

Tax haven implications in financial crime

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Abstract: *The term "tax haven" is often incorrectly used to describe a country because from this point of view, we should use the term "financial secrecy jurisdiction". A certain degree of financial and banking secrecy is characteristic of all states, almost all states requiring a certain level of protection for banking and commercial information. Banking and financial secrecy jurisdictions refuse, nearly always, to violate its own laws on banking secrecy, even when it could be a serious violation of the laws of a country.*

Keywords: *tax haven, banking crime, money laundering, tax evasion*

JEL Classification: G21, G22, K42

Introduction

Economic-financial crime, also known as "white collar crime", generates the greatest harm to global economy. However, offenders who commit crimes in this area are viewed by society as people who have found a solution to circumvent to "coercive" acts of the state, ie increasing taxes. As a result, these individuals are not considered criminal, although criminal law makes no distinction, they are actually regarded with respect, they are considered "business people" who do not deserve to be held accountable for founding solutions, even illegal, to the fiscal laws of the State in which business operates (Voicu Boro, Sandu, Molnar, Gorunescu, Corlateanu, 2006).

In a transition economy like that in Romania where the financial and fiscal legislation was born tough, but has matured even tougher, the main result was the emergence of a class of "cardboard billionaires" based on the general population poverty.

Financial crime threatens the safety and soundness of financial systems worldwide. These crimes range from fairly simple operation, carried out by individuals or small groups, to highly sophisticated rings seeking funding for criminal enterprises or terrorism. Although financial criminals are often well organized and persistent, the bankers and citizens can take proactive steps to counter their attempts. They have long used money laundering schemes to conceal or "clean" the source of fraudulently obtained or stolen funds. Money laundering poses significant risks to the safety and soundness of the US financial field.

With the advent of terrorists who employ money-laundering techniques to fund their operations, the risk expands to encompass the safety and security of the nation. Through sound operations, banks play an important role in helping investigative and regulatory agencies identify money-laundering entities and take appropriate action.

Insights into financial crime issue

In this moment, at a worldwide level, international community can develop mechanisms to allow it to ensure a genuine cooperation and thus give a firm response and effective to international crime (Radu, 2014).

The international community has long recognized that the problems of money laundering and terrorism require a coordinated approach. For many years, a number of international organizations have developed standards for combating money laundering, terrorism, and terrorist financing. These standards contain common themes of promoting actions to

deny criminals, terrorists, and those who assist them access to their funds and the world's financial services industries. Many international agreements and resolutions outline similar standards or build upon each [\[1\]](#).

Although it is not illegal to individuals or companies to have offshore accounts, is illegal to avoid paying taxes on income held in these accounts. Taxation in the country of origin is not possible by lack of transparency and accountability for law enforcement agencies (Gravelle, 2013).

Global Financial Integrity released a report showing the damage caused by mispricing trade, practice through which goods and services are sold using fraudulent invoices. They often underestimate the true value, creating an opportunity tax evasion, fraud and money laundering. The report focuses on five countries: Kenya, Mozambique, Ghana, Tanzania and Uganda.

The losses are huge. In Kenya, the amount of revenue lost by the government will cover nearly all the country's budget deficit.

Tax havens, also called offshore jurisdictions, have attracted an increasing number of foreign investors, especially in recent decades. Usually they are people and fleeing their own country's tax collecting voracity in their own country in search of a more favorable business environment. This is not surprising, since in some countries with high taxes, especially in Europe, the taxes paid by a person or company are up to 50% of their profit. This capital flight, of course, is not viewed favorably by tax officials in the countries indicated. Therefore, they tried to react with different measures to prevent the transfer of assets in tax havens [\[2\]](#).

The main actions aimed at pressuring governments in tax havens and limiting their confidentiality and bank secrecy laws.

This is done today by various international organizations, usually under the banner of the fight against terrorist networks, drug trafficking and money laundering.

OCDE, G-20 and FATF (Financial Action Task Force) are the most active organizations in this field. In any case, the solution to the migration of capital flows to offshore area is very complex, since for many of these countries is in stake their own economic and financial survival as a nation and do not have very many viable economic alternatives.

