



Tax Havens: Information Exchange

Countries with high taxes keep pushing tax havens towards a level playing field. Cooperation, compliance and transparency in taxation matters are the flags of international organizations fighting for tax justice. Tax havens' commitment to the principles of transparency and effective exchange of information improves their international image in the eyes of the first world countries, but obviously leads to a lack of privacy and confidentiality for persons using services of such jurisdictions.

By efforts of the OECD's Initiative on Harmful Tax Practices nearly all tax havens and financial centers have committed to internationally agreed tax standard. Now they are being classified into "black" and "white" by measuring their achievements in implementing of this policy.

A jurisdiction meets the key principles of ideal transparency for tax purposes if it provides for the following:

- Existence of mechanisms for exchange of information upon request (**double tax conventions – DTC, tax information exchange agreements – TIEA**);
- Exchange of information in both criminal and civil matters;
- No application of dual criminality principle or domestic tax interest requirement;
- Respect for safeguards and limitations;
- Strict confidentiality rules for information exchanged;
- Availability of reliable information (in particular bank, ownership, identity and accounting information) and powers to obtain and provide such information in response to a specific request.

According to the recently published Progress Report by OECD published on 25 February 2010 the "**blacklist**" is empty.

The "**white list**" of jurisdictions that substantially implemented the international tax standards covers: *Andorra, Anguilla, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, British Virgin Islands, Canada, Cayman Islands, Chile, China (excluding committed SARs), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Korea, Liechtenstein, Luxembourg, Malaysia, Malta, Mauritius, Mexico, Monaco, Netherlands, Netherlands Antilles, New Zealand, Norway, Poland, Portugal, Russian Federation, St. Kitts and Nevis, St. Vincent and Grenadines, Samoa, San Marino, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Turks and Caicos Islands, United Arab Emirates, United Kingdom, United States, US Virgin Islands.*



The “**grey list**” of non-cooperative countries, which are committed countries that did not substantially implement the internationally agreed standards, includes:

a. tax havens (as per identification of the report of 1998):

Belize, Cook Islands, Dominica, Grenada, Liberia, Marshall Islands, Montserrat, Nauru, Niue, Panama, St. Lucia, Vanuatu.

b. other financial centres:

Brunei, Costa Rica, Guatemala, Philippines, Uruguay.

All of them have declared their participation in the Initiative on Harmful Tax Practices and commitment to the principles of transparency and effective exchange of information. Now they are supposed to establish and implement a comprehensive anti-money laundering regulatory framework applicable to all areas of their offshore financial services sector as well as to enact legislation facilitating the exchange of information on tax matters with foreign jurisdictions directly through their competent authority.

Good conduct of a jurisdiction absolutely following these principles is leading to a serious lack of privacy and confidentiality for persons using its services.

However, as everyone is striving to protect its economic interests and fiscal autonomy in the first turn, the practical achievements of each country in this direction are quite different.

Sufficient privacy condition is an imperishable factor in making a decision on where to incorporate your offshore company. You need to be aware of the underlying regulations in the jurisdiction of choice.

The below information involves several popular tax-haven jurisdictions reflecting the current status of their policy and mechanisms as towards sharing confidential information with other countries under these or those circumstances.

The terms used below mean:

Tax treaties – existence of TIEA/DTC tax providing for exchange of information.

Other regulations – domestic law and other regulations allowing for exchange of information with other countries.

Bank information – access to bank information, bank secrecy towards tax authorities.

Ownership – access to ownership identity and accounting information.

ANGUILLA

- **Tax treaties:** TIEA with *Australia, Denmark, Faroe Islands, Finland, Germany, Greenland, Iceland, Ireland, Netherlands, Norway, New Zealand, Sweden, UK.*
- **Other regulations:** EU Savings Tax Agreements.
- **Bank information:** only in criminal tax matters subject to MLAT with *USA (tax offences are excluded from MLAT unless it is shown that the money involved derives from an activity that is a covered offence, e.g. drug trafficking).* Automatic exchange with EU members pursuant to EU Savings Tax Agreements. Competent authority has direct access to bank information.



- **Ownership:** no access in civil tax matters, except for the purposes of EU Savings Tax Agreements. In criminal tax matters only in other cases. Bearer shares may be issued, but Anguilla is planning to adopt legislation requiring the immobilization of bearer shares.

