

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 19: Bilateral Treaties

What is being measured?

This indicator examines the extent to which a jurisdiction has entered into 98 effective information exchange relationships conforming to the ‘upon request’ standard developed by the OECD and the Global Forum. The number of 98 stems from the number of jurisdictions that (99, as of 5 October 2017) have adhered to the multilateral [Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters](#)¹ (“Tax Convention”) which enables information exchange upon request among adherent country pairs.

A jurisdiction that has signed and ratified the Tax Convention is given a zero secrecy score. Other jurisdictions are scored according to the number of effective bilateral information exchange relationships they’ve entered into expressed as a proportional share of 98. To arrive at the secrecy score, the transparency score is subtracted from 100. The cut-off-date for the number of bilateral treaties is 5 October 2017.²

The Secrecy Scoring Matrix can be found in Table 1 below, and full details of the assessment logic can be found in Table 4 underneath.

Table 1: Secrecy Scoring Matrix KFSI 19

Regulation	Secrecy Score [100% = full secrecy; 0% = full transparency]
<u>No Tax Convention Adherence</u> Jurisdiction has not joined the Tax Convention as of 5 October 2017. In this case the number of bilateral treaty exchange relationships are counted and expressed as a proportion of 98 (which is equivalent to the number of information exchange relationships under the Tax Convention).	0-100%
<u>Tax Convention Adherence</u> Jurisdiction has joined the Tax Convention as of 5 October 2017 and thus has effective upon request information exchange relationships with at least 98 jurisdictions.	0%

All underlying data and sources relative to specific jurisdictions can be accessed freely in the [FSI database](#)  (IDs 301 and 143).

In respect to 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 source for this information is the table on agreements in the Exchange of Information online portal of OECD's Global Forum⁴. 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 05.10.2017 and which b) met the OECD upon request standard (column 5 of the table).

With respect to the adherence of the [Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters](#),⁵ the published document of ratifications has been analysed (accessed 11 October 2017, with Status as of 12 September 2017).⁶ All jurisdictions whose entry into force date as listed in the last column was on or before 5 October 2017 were counted as having Article 5 in force. A detailed analysis of the Convention [can be found here](#).⁷ Unlike KFSI 20, which considers adherence by jurisdictions to the other provisions of the Tax Convention excluding article 5 ('exchange of information on request'), for KFSI 19, we assess only the adherence of jurisdictions to article 5 of the Tax Convention.

Since this indicator assesses active upon request bilateral relationships (the possibility for two jurisdictions to exchange information with each other upon request), we provide the combined number of DTAs and TIEAs because this eliminates double counting in approximately 18 cases where a pair of jurisdictions had both a valid TIEA and DTA.

In a context of largely unrestricted cross-border financial flows, this Convention provides a minimum backstop to guard against proliferation of cross border tax crimes and offences through adherence to a network of information exchange relationships. Hence, the figure of 98 qualifying agreements is a moving target; when the average number of jurisdictions adhering to the Convention increases, the number of bilateral treaties required to obtain a zero secrecy score will change accordingly.

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 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 mobile and international activity.

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 (as we have pointed out in our ["Creeping Futility"- Report from March 2012](#)⁸). 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. As we

have argued in [our policy paper \(esp. page 25\)](#),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 the book [Treasure Islands \(2011: 74-79\)](#),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 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 especially if combined with automatic information exchange processes, and 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.

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 [KFSI 18](#)). 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.

Yet, 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](#).¹¹ Therefore, 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 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.

As for the expansion of the ‘upon request’ information exchange network, the most cost efficient and quickest way for (developing) 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 a multilateral framework [weaker jurisdictions are likely to remain excluded from the benefits of exchange relationships](#),¹² most of which flow from the collective bargaining clout of a large group of nations. Instead of incurring high costs and facing risks 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.

For this reason, we argue that bilateralism does not and cannot tackle the issue of information exchange in an effective and efficient manner. Accordingly, a jurisdiction that participates in the Tax Convention is given a zero secrecy score. This Tax Convention is open to all countries, not just OECD or European ones. The [Amending Protocol entered into force on 1 June 2011](#), and in October 2017 had been ratified by 99 countries.¹³ Any jurisdiction not wishing to participate in the Tax Convention, [possibly because of suspicion of OECD’s dominance](#),¹⁴ has to be measured nonetheless by its commensurate engagement in information exchange relationships by other means (e.g. bilateral TIEAs or DTAs with exchange clauses). That is why

98 effective bilateral exchange relationships is the bar for any jurisdiction which has not ratified the Tax Convention.

