

Narrative Report on Austria

Austria is ranked at 18th position on the 2013 Financial Secrecy Index. 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.

Austria has been assessed with 64 secrecy points out of a potential 100, placing it in the mid-range of the secrecy scale. It accounts for less than 1 per cent of the global market for offshore financial services, making it a very small player compared with other secrecy jurisdictions (see charts 1 and 2).

Part 1: Telling the story

A recalcitrant European secrecy jurisdiction

Austria's importance as a secrecy jurisdiction for non-residents stems primarily from its banking secrecy, its secretive private foundations and Treuhand¹, and an absence of inheritance and other taxes. These factors, combined with Austria's political stability, its location inside the European Union and its geographical proximity to the countries of the former Soviet Union have made it a magnet for questionable money. It is one of only two recalcitrant European Union member states (alongside Luxembourg) to opt for the "withholding tax" option under the European Savings Tax Directive, instead of allowing automatic information exchange, and indeed it has recently been working closely with Luxembourg and Switzerland to try and sabotage progress on the Directive.

Austria appears to have a close acquaintance with dirty money. The 2013 US International Narcotics Control Strategy Report (INCSR) noted: "Money laundering occurs within the Austrian banking system as well as in non-bank financial institutions and businesses. Money laundered by organized crime groups derives primarily from serious fraud, smuggling, corruption, narcotics trafficking, and trafficking in persons." It cited the Austrian Bankers' Association as an obstacle to law enforcement investigations and raised further concerns about the gambling sector. In 2008 the INCSR had noted that "The percentage of undetected organized crime may be enormous, with much of it reportedly coming from the former Soviet Union."

Chart 1 - How Secretive?

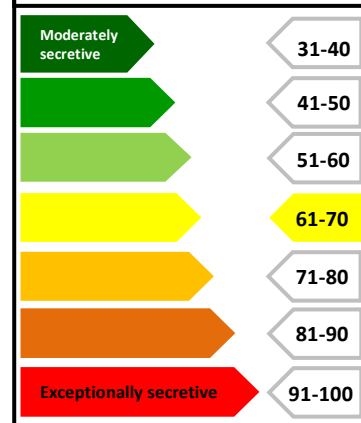
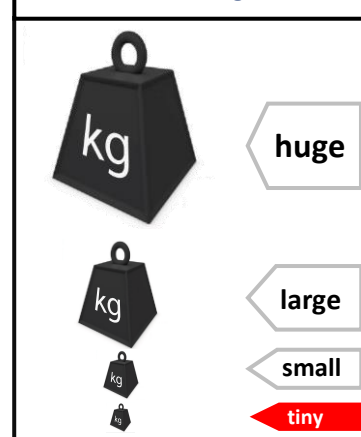


Chart 2 - How Big?



One Austrian speciality is a prior notification process, which constitutes a major obstacle when bank information is being sought whether from international tax information requests or from national public prosecutors. When answering a request, the authorities must first inform the bank and the person about whom the request has been made, then wait 2 weeks for potential appeals before it may answer². Another document notes: "To complicate things further, when national law enforcement authorities do not know the bank account of the suspect, they must address the court order to all of the five bank associations in Austria. The bank associations also have a right to raise a complaint against the court order, and do this as a matter of routine."³ Public prosecutors have called for a central registry of bank information, which the Austrian government has rejected so far. The Global Forum also found some of Austria's recent updates of the bilateral exchange of information treaties to be out of line with OECD requirements, and even found some slippage.⁴

The "hidden Treuhand" – similar in effect to a trust or foundation – is another Austrian secrecy speciality⁵. A Treuhand is created when a person, the Treuhänder (equivalent to a trustee), is given authority to exercise rights over assets in his or her own name, under a binding agreement with another person, the Treugeber [equivalent to a trust settlor]." Austrian legislation does not specify what information trustees resident in Austria must maintain on foreign law trusts they administer, and while there is a partial registration system for Treuhand, it only applies where the Treuhänder is a lawyer or civil law notary⁶.

These loose or non-existing registration requirements are at odds with very public demands by Austrian Finance Minister Maria Fekter who demanded trust registries for "the Channel Islands, but also for countries where British law applies such as the Cayman Islands, Virgin Islands or Gibraltar. ...the UK should be forced to ban anonymous directorships of companies and trusts." She said Austria would resist reforming Austrian banking secrecy if Britain did not do the same.

A tax haven too

Austrian legal entities can also be abused for tax purposes, of course. Entities resident in Austria for tax purposes (i.e. when their seat or place of effective management is in Austria) are liable for tax on their worldwide income, while entities that are not tax resident in Austria are only taxed on their Austrian-sourced income. This is a classic tax haven facility that encourages non-residents to use Austrian legal entities to avoid tax by engaging only in non-resident business.