BAHAMAS

- **Tax treaties:** TIEA with *Argentina, Australia, Belgium, China, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Mexico, Monaco, Netherlands, New Zealand, San Marino, Spain, Sweden, UK, USA.*
- **Other regulations:** none reported
- **Bank information:** in all tax matters under the TIEA. Competent authority has direct access to bank information.
- **Ownership:** in all tax matters under the TIEA.

BELIZE

- **Tax treaties:** DTC with *Austria, Switzerland, UK, CARICOM (Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago).* TIEAs (of OECD standard) with *Australia, Belgium, Netherlands, UK.* Negotiating with: *Aruba, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, Italy, Mexico, Norway, Poland, Sweden, USA.*
- **Other regulations:** anti-money laundering law, allowing for exchange of information in criminal tax matters with all countries, if it is considered to be a criminal offence in requesting country.
- **Bank information:** in criminal tax matters only. Competent authority has NO direct access to bank information. Court order is required.
- **Ownership:** in all tax matters (except for the bank information, which is restricted to criminal tax matters only). Court order is required. Bearer shares issued by IBC incorporated after 2000 must be immobilized.

BVI

- **Tax treaties:** DTC with *Switzerland, UK, Australia.* TIEA with *Aruba, Australia, China, Denmark, Faroe Islands, Finland, France, Greenland, Iceland, Ireland, Netherlands, Netherlands Antilles, New Zealand, Norway, Sweden, UK, USA.* MLAT with *USA.*
- **Other regulations:** EU Savings Tax Agreements; Mutual Legal Assistance (Tax Matters) Act 2003.
- **Bank information:** in all tax matters (under TIEA and Mutual Legal Assistance (Tax Matters) Act 2003. Competent authority has direct access to bank information.



- **Ownership:** in all tax matters under the TIEA. Bearer shares must be held by an approved/authorized custodian (Bearer shares held by companies incorporated prior to 1 January 2005 must be immobilized by 2010).

CAYMAN ISLANDS

- **Tax treaties:** DTC with *UK*. TIEA with *Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, France, Netherlands, Netherlands Antilles, New Zealand, Norway, Sweden, USA*.
- **Other regulations:** EU Savings Tax Agreements. The Reporting of Savings Income Information (European Union) Law 2005. Tax Information Authority Law, introduced unilateral mechanism for the provision of information on tax matters to twelve scheduled countries.
- **Bank information:** in all tax matters. Automatic exchange of information with EU member countries in respect of savings income. Competent authority has direct access to bank information.
- **Ownership:** in all tax matters under the TIEA. Bearer shares must be immobilized.

CYPRUS

- **Tax treaties:** DTC in force with 45 countries.
- **Other regulations:** European Convention (39 countries) on Mutual Assistance in Criminal Matters, including fiscal protocol; Cyprus also exchanges information with EU members basing on EU exchange mechanisms. EU Savings Tax Agreements.
- **Bank information:** Cyprus exchanges information with other EU Member States under EU Savings Tax Directive, as well as with other countries under DTCs, providing there is mutual reciprocity between Cyprus and the other contracting state in this regard. Competent authority has no restrictions to obtain bank information for tax information exchange purposes.
- **Ownership:** In all tax matters under DTC. Written order of the Attorney General is required. Bearer shares may not be issued.

DOMINICA

- **Tax treaties:** DTC with *Switzerland, CARICOM (Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago)*. TIEA with *Australia, Belgium, New Zealand, UK, USA*.
- **Other regulations:** none reported.
- **Bank information:** access to information is through Financial Intelligence Unit.
- **Ownership:** in all tax matters subject to DTC or TIEA. Bearer shares must be held by an approved custodian.



GIBRALTAR

- **Tax treaties:** TIEA with *Australia, Austria, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, New Zealand, Norway, Portugal, Sweden, UK, USA.*
- **Other regulations:** EU Mutual Assistance Instruments and applicable domestic law. Internal policy of the Government allows information exchange in criminal tax matters using the Evidence Act with letters of request with effect from 13 March 2008.
- **Bank information:** Gibraltar has no powers to obtain information from banks and financial institutions, except for the purposes under the EU Savings Directive, or in case of criminal tax matters under its Evidence Act.
- **Ownership:** no, except for the purposes of EU Savings Tax Agreements or Evidence Act. Bearer shares may not be issued.

