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Haven Indicator 11: Robust local filing of country by country reports

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 the OECD's Base Erosion and Profit Shifting (BEPS) project Action 13[2]. Access is ensured if the jurisdiction requires the local subsidiary or branch of a foreign multinational enterprise to file country by country reports locally 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 points = maximum risk; 0 points = minimum risk]
Access to country by country reports is not ensured 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
Access to country by country reports is ensured (comprehensive local filing) The jurisdiction goes beyond the legal framework proposed by the OECD and requires local filing of country by country reports (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 Corporate Tax Haven Index database. 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 points 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 sources for this indicator are the three "Country-by-Country Reporting – Compilation of Peer Review Reports" published by the OECD in phases on 24 May 2018, 3 September 2019 and 17 October 2020.[3] In the most recent review report, the domestic legal framework of 131 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[4], 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 actual law or an external assessment of that domestic law, such as by one of the accounting 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.[5] 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[6] to report multinational's country by country information.

Since we published the previous edition of the Corporate Tax Haven Index in 2019, two jurisdictions have worsened their havens score for this indicator, namely Germany and Spain. According to the OECD's most recent review and Germany's response to the Tax Justice Network's 2020 survey, Germany now complies with rather than surpasses the OECD standard for the filing of local country by country reports, and the OECD's monitoring point on local filing was removed. In Spain, the situation is considered unknown or unclear since legislation that will make it compliant with the OECD has not yet been approved.

As assessed and explained by haven indicator 10 on public country by country reporting[7], 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 reporting data cannot be made public is because the underlying data is designated as tax data. An article published in 2018 traces[8] nearly 50 years of international

TAX JUSTICE NETWORK

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[9], established a complex scheme for accessing country by country reports[10] through the automatic exchange of information. This is illustrated in Figure 11.1 below. The OECD's approach hinders the access of 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.[11]

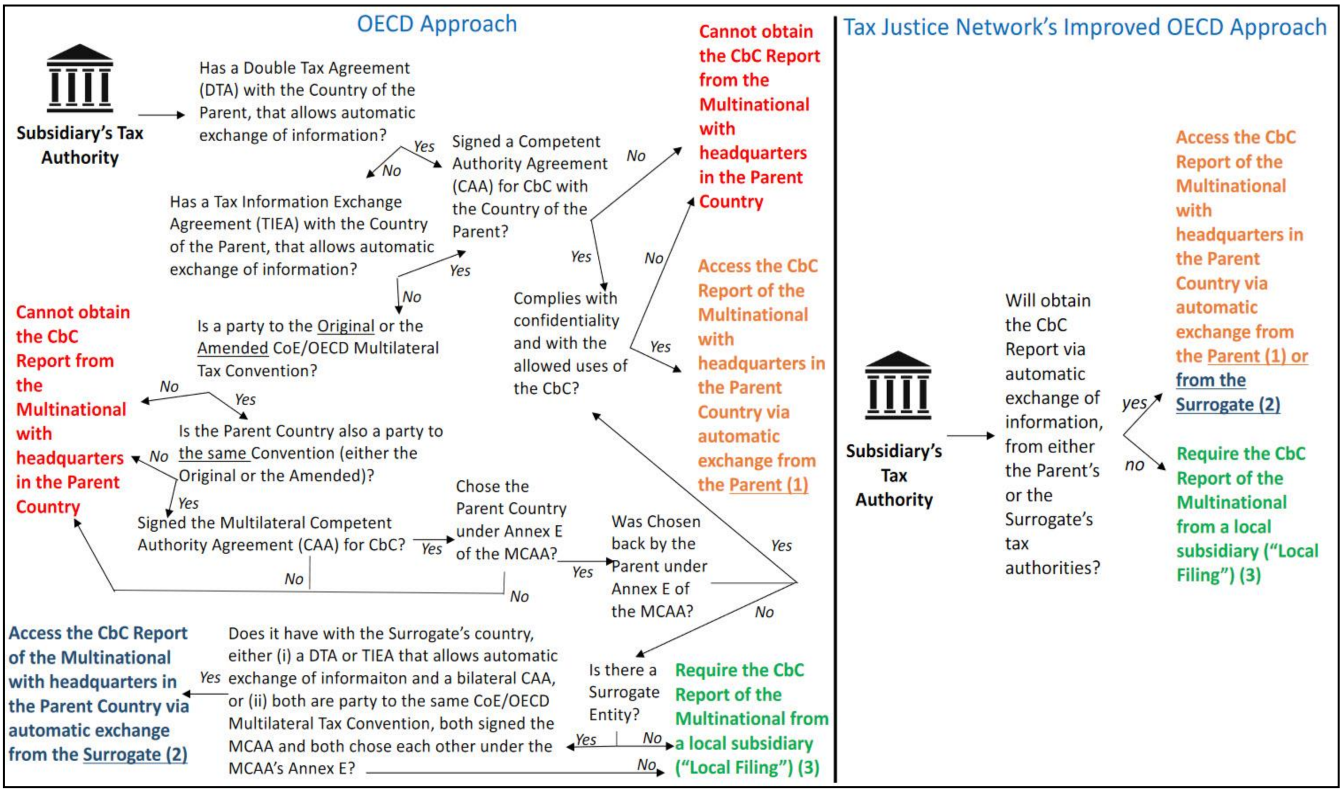
The OECD approach, in essence, requires each multinational enterprise's headquarters to produce and file the country by country report with their local authority. The local authority is then supposed to automatically exchange this country by country report with authorities of all countries where the 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 those 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 13 January 2020, only 89[12] jurisdictions had signed the Multilateral Competent Authority Agreement (MCAA) required to automatically exchange country by country reports.[13] The first exchanges started in 2018[14], but some jurisdictions will start later. Indeed, as of December 2020, the highest number of activated relationships was 80 jurisdictions for some European countries, meaning that out of the 89 current signatories, a country may be exchanging country by country reports with 80 jurisdictions at most.[15]

