

THE TAX HAVENS BETWEEN MEASURES OF ECONOMIC STIMULATION AND MEASURES AGAINST TAX EVASION

Adrian Constantin MANEA¹

Abstract: *In the literature but also in the legal language there are ever-increasingly met the current economic notions of tax havens, offshore companies, offshore law or double taxation. These concepts are encountered, however, in legislative efforts of combating domestic and international business and tax evasion, because such tax havens, although offering financial benefits to individuals or legal residents, make it virtually impossible to control, by the national tax services, the level of imposed income tax and the fees payable by the taxpayer, and all these through operations under the legislation of the States where there are these tax havens. The terminology of tax havens is replaced in recent years with the more discreet terms. of center of international finance or financial haven.*

Key words: *tax haven, offshore company, double taxation, tax evasion, tax.*

1. Juridical Characteristics of tax Havens

In everyday language, there are defined as tax havens, those territories or countries that offer a wide range of laws adopted for tax advantages of offshore companies registered as resident in that territory. Terminologically speaking, the Romanian translation of the concept of tax haven from English - tax haven - leads us to the phrase tax shelter.

Tax havens are provided by legislation, which is passed in order to stimulate economic favorable tax conditions, ranging from reduced rates of tax to zero tax, accounting formality and flexibility over the registration of companies, all translating into a well-organized legislative mechanism, which supports the organization and operation of companies in the country. Just like not paying tax or the failure to submit annual balance sheet do not violate the tax law and finance, but on

the contrary, the company is applying the law to offshore partial or total exemption from paying taxes, which takes the form of avoidance tax law.

This form of tax evasion under the letter of the law must not be framed as a means of tax fraud; tax fraud occurs because of financial and criminal penalties, while the legal benefits of taxpayers who use tax havens are not sanctioned in any way.

In general, the conceptual approaches of of tax haven data are limited to declaring those tax haven countries with low taxes, but this approach does not supply the legal advantages provided by the tax system in these territories. Although there is no general definition of the term tax haven, we believe that Roger Brown's conceptual approach is the best approach to the facts existing in those territories " it is called a tax haven the territory where individuals or companies have the impression of being required less than elsewhere."

¹ Department of Private Law, *Transilvania* University of Braşov.

If we make reference to international instruments for the analysis of tax havens, we find it to be eloquently presented in the report by Richard Gordon at the request of Congress entitled “The Gordon Report, Tax Havens and Their Uses by Tax Payers from United States - An Overview”. According to the report, “*tax haven is any country with tax rates of zero or very low on some categories of income and provides a certain level of banking or commercial secrecy*” [1].

The definition given in this report does not fully cover contemporary facts, because by this definition there are recognized only those countries with a permissive and minimal tax law, as tax havens, while other territorial units are excluded from the definition. In this sense, there are illustrated some countries that have territorial units within the country known as tax havens such as the United States - Delaware, Nevada, Wyoming or cantons in Switzerland: Neufchatel, Freiberg, and Zug.

Research group C. Bişa, I. Costea, B. Dancău, have extended the tax paradise considering that tax havens “*are areas that provide a suite of tax advantages of offshore companies registered in those jurisdictions*” [2].

Another report which examines the contemporary essence of the issue in light of the tax havens of tax evasion is “Report from the Government Commission on Capital Flight from Poor Countries” in which we find a precise definition of the term, but we find generally recognized criteria specific as tax havens: a combination of privacy and zero fees [3].

Based on the concepts of legal and illegal tax evasion, the tax havens classification category of tax fraud is exaggerated because if within tax havens practically the taxpayer merely observes the tax law without incurring legal sanctions, if not for that mistake they argue that the tax haven is a tool, an instrument through which the international tax evasion is used by taxpayers seeking a more advanced tax treatment.

1.1 Characteristics of tax havens.

1) First, these legal entities offer substantial tax advantages compared with other legal entities, for the companies that shall be registered within the office, or individuals residing in their territory, through legislative rules. The purpose of these facilities is economic: to attract growing companies, raising capital and fostering the emergence of activities necessary to ensure economic and social balance. The tax incentives used to achieve the goal are many tax deductions based on income or profits taxable by the application of extremely low rates, benefits that can be applied by the statutory criteria on income level or attracted.

