

# NARRATIVE REPORT ON ROMANIA



## PART 1: NARRATIVE REPORT

### Overview

Romania is a sovereign state located in South-Eastern Europe, which has a population of approximately 19.7 million inhabitants. Since 1st of January 2007, Romania has been a member state of the European Union.

After the abolition of the communist regime in 1989, Romania pursued a gradual transition to a market economy, implementing market-oriented reforms. The process of privatisation, the liberalisation of prices, exchange rates or trade, as well as tax reform, were launched gradually.

### Taxation in Romania

As of 2018, the standard corporate tax rate is 16%. A 1% tax rate is applied to micro-enterprises if they have at least one employee, or 3% if they have no employees.<sup>1</sup> Nightclub, disco and casino operators are either subject to a 5% rate of the revenue obtained from such activities or a 16% rate of the taxable profit, depending on which is higher.

In 2016, the general withholding tax rate was reduced from 16% to 5% and is applied to dividends paid to Romanian legal entities and individuals, as well as to non-residents. A 0% rate applies to dividends paid by a Romanian legal entity to a legal entity resident in Romania or in another EU member state if they hold more than 10% of the shares in a company for an uninterrupted period of at least one year.<sup>2</sup>

The standard VAT rate was reduced in 2016 from 24% to 20%, and further reduced to 19% as of 2017.

### Transfer pricing rules

One of the main objectives of the tax authorities in Romania is to prevent the erosion of the tax base through transfer pricing. In order to ensure that the transactions of Romanian companies with foreign affiliates are done at market values, taxpayers are required to prepare a transfer pricing documentation file.

Rank: 47

Chart 1 - How Secretive?

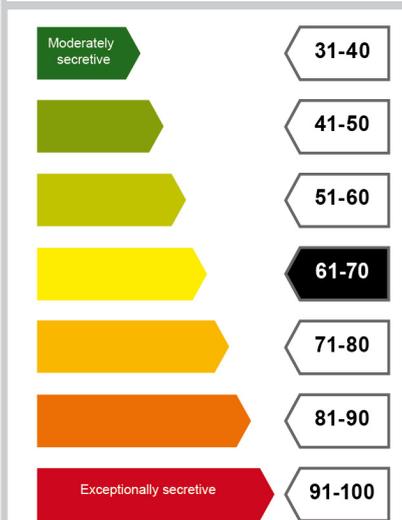
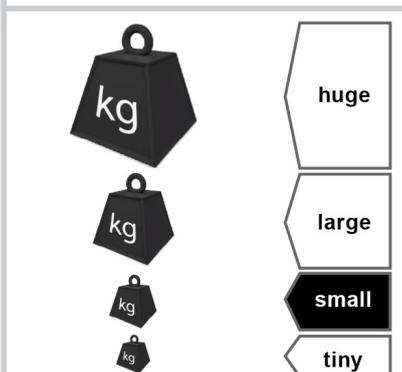


Chart 2 - How Big?



*Cayman Islands accounts for slightly over 0.2 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 Andorra is available here: <http://www.financialsecrecyindex.com/database>.

To find out more about the Financial Secrecy Index, please visit <http://www.financial-secrecyindex.com>.

© Tax Justice Network 2018

If you have any feedback or comments on this report, please contact us at [info@taxjustice](mailto:info@taxjustice).

## ROMANIA

By law<sup>3</sup>, the taxpayer must provide any other additional information demonstrating compliance with the market value principle, at the written request of the tax authority. If the taxpayer carries out transactions with affiliates, without complying with the market value principle, the tax authorities will adjust the amount of the practiced transfer prices. The adjustment will be applied to those transactions with affiliates for which the taxpayer has not provided evidence that the established price has respected the market value principle.

The National Agency for Tax Administration (ANAF) encourages voluntary compliance of businesses by concluding advance pricing agreements. An advance pricing agreement is a voluntary programme that allows companies to fix their internal prices without the risk of challenge from the tax authority for a period of at least five years. By means of exception, the validity may be longer in case of long-term agreements. The advance price agreement is opposable and binding on the tax authorities as long as its terms and conditions are fully observed by the taxpayer.<sup>4</sup> Companies which enter into such agreements are not obliged to prepare and present a transfer pricing documentation.

