

# NARRATIVE REPORT ON AUSTRIA



## PART 1: TELLING THE STORY

Austria is ranked at 24th position on the 2015 Financial Secrecy Index, based on a moderate secrecy score of 54, and a small scale weighting of 0.7 percent of the global market for offshore financial services. Austria's secrecy score has improved considerably since the 2013 index was published: more than most other countries.

### Austria: still a tax haven, but turning away from a secretive past

Austria's importance as a secrecy jurisdiction for non-residents stems primarily from its secretive private foundations and Treuhand<sup>1</sup>, and an absence of inheritance and other taxes. These factors, combined with Austria's political stability, its location inside the European Union and its geographical proximity to the countries of the former Soviet Union and South Eastern Europe, have made it an attractive place for questionable money. Official reports suggest that Austria's financial sector has considerable problems with financial crime.<sup>2</sup>

Until recently, Austria had [often sided with](#) other European and associated tax havens – notably Luxembourg and Switzerland – in efforts to slow or derail European efforts to improve transparency through mechanisms such as the European Savings Tax Directive. Yet its stance seems to have changed decisively in the last couple of years. Austria has also adapted to a fast-changing global climate on transparency more rapidly and more proactively than nearly all the other jurisdictions we've surveyed, and the sharp fall in its secrecy score from 64 in our 2013 index to 54 in 2015 bears testament to these changes. Some have been adopted by all Austria's peers; while some – such as the abolition of banking secrecy, in July 2015 – are changes that Austria has made unilaterally.

These changes have been due to numerous internal and external factors:

- Public pressure, in Austria and outside. Civil society has undoubtedly played an important role in keeping up the pressure, especially with regards to strict banking secrecy.
- International "official" pressure, notably from the EU and EU countries. The most focused recent pressure on Austria (and Luxembourg) forced them to drop their opposition to the Revised EU Savings Tax Directive. When Luxembourg finally dropped its resistance to this, after heavy criticism, it was very hard for Austria to continue alone.<sup>3</sup>

## Rank: 24

Chart 1 - How Secretive?

54  
Secrecy  
Score

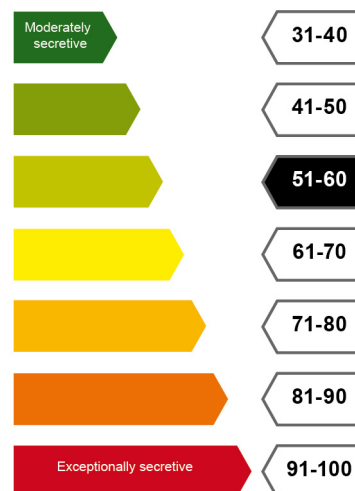
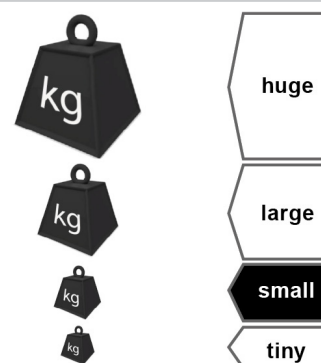


Chart 2 - How Big?



*Austria accounts for slightly under 0.7 per cent of the global market for offshore financial services, making it a small player compared with other secrecy jurisdictions.*

The ranking is based on a combination of its secrecy score and scale weighting.

Read more  
 → Full data  
 → Austria on TJN Blog  
 → Full Methodology

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- Budget constraints were also important. As many other countries, Austria has a growing budget deficit that it wanted to cover by increasing tax revenues. Unfortunately (but foreseeably), a bilateral tax treaty signed with Switzerland to access 'untaxed' Austrian money there garnered only three quarters of the envisaged 1 billion Euros.
- Political changes were instrumental, and notably a change of minister. The appointment in 2014 of Hans-Jörg Schelling to replace Maria Fekter as Finance Minister played a role. Though Schelling also hails from the Conservative Party, his more pragmatic role made a contrast with Fekter who had earlier said she had had to "[fight like a lion](#)" in European forums to hold onto Austria's banking secrecy.
- Austrian legal entities (such as companies) can also be abused for tax purposes, of course. Entities resident in Austria for tax purposes (i.e. when their seat or place of effective management is in Austria) are liable for tax on their worldwide income, but entities that are not tax resident in Austria are only taxed on their Austrian-sourced income. This is a fairly standard tax haven facility that encourages non-residents to use Austrian legal entities to avoid tax by engaging only in non-resident business.
- Austria also allows companies to consolidate foreign losses with domestic profits for tax purposes. A recent study<sup>6</sup> by the Austrian Audit Court found 110 tax allowances in Austrian Corporate Tax Law (KStG); and estimated that €450m is lost to them each year - €3 billion since 2005 - because of these facilities. The Audit Court added that the Finance Ministry has no systematic and comprehensive concept for tax allowances, and detailed figures are missing.<sup>7</sup>

### Several problem areas

Austria has many problem areas that provide significant financial secrecy.