2) Secondly, protection by the law of commercial or the financial transactions made by individuals or legal persons is another feature of tax havens, tax agreements concluded by the territorial entities for the double taxation of income in industrialized countries. These agreements are intended to ensure tax reduction, normally applied to the foreign investment in signatory countries, so that the tax system of tax havens should be attractive to foreign traders.

The conclusion of bilateral treaties for the avoidance of double taxation is to reduce the opportunity or, in some cases, even to eliminate the withholding tax (withholding tax instead of income generation) operation for the country with productive activity and a practical level so high that the income tax is no tax in the paradise where the parent company is registered or the product concerned is sold.

Thus, an investment in Eastern Europe benefits from the advantages of double taxation treaties signed with countries of destination, if made by an offshore company if there is tax relief in the intermediate country. A very good example of such an intermediate country is Cyprus, which has a network of double taxation treaties with 43 countries. Other examples of suitable jurisdictions for the registration of holding companies are Britain, Denmark, Liechtenstein,

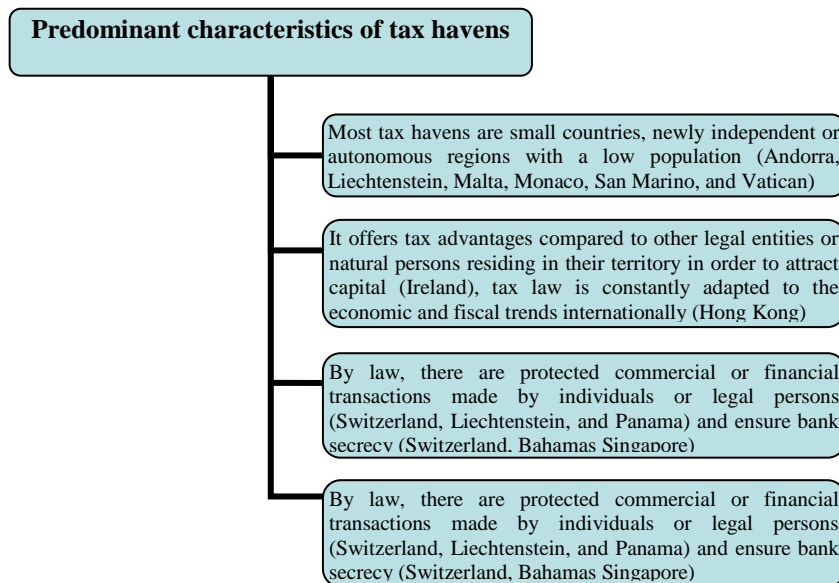
Luxembourg and the Netherlands, one of the reasons being that these countries have concluded double tax treaties with a considerable number of countries, and leading a tax policy that encourages the establishment of holding companies.

3) Other characteristics relate to: development of a banking system without restrictive rules and constraints, which ensure rapid operations inside and outside, for the beneficiaries of corporate privacy, trusts and bank accounts into criminal sanctions, lack of control on trade, except those related to foreign currency, attracting activity of fictitious front companies,

means for communication (telephone, telex, telegraph, air services) to a high functional level, minimal accounting formalities such as not requiring the submission of annual accounts of income and loss from the tax authorities.

Analyzing economic development within the tax havens of prosperous states we note they develop activities that generate income from fees in the form of various services, or earnings from rental properties, from the employment of local staff, and not least in boosting tourism.

The predominant characteristics of tax havens are shown in Figure 1.1.



1.2. The Classification of Tax Havens

Tax havens can be divided into primary and secondary. Within the six main types of countries we can identify.

- a. Countries that do not apply any imposition on income and capital gains for individuals: Bahamas, Bahrain, Bermuda, Cayman Islands, Nauru, Saint Vincent, Turks and Caicos, Vanuatu and the Principality of Monaco.
- b. Countries wherein the income tax or benefit are established on a territorial basis (outside income is not taxed): Costa Rica, Hong Kong, Liberia,

- Malaysia, Panama, Philippines, Venezuela, and United Kingdom.
- c. Countries in which tax rates are less than the average high: Liechtenstein, Switzerland, British Virgin Islands, Netherlands Antilles, Jersey, Ireland.
- d. Countries that offer specific benefits to companies or companies holding offshore: Luxembourg, Singapore, Holland, Denmark, United Kingdom.
- e. Countries that offer tax exonerations created in the development of export industries: Ireland: companies formed before 1 January 1981.
- f. Countries which offer specific advantages to certain companies, such

as international business companies: Antigua, Aiguilles, Grenada, Jamaica, Barbados, or the banks with offshore activities: Switzerland.

