Key Corporate Tax Haven Indicators

Haven Indicator 11:

Robust local filing of country-by-country reporting

What is measured?

This indicator assesses whether a jurisdiction ensures its own access to the country-by-country reports of any relevant[1] foreign multinational enterprises with domestic operations. This is set within the context of country-by-country reporting related to Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project Action 13.[2] Access is ensured if the jurisdiction requires country-by-country reports to be filed locally by the local subsidiary or branch of a foreign multinational enterprise whenever the jurisdiction cannot obtain these reports through the automatic exchange of information. This goes beyond the legal framework proposed by the OECD in the model domestic legislation for country-by-country reporting. The OECD's framework allows a jurisdiction to require local filing only in specific circumstances.

Table 11.1. Scoring Matrix Haven Indicator 11

Regulation	**Haven Score Assessment** [Haven Score: 100 = maximum risk; 0 = minimum risk]
<u>Access to country-by-country reports is not ensured</u> The jurisdiction abides by the OECD's legal framework and requires local filing of country-by-country reports only when authorised by the OECD, if local filing is required at all; or unknown.	100
<u>Access to country-by-country reports is ensured (comprehensive local filing)</u> The jurisdiction goes beyond the legal framework proposed by the OECD and requires local filing of the country-by-country report (by the local subsidiary or branch of a foreign multinational enterprise) whenever the jurisdiction cannot obtain it through the automatic exchange of information.	0

All underlying data can be accessed freely in the CTHI database.[3] To see the sources used for particular jurisdictions, please consult the assessment logic in Table 11.3 and search for the corresponding info IDs (ID 419) in the database report of the respective jurisdiction.

This indicator focuses on the local filing of country-by-country reports. A haven score of zero is given if all relevant foreign multinational enterprises with domestic operations are required to file a local country-by-country report whenever the jurisdiction cannot obtain the country by country report through the automatic exchange of information. A 100 haven score is given if the jurisdiction abides by the OECD's legal framework or if the country-by-country report is not required to be filed in every circumstance, or if the domestic legal framework is unknown.

The main source for this indicator is the report "Country-by-Country Reporting – Compilation of Peer Review Reports"[4] published by the OECD on 24 May 2018. The domestic legal framework of 95 jurisdictions is reviewed in the report. Part A (Section c) of the report refers to the "Limitation on local filing obligation". If the peer review report describes that a jurisdiction's domestic law goes beyond the OECD model legislation (i.e., requiring local filing in more cases than those authorised by the OECD) but the report confirms that the jurisdiction will respect the OECD restrictions,[5] then a jurisdiction is rated in this indicator as abiding by the OECD model legislation.

In cases where a jurisdiction's domestic laws have not been reviewed by the OECD, then the domestic law has been analysed or an external assessment of domestic law, such as by one of the big four, may have been used as a source.

Why is this important?

Country-by-country reporting requires multinational corporations to provide a jurisdiction-level breakdown of activities, profits declared and tax paid. The practice clarifies where corporations are conducting real business activity and where they are reporting their profits, making it easier to identify risks of profit shifting for tax avoidance. It also helps to identify the jurisdictions that are attracting profit shifting at the expense of other countries.[6] While the first draft international accounting standard for country-by-country reporting was created in 2003 by Richard Murphy, the recent OECD's BEPS Action 13 has established a less ambitious template[7] to report multinational's country-by-country information.

As assessed and explained by Haven Indicator 10[8], country-by-country reports should be public to ensure that all foreign authorities, as well as civil society organisations and investigative journalists, can access this basic accounting information that is key to revealing tax avoidance schemes. One of the reasons why OECD members claim that its country-by-country report data cannot be made public is because the underlying data is designated as tax data. An [article published in 2018 traces][9] nearly 50 years of international political manoeuvres by business lobbyists and captured states in successful efforts to requalify country-by-country report as tax data rather than accounting data.