- The "hidden Treuhand" – an arrangement that has no legal status but is similar in effect to a trust or foundation – is one Austrian secrecy speciality<sup>4</sup>. A Treuhand is created when a person, the Treuhänder (equivalent to a trustee), is given authority to exercise rights over assets in his or her own name, under a binding agreement with another person, the Treugeber [equivalent to a trust settlor]. A Treuhand can exist without any written record, and both Treugeber and Treuhänder may choose not to inform third parties of their arrangement ("hidden Treuhand"). While there is a partial registration system for Treuhand, it only applies where the Treuhänder is a lawyer or civil law notary. These lax registration requirements are at odds with Austrian demands for "central and public beneficial owner registries in the very country by whose laws a legal person or a trust is governed."<sup>5</sup>

### But some important improvements

A range of recent improvements suggest a major change of political will in Austria, in response to international pressures against secrecy. These changes have happened in the last five years, but the pace appears to have accelerated significantly in 2015.

- Although foundations and Treuhand remain a serious problem, a number of improvements have been made. The Corporate Income Tax Act of 2010 stipulates that foundations must disclose any appendix to the foundation deed to the tax authorities, together with a copy of any Treuhand used by the founder; and the tax authority must be notified of any alterations to these documents. Since April 2011, the identity of any beneficiaries not named in the deed must be disclosed to the revenue authorities, including

any foundations set up before then (GF 2011: 34-35).

- Until recently, an Austrian speciality was a prior notification process, where clients would be tipped off about impending tax investigations. This constituted a major obstacle when bank information was being sought whether from international tax information requests or from national public prosecutors. The prior notification procedure was abolished in June 2014.

In 2011 the OECD Global Forum had found some of Austria's updated bilateral exchange of information treaties were out of line with OECD requirements.<sup>8</sup> The rules about bearer shares and the prior notification procedure were judged to be not compliant, so Austria was rated as only being "partially compliant" in 2013.<sup>9</sup> As a consequence, Austria was blacklisted by the IFC. Austria then made a series of improvements that largely followed the OECD recommendations, and put a lot of effort into being peer reviewed again. In a Supplementary Peer Review in 2015 it was rated "largely compliant".<sup>10</sup> However, despite the updating and extension of its tax treaties, 21 out of 118 agreements still do not allow for the exchange of banking information.

- In May 2013, Austria also gave up its long-running resistance to the negotiations with Third Countries like Switzerland that paved the way for the Revised EU Savings Tax Directive.
- Also in May 2013, Austria committed to the Automatic Exchange of Information by signing the Amended Multilateral Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters. It became effective on 1 January 2015. Austria then signed the multilateral competent authority agreement in Berlin in October 2014, committing to the automatic exchange of information (though only by 2018, around a year after all other European countries).
- As of 1 January 2014, for unlisted stock companies (AGs) the issuance of bearer shares is prohibited. Old shares cannot be traded or sold and have to be converted to nominal shares. After a negative assessment in the Phase 2 Peer Review Report of the Global Forum, financial sanctions were introduced with regards to these new rules later in 2014, but only for substantial and systematic inaccuracies.
- In March 2014, a prohibition on using data from SARs (Suspicious Activity Reports) was lifted for Austrian tax authorities. Before, SARs could only trigger tax proceedings in cases of serious tax fraud
- In May 2014, the Budget Accompanying Law 2014 made "group requests," including retroactive group requests, possible. (Previously, requests to Austria for taxpayer information could only be made for individual taxpayers, one at a time.) Obtaining bank information will now be possible for treaty partners of the Multilateral Convention as well as those bilateral treaties that already have been updated according to the OECD standard. However, 21 countries whose treaties have not been updated, and those countries who are not treaty partners will still not be able to receive bank information.<sup>11</sup>
- As part of the EU, Austria in 2014 incorporated new legislation concerning country-by-country reporting for the financial sector, and separately for the extractives sector (in the "Rechnungslegungs-Änderungsgesetz", 2014).
- In July 2015 parliament enacted Austria's adherence to the OECD's Common Reporting Standard (CRS) on

Automatic Exchange of Information, though with all the usual (and more) loopholes included.

