

Narrative Report on Belgium

Belgium is ranked at 40th position on the 2013 Financial Secrecy Index, with a secrecy score of 45 - a dramatic improvement of its score of 59 in 2011. The 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.

Belgium has been assessed with 45 secrecy points out of a potential 100, which places it in the lower range of the secrecy scale (see chart 1). Belgium accounts for slightly over 1 per cent of the global market for offshore financial services, making it a small player compared with other secrecy jurisdictions (see chart 2).

Its ranking has improved because of a decision to move significantly away from banking secrecy and to embrace automatic information exchange.

Part 1: Telling the story

25 October 2013

The financial sector plays a dominant role in the Belgian economy, with banking system assets estimated to be equivalent to 470 percent of GDP in 2007, falling to 310 percent by mid-2012, according to [the IMF](#).

Bank secrecy was formally introduced in Belgian tax legislation in 1980 but existed informally for a very long time. The domestic provisions governing bank secrecy (article 318 of the Income Tax Code) prevented the tax administration from investigating the accounts of non-residents when requested by a foreign administration. The tax administration could only force the bank to release client information when provided with evidence that the bank was an accessory to serious tax fraud.

When the European Union Savings Tax Directive came into effect in 2005, Belgium initially opted to levy withholding taxes on savings income instead of opting for automatic information exchange with the relevant taxpayer's home jurisdiction. In March 2009, however, Finance Minister Didier Reynders, fearing G20 sanctions, announced that Belgium would switch over to the automatic information exchange system under the EU Directive. He also announced that Belgium would commit to applying the OECD's "on request" standard of transparency and exchange of information, and pledged to negotiate or renegotiate bilateral tax agreements in this spirit.

Chart 1 - How Secretive?

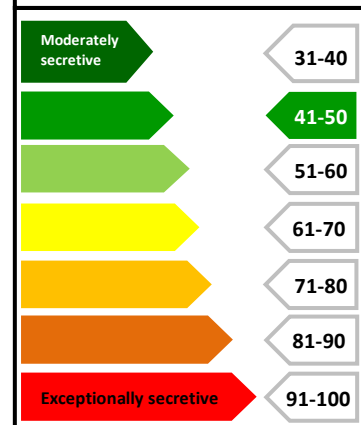


Chart 2 - How Big?



A couple of days after the announcement, Belgium still found itself on the OECD's 'grey list' – but by July 2009 it had concluded the 12 tax information exchange agreements with other jurisdictions necessary for it to be removed from the grey list. New legislation in March 2011 also removed internal law obstacles to exchanging bank account information across its borders. (Belgian taxpayers continued to be able to keep their assets secret from the Belgian Tax administration, although there is a register of taxpayer accounts at the central bank, and under new laws the tax authorities will be able to obtain information under certain circumstances.¹ From 2014, Belgian taxpayers will [have to declare interests](#) in entities and arrangements such as foundations.)

The current administration, in power since December 2011, further embraced automatic information exchange across borders by joining the initiative for a pilot of multilateral automatic information exchange based on the U.S. Foreign Account Tax Compliance Act (FATCA,) as well as supporting the extension of automatic exchange of information within the EU, beyond the current narrowly defined category of interest income, to cover all relevant types of income. Now, if a foreign tax authorities asks information from Belgium, it is automatically treated as a suspicion of evasion, and permission to hand over the relevant information is also automatically provided.

Belgian law does allow the creation of local foundations, but information about these is available on a central [registry](#). It does not allow trusts, but recognises the legal effects of foreign trusts.

Despite the sharp improvements in its legal arrangements, some doubts remain over compliance. According to an [IMF report](#) issued in May 2013, a mission to assess Belgium's adherence to the Basel Core Principles was, *"unable to conclude that AML/CFT compliance is sufficiently embedded in the supervisory framework. Specifically, it is unclear how monitoring of compliance is undertaken for those smaller banks that are subject to on-site inspections only infrequently."*

Belgium's banking sector has heavily re-engineered itself alongside (and partly because) of the renunciation of secrecy, with a shift away from investment banking and asset management towards a more traditional domestically-focused banking model: strikingly, the [IMF estimated](#) that cross-border banking claims fell from 300 percent of GDP in 2008 to just 58 percent by mid-2012.

