

NARRATIVE REPORT ON GERMANY



PART 1: NARRATIVE REPORT

Germany's offshore financial centre: Overview and background

Germany is a safe haven for dictators' loot, the assets of organised crime networks, and the proceeds of tax crimes and other illicit financial flows from around the globe. In his September 2015 book [Tax Haven Germany](#), TJN researcher Markus Meinzer calculated that the amount of tax exempt interest-bearing assets held by non-residents in the German financial system ranged between €2.5 - 3 trillion as of August 2013.

Germany's global scale weighting in the FSI is 6.0, meaning it has a six percent share of global offshore financial services – though not as large as the United States, United Kingdom or Luxembourg, whose shares are respectively around 20 percent, 17 percent and 12 percent¹. Germany's secrecy score of 56 places it in the lower mid-range of the secrecy scale, roughly equivalent to those of Japan and (a much-improved) Luxembourg.

However, behind this moderate secrecy score lie areas of great concern.

While there has been some recent progress with Germany's international treaty commitments and anti-money laundering framework, there are still major loopholes and many implementation deficits. Germany has shown negligent enforcement of anti-money laundering rules, and it offers a worrisome set of secrecy facilities and instruments, such as bearer shares, which were outlawed or severely restricted long ago in many 'classic' tax havens. Like many other OECD countries, Germany does not sufficiently exchange tax-related information, automatically or otherwise, with a multitude of other jurisdictions. Many foreign-owned assets in Germany are held secretly through elaborate structures spanning secrecy jurisdictions such as Cayman Islands and Switzerland. And Germany's willingness to police its financial sector in these areas is woefully inadequate. Germany has flown under the radar for too long: it is one of the world's bigger secrecy jurisdictions, and needs to be understood as such.

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

Rank: 8

Chart 1 - How Secretive?

56
Secrecy Score

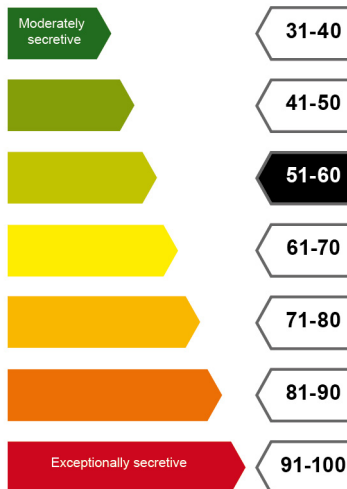
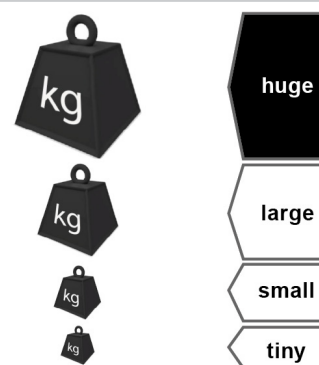


Chart 2 - How Big?



Germany accounts for slightly over 6 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.

Read more
 → Full data
 → Germany on TJN Blog
 → Full Methodology

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from 1585 ([p308](#)). 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 elected to set up their headquarters there, marking the financial centre's rebirth.

After the Second World War, German banks, faced with quite strong domestic regulations in the Bretton Woods era, shifted substantial operations abroad in the 1960s and 1970s, particularly into the deregulated "[Euromarkets](#)" – notably the City of London and Luxembourg (see their respective offshore histories [here](#) and [here](#)). Their London offices in particular, where Deutsche and other German banks became heavily involved in the recycling of Petrodollars during and after the OPEC oil crisis, helped them grow into global financial powerhouses, spreading their activities worldwide and, as they grew in strength, lobbying 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 ([p178 of *European Banks and the American Challenge*](#)). By the 1970s the high-growth Bretton Woods system of relatively tight administrative controls over cross-border financial flows and speculative activity was being fatally undermined by the unregulated Euromarkets, and German banks became increasingly international in focus. Yet the presence of strong industrial sectors in Germany, such as the motor vehicle industries, meant that there were always powerful counter-lobbies able to resist the scale of dominance by finance that has been achieved in other countries such as the United Kingdom.

Germany fights against foreign tax havens

However, Germany also has a long record of resistance against external tax haven activity.

This dates back till at least 1931 when Germany issued a regulation to defend against tax erosion by Liechtenstein foundations ([p.263](#)), which were becoming increasingly popular among German wealthy 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" ("[Steueroasenbericht](#)") of 1964 raised fresh concern about these and other issues and resulted in a new law in 1972 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.

... but then starts to offer offshore attractions in earnest

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 (and, by and large, risk) in Germany's financial system ([p.264](#)).

