

NARRATIVE REPORT ON AUSTRALIA



PART 1: NARRATIVE REPORT

Background

Australia, not traditionally regarded as a secrecy jurisdiction, is ranked at 45th position in the 2018 Financial Secrecy Index, one place down from its 2015 position, 44. This ranking is based on a combination of its secrecy score and a scale weighting based on its share of the global market for offshore financial services.

Australia has been assessed with a secrecy score of 51 out of a potential 100, which places it in the lower mid-range of the secrecy scale (see chart 1).

Australia accounts for less than 1 per cent of the global market for offshore financial services, making it a tiny player compared with other secrecy jurisdictions (see chart 2).

Telling the story: Australia as a secrecy jurisdiction

Despite its relatively low ranking on the Financial Secrecy Index, a number of cases demonstrate that Australia undoubtedly hosts significant quantities of illicit funds from outside the country.

In June 2015, Global Witness worked with a number of media outlets to expose evidence of how Australian lawyers have been allegedly involved in facilitating bribery and money laundering of funds out of Papua New Guinea (PNG).¹

Also in June 2015, the media reported on allegations of senior Malaysian Government officials and businessmen involved in bribery laundering money through the purchase of Australian property.² The purchase of Australian properties was conducted via shell companies in the British Virgin Islands and Singapore.

In September 2016 it was revealed the son of General James Hoth Mai Nguoth, who served as the Sudan People’s Liberation Army’s (SPLA) chief of staff from May 2009 until being dismissed and replaced by General Paul Malong Awan in April 2014, bought a property in Melbourne worth \$1.5 million. Even as a senior official in the SPLA, General Hoth Mai’s salary was never more than about US\$45,000 per year.³

Yeo Jiawei, who was convicted in Singapore of money laundering and obstructing justice as part of the Malaysian 1MDB scandal, used a Seychelles-based company for [a series of purchases in Australia](#).⁴ In 2017 it was [reported](#) that Yeo’s court case in Singapore uncovered substantial purchases of property in Australia worth AUS \$6m⁵

One reason for the failure to stop illicit funds finding a safe haven in Australia are weaknesses in Australia’s anti-money laundering laws. In 2007 the Federal Government released draft legislation to extend anti-money laundering provisions to real estate agents in relation to the buying and selling of property, dealers in precious metals and stones, lawyers, accountants, notaries and company service providers. Yet this legislation was never implemented.

In April 2015, [FATF released its latest mutual evaluation report](#) of Australia’s anti-money laundering and counter-terrorist financing

Rank:44

Chart 1 - How Secretive?

51
Secrecy Score

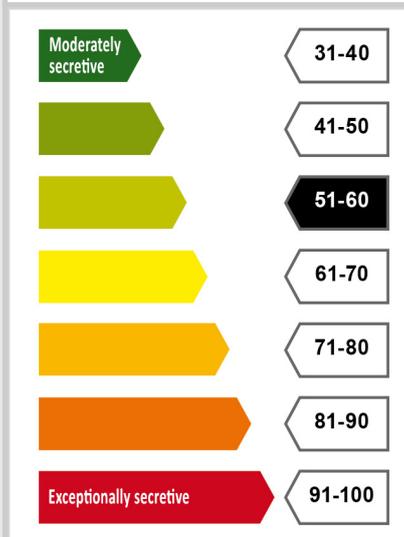
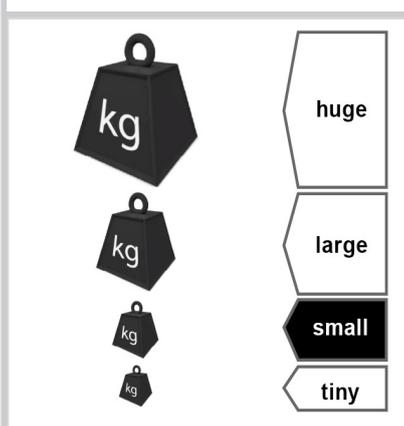


Chart 2 - How Big?



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

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

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

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system. FATF found that Australia has strong legal, law enforcement and operational measures for combating money laundering and terrorism financing, but important improvements are needed in a number of key areas.⁶

The Mutual Evaluation Report of Australia, recognised that Australia has a good understanding of its money laundering risks, coordinates domestically to address these risks, and has effective mechanisms for international cooperation. However, the FATF review noted that the authorities focus more on the disruption of predicate crimes, rather than on the laundering of the proceeds of these crimes and their confiscation.

