



THE UK'S CORRUPTION PROBLEM

PROGRESS MADE AND PROGRESS THAT NEEDS TO BE MADE IN THE UK'S OVERSEAS TERRITORIES

SUMMARY

Seven of the UK's Overseas Territories are infamous for the role they play as secrecy jurisdictions. This report examines the progress that these seven Territories have made towards transparency in the last two years. We have graded each of the Territories as green, yellow, orange or red for their commitments with respect to tax and beneficial ownership transparency. We look at:

- *The ease with which people can hide money from tax authorities in Overseas Territories' banks.* The report concludes that **all seven Territories have made progress in this area in the last two years.** There is still further work to do nonetheless: the progress primarily benefits tax authorities in rich countries, leaving out those in developing countries.

- *The ease with which people can hide their identity, and their assets, behind anonymously-owned companies incorporated in the Overseas Territories.* Opaque details on beneficial owners – the people who own and control companies – can be abused by tax evaders, the corrupt and other criminals. Here, progress has been slow, but **two of the Territories deserve some credit for commitments they have made to make company information more transparent.** Montserrat has said it will put beneficial ownership information in the public domain, albeit for a small fee, and without putting it online. This makes it the first of the Territories to commit to make beneficial ownership information public. Gibraltar, by virtue of being a member of the EU, will be creating a registry of beneficial ownership and will make it available to anyone who can demonstrate a "legitimate interest". We believe that in order to maximize the protection against companies being abused by tax evaders, the corrupt and other criminals, beneficial ownership information should be fully public. Nevertheless, the changes in the last year represent the first steps towards transparency.

2013		2015	
Automatic exchange of information	Ratified OECD Tax Convention	Automatic exchange of information	Ratified OECD Tax Convention
Bermuda, Gibraltar	None of the Overseas Territories ¹	Non-compliant	Non-compliant
All other Overseas Territories ²		All other Overseas Territories ³	All other Overseas Territories ⁴

Company beneficial ownership, 2014	Company beneficial ownership, 2015
Anguilla, BVI, Caymans, Montserrat, Turks and Caicos	Anguilla, BVI, Caymans, Turks and Caicos
Bermuda	Bermuda
Gibraltar	Gibraltar, Montserrat

- Red: not compliant.
- Green: fully compliant.

RECOMMENDATIONS

- The UK's Overseas Territories should require company beneficial ownership information to be made public, in a format that is free and searchable.
- If the Overseas Territories are unwilling to do this themselves, the UK should require its Overseas Territories to make company beneficial ownership information public, in a format that is free and searchable.
- The UK should provide technical expertise and, if necessary, money to help its Overseas Territories make beneficial ownership available in an open data format. Montserrat would appear to be a current candidate for such help: it has shown the political will to open up its company registry but does not yet have plans to put the information online.
- The UK's Overseas Territories should pledge to exchange tax information automatically on a comprehensive, multilateral basis, and without requiring immediate reciprocity from lower-income countries.
- To help monitor the impact of automatic exchange of information and generate political will for further countries to join, the UK and its Overseas Territories should publish aggregate statistics showing the size and origin of the assets in its financial institutions.
- To ensure the maximum utility of information shared under automatic exchange of information, the UK and its Overseas Territories should make it clear they will allow information they exchange to be used in anti-corruption efforts as well as to address tax evasion.
- The UK should ensure there is transparency over who owns and controls companies that hold assets in the UK. More than 36,000 properties in London are owned by offshore companies, 38% of them BVI companies.⁵ Property is a sector that is at high risk of money laundering and yet the total of the fines handed out in the UK last year by the body that oversees the property sector was less than the price of an average house in central London.⁶ The beneficial owners of any foreign company owning property in the UK should be made public. The UK has committed to consult on the best way forward to stop the UK's property market from becoming a safe haven for corrupt money. The consultations need to start now.
- The UK should consider how the same levels of beneficial ownership transparency can be achieved over foreign ownership of assets other than property.
- The Financial Action Task Force, the body that sets the global anti-money laundering standards, should specify that one of the customer risk factors that should be taken into account when determining whether to carry out enhanced due diligence is if a corporate customer is linked to a secrecy jurisdiction. In the absence of FATF adding this specification, the UK and its regulators should require financial institutions to do this. Secrecy jurisdictions pose an extra risk of money laundering due to the opacity that they provide over company ownership and, in the case of most developing countries, bank account ownership.