However, a second-best scenario to public reporting is assessed by this indicator. It assesses whether country-by-country reports are at least locally filed so that authorities of all countries where a multinational has operations can access reports in cases where these reports cannot be obtained through automatic exchanges, regardless of the reason. Local filing ensures authorities can use the country-by-country report as they see fit to tackle tax avoidance.

Rather than promoting this approach, the OECD has, among other concerns[10], established a complex scheme for accessing country-by-country reports[11] through the automatic exchange of information. This is illustrated in Figure 11.1 below. The OECD's approach hinders access by developing countries that cannot implement automatic exchanges. By promoting the access of country-by-country reports through the exchange of information and not through local filing requirements, the OECD has also imposed restrictions on the use of reports. This means that any authority using the received country-by-country report for additional purposes could be penalised by preventing it from receiving any other report from foreign authorities. That is, exchange of information with that jurisdiction would be suspended.

Specifically, the OECD restricts the use of the country-by-country report as follows:

> Appropriate use is restricted to: high level transfer pricing risk assessment, assessment of other base erosion and profit shifting related risks, economic and statistical analysis, where appropriate (…). The information in the Country-by-Country Report should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate. It should not be used by tax administrations to propose transfer pricing adjustments based on a global formulary apportionment of income. Jurisdictions should not propose adjustments to the income of any taxpayer on the basis of an income allocation formula based on the data from the Country-by-Country Report.[12]

The OECD approach, in essence, requires each multinational enterprise's headquarters to produce and file the country-by-country report with their local authority. The local authority is then supposed to automatically exchange this country-by-country report with authorities of all countries where the multinational enterprise has operations. In other words, all other jurisdictions where a multinational enterprise has operations should receive the country-by-country report from the country where the multinational enterprise is headquartered through the automatic exchange of information.

However, the automatic exchange of information requires countries willing to receive the country-by-country report from the headquarters' jurisdiction to have the necessary legal framework. This includes international agreements with the headquarters' jurisdiction that allow the automatic exchange of information as well as compliance with confidentiality provisions and the appropriate use of the received country-by-country report. For example, as of January 2019, only 77[13] jurisdictions had signed the Multilateral Competent Authority Agreement (MCAA) required to automatically exchange country-by-country reports.[14] The first exchanges started in 2018[15], but some jurisdictions will start later. Indeed, as of February 2019, the highest number of activated relationships[16] was 67 jurisdictions for some European countries, meaning that out of the 77 current signatories, a country may be exchanging country-by-country reports with 67 jurisdictions at most.

While the framework and its alternatives are complex (see Figure 11.1), the key condition imposed by the OECD framework to access the country-by-country report is to have an international agreement[17] between the country where the multinational enterprise has operations (O) and where it is headquartered (HQ). If this condition is met, there are three possible ways to access the country-by-country report for O under the OECD framework: (i) automatic exchange of information with HQ, (ii) automatic exchange of information with another country, called "Surrogate" (S); or if neither (i) or (ii) apply, then (iii) by local filing (a subsidiary of the multinational enterprise resident in O would file the country-by-country report directly with O's authorities).

Countries that comply with the OECD legal framework for country-by-country reporting do not ensure access to the country-by-country report. Instead, they first need to have an international agreement with HQ, subject to HQ's discretion to sign one or not. Countries that go beyond the OECD proposed legislation will ensure access in all cases because, if they cannot obtain the country-by-country report through the automatic exchange of information (for example, because they lack an international agreement with HQ), they will require the local subsidiary of an multinational enterprise to file the report with local authorities ("local filing"). Local filing also means that countries can use the country-by-country report as they see fit (to tackle tax avoidance) without the threat of preventing access in the future if the automatic exchange of information with foreign countries is suspended.