This number is far higher than the original number of twelve exchange relationships which the OECD announced in April 2009 as the threshold for removal from 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 twelve agreements, often negotiating agreements among themselves, the OECD created a ['white list' of secrecy jurisdictions](#)¹⁵ which offered some form of official endorsement from the OECD itself.

All underlying data and sources relative to specific jurisdictions can be accessed freely on the [FSI database](#) (IDs 301 and 143).

Results Overview

Table 2: Bilateral Treaties – Information Exchange Networks Overview		Number of Jurisdictions
<u>Adherence to the Tax Convention:</u> Jurisdictions adhering to the multilateral Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters as of 5 October 2017. or <u>Equivalent information exchange treaty network:</u> Jurisdictions having a treaty network for tax information exchange upon request, including 98 or more other jurisdictions.		84
<u>Intermediate Secrecy Scores:</u> Jurisdictions which are not part to the Tax Convention and do not have an equivalent information exchange treaty network (see Table 4 for assessment).	Scores 0,10 to 0,40	3
	Scores 0,41 to 0,70	5
	Scores 0,71 to 0,99	11
<u>Full Secrecy Scores:</u> Jurisdictions having no comparable bilateral treaties in operation. Tax information exchange upon request is minimal in these jurisdictions.		9

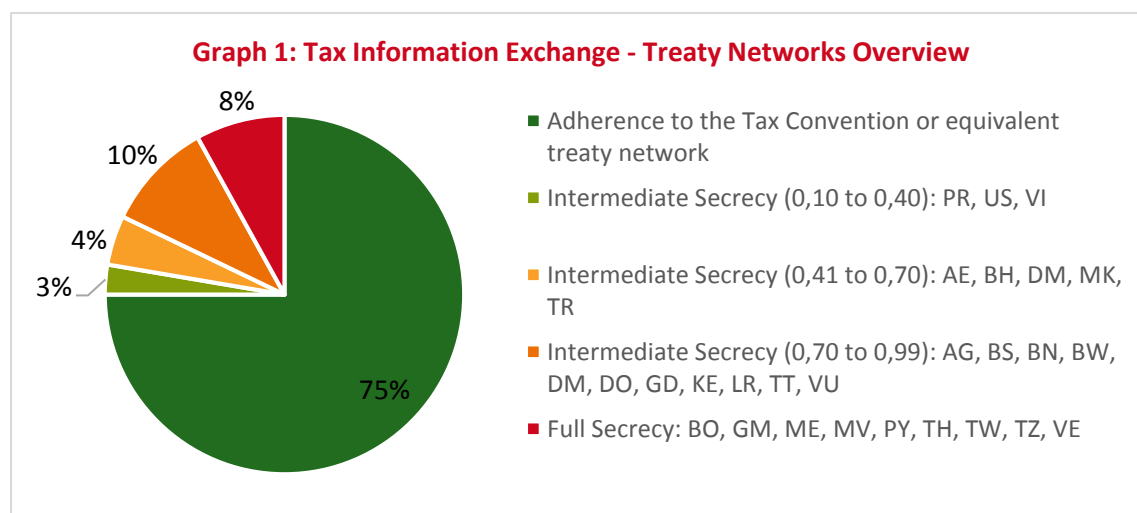


Table 3: Bilateral Treaties Secrecy Scores

Country Name	Score	ISO	Country Name	Score	ISO
Andorra	0	AD	Lebanon	0	LB
Anguilla	0	AI	Liberia	0,89	LR
Antigua & Barbuda	0,79	AG	Liechtenstein	0	LI
Aruba	0	AW	Lithuania	0	LT
Australia	0	AU	Luxembourg	0	LU
Austria	0	AT	Macao	0	MO
Bahamas	0,73	BS	Macedonia	0,7	MK
Bahrain	0,65	BH	Malaysia (Labuan)	0	MY
Barbados	0	BB	Maldives	1	MV
Belgium	0	BE	Malta	0	MT
Belize	0	BZ	Marshall Islands	0	MH
Bermuda	0	BM	Mauritius	0	MU
Bolivia	1	BO	Mexico	0	MX
Botswana	0,88	BW	Monaco	0	MC
Brazil	0	BR	Montenegro	1	ME
British Virgin Islands	0	VG	Montserrat	0	MS
Brunei	0,8	BN	Nauru	0	NR
Bulgaria	0	BG	Netherlands	0	NL
Canada	0	CA	New Zealand	0	NZ
Cayman Islands	0	KY	Norway	0	NO
Chile	0	CL	Panama	0	PA
China	0	CN	Paraguay	1	PY
Cook Islands	0	CK	Philippines	0,7	PH
Costa Rica	0	CR	Poland	0	PL
Croatia	0	HR	Portugal (Madeira)	0	PT
Curacao	0	CW	Puerto Rico	0,28	PR
Cyprus	0	CY	Romania	0	RO
Czech Republic	0	CZ	Russia	0	RU
Denmark	0	DK	Samoa	0	WS
Dominica	0,78	DM	San Marino	0	SM
Dominican Republic	0,97	DO	Saudi Arabia	0	SA
Estonia	0	EE	Seychelles	0	SC
Finland	0	FI	Singapore	0	SG
France	0	FR	Slovakia	0	SK
Gambia	1	GM	Slovenia	0	SI
Germany	0	DE	South Africa	0	ZA
Ghana	0	GH	Spain	0	ES
Gibraltar	0	GI	St Kitts and Nevis	0	KN
Greece	0	GR	St Lucia	0	LC
Grenada	0,84	GD	St Vincent & Grenadines	0	VC
Guatemala	0	GT	Sweden	0	SE
Guernsey	0	GG	Switzerland	0	CH
Hong Kong	0	HK	Taiwan	1	TW
Hungary	0	HU	Tanzania	1	TZ
Iceland	0	IS	Thailand	1	TH
India	0	IN	Trinidad & Tobago	0,99	TT
Indonesia	0	ID	Turkey	0,47	TR
Ireland	0	IE	Turks & Caicos Islands	0	TC
Isle of Man	0	IM	Ukraine	0	UA