INTRODUCTION

Corruption takes many forms, and the UK's Overseas Territories are key providers of financial secrecy to the world's tax dodgers, drugs cartels, arms traffickers and other criminals. Christian Aid, Global Witness, Tax Justice Network and Transparency International UK have been campaigning against such illicit financial flows for many years. In this briefing document we have joined together to examine two aspects of the financial secrecy provided by the Overseas Territories:

- The ability for tax evaders to hide money out of sight of their own country's tax authorities by putting it in an offshore bank account. In particular, we examine the progress made and the progress that still needs to be made with regard to requiring banks to **exchange information automatically** on their customers with tax authorities (as opposed to just exchanging information on request).
- The ability for tax evaders, the corrupt and other criminals to hide their identity behind an anonymously-owned company – that is, a company where businesses and civil society cannot find out who owns and controls it and even law enforcement and tax inspectors struggle to find out. In particular, we examine the progress made and the progress that still needs to be made with regard to requiring information on the people who own and control companies – the **beneficial owners** – to be put in the public domain.

See the appendix for details of our methodology.

AUTOMATIC EXCHANGE OF INFORMATION: WHAT IT IS AND WHY IT IS NEEDED

Tax evaders need to keep their money and other income-generating assets out of sight of tax inspectors. The simplest way of doing this is to keep money in an offshore bank account, preferably somewhere with strong banking secrecy laws. Increasingly, a more complex range of financial instruments are used.

Often, information on who has what money in what bank account or other instrument is exchanged between jurisdictions only on an 'on request' basis under a patchy network of bilateral and multilateral tax exchange treaties. In other words, the information remains secret unless the tax authorities get suspicious and start asking questions. And even

then, they need to know which tax payer is suspected of having hidden money in which bank in which jurisdiction – a catch-22 situation. In essence, tax authorities have to already know what they are looking for before they make a successful request for the information.

For years the OECD and influential member states claimed that the exchange of financial information between jurisdictions 'on request' was sufficient for efforts to counter crimes including tax evasion – despite overwhelming evidence that the 'on request' mechanism in practice led to little if any actual information exchange.⁷

Progress made to date

However, since 2012 a new consensus has emerged on exchanging tax information: that the exchange should happen automatically rather than on demand. The major change came after the global financial crisis, with growing evidence of the scale of tax evasion facilitated by major international banks. This prompted the United States to end its backing of 'on request' information exchange and adopt the Foreign Account Tax Compliance Act (FATCA). FATCA is a unilateral approach which requires the one-way automatic transfer of information about U.S. taxpayers to the U.S. tax authorities from foreign banks. In tandem with the European Union's Savings Tax Directive (EUSTD), which has long-required automatic and reciprocal information exchange among member states, FATCA tipped the scales globally.

In February 2014, at the behest of the 2013 meetings of the G8 and G20 groups of countries, the OECD rolled out the Common Reporting Standard (CRS). The CRS is a system of multilateral automatic exchange of information, which will come into force from 2017, and involves the exchange of information by jurisdictions about financial accounts (i.e. bank accounts, interests in mutual funds or other investing entities, etc.) held in their financial institutions by non-residents.

The Common Reporting Standard represents a powerful step forward: first, through the recognition of automatic information exchange as the global standard; and second, through the intention to achieve a global, multilateral system.

Two serious obstacles remain, however.⁸ In terms of the specific information that is exchanged, the Common Reporting Standard will need to be substantially tightened up over time – addressing, for example, ownership of real estate, safe deposit

boxes and hard assets held in freeports. In terms of the exchange *system*, coverage is crucial: how many jurisdictions are included in terms of (i) information provision, and (ii) information receipt? (These are separate points because it would be straightforward, in parallel with many international treaties, to allow differentiated responsibilities – so that, for example, lower-income countries without substantial, cross-border financial activity could benefit from information for a period of years before facing any requirement to reciprocate.)

BENEFICIAL OWNERSHIP: WHAT IT IS AND WHY IT IS NEEDED

There is another secrecy product that tax evaders, the corrupt and other criminals like to use in order to distance themselves from their assets (and therefore make it more difficult for tax authorities to find hidden money or for law enforcement to find stolen or dirty money). Instead of a wannabe criminal opening a bank account in their own name, they can open a company or trust in a place where it is difficult to find out who is behind it, and then open a bank account in the company or trust's name.

