

NARRATIVE REPORT ON THE NETHERLANDS



PART 1: NARRATIVE REPORT

Narrative Report on the Netherlands

The Netherlands is ranked eighth on the 2020 Financial Secrecy Index (FSI), up from its 2018 ranking of 14. This ranking is based on a combination of its secrecy score and a scale weighting based on its share of the global market for offshore financial services.

The rise in the Netherlands' FSI value has been driven by both an increase in both its secrecy score and global scale weight. The country now has a secrecy score of 67 out of a potential 100 and a global scale weight of 1.1%.

Telling the story

The Netherlands is home to 15,000 'special financial institutions' (SFIs). SFIs are the international link between subsidiaries of multinational corporations (MNCs) in countries of 'origin' and 'destination'. Known as 'shell companies' or 'letterbox companies', SFIs are used by foreign multinational corporations to route approximately €4,000 billion through the Netherlands every year - roughly ten times the Netherlands' gross national product. SFIs represent the largest sector in the Netherlands, even outstripping the banking sector.

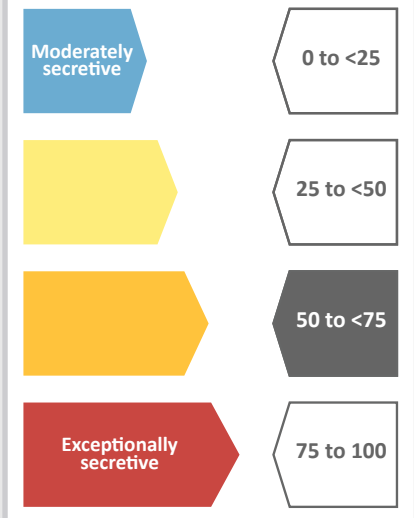
According to the International Monetary Fund (IMF), the flows of foreign direct investment (FDI) through the Netherlands' SFIs cannot be understood without taking into account the crucial role the country plays in the field of international corporate tax avoidance.¹ Since the 1950s the Netherlands has developed an extremely opaque financial infrastructure whose fiscal properties are characterised by dividend exemption, the absence of withholding taxes on interest and royalties, a large number of bilateral tax treaties to which the Netherlands is a signatory and; rulings by its tax authorities; all these make it a popular conduit country for multinational corporations (MNCs) as well as rich individuals. Recorded dividends, interest and royalties flowing through the Netherlands amount to 200 billion euro yearly. Sixty per cent of royalties through the Netherlands go directly to the secrecy jurisdiction of Bermuda.² The Dutch government has, so far, been reluctant to provide sufficient transparency on tax avoidance schemes, nor has it taken steps to reduce risks associated within its financial sector.

Ingredients for a conduit country

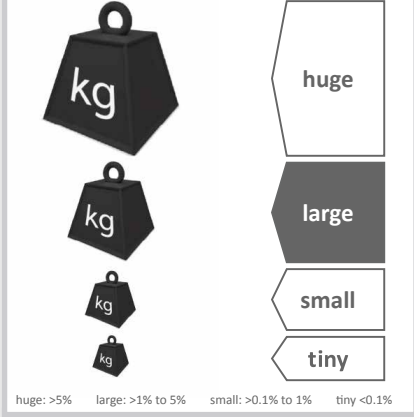
The Netherlands is a useful conduit country because of its mix of beneficial fiscal arrangements available to international corporations. First, the Netherlands has an extensive Double Taxation Treaty (DTT) network which allows MNCs to substantially reduce withholding taxes on dividends, interest and royalty payments on financial flows to and from other countries and tax havens via the Netherlands.³ Second, the Netherlands' offers its famous 'participation exemption' which exempts international subsidiaries from Dutch corporation tax, 'withholding taxes' on interest and royalties and the possibility to have tax rulings (Advance Tax Ruling and Advance Pricing Agreement). And finally, the Netherlands operates an 'innovation box' regime which it modified in 2017 to take account of the Organisation for Economic Cooperation and Development's (OECD) new rules following the conclusion of the so-

Rank: 8 of 133

How Secretive? **67**



How big? **1.11%**



The Netherlands accounts for 1.11 per cent of the global market for offshore financial services. This makes it a large player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.
 Full data is available here: <http://www.financialsecrecyindex.com/database>.
 To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrecyindex.com>.
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called Base Erosion Profit Shifting (BEPS) project. No wonder ninety-one of the hundred largest MNCs in the world have financing firms in the Netherlands. According to the New York Times, more US dollars are piped through the Netherlands than anywhere else in the world.⁴

Most of the €4,000 billion flowing through the Netherlands end up in secrecy jurisdictions. Out of the top five countries, in terms of origin and destination of inward and outward flows from the Netherlands, three are in the top ten of the FSI 2018. These are: Switzerland (€1,195 billion), Luxembourg (€839 billion) and the United States (€3,403 billion).

