

Secrecy Indicator 14: Tax Court Secrecy

What is measured?

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing the public online availability of verdicts, judgements and sentences. It assesses separately the availability for criminal and civil/administrative tax matters and whether all written judgments are published online for free or at a cost of no more than US\$10, €10 or £10.¹ 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, can 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 anonymised.

If verdicts, judgements and sentences are published online for free, this indicator's secrecy score is reduced by 50 points each for both criminal and civil tax matters. However, the score is reduced only by 25 points (instead of 50 points) if judgments are available online only with a fee of no more than US\$10, €10 or £10 or if judgments are published online for free but in anonymised form.

Thus, for instance, a jurisdiction will have a zero haven score if all the judgements and verdicts resulting from criminal and civil tax proceedings are published online for free and not anonymised. The jurisdiction would have a 50 points secrecy score if the judgements resulting from both criminal and civil tax proceedings are available online for a fee of up to US\$10, €10 or £10 each or if judgements are available online for free, but at least some of them are in an anonymised form.

Furthermore, jurisdictions with no income taxes are assessed as not applicable and receive the full secrecy score (100 points) for the indicator.

The information for this indicator has been drawn from the jurisdictions' judiciary website or other government agencies' websites and from the results of the Tax

Justice Network’s 2021 Survey and earlier surveys.² Government websites were consulted to ensure that both criminal and civil tax judgments are effectively available with full text and that technical problems do not prevent access to information.

We have concluded that judgments are available online for free only when we were able to download a sample of judgments from different courts. If we were not able to download a sample of judgments or if it appeared that only a few judgments were published but not all of them, we have considered that not all judgments are available online in full.

Moreover, to ensure that no obstacles can hinder the online availability of the data, 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 (eg registration of bank account, requirement of a local identification number or sending a request by post). The secrecy scoring matrix is shown in Table 1, with full details of the assessment logic given in Table 2.

Table 1. Secrecy Scoring Matrix: Secrecy Indicator 14

Regulation		Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
Criminal tax judgements/verdicts	Not available online	50
	Always available up to US\$10, €10 or £10, or available for free but in anonymised form	25
	Always available online for free	0
Civil tax judgments/verdicts	Not available online	50
	Always available up to US\$10, €10 or £10, or available for free but in anonymised form	25
	Always available online for free	0

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.³ Public availability of verdicts is often considered to be an important pillar 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.

Preventing public access to tax court judgments may result in important court decisions that have an impact on public revenue being made without the public's knowledge. As such, it limits the access to information required to exercise the right to protest or criticise decisions, to determine the need for a policy change, or to engage with the court through an "amicus curiae" process. In some jurisdictions, only "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 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 precedents and, therefore, provide clarity among citizens about the right way to interpret the law. They are also 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-makers. It may lead over time to flawed legislation as well as to a low deterrence effect, impaired law enforcement by prosecutorial authorities, and tax administrations' 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; and sweetheart deals at court and undue political interference in the administration can neither be detected nor ruled out.

Nonetheless, in practice, in some countries 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 non-disclosure of verdicts. This practice creates fundamental conflicts with the rule of law. While all tax verdicts 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.⁴ 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 tax verdicts. Nonetheless, 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 (as for example, in Estonia⁵ and Taiwan⁶) is acceptable, anonymisation of all or most decisions may create obstacles for the process of researching and analysing decisions.

The secrecy emanating from not publishing tax judgements 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 prevent that exchange from happening while keeping the decision far from the public eyes.

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 Secrecy Indicator 9⁷), 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 free data access is because if relevant data can only be accessed by paying a fee, it can be prohibitively expensive to import this data 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.⁸

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 2. Assessment Logic: Secrecy Indicator 14 - Tax Court Secrecy

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
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 €/U\$/GBP, or it is always available for free but in anonymised form; 2: Yes, full text of verdicts is always online for free.	<=0: 50 points 1: 25 points 2: 0 points

...continues on next page

Continuing from previous page...

