

## **Secrecy Indicator 1: Banking Secrecy**

### **What is measured?**

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

Accordingly, we have split this indicator into six subcomponents; the overall secrecy score for this indicator is calculated by simple addition of these subcomponents. The secrecy scoring matrix is shown in Table 1, with full details of the assessment logic given in Table 3.

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

The availability of relevant banking information is measured by a jurisdiction's compliance with FATF-recommendations 10, 11 and 15.<sup>1</sup> Recommendation 10 states that "Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names". The recommendation specifies that the financial institution must be able to identify not just the legal owner but also the beneficial owner(s), both in the case of natural and legal

**Table 1. Secrecy Scoring Matrix: Secrecy Indicator 1**

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

persons.<sup>2</sup> If a jurisdiction fails to comply with this recommendation, this adds a 20 points of secrecy score.<sup>3</sup>

FATF-recommendation 11 requires financial institutions to “maintain, for at least five years, all necessary records on transactions, both domestic and international”.<sup>4</sup> A further 20 points of secrecy score is added if a jurisdiction is non-compliant with this recommendation.

Recommendation 15 requires jurisdictions to ensure that virtual assets service providers (VASPs) are treated equally as financial institutions by requiring them to identify, assess, and take effective action to mitigate their money laundering and terrorist financing risks. As part of this requirement, VASPs should be licensed or registered and countries should ensure that VASPs are subject to adequate regulation and supervision or monitoring for AML/CFT and are effectively implementing the relevant FATF Recommendations. As such, VASPs must comply with policies and procedures related to Know Your Customer (KYC), Anti-Money Laundering (AML) and Counter Terrorism (CTF).<sup>5</sup> A further 20 points of secrecy score is added if a jurisdiction is non-compliant with this recommendation.<sup>6</sup> We have relied on the mutual evaluation reports and follow up reports published by the FATF, FATF-like regional bodies, or the IMF for the assessment of these criteria.<sup>7</sup>

In addition, since it is not sufficient for banking data to merely exist, we also measure whether this data can be obtained and used for information exchange purposes, and if no undue notification<sup>8</sup> requirements or appeal rights<sup>9</sup> prevent effective sharing of banking data. We rely on the Global Forum’s element B.1<sup>10</sup> for addressing the first issue of powers to obtain and provide data, and we use Global Forum’s element B.2<sup>11</sup> for the second issue of undue notification and

appeal rights. Each will be attributed a 10 points secrecy score if any qualifications apply to the elements and underlying factors.<sup>12</sup> Where available, we also consider countries' replies to TJN-survey 2021.<sup>13</sup>

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

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

## Why is this important?

For decades, factual and formal banking secrecy laws have obstructed information gathering requests from both national and international competent authorities such as tax administrations or financial regulators. Until 2005, most of the concluded double tax agreements<sup>14</sup> did not specifically include provisions to override formal banking secrecy laws when responding to information requests by foreign treaty partners.

This legal barrier to accessing banking data for information exchange purposes has been partially overcome with the advent of automatic information exchange.<sup>15</sup> Automatic exchange of information (AEOI) following the OECD's Common Reporting Standard (CRS) got underway in 2017 (see SI 18<sup>16</sup>). However, we consider access to information and undue notifications related to the "Upon Request" standard to be relevant still for the following reasons. First, AEOI will not take place among all countries. If AEOI takes place between countries A and B, country C (very likely a developing country) will still depend on specific information requests for accessing banking information from countries A or B. Second, AEOI will complement but not replace exchanges upon request. For example, after countries A and B exchange banking information automatically, country A may need to obtain more detailed information (eg when the account was opened, what was the highest balance account or information regarding a specific transaction). All these extra details will not be included in AEOI, but will have to be asked via specific requests. In other words, even when AEOI is fully implemented and involves all countries, exchanges upon request will remain necessary.

