

NARRATIVE REPORT ON BELGIUM



PART 1: NARRATIVE REPORT

Belgium comes in at number 53 in the 2018 Financial Secrecy Index.

Belgium has always had a relatively large financial services industry given the size of the country, but recent improvements in financial transparency means it has a relatively low secrecy score of 44. This is a welcome change for a country that previously had strong secrecy laws.

Although the use of Belgium as a secrecy jurisdiction has declined, there remain issues for domestic tax inspectors accessing Belgian accounts. The country also remains a corporate tax haven.

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. However, in recent years, a number of measures have been introduced to weaken bank secrecy. In the aftermath of recent financial scandals like the Panama Papers and the Paradise Papers, there is a wide call to increase overall transparency to ensure fair taxation. Bank secrecy is under attack more than ever.

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 the EU's 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 domestic legal obstacles to exchanging bank account information across borders.

In 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 remained 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

Rank: 53

Chart 1 - How Secretive?

44
Secrecy Score

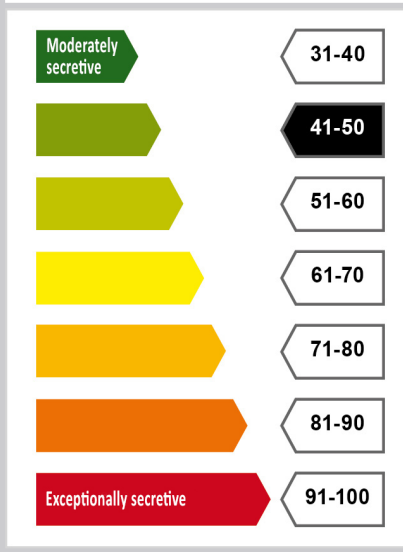
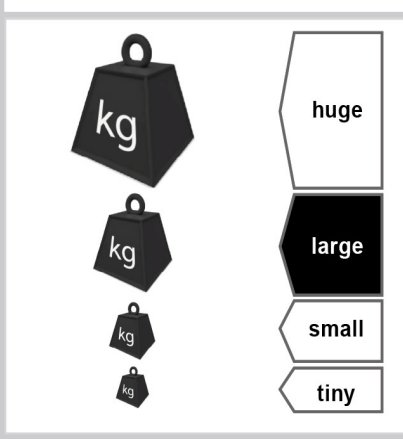


Chart 2 - How Big?



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

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

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

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sufficiently embedded in the supervisory framework. Specifically, it is unclear how monitoring of compliance is undertaken for those smaller banks that are subject to on-site inspections only infrequently.”¹ Moreover, Belgium still maintains certain provisions in domestic 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.

There remain significant issues with [domestic tax collection](#). 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.²

Although Belgium has agreed to adopt the automatic exchange of financial information (AOI) initiated by the OECD, the question remained whether financial institutions in Belgium would be required to share information with the tax administration on domestic accounts. Following a [royal decree](#), financial institutions are required to share information on their clients and their respective accounts once a year.³ This information is centralized in a database from the National Bank. However, consultation of the data by tax administrators is only allowed under a [limited number of circumstances](#). For instance, when there are clear indications of tax avoidance or if information is requested by a foreign administration.⁴ This implies that tax officials could still not request information from financial institutions for tax purposes as a matter of routine.

After the Panama Papers scandal broke, a [special commission](#) was established in parliament to investigate how to tackle large-scale tax avoidance and fiscal fraud more efficiently in the future. The inquiries performed by the commission made clear that bank secrecy strongly impedes the fight against tax fraud and fiscal optimisation strategies. Therefore, a specific recommendation was made to use the centralized database from the National Bank more efficiently by making it a dynamic platform with ‘real time’ financial information. Tax authorities should

have easier access to information regarding bank accounts in Belgium.⁵

In the same context, the European Parliament explored the possibility of combining this platform with an [ultimate beneficial ownership register](#) (UBO) which would allow the identification individuals behind different accounts.⁶ The establishment of this register is part of the European Anti-Money-Laundering-Directive (AMLD) and in line with the OECD-worldwide exchange of information. While there had been strong voices to make the register public, the Panama Commission defined authorization only for people with a legitimate interest. However, on the 18th of December 2017 an announcement was made that an agreement on the fifth AMLD-Directive was reached between the European Parliament, the EU Council and the European Commission, which defines [full public access to beneficial owners registries](#).⁷