Progress made to date

While concerns about the lack of transparency around the ownership of companies and trusts have been around for many years,⁹ 2013 was a landmark year with respect to progress made on company (but not trust) transparency. Beneficial ownership became front page news, and was at the centre of the G8 agenda. It also made it onto the G20 agenda as well as that of the Joint Ministerial Council – a meeting of the UK and leaders from the Overseas Territories.

In the UK the developments came quick and fast. In June, as part of the G8 commitment to publish national action plans, the UK promised to create a central register of company beneficial ownership and to consult on whether to make it public.¹⁰ The consultation lasted over the summer and on 31 October 2013 Prime Minister David Cameron announced that the UK would create a public register.¹¹ Legislation was introduced in June 2014,¹² was debated, amended, and passed into law in March 2015.¹³

Whilst this was happening in the UK, the Ukraine was also going through a similar process, voting in October 2014 to create a public register of beneficial owners of

companies. This happened in part due to a reaction to the role that anonymously-owned companies played in Ukraine's endemic corruption,¹⁴ which was itself a partial cause of the uprising in the country.

In the EU, discussions on the 4th Anti-Money Laundering Directive started in March 2013. The new directive was passed on 20 May 2015 with a requirement that company beneficial ownership information be held in central registers, accessible by the authorities, obliged entities and members of the public who can demonstrate a legitimate interest in the information.

AUTOMATIC EXCHANGE OF INFORMATION AND THE UK'S OVERSEAS TERRITORIES

The potential role of the Overseas Territories in tax evasion was illustrated in dramatic fashion by the International Consortium of Investigative Journalists' *Secrecy for Sale* project¹⁵ which showed the Overseas Territories at the heart of many elaborate structures. It can also be seen in the large numbers of financial institutions in the Overseas Territories that have had to register with the U.S. tax authorities for FATCA compliance.¹⁶

At the Berlin Tax Conference in 2014, all of the UK's Overseas Territories committed to be early adopters of automatic information exchange, using the Common Reporting Standard.¹⁷ Consistent with this, they all signed the multilateral competent authority agreement (MCAA) implementing the CRS and have ratified the prerequisite OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the Tax Convention), albeit no information has yet been exchanged. As such, all the Overseas Territories are graded as 'fully compliant' here.

We have assessed the Overseas Territories on two aspects of their commitment to automatic exchange:

- Whether or not a Territory has a) signed the MCAA implementing the CRS and b) committed to exchange information as soon as possible (i.e. in 2017).¹⁸ The data for this assessment came from indicator 12 of the Financial Secrecy Index.
- Whether a Territory has ratified the Tax Convention, which is needed in order for information exchange to take place under the MCAA. The data for this assessment came from indicators 13 and 14 in the Financial Secrecy Index.

Overseas Territories	Automatic exchange of information, 2013	Automatic exchange of information, 2015	Ratified OECD Tax Convention, 2013	Ratified OECD Tax Convention, 2015
Anguilla	Pass	Pass	Fail	Pass
Bermuda	Fail	Pass	Fail	Pass
British Virgin Islands	Pass	Pass	Fail	Pass
Cayman Islands	Pass	Pass	Fail	Pass
Gibraltar	Fail	Pass	Fail	Pass
Montserrat	Pass	Pass	Fail	Pass
Turks and Caicos	Pass	Pass	Fail	Pass

Source: *Financial Secrecy Index 2015*, <http://www.financialsecrecyindex.com/index.php/faq/britishconnection>

The UK ratified the Tax Convention on 30 June 2011, and extended its reach to its relevant Overseas Territories in late 2013 and early 2014.¹⁹ As a result all seven Territories are now graded green on this point.

A major question mark remains over the extent to which information will be provided in practice, and to developing countries in particular. Specific pledges on this point, for example on providing developing countries a temporary period of non-reciprocity in information exchange, would be in keeping with the G8's 2013 commitment, and the 2015 Conservative Party Manifesto commitment, to ensure developing countries are fully included in the benefits of the new automatic exchange regime.

The data that will be collected for automatic information exchange also provide a new opportunity to increase transparency over the international financial system. Financial centres will be able to collate statistics on the scale and origin of the assets held in their financial institutions. As these would be aggregate data, there would be no risk to account holder confidentiality by publishing statistics such as the value of assets by country of residence of account holder. Such statistics would aid understanding of the financial system, help accountability of the information exchange system, and build political will for new countries to participate.