Austria also allows companies to consolidate foreign losses with domestic profits for tax purposes. A recent study⁷ by the Austrian Audit Court found 110 tax allowances in Austrian Corporate Tax Law (KStG); and estimated that €450m is lost each year - €3 billion since 2005 - because of these facilities. The Audit Court added that the Finance Ministry has no systematic and comprehensive concept for tax allowances, targets and detailed figures are missing.⁸

Some improvements

Austria has made some improvements. Most significantly, in May 2013 it signed the Amended CoE/OECD Convention on Mutual Administrative Assistance in Tax Matters, an automatic information exchange system, but it has not yet ratified it. Another improvement came in the Corporate Income Tax Act of 2010, which stipulates that foundations must disclose any appendix to the foundation deed to the tax authorities, together with a copy of any Treuhand used by the founder; and alterations to these documents must be notified to the tax authority. Since April 2011, the identity of any beneficiaries not named in the deed must be disclosed to the revenue authorities, including any foundations set up before then⁹.

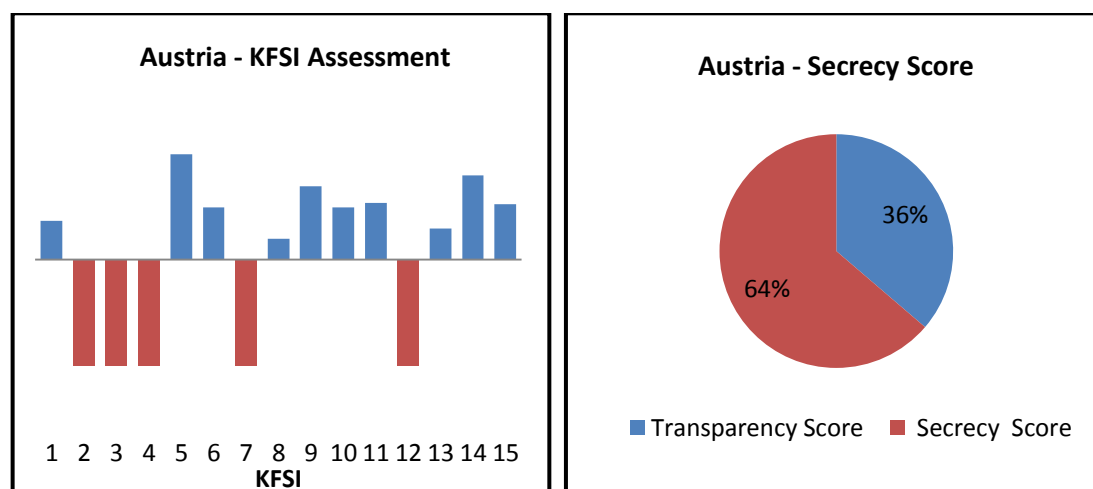
As part of the EU, Austria will also incorporate new legislation concerning country-by-country reporting for the financial sector, and separately for the extractives sector.

Next steps for Austria

Austria's 64 per cent secrecy score shows that it must still make major progress in offering satisfactory financial transparency. If it 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 take action on the points noted where it falls short of acceptable international standards. See part 2 below for details of Austria's shortcomings on transparency. See this link <http://www.financialsecrecyindex.com/kfsi> for an overview of how each of these shortcomings can be fixed.

Part 2: Secrecy Scores

The secrecy score of 64 per cent for Austria has been computed by assessing the jurisdiction's performance on the 15 Key Financial Secrecy Indicators, listed below.



The numbers on the horizontal axis of the bar chart on the left refer to the Key Financial Secrecy Indicators (KFSI). The presence of a **blue** bar indicates a positive answer, as does **blue** text in the KFSI list below. The presence of a **red** bar indicates a negative answer as does **red** text in the KFSI list. Where the jurisdiction's performance partly, but not fully complies with a Key Financial Secrecy Indicator, the text is coloured **violet** in the list below (combination of red and blue).

This paper draws on key data collected on Austria. Our data sources include regulatory reports, legislation, regulation and news available at 31.12.2012¹⁰. The full data set is available [here](#)¹¹. Our assessment is based on the 15 Key Financial Secrecy Indicators (KFSIs, below), reflecting the legal and financial arrangements of Austria. Details of these indicators are noted in the following table and all background data can be found on the [Financial Secrecy Index website](#)¹².