GUATEMALA

- **Tax treaties:** Has no DTC or TIEA in force. Has ratified multilateral treaty of mutual assistance, exchange of information and technical cooperation with other members of CACM (Costa Rica, El Salvador, Honduras, Nicaragua).
- **Other regulations:** None reported. Guatemala has no mechanisms for exchange of information in tax matters.
- **Bank information:** Bank secrecy reinforced by statutes. No access to bank information for tax purposes.
- **Ownership:** Statutory confidentiality provisions prohibiting disclosure of ownership, identity and accounting information. Guatemala does not currently exchange information in tax matters with any country. Bearer shares may be issued.

GUERNSEY

- **Tax treaties:** DTC with *Denmark, Faroe Islands, Finland, Greenland, Iceland, Jersey, Norway, Sweden, UK.* TIEA with *Australia, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, New Zealand, Norway, Sweden, UK, USA.*
- **Other regulations:** Fraud Investigation Law Allows for assistance including exchange of information in cases of serious or complex fraud including tax fraud (with all countries); Mutual Legal Assistance Law Allows for assistance including exchange of information in criminal tax matters which do not involve serious or complex fraud or money laundering with all countries; Anti-Money Laundering Law: all crimes money laundering legislation which allows Guernsey's authorities to assist overseas authorities investigating criminal conduct or the whereabouts of



proceeds of such conduct including tax fraud (with all countries). Law implementing Savings Tax Agreements with EU member states (provides only for exchange in the case of voluntarily disclosure).

- **Bank information:** in all tax matters with *USA*; In criminal tax matters only with all other countries. Competent authority has direct access to bank information in connection with TIEA.
- **Ownership:** in all tax matters. Bearer shares may not be issued.

HONG KONG

- **Tax treaties:** DTC with *Belgium, Brunei, China, Indonesia, Japan, Luxembourg, Netherlands, Thailand, Vietnam*.
- **Other regulations:** Has published draft legislation to allow it exchange of information to the OECD standards.
- **Bank information:** in all tax matters, domestic tax interest requirement to be removed shortly. Competent authority has direct access to bank information.
- **Ownership:** in all tax matters, domestic tax interest requirement to be removed shortly. Share warrants may be issued to bearer, but Hong Kong is now rewriting its company law to consider whether the issue of share warrants to bearer should still be permitted.

ISLE OF MAN

- **Tax treaties:** DTC with *Australia, Belgium, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, New Zealand, Norway, Sweden, UK*. TIEA with *Australia, Faroe Islands, Denmark, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, New Zealand, Norway, Sweden, UK, USA*.
- **Other regulations:** Anti-Money Laundering Law allows information to be disclosed for the purposes of the prevention or detection of crime including tax crimes or for the purposes of criminal proceedings in another country (with all countries); Criminal Justice Acts allow the Attorney General to obtain and provide information relating to a suspected offence involving serious or complex fraud, criminal proceedings that have been instituted or a criminal investigation that is being carried on in another country (with all countries). Where a request for information relates to a tax offence in respect of which proceedings have not yet been instituted, there is a requirement that the request must be from a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and which extends to the Island; if these conditions are not complied with then there is a dual criminality requirement; Evidence (Proceedings in Other Jurisdictions) Act gives effect to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. Law implementing Savings Tax Agreements with EU member states (provides only for exchange in the case of voluntarily disclosure).



- **Bank information:** in all tax matters in case of DTC or TIEA present. In criminal tax matters only with all other countries. Competent authority has direct access to bank information in connection with TIEA or a new DTC.
- **Ownership:** in all tax matters under the TIEA or a new DTC. In criminal tax matters only in the other cases. Bearer shares may not be issued.

JERSEY

- **Tax treaties:** DTC with *Finland, Germany, Greenland, Guernsey, Iceland, Norway, Sweden, UK*. TIEA with *Australia, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Iceland, Ireland, Netherlands, Norway, Sweden, UK, US*.
- **Other regulations:** Fraud Investigation Law allows for assistance including exchange of information in cases of serious or complex fraud including tax fraud (with all countries); Mutual Legal Assistance Law allows for assistance including exchange of information in criminal matters, including tax matters (with all countries); Anti-Money Laundering allows for international co-operation with respect to money laundering which includes the laundering of the proceeds of tax crimes (with all countries); Criminal Justice (International Cooperation) Law allows Jersey to cooperate with other countries in criminal investigations and proceedings and for related purposes; Evidence (Proceedings in Other Jurisdictions) gives effect to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. Law implementing Savings Tax Agreements with EU member states (provides only for exchange in the case of voluntarily disclosure)
- **Bank information:** in all tax matters in case of TIEA present. In criminal tax matters only with all other countries. Competent authority has direct access to bank information in connection with TIEA.
- **Ownership:** in all tax matters under the TIEA. In criminal tax matters only in the other cases. Bearer shares may not be issued.