The secondary tax havens include both small countries and industrialized countries; the level of taxation of certain types of income is high, but there are legal provisions with particular characters, which can be used in an operation by tax planning investors. The category of small territorial entities following examples is relevant: the Vatican, the Republic of Malta, French Polynesia, Tonga Islands, Maurice Islands, Djibouti Republic, Haiti, Virgin Islands, Jamaica, and Taiwan.

I.3 Short Insight of Tax Havens Throughout the Territory of the European Continent

Tax havens are a reality today, and under the current global economic crisis, when countries are seeking to reinstate economic and financial situation, we assist to the propagation within the European Union of tax havens. At European level, liberal tax laws, considered individually for a particular Member State, may bring some economic and tax advantages, but at Community level, under current conditions, they are a potential danger for the EU.

In order to eliminate this danger, the Foreign Ministers of the Member States decided unanimously to apply severe measures: the rules that determine tax residency will reinforce and, parallel to it, they will take a number of other "conventional measures", such as the hard checking double residence of the taxpayer, reviewing terms of exchange of information, the terms of mutual assistance on debt recovery, etc..

ANDORRA - Principality located on the border between France and Spain, known by tourists as a place of transit and shopping at much lower prices than elsewhere because of the lack of customs or excise duties, stands like a genuine tax haven because of low taxation. Thus, in Andorra there are no direct taxes; and the

companies whose capital is owned by two thirds of the residents are registered in Andorra and do not pay income tax, they only impose a tax on production and imports ranging between 1-12% standard rate; the income tax is 4%.

BELGIUM is a land of contrasts, where the system is widely used for anonymous accounts of off-shore investment; particularly it is fostered for multinational companies; where high-tech industry development based on the facilities granted to the companies are "innovative" : exemption income tax for a period of 10 years.

CYPRUS has a strong legislation inspired by the British law, and appears as a true "paradise" especially for non-residents: foreign workers are accountable to Cyprus income tax at half the normal tax rate, while employees of local enterprises established abroad do not owe tax on "Welcome to Cyprus" where they make and keep money in Cypriot banks. Permanent residents only owe a charge of 5% over 2000 revenues of CYP and a 20% tax applied to the capital increase from real estate transactions. Value added tax is usually only 8% of the enterprises benefits; there are taxed progressively but reasonably off-shore companies and establishments. Cypriot local foreign collective entities benefit from a highly advantageous tax regime (Which is why the number of offshore companies registered in Cyprus is very high).

Income taxes, which had been established for long time just at 4.25% were increased since 1 January 2003 to 10% in the EU integration perspective they do not owe tax on dividends, do not charge customs duty on import of goods.

As regards taxation in **SWITZERLAND**, it is worth noting that taxation is different and individual, in accordance with local regulations and with the numerous double taxation treaties. The main advantage is the promotion and guarantee by banking secrecy laws and even criminal sanctions, measures that have attracted a strong financial services development; so far these

activities have a share of about 11% of gross domestic product.

The European Commission has fought for years against Switzerland's tax regime, arguing that tax exemptions to companies that establish their headquarters here are actually illegal State aid, and this must be removed.

LUXEMBOURG is certainly a "haven of havens" as it has full coverage; the principle of banking secrecy is elevated to the rank of a constitutional principle (in the State Constitution there is written the principle of banking secrecy), while legislative measures to boost hiring personal record the lowest unemployment rate in continental Europe (less than 3%).

MALTA-relative to taxes, there is no difference in the tax for legal and natural persons, in relation to income tax. The level of taxation is progressive, the rate can reach up to 35%; the value added tax on goods and services is set at a level lower than the European average (18%); there is practiced a 15% tax on imported products.

