

Key Corporate Tax Haven Indicators

Haven Indicator 14: Tax Court Secrecy

What is measured?

This indicator assesses the openness of a jurisdiction's judicial system in tax matters by analysing two relevant aspects.

1. **Regarding the openness of court proceedings/lawsuits/trials:** we assess for a) criminal and b) civil/administrative tax matters,¹ whether the public always has the right to attend the full proceedings and cannot be ordered to leave the court room even if a party invokes tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules. –
 - Acceptable justifications for exceptions for the principle of public access may include (subject to contextual analysis): against moral, involvement of a minor, public order, national security, administration of justice, business or trade secrets or exceptional circumstances.
 - Unacceptable exceptions include: discretion by the judge, the taxpayer requesting privacy or the involvement of, for example, a trustee.
 - When exceptions to the principle of public access include: personal privacy or the protection of private or family life, we consider the answer as “unknown” because it is not clear if these provisions are used in extraordinary circumstances or if they can be abused to exclude the public from proceedings on tax matters.²
2. **Regarding the public online availability of verdicts/judgements/sentences:** it assesses for a) criminal and b) civil/administrative tax matters, whether all written judgments are published online for free or at a cost of no more than €/£/US\$10. For a judgement to be considered published, only personal details which are not relevant for assessing the tax matter in question, such as personal addresses and account numbers, could be redacted. Tax Secrecy, bank secrecy, professional secrecy or comparable confidentiality rules are not acceptable as the basis for exceptions from public disclosure. This component also assesses if the names of the parties are anonymised.³

If court proceedings are openly accessible, this indicator's haven score is reduced by 25 for each criminal and civil tax matters. By the same token, the

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haven score will be reduced by 25 if all judgments in criminal tax matters are published online for free; and likewise, by another 25 for judgements in civil tax matters. However, the score is reduced only by 12.5 (instead of 25) if judgments are available online only against a cost of no more than €/£/US\$10 or if judgments are published online for free in anonymised form.

Thus, for instance, a jurisdiction with public and comprehensively accessible criminal and civil tax proceedings, will have a haven score of 0 if all the judgements/verdicts resulting from those proceedings are published online for free. The jurisdiction would have a 25 haven score if the judgements resulting from both criminal and civil tax proceedings are available online against a cost of up to €/£/US\$10 each or if judgements are available online for free, but at least some of them in an anonymised form.

The information for this indicator has been drawn from the following sources: a) results of the Tax Justice Network Survey 2017; b) Thomson Reuters Practical Law [Tax Litigation Global Guide](#)⁴ or similar online sources; c) in certain cases, we searched for and analysed the local legislation of jurisdictions to find out whether there are any limitations to public access embedded in the laws; and d) in cases where the above sources indicated that written judgments of both criminal and civil tax court cases are published online, the corresponding local court website or other government agencies' websites were consulted to ensure that both criminal and civil tax judgments are effectively available and that technical problems do not prevent access to information.

If we were unable to find supporting evidence (either any academic article or source, such as Thomson Reuters Practical Law [Tax Litigation Global Guide](#), or a Law plus Section/Article/Paragraph), we concluded the answer to be "unknown", and described the situation in a note (e.g. "while the Ministry of Finance said X, we could not verify this").

For practical purposes, we consider court judgments to be publicly available online when it is not necessary to establish complex payment or user-registration arrangements for accessing the data (e.g. registration of bank account, requirement of a local identification number, or sending a request by post). Accordingly, we have split this indicator into two components. The overall haven score for this indicator is calculated by simply addition of the haven scores of each of these components. The haven scoring matrix is shown in Table 14.1 (on the following page), with full details of the assessment logic presented in Table 14.3.

