

NARRATIVE REPORT ON AUSTRIA



PART 1: NARRATIVE REPORT

Austria is ranked at 35th position on the 2018 Financial Secrecy Index, based on a moderate secrecy score of 56, and a small scale weighting of 0,56 percent of the global market for offshore financial services. The secrecy score has increased slightly, from 54 in the 2015 Financial Secrecy Index, however, the FSI methodology has also changed to be more demanding than the previous index.

Austria: partly turning away from a secretive past

Austria’s importance as a secrecy jurisdiction for non-residents has stemmed primarily from its secretive private foundations and Treuhand (a form of Austrian trust), and an absence of inheritance and other taxes. These factors, combined with Austria’s political stability, its location inside the European Union and its geographical proximity to the countries of the former Soviet Union and South Eastern Europe, have made it an attractive place for questionable money. Official reports suggest that Austria’s financial sector has considerable problems with financial crime.¹ In 2017, links to Austria were detected in the so-called ‘[Russian Laundromat Scandal](#)’² and the ‘[Malta Files](#)’ (files from Malta’s non-public company register), where gaming industry companies, Austrian company and financial service providers, airlines, leasing companies, and wealthy Austrians showed up in the files.³

Austria also came close to receiving a disastrous rating when the country’s anti-money laundering system was reviewed by the Financial Action Task Force (FATF) in 2016. According to [media reports](#)⁴, a big Austrian delegation went to the FATF meeting in Busan where the assessment of Austria was being discussed, to prevent the worst outcome, which would have been to end up on the FATF grey list. In the end, [Austria avoided the grey list](#).⁵

Austria has in the past often sided with other European and associated tax havens – [notably Luxembourg and Switzerland](#)⁶ – in efforts to slow or derail European efforts to improve transparency through mechanisms such as the European Savings Tax Directive. It adapted quickly to a fast-changing global climate on transparency, especially in the field of banking secrecy and automatic information exchange between 2013 and 2015. However, despite some progress in these areas, Austria has still continued to take a cautious approach to other international tax reforms. The former government (in office until December 2017) was reluctant to allow for greater transparency, being against both public country by country reporting and public registers of beneficial owners. There’s little hope that this could change under the new government. So it seems that the country has still not overcome its resistance to transparency.

Problem areas

Austria has many problem areas that provide significant financial secrecy.

Austria does not support public CBCR, not even in the very limited version proposed by the European Commission. According to former the Minister of Finance, Hans-Jörg Schelling the risks are too high for business, including risk of violations of confidentiality and

Rank: 35

Chart 1 - How Secretive?

56
Secrecy Score

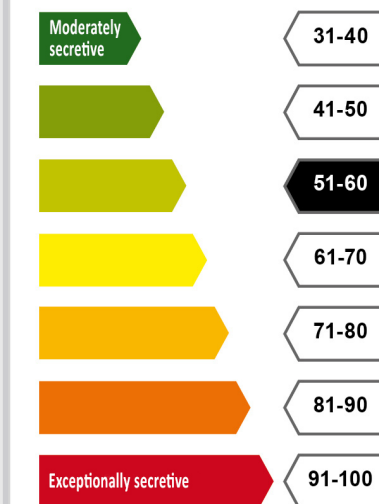
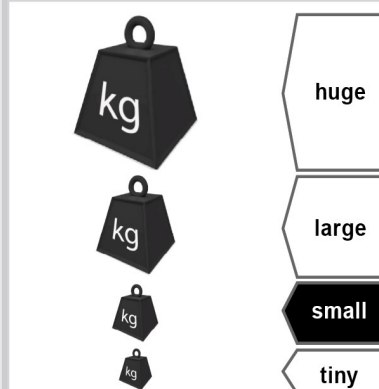


Chart 2 - How Big?



Austria accounts for less than 1 per cent of the global market for offshore financial services, making it a small 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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misinterpretation of data. The ministry also [argues](#) that public reporting would not be in line with the agreement made on non-public reporting made in the OECD BEPS project and would thus be a breach of international obligations.⁷

Austria has [56 automatic information exchange agreements in place](#), on basis of the standard for information exchange, designed by the OECD.⁸ After Austria implemented the automatic exchange of financial account information, in 2015/2016, the Austrian Rubik-agreement with Switzerland was terminated on 1 January 2017 when Switzerland concluded an agreement with the EU. However, a similar withholding tax agreement with Liechtenstein was not cancelled. Instead, the automatic information exchange between Austria and Liechtenstein [will exclude information](#) on transparent Liechtenstein asset structures (if formed before 2017) and for all non-transparent asset structures, if Austrian residents are the controlling persons of these structures.⁹

