Key Financial Secrecy Indicator 13: Tax Information Exchange Treaties

What is being measured?

KFSI-13 examines the extent to which a jurisdiction has signed and ratified bilateral treaties conforming to the 'upon request' information exchange standard developed by the OECD and the Global Forum with 53 other countries, and/or whether the jurisdiction has signed and ratified the Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters[1] ("Tax Convention"). The cut-off-date is 31 May 2015[2].

In respect of bilateral treaties, the 'upon request' provisions can either be tax information exchange agreements (TIEAs)[3] or full double taxation agreements (DTAs) whose scope extends far beyond information exchange.

The main source[4] for this information is the table on agreements in the Exchange of Information online portal of OECD's Global Forum[5]. This table displays the bilateral agreements allowing for information exchange upon request, broken down into various categories. We have included those treaties that a) were in force as of 31.05.2015 and which b) met the OECD "upon request" standard (column 5 of the table).

A chart of the signatures and ratifications of the Tax Convention can be found on the OECD website[6]. A detailed analysis of the Convention can be found here[7].

We have awarded a full credit for this indicator either if a jurisdiction is party to the Tax Convention or if a jurisdiction has at least 53 qualifying treaties in place, with a proportionate credit awarded where fewer agreements are in place. This number of agreements was selected because it is the average number of information exchange provisions contained in bilateral treaties signed up to by the G20 member states by 31.05.2015[8]. Since many secrecy jurisdictions claim to be major financial services centres we have taken them at their word and compared their treaty network with those of the world's leading trading nations, represented by the G20 member states.

It follows from this that the figure of 53 qualifying agreements is a moving target; when the average number of treaties signed by G20 member states either decreases or increases the average we use will change accordingly. Since 2011 the average number of qualifying agreements has decreased from 60 to 53, because – as confirmed by the OECD[9] -"the assessment has become different", reflecting "the results of the peer review process, which considers both an analysis of the international treaties and an analysis of the domestic legal framework". For this reason, a number of agreements which used to be considered as "meeting the standard" are now considered "unreviewed[10]" and others as not meeting the standard (because of domestic obstacles not reflected in the agreement itself), reducing the number of qualifying treaties.

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. While economic activity has become increasingly global, the tax collectors' efforts remain locally based and are frequently deliberately 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 who is footing the bill for missing tax revenues from mobile and international activity.

The upon request standard for information exchange promoted by the OECD and the Global Forum is weak and largely ineffective (as we have pointed out in great detail in our "Creeping Futility"-Report from March 2012[11]). The consequences of this weakness reach far beyond mere tax enforcement, and have huge implications for the global economy. Ultimately, it incentivises a distorted pattern of global financial flows and investment that is known best in terms of capital flight. As we have argued in our policy paper (esp. page 25)[12], this distortion creates imbalances in the world economy, with devastating effects on ordinary people and the environment. Moreover, as Nicholas Shaxson has argued in the book Treasure Islands (2011: 74-79)[13], 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 flight capital 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 if a sufficient number of countries, including poorer countries, are able to effectively use the upon request model to collect evidence needed to prosecute offenders. In April 2009, the OECD announced that the conclusion of just twelve bilateral agreements for information exchange is sufficient to be taken off the OECD's grey list of tax havens. This number appears to have been picked at random and there is no reason to believe that the requirement to have twelve agreements in place changes in any material way the level of secrecy found in a jurisdiction. Unfortunately, by allowing many secrecy jurisdictions to conclude just 12 agreements, often negotiating agreements between themselves, the OECD created a 'white list' of secrecy jurisdictions[14] which offered some form of official endorsement from the OECD itself.

Despite having strong reservations about the operational effectiveness of the 'upon request' model promoted by the OECD, we have opted to set the bar far higher than 12 agreements and employ the average number of tax treaties of G20-countries as our yardstick.

We argue that bilateralism does not and cannot tackle the issue of information exchange in an effective and efficient manner. For this reason we award a credit to any jurisdiction that participates in the Tax Convention which is open to participation to all countries, not just

OECD or European ones. The Amending Protocol entered into force on 1 June 2011, and in May 2015 had been ratified by 53 countries[15].

