

Key Financial Secrecy Indicators

10: Effective Access on Banking Information

What is measured?

This indicator shows if the jurisdiction has effective access to bank information for the purposes of information exchange for both criminal and civil tax matters. Effective access on bank information is defined here as a government having direct access to account information without the need for separate authorisation (e.g. by a court). Only if a country allows access on banking information unrelated to specific treaties do we give it credit here.

The main source for this indicator is table B2 and B3 of the OECD-report (Tax Co-operation 2007 and 2008¹). Table B2 shows in rather general terms “to what extent the countries reviewed have access to bank information for exchange of information purposes in all tax matters” (table B2; OECD 2008: 52). Table B3 instead details “for each of the countries reviewed whether the country’s competent authority has the power to obtain bank information directly or if separate authorisation is required” (ibid: 68). Only if both instances - “having access” and “obtaining information directly” - are answered “yes” without strings attached do we credit the jurisdiction.

If a jurisdiction is not monitored by the OECD, we did not inquire further because it would have required a depth of legal analysis that is impossible for us to carry out with the resources at our disposal. However, we would appreciate further information about any of the jurisdictions for which we lack data and would consider including relevant information in the database if it can be sourced to an appropriate reference.

Why is it important?

Currently, tax authorities around the world face immense difficulties when trying to obtain foreign-country based bank account information relating to suspected domestic tax evasion and/or aggressive tax avoidance schemes. While tax authorities domestically often have the powers to cross-check data obtained through tax returns through access to domestic bank account information, this does not hold true internationally. Whereas economic activity has become increasingly global, the tax collectors’ efforts have remained locally based and are often deliberately obstructed by secrecy jurisdictions. Therefore, the rule of law is severely

¹ The full title of this annual publication is “Tax Co-operation. Towards a Level Playing Field”. Because the OECD published its 2008 report during the research process, both the 2007 and 2008 report have been used. Table B2’s title is “Access to Bank Information for Exchange of Information Purposes” (OECD 2008: 52). Table B3’s title is “Procedures to obtain bank information for exchange of information purposes” (ibid.: 68).

constrained by the inability of tax authorities to easily collect information about the foreign bank accounts of their citizens and companies, so undermining the rule of law.

In many jurisdictions, information requests from abroad are seriously hindered by insufficient provision in domestic legislation allowing access to bank information. This absence of adequate regulations extends way beyond formal banking secrecy but is equally effective in declining legitimate information requests by foreign competent authorities. Secrecy jurisdictions clearly have considerable incentive to engineer their domestic laws to avoid information disclosure because it is precisely this sort of secrecy that such jurisdictions 'sell' and which makes them attractive to those seeking financial secrecy. Third-party countries can as a result be in the position of requesting banking information in vain simply because many secrecy jurisdictions lack legal provisions to provide the requested data even if the requesting country provides the most compelling evidence of crime.

In addition, if a court decision is required before obtaining access to banking information, the information request may be seriously delayed. In many cases this makes it impossible for a country to pursue an enquiry as investigations are time limited in duration. Further, such applications are often hard to make because of legal obstacles. Examples include the requirement that access to bank information is allowed only in connection with bilateral treaties such as a DTA, TIEA or MLAT² (Barbados and Grenada being examples); that a domestic tax interest must be present (Singapore); a dual criminality requirement must exist and/or restrictive definitions of criminality prevent access to data (St. Vincent and the Grenadines, Luxembourg), or regional limitations restrict the range of permitted requesting countries (limited to Commonwealth in St. Lucia, for example).

A word of explanation on our methodology is important here: we have not given credit if access to banking information is only possible when a bilateral treaty request has been made. In a number of cases we are aware that this is a necessary pre-condition of access. That, of course, is better than having no access but given the difficulty of raising such requests, and the very limited number of them ever submitted this is not the basis of effective regulation or an indication of transparency. As such credit is only given when access is allowed to domestic authorities without the need for a third party request for data.

What are the crimes that might hide behind the absence of effective access to banking information?

