

## 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, the jurisdiction must ensure that banking data exists, and that it has effective access to this data. We consider that effective access exists if the tax authorities can obtain account information without the need for separate authorisation, for example, from a court, and if there are no undue notification requirements or appeal rights against obtaining or sharing this information.

In order to measure whether banking secrecy enjoys legal status in a jurisdiction, we use data<sup>1</sup> from table B1 of the OECD 2010 report<sup>2</sup> and from the Global Forum peer reviews<sup>3</sup>. If a jurisdiction does not legally endorse 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<sup>4</sup>.

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 persons<sup>5</sup>. If a jurisdiction fully complies with this recommendation, we award a further 0.2 credit points<sup>6</sup>.

FATF-recommendation 10 requires financial institutions to "maintain, for at least five years, all necessary records on transactions, both domestic and international"<sup>7</sup>. A further 0.2 credits are awarded if a jurisdiction fully applies this recommendation. We have relied mainly on the mutual evaluation reports by the FATF, FATF-like regional bodies or the IMF for the assessment of these two criteria<sup>8</sup>.

In addition, and in order to diversify our sources, we have also used data contained in the 2012 International Narcotics Control Strategy Report (INCSR, Volume 2 on Money Laundering and Financial Crimes)<sup>9</sup>. This report indicates for a large number of countries a) whether banks are required to maintain records over time, especially of large or unusual transactions, and b) whether banks are required to report large transactions. We award 0.1 credit points for a positive answer for each a) and b)<sup>10</sup>.

However, since it is not sufficient for banking data to merely exist, we also measure whether this data can be obtained and used for information exchange purposes, and if no undue

notification<sup>11</sup> requirements or appeal rights<sup>12</sup> prevent effective sharing of banking data. We rely on Global Forum's element B.1<sup>13</sup> for addressing the first issue at hand (powers to obtain and provide data), and we use Global Forum's element B.2<sup>14</sup> for the second issue (notification requirements/appeal rights). Each will be attributed 0.1 credits if no qualifications apply to the elements and underlying factors<sup>15</sup>. An overview of the rating for B.1 and B.2 can be seen below:

KFSI 1 – Assessment of Global Forum data		
Assessment Credits	Results as in table of determinations of Global Forum B.1 / B.2, "Determination" <sup>16</sup>	Results as in table of determinations of Global Forum B.1 / B.2, "Factors" <sup>17</sup>
0.1	"The element is in place."	No factor mentioned.
0	"The element is in place."	Any factor mentioned.
0	"The element is in place, but certain aspects of the legal implementation of the element need improvement."	Irrelevant.
0	"The element is not in place."	Irrelevant.

All of KFSI 1 is summarized in the next table:

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; Global Forum peer reviews
Availability of relevant information	No anonymous accounts – FATF Rec. 5	0.2 credit points	FATF, FATF-like regional bodies, or IMF
	Keep banking records for at least five years– FATF Rec. 10	0.2 credit points	
	Maintain records over time, especially of large or unusual transactions	0.1 credit points	Bureau for International Narcotics and Law Enforcement Affairs (INCSR 2012)
	Report large transactions	0.1 credit points	
Effective access	Sufficient powers to obtain and provide banking information	0.1 credit points	Global Forum peer reviews elements B.1 and B.2 (incl. factors and text)
	No undue notification and appeal rights against information exchange	0.1 credit points	

### 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](#)<sup>18</sup> did not

specifically include provisions to override formal banking secrecy laws when responding to information requests by foreign treaty partners.

Some countries defend their banking secrecy by means of criminal prosecution which helps to silence, retaliate against, and prosecute critics as well as whistleblowers. Bank secrecy was, and in these cases remains, 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](#)<sup>19</sup> since formal banking secrecy came under attack by the OECD in 2009 consists of 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 trading 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?**