ID	ID description	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Secrecy Score
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: 50 points 1: 25 points 2: 0 points

Results Overview

Figure 1. Tax Court Secrecy: Secrecy Score Overview

ID	MY	LU	ZA	AT	BM	CK	DE	ES	GI	HU	KN	LR	MT	NO	PK	RU	SM	US	VU	
FJ	LT	KR	XK	AS	BH	CH	CZ	EG	GH	HR	JP	LK	MS	NL	PH	RS	SI	TZ	VN	
CR	KZ	CL	UA	AO	BG	BZ	CY	EC	GG	HK	JO	LI	MH	NG	PE	RO	SG	TT	VI	
CA	KE	AD	SK	AL	BE	BW	CW	DZ	GD	GU	JE	LC	ME	NA	PA	QA	SE	TR	VG	
BR	IS	EE	PL	AI	BD	BS	CO	DO	GB	GT	IT	LB	MC	MX	OM	PY	SC	TN	VE	
AU	IL	TW	MO	AG	BB	BO	CN	DM	FR	GR	IN	KY	MA	MV	NZ	PT	SA	TH	VC	
AR	IE	SV	MK	AE	AW	BN	CM	DK	FI	GM	IM	KW	LV	MU	NR	PR	RW	TC	UY	WS

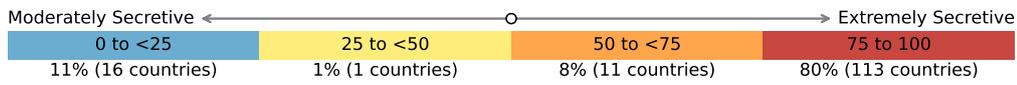
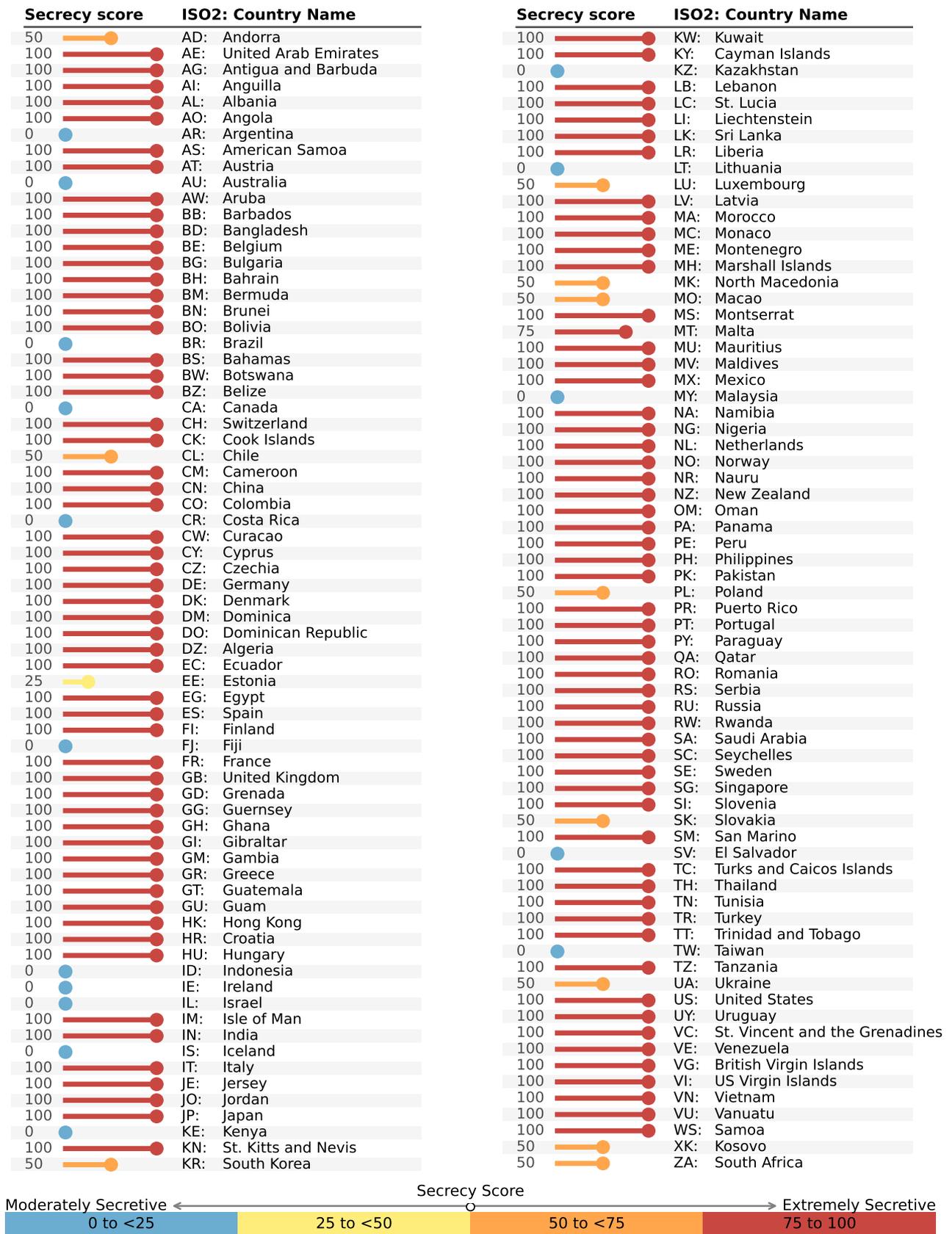


