tax justice network

financial secrecy index

Narrative Report on Belgium

PART 1: TELLING THE STORY

The financial sector plays a dominant role in the Belgian economy, with banking system assets estimated to be equivalent to 470 percent of GDP in 2007, falling to 310 percent by mid-2012, according to [the IMF](#).

The end of bank secrecy in Belgium?

Bank secrecy was formally introduced in Belgian tax legislation in 1980 but had existed informally for a long time prior to that. The domestic provisions governing bank secrecy (article 318 of the Income Tax Code) prevented the tax administration from investigating the accounts of non-residents when requested by a foreign administration. The tax administration could only force the bank to release client information when provided with evidence that the bank was an accessory to serious tax fraud.

When the European Union Savings Tax Directive came into effect in 2005, Belgium initially opted to levy withholding taxes on savings income instead of opting for automatic information exchange with the relevant taxpayer‘s home jurisdiction. In March 2009, however, Finance Minister Didier Reynders, fearing G20 sanctions, announced that Belgium would switch over to the automatic information exchange system under the EU Directive. He also announced that Belgium would commit to applying the OECD’s “on request” standard of transparency and exchange of information, and pledged to negotiate or renegotiate bilateral tax agreements in this spirit.

A couple of days after the announcement, Belgium still found itself on the OECD’s ‘grey list’ – but by July 2009 it had concluded the 12 tax information exchange agreements with other jurisdictions necessary for it to be removed from the grey list. New legislation in March 2011 also removed internal law obstacles to exchanging bank account information across its borders. (Belgian taxpayers continued to be able to keep their assets secret from the Belgian Tax administration, although there is a register of taxpayer accounts at the central bank, and under new laws the tax authorities will be able to obtain information under certain circumstances.[a] Late 2012 the former government – a coalition of social-democrats, Christian-democrats and liberals from both language groups – introduced the obligation to declare interests in foreign entities, including trusts and foundations, from 2014. Despite the notable improvements in its legal arrangements, some doubts remain over compliance. According to an IMF report issued in May 2013, a mission to assess Belgium‘s adherence to the Basel Core Principles was, *„unable to conclude that AML/CFT compliance is sufficiently embedded in the supervisory framework. Specifically, it is unclear how monitoring of compliance is undertaken for those smaller banks that are*

Rank: 38

Chart 1 - How Secretive? 41 Secrecy Score

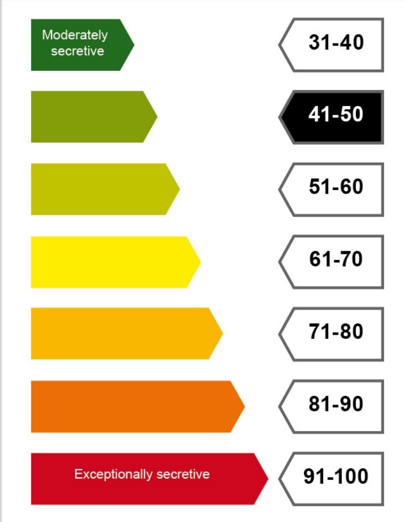
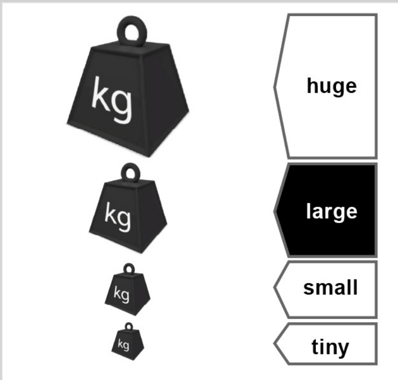


Chart 2 - How Big?



Belgium accounts for slightly under 2 per cent of the global market for offshore financial services, making it a large player compared with other secrecy juridictions.

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

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

If you have any feedback or comments on this report, please contact us at info@taxjustice.net *subject to on-site inspections only infrequently."* Moreover, Belgium still maintains certain provisions in internal law that prevent the effective deconstruction of its banking secrecy. Currently, Belgian law still does not allow tax officials to simply request financial institutions to provide information of account holders for tax purposes and officials have to go through a tedious procedure to monitor compliance.

Belgium does not have a complete database of its taxpayers' income and does not know how wealth is distributed among its population. Moreover, in light of international agreements on exchange of information, Belgian tax administrators only have access to banking information on behalf of other jurisdictions and not on behalf of the Belgian government, nor can it put the information exchanged by other jurisdictions to domestic use. This leads to a much criticised situation – including by the Belgian Supreme Administrative Court - whereby the Belgian tax authority has more information on Belgian taxpayers holding accounts abroad than on domestic account holders.[b]

Belgium's banking sector has heavily re-configured itself alongside (and partly because) of the renunciation of secrecy, with a shift away from investment banking and asset management towards a more traditional domestically-focused banking model: strikingly, the IMF estimated that cross-border banking claims fell from 300 percent of GDP in 2008 to just 58 percent by mid-2012.

