.84
Switzerland	CH	73	100	100	87.5	100	100	100	100	100	100	75	75	100	100	75	30	38	4	0	23.5	74.05
Cook Islands	CK	44	87.5	100	50	100	100	100	100	100	100	100	37.5	80	100	50	100	37	6	0	14	70.30
Chile	CL	50	37.5	90	50	100	100	100	100	93.8	100	50	0	50	75	25	30	48	0	0	16.5	55.79
Cameroon	CM	47	75	100	50	100	100	100	100	97.5	100	87.5	0	100	75	25	70	73	100	0	29.5	71.48
China	CN	27	50	100	100	100	100	100	100	100	100	62.5	0	0	100	50	30	52	2	0	23.5	59.85
Colombia	CO	33	50	100	50	100	100	100	100	85	100	62.5	0	30	75	25	60	45	0	0	14	56.48

Jurisdiction	ISO 2	KI 1	KI 2	KI 3	KI 4	KI 5	KI 6	KI 7	KI 8	KI 9	KI 10	KI 11	KI 12	KI 13	KI 14	KI 15	KI 16	KI 17	KI 18	KI 19	KI 20	Final SS
Costa Rica	CR	27	25	50	50	100	100	100	100	100	100	62.5	100	100	100	25	50	35	15	0	7	62.33
Curacao	CW	60	87.5	100	50	100	100	100	100	100	100	75	100	100	100	75	50	47	26	0	26.5	74.85
Cyprus	CY	50	50	90	100	95	90	100	50	100	75	52.5	100	40	100	50	30	29	13	0	7	61.08
Czechia	CZ	54	25	100	50	52.5	100	25	50	100	75	52.5	37.5	100	100	75	50	44	0	0	17.5	55.40
Germany	DE	50	25	75	100	60	100	100	50	35	75	65	0	30	100	75	30	47	0	0	17.5	51.73
Denmark	DK	54	75	50	50	70	50	100	50	87.5	75	52.5	0	30	50	25	30	40	0	0	17.5	45.33
Dominica	DM	70	50	100	50	100	100	100	100	50	100	75	100	90	100	50	80	74	67	0	17	73.65
Dominican Republic	DO	34	0	40	50	100	100	100	100	75	100	100	75	0	50	25	70	35	100	0	20.5	58.73
Algeria	DZ	93	50	100	50	100	100	100	100	100	100	87.5	37.5	100	50	50	70	72	100	100	32.5	79.63
Ecuador	EC	56	0	0	50	55	5	25	100	56.3	100	50	37.5	100	25	25	70	78	65	0	46.5	47.21
Estonia	EE	24	75	40	45	35	10	50	50	87.5	75	52.5	0	90	75	50	50	38	0	0	14	43.05
Egypt	EG	80	25	100	50	100	100	100	100	100	100	87.5	0	30	100	25	60	47	100	100	23	71.38
Spain	ES	37	25	75	50	100	100	100	50	37.5	75	40	0	40	25	75	30	16	0	0	3.5	43.95
Finland	FI	47	0	100	100	95	100	50	50	87.5	75	40	0	40	100	75	30	39	0	0	14	52.13
France	FR	54	25	50	100	100	100	50	50	37.5	75	52.5	0	100	75	50	30	35	0	0	14	49.90
United Kingdom	GB	37	50	50	100	100	50	0	50	100	75	25	37.5	90	50	50	30	19	0	0	10.5	46.20
Grenada	GD	77	50	100	50	0	100	100	100	100	100	100	100	100	100	50	80	71	26	0	7	70.55
Guernsey	GG	57	100	75	100	100	100	100	100	100	100	100	75	80	75	50	70	18	6	0	7	70.65
Ghana	GH	27	50	40	50	0	100	100	100	75	100	62.5	0	40	75	25	80	39	50	0	20.5	51.70
Gibraltar	GI	76	100	50	100	100	100	100	100	50	100	40	75	100	75	50	90	37	5	0	41.5	69.48
Gambia	GM	66	100	100	50	100	100	100	100	100	100	62.5	0	0	100	25	80	69	100	100	45	74.88
Greece	GR	40	25	65	50	100	100	100	50	100	75	50	75	30	50	50	30	29	0	0	10.5	51.48
Guatemala	GT	47	50	100	50	100	100	100	100	100	100	87.5	75	100	100	50	60	33	100	0	17.5	73.50
Hong Kong	HK	74	50	90	100	100	90	100	90	87.5	100	75	37.5	100	100	50	20	32	14	0	17.5	66.38
Croatia	HR	27	0	100	40	90	100	100	50	100	75	52.5	37.5	40	100	50	60	62	0	0	17.5	55.08
Hungary	HU	74	25	100	100	75	100	50	50	100	75	52.5	0	40	100	25	50	42	0	0	17.5	53.80
Indonesia	ID	34	25	75	50	100	100	100	100	100	100	50	0	0	50	50	30	38	2	0	17.5	51.08
Ireland	IE	24	37.5	40	100	100	10	50	50	100	75	40	75	90	50	50	30	31	0	0	10.5	48.15
Israel	IL	44	50	100	50	95	100	100	100	87.5	100	52.5	37.5	0	100	50	60	25	8	0	14	58.68
Isle of Man	IM	37	100	50	50	95	100	100	100	100	100	75	37.5	80	100	50	70	29	6	0	14	64.68
India	IN	40	50	0	100	100	100	100	100	43.8	50	52.5	0	0	100	25	30	47	1	0	17.5	47.84

