

Key Financial Secrecy Indicators

1: Banking Secrecy

What is measured?

This indicator assesses whether a jurisdiction provides banking secrecy. We seek to go beyond the statutory dimension to assess the absence or inaccessibility of banking information as a form of banking secrecy. For a jurisdiction to obtain full credit on this indicator, it must ensure that banking data exists and that it has effective access to this data. We consider that effective access exists when the tax authorities can obtain account information without the need for separate authorisation, for example, from a court, and if this access is unrelated to a specific treaty.

In order to measure whether banking secrecy enjoys formal status in a jurisdiction, we rely on table B1 of the OECD-report¹. If a jurisdiction does not provide formal banking secrecy, we award 0.2 credit points.

The availability of relevant banking information is measured by a jurisdiction's compliance with FATF-recommendations 5 and 10.

Recommendation 5 states that "financial institutions should not keep anonymous accounts or accounts in obviously fictitious names". The recommendation specifies that the financial institution must be able to identify not just the legal owner but also the beneficial owner(s), both in the case of natural and legal persons². If a jurisdiction fully complies with this recommendation, we award a further 0.2 credit points.

FATF-recommendation 10 requires financial institutions to "maintain, for at least five years, all necessary records on transactions, both domestic and international"³. A further 0.2 credits are awarded if a jurisdiction fully applies this recommendation⁴. We have relied mainly on

¹ The full title of this annual publication is "Tax Co-operation. Towards a Level Playing Field". This publication served as a main source for many variables and, in the following, is referred to by "OECD-report" or "OECD publication". See reference section for more details. The OECD writes the following explanation to this variable: "Table B 1 shows for all of the countries reviewed whether the basis for bank secrecy arises purely out of the relationship between the bank and its customer (e.g. contract, privacy, common law) [...or] whether it is reinforced by statute [...]" (OECD 2010: 142; TJN-notes in [brackets]).

² http://www.fatf-gafi.org/document/58/0,3746,en_32250379_32236920_43642938_1_1_1_1,00.html (21.05.2011).

³ http://www.fatf-gafi.org/document/21/0,3746,en_32250379_32236920_43681621_1_1_1_1,00.html (21.05.2011)

⁴ In order to measure compliance the FATF uses the following scale: 1 = non-compliant; 2 = partially compliant; 3 = largely-compliant; 4 = fully compliant. We give 0 credits for non-compliant, 0.7 for

the mutual evaluation reports by the FATF, FATF-like regional bodies or the IMF for the assessment of these two criteria.

In addition, and in order to diversify our sources, we have also used data contained in the 2010 International Narcotics Control Strategy Report (INCSR, Volume 2 on Money Laundering and Financial Crimes)⁵. This report indicates for a large number of countries a) whether banks are required to maintain records of large transactions in currency or other monetary instruments, and b) whether banks are required to keep records, especially of large or unusual transactions, for a specified period of time (e.g. five years). We award 0.1 credit points for a positive answer for each a) and b)⁶.

However, since it is not sufficient for banking data to merely exist, we also measure whether this data can be accessed for information exchange purposes in both civil and criminal tax matters, and if so, whether this applies only within the framework of a specific treaty (DTA or TIEA). Therefore, we rely on table B.2 and B.3 in the OECD-report.

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 2010: 146).

Table B3 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: 157). In addition, the notes to this table indicate whether or not the powers are conditional upon a certain treaty.

Only if both instances - “having access” and “obtain information directly” without a bilateral treaty condition - are answered “yes” without strings attached do we credit the jurisdiction with a full 0.2 points for having effective access to banking data. If the jurisdiction has access, but only within the framework of a treaty, we award 0.1 credit points.

partially compliant, 0.13 for largely compliant and finally 0.2 credit points for fully compliant jurisdictions.

⁵ This report is available here: <http://www.state.gov/p/inl/rls/nrcrpt/2010/vol2/index.htm> (21.05.2011).

⁶ The information is nicely presented in this table: <http://www.state.gov/p/inl/rls/nrcrpt/2010/vol2/137217.htm> (21.05.2011) under the columns “Record large transactions” and “Maintain records over time”.

KFSI 1 – Banking Secrecy			
Dimensions	Condition(s)	Assessment	Source(s)
Statutory standing	Banking secrecy does not have legal standing	0.2 credit points	OECD Tax-Cooperation report 2010, table B.1
Availability of relevant information	No anonymous accounts – FATF Rec. 5	0.2 credit points	FATF, FATF-like regional bodies, or IMF
	Maintain on record transactions – FATF Rec. 10	0.2 credit points	
	Maintain records of large transactions	0.1 credit points	Bureau for International Narcotics and Law Enforcement Affairs (INCSR 2010)
	Maintain records for specified period of time (e.g. Five years)	0.1 credit points	
Effective access	(1) EoI in both criminal and civil tax matters (2) Not within a DTA or TIEA	(1) + (2) = 0.2 credit points (1) = 0.1 credit points	OECD Tax-Cooperation report 2010, table B.2 and B.3

Why is it important?