- In July 2015, Austria finally abolished banking secrecy completely, thus allowing tax authorities to obtain bank information from those Austrians who transferred untaxed funds back from Switzerland and Liechtenstein before the respective bilateral tax treaties entered into force in 2012 and 2013.
- Also in July 2015, a new Capital Outflow Reporting Act requires Austrian banks to report all capital outflows of at least 50,000 Euros from 1 March 2015 onwards.
- A law allowing the creation of a central bank account register (data transfer as of 1 March 2015) – a measure long called for by Austrian public prosecutors – was also accepted in July 2015.

#### Read more:

- [Full data for Austria](#)
- [Austria on TJN Blog](#)
- [Full Methodology](#)

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<sup>1</sup> Treuhand are rather like trusts, and can be created without any beneficiaries being identified. Only selected information about foundations is on public record because it is possible to create an additional protocol to the foundation deed that is accessible by tax authorities, but can be withheld from public record.

<sup>2</sup> For instance, the 2015 US International Narcotics Control Strategy Report (INCSR) notes: “Money laundering occurs to some extent within the Austrian banking system as well as in non-bank financial institutions and businesses. Money laundered by organized crime groups derives primarily from serious fraud, smuggling, corruption, narcotics trafficking, and trafficking in persons.” It raised further

concerns about the gambling sector and noted that the number of filed Suspicious Transaction Reports (STRs,) prosecutions and convictions had declined or continued to decline.

<sup>3</sup> Austria only gave up when it was assured that there would be an agreement with Switzerland (the country that Austria, alongside with Liechtenstein, had seen as its main competitor for secrecy-related business.) Sticking to banking secrecy also had the effect that Austria concluded an unfavourable version of FATCA with the USA: the agreement may be re-negotiated soon).

<sup>4</sup> “The Treuhand is a civil contract which is not regulated in law, but is based on the general principle of the autonomy of the contracting parties (i.e. the ability of any person to enter into any contract with whomsoever they chose) and delimited by jurisprudence and doctrine. A Treuhand does not have any legal status. It is created when a person, the Treuhänder, is authorised to exercise rights over property in his or her own name, on the basis of and in accordance with a binding agreement with another person, the Treugeber.” (GF 2011: 29). Although the concept of trusts is not known, Austrians may act as trustees for a foreign trust. Austrian legislation does not specify what information they have to administer. “According to AML/CFT requirements, trust service providers are obliged to maintain ownership and identity information regarding their clients and beneficial owners who have at least a 25 % interest in a trust or Treuhand. (...) The practical application (...) has not occurred frequently in Austria (...)” (GF 2015: 36 f.) Despite recommendations from the Global Forum peer reviewers, there are still uncertainties about accounting obligations where the settlor is not an Austrian resident, and assets are located abroad (GF 2015:42).

<sup>5</sup> Declaration by Austria on the Proposal for a Regulation of the European Parliament and of the Council on information accompanying transfers of funds and the Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Brussels, 12 January 2015. <http://data.consilium.europa.eu/doc/document/ST-5116-2015-ADD-3/en/pdf>

<sup>6</sup> Rechnungshof (2013): „Bericht des Rechnungshofes: Transparenz von Begünstigten im Körperschaftssteuerrecht mit dem Schwerpunkt

Gruppenbesteuerung“, Bund 2013/6

<sup>7</sup> Whereas 99 % of the estimated annual losses go back to group taxation, the Ministry could not provide reliable data about the overall effects of it.

<sup>8</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes 2011: Peer Review Report – Phase 1: Legal and Regulatory Framework - Austria, Paris, p7. <http://www.eoi-tax.org/jurisdictions/AT#peerreview> In: <http://www.eoi-tax.org/jurisdictions/AT#peerreview>; 19.9.2011.

Furthermore, for six of the twelve treaties, the Global Forum even identified a further restriction compared to the old DTA (ibid.: 58). This is the case for Belgium, Bulgaria, Luxembourg, Singapore, Switzerland and Tajikistan.

<sup>9</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes 2013: Peer Review Report – Phase 2: Legal and Regulatory Framework – Austria, Paris.




