

THE LEGAL REGIME OF FISCAL PARADISES - PRODUCTS OF GLOBALIZATION

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ABSTRACT: *The term "tax haven" is vaguely defined and includes any country that perceives zero taxes or reduced taxes on all or just some income categories, a certain level of banking or commercial secret, requirements minima from the central bank and no restrictions on its foreign exchange. Tax havens, also called offshore financial centers, provide a Fund base such as offshore or other forms of investment managed investment portfolios.*

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JEL CLASSIFICATIONS: *K1, K2, K220.*

1. THE NOTION AND GENERAL CHARACTERISTICS OF A FISCAL PARADISE

The complexity of the phenomenon of tax havens, in the contemporary economy, requires its research at different levels: global, national (macro and microeconomic); the main motivation is that tax havens, in the current conditions, have become part of the world economic system and national economies, this confirming the topicality of the research topic.

The term "tax haven" is vaguely defined and includes any country that collects zero or reduced taxes on all or only some categories of income, a certain level of banking or trade secrecy, minimum requirements from the central bank, and no restrictions on foreign exchange. The goal of users of tax havens is simple: to pay less, to earn more. The American states explain the use of tax havens by their economic agents, through their purpose: expansion abroad by legal means that are left at their disposal by the legislators of their country. However, we equate tax havens with tax fraud. Tax havens, also called offshore financial centers, provide a basis for funds such

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as offshore investments or other forms of managed investment portfolios. Other attractive features of tax havens may include banking secrecy and business-friendly aspects. The essential feature of the offshore banking system is that transactions are made in foreign currencies and in favor of non-residents.

Offshore companies are financial instruments for international planning and at the same time for tax avoidance, raising the profitability of a business, coordinating a productive activity, leaving the possibility of anonymity and at the same time creating full currency freedom. It should be noted that the main function of offshore centers is not to minimize current and / or future tax obligations, but to create independent structures that, when the parent company has problems in the state of residence, take over its values.

Even if the term tax haven is not synonymous with the term offshore financial center, these legal entities form a complex and complete network through which cash flows are generated, which comes either from lawful activities in the form of profit or from activities illicit in order to lose the trace of the source of origin.

A specialized analysis carried out in order to identify the states that would allow their development as tax havens, shows that the legislative system most favorable to the evolution of a tax haven is the American one, and the least favorable is the European one, given the political stability and economics of states. Concentrating on the definition of the term offshore, we appreciate that an offshore area consists of a small space on the territory of a state (port, airport) where customs duties on goods and services are suspended. Each tax haven offers investors, in addition to standard tax facilities, some more viable opportunities, others linear from a fiscal financial point of view.

Thus, some offshore territories may attract investment due to their geographical location having developed communications and transportation networks that allow capital infusion or generate capital anywhere in the world. Tax havens attract disproportionate levels of capital, holding 15.7% of the gross assets of US companies. Given the economic growth of tax havens compared to other countries, the tax policy of tax havens tends to have ramifications for onshore states close to offshore territories.

Tax havens are not welcomed by states in the world that practice high taxation. This goodwill is often the result of the idea that the availability of tax havens would have the effect of diverting economic activity from countries with high tax rates and eroding tax bases - as a source of income for the governments of these countries. The fight against tax evasion and tax havens has found its way to the top of the agenda of major international forums due to the current economic crisis.

Thus, these offshore legal entities that apply banking secrecy in the case of financial transactions support each other, becoming attractive not only for individuals and / or legal entities that simply want to avoid excessive taxation in the state of tax residence, but especially for participants in committing financial-banking crime in order to hide dirty money as a product of crime. In a report entitled "Harmful tax competition: a global problem", the OECD highlighted the negative aspects of tax havens, calling for a new definition of place of residence, better control of foreign companies, a reduction in double tax exemptions, foreign source income and better

access to banking information; one of the OECD's recommendations stipulates, in fact, that member countries should examine their laws, rules and practices governing access to this tax information. Tax havens seem to be relevant to a number of tax policies. They overlap with other techniques, such as areas of trade policy or financial development, which can be re-examined in the light of the achievement of the objectives of global fiscal policy. The objectives of this policy, such as preventing crime and combating money laundering, can be achieved by including them in a single framework, when addressing the issue of tax havens. Tax havens introduce both macro and microeconomic distortions. As already stated, at the macro level they can pose a threat to the stability of financial systems. Also, the possibility to avoid or evade the taxation of real and / or financial investments reduces state revenues, which leads to their inevitable recovery by taxing labour income: tax havens are therefore a source of distorting the fair balance between taxation capital and labour.