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Table 14.1. Scoring Matrix Haven Indicator 14

Regulation		Haven Score [100 = maximum risk; 0 = minimum risk]
Component 1: Public access to tax court proceedings (50)		
<u>No or restricted access to both criminal and civil tax proceedings</u> For both criminal and civil tax proceedings, the public cannot always access the courtroom or it may be ordered to leave by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules.		50
<u>No or restricted access to either criminal or civil tax proceedings</u> While criminal (or civil) tax proceedings are generally public; civil (or criminal) tax proceedings are not public, or the audience may be ordered to leave by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules.		25
<u>Public access to both criminal and civil tax proceedings</u> Criminal and civil tax proceedings are always public, and the audience may not be ordered to leave by invoking tax secrecy, professional secrecy, or comparable confidentiality rules.		0
Component 2: Online publication of tax judgements/verdicts (50)		
<u>Criminal tax judgements/verdicts</u>	Not available online	25
	Always available up to €/£/US\$10 or available for free but in anonymised form	12.5
	Always available online for free	0
<u>Civil tax judgements/verdicts</u>	Not available online	25
	Always available up to €/£/US\$10, or available for free but in anonymised form	12.5
	Always available online for free	0

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All underlying data can be accessed freely in the CTHI [database](#).⁵ To see the sources we are using for particular jurisdictions please consult the assessment logic in Table 14.3 and search for the corresponding info IDs (IDs 407-410) in the database report of the respective jurisdiction.

Why is it important?

The public's right to open courts is well established in most countries, regardless of whether the legal system is rooted in common law or civil law.⁶ Open court proceedings and public availability of verdicts are often considered to be important pillars of a modern democratic state, directly derived from a jurisdiction's constitution and/or the principle of the rule of law, on which the legitimacy of the entire judicial process hinges.

The "Rule of Law Department" of the Organisation for Security and Co-operation in Europe (OSCE) makes a direct connection between the Universal Declaration of Human Rights and public access to court judgements:

The obligation of states to 'make public' the decisions of their courts is found within the provisions on 'the right to a fair trial'. This right stems from Article 10 of the Universal Declaration of Human Rights (1948) and has been elaborated and set down in binding form in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR).⁷

Governments and private actors alike abide by court decisions at least in part because the openness of the process allows the public to monitor if it meets requirements of procedural justice. These requirements include the transparency of the process, thereby building confidence in the non-arbitrary application of the law. The transparency of the process safeguards the independence and impartiality of courts.

Closely linked to the fundamental human rights of the freedom of expression and freedom of the press,⁸ open courts not only allow the scrutiny of judicial decisions, but also are a prerequisite for the accountability of governments (in the form of the public prosecutor and/or tax administration).⁹ Furthermore, open courts are essential in ensuring compliance with both the letter of the law and its spirit.¹⁰ Thus, open courts are an important element in protecting the integrity of the entire judicial system and of the administration.

If any exceptions are allowed for certain types of civil and/or criminal tax matters, governments and private sector actors may misuse these exceptions for sweetheart deals, questionable out of court settlements or political vendettas. Generally speaking, the possibility of allowing exceptions to public access to proceedings may invite powerful lobbyists and/or defendants to exert

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pressure on judges not to grant access to court proceedings or verdicts in order to avoid public scrutiny.

While specific exceptions to this open court principle are widely seen to be legitimate with respect to “the protection of children or victims of sexual crimes”,¹¹ the holding of closed sessions of a court (in camera) should be restricted to such specific situations.

Nonetheless, in practice, in some countries tax proceedings are typically conducted behind closed doors and/or tax judgements are not published. Privacy arguments or official “tax secrecy” legislation, which may have the power to override the open court principle, are sometimes used as justification for the exclusion of the public or non-disclosure of verdicts.