Our concerns about the effectiveness of the 'upon request' model of information exchange also relate to the need for a 'smoking gun' to alert tax authorities to possible cases of tax evasion (see KFSI number 12). This explains why we regard automatic information exchange as a more effective deterrent of tax evasion, and propose a simplified system of automatic information exchange of the type proposed by Richard Murphy (downloadable here) as a means of making sense of the existing OECD structure by providing the necessary 'smoking gun' information to make it work. Trust registries[16] would be one important pillar of such a system.

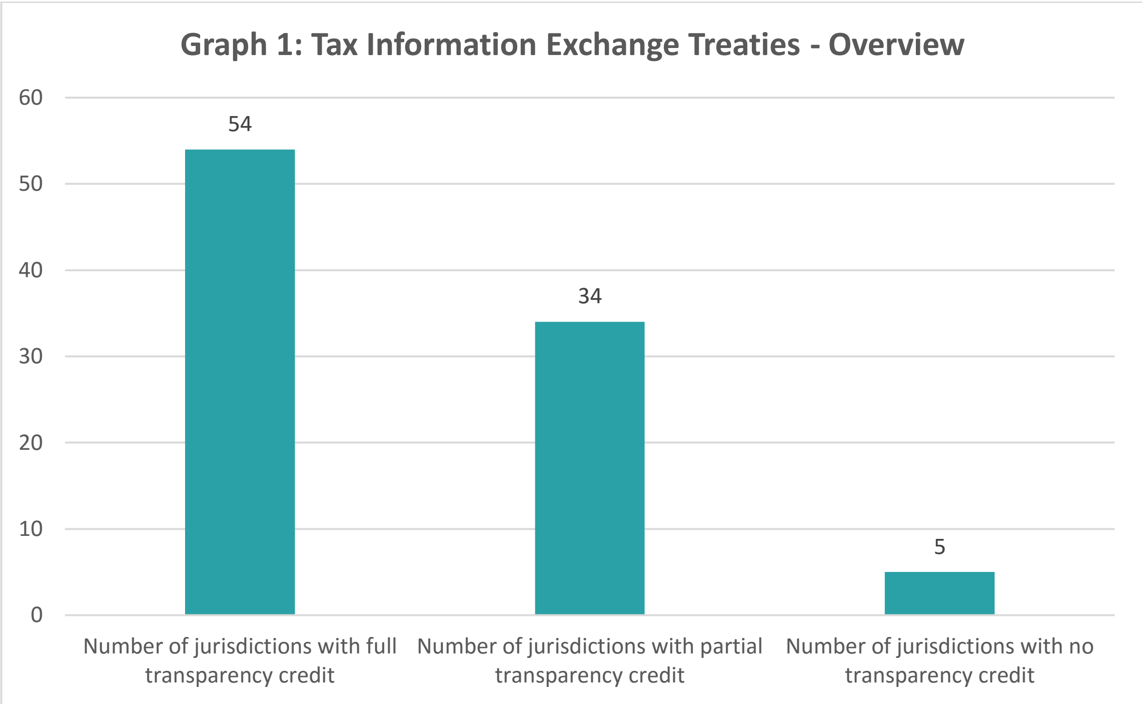
While jurisdictions may now become party to the OECD's Common Reporting Standard (CRS) for Automatic Information Exchange (AIE), many loopholes and obstacles for the inclusion of developing countries have been identified[17], so the upon request standard will be the only mechanism whereby some countries can obtain at least some information. Moreover, even countries able to implement AIE will still 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 information about a particular taxpayer.

What crimes and abuses might be hidden behind a weak network of information exchange treaties?

The bilateral treaties under scrutiny here deal only with tax matters, hence the relevant crimes are tax related, such as tax evasion, tax avoidance (which is now targeted as unacceptable by the OECD and many countries) and transfer pricing manipulation. However, indirectly, other crimes could be detected by spontaneous information exchange permitted under the Tax Convention.