Our indicator is based on the OECD-source which focuses only on tax matters. Therefore the crimes and abuses covered are tax evasion, aggressive tax avoidance and transfer pricing manipulation. However, since tax evasion is associated as a side effect with many other crimes where the proceeds are not declared to relevant tax authorities it is quite possible

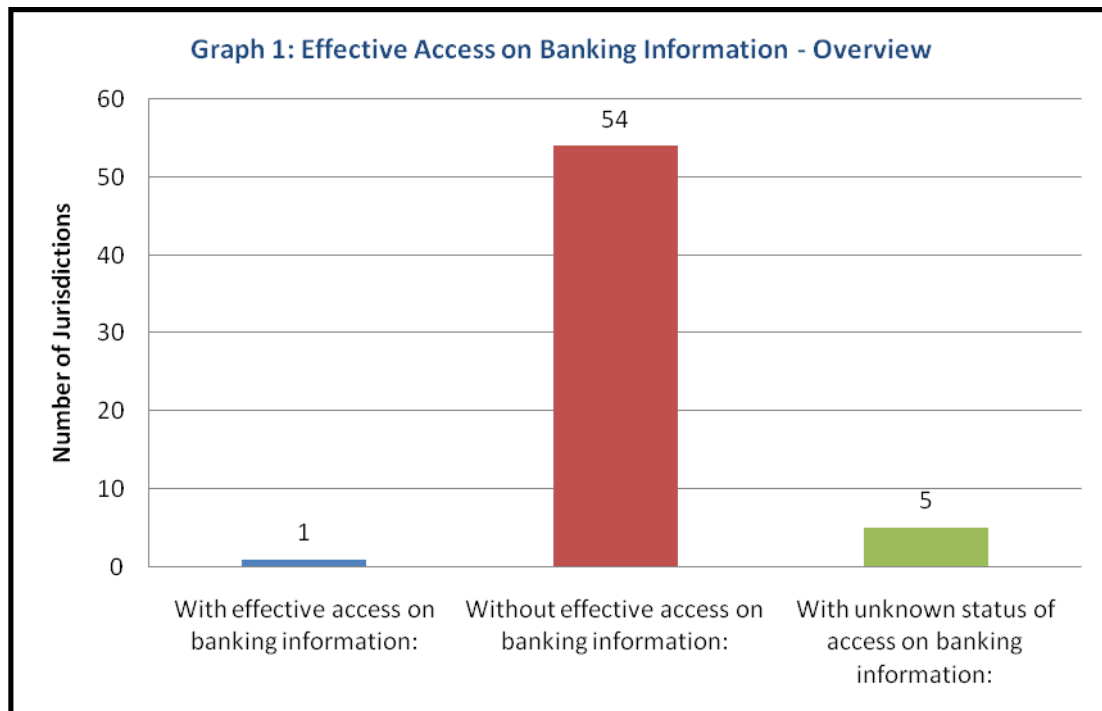
² Mutual Legal Assistance Treaties.

that if disclosure is allowed for tax purposes that information will also reveal information on other crimes such as hiding the proceeds of corruption, organised crime (especially drug trafficking), the illegal arms trade, trafficking in human beings, money laundering, the covering of illicit intelligence activity and more besides might hide behind the benefits that banking secrecy provides.

Results Overview

Table 1: Effective Access on Banking Information – Overview

Number of Jurisdictions with effective access to banking information:	1
Number of Jurisdictions without effective access to banking information:	54
Number of Jurisdictions with unknown status of access to banking information:	5