Israel	0	IL	United Arab Emirates (Dubai)	0,57	AE
Italy	0	IT	United Kingdom	0	GB
Japan	0	JP	Uruguay	0	UY
Jersey	0	JE	US Virgin Islands	0,28	VI
Kenya	0,92	KE	USA	0,28	US
Korea	0	KR	Vanuatu	0,96	VU
Latvia	0	LV	Venezuela	1	VE

Moderately Secretive 0 – 0,40	Secrecy Score 0,41 – 0,50	Secrecy Score 0,51 – 0,60	Secrecy Score 0,61 – 0,70	Secrecy Score 0,71 – 0,80	Secrecy Score 0,81 – 0,90	Extremely Secretive 0,91 – 1
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Table 4: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation % Secrecy
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%; otherwise: see ID 143
143	Bilateral Treaties for Information Exchange Upon Request: Number of Double Tax Agreements (DTA) or Tax Information Exchange Agreements (TIEAs) with provisions for 2002 OECD-style information exchange?	Number	inverse % of 98

¹ <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>; http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 11.10.2017.

² While the cut-off date is a few months before the publication of the Financial Secrecy Index, there is no reason to believe that the *relative* amount of treaties in January 2018 dramatically deviated from the situation on 05.10.2017.

³ http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf; 21.07.2015.

⁴ 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 website scraping carried out on 5 October 2017 – with thanks to Wouter Lips for the code.

⁵ <http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>; http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 11.10.2017.

⁶ http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 11.10.2017.

⁷ Meinzer, Markus 2012: Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as amended in 2010 (Tax Justice Network), London, in: <http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>; 10.11.2013.

⁸ 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.

⁹ http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 21.07.2015.

¹⁰ <http://treasureislands.org/>; 21.07.2015.

¹¹ Knobel, Andres 2015: OECD's Handbook for Implementation of the CRS: TJN's preliminary observations, in: www.taxjustice.net/wp-content/uploads/2013/04/OECD-CRS-Implementation-Handbook-FINAL.pdf; 26.4.2016. Knobel, Andres/Meinzer, Markus 2017: Delivering a level playing field for offshore bank accounts. What the new OECD/Global Forum peer reviews on automatic information exchange must not miss, in: www.taxjustice.net/wp-content/uploads/2013/04/TJN_AIE_ToR_Mar-1-2017.pdf; 16.3.2017. Knobel, Andres 2017: 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, in: https://financialtransparency.org/wp-content/uploads/2017/01/Knobel2017_AEOI-Survey-Report.pdf; 14.2.2017.

¹² <http://uncounted.org/2015/09/14/oecd-country-by-country-reporting-only-for-the-strong/>; 12.10.2017.

¹³ http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf; 11.10.2017.

¹⁴ <http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>; 12.10.2017.

¹⁵

http://www.oecd.org/tax/transparency/Tax%20Transparency%202012_JM%20MB%20corrections%20final.pdf; 21.07.2015.