Narrative Report on Taiwan

PART 1: NARRATIVE REPORT

Taiwan is a tax haven that for many years has managed to successfully avoid scrutiny.

The first detailed analysis of Taiwan as an offshore centre emerged in July 2017 with the publication of the analysis of offshore sinks and conduits compiled by the CORPNET group of researchers at the University of Amsterdam. Researchers found that Taiwan was a significant sink jurisdiction, one of the most prominent destinations for offshore capital in the world. The results of the research was a surprise to the research team, who noted that previous studies which relied on IMF data would have missed out Taiwan as the country does not participate in IMF statistics under pressure from China.

Looking at the importance of Taiwan in the offshore world the researchers noted,

“The prominence of Taiwan is driven by Taiwanese technological companies, which often own Chinese firms through Hong Kong (33%) and Caribbean Islands (20%), or own Hong Kong firms through Caribbean Islands (12%).”

The Tax Justice Network started covering Taiwan in our 2015 FSI. In that edition the amount of data we could find on the country was too poor for it to make it onto our main ranking. This year, having undertaken a full review of Taiwan’s legal system the country makes it in to the top ten.

Offshore Financial Business in Taiwan

To a large extent, the offshore industry in Taiwan has been driven by the political difficulties with China.

Due to the long-term political hostility with China, domestic companies which would like to do cross-strait business often set up offshore subsidiaries in a third country (usually in one of tax havens) to facilitate their cross-strait business operations.

This offshore trade was facilitated by Taiwaneese “Overseas Banking Units”, a financial structure first permitted in 1983. OBUs were a classic offshore vechicle designed to compete with unregulated foreign currency markets in London and Singapore, they allowed foreign companies and individuals to trade in foreign currency units via Taiwanese banks with minimal supervision, little regulation, in secrecy and subject to no taxes.

At the beginning, Overseas Banking Units could not be used by Taiwanese residents. As a result, in the early years the OBU business did not go well, as Taiwanese banks could do little to break into the space dominated by more well known international players. However, Taiwanese companies were able to use OBUs via their offshore subsidiaries and with the emergence of China’s economy during post-80’s, the opening up of overseas business units to trade related banking services in the

Rank: 8

Chart 1 - How Secretive? 76 Secrecy Score

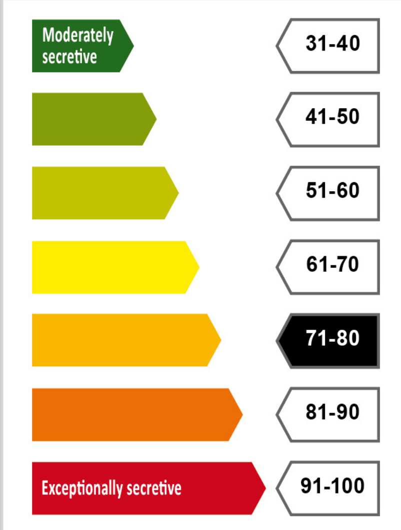
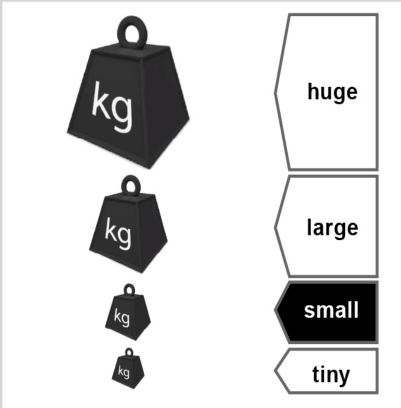


Chart 2 - How Big?



Taiwan accounts for less than 1 per cent of the global market for offshore financial services, making it a small player compared with other secrecy juridictions.

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

Full data on Taiwan is available here: www.financialsecrecyindex.com/database.

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If you have any feedback or comments on this report, contact us at **info@taxjustice.net** early 1990s and the increasing overseas investment activities by Taiwan's enterprises, Taiwan's offshore economy grew.[1]

As a result, Overseas Banking Units have served as a major channel enabling domestic Taiwanese companies to engage in overseas business operations (including cross-strait operations) through their offshore subsidiaries. Until July 2017, the total asset of OBUs has reached over 200 billion[2] US dollars, which is a significant growth from 187 billion[3] in December 2015, roughly an 8 percent rise.

The next Tax and money laundering haven in South-East Asia? Could be.

