

NARRATIVE REPORT ON GERMANY



PART 1: NARRATIVE REPORT

Overview

Germany is ranked 7 in the 2018 Financial Secrecy Index (FSI), based on a moderate secrecy score of 59.1 combined with a large global scale weight: Germany accounts for over 5% of the global market for offshore financial services.

The German government has had a mixed record in terms of taking on financial secrecy. Germany has in recent years taken important steps to fight tax evasion and money laundering both internationally and nationally. However, serious loopholes remain in national legislation and negligent enforcement of tax and anti-money laundering regulations still pose a threat to their effectiveness. At the same time, the German government has been ambiguous on public CbCR, and opposed public registers of beneficial ownership as well as unilateral automatic reporting of tax information to developing countries, insisting on reciprocal exchange. This opposition to true fiscal transparency is alarming as the involvement of civil society and the access to information by countries most harmed by illicit outflows are crucial for an effective fight against illicit financial activities.

History

Frankfurt, Germany’s modern financial powerhouse, was one of the most important cities in the Holy Roman Empire, and for much of that time it was the most economically powerful city in the region. Its pre-eminence waxed and waned over ensuing centuries but received a major boost in the late 16th Century when Spanish soldiers plundered Antwerp, prompting many merchants to flee to Frankfurt, and launching its first real financial boom from 1585 (p. 308¹). Further inflows of French Huguenots a century later helped cement the city’s financial role.

Frankfurt suffered in the first half of the 20th Century, and even in the early 1950s it was probably eclipsed by Düsseldorf which was closer to Germany’s industrial heartland, the Ruhr. It only regained prominence from 1957, when Germany’s central bank was set up with its headquarters in Frankfurt. The same year Dresdner Bank and Deutsche Bank also chose to set up their headquarters there, marking the financial centre’s rebirth.

In the 1960s and 1970s, German banks, faced with strong domestic regulations and capital controls, shifted substantial operations abroad, particularly into the deregulated “Euromarkets”² – notably the City of London and Luxembourg (see their respective offshore histories [here](#)³ and [here](#)⁴) undermining the tight administrative controls over cross-border financial flows and speculative activity of the Bretton Woods system. Deutsche Bank and other German banks became heavily involved in the recycling of Petrodollars during and after the OPEC oil crisis th-

Rank: 7

Chart 1 - How Secretive?

59
Secrecy Score

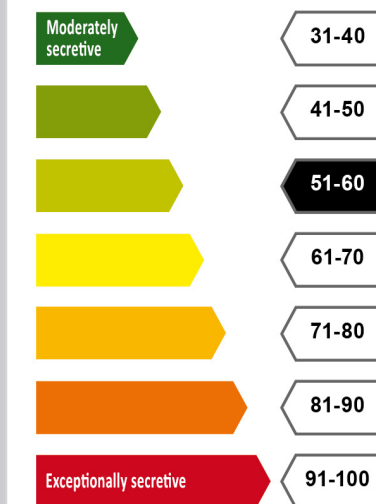
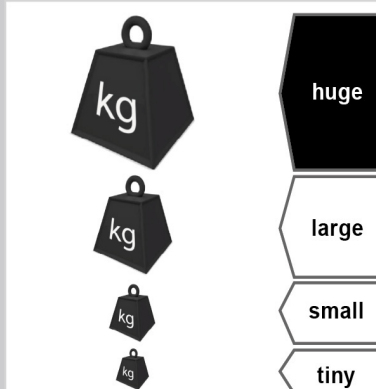


Chart 2 - How Big?



Germany accounts for more than 5 per cent of the global market for offshore financial services, making it a huge player compared with other secrecy jurisdictions.

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

Full data on Germany is available here: <http://www.financialsecrecyindex.com/database>.

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

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rough their London offices. They thus grew into global financial powerhouses, spreading their activities worldwide and, as they grew in strength, lobbied at home for financial liberalisation too. This, in turn, helped attract global banks and by the mid-1980s, 40 of the world's top 50 banks had a presence in Frankfurt and four fifths of foreign banks in Germany had chosen Frankfurt as their base ([p. 178 of European Banks and the American Challenge](#)⁵).

The presence of strong industrial sectors in Germany, such as the motor vehicle industries, has so far provided for powerful counter-lobbies and restricted the dominance by finance that has been achieved in other countries such as the United Kingdom. Nevertheless, in light of the Brexit, Frankfurt is actively promoting itself as the European financial centre to attract investment and jobs from London.