The review also concluded that while Australia regulates its major money laundering and terrorism financing channels, such as banking, remittance and gaming, most designated non-financial businesses and professions (DNFBPs) are still not subject to anti-money laundering / counter-terrorist financing (AML/CTF) requirements and have insufficient understanding of their risks.

Designated non-financial businesses and professions include real estate agents and lawyers, which the authorities assessed as high risk for money laundering and terrorist financing. The report concludes that Australia should do more to demonstrate they are improving AML/CTF compliance by those entities already subject to AML/CTF requirements and that they are successfully discouraging criminal abuse of the financial and non financial professional sectors.

In 2016 the Attorney General's Department launched a consultation about including designated non-financial professionals into Australia's AML/CTF laws. However, the results of the consultation have not yet resulted in any legislative action.

Money laundering legislation permits information about suspicious financial transactions collected by Australia's financial intelligence unit, AUSTRAC, to be passed to a foreign government, provided that the government receiving the information gives appropriate undertakings in relation to confidentiality.⁷

A 2013 [assessment of the Australian Transaction Reports and Analysis Centre](#) (AUSTRAC) by the Australian Auditor General concluded that while its financial intelligence is "highly valued both domestically and internationally," its effectiveness in countering money laundering and serious and organised crime is "not readily quantifiable."⁸ Furthermore, AUSTRAC will generally only share information with overseas Financial Intelligence

Units (FIUs) where a formal exchange agreement exists. [At the moment](#) there are 90 such agreements in place, including with Argentina, Bangladesh, Brazil, Cambodia, Chile, Colombia, Fiji, Ghana, Guatemala, India, Indonesia, Malaysia, Mexico, Papua New Guinea, Peru, the Philippines, South Africa, Sri Lanka, Thailand, Vanuatu and Venezuela.⁹

[A 2010 investigation](#) into alternative remittance services by the Australian Institute of Criminology found that some of these services were willing to handle transactions suspected of being involved in tax and customs evasion and illicit drug trafficking, in exchange for a higher rate of commission.¹⁰ Legislation before Parliament at the time of writing will require remittance providers to be registered with AUSTRAC to provide better oversight.

The Australian Treasury has conducted a consultation on a beneficial ownership register for companies in Australia, but the focus appears to lean towards the register being only accessible to law enforcement agencies.

Australia's losses to secrecy jurisdictions

When seeking to tackle illicit outflows from Australia, including the protection of tax revenue (and other) losses to secrecy jurisdictions, Australia has taken an innovative and highly proactive approach.

In February 2006 the Australian government established Project Wickenby, a multi-agency taskforce aimed at preventing people from promoting and using overseas secrecy jurisdictions for tax avoidance and tax evasion. [By the 31st of January 2015](#), the Project Wickenby had raised \$2.3 billion in tax liabilities and its work had seen 76 people charged and 46 convictions. Cash collections from Project Wickenby totalled \$985million.¹¹ It is seen as a model for other countries to follow in curbing tax evasion and tax avoidance.

[AUSTRAC has reported](#) that Project Wickenby resulted in a decrease in the flow of money to the 13 secrecy jurisdictions of interest to the task force. They reported a 13% decrease in the value of funds moving from Australia to secrecy jurisdictions in 2012-13 compared to 2007-08. The value of financial flows to six of the 13 tax secrecy jurisdictions decreased by more than 30%. This includes Liechtenstein (55% decrease); Vanuatu (51% decrease) and Jersey (30% decrease).¹²

Project Wickenby was [replaced in 2015](#) by the Serious Financial Crime Taskforce, to fight serious and organised financial crime.¹³ The new taskforce conducts investigations and prosecutions into

superannuation and investment fraud, identity crime and tax evasion.

The Serious Financial Crime Taskforce includes the Australian Taxation Office, Australian Crime Commission, Australian Federal Police, Attorney-General's Department, Australian Transaction Reports and Analysis Centre, Australian Securities and Investments Commission, Commonwealth Director of Public Prosecutions and Australian Customs and Border Protection Services.

