

KEY FINANCIAL SECRECY INDICATORS

Key Financial Secrecy Indicator 9: Corporate Tax Disclosure

What is measured?

This indicator assesses two aspects of a jurisdiction's rules on corporate tax disclosure:

1. Regarding **global country-by-country reports** (CbCR) related to [OECD's BEPS Action 13](#): it assesses whether a jurisdiction ensures its own access to the CbCR of any relevant¹ foreign Multinational Enterprises (MNEs) with domestic operations. Such access is ensured if the jurisdiction - going beyond the legal framework proposed by the OECD in the Model domestic legislation for CbCR - requires the "local filing" of the CbCR (by the local subsidiary or branch of a foreign MNE), whenever the jurisdiction cannot obtain it via automatic exchange of information. [Instead, the OECD framework allows a jurisdiction to require "local filing" only in specific circumstances];
2. Regarding **unilateral cross-border tax rulings**: it assesses whether all unilateral cross-border tax rulings are published online for free, or if at least some are made available upon payment of a fee.

Accordingly, we have split this indicator into two components. The overall secrecy score for this indicator is calculated by simple addition of the secrecy scores of each of these components. The secrecy scoring matrix is shown in Table 1 on the following page, with full details of the assessment logic given in Table 3 below.

One half of this KFSI concerns local filing of CbCR. A zero secrecy score is given if all relevant foreign MNEs with domestic operations are required to file a local CbCR, whenever the jurisdiction cannot obtain the CbCR via automatic exchange of information. A 50% secrecy score is given if the jurisdiction abides by the OECD legal framework or if CbCR is not even required to be filed in any circumstance, or if the domestic legal framework is unknown.

The other half of the indicator concerns the public disclosure of unilateral cross-border tax rulings. A zero secrecy score is given if all cross-border tax rulings are published online for free. A partial secrecy score of 25% is given either if tax rulings are only published against a cost (irrespective of whether all or only some are accessible against a cost), or only some, but not all are published online for free.

Table 1: Secrecy Scoring Matrix KFSI 9

Regulation	Secrecy Score Assessment [Secrecy Score: 100% = full secrecy; 0% = full transparency]
COMPONENT 1: CBCR LOCAL FILING (50%)	
<p><u>Access to CBCR is not ensured</u> The jurisdiction abides by the OECD legal framework and requires “local filing” of the CbCR only when authorized by the OECD, if local filing is required at all; or unknown.</p>	50%
<p><u>Access to CbCR is ensured (comprehensive “local filing”)</u> The jurisdiction - going beyond the legal framework proposed by the OECD - requires “local filing” of the CbCR (by the local subsidiary or branch of a foreign MNE), whenever the jurisdiction cannot obtain it via automatic exchange of information.</p>	0%
COMPONENT 2: PUBLIC TAX RULINGS (50%)	
<p><u>Tax Rulings Not Available Online</u> Unilateral cross-border tax rulings cannot be accessed online, or unknown.</p>	50%
<p><u>Tax Rulings Available for a Fee</u> Unilateral cross-border tax rulings are available online only against a cost (irrespective of whether all or only some are available). Or <u>Only Some Tax Rulings Online For Free</u> While some unilateral cross-border tax rulings are available free of cost, not all are available online.</p>	25%
<p><u>All Tax Rulings Online For Free</u> All unilateral cross-border tax rulings are published online free of cost</p>	0%

All underlying data can be accessed freely in the [FSI database](#) . To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 3 at the end of this document and search for the corresponding info IDs (**IDs 363, 419 and 421**) in the database report of the respective jurisdiction.

With respect to tax rulings, it is important to differentiate unilateral cross-border tax rulings from bi- or multilateral advance pricing agreements. While the latter involve a priori agreement by all tax administrations of all jurisdictions involved in a cross-border transaction for which the agreement is sought, unilateral cross-border tax rulings do not require, per se, prior agreement. In this indicator, we are focusing only on unilateral cross-border tax rulings, as these represent the highest risk for abusive tax policies.

For the purposes of this KFSI, we define cross-border tax rulings similarly, but not entirely identical to the European Union in its directive on administrative assistance (which provides automatic information exchange of advance cross-border rulings and advance pricing agreements).²

A unilateral cross-border tax ruling is any unilateral agreement, communication, or other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets certain conditions.³

Whenever there is no formal system available for the issuance of unilateral cross-border tax rulings, we consider that these are not available, unless we found more evidence that issuance of rulings is an established practice. The documented possibility to engage in informal discussions with the tax administrations with non-binding outcomes is considered insufficient for considering the availability of unilateral cross-border tax rulings.