Automatic exchange of information

The previous administration, governing between 2011 and 2014, further embraced automatic information exchange across borders by joining the initiative for a pilot of multilateral automatic information exchange based on the U.S. Foreign Account Tax Compliance Act (FATCA,) as well as supporting the extension of automatic exchange of information within the EU, beyond the current narrowly defined category of interest income, to cover all relevant types of income. Now, if a foreign tax authorities requests information from Belgium, it is automatically treated as a potential case of tax evasion, and permission to hand over the relevant information is automatically provided. Belgium successfully passed stages 1 and 2 of the peer review process of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes in 2013 and has joined the group of "early adopters"[1] who have declared their commitment to early implementation of the new OECD standard of automatic exchange.

Cayman tax

In response to the Luxleaks scandal, the newly formed centre-right government built on the obligation to declare interests in foreign entities to introduce a 'look through tax' or 'Cayman Tax'. This tax aims to prevent Belgian residents from shifting assets to offshore structures in order to avoid taxation in Belgium. The new regime, which came into effect in August 2015,[c] does not prohibit setting up 'offshore structures' such as trusts, foundations and companies in low-tax jurisdictions, but allows tax authorities to ignore them for tax purposes (e.g. 'look through' them).[d] The Cayman Tax will only affect physical persons and not corporations and cannot be considered as a solution to aggressive corporate tax planning and harmful tax competition between sovereign states. [e] Furthermore, the Cayman Tax regime may open a loophole because taxpayers subject to the regime may be exempt from additional audits into the origins of the assets in offshore structures.

Belgian law does allow the creation of local foundations, but information about these is available on a central registry. It does not allow trusts, but recognises the legal effects of foreign trusts.

No longer much of a secrecy jurisdiction, but still a tax haven

While Belgium is significantly less of a 'secrecy jurisdiction' than it used to be, it is still very much a tax haven, because of the particular tax facilities it offers, for both wealthy individuals and for multinational corporations. For instance, there is no tax on capital gains, a 'notional interest deduction' allows companies

[1] http://www.oecd.org/tax/transparency/AEOI-jointstatement.pdf

to deduct a fictitious interest calculated on the basis of their shareholders' equity leading to a fiscal cost of nearly € 5 billion annually between 2006 and 2010, and also bank secrecy for residents. Belgium can be considered as a tax conduit country like Luxembourg or the Netherlands, and one in five of the world's top 100 multinational corporations has used Belgium for tax avoidance purposes, according to one report.

The Belgian tax haven model is quite heavily based on attracting holding companies of multinational corporations headquartered elsewhere. Belgium's corporate tax regime rests on an extensive network of double tax treaties; on low capital gains taxes for corporations, and a 95 percent tax exemption for dividends remitted to Belgium from subsidiaries of Belgian-based holding companies. Under the so-called ‚Belgian Participation Exemption rules' a Belgian holding company that receives dividend income from a non-EU subsidiary will see 95% of that income exempted from tax; the remaining 5 percent is subject to the Belgian corporate income tax rate of 33.99%.

The diamond trade

Another notable example of Belgian tax particularism is a new scheme for the diamond sector. The so-called 'Carat Tax' allows the taxable result of companies in the sizeable diamond sector – mainly based in and around Antwerp – to be determined on a lump-sum basis being 0.55 per cent of the turnover rather than on profits.[f] The argument for this niche is to ensure better compliance of the diamond sector, which is said to be particularly vulnerable to fraud while simultaneously sustaining competitiveness of the sector in Belgium. The regime is set to take effect from 2016 and is estimated to increase the tax contribution of the sector by 250 per cent.[g] Because there have been concerns that the Carat Tax scheme could constitute a form of illegal state aid under the EU rules, the introduction of the new tax is subject to the prior approval of the European Commission.[h]

The diamond sector constitutes grounds for concern, as illustrated by various scandals that have come to judicial attention in recent years. Antwerp accounts for 80 percent of world trade in rough diamonds, half of polished stones and five percent of Belgium's exports, with a turnover estimated at $56 billion in 2011. The industry employs around 34,000 people, directly and indirectly, but it faces stiff competition from India, Israel and Shanghai – so there is clearly a temptation to employ various subterfuges – as is the case of Dubai or Luxembourg - to attract business. One expert said that Antwerp's prosecutors

> "are slowest when diamonds are involved," for fear of tarnishing Antwerp's diamond business."

