

NARRATIVE REPORT ON AUSTRIA



PART 1: NARRATIVE REPORT

Austria is ranked at 36th position on the 2020 Financial Secrecy Index, based on a moderate secrecy score of 57, and a small scale weighting of 0.54 per cent of the global market for offshore financial services. The secrecy score increased a bit, from 56 in the 2018 Financial Secrecy Index.

Austria: 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 wealth 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 money of questionable origin.

According to media reports, in 2019 dubious links of the Austrian Raiffeisen Zentralbank were detected in the wake of the “Troika-Leaks”,¹ whereby leaked papers from the Latvian Bank Ukio showed that Russian money of suspicious origin was channeled into western banks.² Austria was also affected by the so-called Cum-ex tax scandal, causing a damage of (at least) 108 million Euro.³ In November 2019, the European Central Bank (ECB) revoked the banking license of the Anglo Austrian Bank, formerly Meinel Bank, because of failures to comply with anti-money laundering rules. In cooperation with banks from Lithuania, Latvia and above all Ukraine, Meinel Bank helped to channel 500 million Euros out of these countries to offshore letterbox companies, by using back-to-back loans. Through Meinel Bank Antigua (officially independent from its Austrian holding since 2011), the Brazilian construction company Odebrecht bribed politicians and civil servants in several Latin American and African countries until 2014, in order to obtain public contracts.⁴ The decision of the ECB to revoke the AAB’s banking license was temporarily annulled by the European Court of Justice, but reinstated in February 2020.⁵

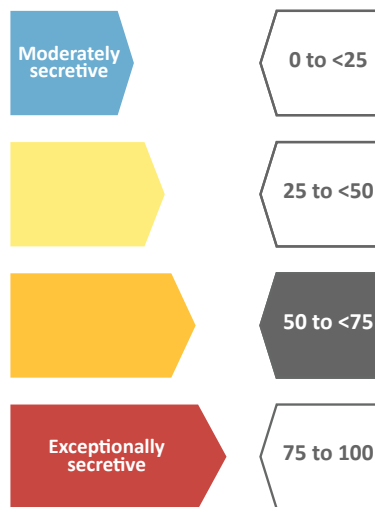
Austria came close to receiving a disastrous rating when the country’s anti-money laundering system was reviewed by the Financial Action Task Force (FATF) in 2016, but Austria avoided the grey list.⁶ As a reaction to international criticism, a first Money Laundering/Terrorist Financing National Risk Analysis was undertaken in 2015. It found terror financing and proliferation risks (especially for dual use goods) as well as offshore risks to be “high”, and risks for laundering of proceeds from illegal drugs and corruption to be “medium to high”.⁷ Particularly cases where proceeds from corruption were laundered in Austria gained in importance.⁸

Austria has in the past often sided with other European and associated tax havens – notably Luxembourg and Switzerland⁹ – in efforts to slow or derail European efforts to improve transparency through mechanisms such as the European Savings Tax Directive. Yet Austria 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.

Rank: 36 of 133

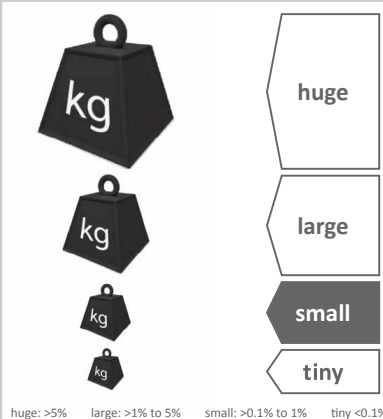
How Secretive?

57



How big?

0.54%



Austria accounts for 0.54 per cent of the global market for offshore financial services. This makes it a small player compared to other secrecy jurisdictions.

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

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

To find out more about the Financial Secrecy Index, please visit

<http://www.financialsecrecyindex.com>.

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However, despite some progress in these areas, Austria has been hesitant to embrace reforms for more transparency. Austria's last Conservative-Freedom Party coalition government that ended in May 2019, was against public country by country reporting, as were previous governments.¹⁰ Only in December 2019 did the Austrian parliament try to force the government to change its position on this matter.¹¹ It has to be seen whether the new Conservative-Green government will really follow the parliament's opinion.

Large companies in Austria are known to prefer secrecy over transparency. A Deloitte study found that Austrian companies, in comparison to those in other North Western European countries, provide little voluntary information on their tax governance and tax strategies: "In Austria tax transparency is governed by the principle of secrecy in tax matters." The study therefore recommended: "Austrian companies will do well to observe the extent of tax information included in Financial Statements by their peers across North West Europe."¹² It seems that Austria has still not overcome its "traditional" resistance to transparency.

Remaining sources of risk for illicit financial flows in Austria

Austria has many problem areas that provide for or are caused by significant financial secrecy.