Meanwhile, attempts by the constitutional convention after the 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](#)': a race to the bottom inside Germany: not so much on corporate tax rates themselves, but on lax enforcement, auditing and the hiring and staffing of local tax authorities. This kind of laxity is another classic 'tax haven' staple.²

Yet there is *some* 'competition' at the parish level on corporate taxes. The municipalities

have some freedom to set a component of the corporate tax, the “business tax” known as *Gewerbsteuer*, which now represents approximately half of the corporate tax rate on average³.

This situation led to, among other things, a rather comical situation in the tiny German commune of Norderfriedrichskoog in the far north near the Danish border: a commune with fewer than 50 inhabitants which turned itself into a miniature internal German corporate tax haven by setting its rate for *Gewerbsteuer* at zero.

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 *Gewerbsteuer*, removing most of the incentive to perform such tax gymnastics.

Even so, the minimum tax has reduced but not eliminated the problem. Other parishes, particularly in poverty-stricken Eastern Germany, have sought to attract corporate business through similar engagement in ‘tax wars’; another example is Deutsche Börse’s [relocation from Frankfurt to nearby Eschborn](#) in 2010, cutting its tax rate sharply.

This ‘race to the bottom’ contributes to the fact that Germany’s corporate tax revenues are low, coming in at around 1.8 percent of GDP in 2012 according to OECD data, compared to 2.9 percent for the OECD average.⁴ This is despite Germany having an average corporate tax rate of around 30-33 percent (depending on the state), far above the OECD’s average 26 percent rate.

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

Although Germany does not practice banking secrecy like neighbouring Switzerland, criticism [by the FATF](#) highlights concern about the use of entities such as trusts, foundations and Treuhand (a German speciality that can provide strong secrecy). Information about beneficial ownership of such structures, the FATF notes, is very patchy and constitutes a major secrecy loophole. While Germany addressed some of the FATF’s concerns after 2010, problems remain, as witnessed in [FATF’s latest follow-up report of 2014](#).

Germany has been very slow to join the OECD / Council of Europe [Tax Convention](#) for tax information exchange - meaning that it has failed to establish effective tax information-exchange agreements with many countries. These factors – combined with a number of tax exemptions for non-residents, notably on bank deposit interest and on German government bonds - have attracted large (and often illicit) financial inflows. In its [draft law for transposing the new global automatic information exchange standard](#) dating from July 2015, Germany’s maximum fine for wilful misreporting was only 5000€, indicative of the lax enforcement approach.

Low level of suspicious transactions reports (STRs)

The FATF in 2010 also noted particular concerns with Germany’s relatively low level of reporting of suspicious transactions (STRs):

“For an economy the size of Germany’s, with a highly-developed financial services sector which provides near-universal access to such services for its resident population, the level of suspicious transaction reporting appears to be unusually low.”

Although reporting increased by more than 10% every year in 2011 and 2012, the figures remain very low by international comparisons. Furthermore, in 2010 the FATF noted a surprisingly low number of STRs filed by Frankfurt financial institutions in the year 2008 ([p.172](#)):

“The analysis of STR filings within each state [...] also show, prima facie, some surprising results, particularly in relation to the comparatively low numbers submitted to the authorities in Hessen, which is host to the country’s financial center of Frankfurt”.

While this suspicious underreporting in Hessen decreased somewhat in 2011 and 2012, even in those years both Bundesländer Bavaria and Northrhine-Westfalia reported higher numbers of STRs than Hessen, pointing to the likelihood of low profile case reporting instead of serious cases being brought to light through those STRs.

Germany suffers many other shortcomings that attract illicit and questionable financial flows from abroad. For instance:

- Even tax evasion in particularly serious cases (“*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.

- Bearer shares are a widely used instrument in Germany even though they obscure legal and beneficial ownership. The FATF, in its [2010 evaluation of Germany](#), decries the “Complete lack of transparency over stock corporations that issue their shares in bearer form, and over private foundations.” German limited companies are not sufficiently transparent, though the extent of transparency varies across the different legal forms.
- There are no comprehensive public statistics about the number of money laundering and tax evasion convictions in Germany. And the financial regulator BaFin overwhelmingly outsources supervision of the implementation of money laundering rules to private auditing firms, which raises serious questions about conflicts of interest. Similarly, Germany is more secretive about the outcome of its freezing and related anti-money laundering audits than Switzerland and the United Kingdom.
- 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.
- Germany played a key role in 2013-2014 in weakening EU rules to require the public naming of offenders against anti-money laundering rules, resulting in many loopholes from the obligation to publish the offenders. Despite criticism by the FATF, supervision is still highly fragmented among more than 100 different agencies, which often lack the required capabilities to enforce AML rules effectively.
- The German tax authorities have also 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. In 2015, [new data](#) showed how the two wealthy southern

Bundesländer of Bavaria and Baden-Württemberg have understaffed their corporate audit departments, relative to the German average.

