

THE USE OF OFFSHORE JURISDICTIONS IN INTERNATIONAL FINANCIAL FITTINGS

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Abstract

Essential legal and financial Structures, sometimes complex, had until recently been small and medium entrepreneurs away from the use of offshore jurisdictions, but the constraints of increasingly heavy taxation of excessive in certain States, you push even those with limited resources to use in these jurisdictions to protect revenue.

The purpose of this research is to analyze the offshore jurisdictions in order to determine the possibilities of use of their disadvantages in order to improve measures to combat tax evasion, as well as for the use of their advantages in order to reduce illegal migration and regular employment of capital through the analysis of specific cases of the use of offshore jurisdictions – Case Franklin Jurado, The Bank of Commerce and Credit International American Express Bank International.

Scientific novelty and originality of the investigation consists of:

-the identification on the basis of international practice, some offshore jurisdictions specific items in order to reflect their fiscal policies (trade and investment, etc.)

-analysis of cases of the use of offshore jurisdictions in international financial fittings (such as the Bank of Credit and Commerce International; Franklin Jurado; American Express Bank International),

-identification of the impact paradisurilor tax and offshore financial centres of the world economy

– revealing secret financial transactions carried out within the framework of ofssore, research instruments jurisdictions and management techniques of cadrulacestor tax jurisdictions.

It is interesting to be seen through the prism of analysis of economic-fiscal financiare if a competition is beneficial or not for the welfare of States and to what extent this competition will have a say in future developments and tax paradisurilor financiare offshore centres.

In conclusion, I appreciate that in order to survive successfully in the global economy of the future, offshore Jurisdictions should promote a healthy tax, competing on the basis of a transparent legislation and to eliminate the possibility of the existence of financial crime, in line with the requirements concerning cooperation in the field of international economic relations.

Keywords: *Offshore Jurisdiction, taxation, financial crime, the world economy, financial strategies*

Introduction

To the context of the globalization of the world economy, the glue created between international tax system and refining strategies financial has created a climate for the optimum development of the offshore jurisdictions, which, due to lax law enforcement and fiscal regime very indulgent, bring a number of advantages of the location.

Purpose of the research is the analysis of offshore jurisdictions in order to determine the possibilities of use of their disadvantages in order to improve measures to combat tax evasion, as well as for the use of their advantages in order to reduce illegal migration and regular employment of capital through the analysis of specific cases of the use of offshore jurisdictions – Case Franklin Jurado, The International Bank of Commerce and Credit International, American Express Bank, If The Company Enron.

The activities carried out within the framework of the offshore jurisdictions, leading to increased tax avoidance by default, with a particular emphasis on legal, lawful migration and illicit capital, causing financial instability, and by circumvention of financial control, financial crises.

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Academic level, offshore jurisdictions utilization in the context of international financial mechanisms has not been tackled as a study in its own right, but was treated by specialists within the framework of any work that is based on a thorough presentation of the paradisiacal tax and/or financial offshore centres, such as: George Cristian Buzan, Bisa, Adrian Manaila, Claude Dauphin, Stephen c. r. Munday, etc.

At the same time, some specific cases of the use of offshore jurisdictions and have been treated in a few specialty items, including: Center for Responsive Politics, "Enron: Other Money in Politics, Les Echos" Stats, "Enron: la commission d ' enquete denonce une enrichir les dirigeants machine, the US Senate Report" Report Kerry Brown ", etc.

Methodology of scientific research is based on the use of methods of analysis and synthesis, as well as to investigate evolutionary events and phenomena. The application of these methods to perform a thorough analysis of the issue under study.

The current method of avoiding tax in a jurisdiction offshore to provide incredible advantages to businesses for the development of a profitable business.

Jurisdictions that are part of the offshore system are characterized by a wide typology of possible entities registered in these locations¹.

Banking secrecy is a tradition for the development and operation of an offshore territory.

In the absence of cooperation regarding the exchange of tax information with foreign countries in general, and to those whose citizens are unlikely to have bank accounts in their country of residence for tax purposes, for the purposes of tax evasion, in particular offshore jurisdictions that reproached them tax law and not merely permissive, is not on the same level with the international regulatory system the system by which you can avoid tax evasion technique or that of money laundering.

Fiscal competition among transnational companies, the pace of technical progress and increase the risk of monetary fluctuatiile and the uncertainty of a tax haven².