Germany takes action against foreign tax havens

Due partly to its proximity to traditional tax havens such as Switzerland and Luxemburg, Germany has a relatively high share of its wealth held offshore – Zucman et al. (2017) estimate it at 16% compared to a world average of 9.8%. It also has a long record of resistance against foreign tax haven activity dating back till at least 1931 when Germany issued a regulation to defend against tax erosion by Liechtenstein foundations ([p. 263](#)⁶), which were becoming increasingly popular among wealthy German individuals. That same year, German tax inspectors and intelligence officers were caught in Switzerland trying to access data held by Swiss bankers on German evaders.

The government's "Tax Haven Report" ("[Steueroaussenbericht](#)"⁷) of 1964 raised fresh concerns and the relocation of a prominent tycoon (Helmut Horten) to Switzerland and the tax free disposals of his company assets from there resulted in a new law in 1972 (Außensteuergesetz) with a range of measures aimed at stemming tax flight, including new legislation on controlled foreign corporations, aimed at curbing the effects of corporate tax haven activity. The law continues in force with several amendments but due to intensive tax planning and due to restrictions by EU law the resulting tax collections remain very small.

Germany as an offshore centre and intra-German tax competition

In the 1980s Germany's role grew more ambiguous when it openly began to enact its own tax haven strategies, simultaneous with attempts to defend against foreign tax havens. For instance, in 1984 it abolished a tax on state bonds levied on non-residents ("Couponsteuer"), enabling tax evaders to invest free of cost in Germany's financial system ([p. 264](#)⁸).

Meanwhile, attempts by the constitutional convention after the Second World War to create a central tax administration had been thwarted by fierce opposition from Allied powers. The result was a fragmented tax administration accountable to each of the now 16 Bundesländer (subnational states of Germany), but not to the central government. This has created a badly flawed incentive structure: the 16 states bear the costs of tax administration and tax audit, but they have to pass on much of the extra tax revenue to other states or central government. This led to ruinous intra-German '[tax wars](#)'⁹: a race to the bottom inside Germany, mainly on lax enforcement, auditing and the hiring and staffing of local tax authorities. This kind of laxity is another classic 'tax haven' staple.

Tax rates are also subject of intra-German competition at the parish level. The municipalities have some freedom to set a component of the corporate tax, the "business tax" known as Gewerbesteuer, which now represents approximately two thirds of the corporate tax rate on average. As a result, tiny German municipalities such as Norderfriedrichskoog in the far north near the Danish border with fewer than 50 inhabitants or Ebersberger Forst near Munich turned themselves into miniature internal German corporate tax havens by setting their rate for Gewerbesteuer at 0%.

By the early 2000s Norderfriedrichskoog had become the place of incorporation to over 300 companies, including affiliates of Deutsche Bank, Eli Lilly & Co., Lufthansa and the German utility E.ON. The commune hosted just a handful of farmsteads and the commune was treated to the regular spectacle of corporate limousines trailing along muddy tracks to have 'meetings' in makeshift boardrooms built at the backs of farms, in order to be able to have just enough 'presence' and 'substance' to be allowed

to qualify for the Norderfriedrichskoog tax rate. In 2004, as this situation began to get out of hand, the laws were changed to enforce a minimum tax rate of roughly seven percent for the Gewerbesteuer, reducing the incentive to perform such tax gymnastics. Nevertheless parishes in structurally weak regions or around big cities continue to attract corporate business through lower tax rates, exemplified by Deutsche Börse's [relocation from Frankfurt to nearby Eschborn](#)¹² in 2010 which helped to cut its tax rates sharply.

The German offshore financial centre today: no classic banking secrecy but much else

Although Germany does not practice banking secrecy like neighboring Switzerland, regulative loopholes, lax enforcement especially for non-residents, and in general, a strong emphasis on confidentiality of tax information have made it an attractive destination for illicit and questionable flows in the past.

Legal reforms have left important loopholes

Several new laws have been adopted to fight tax evasion and avoidance as well as money laundering. These include a ban on newly issued bearer shares, a law to fight tax avoidance with the help of shell companies¹³ by introducing or tightening reporting obligations for national taxpayers and intermediaries and abolishing remaining bank secrecy, and the implementation of the 4th anti-money laundering directive with a register of beneficial ownership for companies and trusts. These reforms represent important steps for a fairer tax system but also included several short-comings and loopholes.