Factual and formal banking secrecy laws can help to obstruct information gathering requests from both national and international competent authorities such as tax administrations or financial regulators. Until 2005, most of the concluded [double tax agreements](#) did not specifically include provisions to override formal banking secrecy laws when responding to information requests by foreign treaty partners.

Some countries defend their formal banking secrecy by means of criminal prosecution which helps to silence, retaliate against, and prosecute critics as well as whistleblowers. Formal bank secrecy was, and remains in these cases, a massive obstacle to progress in obtaining information required to secure law and tax enforcement.

Another way of achieving factual banking secrecy which has become increasingly fashionable since formal banking secrecy came under attack by the OECD in 2009 consists in not properly checking the identity of the account holders, or in allowing nominees such as custodians, trustees, or foundation council members to be acceptable as the only names on bank records. Furthermore, the absence of or neglect in enforcing record keeping obligations for large transactions, for instance through wire transfers, is another way in which banks are complicit in aiding their clients to evade investigation.

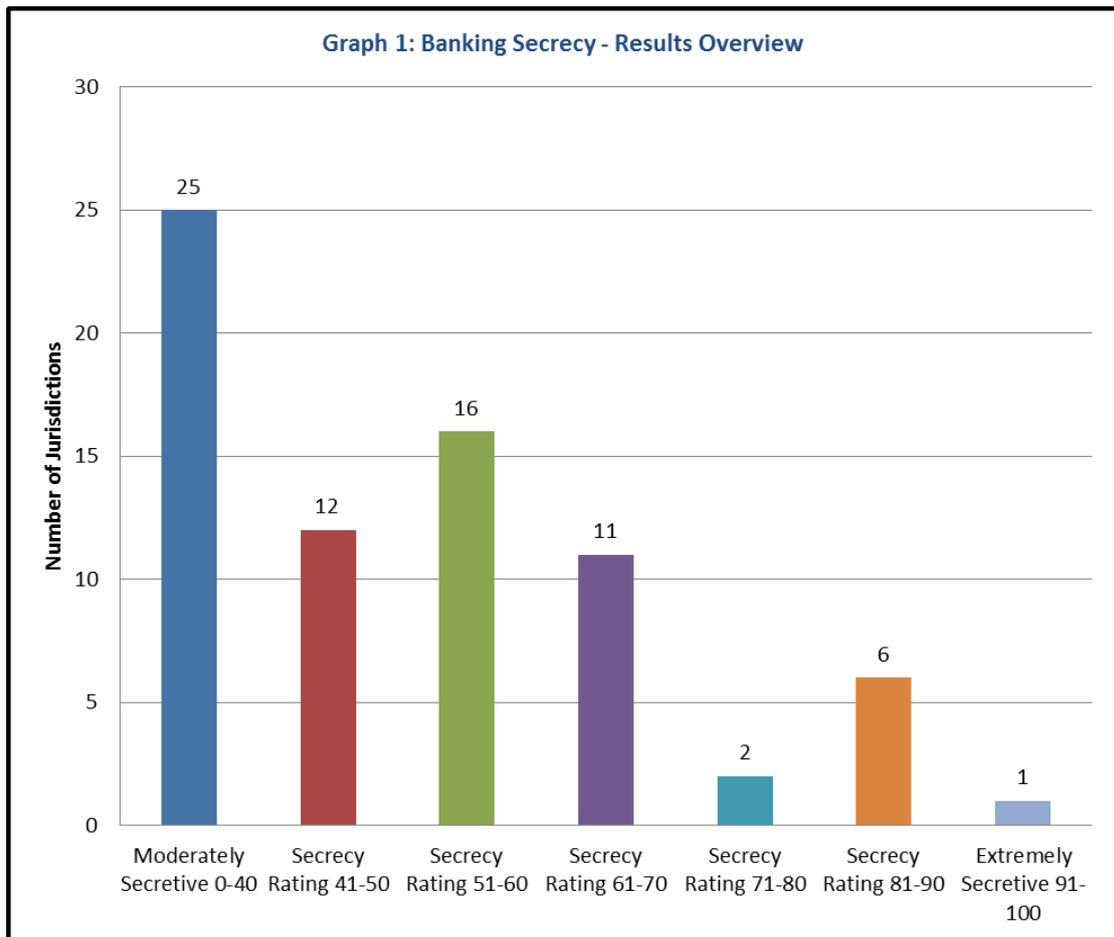
Since most trusts, shell companies, partnerships and foundations need to maintain a bank account, the beneficial ownership information banks are required to hold on the accounts they operate is often the most effective route for identifying the people behind these legal structures. Together with the recorded transfers, ownership records of bank accounts therefore are often the only available proof of criminal or illicit activity of individuals, such as the payment of bribes, illegal arms trade or tax evasion. Therefore, it is of utmost importance that authorities with appropriate confidentiality provisions in place can access banking data routinely without being constrained by additional legal barriers such as formal banking secrecy or factual barriers, such as missing or outdated records.

What are the crimes that might hide behind banking secrecy?

