

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 108 effective information exchange relationships conforming to the 'upon request' standard developed by the OECD and the Global Forum. The number of 108 stems from the total number of jurisdictions minus one that as of November 2019 are parties to the multilateral [Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters](#)¹ ("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 (e.g. the US) which are only party to the original Convention (which among other changes, was not open to non-OECD countries) are not considered in this indicator. As of November 2019, the Tax Convention has 109² parties, meaning that each of these parties would have bilateral relationships with the other 108 jurisdictions party to the Tax Convention.

A jurisdiction that has signed and ratified the Tax Convention is given a zero secrecy score and its number of exchange of information relationships is not considered. Other jurisdictions are scored according to the number of effective bilateral information exchange relationships they've entered into expressed as a proportional share of 108. For a bilateral information exchange relationship to be considered effective it must be (i) in force, and (ii) considered 'compliant with the standard' according to the Global Forum table of treaties published for every Global Forum member. To arrive at the secrecy score, the transparency score is subtracted from 100. The cut-off-date for the number of bilateral treaties is November 2019.

The Secrecy Scoring Matrix can be found in Table 19.1. below, and full details of the assessment logic can be found in Table 19.4. underneath.

Table 19.1. Secrecy Scoring Matrix KFSI 19

Regulation	Secrecy Score [100 points = full secrecy; 0 points = full transparency]
<p><u>No Tax Convention Adherence</u></p> <p>Jurisdiction has not joined the Tax Convention as of November 2019. In this case the number of bilateral treaty exchange relationships are counted and expressed as a proportion of 108 (which is equivalent to the number of relationships available to each party to the Tax Convention).</p>	0-100
<p><u>Tax Convention Adherence</u></p> <p>Jurisdiction has joined the Tax Convention as of November 2019 and thus has effective upon request information exchange relationships with all other cosignatories.</p>	0

All underlying data and sources relative to specific jurisdictions can be accessed freely in the [Financial Secrecy Index database \(IDs 309 and 143\)](#).

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 November 2019 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 in November 2019).⁶ All jurisdictions whose entry into force date as listed in the last column was on or November 2019 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 where a pair of jurisdictions had both a valid TIEA and DTA.

In a context of largely unrestricted cross-border financial flows, this Tax 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 108 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 Exchange of Information (AEOI), 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 AEOI 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](#).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 108 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 [Financial Secrecy Index database](#) (IDs 309 and 143).

Results Overview

Figure 19.1: Bilateral treaties – Overview of Secrecy Scores

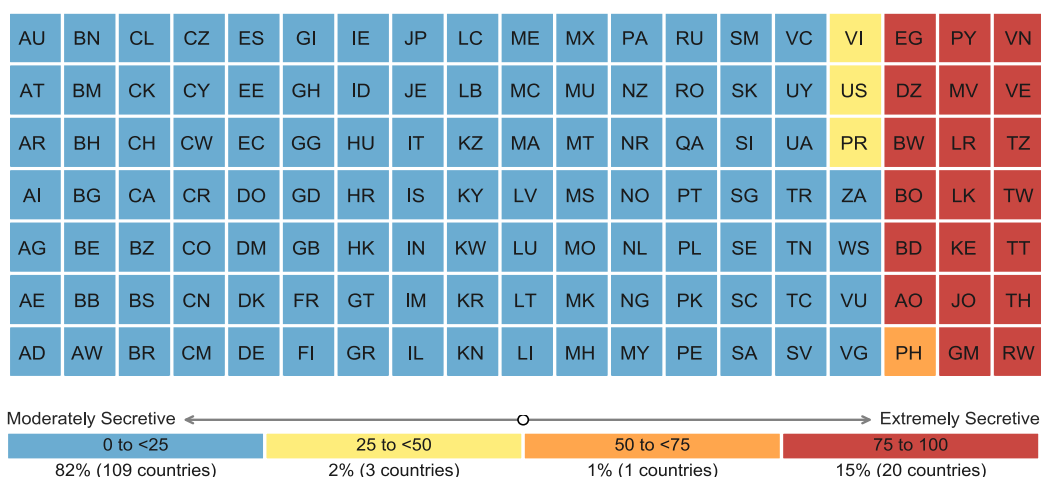


Figure 19.2: Parties of the OECD Convention on Mutual Administrative Assistance in Tax Matters (Tax Convention)



Table 19.2. Bilateral Treaties – Information Exchange Networks Overview

		Number of Jurisdictions
<p><u>Adherence to the Tax Convention:</u></p> <p>Jurisdictions adhering to the multilateral Amended Council of Europe / OECD Convention on Mutual Administrative Assistance in Tax Matters as of November 2019.</p> <p>or</p> <p><u>Equivalent information exchange treaty network:</u></p> <p>Jurisdictions having a treaty network for tax information exchange upon request, including 108 or more other jurisdictions.</p>		109
<p><u>Intermediate Secrecy Scores:</u></p> <p>Jurisdictions which are not part to the Tax Convention and do not have an equivalent information exchange treaty network (see Table 19.4. for assessment).</p>	Scores 0,10 to 0,40	3
	Scores 0,41 to 0,70	0
	Scores 0,71 to 0,99	5
<p><u>Full Secrecy Scores:</u></p> <p>Jurisdictions having no comparable bilateral treaties in operation. Tax information exchange upon request is minimal in these jurisdictions.</p>		16