There are almost 70 tax havens in the world, which are in constant motion; thus some disappear and are reborn later (Lebanon), others are endangered (Switzerland) and others have disappeared (Hong Kong). Tax havens are used by taxpayers in other countries for various reasons such as: protection of wealth; making big profits; money laundering resulting from illegal operations; escape from the excessive fiscal pressure from the state of origin. Tax havens are often used to launder money from illegal activities: drug trafficking, arms trafficking, prostitution or smuggling; for this reason, they are a significant component of organized crime.

There can be three types of companies installed in tax havens:

- Holding companies: hold a portfolio of equity securities but do not carry out any economic activity.
- Basic companies: these are companies registered in a country with low taxation but which do not carry out economic activities here but only manage the concentrated benefits from the subsidiaries of the founding group that are registered in countries with high taxation.
- Fictitious companies: it comes down to a simple "letter box" existing next to an accountant, lawyer, notary, not based in the respective tax oasis; Their purpose is to transfer profits to the tax haven and evade tax control over the accounting of group companies.

In order to evade part of the profit from tax, a way widely used by transnational companies is to set up subsidiaries in countries where taxation is lower and to organize artificial relationships (often only scriptural) between them and the production units located on the territory of another country with higher taxation.

The common characteristics of tax havens can be the following: offers tax advantages to taxpayers who establish their headquarters or residence on their territory; ensures the protection of commercial or financial operations; the existence of a banking system without restrictive regulations and efficient means of communication; the speed of economic and commercial operations; the absence of control over foreign exchange transactions.

2. OFFSHORE COMPANIES

Offshore - a limited company - designates a company that does not carry on a commercial activity in the country in which it was registered, which means that it does not generate income from the country of residence. Theoretically, offshore companies can be registered in any country in the world, but not everywhere tax advantages can be obtained. Offshore companies can be used in many fields: banking, real estate, shipping, insurance, intellectual property, investment, finance, services, trade, etc.

The most commonly used forms of offshore companies are:

- Non-resident company (non-resident)
- International Business Company (I.B.C.)
- Exempt companies (exempt)
- L.L.C. (Limited Liability Company)
- The trust.

Offshore companies offer various advantages, the most important of which are the following:

- Reduced taxation. In all tax havens, the easy tax regime of offshore companies is guaranteed by law. Taxation is zero or almost zero. The profit accumulated by offshore companies is taxed in the state of residence, and these states either do not apply any tax on the profit obtained, or this tax is very small (max. 5%).
- Low bureaucracy. Offshore companies are exempt from the obligation to keep accounts, business records and are not required to present the balance sheet. Anonymity. The identification data of shareholders and directors are not public.
- Heritage protection. The law guarantees the shareholder's right of absolute disposition over the entire patrimony of the company. The profit of the offshore company can be used at any time, according to the will of the company's beneficiary.
- Well developed infrastructure. Tax havens offer perfect telecommunications services, well-developed and stable banking system.

Switzerland. Switzerland is a federal republic and has an area of 41,295 km². Switzerland is divided into 26 cantons, and each canton and community has a different tax system. The cantons retained many of their rights as sovereign political centres. However, the Constitution delegates considerable authority to the Federal Government, including the authority to conclude treaties and alliances, to levy taxes, and to regulate foreign trade. However, each canton has its own taxation.

There are many cantons with favorable tax levels, and some cantons with high unemployment rates or low population (mountain regions) have even lower tax levels. There are double taxation agreements with the following countries: Australia, Austria, Belgium, Brazil, Canada, Denmark, Egypt, Finland, France, Germany, the United Kingdom, Greece, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Malaysia, The Netherlands, New Zealand, Norway, Pakistan, Portugal, Singapore, South Africa, South Korea, Spain, Sri Lanka, Sweden, Trinidad and Tobago and the USA.