The Austrian tax treaty network is an issue of concern. Austria has 42 tax treaties with developing countries. By accepting these treaties, these developing countries reduced their withholding taxes (royalties, interest, dividends) [on average by 3.9 percent](#).¹⁰ Thus, one can assume that the Austrian treaty network has a negative impact on its developing country partners. Unfortunately, Austria has no plans to conduct an analysis of these impacts. [According to the Ministry of Finance](#), Austria's double tax treaties are 'largely' oriented by the OECD Model Tax Treaty.¹¹

Austria seems to be attractive for holding companies: The national investment promotion company ABA refers to Austria as an ['outstanding holding location'](#). For example, ABA highlights that profits from foreign subsidiaries can be pooled tax-free in the Austrian holding company, that losses of foreign subsidiaries can be offset against the domestic profits of the holding company (group taxation), that interest expenses on borrowings (to acquire third-party equity interests) are tax deductible, and that dividends and capital gains from foreign subsidiaries are mostly tax free.¹² Austria therefore seems to be an attractive location for Special Purpose Entities, like holdings: [According to the OECD](#), SPEs account for 25 per cent or more of inward foreign direct investments in Austria.¹³ In 2016, the Brazilian National Revenue Agency added the Austrian holding company tax regime to a [Brazilian 'grey list'](#) of 'privileged 'tax regimes (PTRs). This listing only applies to holding companies without 'substantial economic activity in Austria, judged by the existence of qualified employees in

sufficient number and appropriate management facilities'.¹⁴ Many Brazilian MNEs, like Vale and Odebrecht, have established holding structures in Austria.

Austria still allows companies to consolidate foreign losses with domestic profits for tax purposes. [A study](#)¹⁵ by the Austrian Audit Court found 110 tax allowances in Austrian Corporate Tax Law (KStG); it stated that the Finance Ministry has no systematic and comprehensive concept for tax allowances, and detailed figures are missing. While the Audit Court estimated that €450m is lost to tax allowances for corporates each year, nearly all of it being due to Group Taxation,¹⁶ the Finance Ministry [calculates](#) annual losses over € 250 Mio for Group Taxation.¹⁷

Austria has implemented EU's 4th Anti-Money Laundering Directive (AMLD) and has committed itself to setting up a [beneficial ownership register](#).¹⁸ The register came into force on 15 January 2018, but it will not be public. Access to the register will be completely open only to designated people who need access because of their anti-money laundering duties within the framework of customer due diligence, i.e. banks, attorneys, notaries, business consultants, estate agents, insurance brokers, members of the gambling and betting industry, tax consultants, accountants, etc.¹⁹ For other people, the register will be less accessible. The register will contain data on any natural person who ultimately owns (25 per cent or more) or controls (as a senior manager or board member) entities such as limited liability companies, partnerships, private foundations and (foreign) trusts managed in Austria. The will be operated as a supplement to the Business Service Portal.²⁰ The register cannot be accessed cost-free, at the time of writing, the user fee had yet to be decided.²¹ Former Finance Minister Mr Schelling also spoke out against public registers of beneficial ownership for companies and trusts.

Although Austria has a public central registry of real estate, the legal or beneficial ownership information of real estate is not available online on public record under 10 EUR. In recent years it has emerged that the purchase of real estate and other high value assets are a key mechanism for storing the wealth of corrupt officials and kleptocrats. Charging a fee makes it much harder for journalists and civil society to access the register, and places a barrier to this information. For that reason countries which have significant fees to access information receive a lower score in the FSI.

In Austria court proceedings on criminal and civil tax matters are not openly accessible to the public, and the public can be ordered to leave the

court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. Countries which do not allow open justice in tax matters receive a lower score in the FSI. Open justice is a key principal of the right to a fair trial. It is important also for the public to understand how key judicial decisions that interpret the law governing how revenues are raised are available and able to be understood. In closed systems there is a greater risk that an abuse of process could occur, and closed proceedings also restrict public debate on these important matters.

But some improvements

Although foundations and Treuhand remain a problem, a number of improvements have been made. The [commentary of the law](#) setting up a beneficial ownership register in Austria²² explains that Treuhand that are sufficiently similar in their 'functioning and structure' to ordinary trusts and will fall under the scope of the [Beneficial Ownership Register Law](#).²³ This is a welcome step forward, since Treuhands have previously raised concerns.²⁴ For example, in its [2016 evaluation of Austria](#), FATF highlighted that in Austria: '*measures to prevent the misuse of Treuhand arrangements are limited*'.²⁵

Austria signed the multilateral competent authority agreement in Berlin in October 2014, committing to the automatic exchange of information (although starting only by 2018, around a year after all other European countries).