### Financial secrecy

A less often encountered type of business vehicle in Romania, that ensures the anonymity of its shareholders, are bearer share corporations. Bearer share corporations have been permitted in Romania since 1990. In Romania, companies could be established as bearer share corporations, or become bearer share corporations through a vote of the shareholders.

The establishment of bearer share corporations is not a widely-used practice in Romania, as it is in some offshore jurisdictions. Experts believe that these companies may be the perfect shield for illegal operations and that only those "initiated" people, few in number, use them.<sup>5</sup> This could be the case of those people who do

not have the right to own a business, being in conflict of interests with their job (for example, politicians, leaders of public institutions, etc). According to the National Trade Register Office, currently, there are 383 such companies in Romania.<sup>6</sup> A highly controversial issue, much debated in the media in 2017, was the award of contracts for public works to bearer shares companies and allegations that some high state officials or their families are hiding behind them.<sup>7</sup> Their lack of transparency regarding the identity of the real owners has led to pressure from civil society and non-governmental organizations.<sup>8</sup> In order to increase transparency, some political parties have proposed banning access to companies with bearer shares to public contracts<sup>9</sup>, while others have gone ahead and have submitted to Parliament proposals to dissolve them if they do not convert bearer shares into nominal, registered shares.<sup>10</sup> In March 2018, the government introduced a draft bill that would force companies to abandon bearer shares. The draft legislation prepared by the Ministry of Justice relates to the implementation of European directives. It is also part of the efforts of government to join the OECD.<sup>11</sup> The new legislation also proposes the establishment of a register of true beneficial ownership of companies.

### Nominees

Over time, investors in Romania have used various ingenious ways to hide their identity. For example, some rented the names of shareholders at the establishment of a company. Besides residents, there are foreign individuals who are settled in Romania for a period of time to register a company in their names, after which they leave the country.<sup>12</sup>

A classic scheme used to hide the identities of shareholders is holding companies through foreign firms, often registered in tax havens, which in turn are owned by a succession of other firms registered in other countries or territories. In fact, tax havens have a significant im-

pact on the Romanian economy. According to the National Trade Register Office, at the end of September 2017, there were 214,207 companies registered with foreign shareholders.<sup>13</sup> Of these, approximately 15% have shareholders in tax havens, which hold about 45% of the share capital of all companies with foreign shareholders.

Another method that was used in Romania to hide the identity of real shareholders was the establishment of companies on behalf of homeless people, who were persuaded to have their names used in the place of the real owners, without having any connection with the company.<sup>14</sup> Also, over time, there have been cases of companies set up on behalf of people who were suffering from mental illness.<sup>15</sup>

### **Bank secrecy law**

According to the article 111(1) of Government Emergency Ordinance no. 99 of 2006 on Credit Institutions and Capital Adequacy,<sup>16</sup> credit institutions are obliged to keep confidential all facts, data and information regarding their activity, as well as on any facts, data or information at their disposal, which relate to the person, property, activities, business, personal or business relationships of clients, or information regarding clients' accounts - balances, turnover, operations, services rendered or contracts with clients, respectively. Article 112(1) states that any person who performs administration and/or management duties or who participates in a credit institution is required to maintain the confidentiality of any fact, data or information specified in article 111, that is aware of it during the exercise of its responsibilities in relation to the credit institutions. Also, these persons shall not have the right to use or disclose, either during or after their activity, facts or data which, if made public, would harm the interests or the prestige of a credit institution or its client.

However, according to article 114, credit institutions are required to provide information

which would normally be secret after the commencement of criminal proceedings against a client, at the written request of the prosecutor or the court or, as the case may be, the criminal investigation authorities, with the authorization of the prosecutor. Also, according to the article 113, the obligation of professional banking secrecy cannot stand in the way of a competent authority in exercising its supervisory duties at the individual level or, where appropriate, at consolidated or subcontracted level.