Results Detail

Graph 2: Effective Access on Banking Information - Details

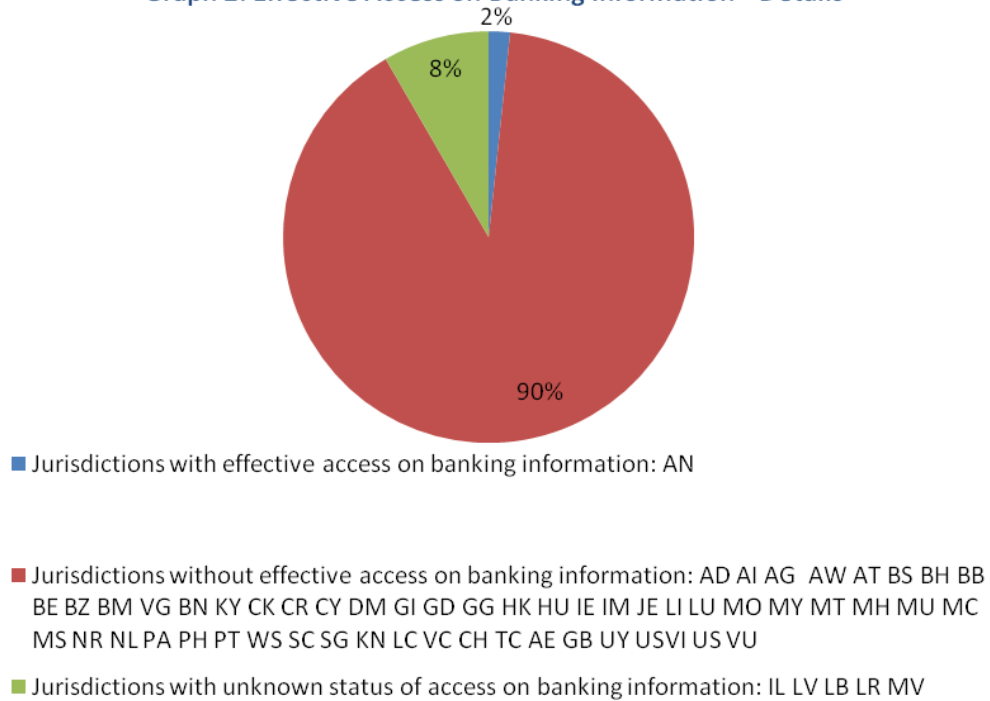


Table 2: Effective Access on Banking Information – Details							
ID	Jurisdiction	ISO		ID	Jurisdiction	ISO	
1	Andorra	AD	No	31	Liechtenstein	LI	No
2	Anguilla	AI	No	32	Luxembourg	LU	No
3	Antigua & Barbuda	AG	No	33	Macao	MO	No
4	Aruba	AW	No	34	Malaysia (Labuan)	MY	No
5	Austria	AT	No	35	Maldives	MV	Unknown
6	Bahamas	BS	No	36	Malta	MT	No
7	Bahrain	BH	No	37	Marshall Islands	MH	No
8	Barbados	BB	No	38	Mauritius	MU	No
9	Belgium	BE	No	39	Monaco	MC	No
10	Belize	BZ	No	40	Montserrat	MS	No
11	Bermuda	BM	No	41	Nauru	NR	No
12	British Virgin Islands	VG	No	42	Netherlands	NL	No
13	Brunei	BN	No	43	Netherlands Antilles	AN	Yes
14	Cayman Islands	KY	No	44	Panama	PA	No
15	Cook Islands	CK	No	45	Philippines	PH	No
16	Costa Rica	CR	No	46	Portugal (Madeira)	PT	No
17	Cyprus	CY	No	47	Samoa	WS	No
18	Dominica	DM	No	48	Seychelles	SC	No
19	Gibraltar	GI	No	49	Singapore	SG	No
20	Grenada	GD	No	50	St Kitts & Nevis	KN	No
21	Guernsey	GG	No	51	St Lucia	LC	No
22	Hong Kong	HK	No	52	St Vincent & Grenadines	VC	No
23	Hungary	HU	No	53	Switzerland	CH	No
24	Ireland	IE	No	54	Turks & Caicos Islands	TC	No
25	Isle of Man	IM	No	55	United Arab Emirates (Dubai)	AE	No
26	Israel	IL	unknown	56	United Kingdom (City of London)	GB	No
27	Jersey	JE	No	57	Uruguay	UY	No
28	Latvia	LV	unknown	58	US Virgin Islands	USVI	No
29	Lebanon	LB	unknown	59	USA (Delaware)	US	No
30	Liberia	LR	unknown	60	Vanuatu	VU	No