Companies are required to keep financial accounting records. Although no financial statements are required from the Trade Register, they must be submitted to

shareholders together with the authorities' taxes. There must be at least one and be a Swiss citizen and resident in Switzerland. If more than one is appointed, most of them must be Swiss citizens and resident in Switzerland. Assistant directors are not allowed. There is no obligation under the law to appoint a secretary to the company.

United Arab Emirates. In the United Arab Emirates, the federal government has not imposed any taxes and duties on companies and individuals. The federal government of the United Arab Emirates has not enacted any tax laws. The emirates issued a series of tax decrees, but in practice taxes were imposed only on gas and oil production companies and petrochemical companies at the rate set by a quarter of the concession quota negotiated with the government.

For foreign banks, fixed contributions have been established by the Emirati Tax Administrators. The income tax of non-residents is non-existent. There is no exchange control. Double taxation avoidance treaties were concluded with: the Czech Republic, Egypt, Finland, France, India, Italy, Pakistan, Poland, Romania, Singapore, and Turkey. Treaties have also been concluded with China, Indonesia and Malaysia, but have not been formally ratified.

Madeira. The island of Madeira is located 700 km west of the coast of Africa, at the same latitude as Casablanca and Morocco. Thanks to the Portuguese government's policy in the island's economy, Madeira is today one of the most effective instruments of international tax evasion in the world.

Recognized by EU countries as a developing area and not exclusively a tax haven, with the advantage of access to the network of double taxation treaties signed by Portugal, Madeira companies are a perfect vehicle for non-European investment in Europe and mainly, in trade with the EU, where a VAT registration number is required.

Portugal has concluded double taxation treaties with Austria, Belgium, Brazil, Denmark, Finland, France, Germany, Italy, Japan, Mozambique, Norway, Spain, Switzerland and the United Kingdom. Among other clauses, these treaties also provide for the taxation of dividends and royalties at a much lower rate than the standard rate. In addition to ordinary offshore companies, Madeira allows the registration of a special type of company: *Sociedades Gestoras de Participates Sociais* (SGPS). This type of company was created to benefit from the provisions of EU Directive 90/435.

The terms of that directive stipulate that dividends paid by a subsidiary located in an EU state to the parent company, resident in another EU state, are not subject to income tax on non-residents if certain conditions are met, the most important of which is that the company the mother is not exempt from tax in the country in which she is registered, so the effective tax rate is only 1.8%. However, SGPS only has to carry out holding company activities. This company is extremely useful for any company that is not European and wants to invest in the EU.

Great Britain. The United Kingdom is the second largest tax haven after the United States. Foreigners who hold external accounts with financial institutions in the UK can do business without being taxed in the UK. Substantial tax reductions can also be obtained by residents of the Kingdom who are not domiciled in that country. It is allowed for a non-UK citizen, who has no UK capital or income, to live indefinitely in the UK, avoiding paying taxes in the UK.

This has led to the fact that there are an extremely large number of millionaires in London, compared to all European capitals combined. A person who is a resident of the United Kingdom but not domiciled in the United Kingdom for tax reasons will pay tax only on income and capital gains which have their source in the United Kingdom and on income which is collected in the United Kingdom, allows persons not domiciled in the Kingdom to have their residence in the Kingdom, without paying taxes on income obtained abroad. Furthermore, if a non-UK resident creates an offshore trust that manages non-UK assets, those assets will be exempt from tax in the UK. The profit tax is by far the lowest in the European Community. Thus, for profits lower than GBP 300,000, the tax is 23%, and for those exceeding GBP 300,000, the tax increases to 33%.

A careful selection of the country from which the British company is run can create a non-taxed company in the United Kingdom. For example, Portugal has a double taxation treaty with the United Kingdom, so the British company run from Madeira (part of Portugal) will never be taxed in Madeira or the UK.

Another recent innovation, which appeared in 1994, are international holding companies. This status can be granted to ordinary UK companies, which are owned by over 80% non-residents. An international holding company is a useful tool in collecting dividends from outside the Kingdom. In general, a full credit is granted for all taxes paid for the transfer of profits from the source country to the Kingdom, which is deducted from the UK tax.