Revelations in Dutch media repeatedly show that in addition to MNCs using the Netherlands to avoid paying taxes, the Dutch financial sector is being used to evade taxes and engage in money laundering. In recent years, many Dutch banks have fallen short in their anti-money laundering policies. In 2018, [ING](#) bank agreed a settlement with the Dutch Public Prosecution Service in respect of ING Netherlands' serious shortcomings in the execution of their customer due diligence policies which had been designed to prevent financial economic crime. ING agreed to pay a fine of €775 million in relation to ING Netherlands for the period investigated (2010-2016).⁵ These shortcomings enabled customers to misuse the accounts of ING Netherlands. At the beginning of October 2019, it was announced that an investigation into [ABN AMRO](#) had commenced for failure to comply with money laundering rules. ING and ABN are not the only banks that have settled in lieu of (multiple) penalties. Rabobank paid a fine of one million euros in 2019 for not having their customer files in order⁶ and de Volksbank was fined for not reporting seven suspicious transactions.⁷ In addition, De Nederlandsche Bank (DNB) criticized Triodos for failing to prevent money laundering.⁸

The debate around Special Financial Institutions in the Netherlands

In June 2014 the Dutch government began requiring all financial service providers to fulfil 'substance requirements' when it comes to special financial institutions (SFI). Substance requirements were designed to guarantee a certain level of activity by an MNC to ensure a real presence in the Netherlands. However, in November 2014 the National Court of Audit concluded that the substance requirements are of such a low standard in the Netherlands that it is too easy for MNCs to claim that they meet the necessary criteria.⁹ In practice most SFIs hire so-called financial service providers to fulfil substance requirements such

as having a registered address in the Netherlands, ensuring at least fifty percent of board members are Dutch residents, and by maintaining a main bank account within the jurisdiction. Of the 15,000 SFI's in the Netherlands seventy five per cent use facilities provided by a financial service provider.¹⁰

Monitoring by financial service providers is based on the concept of due diligence. With thousands of billions flowing through the Netherlands this task carries serious responsibilities. In 2013, the Dutch Central Bank conducted an investigation into financial service providers. They identified limited partnerships (in Dutch 'CV structures') that financial service providers offer to their clients as a serious risk. In 2012, sixty-seven service providers hosted over sixteen thousand limited partnerships mainly on behalf of beneficial owners in Central and South America. The Dutch Central Bank attributed the popularity of this structure to the anonymity it provides to beneficial owners.¹¹ As the position of a director can be carried out by a legal entity (e.g., an offshore company), the real beneficial owners are able to hide their true identity.

Early in 2019, the European Court ruled that shell companies are used to abuse tax treaties and international investment treaties to avoid taxation.¹² The Netherlands was denounced as a tax transit country. The ruling aligns with broader criticism of the Netherlands' fiscal regime where previously the European Parliament determined that the Netherlands is a secrecy jurisdiction. The European Court's ruling supports this position. Investors have expressed a fear that this means the end of their lucrative financial routes.¹³

The case that triggered concern about the Netherlands' status as a 'conduit' jurisdiction revolved around a Danish company using an intermediary company both in Luxembourg and the Netherlands to avoid withholding tax on a dividend payment. The Court drew up guidelines to establish abuse of exemption rules. National tax authorities are required to test exemption rules using the guidelines. The tax authority now must assess whether the letterbox company incurs actual costs and whether it has access to financial flows, or that it only serves to facilitate tax avoidance. The decision fits with a broader development that challenged these type of 'entity' constructions. In 2016, the European Commission presented a proposal to the EU Parliament to determine which tax deductions could be permitted for multinationals. It was intended to prevent tax avoidance. In the Netherlands itself, the Rutte-III cabinet announced that it will focus on companies that actually have

economic activities in the Netherlands instead of solely making use of favourable legislation.¹⁴

Beneficial ownership debate in the Netherlands

Given the high risks of secrecy associated with beneficial ownership, it is reasonable to expect the Dutch government would take steps to minimise the effects of existing measures. By the end of 2014 the European Union had approved a beneficial ownership register.¹⁵ Initially, the Netherlands was one of the countries that was reluctant to support a proposal for a public register. Finally, because of resistance of the Netherlands and other Member States, the EU decided to leave the decision on whether to make that register public to individual Member States. Because of international pressure, in 2016 the Dutch government announced that it would make the UBO-register open to the public.¹⁶

