

Secrecy Indicator 19

Information Exchange Upon Request

What is measured?

This indicator examines exchange of information (EOI) upon request under the multilateral amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters¹ (“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 (eg. the US) which are parties to the original Convention (which was only open to OECD countries) are not considered in this indicator. The amended Tax Convention is open to all countries, not just OECD or European ones. The Amending Protocol entered into force on 1 June 2011.² As of December 2021, the Tax Convention has 144 signatory parties, of which 135 have followed up with the ratification of the legal instrument, effectively making it applicable under domestic law. This means that each of the parties having ratified the Tax Convention benefits from information exchange upon request relationships with the other 134 jurisdictions party to the Tax Convention.³ A detailed analysis of the Tax Convention can be found on the Tax Justice Network website.⁴

In this indicator, a jurisdiction that has signed and ratified the amended Tax Convention is given a zero secrecy score while a jurisdiction that hasn’t will get a full (100) secrecy score. In the past editions of the Financial Secrecy Index a different approach was used, and in cases in which a jurisdiction had not signed or ratified the amended Tax Convention, we assessed the number of effective bilateral information exchanges.⁵

The secrecy scoring matrix can be found in Table 1, and full details of the assessment logic can be found in Table 2.

Table 1. Secrecy Scoring Matrix: Secrecy Indicator 19

Regulation	Secrecy Score Assessment [Secrecy Score: 100 points = full secrecy; 0 points = full transparency]
<p>No adherence to the amended Tax Convention Jurisdiction has not signed and ratified the amended Tax Convention as of November 2021.</p>	100
<p>Adherence to the amended Tax Convention Jurisdiction has signed and ratified the amended Tax Convention as of November 2021.</p>	0

In a context of largely unrestricted cross-border financial flows, the amended Tax Convention provides a minimum backstop to guard against proliferation of cross border tax crimes and offences through adherence to a network of administrative cooperation. Although the adherence to the amended Tax Convention is assessed in this indicator for its role in facilitating information exchange upon request, the Convention is considered again for SI 20 on International Legal Cooperation.⁶ This is because in addition to information exchange upon request under Article 5 of the amended Tax Convention, the multilateral treaty is an essential tool to address other important cooperation policies, such as spontaneous exchange of information (Article 7), recovery of tax claims (Article 11), and a range of international assistance safeguards (see for instance Articles 12 to 17).⁷

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. Although economic activity has become increasingly global, tax collectors' efforts often 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 revenue authorities wanting to tackle tax dodging and on society at large which is footing the bill for missing tax revenues from international activity.

As we have pointed out already in March 2022 in our “Creeping Futility” report⁸, 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. 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.⁹ This distortion creates imbalances in the world economy, with devastating effects on ordinary people and the environment. Moreover, as Nicholas Shaxson has argued in his book *Treasure Islands*,¹⁰ 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 capital flight 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 lower income 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 Secrecy Indicator 18¹¹). 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 registries of the beneficial owners of companies, trusts and foundations are an important pillar of such a system.

By virtue of Article 6 of the Tax Convention, which mandates the parties to mutually agree on the scope and procedures relating to automatic exchange of information, the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (CRS MCAA) was developed, concerning the automatic exchange of financial account information pursuant to the Common Reporting Standard (for more information see Secrecy Indicator 18¹²).

Yet, while jurisdictions may now become party to the OECD's Common Reporting Standard (CRS) for Automatic Exchange of Information, many loopholes and obstacles for the inclusion of developing countries have been identified.¹³ In absence of automatic exchange of information, the upon request standard remains the only mechanism for countries that are not in a position to receive data automatically.

Moreover, even countries able to implement Automatic Exchange of Information 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.

Therefore, access to information exchange upon request remains a crucial pillar for countering cross-border illicit financial flows. As for the expansion of the 'upon request' information exchange network, by far the quickest and most

efficient and equitable way for lower income 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 such a multilateral framework, weaker jurisdictions are disadvantaged and often remain excluded from the benefits of exchange relationships,¹⁴ most of which flow from the collective bargaining clout of a large group of nations. Instead of incurring high costs and facing risks¹⁵ 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.

In absence of such a truly global framework covering all countries, the amended Tax Convention currently offers the only suitable alternative for achieving multilateral information exchange upon request. As mentioned above, the ratification of the amended Tax Convention directly makes information exchange upon request possible with regards to all other parties to the multilateral treaty. In contrast, the negotiation, signature and ratification of one bilateral treaty only allows for information exchange between the two treaty partners involved, making it an ineffective and costly legal instrument to attain administrative tax information exchange for countering illicit financial flows. Furthermore, the signature of bilateral treaties to fulfill the same purpose outside the Tax Convention poses an undue burden on lower income countries, who do not have the resources to negotiate many treaties and who are usually pressured to make tax concessions in those treaties¹⁶ in addition to any exchange of information provision.