[As of September 2017](#) the Taskforce had recovered \$153 million, raised \$392 million in tax liabilities and seen four people convicted.¹⁴

In December 2014, the then Treasurer, the Hon Joe Hockey, said that the Australian Government was being short-changed by the cross-border profit shifting activities of MNEs to the tune of \$1 billion to \$3 billion a year.¹⁵ Previously, in September 2014, the Commissioner of Taxation, Chris Jordan, said the ATO had estimated the government was losing up to \$1 billion a year because of the tax minimising strategies of MNEs.¹⁶ Recent independent research put the Australian losses from tax avoidance in 2013 at US\$6.05 billion.¹⁷

To stem these losses, legislation has been passed that require MNEs with more than \$1 billion of revenue globally, but which operate in Australia, to provide their financial details on a country-by-country basis to the Australian Taxation Office (ATO) starting in 2018. None of the information will be made publicly available, which is a major shortcoming given that civil society plays an important part in scrutinising corporate tax behaviour. The Government has attempted to ensure compliance with the country-by-country reporting requirements by introducing penalties of up to \$450,000 for failing to file the report within 16 weeks of it being due.

The Government has [implemented the OECD Common Reporting Standard](#) for the automatic exchange of financial account information, with the first exchange of information in 2018.¹⁸ De-identified data will be made available to developing countries so that they are able to know the size of assets being held by their nationals in Australia.

In June 2013 the Australian Parliament passed legislation to allow the tax payable by companies with revenue greater than \$100 million to be published by the Australian Taxation Office, a small step towards greater tax transparency. However, for 700 Australian resident privately owned companies, where the company is at least 50% Australian owned, the disclosure threshold is \$200 million.

[The Australian Parliament passed](#) the Multilateral Anti-Avoidance Law which came into effect on 11 December 2015. It applies to certain schemes on or after 1 January 2016, irrespective of when the scheme commenced. The law allows the ATO to tax profits made from Australian residents by multinational enterprises even if the the company has not set up a permanent establishment in Australia.¹⁹ This is particularly important with the provision of digital services. The law only applies to companies with global revenues of more than \$1bn

[The Australian Government introduced](#) a Diverted Profits Tax that came into effect on 1 July 2017 that imposes a 40% corporate income tax rate on MNEs with over \$1 billion in revenue that attempt to avoid paying tax on profits made in Australia.²⁰

The Australian Government has been an active participant in the OECD BEPS Action Plan working groups.

The Government is in the process of [drafting legislation](#) to provide protection and compensation for whistleblowers in the private sector that expose tax evasion and tax avoidance.²¹

The Government has announced the introduction of a Director Identification Number, which will help with revealing people who are acting as fronts for shell companies on a professional basis and help combat phoenixing activities by companies.²²

At the time of writing the Australian Government is in the process of ratifying the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI). There are some disappointing exemptions that the Australian Government has adopted in the MLI.

The Government [has been consulting](#) on requiring tax advisers to have to report to the ATO if they are marketing aggressive tax schemes.²³ However, there are no public signs of progress that such a measure will be implemented.

Source: Mark Zirnsak, [Tax Justice Network - Australia](#)