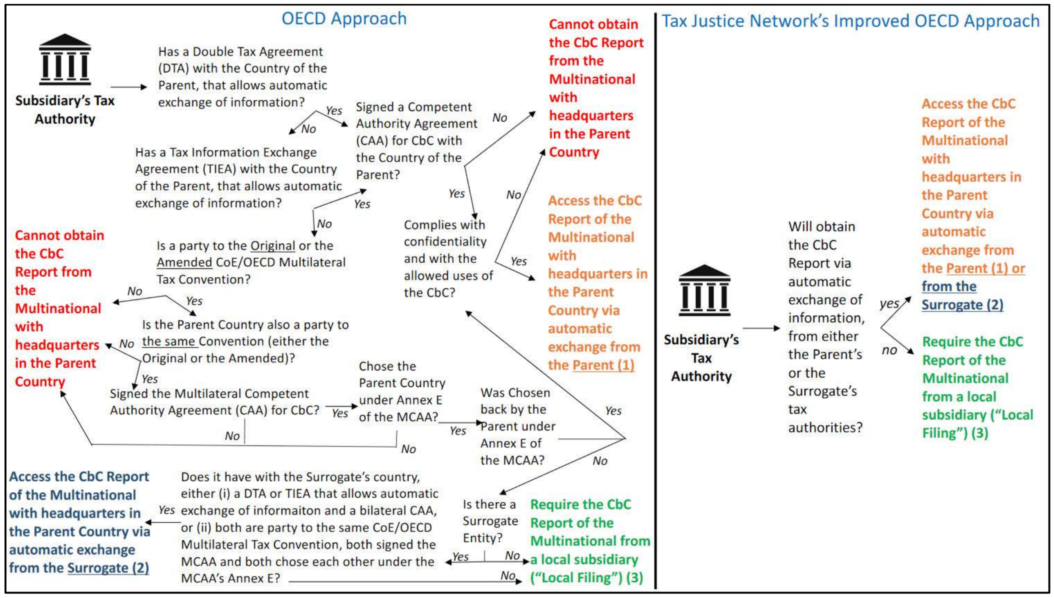


Figure 11.1. A comparison of approaches to accessing country-by-country reports

Source: https://www.taxjustice.net/wp-content/uploads/2013/04/access-to-Country by country report-comic-march-1.pdf; http://www.taxjustice.net/2017/03/07/19628/; [accessed 1 September 2018].

While some countries had implemented legislation that requires local filing beyond the situations allowed by the OECD (as described by the Financial Secrecy Index published in January 2018[18]), the OECD peer reviews published in 2018 started to mark these countries as requiring amendments to their laws.

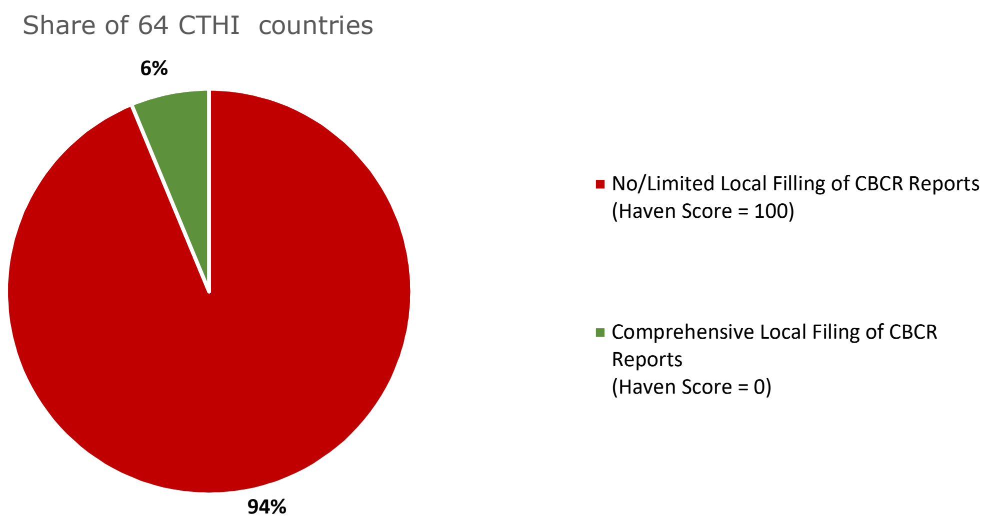
For example, Spain was one of the few countries that kept its regulations requiring local filing of the country-by-country beyond the OECD model legislation. It received a "recommendation for improvement" from the OECD:

> It is recommended that Spain amend its legislation or otherwise take steps to ensure that local filing is only required in the circumstances contained in the terms of reference.[19]

This approach taken by the OECD appears to restrict a country's tax sovereignty by imposing a monopolistic ambition of the OECD. A jurisdiction should be free to go beyond OECD rules to use domestic legislation without the OECD's interference to require the filing of any data it wishes by the entire corporate group doing business within its territory.

Results Overview

Graph 11.1. Robust local filing of country-by-country reporting Overview



Results Detail

Table 11.2. Robust local filing of country-by-country reporting - Haven Indicator Scores

Country Name	Score	ISO		Country Name	Score	ISO
Andorra	100	AD		Kenya	100	KE
Anguilla	100	AI		Latvia	100	LV
Aruba	100	AW		Lebanon	100	LB
Austria	100	AT		Liberia	100	LR
Bahamas	100	BS		Liechtenstein	100	LI
Belgium	100	BE		Lithuania	100	LT
Bermuda	100	BM		Luxembourg	100	LU
Botswana	100	BW		Macao	100	MO
British Virgin Islands	100	VG		Malta	100	MT
Bulgaria	100	BG		Mauritius	100	MU
Cayman Islands	100	KY		Monaco	100	MC
China	100	CN		Montserrat	100	MS
Croatia	100	HR		Netherlands	100	NL
Curacao	100	CW		Panama	100	PA
Cyprus	100	CY		Poland	100	PL
Czech Republic	100	CZ		Portugal (Madeira)	100	PT
Denmark	100	DK		Romania	100	RO
Estonia	100	EE		San Marino	100	SM
Finland	100	FI		Seychelles	100	SC
France	0	FR		Singapore	100	SG
Gambia	100	GM		Slovakia	100	SK
Germany	0	DE		Slovenia	100	SI

Country Name	Score	ISO		Country Name	Score	ISO
Ghana	100	GH		South Africa	100	ZA
Gibraltar	100	GI		Spain	0	ES
Greece	100	GR		Sweden	100	SE
Guernsey	100	GG		Switzerland	100	CH
Hong Kong	100	HK		Taiwan	0	TW
Hungary	100	HU		Tanzania	100	TZ
Ireland	100	IE		Turks and Caicos Islands	100	TC
Isle of Man	100	IM		United Arab Emirates (Dubai)	100	AE
Italy	100	IT		United Kingdom	100	GB
Jersey	100	JE		USA	100	US

Maximum Risk (Haven Score 100)	Haven Score 76 - 99	Haven Score 51 - 75	Haven Score 26 - 50	Haven Score 1 - 25	Minimum Risk (Haven Score 0)

Table 11.3. Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation % Secrecy
419	Country by country report: Is there a local filing requirement of a global country by country reporting file (according to OECD's BEPS Action 13) by large corporate groups (with a worldwide turnover higher than 750 million Euro) and local subsidiaries of foreign groups?	0: No; 1: OECD Legislation: Secondary mechanism is subject to restrictions imposed by OECD model legislation; or no secondary mechanism at all (only the domestic ultimate parent entity has to file the country by country report); 2: Beyond OECD Legislation: Secondary mechanism is not subject to restrictions imposed by OECD model legislation: any domestic subsidiary of a group would have to file the country by country report in all cases in which the jurisdiction cannot obtain the Country by country report via automatic exchange of information.	If answer is 2: 0; otherwise 100.