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 19 - Information Exchange Upon Request

ID	ID description	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: 100 points

Results Overview

Figure 1. Information Exchange Upon Request: Secrecy Score Overview

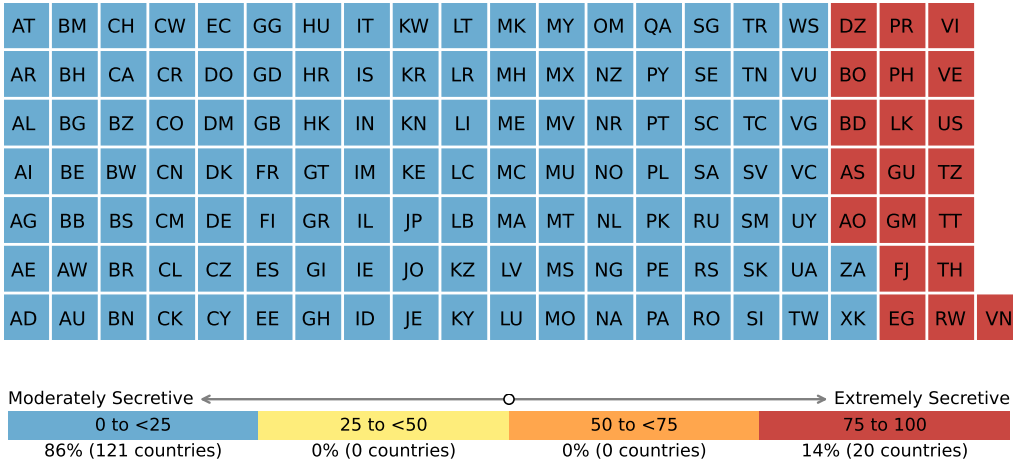
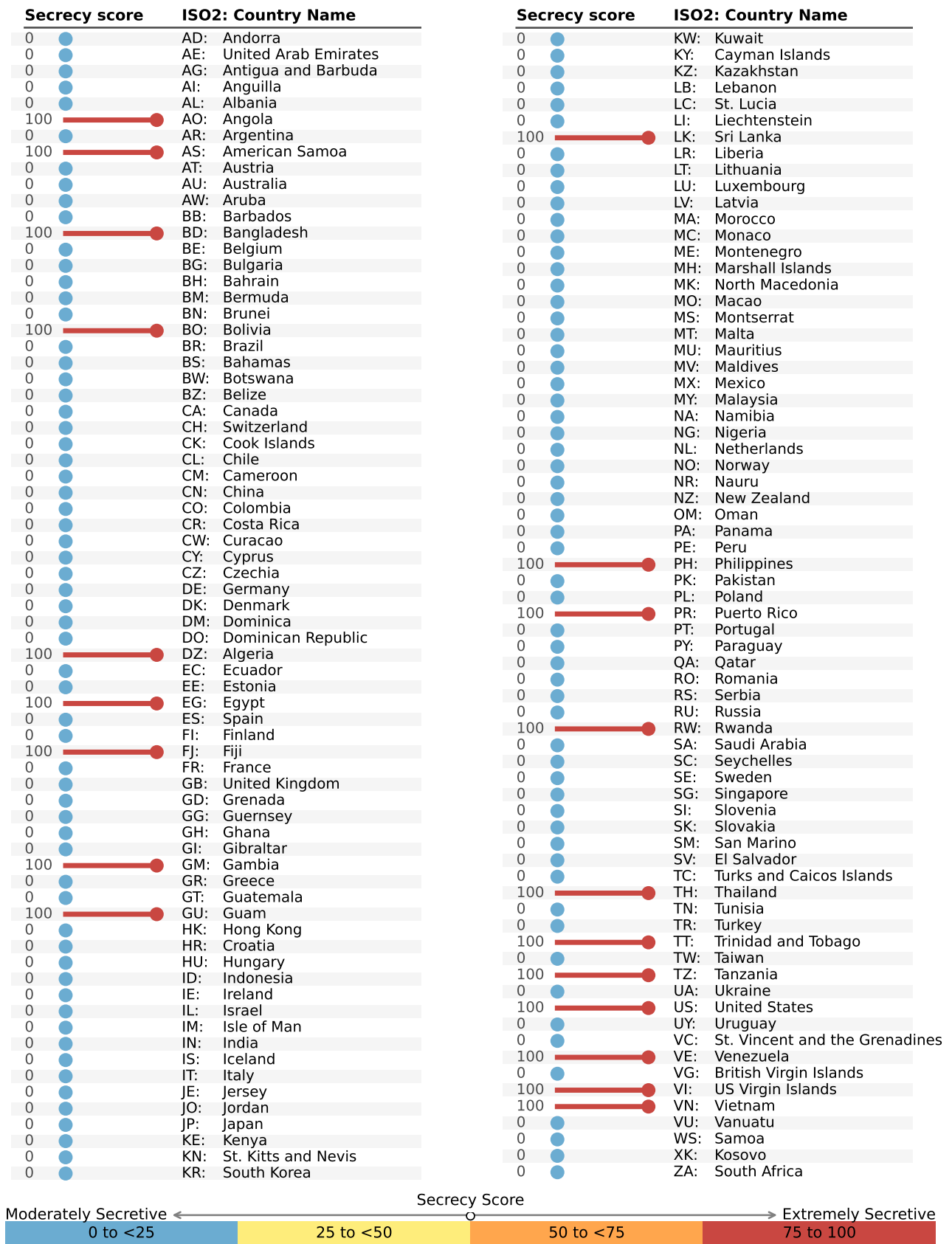


