

Key Financial Secrecy Indicators

13: Bilateral treaties

What is being measured?

This indicator examines the extent to which a jurisdiction has signed and ratified bilateral treaties conforming to the 'upon request' standard developed by the OECD and the Global Forum with 60 other countries, and/or whether the jurisdiction has signed and ratified the Amending Protocol of the 1988 Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters ("the 1988 Convention")¹. The cut-off-date is 30 June 2010².

In respect of bilateral treaties, the 'upon request' provisions can either be full double taxation agreements (DTAs) or [tax information exchange agreements \(TIEAs\)](#)³ which have a much reduced scope.

The main source for this information is table A of the OECD-report (Tax Co-operation 2010⁴). This table displays the number of bilateral agreements for information exchange, both signed and in force as of June 2010. Where the OECD did not cover the jurisdiction, we consulted other private sources, including Lowtax.net, or the jurisdiction's finance ministries. A list of all the parties to the 1988 Convention and its Amending Protocol can be found on the OECD website⁵.

We have awarded a full credit for this indicator either if a jurisdiction is party to the CoE/OECD Convention and its Amending Protocol or if a jurisdiction has at least 60 qualifying treaties in place, with a proportionate credit awarded where fewer agreements are in place. This number of agreements was selected because it is the average number of information exchange provisions contained in bilateral treaties a G20-country had in 2010⁶. Since many secrecy jurisdictions claim to be major financial services centres we have taken them at their word and concluded that it is fair to compare their treaty network with that of the world's major trading nations, represented by the G20-nations. It follows from this that the figure of 60 qualifying agreements is a moving target; when G20-nations increase their average number of treaties the average we use will also increase and therefore the minimum number of treaties for the purpose of this indicator will increase. Since 2009 the average number has remained stable at 60⁷.

Why is it 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 aggressive tax avoidance schemes. 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 locally based and are frequently deliberately obstructed by secrecy jurisdictions. This barrier to information exchange undermines the rule of law and imposes huge costs on revenue authorities wanting to tackle tax dodging.

The standard for information exchange promoted by the OECD and the Global Forum is weak and largely ineffective (as we have pointed out in great detail in [our briefing paper here](#) and [time and time again in our blog here](#) and in the [Financial Times here](#)⁸). The consequences of this weakness reach far beyond mere tax enforcement, but have huge implications for the global economy. Ultimately, it incentivises 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](#)⁹, this distortion creates huge 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 at least to 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 standard for information exchange promoted by the OECD has severe shortcomings, such a system may be a step forwards if a sufficient number of countries, including poorer countries, are able to effectively use the 'upon request' system to collect evidence needed to prosecute offenders. In April 2009, the OECD announced that the conclusion of just twelve bilateral agreements for information exchange is sufficient to be taken off 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 12 agreements, often negotiating agreements between themselves, the OECD has created a 'white list' of secrecy jurisdictions which appear to carry some form of official endorsement from the OECD itself.

Despite having strong reservations about the operational effectiveness of the 'upon request' model promoted by the OECD, we have opted to set the bar far higher than 12 agreements and employ the number of tax treaties a G20-country has on average as our yardstick.

We argue that bilateralism does not and cannot tackle the issue of information exchange in an effective and efficient manner. For this reason we award a credit to any jurisdiction that participates in the 1988 Convention and its Amending Protocol which opens participation to all countries, not just OECD or European ones. The [Amending Protocol entered into force on 1 June 2011](#)¹¹, with the membership of five jurisdictions, only one of which is monitored by the FSI (Denmark)¹².

Our concerns about the effectiveness of the 'upon request' model of information exchange also relate to the need for a 'smoking gun' to alert tax authorities to possible cases of tax evasion (see [KFSI number 12](#)). This explains why we regard automatic information exchange as a more effective deterrent of tax evasion, and propose a simplified system of automatic

information exchange of the type proposed by Richard Murphy ([downloadable here](#)) as a means of making sense of the existing OECD structure by providing the necessary 'smoking gun' information to make it work. A [system of full multilateral automatic tax information exchange](#)¹³ should be the goal of international efforts to cooperate on tackling tax evasion.