Results Overview

Table 1: Tax Information Exchange Treaties - Overview[18]	
Number of jurisdictions with full transparency credit	54
Number of jurisdictions with partial transparency credit	34
Number of jurisdictions with no transparency credit	5



Results Detail

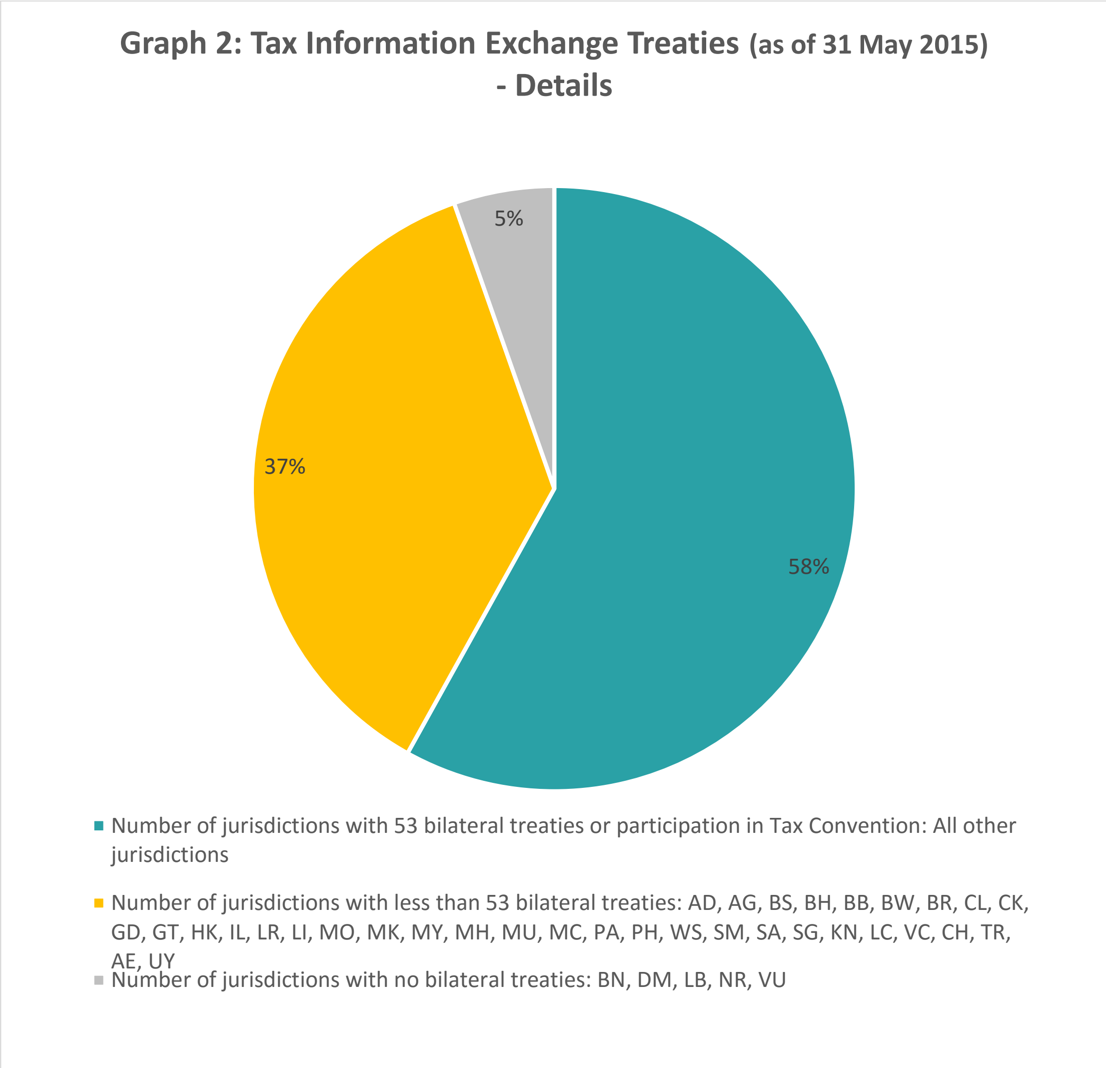


Table 2: Jurisdictions with at least 53 bilateral treaties or participation in Tax Convention - Details			
Country	**ISO**	**53 Bilateral Treaties**	**Tax Convention**
Anguilla	AI		X
Aruba	AW		X
Australia	AU	X	X
Austria	AT		X
Belgium	BE	X	X
Belize	BZ	X	X
Bermuda	BM		X
British Virgin Islands	VG		X
Canada	CA	X	X
Cayman Islands	KY		X
China	CN	X	
Costa Rica	CR		X
Curacao	CW		X
Cyprus	CY		X
Czech Republic	CZ	X	X
Denmark	DK	X	X
Estonia	EE		X
Finland	FI	X	X
France	FR	X	X
Germany	DE	X	
Ghana	GH		X
Gibraltar	GI		X
Greece	GR		X
Guernsey	GG		X
Hungary	HU		X
Iceland	IS	X	X
India	IN	X	X
Ireland	IE	X	X
Isle of Man	IM		X
Italy	IT	X	X
Japan	JP		X
Jersey	JE		X
Korea	KR		X
Latvia	LV		X
Luxembourg	LU		X
Malta	MT	X	X
Mexico	MX	X	X
Montserrat	MS		X
Netherlands	NL	X	X
New Zealand	NZ		X
Norway	NO	X	X
Poland	PL	X	X

Country	ISO	53 Bilateral Treaties	Tax Convention
Portugal (Madeira)	PT	X	X
Russia	RU		X
Seychelles	SC		X
Slovakia	SK		X
Slovenia	SI		X
South Africa	ZA		X
Spain	ES	X	X
Sweden	SE	X	X
Turks & Caicos Islands	TC		X
United Kingdom	GB	X	X
US Virgin Islands	VI	X	X
USA	US	X	X

Table 3: Tax Information Exchange Treaties - Transparency Credits								
ID	Country	ISO	Credits		ID	Country	ISO	Credits
1	**Andorra**	AD	0.34		48	**Korea**	KR	1
2	**Anguilla**	AI	1		49	**Latvia**	LV	1
3	**Antigua & Barbuda**	AG	0.38		50	**Lebanon**	LB	0
4	**Aruba**	AW	1		51	**Liberia**	LR	0.19
5	**Australia**	AU	1		52	**Liechtenstein**	LI	0.38
6	**Austria**	AT	1		53	**Luxembourg**	LU	1
7	**Bahamas**	BS	0.49		54	**Macao**	MO	0.19
8	**Bahrain**	BH	0.53		55	**Macedonia**	MK	0.57