The practice of Taiwanese citizens or domestic companies using OBUs via offshore companies has come in for some criticism in Taiwan as it as seen as a mechanism for avoiding domestic taxation. The mass media in Taiwan generally label those who deliberately conduct their business via non-resident companies as "Fake foreign investment".

However for the past 30 years the government has done little to tackle the problem. There have been no reports of prosecutions for "Fake foreign investment" until 2014 when the first was confirmed by the Taiwan Financial Supervision Commission("FSC")[4]. In addition, although there has always been a rumor that FSC is going to investigate and require the banks to submit the list of the beneficial owners of each OBU account, it has not yet happened, and that significantly increases the financial secrecy of beneficial owners and opportunities of illicit transactions and money laundering.

All of this means that Taiwanese citizens are relatively heavy users of offshore structures. According to a report published by a local Taiwanese media outlet which participated in the offshore leaks investigation from The International Consortium of Investigative Journalists (ICIJ), there are 16,856 Taiwanese individual clients found in the database, that is 1.25 times more than in Hong Kong and even 1.8 times than in China.[5] In addition, in August 2016, one of Taiwan's government-affiliated-banks was subject to a heavy fine of USD180 million imposed by the US government, for not complying with the AML regulations. In particular, a substantial number of customer entities were reportedly formed with input from Mossack Fonseca,[6] the most prominent character in the Panama Papers.

Political isolation

No analysis of the financial policies of Taiwan is possible without an understanding of the unique international position of the country.

Taiwan was the home of the nationalist government of China after it lost the Chinese Civil War. Both the People's Republic of China on mainland China and the Republic of China in Taiwan continued to claim sole sovereignty over China in its entirety.

At the same time, China has been the biggest trading partner for Taiwan for more than a decade. In 2016, 40% and 20% of Taiwan's total export and import are to and from China.[7] The US which has supported Taiwan is the third biggest trading partner, and has taken up approximately 12% of Taiwan's total export and import as well. In addition, the US has been selling weapons to Taiwan in a tremendous amount for decades.

In pursuing its "One China policy"[8] the People's Republic of China, has used its international influence to prevent Taiwan from joining all kinds of international institutions. Today Taiwan is the world's largest economy which is not a member of the United Nations. Other UN organisations such as the World Health Organisation and the OECD have rejected Taiwan's proposal of admission.[9] Some have granted Taiwan admission only via a different name such as "Chinese Taipei", "Taiwan, China" or "Taiwan, Province of China" – all names which suggest that Taiwan is not an independent country but part of mainland China.

Even though Taiwan can not join the UN, it still follows and implements some of the prominent international conventions into the domestic law, for instances:

1. UN Convention Against Corruption
2. UN Drug Convention 1988
3. UN International Convention for the Suppression of the Financing of Terrorism
4. UN Convention Against Transnational Organized Crime

Taiwan however is not a member of the OECD's global forum on transparency and exchange of information for tax purposes, a body which reviews the progress of countries in bringing their laws up to international standards on financial transparency. However, as discussed below, it has committed to implement many of the standards in domestic law.

The country is a member of the Asia Pacific Group of the Financial Action Task Force, as Chinese Taipei. The group started evaluating the country in 2007 and placed it on the "regular follow-up" list as a result of inadequate controls on money laundering and ineffective supervisions on Financial institutions. The country was placed on the "enhanced follow-up" list in 2011, and then on the "transitional follow-up list" in 2014 for further evaluation of Taiwan's progress.

Taiwan's dilemma when considering to join CRS

The issue of the OECD's "Common Reporting Standards" ("CRS"), demonstrates the difficulties facing the country. It would be evidently more practical for Taiwan to join CRS through a Multilateral Competent Authority Agreement ("MCAA"). However, it will put Taiwan into quite an unfavorable position given the "One China policy": Neither Taiwanese citizens nor its government would accept joining with the name "Taiwan, China" or "Taiwan, province of China".

In light of this, it seems Taiwan could join CRS only by following Hong Kong's current model and signing Bilateral Competent Authority Agreements ("BCAA") under either the existing framework of Double Taxation Agreements (DTA), or new Tax Information Exchange Agreements ("TIEA"). However, it would take much longer to sign BCAAs and negotiate conventions of DTAs or TIEAs with each jurisdiction, especially when there is a threat of China's political intervention pressuring countries not to enter into international agreements with Taiwan. This will consequently raise the chances Taiwan appearing on lists of non-cooperative jurisdictions.