- In 2013-2014, Germany played a decisive [blocking role](#) in European efforts to require transparency of beneficial ownership of companies across Europe. Because of Germany's intransigence, the hoped-for public access to European-wide registers of beneficial ownership information as implemented in the 4th EU anti-money laundering directive was watered down so that it only applies after a "legitimate interest test" has been performed.
- Furthermore, Germany signed a widely criticised tax deal with Switzerland to allow tax evaders and other criminals to preserve their anonymity – though at least the deal was eventually overturned in the Bundesrat (upper house) in late 2012.
- The German strategy of purchasing data from whistleblowers (especially from Swiss Banks) has allegedly led to substantial additional tax revenue. However, robust data on the results of those purchases have never been published by the German authorities ([p.14-16](#)). More importantly, the results of these data purchases, in terms of criminal prosecutions, are largely unknown. In the first and largest "whistleblown" dataset on the Liechtenstein LGT bank, it was revealed that in Northrhine-Westfalia, the largest German state, there has not been a single prison term without probation, and in the Swiss-Leaks cases, there has not even been a single public indictment. The data for the rest of Germany is not available, but it is very unlikely that prison terms (or public indictments, respectively) have been served in other German states. By contrast, there is evidence that German prosecutors are refusing to open investigations even if confronted with fully documented undeclared foreign accounts. This contrasts with

much-criticised Greece, where there has been at least a prosecution of a Minister who manipulated the data ([chapter 6](#)).

- The OECD has repeatedly criticized German courts and judicial practices for regularly entering into intransparent deals ([p.220](#)).
- The influx of dirty money is facilitated by a narrow set of predicate offenses for money laundering. For instance, if committed abroad, embezzlement of public funds, taking undue advantages or extortion are not predicate offenses for money laundering, and therefore would not expose a banker to the risk of money laundering charges.

And all this brings large-scale questionable flows

All this regulatory laxity have brought large money laundering flows from criminal organisations in countries such as Italy. But there are also large illicit capital flows from developing countries: for instance, Germany froze billions of dollars' worth of assets from the 'Arab spring' countries such as [Libya](#), Tunisia or Egypt: raising the question of how they managed to get to Germany unchecked.

Another striking example in recent years has been the management of large-scale and probably [illicit Turkmen funds](#).

In many of such instances of going after kleptocrats' loot, however, Germany has lagged behind other European partners such as France or Switzerland, and has played rather an obstructive role when the European Union sought to set up European financial sanctions. Meanwhile, German companies also often play a questionable role abroad, supported by these weak laws and enforcement by German prosecutors. Until 1999, Germany [allowed](#) bribe payments to be tax-deductible, becoming one of the world's last major economies to outlaw this practice later on. With intensified investigations, some large-scale corruption cases involving companies such as Siemens were brought to light. Only [late in 2014](#), did Germany ratify the UN Convention on Corruption – ten years after

it signed it, and later than most other countries in the world. This came only after Germany belatedly tightened its lenient laws on bribery of Members of Parliament.

Also German banks have a worrisome record of supporting tax evasion and money laundering activities abroad. For instance, Deutsche Bank Mauritius was involved in handling part of a US\$20 million bribery scandal in Kenya, and various German banks have been facing investigations for breaches of anti-money laundering rules in places as diverse as the USA, Dubai and India ([pp. 87-90](#)).

According to the [latest report](#) 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](#), 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.

Read more:

- [Full data for Germany](#)
- [Germany on TJN Blog](#)
- [Full Methodology](#)
- For more background on the role played by Germany in money laundering and tax evasion, see Markus Meinzer's 2015 book on Germany as a tax haven, entitled "[Steueroase Deutschland](#)" (currently only available in German.)
- See the TJN Deutschland study on Germany as a secrecy jurisdiction, [here \(in German language\)](#)
- Baltilossi, Sand Cassis, Y (2002), *European Banks and the American Challenge: Competition and cooperation in international banking under Bretton Woods*, Oxford University Press: Oxford.
- Global Financial Integrity (March 2010), *Privately held, non-resident deposits in secrecy jurisdictions*, available at http://www.gfintegrity.org/storage/gfip/documents/reports/gfi_privatelyheld_web.pdf

- Holtfrerich, C.L (1999), *Frankfurt as a Financial Centre: From medieval trade fair to European banking centre*, C.H.Beck: Munich.