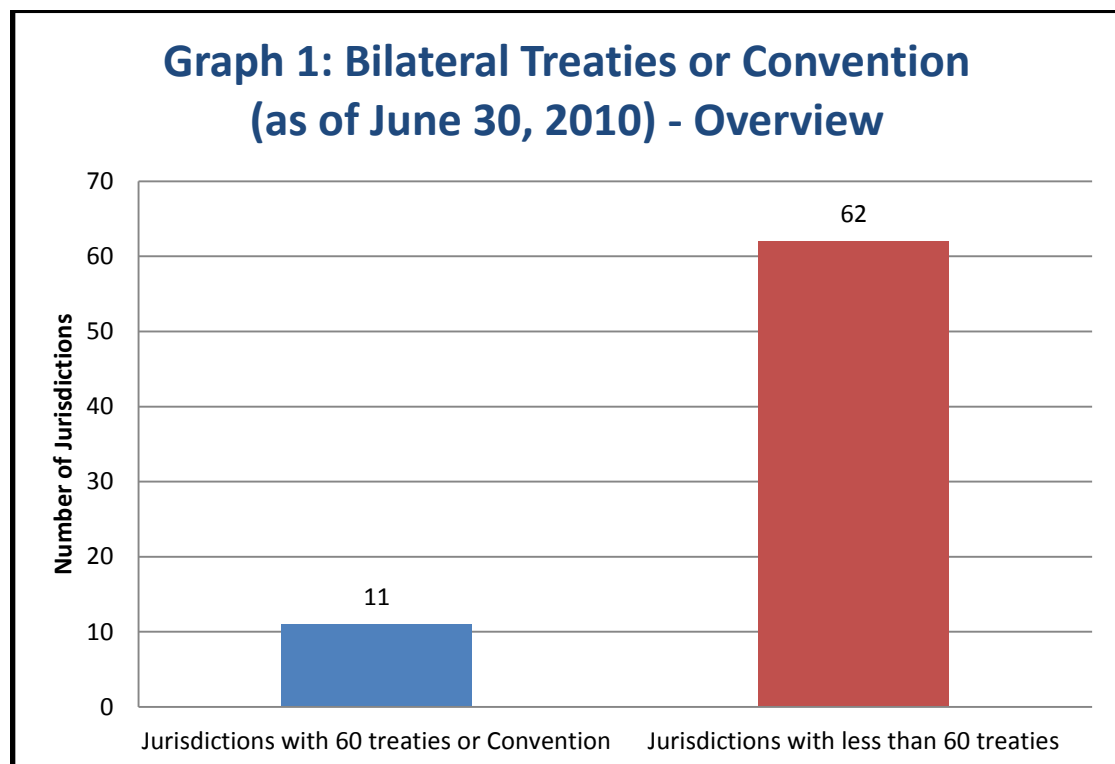
What are the crimes and abuses that might hide behind a weak network of information exchange treaties?

The bilateral treaties under scrutiny here deal only with tax matters. Therefore the relevant crimes are tax related, such as tax evasion, aggressive tax avoidance (which is now targeted as unacceptable by the OECD and many countries) and transfer pricing manipulation. However, indirectly, other crimes could be detected by spontaneous information exchange permitted under the 1988 Convention and its Amending Protocol.

Results Overview

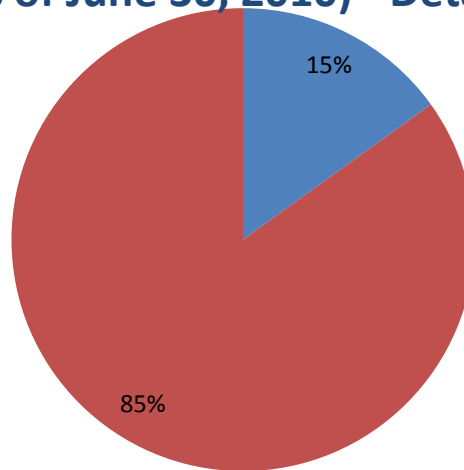
Table 1: 60 Bilateral Treaties or Multilateral Convention (as of June 30, 2010) - Overview

Number of jurisdictions with full transparency credit	11
Number of jurisdictions with partial or no transparency credit	62