In July 2018, the 5th Anti-Money Laundering Directive (AMLD 5) of the EU entered into force. According to the AMLD 5, the register for companies will have to be made accessible to the general public in early 2020.¹⁷ In 2019, the Dutch government published the Bill around the implementation of the public UBO-register. However, unlike in many other European countries, with this proposal the UBO-register does not really become public in the Netherlands. For access to the register, which will be managed by the Chamber of Commerce, must be paid. Also, every user of the register must first log in and only a part of the register will be made publicly accessible. Therefore, searching for people and recognizing patterns will be made impossible.¹⁸

In the Netherlands it is still possible to set up legal structures without announcing the identity of the actual owner behind these structures. Other examples demonstrate that anonymous companies take advantage of the Netherlands' abusive regime for corruption, fraud, money laundering, organized crime and cartels.¹⁹

Corruption, money laundering and the financing of terrorism are cross-border problems. It is critical, therefore, that all EU countries establish a public Ultimate Beneficial Ownership (UBO) register. In January 2020, the Netherlands will finally implement its UBO register, some two years after the scheduled date of implementation. The requirements of the proposed UBO register can be found in the Bill "Implementation Act registration ultimate beneficial owners of companies and other legal entities"²⁰. However, the proposed Dutch UBO-register has many limitations in accessibility and completeness that it is expected to only be of limited use for its

purpose of fighting crime.²¹

A recent study by Transparency International confirms the importance of an effective public register of real beneficial owners. The study shows that none of the eighty-three countries surveyed has access to adequate information on UBOs, the 'ultimate stakeholders' of companies.²² To combat crime and corruption, enforcement agencies around the world need to be able to quickly identify the real ultimate beneficial owners. For example, if there are suspicions that a company's bank account is being used to launder the proceeds of crime, authorities should have the ability to quickly identify of the ultimate beneficiary person behind that company. The current UBO-register regime makes this impossible.²³

Next steps for Netherlands

Major progress toward satisfactory financial transparency is still needed. If the Netherlands wishes to play a full part in the modern financial community, and to impede and deter illicit financial flows, including flows originating from tax evasion, aggressive tax avoidance practices, corrupt practices and criminal activities, it should urgently take action to meet acceptable international standards.

*With special thanks to Lotte Rooijendijk,
[Transparency International - Nederland](#)*

Endnotes

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- 2 <https://www.cpb.nl/sites/default/files/omnidownload/CPB-Policy-Brief-2019-01-Conduit-country-the-Netherlands-in-the-spotlight.pdf>; 04.02.2020.
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PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 50 1. Banking Secrecy
- 100 2. Trust and Foundations Register
- 100 3. Recorded Company Ownership
- 95 4. Other Wealth Ownership
- 100 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 100 6. Public Company Ownership
- 100 7. Public Company Accounts
- 50 8. Country-by-Country Reporting
- 88 9. Corporate Tax Disclosure
- 75 10. Legal Entity Identifier

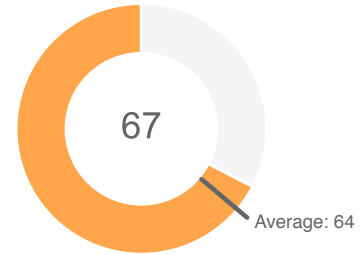
INTEGRITY OF TAX AND FINANCIAL REGULATION

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

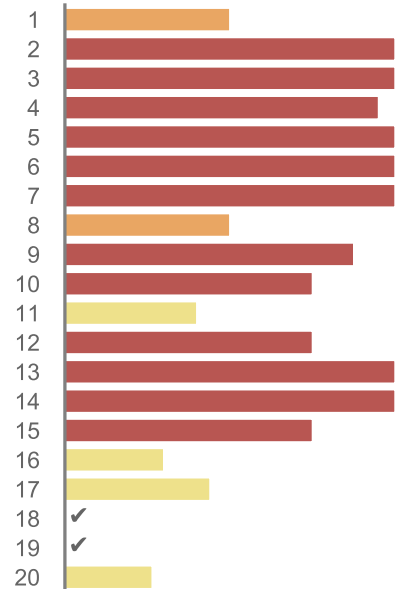
INTERNATIONAL STANDARDS AND COOPERATION

- 44 17. Anti-Money Laundering
- 0 18. Automatic Information Exchange
- 0 19. Bilateral Treaties
- 27 20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click [here](#) to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: <http://www.financialsecrecyindex.com/database>.

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