Unregistered bearer shares continue to exist in Germany

The government has reformed the law on stock companies to limit the use of bearer shares which allow for anonymous transfers of shares and may thus be used to obscure legal and beneficial ownership. However, the ban of bearer shares only holds for newly issued shares. There is no deadline of registration for existing bearer shares which might increase demand for already existing shell companies¹⁴. Furthermore, the ban of bearer shares does not apply for bearer shares held in collective custody.

The German beneficial ownership register fails to provide true transparency

With the adoption of the 4th AMLD and based on its provisions, the definition of beneficial ownership was watered down so that in cases where no beneficial owner can be identified, a legal representative or managing partner can be listed as the beneficial owner instead.¹⁵ A further weakness is that the obligation to report to the central registry will only be placed on companies or shareholders, where the companies are directly controlled by the beneficial owner. In situations of indirect control, for instance where beneficial ownership is held through several layers of legal entities, the German legal entity will have no obligation to identify the ultimate beneficial owner. Instead, the obligation is placed on the beneficial owner to report her- or himself. Also, the initial proposal to give public access to the register was finally dropped. Access is now restricted to public authorities, banks and those with a legitimate interest.¹⁶

The new reporting obligations for ownership of shell companies have serious flaws.

The new reporting obligations for banks and other intermediaries assisting in setting up shell companies were limited to companies created outside of the EU and the European Free Trade Association (EFTA), failed to include important intermediaries such as lawyers and tax consultants, and carry only very limited fines and no statistical reporting requirements for the German government to check the success of the law's implementation.

No transparency for civil society and poor countries

German companies have to publish their annual accounts in a central depository that is accessible free of charge. Nevertheless, a significant share of companies, including some of the biggest, as well as foundations and other legal vehicles are exempted from the duty to publish profits and tax payments. Germany implemented the internationally agreed reforms such as automatic exchange of information and (non-public) country-by-country reporting for multinationals. These are important steps towards more fiscal and financial transparency. As of December 2017, Germany has entered into bilateral exchange agreements with 63 jurisdictions, among which are very few poor countries (however, this

reflects the current signatory status of the OECD multilateral agreement). The government insists on reciprocity which means that insufficiently equipped tax administrations of poorer countries might not get access to the data. Germany has repeatedly opposed making CbCR data public, accompanied by strong lobbying of the association of family companies (Stiftung Familienunternehmen) claiming a danger to German competitiveness and jobs¹⁷.

Law enforcement problems

Tax enforcement suffers from understaffing and fragmented regional systems of tax collection.

The German tax authorities have been criticised for their fragmented, low-tech and under-resourced approach to collecting tax, especially from wealthy people, and for having inadequate means to deal with large taxpayers. Decades of cut backs in the public sector have produced a situation of lax tax enforcement in Germany. Under these circumstances, it is questionable how administrations will effectively process the information collected through the automatic exchange of information on financial accounts. The service sector trade union ver.di estimates that tax authorities lack 16,000 employees of which 3,000 tax auditors and 500 tax investigators. Staff policy is left to the regional governments with the result that lax tax audit policy caused by understaffing might even be part of a strategy of hidden tax competition. For example, despite its relatively low number of audits and repeated claims of understaffing of its tax agencies¹⁸, the economically important state of Bavaria has not increased the number of tax auditors it employs since 2016.¹⁹ In Berlin, the number of tax audits of people earning more than a million a year declined significantly over the last decade. In 2016, only eleven tax audits among its 489 income millionaires were conducted even though audits had on average yielded additional revenues of more than €80,000 per audit throughout the last decade.²⁰ Another problem is the fragmented regional system of tax collection and tax IT which hinders interregional exchange of information. A recent reform, shifting competencies to the federal state, aimed to speed up standardisation but has not delivered so far. In addition, binding federal guidelines for the staffing of the regional tax authorities still do not exist.

Restructuring the Financial Intelligence Unit

Like other growing economies, Germany seems to attract substantial money laundering activities. A recent study by professor Kai Bussmann for the German Federal Ministry of Finance estimated that more than €100 billion were laundered in Germany in 2014. Anti-money laundering supervision used to be criticized for being highly fragmented among more than 100 different agencies, which often lacked the required capabilities to enforce AML rules effectively.