With an easier access to accurate financial data, as well as an UBO-register, it seems that bank secrecy has lost much of its former significance. In the future, tax authorities should be able to access information in a more efficient way. However, time will tell if bank secrecy will finally be over in Belgium. Automatic exchange of information on domestic accounts will only be implemented when ‘[useful and necessary](#)’.⁸ This of course still leaves much room for interpretation.

While Belgium has taken some important steps towards more transparency, its overall strategy to tackle tax avoidance and fraud could certainly be more ambitious. For instance, Belgium never goes beyond the European minimum criteria on tax and financial regulation. At the EU-level, the Belgian government has not always played a very constructive role in discussions on tax reforms.

Another important step to increase financial transparency is public country-by-country reporting. The issue of country-by-country reporting, which would require companies to publish financial data (e.g. on profits, turnover, staff etc.) in public databases, is still under discussion at the EU-level. Belgium’s position regarding CBCR is [still unclear](#).⁹

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 2015,¹⁰ [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).¹¹ 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.¹²

The Belgian government decided to reform the Cayman tax in 2017. The government expects that reform will [generate about 50 million Euro](#).¹³ This should tackle the issue of double structures ('chain constructions') and by treating payments from trusts as dividends, distributions from trusts can be [more effectively taxed](#).¹⁴ This way, an important tax leak will be addressed. [Previously](#) payments derived from trust income were not taxable when transferred to third parties.¹⁵

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.

Tax haven Belgium

While Belgium is significantly less of a secrecy jurisdiction than it used to be, it still has a reputation as a tax haven, because of the particular tax facilities it offers, for both wealthy individuals and for multinational corporations. Belgium has come under a great deal of pressure in recent years to reform its tax system by the European Commission, and is responding by closing some loopholes but lowering the tax rate to compensate businesses for any increased tax payments that result.

The notional interest deduction

The most well-known Belgian tax advantage is the 'notional interest deduction' which allows companies to deduct from their tax bill a fictitious interest payment calculated on the basis of their shareholders' equity.

This system encouraged multinational companies to set up internal banks in Belgium, which would lend money to other parts of the company abroad. The profits made from the interest payments that these Belgian entities would receive would be subject to very low or no taxation. Many companies, including BP, Statoil, ArcelorMittal and ExxonMobil have placed

countless billions in Belgian holding companies to take advantage of the notional interest deduction: at one point ArcelorMittal [capitalised](#) its Belgian operations with 45 billion Euros.

In the first four years of the rule (2006-2010), it was estimated to have cost the Belgium government nearly € 5 billion a year in lost taxes. Under pressure Belgium announced a reform of the notional interest deduction in 2017. It will now only apply to increases in capital rather than the entire equity base of a company.

Excess profit rulings

Companies that are part of multi-national groups can substantially reduce their tax liability in Belgium on the basis of so-called 'excess profit' tax rulings. The rulings allow multinational entities in Belgium to reduce their corporate tax liability by the amount of 'excess profit' that they allegedly generate as a result of the advantages they have as being part of a multinational group. Excess profit is defined as the amount of extra profit made above what a similar stand-alone company would make.

In January 2016, the European Commission concluded that the Belgian Excess Profit Tax Scheme is illegal under EU state aid rules. Therefore, Belgium had to recover the full unpaid tax from at least 35 multinational companies that benefitted from the scheme. The total amount is [estimated](#) to be around 700 million euro.¹⁶ Belgium filed an [appeal against this decision](#), which is ongoing at the time of writing.¹⁷

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. Belgium used to operate a patent income reduction, which allowed companies to deduct 80% of their gross revenues from corporation tax calculations if their products were protected by patents.