Among the documents that each credit institution draws up and maintains at its registered office or branches, article 121 of this law highlights the following: a copy of the contractual documents, the internal documentation of the underlying transactions, a daily register of the records for each client with the characteristics of the transactions carried out and the balance owed to the client or the credit institution and any information regarding its business relations with clients and other persons that the National Bank of Romania may provide for them through regulations.

### **Disclosure of information regarding companies in public registers**

With regard to obtaining official financial information about companies registered in Romania, there are two main sources: the website of the Ministry of Finance (information that can be accessed free of charge) and the website of the National Trade Registry Office (information that can be accessed with payment).

On the website of the Romanian Ministry of Finance<sup>17</sup> there is a page on which tax information can be accessed free of charge as well as a series of financial indicators about public institutions, firms, insurance companies, brokers and NGOs. The query in the database can be done by the unique identification code or the name of the economic agent and the county in which it is registered. General information about the economic agent that can be obtained

## ROMANIA

includes: address, county, registration number of the Trade Registry, postcode, telephone, company status (active/inactive and the date of registration), whether it is liable to pay corporation tax or not (micro enterprises are subject to an income tax of 3% or 1%), if they are payers of excise tax, if they are involved in the gambling industry, etc. Within the financial information that can be accessed we may identify following the indicators extracted from the balance sheet and from the profit and loss account: fixed assets - total, current assets - total, stocks, receivables, cash and cash equivalents, advance payments, debts, incomes in prepayments, capital, total, subscribed capital, equity, net turnover, total income, total expenses, gross profit or loss, net profit or loss of the financial year. In addition, for each economic agent, the object of activity and the average number of employees are record.

From the website of the National Trade Registry Office<sup>18</sup>, some basic company information can be downloaded by paying a fee of 1.75 euros. This includes registered office, operating period, main activity, equity, names of directors and shareholders. For a sum of approximately 5.2 euros per company, extensive information can be obtained which includes, in addition to the ones mentioned above, the branches/subunits/secondary offices, the names of the directors/representatives for the branches/subunits/secondary offices in Romania, censors /auditors and information extracted from the annual financial statements (turnover, profit before taxes, profit after taxes, average number of employees).

### International agreements

Preventing and combating cross-border tax evasion is a major concern to the tax authorities in Romania. An important measure in tackling tax evasion is cooperation with other states via the automatic exchange of financial information. At the European level, the automatic exchange of information in the field of taxation

is regulated by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, which repeals Directive 77/799/EEC.<sup>19</sup>

The list of legal instruments concluded by Romania, on the basis of which information is exchanged with other states, includes the treaties for the avoidance of double taxation and agreements on the exchange of information in the field of taxation.

Romania has concluded 107 conventions for avoidance of double taxation and the prevention of tax evasion regarding taxes on income and capital.<sup>20</sup>

In 2017, Romania started collaborating with 23 countries or territories on the basis of the Multilateral Agreement of Competent Authorities for the Automatic Exchange of Financial Information at the level agreed by the OECD. Among these, there are jurisdictions such as: Bermuda, Gibraltar, Guernsey, Cayman Islands, Isle of Man, Turks and Caicos Islands, British Virgin Islands, Jersey, Liechtenstein, San Marino and the Seychelles. Through Order no. 2309/2017 of August 1 2017<sup>21</sup>, the National Agency for Tax Administration updated the list of jurisdictions with which Romania will automatically exchange financial information, adding 50 new agreements that should have entered into force in 2018. Among these we can highlight the following: Andorra, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Curacao, Dominica, Switzerland, Grenada, Cook Islands, Marshall Islands, Lebanon, Macau, Mauritius, Monaco, Nauru, Niue, Panama, Samoa, Kitts and Nevis, St. Lucia, St. Martin, St. Vicens and Grenadines, Singapore, Uruguay and Vanuatu.