This practice creates fundamental conflicts with the rule of law. While all tax proceedings should be public, to address data protection concerns, specific personal data of taxpayers (dates of birth, addresses, names of children, bank account numbers, etc) could be redacted from verdicts, and their reporting could be restricted. These details are not required for judicial decision making and hence removing them does not conflict with the open court principle.¹² This approach balances the taxpayer’s right to privacy over their personal affairs and to informational self-determination, and the public’s right to transparent judicial proceedings. However, we consider that public availability of the names of the parties (plaintiff, defendant) is relevant for contextual research and media purposes, to ensure accountability. While anonymisation in exceptional circumstances, such as to protect victims’ lives or minors, is acceptable, anonymisation of all or most decisions may create obstacles for the process of researching and analysing decisions.

Preventing public access to tax court judgments may result in important court decisions that have an impact on the public’s revenue, being made without the public’s knowledge. This denies the public the information required to exercise the right to protest or criticise decisions, to determine the need for a policy change, or to engage the court through an amicus curiae process. In some jurisdictions, all “important” or “relevant” court verdicts are said to be chosen by judges or others to be made public. However, this selection process of relevant cases for the public is inevitably subjective and thus rife with risk that cases considered to be relevant by some parts of the public remain out of reach of legitimate scrutiny.

Furthermore, court adjudications usually provide an essential part of the application of the laws by setting precedent and therefore provide clarity among citizens about the right way to interpret the law. They are also often an important driver of policy changes and legislative action by exposing gaps and loopholes in, or unintended consequences of, laws and regulations. Not disclosing judgements therefore cuts off an important feedback loop for policy-

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and law-makers. It may lead over time to flawed legislation as well as to a low deterrence effect and impaired law enforcement by prosecutorial authorities and tax administration's failure to collect taxes as intended by parliament. Without public access to all tax verdicts, meaningful empirical research about the outcomes of tax trials, especially with respect to large taxpayers, is near impossible. Consequently, sweetheart deals at court and undue political interference in the administration can neither be detected nor ruled out.

The secrecy emanating from a lack of open tax court proceedings and verdicts shields both domestic and non-resident actors involved in domestic economic activity and seek to aggressively minimise their tax payments from public scrutiny. For example, any non-resident individual or multinational company fearing spontaneous tax information exchange with home jurisdiction authorities may feel reassured to invest in jurisdictions with strict tax secrecy provisions that allow them to intervene to postpone or even frustrate that exchange at court in silence.

Similarly, in the context of tax wars (or "tax competition"), non-resident individuals and companies may be given special tax deals by local administrations in the race to the bottom which may not withstand legal or public scrutiny. While limited access to information about special tax deals brokered between taxpayers and the tax administration is a different problem to tax court secrecy (and is dealt with in [Haven Indicator 12](#)),¹³ the latter can act as an important backstop for the former in case for some reason a non-resident is taken to court.

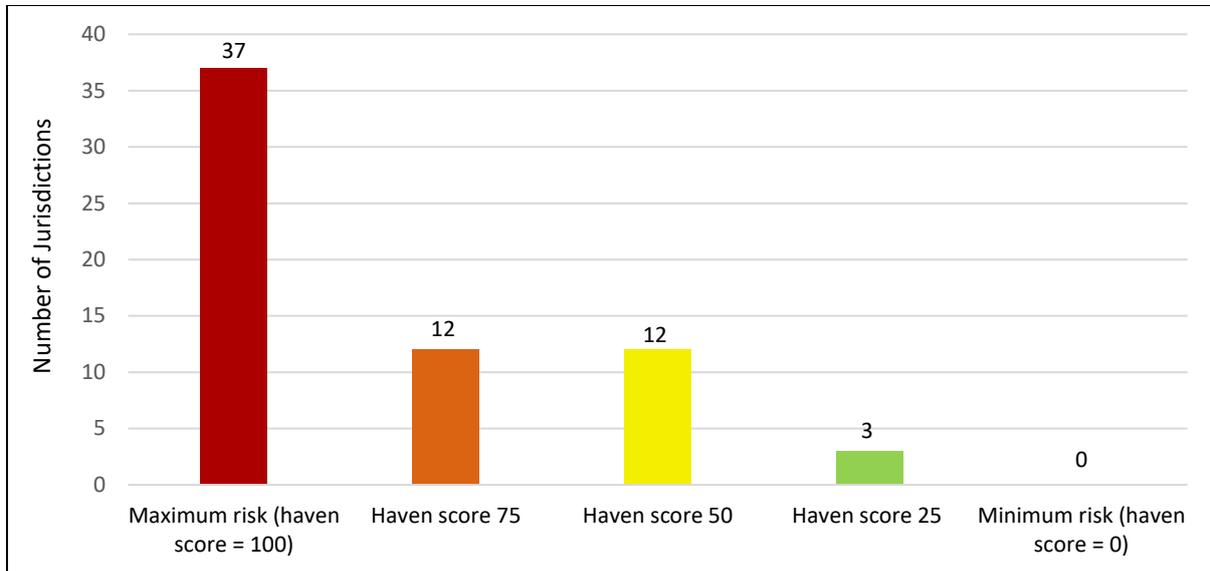
Therefore, without public scrutiny, the risk of (undetected) biases by tax administrations and courts in favour of non-resident investors increases.