Jurisdiction	ISO 2	KI 1	KI 2	KI 3	KI 4	KI 5	KI 6	KI 7	KI 8	KI 9	KI 10	KI 11	KI 12	KI 13	KI 14	KI 15	KI 16	KI 17	KI 18	KI 19	KI 20	Final SS
Iceland	IS	20	75	65	50	100	100	100	100	87.5	100	75	37.5	0	100	25	50	43	2	0	17.5	57.38
Italy	IT	27	50	65	50	95	90	50	50	87.5	75	52.5	75	50	75	50	30	25	0	0	10.5	50.38
Jersey	JE	43	100	40	50	100	90	100	100	100	100	87.5	37.5	100	100	50	70	26	6	0	10.5	65.53
Jordan	JO	80	25	90	50	100	100	100	100	50	100	100	75	100	100	25	70	62	100	100	39	78.30
Japan	JP	27	37.5	100	100	100	100	100	100	100	100	62.5	37.5	30	100	50	30	55	1	0	26.5	62.85
Kenya	KE	63	50	75	50	100	100	100	100	75	100	75	37.5	100	50	50	70	86	100	92.6	45	75.95
St. Kitts and Nevis	KN	77	87.5	100	50	100	100	100	100	50	100	87.5	100	100	100	75	70	56	28	0	22.5	75.18
South Korea	KR	50	37.5	100	100	100	100	100	100	100	100	65	75	0	50	50	30	58	2	0	14	61.58
Kuwait	KW	67	25	100	100	100	100	100	100	100	100	100	75	100	50	25	50	73	26	0	20.5	70.58
Cayman Islands	KY	27	100	75	100	100	100	100	100	100	100	100	100	100	100	50	60	44	27	0	38.5	76.08
Kazakhstan	KZ	57	25	100	50	100	100	100	100	100	100	87.5	37.5	40	50	25	50	69	75	0	23.5	64.48
Lebanon	LB	63	50	40	50	100	100	100	100	50	100	75	100	100	75	25	50	55	29	0	17.5	63.98
St. Lucia	LC	70	50	100	50	100	100	100	100	50	100	75	75	100	100	50	70	86	8	0	36.5	71.03
Liechtenstein	LI	73	75	100	100	100	100	100	100	100	100	75	37.5	100	75	100	90	49	2	0	23	74.98
Sri Lanka	LK	54	100	100	50	0	100	100	100	100	100	100	0	30	100	50	60	54	100	100	45.5	72.18
Liberia	LR	53	100	100	50	100	100	100	100	60	100	62.5	0	100	100	50	90	86	75	89.8	48.5	78.24
Lithuania	LT	7	25	75	50	100	100	100	50	100	75	40	37.5	40	50	50	50	39	0	0	17.5	50.30
Luxembourg	LU	80	50	75	100	75	100	0	50	87.5	75	52.5	0	80	75	100	30	65	0	0	14	55.45
Latvia	LV	60	25	65	100	100	100	100	50	87.5	75	62.5	0	90	100	50	50	44	0	0	23.5	59.13
Morocco	MA	70	25	100	50	100	100	100	100	100	100	87.5	0	100	75	50	60	61	50	0	26.5	67.75
Monaco	MC	50	50	50	100	100	100	100	100	50	100	100	100	80	75	50	100	52	10	0	39	70.30
Montenegro	ME	54	25	90	50	100	100	100	100	50	100	62.5	0	0	100	50	60	45	100	0	14	60.03
Marshall Islands	MH	30	37.5	100	50	100	100	100	100	50	100	75	75	100	100	75	100	55	31	0	23.5	70.10
North Macedonia	MK	33	75	100	40	100	100	100	100	100	100	62.5	0	0	100	25	60	65	100	0	20.5	64.05
Macao	MO	40	25	100	100	100	100	100	100	50	100	75	75	100	100	25	40	26	30	0	14	65.00
Montserrat	MS	80	50	100	50	100	100	100	100	50	100	100	100	100	100	50	80	47	30	0	55	74.60
Malta	MT	47	100	65	100	65	85	50	50	100	75	52.5	75	100	87.5	75	50	41	0	0	17	61.75
Mauritius	MU	54	100	100	87.5	100	100	100	100	75	100	50	75	100	100	50	50	54	12	0	20.5	71.40
Maldives	MV	80	25	90	50	100	100	100	100	50	100	75	75	100	100	25	80	91	100	100	55.5	79.83
Mexico	MX	50	50	100	50	100	100	100	100	100	50	52.5	0	0	75	25	30	48	1	0	23.5	52.75