Tax evasion, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trade, trafficking in human beings, money laundering, the covering of illicit intelligence activity, non-payment of alimonies, and more besides might hide behind the benefits that banking secrecy provides.

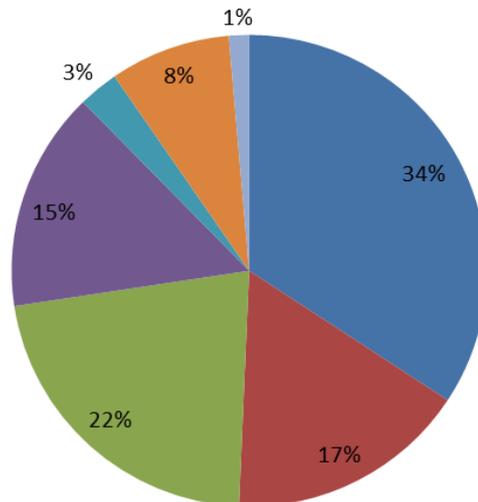
Results Overview

Number of Jurisdictions rated moderately secretive 0-40	25
Number of Jurisdictions with secrecy rating 41-50	12
Number of Jurisdictions with secrecy rating 51-60	16
Number of Jurisdictions with secrecy rating 61-70	11
Number of Jurisdictions with secrecy rating 71-80	2
Number of Jurisdictions with secrecy rating 81-90	6
Number of Jurisdictions rated extremely secretive 91-100	1



Results Detail

Graph 2: Banking Secrecy - Results Details



- Moderately Secretive 0-40: AN BE HU IN IE IM IT GG DE KR NL BZ JE GB PA GI HK IL BM CA JP MY AE VG PH
- Secrecy Rating 41-50: DK ES CH SG LV MT PT KY DM FR USV US
- Secrecy Rating 51-60: AG AT LB LI UY AD AW KN AI BH CK CR CY GT LU MC
- Secrecy Rating 61-70: BB BS WS VU BW GD MH VC MO MU SM
- Secrecy Rating 71-80: TC BN
- Secrecy Rating 81-90: GH LR MS NR SC LC
- Extremely Secretive 91-100: MV

Table 2: Formal Banking Secrecy - Details							
ID	Jurisdiction	ISO	Secrecy	ID	Jurisdiction	ISO	Secrecy
1	Andorra	AD	0,57	38	Korea	KR	0,3
2	Anguilla	AI	0,6	39	Latvia	LV	0,46
3	Antigua & Barbuda	AG	0,53	40	Lebanon	LB	0,53
4	Aruba	AW	0,57	41	Liberia	LR	0,83
5	Austria	AT	0,53	42	Liechtenstein	LI	0,53
6	Bahamas	BS	0,66	43	Luxembourg	LU	0,6
7	Bahrain	BH	0,6	44	Macau	MO	0,7
8	Barbados	BB	0,63	45	Malaysia (Labuan)	MY	0,37
9	Belgium	BE	0,17	46	Maldives	MV	1
10	Belize	BZ	0,33	47	Malta	MT	0,47
11	Bermuda	BM	0,37	48	Marshall Islands	MH	0,67
12	Botswana	BW	0,67	49	Mauritius	MU	0,7
13	British Virgin Islands	VG	0,4	50	Monaco	MC	0,6
14	Brunei	BN	0,77	51	Montserrat	MS	0,83
15	Canada	CA	0,37	52	Nauru	NR	0,83
16	Cayman Islands	KY	0,5	53	Netherlands	NL	0,17
17	Cook Islands	CK	0,6	54	Netherlands Antilles	AN	0
18	Costa Rica	CR	0,6	55	Panama	PA	0,34
19	Cyprus	CY	0,6	56	Philippines	PH	0,4
20	Denmark	DK	0,43	57	Portugal (Madeira)	PT	0,47
21	Dominica	DM	0,5	58	Samoa	WS	0,66
22	France	FR	0,5	59	San Marino	SM	0,7
23	Germany	DE	0,3	60	Seychelles	SC	0,83
24	Ghana	GH	0,83	61	Singapore	SG	0,44
25	Gibraltar	GI	0,36	62	Spain	ES	0,43
26	Grenada	GD	0,67	63	St Kitts and Nevis	KN	0,57
27	Guatemala	GT	0,6	64	St Lucia	LC	0,9
28	Guernsey	GG	0,27	65	St Vincent & Grenadines	VC	0,67
29	Hong Kong	HK	0,36	66	Switzerland	CH	0,43
30	Hungary	HU	0,17	67	Turks & Caicos Islands	TC	0,73
31	India	IN	0,2	68	United Arab Emirates (Dubai)	AE	0,37
32	Ireland	IE	0,23	69	United Kingdom	GB	0,33
33	Isle of Man	IM	0,23	70	Uruguay	UY	0,53
34	Israel	IL	0,36	71	US Virgin Islands	USV	0,5
35	Italy	IT	0,23	72	USA	US	0,5
36	Japan	JP	0,37	73	Vanuatu	VU	0,66
37	Jersey	JE	0,33				