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## ***BANK SECRECY - PILLAR FOR PERFORMANCE OF TAX HAVENS***

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### ***Abstract***

*Banking secrecy, one of the pillars of the functioning of financial systems, has undergone major changes lately, even in countries known for compliance. This shows a significant transformation of global economic-financial paradigms under increasingly strong pressure of the crisis. Automatic exchange of information is considered one of the most effective tools for combating tax evasion, providing essential information on the authorities' foreign income of individuals to assess and collect related fees.*

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### **1. Introduction**

Tax havens are home to an important wealth management industry, offering foreigners an opportunity to evade taxes. Tax havens can start exchanging information with partner countries on the basis of two types of events Legal: new treaties or amendments to existing treaties on the one hand (for example, changing tax treaty French-Swiss in 2009), and changes in national laws enabling the exchange of information with existing treaty partners on the other (Cyprus adopted such a law in July 2008). The two events are equivalent in terms, but we treated may be more prominent than the subtle changes in banking laws of tax havens.

The distinction between the two types of legal events allows us to investigate whether depositors respond differently to many important events. Over the years, many developed countries have taken steps to mitigate the impact of banking secrecy on the development of tax havens, by including provisions in tax treaties or other agreements to exchange financial information with other governments, including the governments of member tax havens at request. This system, however, has two major flaws.

Thus, first, the government requesting is bound to know what specific information search, which can be difficult to determine when trying to follow the money passing through fictitious companies anonymous, and secondly, state government tax haven must not be able to collect or have access to regulated information, which otherwise would result in delay in the procedure for obtaining information. Developing countries could benefit following the adoption of a well designed and implemented the automatic exchange of financial information.

Enforcement of tax law, countries in the developing world, often less technical capacity for transaction tracking and route revenue through tax havens, but these countries are most affected by illicit financial flows enabled opacity and tax havens dualistic financial system. Suppression of tax evasion often requires straightening loopholes in tax treaties. In this regard, Global Financial Integrity recommends that multinational companies be required to disclose basic information to financial issues such as sales, profits, taxes paid, and the number of employees in each country where it operates.

## **2. Banking secrecy - operating condition havens**

Banking secrecy has long been a target of international economic groups that track by sliding profits from offshore jurisdictions. Court of Justice of the European Union has set in terms of banking secrecy applied interbank transactions, the judgment in Case C-580/13 Coty Germany, that Article 8 (3) (e) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as precluding a national provision such as that at issue in the main proceedings, which authorizes unlimited and unconditional, a banking institution to invoke secrecy bank to refuse to provide, under Article 8 (1) (c) of the Directive, information on the name and address of the account holder.

Moreover, the European Union and Switzerland signed an historic agreement on transparency in the tax area, which will significantly improve the fight evasion by eliminating bank secrecy, the parties will exchange information automatically about residents' accounts in 2018. The agreement puts end of banking secrecy for EU residents and prevent fraudsters to hide undeclared funds in accounts in Switzerland, said in a statement the European Commission. The agreement signals a new era of tax transparency and cooperation between the EU and Switzerland, is a new blow to the fraudsters, a new step to correct taxation in Europe. EU paved the way for automatic exchange of information in the hope that other international partners will follow.

This agreement is proof that ambition and determination the EU can bring results. According to the agreement between the EU and Switzerland, Member States will receive annually the names, addresses, tax identification details and dates of birth of people with bank accounts in Switzerland and other information about their financial situation. The new agreement corresponds with increased transparency rules agreed by EU member states last year, and the new standards of the Organization for Economic Cooperation and Development and the G20, the automatic exchange of information.

The European Commission is currently finalizing negotiations for similar agreements with Andorra, Liechtenstein, Monaco and San Marino, which would be signed by the end of this year. Regarding legislation in Romania, applicable legal provisions on credit institutions and capital adequacy on professional secrecy in banking and customer relationship and exchange of information and professional secrecy. Thus, the obligation of professional secrecy in banking can not be opposed to a competent authority in exercising supervision.