Various financial operations are used through multiple financial instruments, so as to allow the washed money to be invested again in legal activities or in financing trades or terrorist activities. The same authors define the financing of terrorism as the use of proceeds from any source (legal or not) to finance terrorist activities, past or future. This is a feature that allows differentiation of the money laundering activities to terrorist financing activities: more often than before, terrorist financing is geared towards future actions (Radu, 2014).

Despite the above characteristics, the line between being and not being a tax haven is often very unclear. Being listed in one or other category of OECD and other agencies is often more receptive to political and economic interests of its members than purely objective criteria. It is also good to know that there are differences between a tax haven and another. Some focus more on serving people, while others try to promote the registration of companies. And there is, of course, those seeking both. These jurisdictions elitist, specialized in large fortunes, are interesting only for individuals with a good amount of money in their bank account. This is particularly true in Europe. But this is not the norm on. Most tax havens must accept also less affluent customers. The latter are precisely those who have contributed to the spectacular growth of the financial industry in decades. With globalization and the development of the Internet, is no longer needed to travel to remote places to establish a company or open a bank account. Operating costs have become very cheap, so investment in a tax haven is now available to almost anyone.

However, offshore corporations also have some disadvantages. Some countries have implemented anti-circumvention measures that prevent companies based in tax havens to participate in certain investments. In some cases, there are also anti-fraud or "controlled foreign corporation" (CFC) rules. For example, the owner of offshore company must include profits in his individual income tax declaration, even if the company does not pay dividends. In nominees cases, as directors or shareholders are used, document management can also get more complicated. In particular, banks may want to determine who the beneficial owner of the company is, requiring additional documentation to prove this (Hlaciuc, 2002).

Laundering criminal proceeds through a tax haven is therefore more a matter of finding a bank in that country to accept your deposit without asking questions, shuffling the money around a bit, and then sending it to where you would like to spend it or to where you would like to receive it. Evading taxes through a tax haven works similarly: disguise income or assets as passing through that country and fail to report it to your home country's tax authority. For the less

criminally inclined, tax havens often offer a great legal ways to avoid paying taxes, simply by characterizing income as passing through that country and using loose tax treaties or gasps in one's home country tax law to claim that the income is not taxable there. (Lecou, 1999).

Over the years, many developed countries have taken steps to break through tax haven secrecy by including provisions in tax treaties or other agreements to exchange financial information with other governments, including tax haven governments upon request. This system has two major flaws, though. First, it requires the requesting government to know what specific information they are looking for, which can be quite difficult to determine when attempting to track money passing through anonymous shell companies or many other money laundering strategies. Second, the tax haven government may not be able to collect or have access to the information being regulated; so continuing the process can be extremely slow and having potentially little reward.[\[3\]](#)

Banking financial crime is in correlation and interdependence with a series of destructive mechanisms and political, moral, normative and cultural disorder, prevailing at the state level. The facilities offered by the political, social and economic aspects of a country, coupled with insufficient and sometimes inefficient legitimate control, favoring profit-oriented crime, which tends to acquire a global, explosive and organized by threatening economy as a whole, structuring and multiplying constantly and materializing in fraud of great diversity and complexity in terms of number of participants, methods, damage, and the importance of businesses and institutions concerned.

Representing a complex social problem, whose ways of expression, social consequences and ways to solve interests both the public and the institutionalized social control entities, banking and financial crime is conceived by most honest social segments as a very serious and dangerous phenomenon able to undermine the power structures, economic reform, raising living standards of the population, hope moving towards a sound legal system and able to eliminate social and economic injustice (Voicu, Boroi, Sandu, Molnar, Gorunescu, Corlateanu, 2006).

In most tax havens is a policy of encouraging foreign banking. This is done by introducing a distinction between banking business of the inhabitants of that country and that of foreigners. In general, the activity of foreigners is not subject to requirements regarding the reserve funds and is not subject to foreign exchange contracts exerted or other controls.