In addition, some jurisdictions have tightened their penalties for breaches of extant banking secrecy. For example, in September 2014, Switzerland passed a law that extended the prison sentence for whistleblowers who disclose bank data from three years to a maximum of five years. The prison terms had previously been increased with effect from 1 January 2009.<sup>17</sup>

**Table 2. Assessment of Global Forum Data for Secrecy Indicator 1**

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

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

The extent to which banking secrecy has acted as a catalyst for crime became evident through recent leaks and large scale public prosecutions of banks that have engaged in and supported money laundering and tax evasion by clients. In this context, the threat of prison sentences for breaches of banking secrecy has served to effectively deter, silence, retaliate against, and prosecute whistleblowers, up to the point of issuing arrest warrants against officials from tax administrations, and deploying spies.<sup>18</sup> The threat of criminal prosecution for breaches of banking secrecy was, and remains, a potent means of covering up illicit and/or illegal activity.

Another fashionable way<sup>19</sup> of achieving de facto banking secrecy consists of not properly verifying the identity of both account holders and beneficial owners, or allowing nominees such as custodians, trustees, or foundation council members to be acceptable as the only natural persons on bank records. Furthermore, proper regulation of virtual asset service providers is also necessary to ensure these institutions are not used as a means to escape investigation.

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

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

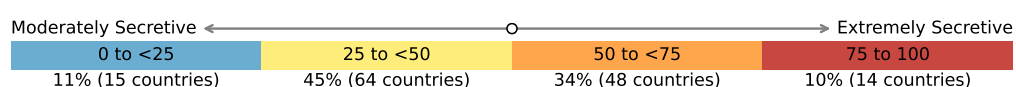
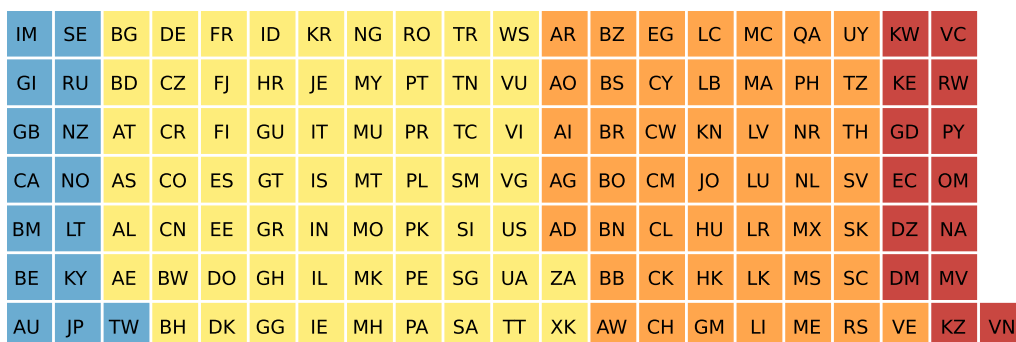
**All underlying data, including the sources we use for each jurisdiction, can be viewed in the [country profiles](#) on the Financial Secrecy Index website.**

**Table 3. Assessment Logic: Secrecy Indicator 1 - Banking Secrecy**

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

## Results Overview

**Figure 1. Banking secrecy: Secrecy Score Overview**

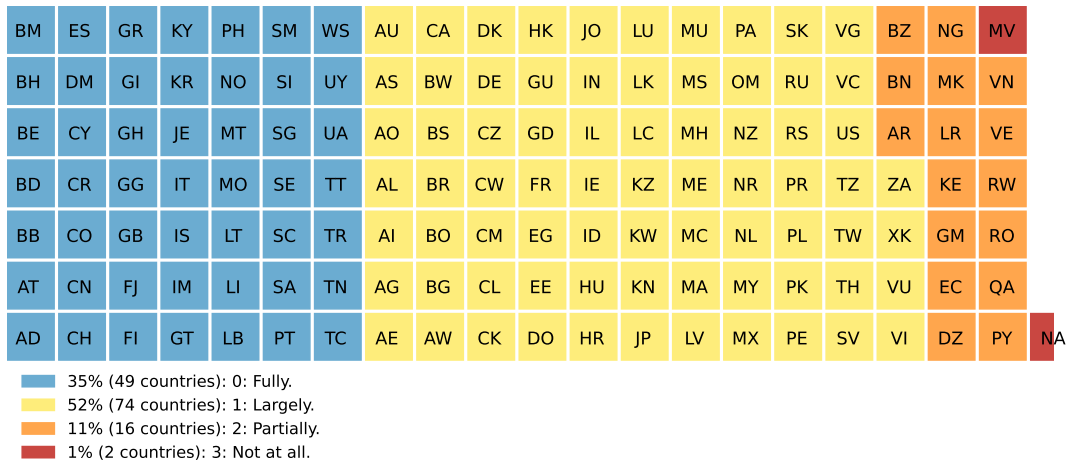


**Figure 2. Are there criminal sanctions, custodial sentencing or any other statutory sanctions for breaches of banking secrecy? (ID 360)**