In 2016, the government decided to move the financial intelligence unit dealing with reported suspicions of money laundering from the Federal Criminal Police Office to the Federal Customs Authority with oversight moving from the Ministry of the Interior to the Ministry of Finance. As part of a broader reform that aims at making the authority's work more effective, the number of employees was increased from 25 to 50 and a further increase was announced to 165 until 2018.²¹ This would be a welcome reaction to serious staff shortages that prevented an effective processing of suspicious transaction reports in the past. It is not clear, if the announced reforms and staffing increases will meet the requirements of a rising workload. The number of suspicious transaction reports has significantly increased over the last years, reaching 40,690 in 2016²²; however, only 249 (0.6 %) of them came from the non-financial sector, showing a strong compliance deficit there.

Prosecution issues

Major tax evasion ("Steuerhinterziehung in besonders schweren Fällen") is not a predicate crime for money laundering purposes in Germany. This implies that banks may easily accept money stemming from tax evasion, especially if committed abroad. In addition, the relatively low fines and low number of convictions relating to failures to prevent money laundering by banks and other institutions point to weaknesses in the policing of anti-money laundering rules. The influx of dirty money is facilitated by a narrow set of predicate offenses for money laundering. For instance, tax fraud is only covered if it is committed commercially or as part of a criminal network, and therefore many tax crimes would not expose a banker to the risk of money laundering charges.

In many court cases in tax matters, the public is excluded from court deliberations and sentences are rarely published with recourse to data privacy. Money laundering fines are not published by the authorities. Consequently, there are no comprehensive public statistics about the number of money laundering and tax evasion convictions in Germany. The lack of public statistics on the work of enforcement and prosecution authorities makes it difficult to evaluate if progress has been made due to legal or organizational reforms or new sources of information. Similarly, Germany is more secretive about the outcome of its freezing and related anti-money laundering audits than Switzerland and the United Kingdom.

Finally, Germany played a key role in 2013-2014 in weakening proposed EU rules to require the public naming and shaming of people or institutions found to be breaking anti-money laundering rules. As a result naming such offenders is not always obligatory.

The strategy adopted some German states of purchasing data from whistleblowers (especially from Swiss Banks) and more recent data from the Panama Papers has allegedly led to substantial additional tax revenue. However, robust data on the results of those purchases have not been published so far by the [German authorities](#)²³. More importantly, the results of these data purchases, in terms of criminal prosecutions, are largely unknown.

There are no comprehensive public statistics about the number of money laundering and tax evasion convictions in Germany. At least, the FIU reports the results of the suspicious transaction reports, with roughly 1 % (447) of the reports having resulted in court convictions, penalties or indictments in 2016. The financial regulator BaFin overwhelmingly outsources supervision of the implementation of anti-money laundering rules to private auditing firms, which raises serious questions about conflicts of interest. At least, they recently announced to build up own resources in the future.

Tax scandals shake confidence in the legislature

The final report by the committee of inquiry on the “cum ex” and “cum cum” share scandals shed light on the influence of business lobbies in drafting national legislation. Over several years, the government had proven itself incapable of closing a tax loophole

for super-rich investors who managed to extract billions of tax revenues with a trick related to short sales of shares around the dividend record date and claiming a tax refund twice. It turned out that a legislative change, ineffective in addressing the problem, had been drafted by the banking association and had been uncritically adopted by the government which consequently, continued to lose revenues for years. However, based on evidence from leaked CDs of data showing that banks have intentionally set up the schemes, courts have finally tended to rule that the “cum ex” deals have not been legal based on the law at that time. In the “cum cum” scandal, German banks collaborated with foreign investors to avoid billions of taxes due and share the profits from the trade. In total, estimated tax losses due to “cum ex” and “cum cum” accumulated to about €32 billion.²⁴

The scale of Germany illicit financial flows

According to the [latest report](#)²⁵ by the Financial Action Task Force (FATF) in 2010, Germany hosted over US\$1.8 trillion in deposits by non-residents and boasted 3,400 financial institutions of various kinds, mainly commercial banks, savings banks and co-operative banks. In his book [Tax Haven Germany](#)²⁶, TJN researcher Markus Meinzer calculated that the amount of tax exempt interest bearing assets by non-residents in the German financial system ranged between €2.5 trillion to over €3 trillion in August 2013.