Reference List

Cobham, Alex, Petr Janský, and Markus Meinzer, 'A Half-Century of Resistance to Corporate Disclosure', *Transnational Corporations - Investment and development*, Special Issue on Investment and International Taxation. Part 2, 25/3 (2018), 160

Knobel, Andres, and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf> [accessed 9 February 2017]

OECD, *BEPS Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting*, 2015 <https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf> [accessed 26 February 2019]

———, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 2018 <http://www.oecd.org/tax/beps/country-by-country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm> [accessed 26 February 2019]

———, *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*, 2017 <http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf> [accessed 1 April 2019]

———, *Multilateral Competent Authority Agreement on the Exchange of for Country-by-Country Reports*, 2016 <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf> [accessed 29 March 2019]

———, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015) <http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en> [accessed 12 June 2017]

---

[1] Here "relevant" refers to multinational enterprises with over EUR 750m global consolidated turnover that are required to produce and file the country-by-country reports according to BEPS Action 13.

[2] OECD, *BEPS Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country by country Reporting*, 2015 <https://www.oecd.org/ctp/beps-action-13-guidance-implementation-tp-documentation-cbc-reporting.pdf> [accessed 26 February 2019].

[3] http://www.corporatetaxhavenindex.org/database/menu.xml

[4] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 2018 <http://www.oecd.org/tax/beps/country by country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm> [accessed 26 February 2019].

[5] Even though, as assessed by the Financial Secrecy Index in 2018, some jurisdictions had legislation that required local filing under more circumstances than those authorised by the OECD model legislation, upon being reviewed by the OECD, some jurisdictions adopted the guidance or additional regulation, or stated that they would ensure their laws are consistent with the OECD regulations.

[6] https://www.taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/; [accessed 4 January 2019].

[7] OECD, *Transfer Pricing Documentation and Country by country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project (2015), 29–31 <http://www.oecd-ilibrary.org/taxation/transfer-pricing-documentation-and-country by country-reporting-action-13-2015-final-report_9789264241480-en> [accessed 12 June 2017].

[8] http://www.corporatetaxhavenindex.org/PDF/10-C-b-C-Reporting.pdf; [accessed 2 January 2019].

[9] Alex Cobham, Petr Janský and Markus Meinzer, 'A Half-Century of Resistance to Corporate Disclosure', *Transnational Corporations - Investment and development*, Special Issue on Investment and International Taxation. Part 2, 25/3 (2018), 160.

[10] Andres Knobel and Alex Cobham, 'Country-by-Country Reporting: How Restricted Access Exacerbates Global Inequalities in Taxing Rights', 2016 <https://www.taxjustice.net/wp-content/uploads/2016/12/Access-to-CbCR-Dec16-1.pdf> [accessed 9 February 2017].

[11] To see more details about country-by-country reporting and its uses, please refer to Haven Indictor 10.

[12] OECD, *Guidance on the Appropriate Use of Information Contained in Country-by-Country Reports*, 2017 <http://www.oecd.org/ctp/beps/beps-action-13-on-country-by-country-reporting-appropriate-use-of-information-in-CbC-reports.pdf> [accessed 1 April 2019].

[13] https://www.oecd.org/ctp/exchange-of-tax-information/CbC-MCAA-Signatories.pdf; [accessed 29 March 2019].

[14] OECD, *Multilateral Competent Authority Agreement on the Exchange of for Country by country Reports*, 2016 <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/cbc-mcaa.pdf> [accessed 29 March 2019].

[15] http://www.oecd.org/tax/beps/country by country-reporting-update-on-exchange-relationships-and-implementation.htm; 29.3.2019.

[16] http://www.oecd.org/ctp/beps/country by country-exchange-relationships.htm; [accessed 29 March 2019].

[17] There are three possible international agreements: 1) The Multilateral Convention on Administrative Assistance in Tax Matters, 2) Double Tax Agreements, and 3) Tax Information Exchange Agreements.

[18] https://financialsecrecyindex.com/; [accessed 1 April 2019].

[19] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 682.