9	**Barbados**	BB	0.47		56	**Malaysia (Labuan)**	MY	0.66
10	**Belgium**	BE	1		57	**Malta**	MT	1
11	**Belize**	BZ	1		58	**Marshall Islands**	MH	0.17
12	**Bermuda**	BM	1		59	**Mauritius**	MU	0.42
13	**Botswana**	BW	0.19		60	**Mexico**	MX	1
14	**Brazil**	BR	0.36		61	**Monaco**	MC	0.4
15	**British Virgin Islands**	VG	1		62	**Montserrat**	MS	1
16	**Brunei**	BN	0		63	**Nauru**	NR	0
17	**Canada**	CA	1		64	**Netherlands**	NL	1
18	**Cayman Islands**	KY	1		65	**New Zealand**	NZ	1
19	**Chile**	CL	0.4		66	**Norway**	NO	1
20	**China**	CN	1		67	**Panama**	PA	0.3
21	**Cook Islands**	CK	0.26		68	**Philippines**	PH	0.53
22	**Costa Rica**	CR	1		69	**Poland**	PL	1
23	**Curacao**	CW	1		70	**Portugal (Madeira)**	PT	1
24	**Cyprus**	CY	1		71	**Russia**	RU	1
25	**Czech Republic**	CZ	1		72	**Samoa**	WS	0.23
26	**Denmark**	DK	1		73	**San Marino**	SM	0.66
27	**Dominica**	DM	0		74	**Saudi Arabia**	SA	0.17
28	**Estonia**	EE	1		75	**Seychelles**	SC	1
29	**Finland**	FI	1		76	**Singapore**	SG	0.64
30	**France**	FR	1		77	**Slovakia**	SK	1
31	**Germany**	DE	1		78	**Slovenia**	SI	1
32	**Ghana**	GH	1		79	**South Africa**	ZA	1
33	**Gibraltar**	GI	1		80	**Spain**	ES	1
34	**Greece**	GR	1		81	**St Kitts and Nevis**	KN	0.4
35	**Grenada**	GD	0.23		82	**St Lucia**	LC	0.45
36	**Guatemala**	GT	0.02		83	**St Vincent & Grenadines**	VC	0.42
37	**Guernsey**	GG	1		84	**Sweden**	SE	1
38	**Hong Kong**	HK	0.38		85	**Switzerland**	CH	0.53
39	**Hungary**	HU	1		86	**Turkey**	TR	0.81
40	**Iceland**	IS	1		87	**Turks & Caicos Islands**	TC	1
41	**India**	IN	1		88	**United Arab Emirates (Dubai)**	AE	0.49
42	**Ireland**	IE	1		89	**United Kingdom**	GB	1
43	**Isle of Man**	IM	1		90	**Uruguay**	UY	0.36
44	**Israel**	IL	0.6		91	**US Virgin Islands**	VI	1
45	**Italy**	IT	1		92	**USA**	US	1
46	**Japan**	JP	1		93	**Vanuatu**	VU	0
47	**Jersey**	JE	1					