Tax havens thrive largely due to the presence of foreign banks. Financial activity generates income in the form of symbolic fees and taxes on financial institutions. Financial activities create an infrastructure that can be used both for legitimate companies and criminals to conceal illicit funds.

Compared to foreign trade, foreign bank accounts in tax havens jurisdictions are considerably higher than foreign bank accounts in banks located in countries that are not tax havens.

Some of the biggest foreign banks have subsidiaries in tax havens countries. They have set these offices to participate in the euro-dollar market, accepting deposits and borrowing money from and to foreign customers (Mihnea, Costas, 2006).

Although the general impression is that tax havens deals primarily with money laundering without asking any embarrassing questions to their customers, in reality respectable offshore centers have regulations that are tougher than in developed countries. In this regard, it should be pointed out most offshore countries governments carefully oversee licensed banks activity in the territory and approve with maximum requirement creation of new financial institutions. 1991 Bankruptcy Bank of Credit and Commerce International, and other events were the circumstances that led tightening oversight of offshore activities to identify potential financial swindlers. However, increased interest in offshore companies was directly proportional to the acceleration of economic crime rate (Buziernescu, Drăcea, Burnea, 2006).

Conclusion

A judgment may be unlawful and ungrounded because of two fundamental flaws: its declaration as a result of disregarding the rules of criminal procedure, which ensures and guarantees finding truth and the rights of the parties, of nature to doubt the correctness of the solution adopted (vitium in procedendo); solving the wrong case (vitium in iudicando) or by establishing the facts wrong (the actual error), which led to the conviction of an innocent or releasing an offender or by misapplication of the rules of substantive law - criminal or civil - or omitting their application (error in jure), which led to a solution not in accordance with law; shortcomings concerning violations - procedural and substantive - come from insufficient knowledge of the rules of law, the misinterpretation or their abusive violation; shortcomings establishing wrong facts come from omitting all the evidence necessary due to parties' inactivity and the lack of an active

role of the courts, the timely undiscovered samples or in blank or incorrect assessment of the evidence, which attracted retention of facts as true and which not actually occurred or which happened in other circumstances than those retained, or missing facts that occurred in reality (Theodoru, 2002).

References:

- Buziernescu Radu, Drăcea Raluca, Burnea Ramona, 2006, Tax havens between theory and practice, "Finance, Banking and Insurance", no. 12 December 2006.
- Gravelle, JG, 2013 Tax Havens: International Tax Avoidance and Evasion (7-5700-R40623). Congressional Research Service;
- Hlaciuc E., 2002, Financial Accounting Directives harmonized with European and international accounting standards, Didactic and Pedagogical Publishing House, Bucharest;
- Lecou Claude, 1999, Office Europeen de Lutte Antifraude (OLAF), coordination et politique generale, affaires juridiques, cellule de liaison et d'expertise penale, in Revista Agon nr. 24/1999;
- Stefan Minea, Costas Flavius Cosmis, 2006, Taxation in Europe at the beginning of the third millennium, Rosetti Publishing House, Bucharest, 2006
- Marius Eugen Radu, 2013, Preventing and combating money laundering and terrorist Financing in the EU, in Knowledge Horizons - Economics, Vol 5, no. 3/2013;
- Marius Eugen Radu, 2014, International Judicial Cooperation, Ed. Pro Universitaria, Bucharest;
- Costica Voicu Boro Alexander, Sandu Florin, John Molnar, Gorunescu Mirela, Corlateanu Sorin, 2006 Business Criminal Law, Master Beck Publishing, Bucharest;
- <http://www.gfintegrity.org/issue/tax-havens-bank-secrecy/>
- <http://www.taxhavensguide.com/tax-haven.php>
- Money Laundering: A Banker's Guide to Avoiding Problems, Office of the Comptroller of the Currency Washington, DC December 2002

[1] Money Laundering: A Banker's Guide to Avoiding Problems, Office of the Comptroller of the Currency Washington, DC December 2002, pg. 12

[2] <http://www.taxhavensguide.com/tax-haven.php>

[3] <http://www.gfintegrity.org/issue/tax-havens-bank-secrecy/>