Endnotes

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- 3 *The Sentry*, 'War Crimes Shouldn't Pay', Sept 2016, p. 46.
- 4 Vanessa Oaige Chelvan, 'Former BSI banker Yeo Jiawei sentenced to additional jail time' Channel NewsAsia, 12 July 2017, <http://www.channelnewsasia.com/news/singapore/former-bsi-banker-yeo-jiawei-sentenced-to-additional-jail-time-9025126>; 23.01.2018.
- 5 Joshua Robertson, 'Banker caught up in Malaysian 1MDB scandal went on \$8.2m Gold Coast property splurge', *The Guardian*, 13 January 2017, <https://www.theguardian.com/australia-news/2017/jan/13/banker-caught-up-in-malaysian-1mdb-scandal-went-on-82m-gold-coast-property-splurge>; 23.01.2018.
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- 7 Section 132 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006
- 8 The audit also found that agreed processing times were not being met for suspicious matter reports and suspicious transaction reports. In the 2011-2012 financial year financial intelligence provided by AUSTRAC was used by the Australian Taxation Office (ATO) in 3,745 cases, resulting in an additional \$252 million in revenue from tax assessments. The Suspicious Report Analysis team is supposed to process 90% of reports within five days. From July 2011 to January 2013, the team was only able to process, on average, 57.7% of received reports within the agreed timeframes. The audit found that in the backlog of suspicious matter reports and suspect transaction reports from July 2011 to February 2013 there were 6,384 un-assessed records that had a significance rating of 'very high/high', suggesting that AUSTRAC needs greater resources to be able to properly carry out its functions. Since the audit, the Australian Government provided an additional \$16.1 million spread over four years to AUSTRAC. AUSTRAC's overall expenses were \$65.88 million in the 2011-2012 financial year, of which 55% (\$36.33 million) were for its FIU functions. From The Auditor-General, "AUSTRAC's Administration of its Financial Intelligence Function", Australian National Audit Office, Audit Report No 47 2012-23, June 2013, pp. 15, 17, 20, 24, 67, 71; <https://www.anao.gov.au/work/performance-audit/austracs-administration-its-financial-intelligence-function>; 23.01.2018.
- 9 AUSTRAC website <http://www.austrac.gov.au/about-us/international-engagement/exchange-instruments-list>; 23.01.2018.
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- 11 <https://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Wickenby-has-delivered/>; 23.01.2018
- 12 <http://www.austrac.gov.au/project-wickenby/>; 23.01.2018.
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- 16 Georgia Wilkins, 'Tax take swims through tears in the corporate net', *The Age*, 6 September 2014.
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- 19 <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Doing-business-in-Australia/Combating-multinational-tax-avoidance---a-targeted-anti-avoidance-law/>; 23.01.2018.
- 20 <https://www.ato.gov.au/general/new-legislation/in-detail/direct-taxes/income-tax-for-businesses/diverted-profits-tax/>; 23.01.2018.
- 21 The Hon Kelly O'Dwyer, Minister for Revenue and Financial Services, 'Expert panel on whistleblower protections', 28 September 2017, <http://kmo.ministers.treasury.gov.au/media-release/097-2017/>; 23.01.2018.
- 22 The Hon Kelly O'Dwyer, Minister for Revenue and Financial Services, 'A comprehensive package of reforms to address illegal phoenixing', 12 September 2017, <http://kmo.ministers.treasury.gov.au/media-release/090-2017/>; 23.01.2018.
- 23 <https://treasury.gov.au/consultation/oecd-proposals-for-mandatory-disclosure-of-tax-information/>; 23.01.2018.

PART 2: AUSTRALIA'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 20% 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
- 25% 9. Corporate Tax Disclosure
- 100% 10. Legal Entity Identifier

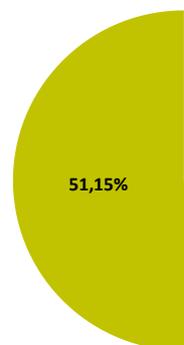
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 40% 11. Tax Administration Capacity
- 0% 12. Consistent Personal Income Tax
- 50% 13. Avoids Promoting Tax Evasion
- 50% 14. Tax Court Secrecy
- 25% 15. Harmful Structures
- 20% 16. Public Statistics

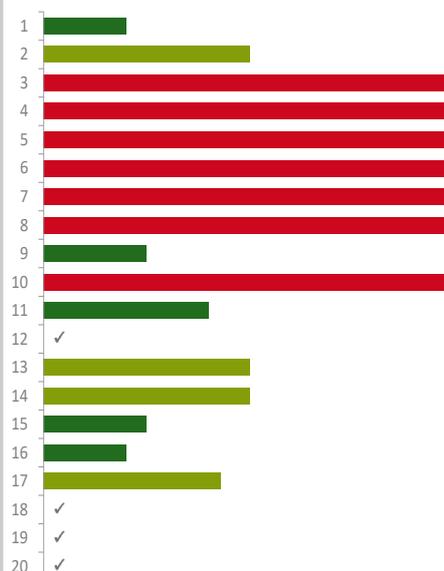
INTERNATIONAL STANDARDS AND COOPERATION

- 43% 17. Anti-Money Laundering
- 0% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 0% 20. International Legal Cooperation

Australia - Secrecy Score



Australia KFSI-Assessment Secrecy Scores



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 51 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 name 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 Australia is available here: www.financialsecrityindex.com/database.

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