In March 2014, a prohibition on using data from SARs (Suspicious Activity Reports) was lifted for Austrian tax authorities. SARs are used to alert law enforcement authorities of suspicious activities.

Endnotes

1 For instance, the 2015 US International Narcotics Control Strategy Report (INCSR) notes: “Money laundering occurs to some extent within the Austrian banking system as well as in non-bank financial institutions and businesses. Money laundered by organized crime groups derives primarily from serious fraud, smuggling, corruption, narcotics trafficking, and trafficking in persons.” It raised further concerns about the gambling sector and noted that the number of filed Suspicious Transaction Reports (STRs,) prosecutions and convictions had declined or continued to decline.

2 The Russian Laundromat Files showed that €4.1 million was transferred from Russia to 32 bank accounts in Austria (involving 88 transactions). See Dossier, ‘Die Russische Waschmaschine’, 20 March 2017; <https://www.dossier.at/dossiers/geldwaesche/die-russische-waschmaschine/>; 25.01.2018.

3 Kid Möchel, Hermann Sileitsch-Parzer and Franz Jandrats, ‘Malta-Connection: Wetten, Bier und Luxusjachten’, Kurier, 23 May 2017; <https://kurier.at/wirtschaft/malta-connection-wetten-bier-und-luxusjachten/265.498.530/>; 25.01.2018.

4 Renate Graber, ‘Kampf gegen Geldwäsche: Österreich landete fast auf Watchlist’, Der Standard, 25 June 2016; <http://derstandard.at/2000039776338/Kampf-gegen-Geldwaesche-Oesterreich-landete-fast-auf-Watchlist>; 25.01.2018.

5 FATF, ‘Outcomes of the Plenary meeting of the FATF, Busan Korea, 22–24 June 2016’, website, 2016; <http://www.fatf-gafi.org/publications/fatfgeneral/documents/plenary-outcomes-june-2016.html>; 25.01.2018.

6 <http://taxjustice.blogspot.ch/2012/11/luxembourg-austria-switzerland-play.html>; 25.01.2018.

7 MNETax, ‘EU finance ministers split on public release of multinational corporation tax data’, 25 April 2016; <http://mnetax.com/country-by-country-reporting-public-eu-14778-14778>; 25.01.2018.

8 See <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/>; 25.01.2018.

9 Liechtenstein Legal Gazette, ‘Ordinance of 15 Dec ember 2015 on the International Automatic Exchange of Information in Tax Matters (AEOI Ordinance)’, No. 358, 2015; <http://www.llv.li/files/onlineschalter/Dokument-2784.pdf>; 25.01.2018.

10 The treaty between Austria and Nepal is not included in the calculation of the average reduction of developing country tax rates, since it has not been possible to find data on the statutory tax rates of Nepal. See Eurodad (2017): Tax Games: the Race to the Bottom. Brussels. P. 150, FN 398.; <http://eurodad.org/files/pdf/1546849-tax-games-the-race-to-the-bottom.pdf>; 25.01.2018.

11 Austrian Federal Ministry of Finance, ‘Doppelbesteuerungsabkommen (DBA)’, https://www.bmf.gv.at/steuern/int-steuerrecht/doppelbesteuerungsabkommen_allgemein.html; 25.01.2018.

12 See <https://investinaustria.at/en/headquarters/holding-location.php>; 25.01.2018.

13 OECD, ‘FDI in figures’, April 2016, accessed 28 September 2017, <http://www.oecd.org/corporate/FDI-in-Figures-April-2017.pdf>; 25.01.2018.

14 Ernst & Young, ‘Brazil changes definition of privileged tax regimes for holding companies in Austria’, Global Tax Alert

(News from Americas Tax Center), 9 January 2017; <http://www.ey.com/gl/en/services/tax/international-tax/alert--brazil-changes-definition-of-privileged-tax-regimes-for-holding-companies-in-austria>; 25.01.2018.

15 Rechnungshof (2013): ‘Bericht des Rechnungshofes: Transparenz von Begünstigten im Körperschaftssteuerrecht mit dem Schwerpunkt Gruppenbesteuerung’, Bund 2013/6; http://www.rechnungshof.gv.at/fileadmin/downloads/2013/berichte/teilberichte/bund/Bund_2013_06/Bund_2013_06_1.pdf; 25.01.2018.

16 Group Taxation means that losses of foreign subsidiaries can be offset against the domestic (taxable) profits of the Austrian holding company.