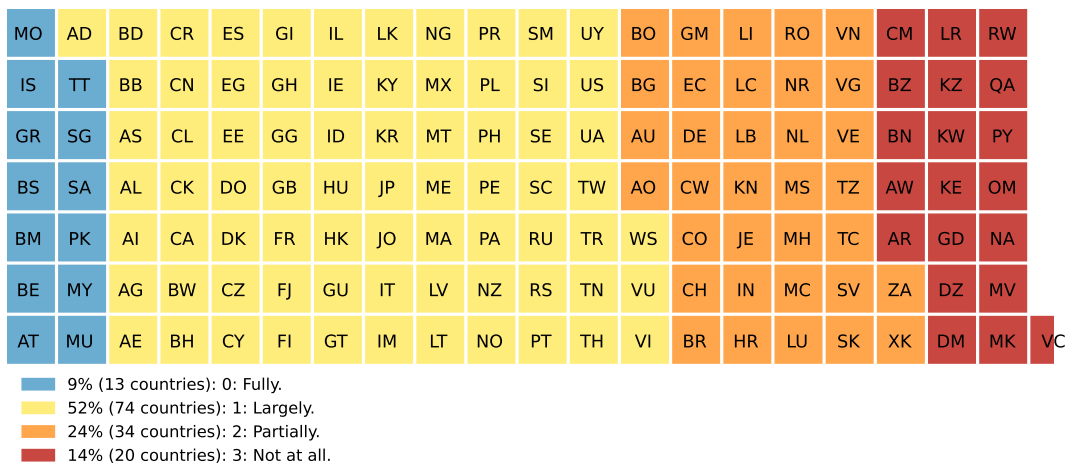


- 17% (24 countries): -2: Unknown
- 13% (19 countries): 2: No, there are no statutory sanctions for disclosing client's banking data to any third party.
- 11% (16 countries): 1: Yes, there are fines for disclosing client's banking data to any third party, but no prison terms.
- 58% (82 countries): 0: Yes, there are prison terms for disclosing client's banking data to any third party (and possibly fines).

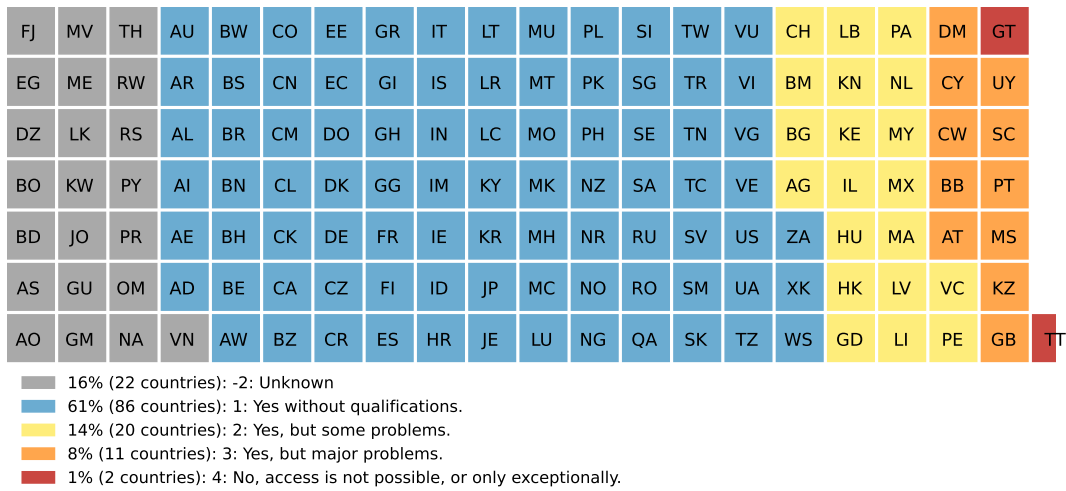
**Figure 3. To what extent are banks required to maintain data records of its customers and transactions sufficient for law enforcement (old FATF-recommendation 10 / new FATF recommendation 11)? (ID 353)**



