

Key Financial Secrecy Indicators

2: Public Register of Trusts

What is measured?

This indicator shows if a jurisdiction has a central register of trusts and foundations that is publicly accessible via the internet¹.

The indicator builds on a variety of sources, among them table D2 and D3 of the OECD-report (Tax Co-operation 2007 and 2008²), private sector internet sources, occasionally FATF and IMF reports, and the TJN-Survey 2009. In cases where there is indication that online information on trust registries is available, the corresponding websites have been consulted as well.

A precondition for this indicator to be answered affirmatively is that all trusts and foundations in a jurisdiction must be required to register with a central agency for it to become legally effective. If a trust is valid without registering there is no reason to believe that such a registry adds to financial transparency since anybody intending to conceal the existence of their financial arrangements will simply not register a trust if that option is available.

Following the same logic, it is not sufficient to secure a positive score if, for instance, a jurisdiction has a stringent registration requirement for foundations, but not for trusts. Both legal arrangements need to be covered unless, of course, one is unavailable in the relevant jurisdiction. There is an exception: where neither foundations nor trusts are available in a jurisdiction we have given that jurisdiction credit for this contribution to financial transparency.

¹ We believe this is a reasonable criteria given a) the prevalence of the internet in 2009, b) as international financial flows are now completely cross border through the use of modern technology, it would be ridiculous if that technology were not used to make information available worldwide especially as c) the people affected by these cross border financial flows are likely to be in many jurisdictions, and hence *need* information to be on the internet to get hold of it.

² 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. OECD-table D2 details which countries have domestic trust laws, which have specific trust laws applying to non-residents only and which countries do not have trust laws but allow their residents to act as trustees of foreign trusts (OECD 2008: 128). Table D3 in turn details what kind of information needs to be submitted to a government authority, defined as including "trust registries, regulatory authorities and tax authorities." (OECD 2008: 132).

If there is a generalised registration requirement for trusts and foundations, we have given credit only if it requires that information be disclosed that is relevant for assessing its tax and ownership implications. For example, the published information must at least comprise information on the identity of the settlor, the trust deed, the names of the trustees, the annual accounts, and details on the (ultimate) beneficiaries of the arrangement.

Why is it important?

Trusts change property rights. That is their purpose. A trust is formed whenever a person (the settlor) gives legal ownership of an asset (the trust property) to another person (the trustee) on condition that they apply the income and gains arising from that asset for the benefit of one or other people (the beneficiaries). It is immediately obvious that such an arrangement could easily be abused for concealing illicit activity should, for example, the identities of settlers and beneficiaries, or the relationship between settlor and trustee, be obscured. There is particular risk when the trust is in fact a sham i.e. the settlor as the beneficiary and controls the activities of the settlor. This is a commonplace mechanism for evading tax since their only effect is to conceal the actual controlling ownership of assets from everybody else's view.

The most basic secrecy jurisdiction "product" comprises a secrecy jurisdiction company that operates a bank account. That company is run by nominee directors on behalf of nominee shareholders who act for the nominee trustees that own the company's shares. The whole structure actually works on behalf of the beneficial owner who will be 'elsewhere'³ in another jurisdiction as far as the secrecy jurisdiction 'secrecy providers' (the lawyers, accountants and bankers actually running this structure) are concerned. If - as is often the case - these structures are split over several jurisdictions then any enquiries by law enforcement authorities and others about this structure can be endlessly delayed because of the complexity it offers, and which is facilitated by the lack of a central, publicly-accessible trust register.

The existence of a central register recording the true beneficial ownership of trusts and foundations would break down the deliberate opacity within this type of structure. The prospects of proper law enforcement would be greatly enhanced as a result.

For more detail on trusts please read [TJN's extensive blog here](#).

³ By 'elsewhere' we mean 'An unknown place in which it is assumed, but not proven, that a transaction undertaken by an entity registered in a secrecy jurisdiction is regulated'

What are the crimes that might hide behind trust secrecy?

Tax evasion, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity, non-payment of alimonies, infringement of competition rules, bankruptcy fraud, and more besides might hide behind the secrecy that trusts in secrecy jurisdictions can provide.

Results Overview

None of the reviewed secrecy jurisdictions has a central register of trusts and foundations that is publicly accessible via the internet.