Furthermore, it is important to stress that unilateral cross-border tax rulings are referring to private rulings applicable to individual taxpayers and singular cases. These are not the same as generally applicable decisions, guidance notes or other types of binding interpretation of tax law issued publicly by the tax administration through circulars, regulations or similar administrative acts.

In contrast to this, advance pricing agreements (APAs) have their roots in international tax norms for the avoidance of double taxation.⁴

We define an advance pricing agreement as always involving all affected jurisdictions of an advance pricing agreement – thus, APAs always involve bi- or multilateral negotiation. This definition is similar, but not identical to the definition used by the OECD in its Transfer Pricing Guidelines as updated in 2010 (OECD 2010: 169-172).⁵

As regards unilateral cross-border tax rulings, their inherently problematic nature has been exposed widely during the Lux Leaks scandal in 2014. During the subsequent investigations by the European Commissioner for Competition, it was determined that some of these rulings conflicted with EU- state aid rules and therefore were illegal. These decisions are currently being appealed against by EU-jurisdictions such as Ireland, the latter having been ordered by the EU-Commission to collect additional taxes.

This episode has revealed that in addition to the profit-shifting tricks multinational corporations such as Google, FIAT, Starbucks, BASF, SAP or Amazon use to reduce their tax bill, tax authorities – often sanctioned if not mandated by their respective finance ministers – help companies to avoid tax if not illegally, then at least questionably. The sums involved are gigantic. Apple alone has been ordered to pay an additional €13billion in taxes due through a complex tax manoeuvre agreed with the Irish tax agency.⁸ Estimates put global tax avoidance by multinationals at around \$500billion per year.⁹

As the Lux Leaks scandal has made amply clear, the practice of unilaterally issuing binding tax rulings for individual taxpayers distorts the market by benefiting specific (large) companies over other (often smaller) competitors who either cannot obtain or did not know about the possibility for obtaining similar treatment. Beyond concerns around fair market competition, a core tenet for the rule of law is jeopardised if there is an exit option from equal treatment before the (tax) law.

A similar history of so-called private letter rulings issued by the US tax administration was (and continue to be) made public in 1977 after the NGO Tax Analysts took the IRS to court over this practice in 1972. This practice had been gaining pace in the 1940s and was criticised for facilitating favouritism where a few privileged law firms were effectively guardians of this kind of “privatised law”, allowing them to build over time libraries of privatised tax law and interpretation, giving them an edge over smaller firms.¹⁰ It is however important to note that since 1991 the US provides the option of so-called “unilateral APAs” which may include cross-border transfer pricing issues and which are not public.¹¹ In contrast in Belgium, all unilateral cross-border tax rulings are published in anonymised form.¹²

Furthermore, attracting profits on paper shrinks the tax bases accordingly in jurisdictions elsewhere. These unilateral rulings usually impact negatively the tax bases of other nations at least to the extent that they go unnoticed or unchallenged by the tax administration. Therefore, developing countries are likely to be hit hardest by the tax base poaching impact of unilateral tax rulings.

While the European Union has subsequently introduced automatic information exchange on these rulings,¹³ this action does not necessarily guarantee access to rulings by third party countries. Because it is difficult to define a unilateral cross border tax ruling, and because it is even more difficult, if not outright impossible, to monitor compliance with any obligation to report and exchange those rulings without making them public, there is a risk for exchange mechanisms only to capture the tip of the iceberg.