One past scandal involves the company Omega diamonds - an Antwerp firm accused of non-payment of taxes, of tax evasion, of customs fraud and of money laundering. The case provides a good example of under-invoicing and undervaluing diamonds and manipulating transfer prices of African diamonds exports, from Angola and the Democratic Republic of Congo. This involved several billions of dollars' worth of diamonds, over several years.

Excess profit ruling

Belgium promotes investment using a particular type of ruling.[i] Group companies can substantially reduce their tax liability in Belgium on the basis of so-called 'excess profit' tax rulings. In essence, the rulings allow multinational entities in Belgium to reduce their corporate tax liability by 'excess profits' that allegedly result from the advantage of being part of a multinational group. Article 185 of the Belgian revenue tax code, modified by the Law of 21 June 2004, allows for a reduction of taxable company profits resulting from 'profit shifting' from a related company abroad. This measure appears to be a form of legally sanctioned 'base erosion and profit shifting', the OECD official wording for corporate tax avoidance. The irony is that this law was presented as the implementation in Belgian tax law of Article 9 of the OECD model tax convention on income and capital, which contains the main anti-abuse provision of the OECD in matters of tax avoidance through manipulation of transfer pricing, the so-called "arms-length pricing principle". The Belgian law actually achieves the opposite result, that of endorsing profit shifting.[j] In February 2015, the European Commission initiated an investigation into this type of ruling. Commissioner Vestager, in charge of competition policy, said: "*this generalised scheme would be a serious distortion of competition unduly benefitting a selected number of multinationals"*.[k] Pending the Commission's conclusions, the Belgian government decided to suspend all requests for this type of ruling.[l]

Research and Development: offshore tax incentives

Big pharmaceuticals businesses and other sectors with large expenditures on research & development (R&D) are also supported by a range of tax incentives: both directly related to R&D (such as tax incentives related to researchers' wages) and indirectly, through incentives for companies to use Belgium as a base for owning intellectual property in ways that allow them to use transfer pricing strategies to escape corporate taxes elsewhere. For example, 80 percent of patent-related income can be exempted from the corporate income tax. This kind of business obviously causes great damage through its spillover effect on other countries, but it has brought lucrative fee income to Belgian financiers, lawyers and accountants.

Notional Interest Deduction

Another plank of Belgium's corporate tax haven offering concerns 'internal banks', or corporate treasury operations. In 2006 Belgium adopted an Allowance for Corporate Equity scheme (ACE) which permits a 'Notional Interest Deduction' designed to allow transnational companies to shift profits via interest payments made from high tax countries. In short, the Belgium 'internal bank' affiliate lends to the TNC's affiliates elsewhere, receiving interest payments which are taxed at a very low rate in Belgium. Many TNCs, including BP, Statoil, ArcelorMittal and ExxonMobil have placed countless billions in Belgian holding companies to take advantage of the ACE facility: at one point ArcelorMittal capitalised its Belgian operations with 45 billion Euros.

These various tax concessions have contributed to a situation where Foreign Direct Investment (FDI) stocks are equivalent to almost twice Belgium's GDP, compared to the OECD average of 30-40%. A 'fairness tax' was introduced in August 2013 to ensure that TNCs at least cannot get away with paying no tax at all in Belgium.
Although Belgium can levy fairly high marginal tax rates on individuals, it also offers plenty of tax loopholes for high net worth individuals. For instance, individuals pay no wealth taxes, and in many circumstances it is possible to avoid capital gains tax, inheritance taxes and gift taxes. Some insurance products are also not taxable. There are also particular tax facilities available to expatriate employees who are part of an international group. These facilities have been particularly successful in attracting wealthy French individuals, undercutting France's tax system. See more details here and here.

With thanks to Francois Gobbe, Jan Van de Poel and Rudy de Meyer for their major input into this report.

Read more

- Full data for Belgium
- Belgium on TJN Blog
- Full Methodology

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[a] The tax authorities will be able to find out the bank accounts of taxpayers via a central database at the Belgian National Bank from 2015 onwards, but only if the taxpayer is suspected of fraud or showing signs of wealth. It is significant that while in 2010 there were 28 requests for such information, this number had soared to 679 by 2012, according to Finance Ministry data.