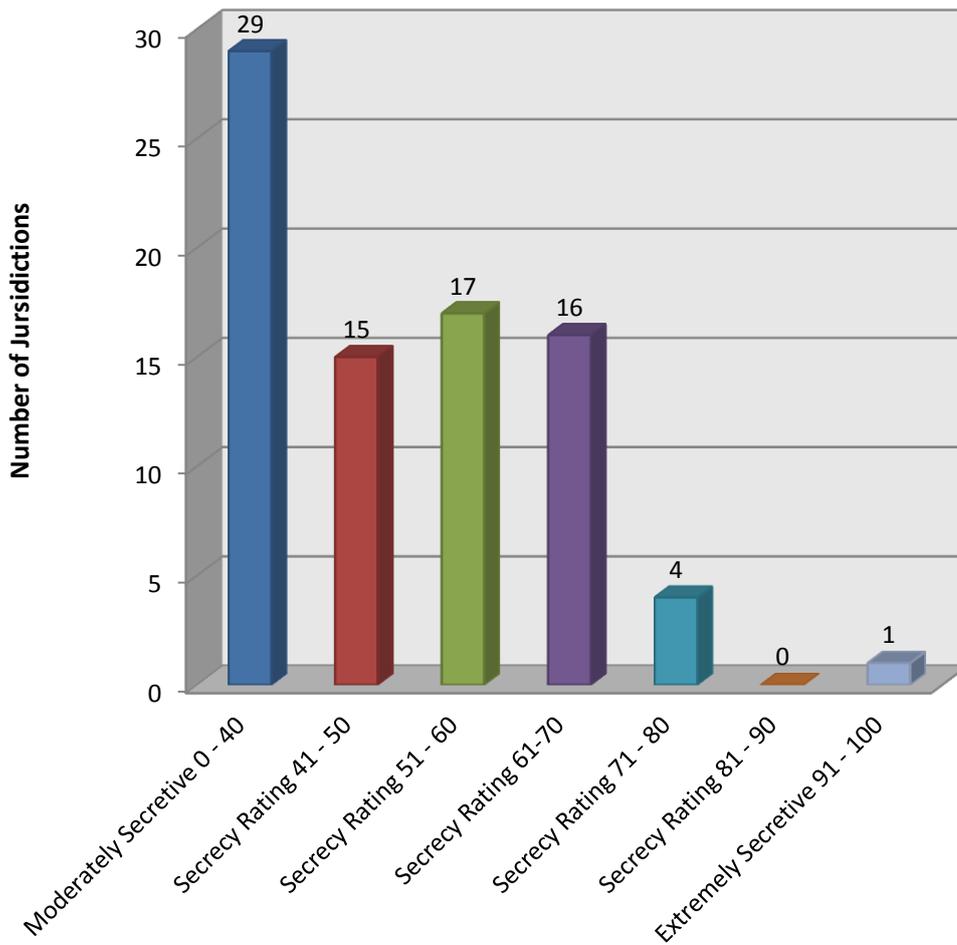
Tax evasion, hiding of the proceeds of corruption, organised crime (especially drug trafficking), illegal arms trading, trafficking in human beings, money laundering, the covering of illicit intelligence activity, non-payment of alimonies, and more besides might hide behind the benefits that banking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

**Results Overview**

**Table 1: Banking Secrecy – Overview**

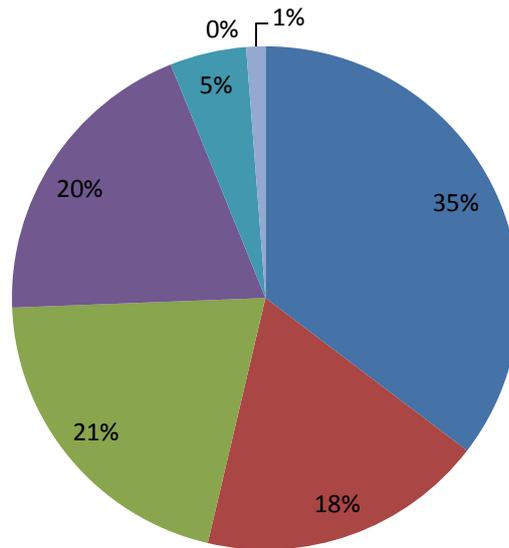
Number of jurisdictions rated moderately secretive 0 – 40	29
Number of jurisdictions with secrecy rating 41 – 50	15
Number of jurisdictions with secrecy rating 51 – 60	17
Number of jurisdictions with secrecy rating 61-70	16
Number of jurisdictions with secrecy rating 71 – 80	4
Number of jurisdictions with secrecy rating 81 – 90	0
Number of jurisdictions rated extremely secretive 91 -100	1