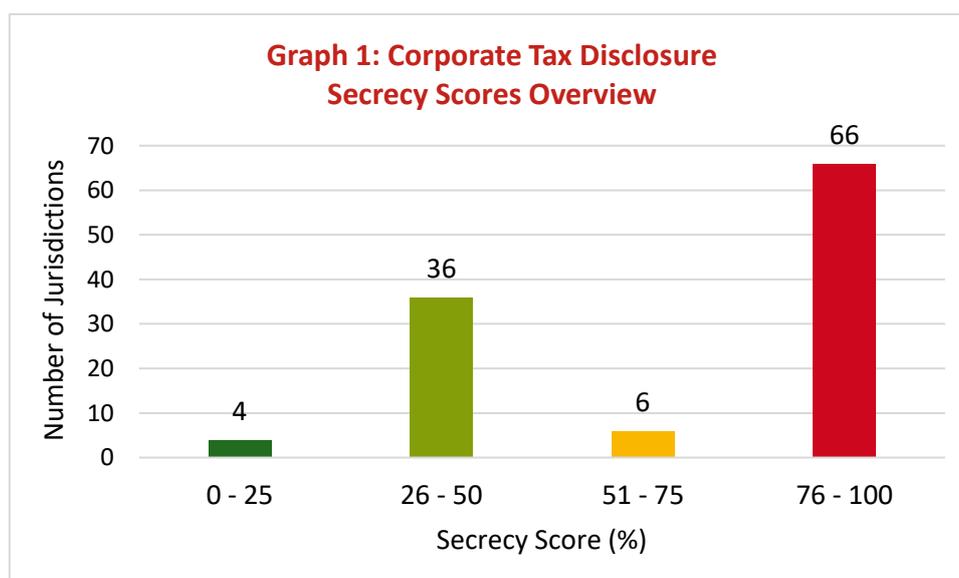
Various examples document the failure of reporting and exchange mechanisms around tax rulings. First, the inconsistent and misleading reporting practice of unilateral rulings by

Luxembourg within the European Commission's Joint Transfer Pricing Forum prior to the LuxLeaks scandal¹⁴ bears witness to the unreliability of data that is only reported by the tax administration without any possibility for verifying the content of the data more publicly. Second, the TAXE Committee (EU Parliament's Special Committee on Tax Rulings) explains how for decades requirements under EU directives on reporting of tax rulings have not been complied with:

"The European Parliament [...] Concludes [...] Member States did not comply with the obligations set out in Council Directives 77/799/EEC and 2011/16/EU since they did not and continue not to spontaneously exchange tax information, even in cases where there were clear grounds, despite the margin of discretion left by those directives, for expecting that there may be tax losses in other Member States, or that tax savings may result from artificial transfers of profits within groups, [...]" (Para. 86)¹⁵

All underlying data can be accessed freely in the [FSI database](#) 🗄️ (IDs 363, 419 and 421).

Results Overview



KFSI 9: CORPORATE TAX DISCLOSURE

Table 2: Corporate Tax Disclosure Secrecy Scores

Country Name	Score	ISO	Country Name	Score	ISO
Andorra	1	AD	Lebanon	1	LB
Anguilla	1	AI	Liberia	0,5	LR
Antigua & Barbuda	1	AG	Liechtenstein	1	LI
Aruba	1	AW	Lithuania	1	LT
Australia	0,25	AU	Luxembourg	0,75	LU
Austria	0,5	AT	Macao	0,5	MO
Bahamas	1	BS	Macedonia	0,5	MK
Bahrain	1	BH	Malaysia (Labuan)	1	MY
Barbados	0,5	BB	Maldives	1	MV
Belgium	0	BE	Malta	1	MT
Belize	0,5	BZ	Marshall Islands	1	MH
Bermuda	1	BM	Mauritius	0,5	MU
Bolivia	1	BO	Mexico	1	MX
Botswana	0,5	BW	Monaco	1	MC
Brazil	0,5	BR	Montenegro	0,5	ME
British Virgin Islands	0,5	VG	Montserrat	1	MS
Brunei	1	BN	Nauru	1	NR
Bulgaria	0,5	BG	Netherlands	0,75	NL
Canada	0,5	CA	New Zealand	1	NZ
Cayman Islands	0,5	KY	Norway	1	NO
Chile	1	CL	Panama	0,5	PA
China	0,5	CN	Paraguay	1	PY
Cook Islands	1	CK	Philippines	1	PH
Costa Rica	1	CR	Poland	1	PL
Croatia	1	HR	Portugal (Madeira)	1	PT
Curacao	1	CW	Puerto Rico	1	PR
Cyprus	1	CY	Romania	1	RO
Czech Republic	1	CZ	Russia	1	RU
Denmark	0,25	DK	Samoa	1	WS
Dominica	0,5	DM	San Marino	1	SM
Dominican Republic	1	DO	Saudi Arabia	0,5	SA
Estonia	1	EE	Seychelles	1	SC
Finland	0,75	FI	Singapore	1	SG
France	0,25	FR	Slovakia	1	SK
Gambia	1	GM	Slovenia	1	SI
Germany	0,5	DE	South Africa	0,75	ZA
Ghana	1	GH	Spain	0,5	ES
Gibraltar	0,5	GI	St Kitts and Nevis	0,5	KN
Greece	1	GR	St Lucia	1	LC
Grenada	1	GD	St Vincent & Grenadines	1	VC
Guatemala	1	GT	Sweden	0,75	SE
Guernsey	1	GG	Switzerland	1	CH
Hong Kong	0,5	HK	Taiwan	1	TW
Hungary	1	HU	Tanzania	1	TZ
Iceland	0,5	IS	Thailand	0,5	TH
India	0,5	IN	Trinidad & Tobago	0,5	TT
Indonesia	1	ID	Turkey	1	TR
Ireland	0,5	IE	Turks & Caicos Islands	0,5	TC
Isle of Man	0,5	IM	Ukraine	1	UA
Israel	0,75	IL	United Arab Emirates (Dubai)	1	AE
Italy	0,5	IT	United Kingdom	0,5	GB
Japan	1	JP	Uruguay	0,5	UY
Jersey	0,5	JE	US Virgin Islands	1	VI
Kenya	0,5	KE	USA	1	US
Korea	0,5	KR	Vanuatu	1	VU
Latvia	1	LV	Venezuela	1	VE