By another ordinance issued at the end of 2017<sup>22</sup>, the list was updated again, with the result that Romania will now exchange financial information with only 44 jurisdictions. These are: Andorra, Argentina, Australia, Belize, Brasil, Chile, China, Colombia, Cook Islands, Costa

Rica, Curacao, Faroe Islands, Gibraltar, Groelanda, Guernsey, Iceland, India, Indonesia, Isle of Man, Israel, Japan, Jersey, Liban, Liechtenstein, Malaysia, Mauritius, Mexico, Monaco, Montserrat, New Zealand, Norway, Pakistan, Russia, Samoa, San Marino, Saudi Arabia, Seychelles, Singapore, South Africa, South Korea, St. Lucia, St. Vincents and Grenadines, Switzerland, Uruguay.

In order to combat tax evasion and ensure the exchange of information between countries, the Romanian government issued in June 2017 an emergency ordinance through which "country by country reporting" was implemented.<sup>23</sup> The obligation to make these reports belongs to the ultimate Romanian parent companies that control a multinational group whose consolidated income is more than 750 million euros. Reporting should be submitted starting with the fiscal year 2016. Implementation of country by country reporting follows the recommendations of the OECD BEPS project, which Romania was a participant in.

### Conclusions

Romania faces a period of political instability, with three governments installed in the last year. Despite this, Romania is making efforts to combat profit shifting by multinational companies and is implementing EU Directive 2016/1164 into the national legislation. A particular focus of the government has been to try to more efficiently collect taxes on profits from banks and multinational companies.<sup>24</sup> This has, however, seen some resistance and there have been protest rallies organised against the government. Former Prime Minister Mihai Tudose directly attacked the role of the banks in promoting these rallies in a statement: "Minister Misa (Minister of Public Finance), I have just found out now that branches of some banks have given their employees time off to attend the rally in front of Government. So you're on the right track. If the banks are offended, that's what I congratulate. Perhaps in this way they

will also pay taxes".<sup>25</sup> For his part, the Minister of Public Finance has stated that "I am telling multinational companies, who try to avoid paying taxes and duties, that they will have to respect Romania and pay these taxes as well as in the other countries".<sup>26</sup>

Significant efforts are being made in terms of increasing financial transparency, combating cross-border tax evasion and combating money laundering. The National Office for the Prevention and Combating of Money Laundering plays a significant role in this effort, and cooperates with authorities from other states in order to exchange financial information. According to the organisation's activity report, in 2016, 276 requests for information were received (involving 1,580 individuals and 533 legal entities) and 313 requests for information regarding suspicious money laundering transactions were sent to other foreign partner institutions (involving 349 individuals and 383 legal entities). Most requests for financial information were sent to partner institutions in Cyprus (36), Italy (32), Switzerland (24), USA (17), Germany (16), United Kingdom (14), British Virgin Islands), Israel (11) and Hungary (11).<sup>27</sup>

With all these efforts to increase transparency, bearer companies have survived so far. In fact, they are the only legal instrument that facilitates financial secrecy with regard to real owners of companies and allows the interposition of straw people. In the near future, important changes are expected in this regard.

**Author:** Assistant professor Ph.D. Mihai-Bogdan Afrăsinei, Faculty of Economics and Business Administration, Alexandru Ioan Cuza University of Iasi, Romania.