Over the last 10 years, Germany has confiscated approximately €6 million per year from the Italian mafia but evidence points to the fact that this is just a tiny fraction of the total²⁷ and completely insignificant compared to the €100 billion estimated to be laundered in Germany every year. Following the Arab spring, Germany froze billions of dollars' worth of assets from countries such as Libya, Tunisia or Egypt, raising the question of how they managed to get to Germany unchecked. Germany has lagged behind other European partners such as France or Switzerland, in pursuing illicit funds from overseas kleptocrats and has played rather an obstructive role when the European Union sought to set up European financial sanctions.

The degree to which German companies are involved in global profit shifting and tax avoidance is not known. All large German listed companies (“DAX 30”) have tax haven subsidiaries, some even many.

Several studies have found indications of profit shifting²⁸. Also, a case study of the German chemical giant BASF from 2016 estimated that BASF avoided approximately €200 million (or 10% of the taxes due) per year between 2010 and 2014, mainly through its operations in the Netherlands, Switzerland, Puerto Rico and Malta.

¹ http://books.google.ch/books?id=UAY9ugffPX-QC&pg=PA276&lpg=PA276&dq=germany+financial+centre+1985+liberalisation&source=bl&ots=YOSUbeD97&sig=RCginmi48IBQhSwJ-39jf7j1Kpl&hl=en&ei=WsOBTs62DIroOerXkTk&sa=X&oi=book_result&ct=result&resnum=1&ved=0CBwQ6AEwAA

² https://www.jstor.org/stable/4177309?seq=1#page_scan_tab_contents

³ <http://www.financialsecrecyindex.com/PDF/UnitedKingdom.pdf>

⁴ <http://www.financialsecrecyindex.com/PDF/Luxembourg.pdf>

⁵ https://books.google.lu/books?id=tNGfPZvXa-MC&dq=isbn:0199250278&redir_esc=y&hl=de

⁶ <https://www.chbeck.de/meinzer-steueroase-deutschland/product/13657015>

⁷ <http://dipbt.bundestag.de/doc/btd/04/024/0402412.pdf>

⁸ <https://www.chbeck.de/meinzer-steueroase-deutschland/product/13657015>

⁹ www.taxjustice.net/topics/race-to-the-bottom/tax-wars/

¹⁰ Since 2006, the central tax administration office (Bundeszentralamt für Steuern, BZSt) formally has a right to initiate a tax audit at a company ("Bundesbetriebsprüfung"), when Federal-level officers may accompany state officers for an audit, and also has hired significant new staff. However, the central tax office lacks a database to identify companies, and the current central government has taken the position that it does not have the right to initiate audits: only to accompany state auditors on their audits. Confidential documents from the national audit office in 2011 and 2014, seen by TJN, reveal that tax audits have almost never been initiated by BZSt.

¹¹ The parishes are allowed to set the rate for the Gewerbesteuer as low as seven percent. Combined with the federal corporate tax rate of 15% this would result in a minimum tax rate of roughly 22%. On average, however, the combined tax rate is around 30%.

¹² <https://www.ft.com/content/005bd7e6-43a0-11dd-842e-0000779fd2ac>

¹³ „Gesetz zur Bekämpfung der Steuerumgehung und zur Änderung weiterer steuerlicher Vorschriften“ available at: http://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Verordnungen/2017-06-24-StUmgBG.html

[gen/2017-06-24-StUmgBG.html](http://www.bundesfinanzministerium.de/Content/DE/Gesetzestexte/Gesetze_Verordnungen/2017-06-24-StUmgBG.html)

¹⁴ <https://community.beck.de/2015/12/03/zur-ckdr-ngung-der-inhaberaktie>

¹⁵ <https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency>

¹⁶ Markus Meinzer, 'Germany rejects beneficial ownership transparency', Tax Justice Network, 18 May 2017, accessed 5 September 2017, <https://www.taxjustice.net/2017/05/18/germany-rejects-beneficial-ownership-transparency>.