Moderately Secretive 0 – 0,40	Secrecy Score 0,41 – 0,50	Secrecy Score 0,51 – 0,60	Secrecy Score 0,61 – 0,70	Secrecy Score 0,71 – 0,80	Secrecy Score 0,81 – 0,90	Extremely Secretive 0,91 – 1
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Table 3: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation % Secrecy
419	CBCR: Is there a local filing requirement of a global country-by-country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?	0: No; 1: OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the CbCR); 2: Beyond OECD Legislation: Secondary mechanism is not subject to restrictions imposed by OECD model legislation: any domestic subsidiary of a group would have to file the CbCR in all cases in which the jurisdiction cannot obtain the CbCR via AEoI.	If answer is 2: 0%; otherwise 50%.
363	APAs & Tax Rulings: Are unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) or bi-or multilateral advance pricing agreements (APA) available in laws or regulation, or in administrative practice?	0: Neither APAs nor unilateral cross-border tax rulings are available; 1: Yes, but only bilateral/multilateral APAs are available; 2: Yes, but only unilateral cross-border tax rulings are available; 3: Yes, both unilateral cross-border tax rulings and bilateral/multilateral APAs are available.	If answer is 0 or 1: 0%; otherwise see below.
421	Tax Rulings: Are all unilateral cross-border tax rulings (e.g. advance tax rulings, advance tax decisions) published online for free, either anonymised or not?	0: No; 1: SOME FOR FREE: Some unilateral crossborder tax rulings are published online for free; 2: COST: Unilateral cross-border tax rulings are published online only against a cost (irrespective of if all or only some are available online); 3: ALL FOR FREE: All unilateral crossborder tax rulings are published online for free.	0: 50%; 1 or 2: 25%; 3: 0%.

¹ Relevant in this instance refers to MNEs with over 750 million Euro global consolidated turnover, that are required to produce and file the CbCR according to BEPS Action 13.

² For a comparison with the actual text in the directive amending the relevant directive on administrative cooperation (EC 2011/16/EU), please refer to Art. 1.1.b (inserting points 14 and 16), on pages 5-6, (Council of the European Union 2015).

³ These are the conditions for tax rulings:

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a State (the first State), or that State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;

(b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;

(c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws or international rules relating to taxes of that first State, or its territorial or administrative subdivisions, including local authorities;

(d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person of another State in the first State create a permanent establishment in the first State; and

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place, or is made during a tax audit, but has implications, explicitly or implicitly, for future transactions or other future aforementioned activities.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance, insurance or the use or relocation of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling.

In the context of the above, 'cross-border transaction' means all transactions or series of transactions where:

(a) not all the parties to the transaction or series of transactions are resident for tax purposes in the first State giving the cross-border ruling, or;

(b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction, or;

(c) one of the parties to the transaction or series of transactions carries on business in another State through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a single legal person in respect of business activities in another State which that person carries on through a permanent establishment.