No longer much of a secrecy jurisdiction, but still a tax haven

While Belgium is significantly less of a 'secrecy jurisdiction' than it used to be, it is still very much a 'tax haven', because of the particular tax facilities it offers, for both wealthy individuals and for multinational corporations. For instance, there is no tax on capital gains, no wealth taxation and also bank secrecy for residents. Belgium can be considered as a tax conduit country like Luxembourg or the Netherlands, and one in five of the world's top 100 multinational corporations used Belgium for tax avoidance purposes, according to [one](#)

[report](#).

The Belgian tax haven model is quite heavily based on attracting holding companies of multinational corporations headquartered elsewhere. Belgium's corporate tax regime rests on an extensive network of double tax treaties; on very low capital gains taxes for corporations, and a 95 percent tax exemption for dividends remitted to Belgium from subsidiaries of Belgian-based holding companies. Under the so-called 'Belgian Participation Exemption rules' a Belgian holding company that receives dividend income from a non-EU subsidiary will see 95% of that income exempted from tax; the remaining 5 percent is subject to the Belgian corporate income tax rate of 33.99%.

The diamond trade

The diamond sector constitutes grounds for concern, as illustrated by various scandals that have come to judicial attention in recent years. Antwerp accounts for 80 percent of world trade in rough diamonds, half of polished stones and five percent of Belgium's exports, with a turnover estimated at \$56 billion in 2011. The industry employs around 34,000 people, directly and indirectly, but it faces [stiff competition](#) with India, Israel and Shanghai – so there is clearly a great temptation to employ different subterfuges – as is the case of Dubai or Luxembourg - to attract business. One expert [said](#) that Antwerp's prosecutors

“are slowest when diamonds are involved,” for fear of tarnishing Antwerp's diamond business.”

One current scandal involves the company Omega diamonds - an Antwerp firm accused of non-payment of taxes, of tax evasion, of customs fraud and of money laundering. The case provides a good example of under-invoicing and undervaluing diamonds and manipulating transfer prices of African diamonds exports, from Angola and the Democratic Republic of Congo. This involves [several billions](#) of dollars' worth of diamonds, over several years.

Research and Development: offshore tax incentives

Big pharmaceuticals businesses and other sectors with large expenditures on research & development (R&D) are also supported by a range of tax incentives: both directly related to R&D (such as tax incentives related to researchers' wages) and indirectly, through incentives for companies to use Belgium as a base for owning intellectual property in ways that allow them to use transfer pricing strategies to escape corporate taxes elsewhere. For example, 80 percent of patent-related income can be exempted from the corporate income tax. This kind of business obviously causes great damage through its spillover effect on other countries, but it has brought lucrative fee income to Belgian financiers, lawyers and accountants.

Another plank of Belgium's corporate tax haven offering concerns 'internal banks', or corporate treasury operations. In 2006 Belgium adopted an Allowance for Corporate Equity

scheme (ACE) which permits a '[Notional Interest Deduction](#)' designed to allow transnational companies shift profits via interest payments made from high tax countries. In short, the Belgium 'internal bank' affiliate lends to the TNC's affiliates elsewhere, receiving interest payments which are taxed at a very low rate in Belgium. Many TNCs, including BP, Statoil, ArcelorMittal and ExxonMobil have placed countless billions in Belgian holding companies to take advantage of the ACE facility: at one point ArcelorMittal [capitalised](#) its Belgian operations with 45 billion Euros.

These various tax concessions have contributed to a situation where Foreign Direct Investment (FDI) stocks are equivalent to almost twice Belgium's GDP, compared to the OECD average of 30-40%. A "fairness tax" was introduced in August 2013 to ensure that TNCs at least cannot get away with paying no tax at all in Belgium.

Although Belgium can levy fairly high marginal tax rates on individuals, it also offers plenty of tax loopholes for high net worth individuals. For instance, individuals pay no wealth taxes, and in many circumstances it is possible to avoid capital gains tax, inheritance taxes and gift taxes. Some insurance products are also not taxable. There are also particular tax facilities available to expatriate employees who are part of an international group. These facilities have been particularly successful in attracting wealthy French individuals, undercutting France's tax system. See more details [here](#) and [here](#).