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.¹³ A similar withholding tax agreement with Liechtenstein was not cancelled.¹⁴ These anonymous withholding tax agreements help maintaining secrecy for cross-border financial investments mainly of high net worth individuals.¹⁵ In 2019, the Audit Court criticized that Austria receives less information than the other EU Member States because of the bilateral agreement, and recommended a revision.¹⁶

Contrary to all other EU member states, Austria concluded a Model 2 agreement with the USA under the Foreign Account Tax Compliance Act (FATCA) in 2014. Only Switzerland, Japan, Chile and Bermudas had concluded the same agreement that does not foresee a reciprocal exchange of information of tax data. Because of the resulting sharp increase in US group information requests, the Austrian authorities were faced with a considerable administrative burden. Meanwhile, Austria has repeatedly, and unsuccessfully, asked the US authorities to

start negotiations on the (reciprocal) Model 1 agreement.¹⁷

Austria also has problems with the exchange of tax information with other countries because there is no uniform tax number (TIN) within the EU. But Austria has additional problems too, because its national TIN is tied to the tax office and not to the taxpayer.

The number of requests for mutual assistance has increased considerably in recent years. According to the Audit Court, between 2009 and 2017 the number of requests to Austria increased by 444% to 1,327 – only on direct taxation. Inquiries mainly came from Switzerland and the US. In the same period, Austria's requests rose by 87% to 622. Due to the start of the automatic exchange of information, and the resulting additional requests for supplementary data, figures are likely to increase in the coming years. In addition to the lack of human resources (see below), tax authorities are also struggling with delayed responses, including from EU Member States. According to the Audit Court, particularly Ireland, the Netherlands, Luxembourg, Cyprus, Turkey and Japan took their time to respond.¹⁸

Austria has implemented the 4th EU Anti-Money Laundering Directive (AMLD) and has set up a beneficial ownership register¹⁹ that came into force on 15 January 2018. It is operated by the Business Service Portal and is only completely accessible by designated persons 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. No beneficial owners who own less than 25 per cent of a company, foundation etc. will be registered, and if no beneficial owners can be identified, a senior manager or board member can be registered.²⁰ By implementing the 5th EU Anti-Money Laundering Directive, also non-designated persons will have access to some beneficial ownership data, from 10 January 2020 onwards (see below).²¹ However, the register would only be truly public if the data were published in a "open data" format (no fees, no registration, clear presentation, machine-readable data, no restrictions on data access, and searchability of all data). The lack of transparency may not be the only problem. Especially Treuhand arrangements may still be a matter of concern. According to the Financial Market Authority, difficulties arise in identifying beneficial owners in the case of complex structures, and where Austrian ownership is only connected to a bank account or a company. In addition, it is

difficult to determine the beneficial owners of companies where the trustees are lawyers and notaries.²² Furthermore, bearer shares are still a barrier for updating ownership information for some companies in Austria.²³

When amending the Beneficial Ownership Register Act in July 2019, it was also decided that in the future official representatives (notaries and attorneys) can send so-called compliance packages to the register authority. Those shall make it easier to identify and verify beneficial owners. However, the Austrian FIU, the police, the public prosecutor's office and the courts can only have access to these compliance packages under certain conditions. The Audit Court was not granted any in-depth access to the data, although the Court claimed to have a constitutional right.²⁴

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 access this information. For that reason, countries which have significant fees to access information receive a lower score in the FSI.

The Austrian tax treaty network is still an issue of concern, because low or no withholding taxes on royalties, interest and dividends may have negative impacts 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.²⁵

Austria signed the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Instrument", MLI) in 2017. It may be applied to existing agreements as from 2019. However, Austria made a lot of reservations to the Agreement and has also excluded many treaty partner countries. The MLI's effect on Austria's treaty network will therefore be limited at best.

Austria's previous Conservative-Freedom Party government wanted to decrease the corporate income tax rate from 25 to 23 per cent by 2022/23 and 21 per cent in a second step,²⁶ thereby further fueling the international race to the bottom in corporate taxation. The target of decreasing the

tax rate to 21 per cent can be found again in the programme of the new conservative-green government.²⁷

Austria still allows companies to consolidate foreign losses with domestic profits for tax purposes. The Audit Court estimated that €450m is lost to tax allowances for corporates each year, nearly all of it being due to Group Taxation.²⁸ The Finance Ministry latest estimates were € 200m.²⁹

In November 2019, the EU-Commission decided to take legal action against Austria (and Ireland) because Austria still has not implemented the interest limitation measure as required by the EU Anti-Tax Avoidance Directive. The Commission had disagreed with the Austria's notion that its national rules were 'equally effective' to the EU rule, and transposition could therefore be postponed until the end of 2023.³⁰

Implementing internationally agreed transparency rules requires sufficient qualified and dedicated staff. More officials are needed, and they have to be trained well. According to the Audit Court, however, these requirements were not taken into account in the previous years. Not only has the number of planned positions in the tax and customs administration been reduced – approved positions have not even been appointed. The Court criticizes the fact that these cuts will reduce the frequency and quality of tax audits. In addition, less information received from other countries can be reviewed and processed, potentially creating a "data graveyard".³¹

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. Furthermore, not all verdicts by civil nor by criminal tax courts are not always published. 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.