KFSI 19: BILATERAL TREATIES

Table 19.3. Bilateral treaties secrecy scores

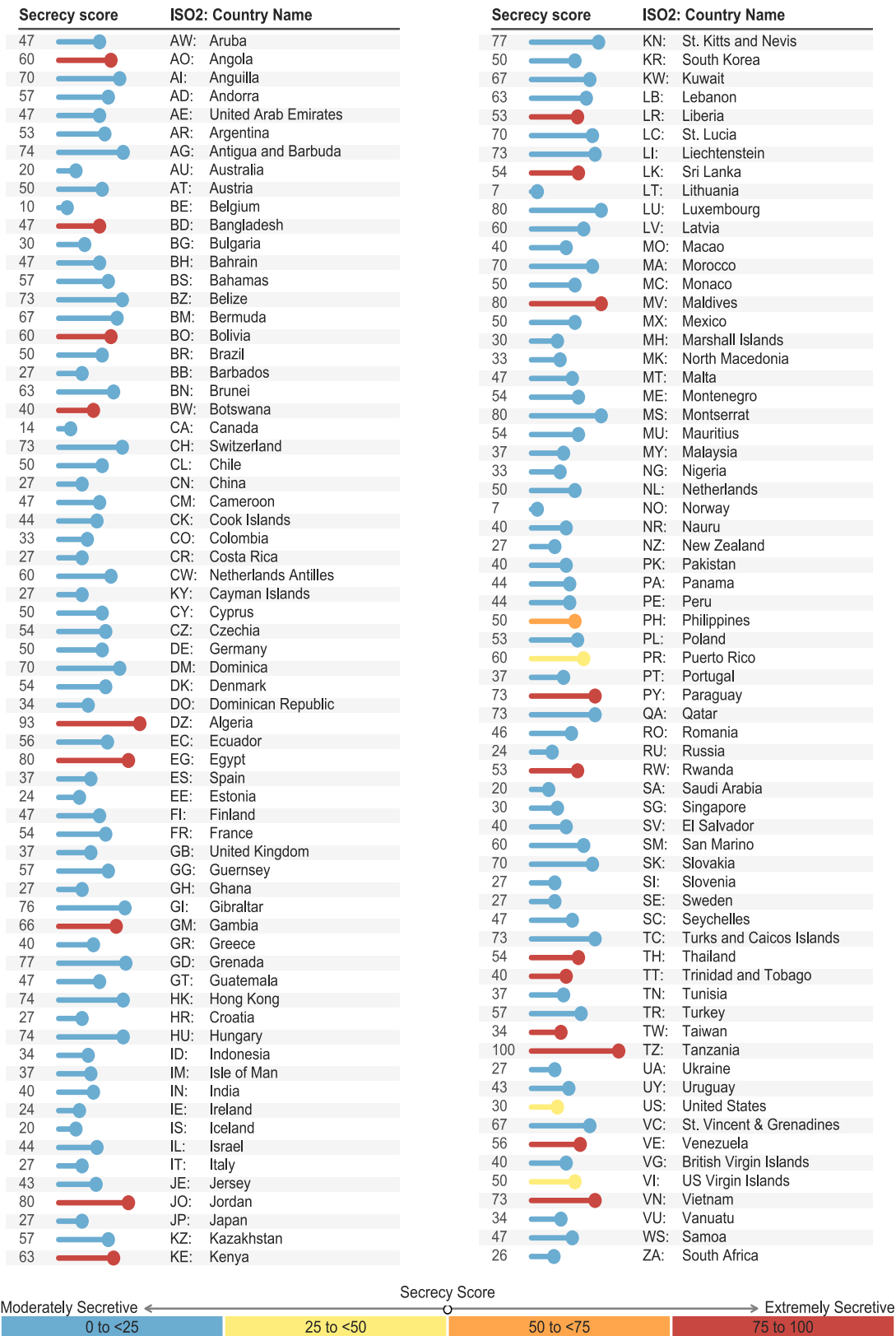


Table 19.4. Assessment Logic

Info_ID	Text_Info_ID	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: 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 score of 108

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¹ OECD and Council of Europe, 'Convention on Mutual Administrative Assistance in Tax Matters', 1988 <<http://www.oecd.org/ctp/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm>> [accessed 24 January 2020].; OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters', 2019 <http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf> [accessed 24 January 2020].

² Montenegro Ministry of Finance communicated in December of 2019 that they have approved the ratification of the Convention, so it is assumed that the Convention will enter into force for Montenegro before the next edition of the Financial Secrecy Index in 2022.

³ Tax Justice Network, 'Tax Information Exchange Arrangements', 2009 <http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf> [accessed 24 January 2020].

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: Global Forum on Transparency and Exchange of Information for Tax Purposes, 'Exchange of Information Portal' <<http://www.eoi-tax.org/#default>> [accessed 21 January 2020]. 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 OECD and Council of Europe, 'Convention on Mutual Administrative Assistance in Tax Matters'.; OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters'.

⁶ OECD, 'Jurisdictions Participating in the Convention on Mutual Administrative Assistance in Tax Matters'.

⁷ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010', 2012 <<http://www.taxjustice.net/cms/upload/CoE-OECD-Convention-TJN-Briefing.pdf>> [accessed 24 January 2020].

- ⁸ See the full report here: Meinzer, Markus, 'The Creeping Futility of the Global Forum's Peer Reviews' (2012) <<http://www.taxjustice.net/cms/upload/GlobalForum2012-TJN-Briefing.pdf>> [accessed 24 January 2020]. International Tax Review broadly reported about this study here: Salman Shaheen, 'Exclusive: Why Tax Justice Campaigners and the OECD Are Not Seeing Eye to Eye | International Tax Review', 14 March 2012 <<https://www.internationaltaxreview.com/Article/2994829/EXCLUSIVE-Why-tax-justice-campaigners-and-the-OECD-are-not-seeing-eye-to-eye.html>> [accessed 24 January 2020].
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- ¹⁴ Meinzer, Markus, 'Analysis of the CoE/OECD Convention on Administrative Assistance in Tax Matters, as Amended in 2010'.
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