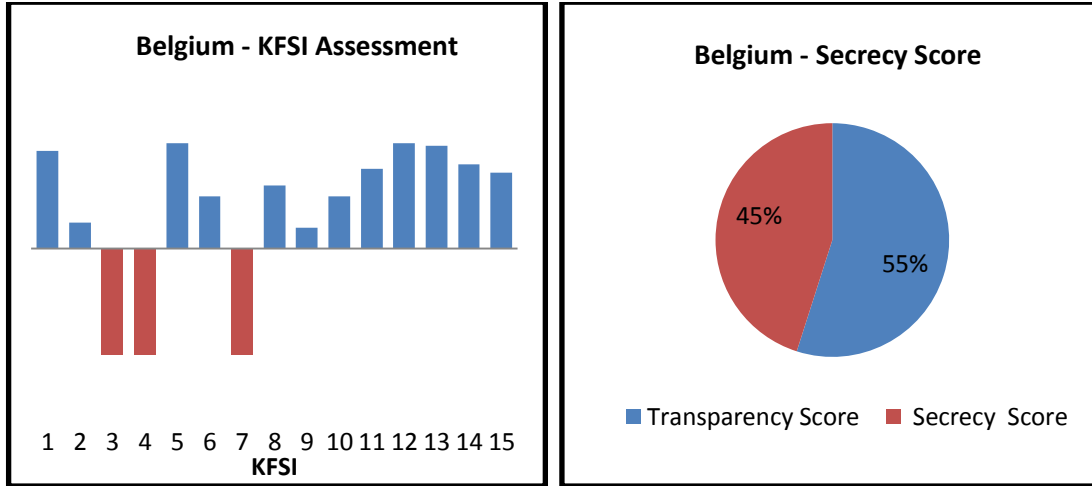
With thanks to Francois Gobbe and Rudy de Meyer for their major input into this report.

Next steps for Belgium

Belgium's 45 per cent secrecy score is better than many, but it shows that Belgium must still make 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 Belgium'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 45 per cent for Belgium 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 (combination of red and blue).

This paper draws on key data collected on Belgium. Our data sources include regulatory reports, legislation, regulation and news available at 31.12.2012². The full data set is available [here](#)³. Our assessment is based on the 15 Key Financial Secrecy Indicators (KFSIs, below), reflecting the legal and financial arrangements of Belgium. Details of these indicators are noted in the following table and all background data can be found on the [Financial Secrecy Index web site](#)⁴.

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

TRANSPARENCY OF BENEFICIAL OWNERSHIP – Belgium	
1.	Banking Secrecy: Does the jurisdiction have banking secrecy? Belgium does not adequately curtail banking secrecy

2.	Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented? Belgium partly discloses or prevents trusts and private foundations
3.	Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies? Belgium does not maintain company ownership details in official records
KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Belgium	
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? Belgium 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? Belgium 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? Belgium partly requires country-by-country financial reporting by some companies
EFFICIENCY OF TAX AND FINANCIAL REGULATION – Belgium	
7.	Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents? Belgium 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? Belgium partly uses appropriate tools for efficiently analysing tax related information

9.	<p>Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments?</p> <p>Belgium partly avoids promoting tax evasion via a tax credit system</p>
10.	<p>Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses?</p> <p>Belgium partly allows harmful legal vehicles</p>
INTERNATIONAL STANDARDS AND COOPERATION – Belgium	
11.	<p>Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations?</p> <p>Belgium partly complies with international anti-money laundering standards</p>
12.	<p>Automatic Information Exchange: Does the jurisdiction participate fully in Automatic Information Exchange such as the European Savings Tax Directive?</p> <p>Belgium participates fully in Automatic Information Exchange</p>
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, Belgium 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>Belgium 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>Belgium partly cooperates with other states on money laundering and other criminal issues</p>

¹ The tax authorities will be able to find out the bank accounts of taxpayers via a central database at the Belgian National Bank from 2015 onwards, but only if the taxpayer is suspected of fraud or showing signs of wealth. It is significant that while in 2010 there were 28 requests for such information, this number had soared to 679 by 2012, according to Finance Ministry data.

² With the exception of KFSI 13 for which the cut-off date is 31.05.2012. For more details, look at the endnote number 2 in the corresponding KFSI-paper here:

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

³ That data is available here: <http://www.financialsecrecyindex.com/database/menu.xml>.

⁴ <http://www.financialsecrecyindex.com>.