[b] Advies van de Raad van State nr. 49.038/1/2/3/4 van 20 en 21 december 2010 en 10 januari 2011, http://www.lachambre.be/flwb/pdf/53/1208/53k1208001.pdf

[c] Aanslagstelsel dat van toepassing is op de juridische constructies als bedoeld in artikel 2, § 1, 13°, van het Wetboek van de inkomstenbelastingen 1992, http://

www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2015081003

[d] For a technical assessment of the Cayman Tax, which is basically a particular regime of CFC-rules, see for instance: PwC, Tax Reform in Belgium, http://www.pwc.be/en/tax-reform/index.jhtml

[e] Testimony of Professor Michel Maus (VUB) in Finance Committee of Belgian Parliament, https://www.dekamer.be/doc/CCRA/pdf/54/ac027.pdf

[f] Companies subject to diamond regime cannot benefit from NID and cannot deduct carried forward losses.

[g] Kabinet Minister van Financiën, Persnota Fiscale Maatregelen Programmawet, 21 May 2015, https://www.n-va.be/sites/default/files/generated/files/press-attachment/persnota_fiscale_maatregelen_programmawet_21052015.pdf & PwC. (2015). *Tax reform in Belgium 2014-15*, Accessed 16 September 2015: http://www.pwc.be/en/news-publications/news/tax-reform.html

[h] PwC. (2015). *Tax reform in Belgium 2014-15*, Accessed 16 September 2015: http://www.pwc.be/en/news-publications/news/tax-reform.html

[i] 'België promoot unieke belastingontwijking', in: *De Standaard*, 8 December 2014, http://www.standaard.be/cnt/dmf20141207_01417457

[j] Gambini, A., *'Excess profit ruling' ou comment la Belgique a légalisé l'évasion fiscale des multinationales*, 16 January 2015, http://www.cncd.be/Excess-profit-ruling-ou-comment-la

[k] European Commission, Press Release, State Aid: Commission opens in-depth investigation into the Belgian excess profit ruling system, 3 February 2015, http://europa.eu/rapid/press-release_IP-15-4080_en.htm

[l] Belgische Kamers van Volksvertegenwoordigers, Beknopt Verslag, Commissie voor de Financiën en de Begroting, https://www.dekamer.be/doc/CCRA/pdf/54/ac043.pdf

BELGIUM

PART 2: BELGIUM'S SECRECY SCORE

TRANSPARENCY OF BENEFICIAL OWNERSHIP – Belgium

1 *Banking Secrecy: Does the jurisdiction have banking secrecy?*
Belgium partly curtails banking secrecy

2 *Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented?*
Belgium 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?*
Belgium partly maintains company ownership details in official records

KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Belgium

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?*
Belgium 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?*
Belgium requires that company accounts be available on public record for free

6 *Country-by-Country Reporting: Are all companies required to publish country-by-country financial reports?*
Belgium partly requires public country-by-country financial reporting by some companies

EFFICIENCY OF TAX AND FINANCIAL REGULATION – Belgium

7 *Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents?*
Belgium 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?*
Belgium 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?*
Belgium 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?*
Belgium partly allows harmful legal vehicles

INTERNATIONAL STANDARDS AND COOPERATION – Belgium

11 *Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations?*
Belgium partly complies with international anti-money laundering standards

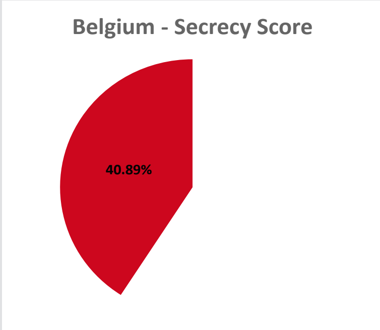
12 *Automatic Information Exchange: Does the jurisdiction participate fully in multilateral Automatic Information Exchange via the Common Reporting Standard?*
Belgium participates fully in Automatic Information Exchange

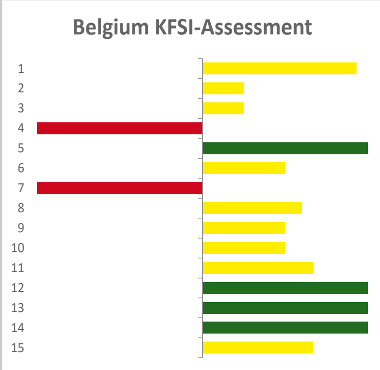
13 *Bilateral Treaties: Does the jurisdiction have at least 53 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?*
As of 31 May, 2015, Belgium had at least 53 bilateral tax information sharing agreements complying with basic OECD requirements

14 *International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?*
Belgium 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?*
Belgium partly cooperates with other states on money laundering and other criminal issues

Secrecy Score





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 41 per cent for Belgium 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 Belgium 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