¹ Research by Washington-based Global Financial Integrity from 2010 identified Germany ([p1](#)) as the world's fifth largest holder of private, non-resident deposits – a key marker of offshore activity.




² 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. 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 ones initiated by the states. 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.

³ 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%.




⁴<https://stats.oecd.org/Index.aspx?DataSetCode=REV>

PART 2: GERMANY'S SECRECY SCORE





TRANSPARENCY OF BENEFICIAL OWNERSHIP – Germany

- 1  **Banking Secrecy: Does the jurisdiction have banking secrecy?**
Germany partly curtails banking secrecy
- 2  **Trust and Foundations Register: Is there a public register of trusts/foundations, or are trusts/foundations prevented?**
Germany does not disclose or prevent trusts and private foundations
- 3  **Recorded Company Ownership: Does the relevant authority obtain and keep updated details of the beneficial ownership of companies?**
Germany partly maintains company ownership details in official records






KEY ASPECTS OF CORPORATE TRANSPARENCY REGULATION – Germany

- 4  **Public Company Ownership: Does the relevant authority make details of ownership of companies available on public record online for free, or for less than US\$10/€10?**
Germany does not require that company ownership details are publicly available online
- 5  **Public Company Accounts: Does the relevant authority require that company accounts are made available for inspection by anyone for free, or for less than US\$10/€10?**
Germany does not require that company accounts be available on public record
- 6  **Country-by-Country Reporting: Are all companies required to publish country-by-country financial reports?**
Germany partly requires public country-by-country financial reporting by some companies

EFFICIENCY OF TAX AND FINANCIAL REGULATION – Germany

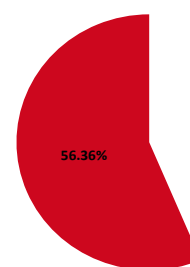
- 7  **Fit for Information Exchange: Are resident paying agents required to report to the domestic tax administration information on payments to non-residents?**
Germany does not require resident paying agents to tell the domestic tax authorities about payments to non-residents
- 8  **Efficiency of Tax Administration: Does the tax administration use taxpayer identifiers for analysing information efficiently, and is there a large taxpayer unit?**
Germany does not use appropriate tools for efficiently analysing tax related information
- 9  **Avoids Promoting Tax Evasion: Does the jurisdiction grant unilateral tax credits for foreign tax payments?**
Germany partly avoids promoting tax evasion via a tax credit system
- 10  **Harmful Legal Vehicles: Does the jurisdiction allow cell companies and trusts with flee clauses?**
Germany partly allows harmful legal vehicles

INTERNATIONAL STANDARDS AND COOPERATION – Germany

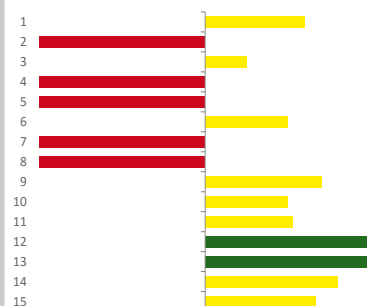
- 11  **Anti-Money Laundering: Does the jurisdiction comply with the FATF recommendations?**
Germany partly complies with international anti-money laundering standards
- 12  **Automatic Information Exchange: Does the jurisdiction participate fully in multilateral Automatic Information Exchange via the Common Reporting Standard?**
Germany participates fully in Automatic Information Exchange
- 13  **Bilateral Treaties: Does the jurisdiction have at least 53 bilateral treaties providing for information exchange upon request, or is it part of the European Council/OECD convention?**
As of 31 May, 2015, Germany had at least 53 bilateral tax information sharing agreements complying with basic OECD requirements
- 14  **International Transparency Commitments: Has the jurisdiction ratified the five most relevant international treaties relating to financial transparency?**
Germany has ratified less than five of the most relevant international treaties relating to financial transparency
- 15  **International Judicial Cooperation: Does the jurisdiction cooperate with other states on money laundering and other criminal issues?**
Germany partly cooperates with other states on money laundering and other criminal issues

Secrecy Score

Germany - Secrecy Score



Germany KFSI-Assessment



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 56 per cent for Germany has been computed by assessing its performance on 15 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail, [here](#).

Green indicates full compliance on the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); and yellow indicates partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 31.12.2014 (with the exception of KFSI 13 for which the cut-off date is 31.05.2015).

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

All background data for all countries can be found on the Financial Secrecy Index website: <http://www.financialsecrecyindex.com>