LIECHTENSTEIN

- **Tax treaties:** TIEA with *Andorra, Antigua and Barbuda, Belgium, France, Germany, Ireland, Monaco, Netherlands, St. Kitts and Nevis, St. Vincent and Grenadines, UK, USA*. MLAT with *USA*.
- **Other regulations:** EU Savings Tax Agreements.
- **Bank information:** in criminal tax matters subject to MLAT or TIEA on tax fraud described as tax evasion committed by means of intentional use of false, falsified or incorrect business records, provided the tax due is substantial; or cases of tax fraud or the like in respect of savings income under EU Savings Tax Agreements. Competent authority has NO direct access to bank information. Court order is required.



- **Ownership:** in criminal taxes only with respect to the MLAT, TIEA or interest income paid to individuals resident in *EU Member States*. Bearer shares may be issued.

PANAMA

- **Tax treaties:** DTC with *Barbados, Belgium, Italy, Mexico*. Negotiating with: *Spain, France, Israel, Switzerland, UK*.
- **Other regulations:** MLAT with *USA*.
- **Bank information:** only for criminal prosecution purposes.
- **Ownership:** in criminal tax matters under MLAT. Bearer shares may be issued.

SAMOA

- **Tax treaties:** DIEA with *Australia, Denmark, Faroe Islands, Finland, Greenland, Iceland, Ireland, Monaco, Netherlands, Norway, San Marino, Sweden*.
- **Other regulations:** Mutual Assistance in Criminal Tax Matters Act allows for exchange of information in criminal matters. Dual criminality standard applies (request must relate to a serious offence in a foreign state. A serious offence includes offences against the laws of a foreign state, that if the act or omission occurred in Samoa, would constitute unlawful activity against any laws of Samoa), except for under TIEA.
- **Bank information:** Statutory bank secrecy rules are limited to international banks. Access to bank information in criminal tax matters only. Competent authority has NO direct access to bank information. Court order is required.
- **Ownership:** in criminal tax matters. Bearer shares may be issued, but immobilising legislation is in effect since April 2008.

SEYCHELLES

- **Tax treaties:** DTC with *Barbados, Belgium, Botswana, China, Cyprus, Indonesia, Malaysia, Mauritius, Oman, South Africa, Thailand, Vietnam, UAE, Zimbabwe*.
- **Other regulations:** Mutual Legal Assistance Law allows for exchange of information in criminal matters, which includes criminal matters relating to revenue (including taxation, customs duties or trade tax). The Act implements the Commonwealth scheme relating to mutual assistance in criminal matters within the Commonwealth and to other countries, where there is a bilateral mutual assistance treaty or to give effect to another treaty or as specified by regulation; Anti-Money Laundering Law that will continue the all crimes provisions of existing legislation is under preparation. Predicate offences will include offences under tax laws, which will be open to exchange of information under the Mutual Legal Assistance Law.
- **Bank information:** in all tax matters. Competent authority has direct access to bank information.



- **Ownership:** in all tax matters. There are statutory provisions for confidentiality in place, but they may be overridden for exchange of information under DTC. Bearer shares may be issued.

ST. VINCENT AND THE GRENADINES

- **Tax treaties:** DTC with CARICOM (*Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago*), Switzerland. TIEA with *Aruba, Australia, Austria, Belgium, Denmark, Finland, Faroe Islands, France, Germany, Greenland, Iceland, Ireland, Liechtenstein, Netherlands, Norway, Sweden, UK*.
- **Other regulations:** Mutual Legal Assistance Law allows for assistance to be given to the Commonwealth countries in criminal matters in relation to serious or indictable offences, including tax offences. There is also provision for cooperation with non-Commonwealth countries but this is subject to amendments to the regulations.
- **Bank information:** in criminal tax matters under TIEA. In other cases dual criminality applies. Criminal conduct is drug trafficking or a relevant offence under the anti-money laundering legislation (crime money proceeds). Information gathering powers adopted to implement the CARICOM tax treaty do not extend to information in the offshore sector. Access to information is through Financial Intelligence Unit.
- **Ownership:** in criminal tax matters only. Bearer shares must be held by an approved custodian.