## Endnotes

1. <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-romaniahighlights-2018.pdf>; 3.7.2018. In Romania taxation does not apply at group level.
2. Law no. 227/2015 regarding the Fiscal Code, updated by Government Emergency Ordinance no. 79/2017 of 8 November 2017, available at: [https://static.anaf.ro/static/10/Anaf/legislatie/Cod\\_fiscal\\_norme\\_2018.htm#A24](https://static.anaf.ro/static/10/Anaf/legislatie/Cod_fiscal_norme_2018.htm#A24); 3.7.2018.
3. Ordinance no. 442/2016 of 22nd of January 2016, concerning the amount of transactions, the preparation terms, the content and conditions for requesting the transfer price file and the adjustment/estimation procedure of transfer prices.
4. Romania Transfer Pricing Country Profile, available at: [https://static.anaf.ro/static/10/Anaf/Prezentare\\_R/TP\\_Romania\\_EU.pdf](https://static.anaf.ro/static/10/Anaf/Prezentare_R/TP_Romania_EU.pdf); 3.7.2018.
5. <http://www.romaniacurata.ro/romania-risca-sa-fie-sanctionata-de-ue-pentru-ca-nu-supravegheaza-activitatile-ilicite-ale-firmelor-cu-actiuni-la-purtator/>; 3.7.2018.
6. <http://www.romaniacurata.ro/exclusiv-analiza-romania-curata-actiunile-la-purtator-protejeaza-mai-bine-decat-offshore-ul-vezi-lista-celor-384-de-asemenea-companii-din-romania/>; 3.7.2018.
7. [http://adevarul.ro/economie/stiri-economice/biris-despre-actiunile-purtator-tel-drumbanii-vor-besc-vada-fiscul-primit-dividende-facut-ele-1\\_5965bd6e5ab6550cb8051b7e/index.html](http://adevarul.ro/economie/stiri-economice/biris-despre-actiunile-purtator-tel-drumbanii-vor-besc-vada-fiscul-primit-dividende-facut-ele-1_5965bd6e5ab6550cb8051b7e/index.html); 3.7.2018; and <http://www.capital.ro/lista-primelor-20-de-firme-care-inregistreaza-actiuni-la-purtator-1.html>; 3.7.2018.
- 8 [https://adevarul.ro/economie/stiri-economice/roaction-actiunile-lapurtator-zilele-numarate-campanie-strangere-semnaturi-pentruinterzicerea-totala-1\\_5a004b475ab6550cb8de8087/index.html](https://adevarul.ro/economie/stiri-economice/roaction-actiunile-lapurtator-zilele-numarate-campanie-strangere-semnaturi-pentruinterzicerea-totala-1_5a004b475ab6550cb8de8087/index.html); 3.7.2018.
9. <https://www.digi24.ro/stiri/actualitate/politica/usr-propune-interzicerea-accesului-firmelor-cu-actiuni-la-purtator-la-contracte-publice-pregatim-falimentul-lui-dragnea-772842>; 3.7.2018.
10. <http://www.startupcafe.ro/taxe/eliminare-actiuni-purtator-firme.htm>; 3.7.2018.
11. <http://business-review.eu/news/romania-makes-first-step-toward-becoming-an-oecd-member-bearer-shares-will-be-eliminated-159629> ;3.7.2018.
12. [https://www.dcnews.ro/dna-administratori-de-firme-retinuti-pentru-evaziune-fiscala\\_497738.html](https://www.dcnews.ro/dna-administratori-de-firme-retinuti-pentru-evaziune-fiscala_497738.html); 3.7.2018; <http://www.monitorulcj.ro/actualitate/53606-mecanismul-prin-care-zeci-de-administratori-de-firme-din-cluj-au-reu%C5%9Fit-sa-in%C5%9Fele-statul-cu-15-milioane-de-euro#sthas-h.XOwO8GpM.dpbs>; 3.7.2018.
13. <https://www.onrc.ro/statistici/2017/septembrie/inmatriculari%20de%20persoane%20fizice%20si%20juridice%202017.xls>; 3.7.2018.