The reason why we place emphasis on open, unpaid data access lies in the enhanced utility in open data environments when data is available free of cost. If relevant data can only be accessed by paying a fee, it can be prohibitively expensive to import this data into an open data environment or to access sufficient cases for research/media purposes, even when the cost per record is low. This creates substantial hurdles for making comparisons between jurisdictions and new creative data usages.¹⁴

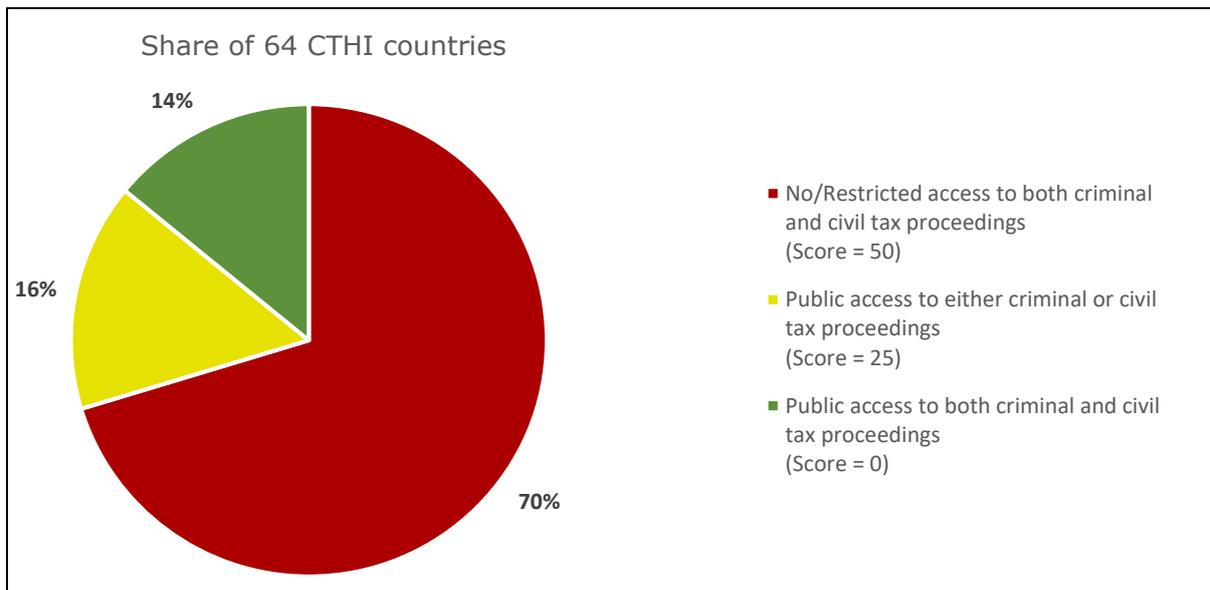
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Results Overview