⁴ While no explicit reference to APAs is made in the OECD Model Convention of 2008 (including the commentary), the Commentary to the UN Model Convention of 2011 refers to APAs with respect to

information exchange (United Nations Department of Economic & Social Affairs 2011: 447). The relevant article in the UN Model Tax Convention allowing for APAs is Art. 25.3:

“The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.” (United Nations Department of Economic & Social Affairs 2011: 31).

Art. 25 (3) of the OECD Model Tax Convention of 2008 contains exactly the same wording (OECD 2008: 37), which “permits countries to enter into Advance Pricing Agreements (Hereafter APAs).” (European Commission 2007: 9).

⁵ The definition we use is fully in line with the definition used by the Joint Transfer Pricing Forum of the European Commission in 2007:

“An APA is an agreement between tax administrations over the way in which certain transfer pricing transactions between taxpayers will be taxed in the future.” (European Commission 2007: 5).

“An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.” (European Commission 2007: 9).

“An APA application should typically have four distinct stages: (a) Pre-filing stage/Informal application (b) Formal application (c) Evaluation and negotiation of the APA (d) Formal agreement.” (European Commission 2007: 11).

⁶ To see more details about the CbCR and its uses, please refer to KFSI 8 [here](#).

⁷ There are three possible international agreements: 1) The Multilateral Convention on Administrative Assistance in Tax Matters, 2) Double Tax Agreements, and 3) Tax Information Exchange Agreements.

⁸ <http://www.zeit.de/wirtschaft/unternehmen/2016-09/apple-steuern-eu-kommission-transparenz>; 12.10.2016.

⁹ <https://www.wider.unu.edu/publication/global-distribution-revenue-loss-tax-avoidance>; 4.11.2017.

¹⁰ See pages 184-185, in: Meinzer, Markus 2015: *Steueroase Deutschland. Warum bei uns viele Reiche keine Steuern zahlen*, München. Furthermore, see Reid, Thomas R. 1973: *Public Access to Internal Revenue Service Rulings*, in: *The George Washington Law Review* 41: 1, 23-43; Sugarman, Norman A. 1955: *Federal Tax Rulings Procedure*, in: *N.Y.U. Tax Law Review* 10: 1, 1-40; Givati, Yehonatan 2010: *Resolving Legal Uncertainty: The Unfulfilled Promise of Advance Tax Rulings*, in: *Virginia Tax Review* 29, 137-175. In the USA, there are also so-called unilateral APAs

¹¹ Although the IRS states a “Preference for Bilateral and Multilateral APAs” over unilateral ones (Rev. Proc. 2015-41, Section 2.4.d, <https://www.irs.gov/pub/irs-drop/rp-15-41.pdf>), the latter may nonetheless be available under certain conditions. After a lawsuit brought by BNA for disclosure of APAs, legislative action in December 1999 led to preventing disclosure of APAs (see FN 52, page 160, in: Ring, Diane M. 2000: *On the frontier of procedural innovation: advance pricing agreements and the struggle to allocate income for cross border taxation*, in: *Michigan Journal of International Law* 21: 2, 143-234; FN 130, page 174, in: Givati 2010, *op. cit.*; Hickman, Kristin E. 1998: *Should Advance Pricing Agreements Be Published*, in: *Nw. J. Int’l L. & Bus.* 19: 1, 171-194). In our classification (see

above), these so-called “unilateral APAs” would be considered to be unilateral tax rulings despite the name suggesting that it is an APA and thence involving at least two tax administrations.

¹² See page 185, in: Meinzer 2015, *op. cit.*

¹³ Council of the European Union 2015: COUNCIL DIRECTIVE (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, in: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN>; 19.1.2017. Council of the European Union 2015: COUNCIL DIRECTIVE (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, in: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2376&from=EN>; 19.1.2017.

¹⁴ Luxembourg had reported only 2 unilateral APAs to be in force in 2012, while reporting 119 in 2013. In contrast, more than 500 unilateral tax rulings were disclosed through LuxLeaks which were reported to have been agreed mainly between 2002 and 2010. These appear not to have been captured by the EU Joint Transfer Pricing Forum statistic which builds on information submitted by member states such as Luxembourg. See pages 178-179, in: Meinzer 2015, *op. cit.*

¹⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//EN&language=EN>; 19.12.2017.