**Graph 1: Banking Secrecy - Overview**



Results Detail

Graph 2: Banking Secrecy - Detail



- Moderately Secretive 0 - 40: AG; AI; AU; BE; CA; CW; DE; ES; FR; GB; GI; HU; IE; IM; IN; IT; JE; JP; MT; MY; NL; NO; NZ; PT; RU; US; VG; VI; ZA
- Secrecy Rating 41 - 50: BM; BR; CK; CR; DK; DM; GG; IL; KR; KY; MC; MO; MU; PA; SE
- Secrecy Rating 51 - 60: AD; AE; BH; BW; CY; GT; HK; LB; LC; LR; NR; PH; SA; SM; UY; VC; WS
- Secrecy Rating 61-70: AT; AW; BB; BS; BZ; CH; DO; GD; LI; LU; LV; MS; SC; SG; TC; VU
- Secrecy Rating 71 - 80: BN; GH; KN; MH
- Secrecy Rating 81 - 90: No jurisdictions
- Extremely Secretive 91 - 100: MV

**Table 2: Formal Banking Secrecy - Transparency Credits**

ID	Country	ISO	Credits	ID	Country	ISO	Credits
1	Andorra	AD	0.43	42	Korea	KR	0.5
2	Anguilla	AI	0.6	43	Latvia	LV	0.34
3	Antigua & Barbuda	AG	0.67	44	Lebanon	LB	0.47
4	Aruba	AW	0.33	45	Liberia	LR	0.47
5	Australia	AU	0.67	46	Liechtenstein	LI	0.37
6	Austria	AT	0.37	47	Luxembourg	LU	0.3
7	Bahamas	BS	0.34	48	Macau	MO	0.5
8	Bahrain	BH	0.4	49	Malaysia (Labuan)	MY	0.63
9	Barbados	BB	0.37	50	Maldives	MV	0
10	Belgium	BE	0.93	51	Malta	MT	0.63
11	Belize	BZ	0.37	52	Marshall Islands	MH	0.2
12	Bermuda	BM	0.53	53	Mauritius	MU	0.5
13	Botswana	BW	0.43	54	Monaco	MC	0.5
14	Brazil	BR	0.5	55	Montserrat	MS	0.3
15	British Virgin Islands	VG	0.8	56	Nauru	NR	0.4
16	Brunei	BN	0.27	57	Netherlands	NL	0.7
17	Canada	CA	0.73	58	New Zealand	NZ	0.63
18	Cayman Islands	KY	0.5	59	Norway	NO	0.87
19	Cook Islands	CK	0.5	60	Panama	PA	0.56
20	Costa Rica	CR	0.5	61	Philippines	PH	0.4
21	Curacao	CW	0.6	62	Portugal (Madeira)	PT	0.63
22	Cyprus	CY	0.4	63	Russia	RU	0.6
23	Denmark	DK	0.57	64	Samoa	WS	0.44
24	Dominica	DM	0.5	65	San Marino	SM	0.4
25	Dominican Republic	DO	0.34	66	Saudi Arabia	SA	0.47
26	France	FR	0.66	67	Seychelles	SC	0.37
27	Germany	DE	0.6	68	Singapore	SG	0.36
28	Ghana	GH	0.27	69	South Africa	ZA	0.74
29	Gibraltar	GI	0.64	70	Spain	ES	0.67
30	Grenada	GD	0.33	71	St Kitts and Nevis	KN	0.23
31	Guatemala	GT	0.4	72	St Lucia	LC	0.4
32	Guernsey	GG	0.53	73	St Vincent & Grenadines	VC	0.43
33	Hong Kong	HK	0.44	74	Sweden	SE	0.5
34	Hungary	HU	0.63	75	Switzerland	CH	0.37
35	India	IN	0.8	76	Turks & Caicos Islands	TC	0.37
36	Ireland	IE	0.77	77	United Arab Emirates (Dubai)	AE	0.43
37	Isle of Man	IM	0.67	78	United Kingdom	GB	0.67
38	Israel	IL	0.54	79	Uruguay	UY	0.47
39	Italy	IT	0.77	80	US Virgin Islands	VI	0.6
40	Japan	JP	0.73	81	USA	US	0.6
41	Jersey	JE	0.77	82	Vanuatu	VU	0.34

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<sup>1</sup> To see the sources we are using for particular jurisdictions please check out the assessment logic table in Annex C here <http://www.financialsecrecyindex.com/PDF/FSI-Methodology.pdf> and the corresponding information for individual countries in our database, available at [www.financialsecrecyindex.com/database/menu.xml](http://www.financialsecrecyindex.com/database/menu.xml).