Graph 14.1. Tax Court Secrecy Overview

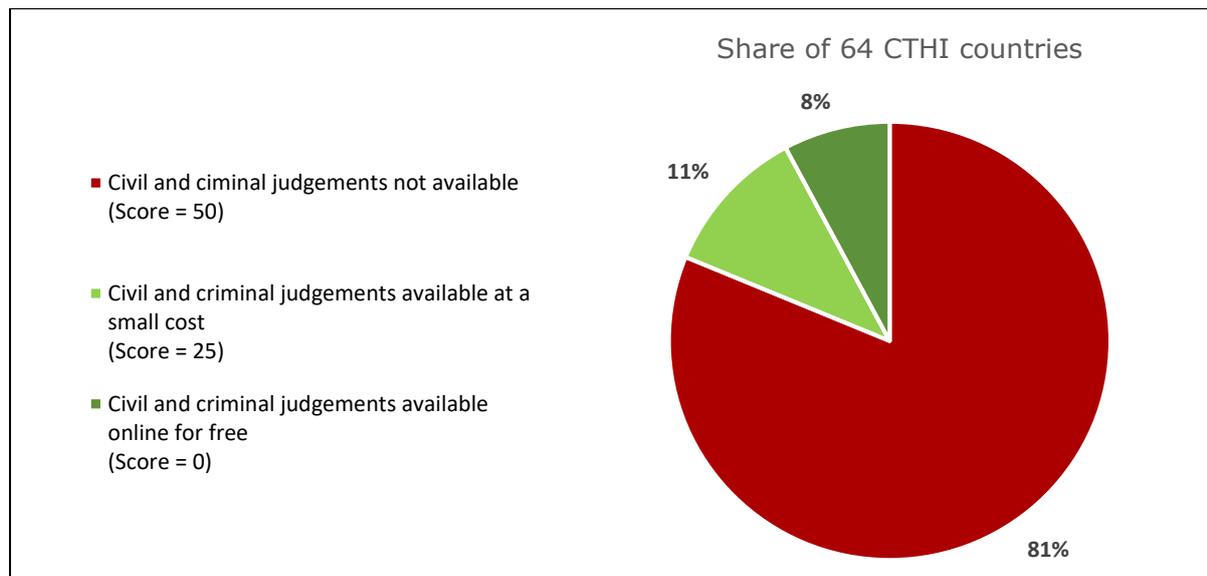


Graph 14.2. Access to Tax Court Proceedings



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Graph 14.3. Civil and Criminal Tax Judgements Available Online



Results Detail

Table 14.2. Tax Court Secrecy - Haven Indicator Scores

ISO	Country Name	Final Score	Public access to tax court proceedings	Online publication of criminal and civil tax judgements/verdicts
AD	Andorra	100	50	50
AI	Anguilla	100	50	50
AW	Aruba	100	50	50
AT	Austria	100	50	50
BS	Bahamas	100	50	50
BE	Belgium	75	25	50
BM	Bermuda	100	50	50
BW	Botswana	100	50	50
VG	British Virgin Islands	100	50	50
BG	Bulgaria	100	50	50
KY	Cayman Islands	100	50	50
CN	China	100	50	50
HR	Croatia	100	50	50
CW	Curacao	100	50	50
CY	Cyprus	50	0	50
CZ	Czech Republic	100	50	50
DK	Denmark	50	0	50
EE	Estonia	100	50	50
FI	Finland	100	50	50
FR	France	75	25	50
GM	Gambia	100	50	50
DE	Germany	100	50	50