Jurisdiction	ISO 2	KI 1	KI 2	KI 3	KI 4	KI 5	KI 6	KI 7	KI 8	KI 9	KI 10	KI 11	KI 12	KI 13	KI 14	KI 15	KI 16	KI 17	KI 18	KI 19	KI 20	Final SS
Malaysia	MY	37	100	100	100	100	100	100	100	100	100	50	75	100	75	75	30	26	2	0	20.5	69.53
Nigeria	NG	33	50	100	50	100	100	100	100	75	100	87.5	75	100	100	25	60	71	50	0	26.5	70.15
Netherlands	NL	50	100	100	95	100	100	100	50	87.5	75	40	75	100	100	75	30	44	0	0	26.5	67.40
Norway	NO	7	50	65	50	50	85	0	100	100	100	62.5	0	40	75	25	30	28	1	0	17.5	44.30
Nauru	NR	40	37.5	40	50	0	100	100	100	50	100	75	75	100	100	25	100	57	26	0	23.5	59.95
New Zealand	NZ	27	50	90	50	100	80	100	100	100	100	50	75	40	75	25	50	56	2	0	14	59.20
Panama	PA	44	100	100	100	100	100	100	100	100	100	75	75	100	100	50	40	33	0	0	20.5	71.88
Peru	PE	44	25	25	50	100	100	100	100	80	100	87.5	0	0	100	25	60	33	100	0	10.5	57.00
Philippines	PH	50	50	25	50	100	100	100	100	78.8	100	62.5	75	0	100	25	30	58	50	73.2	29.5	62.85
Pakistan	PK	40	50	100	50	0	100	100	100	100	100	100	0	0	75	25	50	69	9	0	33	55.05
Poland	PL	53	25	100	50	100	100	100	50	100	75	52.5	0	30	100	50	50	58	0	0	17.5	55.55
Puerto Rico	PR	60	37.5	100	50	100	100	100	100	87.5	100	100	0	80	100	50	100	37	100	100	26.5	76.43
Portugal	PT	37	25	75	100	100	100	100	50	75	75	40	75	30	50	75	30	33	0	0	10.5	54.03
Paraguay	PY	73	37.5	50	50	100	100	100	100	87.5	100	62.5	75	100	100	25	60	83	100	100	45.5	77.45
Qatar	QA	73	87.5	100	50	100	100	100	100	75	100	100	100	100	100	50	80	67	31	0	26.5	77.00
Romania	RO	46	37.5	75	100	100	100	100	50	100	75	50	75	100	100	25	50	49	13	0	7	62.63
Russia	RU	24	25	90	100	100	100	100	100	50	100	62.5	0	80	100	25	30	37	3	0	17.5	57.20
Rwanda	RW	53	50	90	50	0	100	100	100	50	100	62.5	0	0	75	25	80	79	100	100	45.5	63.00
Saudi Arabia	SA	20	37.5	100	100	100	100	100	100	100	100	62.5	100	100	75	25	60	30	3	0	20.5	66.68
Seychelles	SC	47	87.5	100	50	100	100	100	100	93.8	100	75	75	100	75	50	60	56	3	0	36.5	70.44
Sweden	SE	27	50	40	50	100	100	50	50	87.5	75	52.5	0	40	100	25	30	29	0	0	7	45.65
Singapore	SG	30	50	100	95	95	100	100	100	100	100	62.5	37.5	100	75	75	30	27	5	0	17.5	64.98
Slovenia	SI	27	25	65	50	5	55	0	50	100	75	52.5	0	40	50	50	50	39	0	0	17.5	37.55
Slovakia	SK	70	25	65	40	40	100	0	50	100	75	52.5	37.5	100	75	50	50	65	0	0	23.5	50.93
San Marino	SM	60	50	65	50	0	100	100	100	100	100	75	0	40	100	50	100	76	4	0	39	60.45
El Salvador	SV	40	37.5	100	50	100	100	100	100	100	100	62.5	75	0	50	50	50	50	100	0	17	64.10
Turks and Caicos Islands	TC	73	50	65	100	100	100	100	100	100	100	100	100	100	100	50	80	66	28	0	44.5	77.83
Thailand	TH	54	25	100	100	100	100	25	100	50	100	62.5	75	100	100	50	50	47	100	100	26.5	73.25
Tunisia	TN	37	25	100	50	100	100	100	100	65	100	87.5	37.5	100	75	25	70	41	100	0	16.5	66.48
Turkey	TR	64	75	100	50	100	100	100	100	87.5	100	62.5	0	30	50	50	30	45	49	0	7	60.00
Trinidad and Tobago	TT	40	50	65	100	0	100	100	100	75	100	62.5	37.5	0	100	25	80	30	100	99.1	29	64.65