[1] http://www.oecd.org/tax/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm; 21.07.2015.
[2] While the cut-off date is many months before the publication of the Financial Secrecy Index, there is no reason to believe that the *relative* amount of treaties in November 2015 dramatically deviated from the situation on 31.05.2015.
[3] http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf; 21.07.2015.
[4] To see the sources we are using for particular jurisdictions please check out the corresponding information in our database, available at www.financialsecrecyindex.com/database/menu.xml.
[5] The Global Forum peer reviews refer to the peer review reports and supplementary reports published by the Global Forum on Transparency and Exchange of Information for Tax Purposes. They can be viewed at: http://www.eoi-tax.org/; 21.07.2015. For the purpose of our research, we relied on a dataset sent by the OECD secretariat on 22.06.2015.
[6] www.oecd.org/ctp/exchangeofinformation/Status_of_convention.pdf; 21.07.2015.
[7] www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf; 21.07.2015.
[8] The exact average per G20-nation is 53 as of 31 May 2015, according to the dataset provided by the OECD secretariat on 22 June2015.
[9] Communication with OECD of 8 March, 2013.
[10] According to the Communication with OECD of March 8, 2013, "unreviewed" means that:

- "The text of the agreement is not reviewed as both parties have not been reviewed under the Peer Review process; or
- The text of the agreement is considered to be meeting the standard, the legal framework of the reviewed jurisdiction is sufficient, but we have no information on the treaty partner as the other partner is not a GF member (or it has recently joined the GF)".

On the contrary, "Not meeting the standard" means that:

- "The text of the agreement is not to the standard; or
- The text of the agreement is good, but one of the two treaty partners' C1 section (regarding EOI instruments) in the peer review is rated as "not in place"; or
- Both the text of the agreement and the domestic legal framework related to EOI instruments (section C1 of the peer review) of the two jurisdictions (or just one of them) are not sufficient to meet the standard".

[11] See the full report here: www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf; 21.07.2015. International Tax Review broadly reported about this study here: http://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html; 21.07.2015.
[12] http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 21.07.2015.
[13] http://treasureislands.org/; 21.07.2015.
[14] http://www.oecd.org/tax/transparency/Tax%20Transparency%202012_JM%20MB%20corrections%20final.pdf; 21.07.2015.
[15] www.oecd.org/ctp/exchangeofinformation/Status_of_convention.pdf; 21.07.2015.
[16] www.taxjustice.net/cms/upload/pdf/BAR2012-TJN-Report.pdf; 21.07.2015.
[17] http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf; 21.7.2015.
[18] Nine of the countries in our 2015 index are either not members of the Global Forum or had not had their treaties reviewed by the Global Forum as of 31 May 2015 (the cut-off date for KFSI 13). These are Bolivia, Gambia, Maldives, Montenegro, Paraguay, Taiwan, Venezuela: not members of the Global Forum; Tanzania and Dominican Republic: members of the Global Forum, but treaties not yet reviewed. Because this data availability problem is acute in KFSI 13, and results in a clear risk of distortion, a KFSI assessment for KFSIs 1 and 13 is not established for these nine jurisdictions. Nor, as a consequence, are they given an overall secrecy score. The total of assessed jurisdictions in KFSIs 1 and 13 is therefore 93, not 102.