<sup>10</sup> Global Forum on Transparency and Exchange of Information for Tax Purposes 2015: Supplementary Peer Review Report – Phase 2: Legal and Regulatory Framework – Austria, Paris

<sup>11</sup> The May 2014 law was the same law that abolished the prior notification process. The 21 treaty partners concerned are Algeria, Armenia, Barbados, Cuba, Egypt, Former Yugoslav Republic of Macedonia, Iran, Israel, Kyrgyzstan, Kuwait, Libya, Malaysia, Mongolia, Nepal, Pakistan, Serbia, Syria, Thailand, United Arab Emirates, Venezuela and Vietnam. (GF 2015: 64)




# AUSTRIA

## PART 2: AUSTRIA'S SECRECY SCORE





### TRANSPARENCY OF BENEFICIAL OWNERSHIP – Austria

- 1  **Banking Secrecy:** Does the jurisdiction have banking secrecy?  
Austria partly curtails banking secrecy
- 2  **Trust and Foundations Register:** Is there a public register of trusts/foundations, or are trusts/foundations prevented?  
Austria partly discloses or prevents trusts and private foundations
- 3  **Recorded Company Ownership:** Does the relevant authority obtain and keep updated details of the beneficial ownership of companies?  
Austria partly maintains company ownership details in official records






### KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Austria

- 4  **Public Company Ownership:** Does the relevant authority make details of ownership of companies available on public record online for free, or for less than US\$10/€10?  
Austria does not require that company ownership details are publicly available online
- 5  **Public Company Accounts:** Does the relevant authority require that company accounts are made available for inspection by anyone for free, or for less than US\$10/€10?  
Austria requires company accounts to be available on public record only for a fee
- 6  **Country-by-Country Reporting:** Are all companies required to publish country-by-country financial reports?  
Austria partly requires public country-by-country financial reporting by some companies

### EFFICIENCY OF TAX AND FINANCIAL REGULATION – Austria

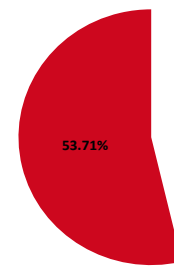
- 7  **Fit for Information Exchange:** Are resident paying agents required to report to the domestic tax administration information on payments to non-residents?  
Austria does not require resident paying agents to tell the domestic tax authorities about payments to non-residents
- 8  **Efficiency of Tax Administration:** Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit?  
Austria partly uses appropriate tools for efficiently analysing tax related information
- 9  **Avoids Promoting Tax Evasion:** Does the jurisdiction grant unilateral tax credits for foreign tax payments?  
Austria partly avoids promoting tax evasion via a tax credit system
- 10  **Harmful Legal Vehicles:** Does the jurisdiction allow cell companies and trusts with flee clauses?  
Austria partly allows harmful legal vehicles

### INTERNATIONAL STANDARDS AND COOPERATION – Austria

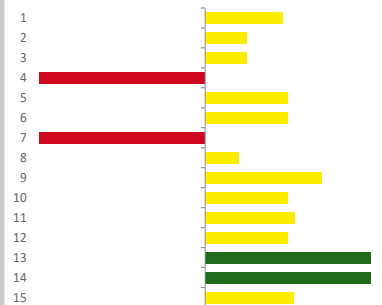
- 11  **Anti-Money Laundering:** Does the jurisdiction comply with the FATF recommendations?  
Austria partly complies with international anti-money laundering standards
- 12  **Automatic Information Exchange:** Does the jurisdiction participate fully in multilateral Automatic Information Exchange via the Common Reporting Standard?  
Austria partly participates in Automatic Information Exchange
- 13  **Bilateral Treaties:** Does the jurisdiction have at least 53 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?  
As of 31 May, 2015, Austria had at least 53 bilateral tax information sharing agreements complying with basic OECD requirements
- 14  **International Transparency Commitments:** Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?  
Austria has ratified the five most relevant international treaties relating to financial transparency
- 15  **International Judicial Cooperation:** Does the jurisdiction cooperate with other states on money laundering and other criminal issues?  
Austria partly cooperates with other states on money laundering and other criminal issues

## Secrecy Score

Austria - Secrecy Score



Austria KFSI-Assessment



## Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click [here](#) to see our full methodology).

The secrecy score of 54 per cent for Austria has been computed by assessing its performance on 15 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail, [here](#).

Green indicates full compliance on the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); and yellow indicates partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 31.12.2014 (with the exception of KFSI 13 for which the cut-off date is 31.05.2015).

Full data on Austria is available here: <http://www.financialsecrecyindex.com/database/menu.xml>

All background data for all countries can be found on the Financial Secrecy Index website: <http://www.financialsecrecyindex.com>