Results Detail

**Graph 2: Bilateral Treaties or Convention
(as of June 30, 2010) - Details**



■ Jurisdictions with 60 bilateral treaties or Convention: CA DK FR IN IT KR NL ES GB USV US

■ Jurisdictions with less than 60 bilateral treaties: AD AI BZ CK CR DM GT HK LB LR MO MY MV MS NR PA PH WS LC VC CH UY VU BS BE BW GD MH KN TC LI AW MC AN SG AT LU SM GH GI BH VG KY BN BM GG SC BB IM JE AG MU DE CY IL JP PT AE MT LV IE HU

Table 2: 60 Bilateral Treaties or Multilateral Convention (as of June 30, 2010) – Some Details

ID	Jurisdiction	ISO		ID	Jurisdiction	ISO	
1	Andorra	AD	No	38	Korea	KR	Yes
2	Anguilla	AI	No	39	Latvia	LV	No
3	Antigua & Barbuda	AG	No	40	Lebanon	LB	No
4	Aruba	AW	No	41	Liberia	LR	No
5	Austria	AT	No	42	Liechtenstein	LI	No
6	Bahamas	BS	No	43	Luxembourg	LU	No
7	Bahrain	BH	No	44	Macau	MO	No
8	Barbados	BB	No	45	Malaysia (Labuan)	MY	No
9	Belgium	BE	No	46	Maldives	MV	No
10	Belize	BZ	No	47	Malta	MT	No
11	Bermuda	BM	No	48	Marshall Islands	MH	No
12	Botswana	BW	No	49	Mauritius	MU	No
13	British Virgin Islands	VG	No	50	Monaco	MC	No
14	Brunei	BN	No	51	Montserrat	MS	No
15	Canada	CA	Yes	52	Nauru	NR	No
16	Cayman Islands	KY	No	53	Netherlands	NL	Yes
17	Cook Islands	CK	No	54	Netherlands Antilles	AN	No

18	Costa Rica	CR	No	55	Panama	PA	No
19	Cyprus	CY	No	56	Philippines	PH	No
20	Denmark	DK	Yes	57	Portugal (Madeira)	PT	No
21	Dominica	DM	No	58	Samoa	WS	No
22	France	FR	Yes	59	San Marino	SM	No
23	Germany	DE	No	60	Seychelles	SC	No
24	Ghana	GH	No	61	Singapore	SG	No
25	Gibraltar	GI	No	62	Spain	ES	Yes
26	Grenada	GD	No	63	St Kitts and Nevis	KN	No
27	Guatemala	GT	No	64	St Lucia	LC	No
28	Guernsey	GG	No	65	St Vincent & Grenadines	VC	No
29	Hong Kong	HK	No	66	Switzerland	CH	No
30	Hungary	HU	No	67	Turks & Caicos Islands	TC	No
31	India	IN	Yes	68	United Arab Emirates (Dubai)	AE	No
32	Ireland	IE	No	69	United Kingdom	GB	Yes
33	Isle of Man	IM	No	70	Uruguay	UY	No
34	Israel	IL	No	71	US Virgin Islands	USV	Yes
35	Italy	IT	Yes	72	USA	US	Yes
36	Japan	JP	No	73	Vanuatu	VU	No
37	Jersey	JE	No				

Table 3: Transparency Credits for bilateral treaties or convention (as of June 30, 2010)

ID	Jurisdiction	ISO	ID	Jurisdiction	ISO		
1	Andorra	AD	0	38	Korea	KR	1
2	Anguilla	AI	0	39	Latvia	LV	0,85
3	Antigua & Barbuda	AG	0,3	40	Lebanon	LB	0
4	Aruba	AW	0,07	41	Liberia	LR	0
5	Austria	AT	0,08	42	Liechtenstein	LI	0,03
6	Bahamas	BS	0,02	43	Luxembourg	LU	0,08
7	Bahrain	BH	0,12	44	Macau	MO	0
8	Barbados	BB	0,23	45	Malaysia (Labuan)	MY	0
9	Belgium	BE	0,02	46	Maldives	MV	0
10	Belize	BZ	0	47	Malta	MT	0,82
11	Bermuda	BM	0,15	48	Marshall Islands	MH	0,02
12	Botswana	BW	0,02	49	Mauritius	MU	0,48
13	British Virgin Islands	VG	0,12	50	Monaco	MC	0,07
14	Brunei	BN	0,13	51	Montserrat	MS	0
15	Canada	CA	1	52	Nauru	NR	0
16	Cayman Islands	KY	0,12	53	Netherlands	NL	1
17	Cook Islands	CK	0	54	Netherlands Antilles	AN	0,07
18	Costa Rica	CR	0	55	Panama	PA	0