The Key Financial Secrecy Indicators and the performance of Austria are:

TRANSPARENCY OF BENEFICIAL OWNERSHIP – Austria	
1.	Banking Secrecy: Does the jurisdiction have banking secrecy? Austria does not adequately curtail banking secrecy
2.	Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented? Austria does not disclose or prevent trusts and private foundations
3.	Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies? Austria does not maintain company ownership details in official records
KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Austria	
4.	Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for less than US\$10/€10? Austria does not require that company ownership details are publicly available online
5.	Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for a fee of less than US\$10/€10? Austria requires that company accounts be available on public record

6.	Country-by-Country Reporting: Are all companies required to comply with country-by-country financial reporting? Austria partly requires country-by-country financial reporting by some companies
EFFICIENCY OF TAX AND FINANCIAL REGULATION – Austria	
7.	Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents? Austria does not require resident paying agents to tell the domestic tax authorities about payments to non-residents
8.	Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit? Austria partly uses appropriate tools for efficiently analysing tax related information
9.	Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments? Austria partly avoids promoting tax evasion via a tax credit system
10.	Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses? Austria partly allows harmful legal vehicles
INTERNATIONAL STANDARDS AND COOPERATION – Austria	
11.	Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations? Austria partly complies with international anti-money laundering standards
12.	Automatic Information Exchange: Does the jurisdiction participate fully in Automatic Information Exchange such as the European Savings Tax Directive? Austria does not participate fully in Automatic Information Exchange

13.	<p>Bilateral Treaties: Does the jurisdiction have at least 46 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?</p> <p>As of 31 May, 2012, Austria had less than 46 tax information sharing agreements complying with basic OECD requirements</p>
14.	<p>International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?</p> <p>Austria has partly ratified relevant international treaties relating to financial transparency</p>
15.	<p>International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues?</p> <p>Austria partly cooperates with other states on money laundering and other criminal issues</p>

¹ Treuhand are rather like trusts, and can be created without any beneficiaries being identified. Only selected information about foundations is on public record because it is possible to create an additional protocol to the foundation deed that can be withheld from public record. Kalss, Susanne 2004: Stiftungsrecht in Österreich (Presentation 7.10.2004 Bucerius Law School), Hamburg, p18-19. <http://homepage.univie.ac.at/ernst.grabovszki/Stiftungsrecht.pdf> In: <http://homepage.univie.ac.at/ernst.grabovszki/Stiftungsrecht.pdf>; 22.9.09. and Kalss/Eiselsberg/Zollner 2009: 21). Kalls/Eiselsberg/Zollner 2009 ... www.law-school.de/fileadmin/user_upload/medien/BLS-Publikationen/Discussion%20Paper%20Österreich.pdf Kalss, Susanne/Eiselsberg, Maximilian/Zollner, Johannes 2009: Stiftungsland Österreich - Aktuelle Entwicklungen und Tendenzen (Heft 16 - Bucerius Law School Hochschule für Rechtswissenschaft), Hamburg, in: www.law-school.de/fileadmin/user_upload/medien/BLS-Publikationen/Discussion%20Paper%20Österreich.pdf; 3.5.2011.

² The OECD's Global Forum notes ([pp7-8](#)) that there are no exceptions to this requirement.

³ OECD (2012): Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Austria, p 26, <http://www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf>.

⁴ Global Forum on Transparency and Exchange of Information for Tax Purposes 2011: Peer Review Report – Phase 1: Legal and Regulatory Framework - Austria, Paris, p7. <http://www.eoi-tax.org/jurisdictions/AT#peerreview> In: <http://www.eoi-tax.org/jurisdictions/AT#peerreview>; 19.9.2011. Furthermore, for six of the twelve treaties, the Global Forum even identified a further restriction compared to the old DTA (ibid.: 58). This is the case for Belgium, Bulgaria, Luxembourg, Singapore, Switzerland and Tajikistan.

⁵ "The Treuhand is a civil contract which is not regulated in law, but is based on the general principle of the autonomy of the contracting parties (i.e. the ability of any person to enter into any contract with whomsoever they chose) and delimited by jurisprudence and doctrine. A Treuhand does not have any legal status. It is created when a person, the Treuhänder, is authorised to exercise rights

over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the Treugeber." (GF 2011: 29).

⁶ However: "For tax purposes a resident trustee may be asked to provide evidence of the fiduciary relationship and information on settlor and beneficiaries to avoid being taxed on the trust income. This information could be submitted through tax returns of the trustee. Organisation for Economic Co-operation and Development 2008: Tax Co-operation. Towards a Level Playing Field, Paris, p134.

⁷ Rechnungshof (2013): „Bericht des Rechnungshofes: Transparenz von Begünstigten im Körperschaftssteuerrecht mit dem Schwerpunkt Gruppenbesteuerung“, Bund 2013/6

⁸ Whereas 99 % of the estimated annual losses go back to group taxation, the Ministry could not provide reliable data about the overall effects of it.

⁹ GF 2011: 34-35.

¹⁰ With the exception of KFSI 13 for which the cut-off date 31.05.2013. For more details, look at the endnote number 2 in the corresponding KFSI-paper here:

<http://www.financialsecrecyindex.com/PDF/13-Bilateral-Treaties.pdf>.

¹¹ That data is available here: <http://www.financialsecrecyindex.com/database/menu.xml>.

¹² <http://www.financialsecrecyindex.com>.