Notwithstanding the principle of confidentiality of customer information, stringent banking legislation regulating the conditions in which credit institutions subject to Romanian law may, in justified cases, providing information and cases in which they are obliged to provide information to banking secrecy. Banking secrecy information may be disclosed to the extent that they are justified by the purpose for which it is requested or provided.

There are several situations that can supply such data. A first case of this kind is providing the information on the written request of authorities or institutions or ex officio, whether by a special law the authorities or institutions are entitled, in order to fulfill their specific request and / or receive such information. But it is clearly identified information that can be provided by credit institutions for this purpose.

Then, the information can be released at the request of the courts, in order to solve various issues related to judgment and not least after the start of criminal proceedings against a client at the written request of the prosecutor or law enforcement agencies, with its authorization.

### **3. Conclusions**

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're looking for, which can be difficult to pin down when attempting to trace 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 pursuing the process can be an extremely slow process with potentially little reward.

The alternative is automatic exchange of financial information (or 'automatic exchange' for short), and it is exactly what it sounds like countries automatically exchange information on bank accounts, transactions, and financial flows with each other on a periodic basis, enabling law enforcement and tax authorities to follow up on any leads they may have. GFI has advocated for many years that countries should establish and participate in systems whereby they exchange as much information with each other as is feasible.

While automatic exchange may have been considered unfeasible in the past, technological advances have made the collection, transfer, and processing of the large amounts of data involved relatively easy, and automatic exchange has come to be seen as a common-sense solution to the problems created by tax haven secrecy. The G20 nations declared in 2013 that automatic exchange is "the new global standard," and pledged to begin exchanging financial information automatically by the end of 2015. In 2014, every OECD member-state and a group of several other countries endorsed a standard system for multilateral automatic exchange of financial information. GFI strongly supports automatic exchange of financial information on a multilateral basis and believes the opportunity to join this system should be extended to all willing countries, specifically developing countries.

In other words, tax havens aren't tax havens just because they have low taxes—rather, what makes a tax haven is its opacity of financial information. This is why tax havens are often more accurately referred to as "secrecy jurisdictions", and why they facilitate many more problems than just tax evasion.

While the legal regimes that tax havens set up to enable this secrecy are complex, their basic outline is simple: banks, companies, trusts, or other financial actors in the country are allowed to accept money from basically anywhere without reporting it to the authorities in the country where it originates or from which it is controlled. In some cases, it is actually illegal to disclose that information, but in many places, it is simply because the banks or other entities aren't required to disclose it and there is no mechanism to force them to do so.

Laundering criminal proceeds through a tax haven is therefore merely 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 wherever you'd like to spend it or to wherever you'd 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 also offer a great legal way to avoid paying taxes, simply by characterizing income as passing through that country and using loose tax treaties or loopholes in one's home country tax law to claim that the income is untaxable there.

Law enforcement and tax authorities will always be one step behind criminals and tax evaders, following cryptic transaction records and grasping at shadows rather than seeing where money is actually hidden.

Multinational companies (or 'MNCs') use tax haven secrecy in slightly different ways than criminal tax evaders and money launderers. In general MNCs use complicated corporate structures involving layers of tax haven entities and accounts to disguise or alter the character of their income in ways that (often legally) reduce their corporate tax bill, a process known as 'tax avoidance' (in contrast to 'tax evasion,' which is illegal). These strategies can be wildly successful for MNCs, bringing their tax bills down to zero or even triggering a tax refund from the government, while they enjoy massive profits.

Cracking down on tax avoidance often requires closing the seemingly endless number of loopholes in tax treaties and tax laws one at a time. However, one way to greatly expedite this process, as well as bring public pressure to bear on rampant tax avoiders, is to require those to own up to their tax schemes. Global Financial Integrity recommends that all multinational companies be required to publicly disclose basic financial information, such as their sales, profit, taxes paid, and number of employees, in each individual country in

which they operate. This policy, called “country-by-country reporting,” will not only help both rich and poor countries better enforce and amend their tax laws, but it will also make free markets more transparent for investors and the public at large.

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