**Figure 4. To what extent are banks subject to stringent customer due diligence regulations (Old FATF recommendation 5 / new FATF-recommendation 10)? (ID 352)**



**Figure 5. Does the domestic administration have sufficient powers to obtain and provide banking information on request? (ID 157)**



**Figure 6. Are there no undue notification and appeal rights against bank information exchange on request?(ID 158)**

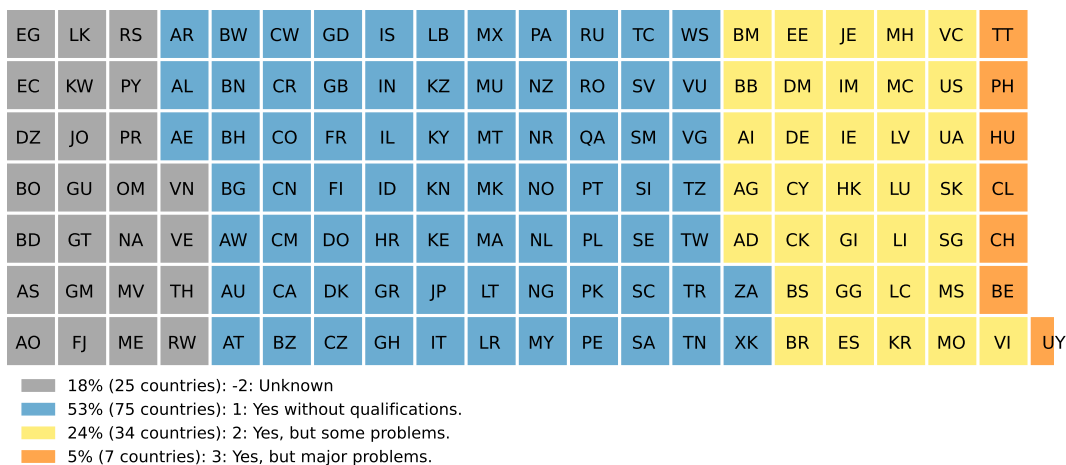
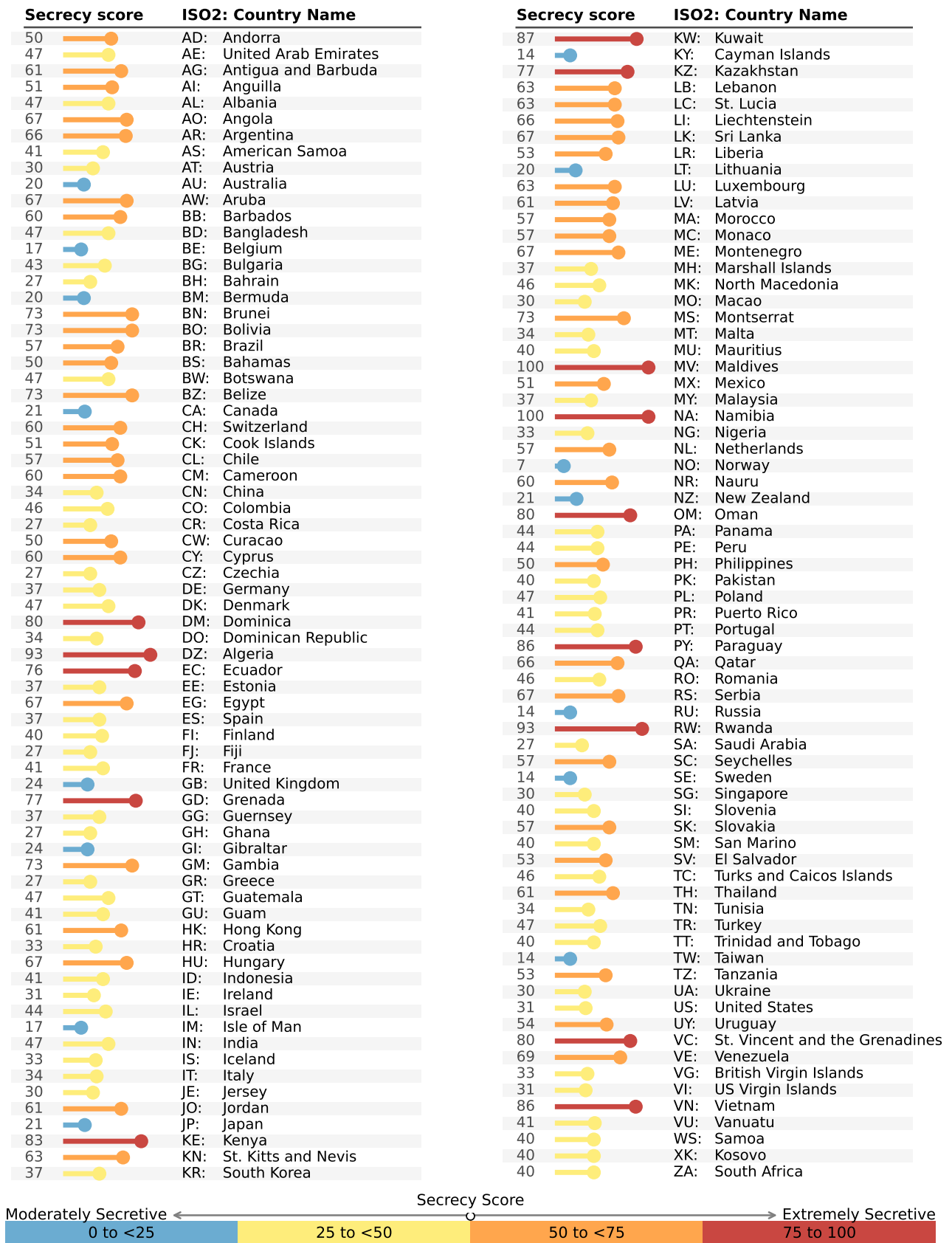