Jurisdiction	ISO 2	KI 1	KI 2	KI 3	KI 4	KI 5	KI 6	KI 7	KI 8	KI 9	KI 10	KI 11	KI 12	KI 13	KI 14	KI 15	KI 16	KI 17	KI 18	KI 19	KI 20	Final SS
Taiwan	TW	34	50	100	75	100	100	100	90	50	100	75	75	0	25	50	50	32	74	100	30	65.50
Tanzania	TZ	100	50	100	50	0	100	100	100	97.5	100	62.5	0	0	100	50	70	87	100	100	48.5	70.78
Ukraine	UA	27	25	100	50	100	100	100	75	75	100	87.5	0	100	100	50	50	38	100	0	20.5	64.90
United States	US	30	100	100	100	100	100	100	100	90	75	15	0	30	50	50	20	37	100	34.3	26.5	62.89
Uruguay	UY	43	25	25	100	100	100	100	100	50	100	62.5	37.5	80	100	25	50	35	0	0	7	57.00
St. Vincent and the Grenadines	VC	67	50	100	50	0	100	100	100	50	100	75	75	100	100	75	70	59	26	0	16	65.65
Venezuela	VE	56	37.5	90	50	100	100	100	100	90	100	62.5	0	0	100	25	80	60	100	100	29.5	69.03
British Virgin Islands	VG	40	50	75	50	100	100	100	100	100	100	100	75	100	100	75	100	33	28	0	0	71.30
US Virgin Islands	VI	50	50	100	50	100	100	100	100	100	100	100	0	80	100	50	100	37	100	34.3	26.5	73.89
Vietnam	VN	73	25	100	100	100	100	100	100	50	100	87.5	0	0	100	50	80	76	100	100	45	74.33
Vanuatu	VU	34	100	100	50	100	100	100	100	100	100	100	100	100	100	75	80	37	33	0	17	76.30
Samoa	WS	47	100	100	50	100	100	100	100	100	100	75	100	100	100	50	70	54	29	0	17.5	74.63
South Africa	ZA	26	37.5	100	50	100	100	100	100	93.8	100	25	75	50	25	50	30	50	2	0	10.5	56.24