No matter which way Taiwan is going to adapt to in the future, at least in 2017, Taiwan has commenced to include CRS's legal basis into its domestic law in order to follow and implement "Standard for Automatic Exchange of Financial Account Information in Tax Matters", and has planned to implement CRS starting from 2019 and initiate information exchange in 2020, by promulgating or drafting enabling statues and concerned regulations or guidance.

Initially exchange will only take place with those jurisdictions which have signed a DTA or TIA with Taiwan. Countries which have not, e.g., China, South Korea, or Mexico etc., will not receive nor be capable of requesting any tax or financial account information and vice versa. This means that Taiwan will still be at risk of being a non-cooperative jurisdiction and raise doubts on its financial transparency. The issue will be particularly important to financial flows between China and Taiwan. Companies which are interested in doing business in China may indirectly invest in China through a Taiwanese subsidiary company, without tax and financial information being disclosed nor exchanged with China's government. The irony of the situation is that China's tense relationship with Taiwan perpetuates financial secrecy leading to tax leakage from China itself.

Is the world ready to put Taiwan in the same boat?

The situation of Taiwan puts the OECD in a difficult position. The OECD has warned that jurisdictions which do not follow CRS will be put on a list of non-cooperative jurisdictions and might be subject to defensive measures. But would it take this action if it refused to allow Taiwan to join the organization, and sign the MCAA. Until now the organization has ignored Taiwan, not including the country in the global forum review and the subsequent list of cooperative and non-cooperative jurisdictions in July 2017.[10]

Is the OECD's position sustainable? On confirming that Taiwan had still not been invited to the World Health Assembly in 2017 the Minister of Health said, "The control and prevention of diseases and epidemics should go beyond boundaries". Should there not be a similar spirit when pursuing multi-national illicit activities and international tax transparency?

But some important improvements

In preparation for the FATF APG's mutual evaluation in 2018, almost 10 years after receiving the mutual evaluation report from APG and being added to the watchlist, the Taiwanese government has taken action to improve anti-money laundering controls. It has:

1) Amended AML regulation (Money Laundering Control Act) in Apr. and Dec. 2016;
2) Revised the regulations governing the OBUs in May 2017;
3) Revised the rules governing Offshore Insurance Units(OIUs) in July 2017;
4) Revised the governing Offshore Securities Units(OSUs) in July 2017;
5) Drafted Whistleblower Protection Act in Oct 2017

The amendments to AML regulations were mainly based on the recommendations of APG's mutual evaluation report in 2007 and the following rounds of assessment. On another point, the amendments of OBUs, OIUs and OSUs regulations seem to increase the financial transparency by paying attention to disclosures of substantial beneficiaries and Know Your Customers ("KYC") rules, and consequently require each bank to re-examine all of their OBUs' current existing accounts and submit the information on the beneficial ownership of the accounts by December 2017.

The work of Taiwan's government has not gone unnoticed. In July 2017, Taiwan was removed from APG's transitional follow-up list of Asia-Pacific jurisdictions.[11] However, the latest draft of whistleblower protection regulations is applicable only to the public sector; whereas regulation related to the private sector will not be drafted until 2018 or maybe even beyond.[12] In short, although the Taiwanese government has made efforts to revise or draft many regulations in the very recent years, it is crystal clear that there is still a long way to go.

Endnotes

1 Developments of the Offshore Banking Business in Taiwan, Annex of Central Bank of Taiwan annual report in the fiscal year 2004, http://www.cbc.gov.tw/public/data/publications/year2004/annex-97-99.pdf; 23.01.2018.

2 Monthly Overview of Offshore Banking Units, Central Bank of Taiwan (July 31th, 2017) (OBUs); http://www.cbc.gov.tw/ct.asp?xItem=60806&ctNode=448&mp=2; 23.01.2018.

3 Monthly Overview of Offshore Banking Units, Central Bank of Taiwan (December 31th, 2015); http://www.cbc.gov.tw/ct.asp?xItem=52726&ctNode=448&mp=2; 23.01.2018.

4 Generally, it was an individual stockholder of a Taiwan public listed company who additionally invested the company indirectly through his own controlled offshore company and did not report his consolidated stock holdings to the concerned authority, especially with the assistance of a foreign securities broker registered in Hong Kong. http://news.cnyes.com/news/id/1161660; 23.01.2018.

5 "The country's tax revenue has lost 300 billion Taiwanese dollars in 10 years?" CommonWealth Magazine, January 2016, http://www.cw.com.tw/article/articleLogin.action?id=5055451; 23.01.2018.