SWITZERLAND

- **Tax treaties:** DTC in force with 90 countries and is currently renegotiating some of them to eliminate “limited exchange” clause and allow for tax information exchange.
- **Other regulations:** EU Savings Directive.
- Mutual Legal Assistance Law provides that judicial assistance may be granted in fiscal matters if the person concerned by the foreign procedure is suspected of conduct constituting tax fraud according to Swiss law. Assistance is granted under the condition of reciprocity and is available even in the absence of an international agreement with the requesting country. Judicial assistance includes the seizure of documents and the transmission of bank information. The information obtained can only be used for prosecution of the offence and not any other purpose (e.g. assessment of tax). Under the principle of speciality, information provided pursuant to the Swiss Mutual Assistance Law can only be used for prosecution purposes. No such restriction on the use of the information applies where the information is provided pursuant to a DTC.
- **Bank information:** Bank secrecy reinforced by
- Statute. Access to bank information is available only in criminal tax matters. Tax fraud means fraudulent conduct, which is deemed to be an offence under the laws of both states, and is punishable by imprisonment.



- Generally competent authority has direct access to bank information with no separate authorization, but procedures and competences differ for cases of DTC and MLA law or treaty.
- **Ownership:** Same rules apply. No access to bank information in civil tax matters. But professional secrecy rules are overridden in case of tax fraud or the like. Bearer shares are allowed, but owners of bearer shares are to be disclosed to Swiss tax authorities and financial intermediaries in certain occasions (refund or reduction of Swiss withholding tax, holder of more than 3% in companies listed on a Swiss stock exchange).

Recently committed Austria, Belgium, Luxembourg and Switzerland withdrew their reservations to Article 26 of the OECD Model Tax Convention – “limited exchange clause”- and started renegotiations of double tax treaties with their partners.

You may also find useful the below information for some other OECD countries:

AUSTRALIA

- **DTCs:** 40 countries, including *Malaysia (Labuan), Malta, Netherlands, Singapore, Switzerland.*
- **TIEAs:** *Anguilla, Antigua and Barbuda, Aruba, Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cook Islands, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Monaco, Netherlands (in respect of the Netherlands Antilles), Samoa, San Marino, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Turks and Caicos, Vanuatu.*

CANADA

- **DTCs:** 90 countries, including *Barbados, Cyprus, Denmark, Ireland, Luxembourg, Malaysia, Malta, Netherlands, Singapore, Switzerland, UAE.*
- **TIEAs:** *Bermuda, the Isle of Man, Guernsey, Netherlands Antilles and Jersey.* Negotiating with: *Anguilla, Aruba, Bahamas, Bahrain, Cayman Islands, Gibraltar, St. Kitts and Nevis, St. Lucia, Turks and Caicos.*

UK

- **DTCs:** 118 countries, including *Antigua and Barbuda, Barbados, Belize, Brunei, BVI, Cyprus, Denmark, Grenada, Guernsey, Ireland, Isle of Man, Luxembourg, Malaysia, Malta, Mauritius, Montserrat, Netherlands, Singapore, St. Kitts and Nevis, Switzerland.*
- **TIEAs:** *Anguilla, Antigua and Barbuda, Bahamas, Belize, Bermuda, BVI, Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Liechtenstein, San Marino, St. Lucia, St. Kitts and Nevis, St. Vincent and Grenadines, Turks and Caicos.*



USA

- **DTCs:** 67 countries, including *Barbados, Cyprus, Denmark, Ireland, Luxembourg, Malta, Netherlands, Switzerland.*
- **TIEAs:** *American Samoa, Antigua and Barbuda, Aruba, Bahamas, Barbados, Bermuda, Brazil, BVI, Cayman Islands, Colombia, Costa Rica, Dominica, Dominican Republic, Gibraltar, Grenada, Guam, Guernsey, Guyana, Honduras, Isle of Man, Jamaica, Jersey, Liechtenstein, Marshall Islands, Mexico, Monaco, Netherlands Antilles, Peru, Puerto Rico, St. Lucia, Trinidad and Tobago.*
- **MLATs:** *Argentina, Bahamas, Canada, Hungary, Italy, Jamaica, Korea, Mexico, Morocco, Netherlands, Panama, Philippines, Spain, Switzerland, Thailand, Turkey, United Kingdom (Cayman Islands), United Kingdom, Uruguay.*

source: Isla Associates Ltd