Figure 2. Tax Court Secrecy: Secrecy Scores



Endnotes

1. In the previous edition of the Financial Secrecy Index of 2020, the secrecy score also comprised an analysis of the openness of court proceedings, lawsuits and trials for criminal and civil or administrative tax matters. The assessment considered whether the public had the right to attend the full proceedings of courts and could not be ordered to leave the court room even if a party invoked tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. This component of the indicator has been removed because it was often unclear and very time consuming to determine for each country included in the index which exceptions for public access are available and whether or not they can be justified.
2. Tax Justice Network. *TJN Survey*. 2021. URL: <http://fsi.taxjustice.net/fsi2022/TJN-Survey-2021.pdf> (visited on 11/05/2022).
3. Randall S. Bockock. *Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers*. Washington, D.C, Oct. 2014. URL: https://iatj.net/content/congresses/washington2014/Protection_Bocock.pdf (visited on 07/05/2022).
4. Sujoy Chatterjee. ‘Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?’ *Dalhousie Journal of Legal Studies* (2014).
5. In Estonia, according to the Code of Criminal Procedure, §408.1(2): “A published decision shall disclose the name and personal identification code or, in the absence of the personal identification code, date of birth of the accused. The personal identification code and name or date of birth of an accused who is a minor are replaced by initials or characters, except in the case the disclosed decision is at least the third one in which the minor is convicted in a criminal offence. A court shall replace the names and other personal data of other persons with initials or characters. A decision shall not disclose the residence of a person”.
6. According to Taiwan’s Judicial Yuan, pursuant to Article 83 of the Court Organic Act: “all levels of courts’ judgement/verdicts are, in principle, publicly available. Exceptions may apply to the extent that when there are certain special provisions under laws to stipulate restrictions on the judgments to be made available to public, those laws may include but not be limited to the Protection of Children and Youth Welfare and Rights Act, the Juvenile Delinquency Act, the Sexual Assault Crime Prevention Act, the Sexual Harassment Prevention Act, the Classified National Security Information Protection Act, and the Intellectual Property Court Organization Act. Judgments may stay unavailable to the public or be published by deleting any related personal information when meeting those special provisions under laws. That is, judgments which were issued by criminal tax courts not meeting the above-mentioned exceptions may be kept publicly available.” Correspondence with Taiwan’s Judicial Yuan, 08.07.2020.
7. Tax Justice Network. *Secrecy Indicator 9: Corporate Tax Disclosure*. Tax Justice Network, 2022. URL: <https://fsi.taxjustice.net/fsi2022/KFSI-9.pdf>.

8. For more information about this see:⁹

9. OpenCorporates. *Open Company Data Index*. 2021. URL: <http://registries.opencorporates.com/> (visited on 08/05/2022).

Bibliography

- Bocock, Randall S. *Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers*. Washington, D.C, Oct. 2014. URL:
https://iatj.net/content/congresses/washington2014/Protection_Bocock.pdf
(visited on 07/05/2022) (cit. on p. 8).
- Chatterjee, Sujoy. ‘Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?’ *Dalhousie Journal of Legal Studies* (2014) (cit. on p. 8).
- OpenCorporates. *Open Company Data Index*. 2021. URL:
<http://registries.opencorporates.com/> (visited on 08/05/2022) (cit. on p. 9).
- Tax Justice Network. *TJN Survey*. 2021. URL:
<http://fsi.taxjustice.net/fsi2022/TJN-Survey-2021.pdf> (visited on 11/05/2022)
(cit. on p. 8).
- *Secrecy Indicator 9: Corporate Tax Disclosure*. Tax Justice Network, 2022. URL:
<https://fsi.taxjustice.net/fsi2022/KFSI-9.pdf> (cit. on p. 8).