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ISO	Country Name	Final Score	Public access to tax court proceedings	Online publication of criminal and civil tax judgements/verdicts
GH	Ghana	50	0	50
GI	Gibraltar	75	50	25
GR	Greece	50	0	50
GG	Guernsey	25	0	25
HK	Hong Kong	100	50	50
HU	Hungary	100	50	50
IE	Ireland	50	50	0
IM	Isle of Man	100	50	50
IT	Italy	75	25	50
JE	Jersey	50	0	50
KE	Kenya	50	50	0
LV	Latvia	100	50	50
LB	Lebanon	75	25	50
LR	Liberia	100	50	50
LI	Liechtenstein	100	50	50
LT	Lithuania	50	50	0
LU	Luxembourg	75	25	50
MO	Macao	100	50	50
MT	Malta	75	50	25
MU	Mauritius	100	50	50
MC	Monaco	75	25	50
MS	Montserrat	100	50	50
NL	Netherlands	100	50	50
PA	Panama	100	50	50
PL	Poland	100	50	50
PT	Portugal (Madeira)	50	0	50
RO	Romania	100	50	50
SM	San Marino	100	50	50
SC	Seychelles	75	25	50
SG	Singapore	75	25	50
SK	Slovakia	75	50	25
SI	Slovenia	75	50	25
ZA	South Africa	25	0	25
ES	Spain	25	25	0
SE	Sweden	100	50	50
CH	Switzerland	100	50	50
TW	Taiwan	50	50	0
TZ	Tanzania	100	50	50
TC	Turks and Caicos Islands	100	50	50
AE	United Arab Emirates (Dubai)	100	50	50
GB	United Kingdom	50	0	50
US	USA	50	25	25

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Final Score					
Maximum Risk (Haven Score 100)	Haven Score 76 - 99	Haven Score 51 - 75	Haven Score 26 - 50	Haven Score 1 - 25	Minimum Risk (Haven Score 0)
Component score					
Maximum Risk (Haven Score 50)	Haven score 26-49		Haven Score 1-25		Minimum Risk (Haven Score 0)

Table 14.3. Assessment Logic

Info_ID	Text_Info_ID	Answers (Codes applicable for all questions: -2: Unknown; -3: Not Applicable)	Valuation Haven Score
407	Are all court proceedings on criminal tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	ID407<=0 & ID408<=0: 50 ID407<=0 & ID408=1
408	Are all court proceedings on civil tax matters openly accessible to the public, and the public cannot be ordered to leave the court room by invoking tax secrecy, bank secrecy, professional secrecy or comparable confidentiality rules?	YN	Or ID407=1 & ID408<=0: 25 ID407=1 & ID408=1: 0
409	Is the full text of judgements / verdicts issued by criminal tax courts published online for free, or for a cost of up to 10 €/US\$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US\$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10 €/US\$/GBP; 2: Yes, full text of verdicts is always online for free.	<=0: 25 1: 12.5 2: 0
410	Is the full text of judgements / verdicts issued by civil tax courts published online for free, or for a cost of up to 10 €/US\$/GBP?	0: No, full text of verdicts is not always online (up to 10€/US\$/GBP); 1: Yes, full text of verdicts is always online but only at a cost of up to 10€/US\$/GBP; 2: Yes, full text of verdicts is always online for free.	<=0: 25 1: 12.5 2: 0