In addition, the functioning of the Common Reporting Standard depends fundamentally on the availability and quality of beneficial ownership information on legal entities within each jurisdiction.²⁰

BENEFICIAL OWNERSHIP AND THE UK'S OVERSEAS TERRITORIES

The UK's Overseas Territories are a particular problem when it comes to incorporating anonymously-owned companies and trusts. The World Bank reviewed 213 cases of grand corruption that took place between 1980 and 2010.²¹ More than 70% of the cases relied on anonymously-owned companies help to obscure what they were doing. These cases involved a total of 817 corporate vehicles, and those from the UK's Overseas Territories were the most popular jurisdictions of choice among the corrupt. Companies from the BVI and the Caymans were the biggest problems. The conclusion is clear: companies in the Overseas Territories are abused.

In general, the Overseas Territories acknowledge that some progress needs to be made on beneficial ownership. For example, all of the Territories with significant financial centres signed up to the G8 beneficial ownership principles and all but one carried out public consultations on whether this information should be made public.

However, there are indications that the UK wants to see further transparency improvements in the Overseas Territories. Prime Minister David Cameron recently said that he was still not happy with the way some Territories were resisting financial transparency. He said, in the context of talking about beneficial ownership transparency: "If we're to beat corruption, we need transparency".²² In addition, the UK's anti-corruption champion, Sir Eric Pickles, suggested to the press that the UK may take a very firm line with its Territories, perhaps even including legislating to force them to open up.²³

At the 2013 Joint Ministerial Council, the UK's Overseas Territories promised to undertake public consultations. All but Bermuda now have, but at a remarkably slow pace. Only one, the Cayman Islands, has published both the submissions received, and a full government response to their consultation. The British Virgin Islands took over a year to produce a response, and the BVI government has yet to publish the submissions they received. And these are the two Territories that have actually produced government responses: none of the others have. While Gibraltar, Montserrat and Turks and Caicos have in various ways announced their policy positions, none of them have provided a formal response to their consultations.

The table below shows the progress as of 5 November 2015, and compares it with the same time in 2014. There has been some progress made in the last year. In particular:

- Montserrat has confirmed it will be making a register of beneficial ownership and making it accessible to the public, albeit for a small fee and without the data being online. The UK should provide support to Montserrat to help ensure that the information is available in an open data format – i.e. searchable and for free. This would ensure that Montserrat changed from its current yellow grade to a green grade.
- Gibraltar, as an EU member, will be implementing the EU's 4th Anti-Money Laundering Directive, albeit with no guarantees yet of how much public access there will be.

This is significant progress, but it is slow, and does not go far enough. The UK's Overseas Territories are among the largest providers of foreign direct investment in the world, especially to developing countries. With such a powerful position comes a responsibility to allow those in countries where Overseas Territory-based companies

operate to know who is behind the companies that are part of their communities.

For all the talk about beneficial ownership transparency in the Overseas Territories since 2013 (and there has been a lot²⁴), there has not yet been enough action.

The UK has proposed three criteria that any beneficial ownership system adopted by the Overseas Territories should meet:²⁵

- UK and domestic law enforcement and tax authorities can access company beneficial ownership information without restriction;
- UK and domestic law enforcement and tax authorities can quickly identify all companies that a particular beneficial owner has a stake in, without needing to submit multiple and repeated requests; and
- Companies and their beneficial owners are not alerted to the fact that an investigation is underway.

Meeting these criteria would represent an improvement but is not sufficient in order to solve the problem of opaque company ownership. It is not just police and tax inspectors from the UK and the Overseas Territories themselves that need to know who is behind companies. Tax inspectors from other countries should be able to find out. Companies doing business or investing in companies incorporated in the Overseas Territories should be able to find out.²⁶ Journalists should be able to find out. The information needs to be made public.

With the UK looking to host an anti-corruption summit in 2016, now is the time to change that, to deliver action and show the UK is as committed to stamping out corruption in its constitutional backyard as it is elsewhere in the world.