Annex D: Secrecy Scores, alphabetical order

Jurisdiction	ISO 2	Secrecy Score
Algeria	DZ	79.63
Andorra	AD	58.33
Angola	AO	79.73
Anguilla	AI	78.20
Antigua and Barbuda	AG	76.08
Argentina	AR	54.98
Aruba	AW	73.28
Australia	AU	50.09
Austria	AT	56.50
Bahamas	BS	75.38
Bahrain	BH	62.40
Bangladesh	BD	72.73
Barbados	BB	74.00
Belgium	BE	45.05
Belize	BZ	73.93
Bermuda	BM	72.73
Bolivia	BO	79.10
Botswana	BW	62.24
Brazil	BR	51.68
British Virgin Islands	VG	71.30
Brunei	BN	78.30
Bulgaria	BG	49.45
Cameroon	CM	71.48
Canada	CA	55.84
Cayman Islands	KY	76.08
Chile	CL	55.79
China	CN	59.85
Colombia	CO	56.48
Cook Islands	CK	70.30
Costa Rica	CR	62.33
Croatia	HR	55.08
Curacao	CW	74.85
Cyprus	CY	61.08
Czechia	CZ	55.40
Denmark	DK	45.33
Dominica	DM	73.65
Dominican Republic	DO	58.73
Ecuador	EC	47.21
Egypt	EG	71.38
El Salvador	SV	64.10
Estonia	EE	43.05
Finland	FI	52.13
France	FR	49.90
Gambia	GM	74.88

Jurisdiction	ISO 2	Secrecy Score
Germany	DE	51.73
Ghana	GH	51.70
Gibraltar	GI	69.48
Greece	GR	51.48
Grenada	GD	70.55
Guatemala	GT	73.50
Guernsey	GG	70.65
Hong Kong	HK	66.38
Hungary	HU	53.80
Iceland	IS	57.38
India	IN	47.84
Indonesia	ID	51.08
Ireland	IE	48.15
Isle of Man	IM	64.68
Israel	IL	58.68
Italy	IT	50.38
Japan	JP	62.85
Jersey	JE	65.53
Jordan	JO	78.30
Kazakhstan	KZ	64.48
Kenya	KE	75.95
Kuwait	KW	70.58
Latvia	LV	59.13
Lebanon	LB	63.98
Liberia	LR	78.24
Liechtenstein	LI	74.98
Lithuania	LT	50.30
Luxembourg	LU	55.45
Macao	MO	65.00
North Macedonia	MK	64.05
Malaysia	MY	69.53
Maldives	MV	79.83
Malta	MT	61.75
Marshall Islands	MH	70.10
Mauritius	MU	71.40
Mexico	MX	52.75
Monaco	MC	70.30
Montenegro	ME	60.03
Montserrat	MS	74.60
Morocco	MA	67.75
Nauru	NR	59.95
Netherlands	NL	67.40
New Zealand	NZ	59.20
Nigeria	NG	70.15

Jurisdiction	ISO 2	Secrecy Score
Norway	NO	44.30
Pakistan	PK	55.05
Panama	PA	71.88
Paraguay	PY	77.45
Peru	PE	57.00
Philippines	PH	62.85
Poland	PL	55.55
Portugal	PT	54.03
Puerto Rico	PR	76.43
Qatar	QA	77.00
Romania	RO	62.63
Russia	RU	57.20
Rwanda	RW	63.00
Samoa	WS	74.63
San Marino	SM	60.45
Saudi Arabia	SA	66.68
Seychelles	SC	70.44
Singapore	SG	64.98
Slovakia	SK	50.93
Slovenia	SI	37.55
South Africa	ZA	56.24
South Korea	KR	61.58
Spain	ES	43.95
Sri Lanka	LK	72.18
St. Kitts and Nevis	KN	75.18
St. Lucia	LC	71.03
St. Vincent and the Grenadines	VC	65.65
Sweden	SE	45.65
Switzerland	CH	74.05
Taiwan	TW	65.50
Tanzania	TZ	70.78
Thailand	TH	73.25
Trinidad and Tobago	TT	64.65
Tunisia	TN	66.48
Turkey	TR	60.00
Turks and Caicos Islands	TC	77.83
Ukraine	UA	64.90
United Arab Emirates	AE	77.93
United Kingdom	GB	46.20
United States	US	62.89
Uruguay	UY	57.00
US Virgin Islands	VI	73.89
Vanuatu	VU	76.30
Venezuela	VE	69.03
Vietnam	VN	74.33