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[16] 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 a 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[17]



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 2020[18]), the OECD peer reviews published in 2018, 2019 and 2020 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.

Haven Indicator 11: Robust filing of local country by country reports

Results Overview

Figure 11.2: Robust local filing of country by country reporting Overview

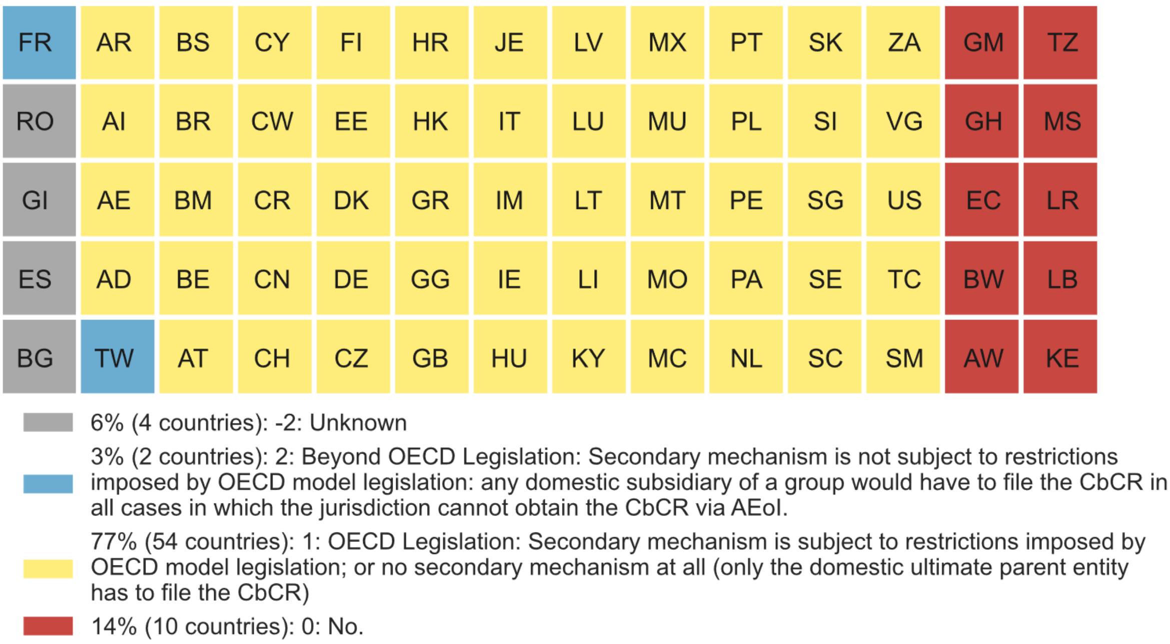


Table 11.2: Robust local filing of country by country reporting - Haven Indicator Scores