Figure 7. Banking Secrecy: Secrecy Scores



## Endnotes

1. These recommendations refer to the new FATF methodology consolidated in 2012. Under the old FATF methodology of 2003, the corresponding recommendations are numbers 5 (replaced by new rec. 10), 8 (replaced by new rec. 15), and 10 (replaced by new rec. 11). Financial Secrecy Index 2022 takes into account both the old and new methodologies because the FATF has not yet assessed all jurisdictions under the new methodology. 124 out of the 141 FSI jurisdictions were assessed by the FATF under the new methodology. For 47 jurisdictions, the most recent FATF mutual evaluation reports available were published before 2013, under the old methodology. The old recommendations can be viewed at:<sup>20</sup> the new recommendations are available at:<sup>21</sup>
2. Financial Action Task Force. *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*. Paris, Mar. 2022. URL: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> (visited on 15/04/2022), also see footnote 3.
3. 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.
4. Financial Action Task Force. *Financial Action Task Force on Money Laundering. The Forty Recommendations*. June 2003. URL: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf> (visited on 12/04/2022).
5. Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*.
6. In the previous edition of the Financial Secrecy Index of 2020, we measured whether banks were required to report large transactions to a public authority. Because the data for this ID came from International Narcotics Control Strategy Reports (INCSR), and the INCSR has stopped updating it since 2016, we have replaced this measure for one that could more effectively assess country-level developments in coming years. For this purpose, we chose to integrate FATF recommendation 15 on virtual asset service providers.
7. The FATF periodically monitors jurisdictions' compliance to the recommendations set in the mutual evaluation reports. The results of the monitoring process are published in follow-up reports, which may inform of changes in jurisdictions' ratings. For jurisdictions assessed according to the new methodology, we have used the most recent rating published in FATF's consolidated table of assessment ratings,<sup>22</sup> be it a mutual evaluation report or a follow-up report. However, for jurisdictions

assessed according to the old methodology, we considered only the ratings of the mutual evaluation reports published before the cut-off date for this SI of 30 September 2021.