Annex E: Secrecy Scores, descending order

Jurisdiction	ISO 2	Secrecy Score
Maldives	MV	79.83
Angola	AO	79.73
Algeria	DZ	79.63
Bolivia	BO	79.10
Brunei	BN	78.30
Jordan	JO	78.30
Liberia	LR	78.24
Anguilla	AI	78.20
United Arab Emirates	AE	77.93
Turks and Caicos Islands	TC	77.83
Paraguay	PY	77.45
Qatar	QA	77.00
Puerto Rico	PR	76.43
Vanuatu	VU	76.30
Antigua and Barbuda	AG	76.08
Cayman Islands	KY	76.08
Kenya	KE	75.95
Bahamas	BS	75.38
St. Kitts and Nevis	KN	75.18
Liechtenstein	LI	74.98
Gambia	GM	74.88
Curacao	CW	74.85
Samoa	WS	74.63
Montserrat	MS	74.60
Vietnam	VN	74.33
Switzerland	CH	74.05
Barbados	BB	74.00
Belize	BZ	73.93
US Virgin Islands	VI	73.89
Dominica	DM	73.65
Guatemala	GT	73.50
Aruba	AW	73.28
Thailand	TH	73.25
Bangladesh	BD	72.73
Bermuda	BM	72.73
Sri Lanka	LK	72.18
Panama	PA	71.88
Cameroon	CM	71.48
Mauritius	MU	71.40
Egypt	EG	71.38
British Virgin Islands	VG	71.30
St. Lucia	LC	71.03
Tanzania	TZ	70.78
Guernsey	GG	70.65

Jurisdiction	ISO 2	Secrecy Score
Kuwait	KW	70.58
Grenada	GD	70.55
Seychelles	SC	70.44
Cook Islands	CK	70.30
Monaco	MC	70.30
Nigeria	NG	70.15
Marshall Islands	MH	70.10
Malaysia	MY	69.53
Gibraltar	GI	69.48
Venezuela	VE	69.03
Morocco	MA	67.75
Netherlands	NL	67.40
Saudi Arabia	SA	66.68
Tunisia	TN	66.48
Hong Kong	HK	66.38
St. Vincent and the Grenadines	VC	65.65
Jersey	JE	65.53
Taiwan	TW	65.50
Macao	MO	65.00
Singapore	SG	64.98
Ukraine	UA	64.90
Isle of Man	IM	64.68
Trinidad and Tobago	TT	64.65
Kazakhstan	KZ	64.48
El Salvador	SV	64.10
North Macedonia	MK	64.05
Lebanon	LB	63.98
Rwanda	RW	63.00
United States	US	62.89
Japan	JP	62.85
Philippines	PH	62.85
Romania	RO	62.63
Bahrain	BH	62.40
Costa Rica	CR	62.33
Botswana	BW	62.24
Malta	MT	61.75
South Korea	KR	61.58
Cyprus	CY	61.08
San Marino	SM	60.45
Montenegro	ME	60.03
Turkey	TR	60.00
Nauru	NR	59.95
China	CN	59.85

Jurisdiction	ISO 2	Secrecy Score
New Zealand	NZ	59.20
Latvia	LV	59.13
Dominican Republic	DO	58.73
Israel	IL	58.68
Andorra	AD	58.33
Iceland	IS	57.38
Russia	RU	57.20
Peru	PE	57.00
Uruguay	UY	57.00
Austria	AT	56.50
Colombia	CO	56.48
South Africa	ZA	56.24
Canada	CA	55.84
Chile	CL	55.79
Poland	PL	55.55
Luxembourg	LU	55.45
Czechia	CZ	55.40
Croatia	HR	55.08
Pakistan	PK	55.05
Argentina	AR	54.98
Portugal	PT	54.03
Hungary	HU	53.80
Mexico	MX	52.75
Finland	FI	52.13
Germany	DE	51.73
Ghana	GH	51.70
Brazil	BR	51.68
Greece	GR	51.48
Indonesia	ID	51.08
Slovakia	SK	50.93
Italy	IT	50.38
Lithuania	LT	50.30
Australia	AU	50.09
France	FR	49.90
Bulgaria	BG	49.45
Ireland	IE	48.15
India	IN	47.84
Ecuador	EC	47.21
United Kingdom	GB	46.20
Sweden	SE	45.65
Denmark	DK	45.33
Belgium	BE	45.05
Norway	NO	44.30
Spain	ES	43.95
Estonia	EE	43.05
Slovenia	SI	37.55