¹⁷ Handelsblatt, 18.09.2017 "Angriff auf die deutsche Wirtschaft"

¹⁸ <http://www.spiegel.de/wirtschaft/soziales/steueroase-deutschland-von-markus-meinzer-die-oase-lebt-a-1052334.html>

¹⁹ https://www.bayern.landtag.de/www/ElanTextAblage_WP17/Drucksachen/Schriftliche%20Anfragen/17_0014893.pdf

²⁰ <http://www.linksfraktion.berlin/uploads/media/S18-11123.pdf>

²¹ <http://mafianeindanke.de/im-kampf-gegen-geld-waesche-und-terrorismusfinanzierung-die-fiu-wechselt-zum-zollkriminalamt>

²² FIU Deutschland Jahresbericht 2016. <https://www.bka.de/SharedDocs/Downloads/DE/Publikationen/JahresberichteUndLagebilder/FIU/Jahresberichte/fiu-Jahresbericht2016.html;jsessionid=C3D3466E8D018ED-D77A19A334D3CAB62.live0612?nn=28276>

²³ <https://www.chbeck.de/meinzer-steueroase-deutschland/product/13657015>

²⁴ Zeit Online 2017, 'Staat verlor mindestens 31,8 Milliarden Euro', Zeit Online 7 June 2017, accessed 03 Aug 2017, <http://www.zeit.de/wirtschaft/2017-06/cum-ex-geschaefte-steuerhinterziehung-banken-aktien>

²⁵ <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Germany%20full.pdf>

²⁶ <https://www.chbeck.de/meinzer-steueroase-deutschland/product/>

²⁷ <http://mafianeindanke.de/einebundestags-anfrage-der-gruenen-zeigt-wie-wenig-die-bundesregierung-ueber-die-italienische-mafia-deutschland-weiss-und-die-zahlen-die-sie-hat-sind-alarmierend>

²⁸ See e.g. Stefan Bach (2013): Unternehmensbesteuerung: Hohe Gewinne – mäßige Steuereinnahmen. DIW Wochenbericht 22+23/2013, DIW, Berlin, S. 3-12. https://www.diw.de/documents/publikationen/73/diw_01.c.421907.de/13-22-1.pdf. Shafik Hebous / Alfons Weichenrieder (2014): What Do We Know About the Tax Planning of German-Based Multinational Firms? WU International Taxation Research Paper Series No. 2014 – 15. October 2014. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2521387. WEED (2017): Aktivität deutscher Großunternehmen in Steueroasen/Schattenfinanzplätzen und Investitionen darüber in Entwicklungs- und Schwellenländer sowie in deren Sonderwirtschaftszonen. http://www2.weed-online.org/uploads/tabelle_aktivitaet_deutscher_grossunternehmen.pdf

PART 2: GERMANY'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 50% 1. Banking Secrecy
- 88% 2. Trust and Foundations Register
- 100% 3. Recorded Company Ownership
- 100% 4. Other Wealth Ownership
- 95% 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

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

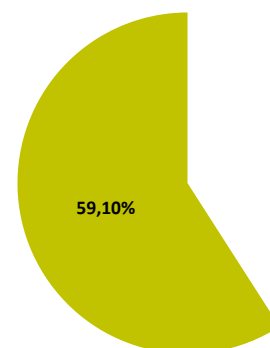
INTEGRITY OF TAX AND FINANCIAL REGULATION

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

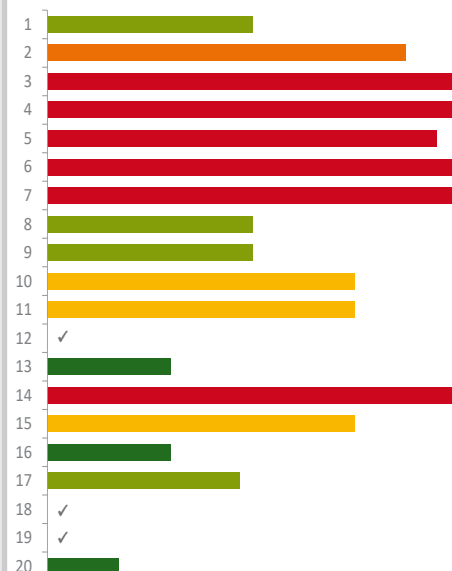
INTERNATIONAL STANDARDS AND COOPERATION

- 47% 17. Anti-Money Laundering
- 0% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 18% 20. International Legal Cooperation

Germany - Secrecy Score



Germany 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 59 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 indicator.

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

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