Under pressure from the OECD, Belgium has reformed the system and instead introduced an innovation deduction which can only apply to net income rather than gross income. Net income is calculated after the costs of an innovation are taken into account. However, the maximum deduction has been increased to 85%.

Holding companies

Belgium seeks to attract holding companies of multinational corporations through favourable tax provisions. Features which encourage holding companies include an extensive network of double tax treaties; low capital gains taxes for corporations, and a 95% 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. Following an announcement by the government in 2017, this will now be increased to a [100% exemption in 2019](#).¹⁸

The race to the bottom

The move away from specific loopholes and deductions such as the notional interest deduction and the excess profits rulings has led Belgium to engage in the 'race-to-the-bottom' on corporate tax rates. In the upcoming years, the government plans on lowering the income tax rate for large companies from 33 percent in 2017 to 29 per cent in 2018 and 25 percent in 2020. This reform is said to be necessary to stay attractive towards investors and ensure job creation.

The Belgian government has always insisted that the corporate tax reform should be [budget-neutral](#).¹⁹ [However](#), the Council of State has questioned the budget neutrality of the policy.²⁰

Other features of the Belgian tax system

Taxes on wealthy individuals

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](#).

The diamond trade

Another notable example of Belgian tax particularism is a scheme for the diamond sector. The so-called 'Carat Tax' introduces a minimum tax of 0.55% of the turnover of a diamond company. Belgium has a sizable diamond industry centered around Antwerp.²¹

The regime took effect from 2016 and a report from De Tijd, which looked at the top 100 diamond companies in the country found that on average the introduction of the tax resulted in a company paying three times more in taxation than before the tax was introduced. The diamond companies also reported an extra 200m in profits after tax became calculated on a turnover basis, whilst turnover remained flat. This suggested that [the industry had been engaging in widespread profit shifting](#) for many years.²²

A [2013 report by the Financial Action Task Force](#) explores the money laundering (ML) and terrorism financing (TF) risks related to diamond trade. Mentioning Belgium as one of the main diamond trading centers, and also as an important cutting and polishing centre, the report assesses the particular risks related to Free Trade Zones, where the "specific vulnerabilities of the diamond trade and the mechanism of transfer pricing" create a "significant vulnerability for ML and TF activities." Indeed:

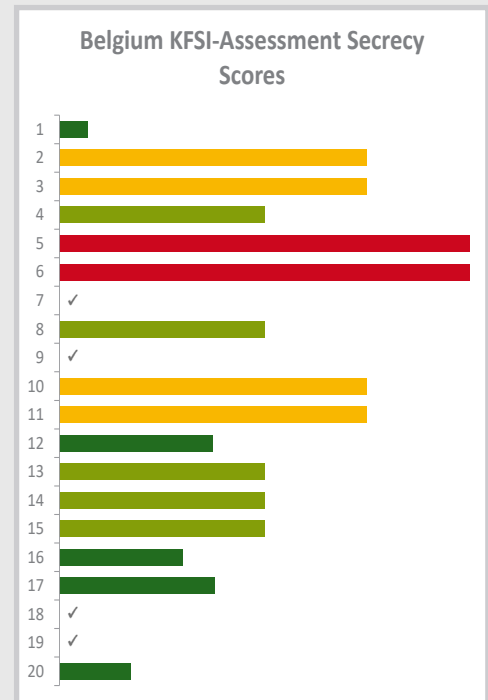
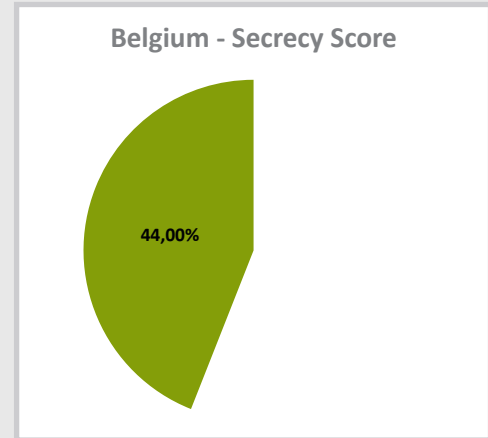
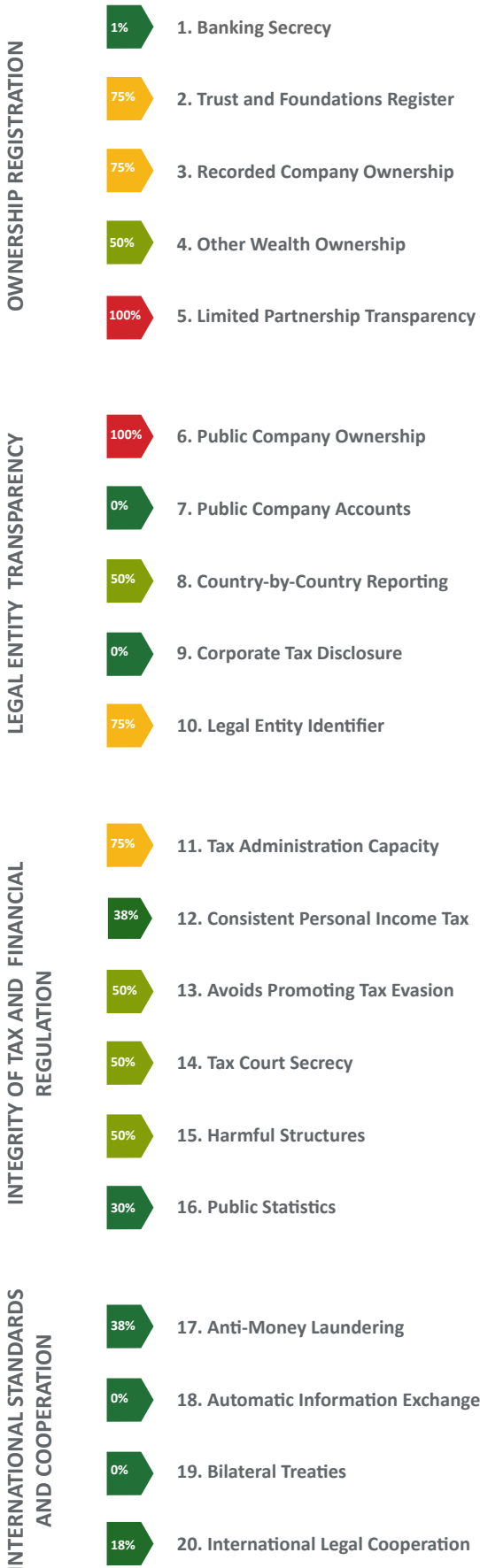
"By way of over or under invoicing with affiliate diamond companies located in FTZ, it is possible to illegitimately shift profits from diamond companies in high tax rate countries to FTZs and thus avoid taxes."(p61)²³

While, according to the [official website](#), the Port of Antwerp "is not a freeport and does not have a free trade zone", it "offers a wide range of alternative procedures to avoid direct import duties and levies. [...] This makes the Port of Antwerp a virtual free zone."²⁴

Endnotes

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- 9 Tax Games: The race to the Bottom: Europe's role in supporting an unjust global tax system. EURODAD Stop Tax Dodging Report 2017; <http://www.eurodad.org/tax-games-2017>; 27.01.2018.
- 10 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; 27.01.2018.
- 11 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>; 27.01.2018.
- 12 Testimony of Professor Michel Maus (VUB) in Finance Committee of Belgian Parliament, <https://www.dekamer.be/doc/CCRA/pdf/54/ac027.pdf>; 27.01.2018.
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- 16 http://europa.eu/rapid/press-release_IP-16-42_en.htm
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- 18 <https://www.tiberghien.com/nl/1107/dbi-aftrek-van-95-naar-100>; 27.01.2018.
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PART 2: BELGIUM'S 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 58 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 Belgium is available here: www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit www.financialsecrecyindex.com.