Haven Score	ISO2: Country Name	Haven Score	ISO2: Country Name
100	AW: Aruba	100	IM: Isle of Man
100	AI: Anguilla	100	IE: Ireland
100	AD: Andorra	100	IT: Italy
100	AE: United Arab Emirates	100	JE: Jersey
100	AR: Argentina	100	KE: Kenya
100	AT: Austria	100	LB: Lebanon
100	BE: Belgium	100	LR: Liberia
100	BG: Bulgaria	100	LI: Liechtenstein
100	BS: Bahamas	100	LT: Lithuania
100	BM: Bermuda	100	LU: Luxembourg
100	BR: Brazil	100	LV: Latvia
100	BW: Botswana	100	MO: Macao
100	CH: Switzerland	100	MC: Monaco
100	CN: China	100	MX: Mexico
100	CR: Costa Rica	100	MT: Malta
100	CW: Curaçao	100	MS: Montserrat
100	KY: Cayman Islands	100	MU: Mauritius
100	CY: Cyprus	100	NL: Netherlands
100	CZ: Czechia	100	PA: Panama
100	DE: Germany	100	PE: Peru
100	DK: Denmark	100	PL: Poland
100	EC: Ecuador	100	PT: Portugal
100	ES: Spain	100	RO: Romania
100	EE: Estonia	100	SG: Singapore
100	FI: Finland	100	SM: San Marino
0	FR: France	100	SK: Slovakia
100	GB: United Kingdom	100	SI: Slovenia
100	GG: Guernsey	100	SE: Sweden
100	GH: Ghana	100	SC: Seychelles
100	GI: Gibraltar	100	TC: Turks and Caicos Islands
100	GM: Gambia	0	TW: Taiwan
100	GR: Greece	100	TZ: Tanzania
100	HK: Hong Kong	100	US: United States
100	HR: Croatia	100	VG: British Virgin Islands
100	HU: Hungary	100	ZA: South Africa

Haven Score

Low Haven Score — High Haven Score

0 to <25	25 to <50	50 to <75	75 to 100

Table 11.3: Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
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.

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———, *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]

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[1] Here 'relevant' refers to multinational enterprises with over €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] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 24 May 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]; OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 2)*, 3 September 2019 <https://www.oecd-ilibrary.org/docserver/f9bf1157-en.pdf?expires=1612261177&id=id&accname=guest&checksum=52A877B9AD4C69EC8E9FDC279EF44491> [accessed 2 February 2021]; OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 3)*, 17 October 2020 <https://www.oecd-ilibrary.org/docserver/fa6d31d7-en.pdf?expires=1612261402&id=id&accname=guest&checksum=D8EEB92B8A62617AB6944ABC1B1F48F6> [accessed 2 February 2021].

[4] Even though, as assessed by the Financial Secrecy Index in 2020, 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.

[5] Mark Bou Mansour, 'GRI Invites Feedback on Its First Global Tax Transparency Standard', *Tax Justice Network*, 2018 <https://taxjustice.net/2018/12/13/gri-invites-feedback-on-its-first-global-tax-transparency-standard/> [accessed 3 February 2021].

[6] 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].

[7] Tax Justice Network, *Haven Indicator 10: Public Country by Country Reporting*, Corporate Tax Haven Index (2021) <http://cthi.taxjustice.net/cthi2021/HI-10.pdf> [accessed 3 February 2021].

[8] 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.

[9] 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].

[10] To see more details about country by country reporting and its uses, please refer to haven indicator 10.

[11] 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].

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[15] OECD, 'Activated Exchange Relationships for Country-by-Country Reporting', 2020 <https://www.oecd.org/tax/beps/country-by-country-exchange-relationships.htm> [accessed 3 February 2021].

[16] 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.

[17] Andres Knobel, 'Access to Country by Country Reports', *Tax Justice Network* <https://www.taxjustice.net/wp-content/uploads/2013/04/access-to-cbcr-comic-march-1.pdf> [accessed 3 February 2021]; Andres Knobel, 'The OECD - Penalising Developing Countries for Trying to Tackle Tax Avoidance', *Tax Justice Network*, 2017 <https://taxjustice.net/2017/03/07/19628/> [accessed 3 February 2021].

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[19] OECD, *Country-by-Country Reporting – Compilation of Peer Review Reports (Phase 1)*, 2018, 682 <http://www.oecd.org/tax/beps/country-by-country-reporting-compilation-of-peer-review-reports-phase-1-9789264300057-en.htm> [accessed 26 February 2019].