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Reference List

- Cecelia Burgman, Carrie Gage, Claire Cronin, and Reshmi Mitra, *Our Rights Our Information: Empowering People to Demand Rights through Knowledge* (2007)
- Chatterjee, Sujoy, 'Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?', *Dalhousie Journal of Legal Studies*, 23 (2014), 91
- Forbes, 'IRS Brings "A Team" To Crush Transfer Pricing Abuse', *Forbes*, 2012 <<https://www.forbes.com/sites/kellyphillipserb/2012/03/27/irs-brings-a-team-to-crush-transfer-pricing-abuse/>> [accessed 13 March 2019]
- Joshua D. Blank, and Nancy Staudt, 'Corporate Shams', *New York University Law Review*, 87/6 (2012), 1641–1712
- Organisation for Security and Co-operation in Europe, 'Access to Court Decisions: A Legal Analysis of Relevant International and National Provisions', 2008 <https://www.right2info.org/resources/publications/publications/OSCE_AnalysisAccesstoCourtDecisions17092008.pdf> [accessed 13 March 2019]
- Randall S. Bocock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers' (presented at the 5th International Assembly of Tax Judges, Washington, D.C, 2014) <http://www.iatj.net/congresses/documents/Protection_Bocock.pdf> [accessed 13 March 2019]
- Thomson Reuters Practical Law, 'Tax Litigation | Global Guide | Practical Law' <[https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=\(sc.Default\)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=(sc.Default)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk&firstPage=true&bhcp=1)> [accessed 13 March 2019]
- United Nations, 'Universal Declaration of Human Rights', 1948 <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> [accessed 13 March 2019]

¹ Civil and administrative tax matters are treated synonymously throughout this document. They refer to any dispute between a taxpayer and the tax administration which is not governed by criminal law/procedures.

² This indicator has been refined since our last assessment (Financial Secrecy Index 2018) to consider cases where privacy or family life were mentioned as reasons to prevent public access.

³ This indicator has been refined since our last assessment (Financial Secrecy Index 2018) to consider cases where the name of the parties were removed or anonymised in some or all cases.

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⁴ Thomson Reuters Practical Law, 'Tax Litigation | Global Guide | Practical Law' <[https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=\(sc.Default\)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/Browse/Home/International/TaxLitigationGlobalGuide?transitionType=Default&contextData=(sc.Default)&navId=1DAC9212383A024E61CC2AB0DFB085D1&comp=pluk&firstPage=true&bhcp=1)> [accessed 13 March 2019].

⁵ <http://www.corporatetaxhavenindex.org/database/menu.xml>

⁶ Randall S. Bockock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers' (presented at the 5th International Assembly of Tax Judges, Washington, D.C, 2014), 6 <http://www.iatj.net/congresses/documents/Protection_Bocock.pdf> [accessed 13 March 2019].

⁷ Organisation for Security and Co-operation in Europe, 'Access to Court Decisions: A Legal Analysis of Relevant International and National Provisions', 2008, 5 <https://www.right2info.org/resources/publications/publications/OSCE_AnalysisAccessToCourtDecisions17092008.pdf> [accessed 13 March 2019].

⁸ United Nations, 'Universal Declaration of Human Rights', 1948 <http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> [accessed 13 March 2019].

⁹ An example of relevant research being enabled through tax court transparency is the study of "Corporate Shams": Joshua D. Blank and Nancy Staudt, 'Corporate Shams', *New York University Law Review*, 87/6 (2012), 1641–1712.. Another example for the potential impact of open tax court judgements on policy decisions and public trust in government are the changes at the US tax administration IRS in response to large scale tax avoidance cases, as reported here: Forbes, 'IRS Brings "A Team" To Crush Transfer Pricing Abuse', *Forbes*, 2012 <<https://www.forbes.com/sites/kellyphillipserb/2012/03/27/irs-brings-a-team-to-crush-transfer-pricing-abuse/>> [accessed 13 March 2019].

¹⁰ Cecelia Burgman and others, *Our Rights Our Information: Empowering People to Demand Rights through Knowledge* (2007).

¹¹ Randall S. Bockock, 'Protection of the Taxpayer in Court Panel Presentation: Introduction of Topics and Privacy Protection of Taxpayers', 7.

¹² Sujoy Chatterjee, 'Balancing Privacy and the Open Court Principle: Does de-Identifying Case Law Protect Anonymity?', *Dalhousie Journal of Legal Studies*, 23 (2014), 91.

¹³ <http://www.corporatetaxhavenindex.org/PDF/12-Tax-Rulings-Extractive-Contracts.pdf>

¹⁴ For more information about this see <http://opencorporates.com/> [accessed 28 November 2016].