19	Cyprus	CY	0,68	56	Philippines	PH	0
20	Denmark	DK	1	57	Portugal (Madeira)	PT	0,73
21	Dominica	DM	0	58	Samoa	WS	0
22	France	FR	1	59	San Marino	SM	0,08
23	Germany	DE	0,65	60	Seychelles	SC	0,2
24	Ghana	GH	0,1	61	Singapore	SG	0,07
25	Gibraltar	GI	0,1	62	Spain	ES	1
26	Grenada	GD	0,02	63	St Kitts and Nevis	KN	0,02
27	Guatemala	GT	0	64	St Lucia	LC	0
28	Guernsey	GG	0,18	65	St Vincent & Grenadines	VC	0
29	Hong Kong	HK	0	66	Switzerland	CH	0
30	Hungary	HU	0,97	67	Turks & Caicos Islands	TC	0,02
31	India	IN	1	68	United Arab Emirates (Dubai)	AE	0,75
32	Ireland	IE	0,93	69	United Kingdom	GB	1
33	Isle of Man	IM	0,23	70	Uruguay	UY	0
34	Israel	IL	0,68	71	US Virgin Islands	USV	1
35	Italy	IT	1	72	USA	US	1
36	Japan	JP	0,72	73	Vanuatu	VU	0
37	Jersey	JE	0,23				

¹ http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48093843_1_1_1_1,00.html; 21.6.2011.

² This date deviates from the general cut-off-date of the FSI 2011, which is 31.12.2010. The reason is that the OECD or the Global Forum no longer publish the Tax Co-operation report, and will not publish table A or the information contained therein elsewhere. Therefore, the most reliable measure of reasonably effective bilateral treaties is table A contained in the 2010 Tax Co-operation report, with a cut-off-date 30 June 2010. There is no reason to believe that the *relative* amount of treaties after 30 June 2010 substantially deviated from the situation before. The information made available by the Global Forum in mid-2011 on its exchange of information website (<http://www.eoi-tax.org/>) does not contain systematic reviews of each agreement so this source is currently unsuitable for use in a comparative study. Therefore, and given the absence of alternative sources, we decided to include the data available up to 30 June 2010. It is an indication of the questionable value of the current Global Forum peer review process that such comprehensive and comparative data are not published on a regular basis

³ http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf; 21.6.2011.

⁴ 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". Table A's title is "Relationships providing for information exchange to the standard" (OECD 2010: 139). More precisely, the information is taken out of column 5 (entitled "DTCs [i.e. Double Taxation Conventions] in force to the standard") and column 6 (entitled "TIEAs in force to standard").

⁵ Here: <http://www.oecd.org/dataoecd/34/7/47507468.doc>

⁶ As reported in OECD 2010 (pages 139-141). The exact average per G20-nation except Saudi Arabia is 61.9 according to this source. We excluded Saudi Arabia from the calculation because it was not included in this OECD publication.

⁷ It is important to note that from 2011 onwards, the OECD or the Global Forum will no longer publish the useful Tax Co-operation reports and valuable comparative data will disappear from public view as a result.

⁸ <http://www.ft.com/intl/cms/s/0/0f687dee-5eea-11e0-a2d7-00144feab49a.html#axzz1PtjiCeHN>;
21.6.2011.

⁹ http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 21.6.2011.

¹⁰ <http://treasureislands.org/>; 21.6.2011.

¹¹ <http://www.oecd.org/dataoecd/8/62/48094428.pdf>; 21.6.2011.

¹² As of 21.6.2011, two additional countries of little relevance to the FSI 2011 have indicated a date for entering into force of the protocol (Poland and Sweden).

¹³ http://www.taxjustice.net/cms/upload/pdf/AIE_100926_TJN-Briefing-2.pdf; 21.6.2011.