6 "Taiwan's Mega Bank fined by New York regulator for compliance lapses" Reuters, August 16, 2017, http://www.reuters.com/article/us-megafinancial-new-york-idUSKCN10U1H8; 23.01.2018.

7 "Table of Taiwan's trade statistic with China from 2012-2016" Bureau of Foreign Trade, March 3rd, 2017; http://www.trade.gov.tw/App_Ashx/File.ashx?FilePath=../Files/Doc/e1775801-812b-4083-85a1-3b9c5fd46025.pdf; 23.01.2018.

8 Reference of the introduction of One China policy, "Events in Catalonia and Kurdistan are causing pangs in Taiwan" The Economist, October 5,2017, https://www.economist.com/news/asia/21729990-taiwanese-government-does-not-dare-hold-its-own-referendum-independence-events?fsrc=rss ; 23.01.2018.

9 Taiwan ministry of foreign affairs has been listing all types of interventions or obstruction in the last 15 years, please check the following link: http://www.mofa.gov.tw/Content_List.aspx?n=442A97CFB4A0C56C; 23.01.2018.

10 OECD Tax Report to G20 Leaders, June 2017, http://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-leaders-july-2017.pdf; 23.01.2018.

11 "Taiwan taken off Asia-Pacific money-laundering watchlist" Reuters, July 26, 2017, http://uk.reuters.com/article/uk-taiwan-cyber-idUKKBN1AB124; 23.01.2018.

12 "Whistle-blower protection urged" Taipei Times, July 20, 2017, http://www.taipeitimes.com/News/taiwan/archives/2017/07/20/2003674928; 23.01.2018.

Taiwan

PART 2: TAIWAN'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 66% — 1. Banking Secrecy
- 50% — 2. Trust and Foundations Register
- 100% — 3. Recorded Company Ownership
- 100% — 4. Other Wealth Ownership
- 100% — 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

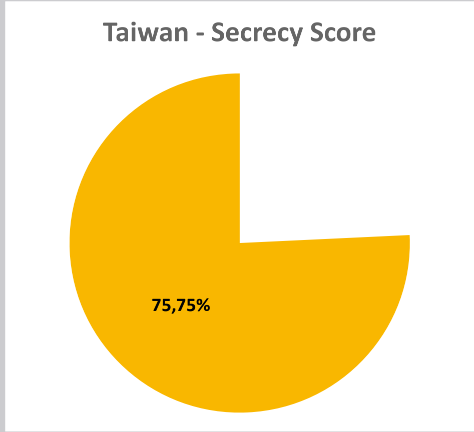
- 100% — 6. Public Company Ownership
- 100% — 7. Public Company Accounts
- 100% — 8. Country-by-Country Reporting
- 100% — 9. Corporate Tax Disclosure
- 100% — 10. Legal Entity Identifier

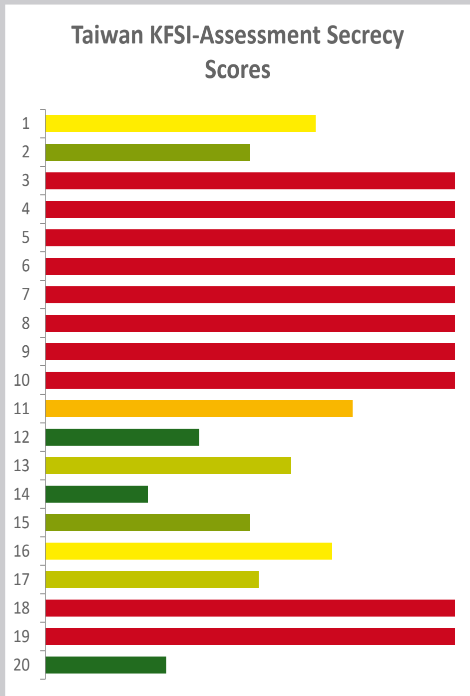
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 75% — 11. Tax Administration Capacity
- 38% — 12. Consistent Personal Income Tax
- 60% — 13. Avoids Promoting Tax Evasion
- 25% — 14. Tax Court Secrecy
- 50% — 15. Harmful Structures
- 70% — 16. Public Statistics

INTERNATIONAL STANDARDS AND COOPERATION

- 52% — 17. Anti-Money Laundering
- 100% — 18. Automatic Information Exchange
- 100% — 19. Bilateral Treaties
- 30% — 20. International Legal Cooperation





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 76 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail by clicking on the names of the indicators.

A grey tick indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 30.09.2017.

Full data on Taiwan is available here: www.financialsecrecyindex.com/database.

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