14. [http://adevarul.ro/locale/iasi/om-strazii-patron-fictiv-afaceri-milioane-lei-intrat-florin-parnica-intr-o-filiera-internationala-construita-ingropa-firme-1\\_5339246d0d133766a85f12c9/index.html](http://adevarul.ro/locale/iasi/om-strazii-patron-fictiv-afaceri-milioane-lei-intrat-florin-parnica-intr-o-filiera-internationala-construita-ingropa-firme-1_5339246d0d133766a85f12c9/index.html); 3.7.2018; and <http://romanalibera.ro/index.php/actualitate/proiecte-locale/oameni-ai-strazii-facuti-pesto-noapte-patroni-de-firme--46183>; 3.7.2018.
15. [http://www.hotnews.ro/stiri-presa\\_regionala\\_arhiva-1728656-bolnav-psihic-marioneta-pentru-frauda-pesto-120-miliarde-lei.htm](http://www.hotnews.ro/stiri-presa_regionala_arhiva-1728656-bolnav-psihic-marioneta-pentru-frauda-pesto-120-miliarde-lei.htm); 3.7.2018.
16. Emergency Ordinance No. 99 of 6 December 2006 on Credit Institutions and Capital Adequacy, Published in Monitorul Oficial al României, Part One, No. 1027 of 27 December 2006, available at: [http://www.bnr.ro/files/d/Legislatie/EN/E\\_OUG99\\_2006.pdf](http://www.bnr.ro/files/d/Legislatie/EN/E_OUG99_2006.pdf); 3.7.2018.
17. <http://www.mfinante.ro/pjuridice.html?pagina=domenii>; 3.7.2018.
18. <https://portal.onrc.ro/ONRCPortalWeb/ONRCPortal.portal>; 3.7.2018.
19. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0016&from=RO>; 3.7.2018.
20. [https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili\\_r/Conventii/Conventii.htm](https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm); 3.7.2018.
21. Ordinance No. 2309/2017 of August 1, 2017, available at: [https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF\\_2309\\_2017.pdf](https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_2309_2017.pdf); 3.7.2018.
22. Ordinance no. 4142/2017 of 28 December 2017, available at: [https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF\\_4142\\_2017.pdf](https://static.anaf.ro/static/10/Anaf/legislatie/OPANAF_4142_2017.pdf); 3.7.2018.
23. Emergency Ordinance No. 42/2017 of 9 June 2017, available at: [https://static.anaf.ro/static/10/Anaf/legislatie/OUG\\_42\\_2017.pdf](https://static.anaf.ro/static/10/Anaf/legislatie/OUG_42_2017.pdf); 3.7.2018.
24. <https://stirileprotv.ro/stiri/financiar/revolutia-fiscala-s-a-transformat-in-miercurea-neagra-guvernul-nu-cedeaza-desi-e-amenintat-cu-greva-general.html>; 3.7.2018.
25. <http://stirileprotv.ro/stiri/social/proteste-in-fac-a-sediului-guvernului-fac-a-de-revoluc-ia-fiscala-a-guvernului-psd.html>; 3.7.2018.
26. <http://stirileprotv.ro/stiri/financiar/ministrul-misa-multinationalele-vor-trebuie-sa-plateasca-impozite-si-taxe-in-romania-la-fel-ca-in-celelalte-tari.html>; 3.7.2018.
27. National Office for Preventing and Combating Money Laundering, Activity Synthesis for 2016, available at: <http://www.onpcsb.ro/pdf/sa2016.pdf>; 3.7.2018.

# ROMANIA

## PART 2: ROMANIA'S SECRECY SCORE

### OWNERSHIP REGISTRATION

- 46% 1. Banking Secrecy
- 38% 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
- 50% 8. Country-by-Country Reporting
- 100% 9. Corporate Tax Disclosure
- 75% 10. Legal Entity Identifier

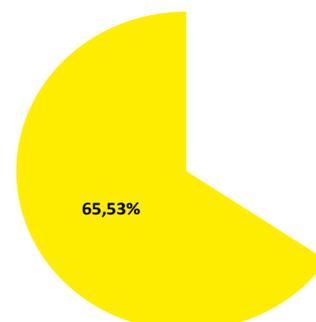
### INTEGRITY OF TAX AND FINANCIAL REGULATION

- 50% 11. Tax Administration Capacity
- 75% 12. Consistent Personal Income Tax
- 100% 13. Avoids Promoting Tax Evasion
- 100% 14. Tax Court Secrecy
- 50% 15. Harmful Structures
- 50% 16. Public Statistics

### INTERNATIONAL STANDARDS AND COOPERATION

- 49% 17. Anti-Money Laundering
- 21% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 7% 20. International Legal Cooperation

Romania - Secrecy Score



Romania 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 77 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each KFSI is explained in more detail by clicking on the KFSI on the right.

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 Andorra is available here: <http://www.financialsecrecyindex.com/database>.

To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrecyindex.com>.