Annex F: Global Scale Weights, alphabetical order

Jurisdiction	ISO-2	Global Scale Weight
Algeria	DZ	0.05%
Andorra	AD	0.00%
Angola	AO	0.03%
Anguilla	AI	0.01%
Antigua and Barbuda	AG	0.00%
Argentina	AR	0.03%
Aruba	AW	0.00%
Australia	AU	0.68%
Austria	AT	0.54%
Bahamas	BS	0.09%
Bahrain	BH	0.02%
Bangladesh	BD	0.02%
Barbados	BB	0.01%
Belgium	BE	1.72%
Belize	BZ	0.00%
Bermuda	BM	0.04%
Bolivia	BO	0.00%
Botswana	BW	0.00%
Brazil	BR	0.15%
British Virgin Islands	VG	0.50%
Brunei	BN	0.00%
Bulgaria	BG	0.01%
Cameroon	CM	0.02%
Canada	CA	1.60%
Cayman Islands	KY	4.58%
Chile	CL	0.05%
China	CN	0.64%
Colombia	CO	0.01%
Cook Islands	CK	0.00%
Costa Rica	CR	0.02%
Croatia	HR	0.03%
Curacao	CW	0.00%
Cyprus	CY	0.48%
Czechia	CZ	0.09%
Denmark	DK	0.14%
Dominica	DM	0.00%
Dominican Republic	DO	0.01%
Ecuador	EC	0.01%
Egypt	EG	0.03%
El Salvador	SV	0.01%
Estonia	EE	0.02%
Finland	FI	0.06%
France	FR	2.25%
Gambia	GM	0.00%

Jurisdiction	ISO-2	Global Scale Weight
Germany	DE	4.71%
Ghana	GH	0.01%
Gibraltar	GI	0.12%
Greece	GR	0.03%
Grenada	GD	0.00%
Guatemala	GT	0.01%
Guernsey	GG	0.41%
Hong Kong	HK	4.44%
Hungary	HU	0.09%
Iceland	IS	0.03%
India	IN	1.04%
Indonesia	ID	0.13%
Ireland	IE	3.46%
Isle of Man	IM	0.09%
Israel	IL	0.30%
Italy	IT	1.14%
Japan	JP	2.20%
Jersey	JE	0.46%
Jordan	JO	0.02%
Kazakhstan	KZ	0.00%
Kenya	KE	0.08%
Kuwait	KW	0.12%
Latvia	LV	0.07%
Lebanon	LB	0.32%
Liberia	LR	0.00%
Liechtenstein	LI	0.02%
Lithuania	LT	0.04%
Luxembourg	LU	12.36%
Macao	MO	0.22%
North Macedonia	MK	0.00%
Malaysia	MY	0.12%
Maldives	MV	0.00%
Malta	MT	0.66%
Marshall Islands	MH	0.03%
Mauritius	MU	0.03%
Mexico	MX	0.09%
Monaco	MC	0.00%
Montenegro	ME	0.00%
Montserrat	MS	0.00%
Morocco	MA	0.01%
Nauru	NR	0.00%
Netherlands	NL	1.11%
New Zealand	NZ	0.12%
Nigeria	NG	0.10%
Norway	NO	0.60%
Pakistan	PK	0.02%

Jurisdiction	ISO-2	Global Scale Weight
Panama	PA	0.22%
Paraguay	PY	0.00%
Peru	PE	0.01%
Philippines	PH	0.05%
Poland	PL	0.19%
Portugal	PT	0.09%
Puerto Rico	PR	0.01%
Qatar	QA	0.09%
Romania	RO	0.08%
Russia	RU	0.26%
Rwanda	RW	0.01%
Samoa	WS	0.00%
San Marino	SM	0.00%
Saudi Arabia	SA	0.06%
Seychelles	SC	0.00%
Singapore	SG	5.17%
Slovakia	SK	0.03%
Slovenia	SI	0.01%
South Africa	ZA	0.19%
South Korea	KR	0.55%
Spain	ES	0.72%
Sri Lanka	LK	0.05%
St. Kitts and Nevis	KN	0.01%
St. Lucia	LC	0.00%
St. Vincent and the Grenadines	VC	0.00%
Sweden	SE	0.71%
Switzerland	CH	4.12%
Taiwan	TW	0.59%
Tanzania	TZ	0.00%
Thailand	TH	0.15%
Trinidad and Tobago	TT	0.00%
Tunisia	TN	0.01%
Turkey	TR	0.12%
Turks and Caicos Islands	TC	0.00%
Ukraine	UA	0.02%
United Arab Emirates	AE	0.21%
United Kingdom	GB	15.94%
United States	US	21.37%
Uruguay	UY	0.02%
US Virgin Islands	VI	0.00%
Vanuatu	VU	0.00%
Venezuela	VE	0.02%
Vietnam	VN	0.04%