Figure 2. Information Exchange Upon Request: Secrecy Scores



Endnotes

1. OECD and Council of Europe. *Convention on Mutual Administrative Assistance in Tax Matters*. 1988, amended by Protocol in 2010. URL: https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en#page1 (visited on 06/05/2022).
2. OECD. *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*. Dec. 2021. URL: http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf (visited on 06/05/2022).
3. OECD, *Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters*.
4. Markus Meinzer. *Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010*. Feb. 2012. URL: <http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf> (visited on 03/05/2022).
5. To be considered effective, the relationship had to be (i) in force, and (ii) considered “compliant with the standard” set under Article 5 of the Tax Convention, according to the Global Forum table of treaties published for every Global Forum member. However, in recent years the Global Forum is no longer publishing those tables. As of this 2022 edition of the Financial Secrecy Index, the methodology has changed to consider the adherence to the Tax Convention as a sole criterion for Secrecy Indicator 19. Over and above the unavailability of the data source previously used to assess bilateral information exchange relationships outside the Tax Convention, two considerations further support the methodology change. First, the cumulative implementation of bilateral information exchange treaties is a substantially weaker policy than the adherence to the multilateral Tax Convention. As mentioned above, the ratification of the Tax Convention directly makes information exchange upon request possible with regards to all other parties to the multilateral treaty. In contrast, the negotiation, signature and ratification of one bilateral treaty only allows for information exchange between the two treaty partners involved, making it an ineffective and costly legal instrument to attain administrative tax information exchange for countering illicit financial flows. Second, the signature of bilateral treaties to fulfill the same purpose outside the Tax Convention poses an undue burden on lower income countries, which do not have the resources to negotiate many treaties and which are usually pressured to make tax concessions in those treaties in addition to any exchange of information provision.
6. Tax Justice Network. *Secrecy Indicator 20: International Legal Cooperation*. Tax Justice Network, 2022. URL: <https://fsi.taxjustice.net/fsi2022/KFSI-20.pdf>.
7. OECD and Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters*.
8. See the full report here:¹⁷ International Tax Review broadly reported about this study here:¹⁸

9. Markus Meinzer. *Policy Paper on Automatic Tax Information Exchange between Northern and Southern Countries*. Sept. 2010. URL: http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf (visited on 06/05/2022).
10. Nicholas Shaxson. *Treasure Islands: Uncovering the Damage of Offshore Banking and Tax Havens*. St. Martin's Griffin, Sept. 2012, pp.74-79.
11. Tax Justice Network. *Secrecy Indicator 18: Automatic Information Exchange*. Tax Justice Network, 2022. URL: <https://fsi.taxjustice.net/fsi2022/KFSI-18.pdf>.
12. Tax Justice Network, *Secrecy Indicator 18: Automatic Information Exchange*.
13. Andres Knobel. *OECD's Handbook for Implementation of the CRS: TJN's Preliminary Observations*. Sept. 2015. URL: <http://www.taxjustice.net/wp-content/uploads/2013/04/OECD-CRS-Implementation-Handbook-FINAL.pdf> (visited on 03/05/2022); 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*. Mar. 2017. URL: www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf (visited on 07/05/2022); Andres Knobel. *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. URL: https://financialtransparency.org/wp-content/uploads/2017/01/Knobel2017_AEOI-Survey-Report.pdf (visited on 01/05/2022).
14. Alex Cobham. *OECD Country-by-Country Reporting: Only for the Strong?* Sept. 2015. URL: <http://uncounted.org/2015/09/14/oecd-country-by-country-reporting-only-for-the-strong/> (visited on 02/05/2022).
15. Lucas Millán-Narotzky et al. *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?* ICTD Working Paper 125. Tax Justice Network / ICTD, 2021. URL: https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16940/ICTD_WP125.pdf?sequence=1&isAllowed=y (visited on 03/05/2022).
16. Millán-Narotzky et al., *Tax Treaty Aggressiveness: Who Is Undermining Taxing Rights in Africa?*
17. Markus Meinzer. *The Creeping Futility of the Global Forum's Peer Reviews*. Tax Justice Network, Mar. 2012. URL: <http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf> (visited on 01/04/2022).
18. Salman Shaheen. 'Exclusive: Why Tax Justice Campaigners and the OECD Are Not Seeing Eye to Eye'. *International Tax Review* (Mar. 2012). URL: <https://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html> (visited on 12/04/2022).

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