Overseas Territories	Company beneficial ownership, 2014	Company beneficial ownership, 2015
Anguilla		
Bermuda	Has a private centralised register ²⁷	Has a private centralised register ²⁸
British Virgin Islands		
Cayman Islands		
Gibraltar	Recently concluded consultation	Will implement the EU standard on beneficial ownership
Montserrat		Has committed to create a public register, but with access charged at EC\$20 per company or EC\$10 per company if asking in person
Turks and Caicos		

CONCLUSION

Many of the UK's Overseas Territories are in the business of selling financial secrecy – the sort of financial secrecy that is popular with the world's corrupt.

The global consensus on financial secrecy is changing fast. More and more countries are signing up to automatically exchange tax information rather than doing it only on request. Several countries have now committed to creating public registries of beneficial ownership and all EU countries are now required to create registries that will be accessible to anyone with a legitimate interest. The topic is on the table at the G7 and G20.

Montserrat has become the first of the UK's Overseas Territories to agree to make beneficial ownership information public

The Overseas Territories are to be commended for the progress they have made in signing up to automatically exchange tax information. This should make it harder in future for tax evaders from other

participating countries to hide money in banks in the Overseas Territories; though a bit more effort is needed to ensure developing countries benefit. Progress in information exchange however does not absolve the need for progress in beneficial ownership transparency too, both are vital. Montserrat and Gibraltar deserve credit for improving their beneficial ownership grades since last year. In particular, Montserrat has become the first Overseas Territory to agree to make beneficial ownership information public. The other Overseas Territories should now follow suit.

The UK should use its control over the Overseas Territories to get them to meet these emerging new transparency standards. With the UK looking to host an anti-corruption summit in 2016, now is the time to change that, to deliver action and show the UK is as committed to stamping out corruption in its constitutional backyard as it is elsewhere in the world. It is not possible for the UK to credibly claim that it has made significant improvements with regard to financial secrecy when jurisdictions it has control over remain some of the most notorious purveyors of financial secrecy.

APPENDIX I: METHODOLOGY


Christian Aid, Global Witness, Tax Justice Network and Transparency International UK have examined all of the UK's Overseas Territories that have significant financial centres: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Gibraltar, Montserrat, Turks and Caicos.

We have graded each jurisdiction as being either 'green', 'yellow', 'orange' or 'red', with green being the most transparent and red the least.


We have used data collected by Tax Justice Network's Financial Secrecy Index in 2013 and 2015 to assess progress.²⁹ The grades on automatic exchange of information have been calculated by looking at the adherence (ratification) to the most relevant multilateral platform for automatic information exchange. In 2013, this was the EU Savings Tax Directive, while for 2015, the signing of the multilateral competent authority agreement (MCAA) and a commitment to begin information exchange in 2017 had become the relevant requirement to receive a full transparency credit. Partial credit was given if countries signed the MCAA but committed to exchange information in 2018, or if countries committed to exchange information bilaterally but without signing the MCAA.³⁰


 Green: fully compliant.


 Yellow: partially compliant.


 Red: not compliant.

We have collected data on beneficial ownership from conversations with all of the Overseas Territories with significant financial centres. The equivalent data from 2014 was published by Christian Aid and Global Witness.³¹ The grades on beneficial ownership transparency have been calculated in the same way as previous publications on this topic:

 Green: the Territory has a public registry of beneficial ownership.

 Yellow: the consultation on beneficial ownership has recently closed (in the last three months) and the Territory is therefore assumed to be considering creating a public registry OR the Territory has committed to applying the EU standard on beneficial ownership transparency (i.e. having a registry that is available to anyone who can demonstrate a legitimate interest) / has committed to creating a public registry, but with a financial barrier to access.

 Orange: the Territory has a private centralised registry of beneficial ownership.

 Red: the Territory does not fall into any of the above categories.

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Christian Aid is a Christian organisation that insists the world can and must be swiftly changed to one where everyone can live a full life, free from poverty. We work globally for profound change that eradicates the causes of poverty, striving to achieve equality, dignity and freedom for all, regardless of faith or nationality. We are part of a wider movement for social justice.



global witness

Global Witness is a UK based non-governmental organisation which investigates the role of natural resources in funding conflict and corruption around the world.



The Tax Justice Network is an independent international network dedicated to high-level research, analysis and advocacy on the role of tax and the harmful impacts of tax evasion, tax avoidance, tax competition and secrecy jurisdictions.



Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a centre of anti-corruption expertise in the UK.