8. While the Global Forum peer reviews assess whether a notification (to the investigated taxpayer) could delay or prevent the exchange of information, we also consider whether any notification to the investigated taxpayer takes place at all, even if it is after the exchange of information, because the taxpayer could start taking actions (transfer assets, leave the country, etc) to obstruct the legal and economic consequences of the requesting jurisdiction's investigation or proceedings. By being made aware, taxpayers could also take precautionary measures with respect to assets, bank accounts, etc., located in other jurisdictions.
9. In those cases when the taxpayer is not notified (either because it is not a legal requirement or because there are exceptions to this notification), we still evaluate whether the information holder has any right to appeal or to seek judicial review. In this case, we consider whether there are legally binding timeframes for the appeal procedures and appropriate confidentiality safeguards which would ensure that the exchange of information would not be delayed or prevented.
10. 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)."<sup>23</sup>
11. The full element B.2 reads as follows: "The rights and safeguards (eg notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information."<sup>24</sup>
12. Because under Global Forum's methodology there are no clear criteria to determine when identified problems as described in "factors" are going to affect the assessment of an "element", we refrain from assessing a secrecy score only if no problems (factors) have been identified, irrespective of the element's assessment. However, we do consider both: (i) whether the factors mentioned are related to bank information; and (ii) whether information described in the report (even if not mentioned as a factor) is also relevant to assess a jurisdiction's power to obtain and exchange bank information. See also the footnotes below for more background on this issue.
13. Tax Justice Network. *TJN Survey*. 2021. URL: <http://fsi.taxjustice.net/fsi2022/TJN-Survey-2021.pdf> (visited on 11/05/2022).
14. Tax Justice Network. *Tax Information Exchange Arrangements*. May 2009. URL: [http://www.taxjustice.net/cms/upload/pdf/Tax\\_Information\\_Exchange\\_Arrangements.pdf](http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf) (visited on 08/05/2022).
15. Markus Meinzer. 'Automatic Exchange of Information as the New Global Standard: The End of (Offshore Tax Evasion) History?' *SSRN Electronic Journal* (2017). URL: <http://www.ssrn.com/abstract=2924650> (visited on 06/05/2022).
16. Tax Justice Network. *Secrecy Indicator 18: Automatic Information Exchange*. Tax Justice Network, 2022. URL: <https://fsi.taxjustice.net/fsi2022/KFSI-18.pdf>.
17. Markus Meinzer. *Steueroase Deutschland: Warum Bei Uns Viele Reiche Keine Steuern Zahlen*. Munich: C.H.Beck, 2015, p.17.
18. Naomi Fowler. *Whistleblower Rudolf Elmer: Legal Opinion on Latest Ruling*. Apr. 2019. URL: <https://www.taxjustice.net/2019/06/04/whistleblower-rudolf-elmer-legal-opinion-on-latest-ruling/>

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19. Bastian Brinkmann et al. 'Wie Einfache Bürger Billige Dienste Für Offshore-Kunden Leisten'. *Süddeutsche.de* (Apr. 2016). URL: <http://www.sueddeutsche.de/politik/mittelamerika-leticia-und-die-briefkasten-oma-1.2954968> (visited on 03/05/2022); Tax Justice Network. *The UK-Swiss Tax Agreement: Doomed to Fail. Why the Deal Will Raise Little, and May Be Revenue-Negative for the UK*. Oct. 2011. URL: [www.taxjustice.net/cms/upload/pdf/TJN\\_1110\\_UK-Swiss\\_master.pdf](http://www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf) (visited on 06/05/2022).
20. Financial Action Task Force, *Financial Action Task Force on Money Laundering. The Forty Recommendations*.
21. Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*.
22. Financial Action Task Force. *FATF Consolidated Table of Assessment Ratings*. 2022. URL: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html> (visited on 23/02/2022).
23. OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes. *Implementing the Tax Transparency Standards: A Handbook for Assessors and Jurisdictions, Second Edition*. Paris: OECD, May 2011. URL: [https://www.oecd-ilibrary.org/taxation/implementing-the-tax-transparency-standards\\_9789264110496-en](https://www.oecd-ilibrary.org/taxation/implementing-the-tax-transparency-standards_9789264110496-en) (visited on 09/05/2022), p.27.
24. OECD and Global Forum on Transparency and Exchange of Information for Tax Purposes, *Implementing the Tax Transparency Standards*, p.28.

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- *FATF Consolidated Table of Assessment Ratings*. 2022. URL: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html> (visited on 23/02/2022) (cit. on p. 12).
  - *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation. The FATF Recommendations (2012 - Updated 2022)*. Paris, Mar. 2022. URL: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> (visited on 15/04/2022) (cit. on pp. 10, 12).
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