As all dividends have suffered higher taxes (23%, 34%) than in the UK, they are no longer taxed in the Kingdom. It is often desirable to use a British company, rather than one located in a genuine tax haven, as this can cause a very bad image in front of the authorities in the countries of residence of their owners. To meet this need, there is a reduced tax for a certain type of British company. A British company, which is established for international trade, can be taxed at a rate of 10%, if it can be proved that the company is structured in such a way that it acts as an agent of an offshore company.

United States of America. The United States is the third largest country in the world in terms of population and the fourth largest country in terms of territory. The United States incorporates 50 states, in addition to the District of Columbia in Washington DC. The type of US legislation is based on British law. Limited Liability Companies (LLCs), which do not operate in the United States, are not subject to any taxation by the State in which they are incorporated, nor are they required to file tax returns. For a corporation, there is generally no obligation to declare the financial situation of the State concerned unless the corporation owns property within the State or has conducted business in that State. For LLC, there is no obligation to declare to the state concerned, only if the company owns assets within the state or has conducted business in that state.

The minimum number of directors for a corporation is one and must be a natural person, but can be of any nationality; so he is not required to be an American citizen. The minimum number for an LLC is an administrator who can be a natural or legal person of any nationality. The corporation must have at least one shareholder,

which may itself be another corporation. The minimum number of shareholders for LLC is two.

4. CURRENT TRENDS IN TAX HAVENS

The EU's reaction. The European Union has declared war on tax havens in Liechtenstein, Switzerland, Monaco and Andorra. The loss of billions of euros in taxes has led the EU's most important command on economic and financial issues to reach a strategy to control tax evasion in "tax-free paradises".

The German finance minister claims that evasion costs Germany about 30 billion euros each year. The UK loses a similar amount, and the EU is damaged by a total of € 100 billion a year in unpaid taxes. The strong pressure from Berlin did not scare the Liechtenstein officials too much. Prime Minister Ottmar Hasler said he would never give up anonymous foundations, and Crown Prince Alois described the Germans' desire to give up banking secrecy as an insult. Foundations and their bank accounts have been a tradition for over 80 years in Liechtenstein and this will not change.

All this has led the European Union to think about tightening the rules in place to combat tax evasion. In addition to strengthening cooperation with Asian tax havens such as Singapore, Hong Kong and Malta, finance ministers intend to amend the 2005 European Economic Taxes Directive.

Adopted after 14 years of heated discussions, the text of the 2005 directive encounters difficulties in implementation and could be revised. The document provides for the exchange of information between states on the gains from the savings of foreign nationals. However, EU countries that practice banking secrecy (Belgium, Luxembourg and Austria), as do European tax havens outside the Union (Switzerland, San Marino, Monaco, Andorra and Liechtenstein - dependent and associated territories), have obtained the right to not to participate in this agreement. These states are content to tax at source the gains obtained from the economies placed on their territory and to give 75% of the money to the countries of origin, but without the amounts in question being controllable.

Consequently, this directive is incomplete as long as it does not take into account all economic products, in particular excluding stock dividends, and is limited to the investments of individuals (not to those of companies and foundations). To amend the directive, Germany has made three proposals: an increase in dividends and financial gains other than income from savings, the inclusion of companies and foundations covered by the directive and forcing tax havens to disclose the identities of those with bank accounts there. While most European finance ministers have appreciated these proposals, Luxembourg has been rather reluctant, with Luxembourg disagreeing with the directive.

US position. The United States is among the territories that have been classified as "tax havens" due to the taxation that is found in part of its territory. The position of the United States of America was different depending on the president it had.

If George W. Bush did not criticize these "tax-free heavens" and take no action against them, the current president, Barack Obama, made the fight against tax havens

the strong point of his program. It can be considered that this reaction is so fierce because of the scandal with the Swiss bank UBS. US authorities accuse Swiss bank UBS of allowing the tax evasion of its US customers for more than \$ 100 billion.

5. CONCLUSIONS

However, even if tax havens disappeared, something similar would immediately appear in their place because they are an inevitable product of globalization. At the same time, economists believe that the existence of tax havens protects the governments of large states from the danger of a huge financial surplus.

Investors say that in the global economic competition, including states with diverse tax regimes, tax cuts have become a key to the success of big business, and tax havens are the simplest legal solution. In their defense, the little "paradises" show that they apply strict rules against money laundering and check companies that want to use their services, so as not to use, for example, the work of minors and comply with international law.

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