Notable improvements that reduce the risks for illicit financial flows

Austria levies a digital advertising tax of 5 per cent for large tech companies (revenues over €750

million, revenues from online ads over €25 million), starting 1 January 2020.³² But revenues might be meager, and a part of them will be diverted to media companies and will not flow into the general budget.

As mentioned above, the Austrian beneficial ownership registry will be publicly accessible from 10 January 2020 onwards. Data about legal entities, their direct and indirect beneficial owners and the owners' residence countries, as well as the nature and scope of the ownership (equity, management, form of control etc) can be accessed. Trusts and Treuhand arrangements that are sufficiently similar in their 'functioning and structure' to ordinary trusts fall under the scope of the Beneficial Ownership Register Law.³³ This is a welcome step forward, since Treuhands have previously raised concerns.³⁴ The Ministry of Finance is obliged to publish an ordinance, specifying exactly what a "trust-like arrangement" is. However, the regulation is in no way more ambitious than the 5th EU Anti-Money Laundering Directive, and access to the registry will not be free of charge.

Austria will take part in the EU-wide automatic exchange of information on aggressive cross-border tax planning arrangements, starting 1 July 2020. While this directive obliges mainly intermediaries to report schemes, the reporting obligation is transferred to the taxpayer if intermediaries are bound by their legal professional privilege.³⁵ If reporting obligations fall either on only intermediaries or taxpayers, the difficult question of what constitutes reportable schemes may lead to underreporting as there are little detection risks of schemes that are in a grey zone.³⁶ Furthermore, conditioning reporting obligations of taxpayers on third party behavior (such as professional secrecy of intermediaries of a specific scheme) may result in a systematic failure to report as it might be easier to claim ignorance about the conditions affecting third parties.

Austria has implemented a Controlled Foreign Company regime in 2018, implementing a part of the EU Anti-Tax Avoidance Directive from 2016. The CFC rules will be applied to low-taxed (below 12.5 per cent) passive income.³⁷

With thanks to Martina Neuwirth, [VIDC](#)

Endnotes

- 1 See The Guardian: Troika Laundromat <https://www.theguardian.com/world/series/troika-laundromat>; 07.11.2019.
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- 15 <https://www.taxjustice.net/2014/02/18/swiss-rubik-secrecy-deal-lets-make-sure-nails-stay-coffin/>; 12.2.2020.
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- 19 Bundesgesetzblatt, 'Wirtschaftliche Eigentümer Registergesetz – WiEReG sowie Änderung des Finanzmarkt-Geldwäschegesetzes, des Finanzstrafgesetzes, der Notariatsordnung, der Rechtsanwaltsordnung, des Devisengesetzes, des Bankwesengesetzes, der Bundesabgabenordnung, des Finanzmarktaufsichtsbehördengesetzes und des Energieabgabenvergütungsgesetzes', BGBl. I Nr. 136/2017, <https://www.ris.bka.gv.at/Dokumente/>

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31 Rechnungshof Österreich (2019): Internationaler Informationsaustausch in Steuerangelegenheiten, Reihe BUND 2019/33, p. 97 f.

32 Bundesgesetzblatt, Abgabenänderungsgesetz 2020 – AbgÄG 2020, Artikel 1 (Digitalsteuergesetz 2020), BGBl. 91/2019, <https://www.ris.bka.gv.at/eli/bgbl/I/2019/91/20191022>; 08.11.2019.

33 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>; 13.11.2019.

34 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").

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PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

- 50 1. Banking Secrecy
- 63 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
- 50 7. Public Company Accounts
- 50 8. Country-by-Country Reporting
- 100 9. Corporate Tax Disclosure
- 75 10. Legal Entity Identifier

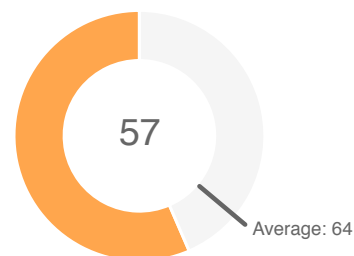
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 53 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

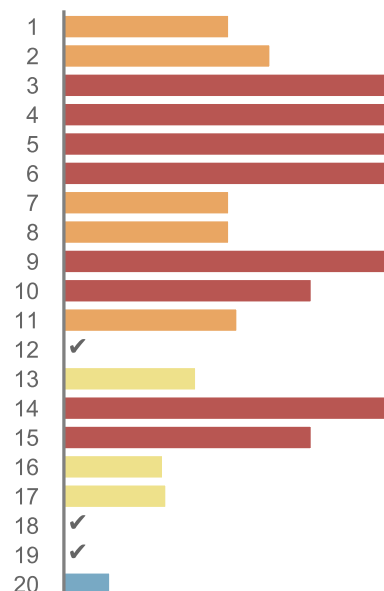
INTERNATIONAL STANDARDS AND COOPERATION

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

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click [here](#) to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: <http://www.financialsecrityindex.com/database>.

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