In Malta you can easily set up businesses "off-shore" or business-type "holding" due to the corporate legislation, provided those entities should conduct activities outside the country.

Although the first paragraph of the Constitution defines it as "a democratic republic founded on work". Tax haven of Malta is a sui generic type, because in spite of EU accession and euro adoption in recent years Malta has adopted several tax amnesties, one of them allowing those who have not declared their income to register anonymously, paying a fine only 4 percent of income.

Monaco is considered "tax havens paradise" from the fiscal point of view, as there are no direct taxes. The charge, however a value-added tax harmonized with the level of VAT charged in France to 19.6%. Half of the work performed mainly concerns the banking, insurance and other services. In Monaco, there operate over seventy banks and other financial institutions, which run about 40 billion dollars annually.

SAN MARINO: in relation to tax law the signed agreement (proposed by the OECD) to exchange information between national authorities is currently subject to EU rules relating to the harmonization of indirect taxes only on duty.

With an area of only 0.44 km square, **VATICAN** is the smallest country in the world. Under a treaty dating from 1929, the Vatican does not pay property tax revenue from its subordinates, including shifting to the outside State boundaries.

2. Control Measures for Community Tax Evasion

Regarding the effects on national economies, the specialists' opinions on tax havens are divided: some believe that tax havens are only one way to achieve tax fraud, while others argue that tax havens are ideal for minimizing tax obligations and encouraging the development of capital and foreign investments.

Our view is that not every operation related to tax havens, tax evasion is illegal and implies, in some cases, involving the application of tax legislation liberal economic policies based on the national ones. But it is also true that, for the use of tax havens to minimize the tax evasion practice, national legislation should be introduced with different limits, in line with the economic and social policy.

Given the global nature of the phenomenon of negative influences in relation to offshore tax heavens in states with a high level of taxation, the international bodies such as OECD, World Bank, UNO, EU, IMF, etc., set policy directions of anti-offshore:

- remove conditions for unfair tax competition, resulting in tax evasion (OECD, UN, and EU)
- fight against money laundering and terrorist financing (FATF, UN).

A series of data in the EU directive, aimed at increasing the scope of the tax assistance between the Member States to adopt fiscal measures at national level, so that, at Community level, there should be ensured the compliance with EU tax law

and the tax should be consistent among Member States. To this end, national initiatives must ensure the elimination of double taxation for the benefit of the taxpayer and not the Member States, and indirectly protect the tax base.

Community legislation gives the Member States a greater ease in developing their own national systems of direct taxation, in line with the economic and national economic policy, while initiating the interaction of tax systems solutions within the common market. The European Commission has not proposed to replace the national tax systems by a single Community system, now being essential to strengthen cooperation among Member States so that, finally, to ensure the smooth running of the 27 different national systems within the common market [4].

The Commission considers that the only way to combat the systematic review used by companies conducting fiscal operations in more than one Member State is to allow taxation of multinational groups, their work throughout the EU based on a common consolidated tax assistance society and not individual subsidiaries and the parent company.

Given that the OECD currently estimates that through private capital there are accumulated in tax havens around a trillion dollars, five times more than two decades ago, as more than a million companies, especially in the U.S. and European Union Member States, have their registered offices in countries where tax havens are this way, the European Parliament notes in the report on promoting good governance in tax matters, the February 2, 2010 [5] that:

- it takes consistency and a real policy on good governance EU tax;
- the tax to be set through good governance transparency, information sharing at all levels, effective cross-border cooperation and fair tax competition;
- the credibility of EU depends, among other things, on its willingness to primarily suppress tax havens on its

territory, as an example of good governance;

- requires the Commission to monitor closely in this context, rapid and sound implementation of actions in its Communication on the promotion of good governance in tax matters;
- recalls that tax evasion in VAT is of particular concern for the internal market to the extent that it has direct cross-border impacts, involves a substantial loss of income and directly affects the EU budget;
- urges the Council to adopt a directive on taxation and administrative cooperation to combat VAT fraud, taking account the Parliament's position.

Compared to the Community objectives for combating tax evasion, we find that through the legislative measures taken by Romania so far [6], our country is only at a declarative level of anti-offshore measures, expressed only as simple political statements.

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