<sup>2</sup> The full title of this annual publication is “Tax Co-operation: Towards a Level Playing Field” (henceforth “OECD-report”). The OECD provides the following explanation: “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-note]).

<sup>3</sup> 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: <http://www.eoi-tax.org/>; 15.07.2013.

<sup>4</sup> These recommendations refer to the 49 FATF recommendations of 2003. While the FATF consolidated its recommendations to a total of 40 in 2012, the old recommendations are used here because the assessment of compliance with the new recommendations will only begin in 2013. The corresponding recommendations in the new 2012 set of recommendations are numbers 10 (replacing old Rec. 5) and 11 (replacing old Rec. 10). In the next FSI, the results of the new assessments will be taken into account. The old recommendations can be viewed at: [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 15.07.2013.

<sup>5</sup> [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 15.07.2013. Also see footnote above.

<sup>6</sup> 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 partially compliant, 0.13 for largely compliant and finally 0.2 credit points for fully compliant jurisdictions.

<sup>7</sup> [www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202003.pdf); 15.07.2013. Also see footnote above.

<sup>8</sup> We ignored the results of update reports to mutual evaluations, and instead only included the results of full mutual evaluations. This is because only a comprehensive re-assessment of all recommendations gives a complete picture of the anti-money laundering system and offers a fair basis for comparison across jurisdictions.

<sup>9</sup> This report is available here: <http://www.state.gov/documents/organization/185866.pdf>; 15.07.2013.

<sup>10</sup> The information is presented in this table: [www.state.gov/documents/organization/191500.pdf](http://www.state.gov/documents/organization/191500.pdf) (15.07.2013) under the columns “Report Large Transactions” and “Maintain records over time”.

<sup>11</sup> While the GF peer reviews assess whether a notification (to the taxpayer) could delay or prevent the exchange of information, we also consider whether any notification to the taxpayer takes place at all, even if it is after the exchange of information, because the taxpayer could start taking actions (transfer assets, leave the country, etc.) to prevent the legal and economic consequences of the requesting jurisdiction’s investigation or proceedings. By becoming aware, he/she could also take precautionary measures with respect to assets, bank accounts, etc. located in other jurisdictions.

<sup>12</sup> In those cases when the taxpayer is not notified (either because it is not a legal requirement or because there are exceptions to this notification), we still evaluate whether the information holder

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has any right to appeal or to seek judicial review. In this case, we consider whether there are legally binding timeframes for the appeal procedures and appropriate confidentiality safeguards which would ensure that the exchange of information would not be delayed or prevented.

<sup>13</sup> The full element B.1 reads as follows: “Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).” (See page 27 in: Global Forum on Transparency and Exchange of Information for Tax Purposes 2010: Implementing the Tax Transparency Standards. A Handbook For Assessors and Jurisdictions, Paris).

<sup>14</sup> The full element B.2 reads as follows: “The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.” (See page 28, in Global Forum 2010, op. cit.).

<sup>15</sup> Because under Global Forum’s methodology there are no clear criteria to determine when identified problems as described in “factors” are going to affect the assessment of an “element”, we are only awarding a credit if no problems (factors) have been identified, irrespective of the element’s assessment. However, we do consider both: (i) whether the factors mentioned are related to bank information; and (ii) whether information described in the report (even if not mentioned as a factor) is also relevant to assess a jurisdiction’s power to obtain and exchange bank information. Also see footnotes below for more background.

<sup>16</sup> The Global Forum peer review process analyses and determines if the 10 elements considered by the OECD to be necessary for “upon request” information exchange are in place. A three-tier assessment is available (element “in place”, “in place, but”, “not in place”), and this assessment is called “determination”. See footnote above and below for more details.

<sup>17</sup> Each of the “determinations” (as explained in footnotes above) of the 10 elements may have underlying factors which justify the element’s determination and the recommendations given. They are shown in a column next to the determination in the “table of determinations” in the corresponding peer review reports.

<sup>18</sup> [http://www.taxjustice.net/cms/upload/pdf/Tax\\_Information\\_Exchange\\_Arrangements.pdf](http://www.taxjustice.net/cms/upload/pdf/Tax_Information_Exchange_Arrangements.pdf); 24.07.2013.

<sup>19</sup> [www.taxjustice.net/cms/upload/pdf/TJN\\_1110\\_UK-Swiss\\_master.pdf](http://www.taxjustice.net/cms/upload/pdf/TJN_1110_UK-Swiss_master.pdf); 15.07.2013.