17 Bundesministerium für Finanzen (Federal Ministry of Finance), ‘Förderungsbericht 2015’, https://www.bmf.gv.at/budget/das-budget/Foerederungsbericht_2015.pdf?5te3ig; 25.01.2018.

18 Bundesgesetzblatt, ‘Wirtschaftliche Eigentümer Registergesetz – WiEReG sowie Änderung des Finanzmarkt-Geldwäschegesetzes, des Finanzstrafgesetzes, der Notariatsordnung, der Rechtsanwaltsordnung, des Devisengesetzes, des Bankwesengesetzes, der Bundesabgabenordnung, des Finanzmarktaufsichtsbehörden-gesetzes und des Energieabgabenvergütungsgesetzes’, BGBl. I Nr. 136/2017; https://www.ris.bka.gv.at/Dokumente/BgblAuth/BG-BLA_2017_I_136/BG-BLA_2017_I_136.html; 25.01.2018.

19 Id., §9.

20 Id., §7.

21 Id., §17.

22 Austrian government, ‘Erläuterungen’, Wirtschaftliche Eigentümer Registergesetz; Finanzmarkt-Geldwäschegesetz, Finanzstrafgesetz u.a., Änderung (1660 d.B.), Government Bill, 2017; https://www.parlament.gv.at/PAKT/VHG/XXVI/I_01660/fname_639899.pdf; 25.01.2018.

23 Treuhand has similarities but is not identical with the Anglo-American ‘trust’. See I. Gveseliani, ‘German “Treuhand” vis-à-vis Austrian “Treuhand” (terminological study) in: European Scientific Journal, April 2015, p. 136; <http://eujournal.org/index.php/esj/article/viewFile/5511/5301>; 25.01.2018.

24 The “hidden Treuhand” – an arrangement that has no legal status but is similar in effect to a trust or foundation – is one Austria’s speciality. A Treuhand is created when a person, the Treuhänder (equivalent to a trustee), is given authority to exercise rights over assets in his or her own name, under a binding agreement with another person, the Treugeber [equivalent to a trust settlor]. A Treuhand can exist without any written record, and both Treugeber and Treuhänder may choose not to inform third parties of their arrangement (“hidden Treuhand”).

25 FATF, ‘Anti-money laundering and counter-terrorist financing measures in Austria – 2016’, 13 September 2016; <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Austria-2016-Executive-Summary.pdf>; 25.01.2018.

PART 2: AUSTRIA'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 57% 1. Banking Secrecy
- 63% 2. Trust and Foundations Register
- 100% 3. Recorded Company Ownership
- 100% 4. Other Wealth Ownership
- 75% 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 100% 6. Public Company Ownership
- 50% 7. Public Company Accounts
- 50% 8. Country-by-Country Reporting
- 50% 9. Corporate Tax Disclosure
- 75% 10. Legal Entity Identifier

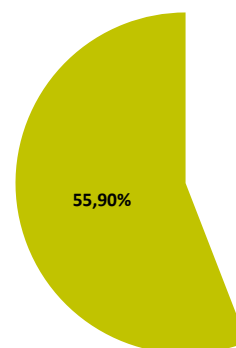
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 63% 11. Tax Administration Capacity
- 0% 12. Consistent Personal Income Tax
- 40% 13. Avoids Promoting Tax Evasion
- 100% 14. Tax Court Secrecy
- 75% 15. Harmful Structures
- 30% 16. Public Statistics

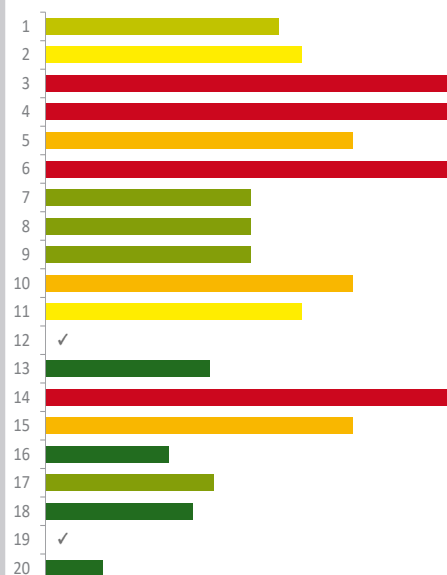
INTERNATIONAL STANDARDS AND COOPERATION

- 41% 17. Anti-Money Laundering
- 36% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 14% 20. International Legal Cooperation

Austria - Secrecy Score



Austria 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 56 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 Austria is available here: www.financialsecrecyindex.com/database.

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