Be it by sovereign countries (Switzerland, Lichtenstein, Luxembourg, Ireland, Monaco, Andorra, San Marino, etc.) territories, either more or less autonomous (Jersey, Cayman Islands, British Virgin Islands, the Bahamas, Bermuda, Barbados, Belize, Panama, etc.), the opacity of the financial-banking sector allows simultaneous mislead, IRS and justice national in the case of non-residents, who consider tax evasion a crime severe, punishable by the law of their countries (from large fines to jail).

Weak or non-existent tax, political and economic stability, prompting companies and banking and competitive enterprises, respectively, to be installed in offshore territories. The liberalization of the exchange of foreign currency in cash, as otherwise the banking and commercial secrecy are other major advantages that attract considerable fortunes in the territories. A highly developed financial sector in comparison to the size of a country, i.e., the weight function to economic infrastructure, communications and transport, are a guarantee for investments.

Money wasted by the different operators by mechanisms of tax evasion (money laundering), hitting directly in social projects that he rigged countries can develop at the level at which would impose the needs of society, given that most of them are financed from fees and taxes.

In general, states shall cooperate in the field of money laundering, and many of them have adopted stringent standards in this area, but the bank secrecy neridicarea in the guise of "Confidentiality", making extremely difficult communication between various foreign jurisdictions and territories, bearing in mind that tax law is very different in the face of the rigged States tax haven³.

¹ Cristian Bisa paradisiacal, *Use between tax evasion and tax fraud, legal* (Publisher BMT Publishing House, 2005), p. 92

² Radu Buzniurescu, *Taxation*, (Publisher Universitaria Craiova, 2009), p. 129

³ Z. Ahmed, *Identificarea paradisiacal fiscale și a centrelor financiare offshore*, http://www.taxjustice.net/upload/pdf/identifying_tax_havens_jul_07.pdf

The frequency and diversity of transactions used for the purpose of money laundering has become increasingly complex, involving certain banking financial institutions as well as non-financial⁴.

A classic case for the use of offshore jurisdictions which may not pass necitat is the famous case of Enron⁵ who did a great vâlvă in 2001-2002.

Company Enron was founded in 1986 in Houston, Texas, USA, by the merger of the two companies producing natural gas.

The company took advantage of the removal of the Government under the control of the natural gas sector, which took place in the 1980s and started games scenes. The transformation from a producer of natural gas, in an intermediary in energy Affairs did that in a period of just 15 years, the company is located on the 7th place in the rankings of the largest 500 companies in the world⁶ with a share of 25% of the world market in electricity and natural gas.

On 3 December 2001, the value of Enron stock at about collapses. 80 billion dollars to 220 million and the company has suddenly declared bankruptcy, though one year before announcing profits of 100 billion dollars. The specialists of the company made misleading public statements, some based on some unreal figures, all of these tactics in order to enforce high taxes to consumers through bold cost operations of getting electricity. At the same time, to maintain a course of actions the company announce huge profits and quarterly internal audits failed to reveal the fraud made by the company. External audits being done by Arthur Anderson that the methods used to try to protect the image of the company Enron⁷.

Profits were obtained as a result of partnerships with other companies, the Commission of securities and stock exchange triggered a thorough investigation, and the end of 2001 Enron has reassessed the proceeds last 4 years announcing a reduction of more than 500 mln. \$ than earlier.

The results of the surveys carried out have revealed and made by management of the company Enron, 140 managers were involved in fraud with skyrocketing wages cumulatively reaching \$ 680 million, and two of them received sentences of 160 years in prison.

As a result of this scandal have been promulgated new laws in the u.s. that attempted a legislative correction of failure, increased control exercised by Government over the Securities and financial reporting.

The main conclusion of this extreme situations in which the company is that full and accurate reporting of financial statements is crucial⁸.

One of the most interesting sentences from the USA which is based on the use of fiscal incentives, the paradisurilor was that of Franklin, a Colombian economist Jurado, a graduate of the Hrvardului, which not only washing money for Jose Santacruz Londono, the exponent of the Cali Cartel brand, but has developed a very well thought-out scheme for money-laundering. Jurado was arrested in 1990 in Luxembourg, where enforcers confiscated several diskettes with data about 115 bank accounts from 16 locations (from Luxembourg in Budapest) and details of a vast money-laundering scheme⁹.

Within the framework of the operation carried out by the famous economist is diferențiu five phases of the scheme that were created in order to legalize the amounts obtained from drug

⁴ George Cristian Buzan, tax havens and offshore financial centres in the world economy conterxtul, (Publisher C.H.Beck, Bucharest 2011), p.110

⁵ Center for Responsive Politics, „Enron: Other Money în Politics Stats”, www.opensecrets.org/news/enron/enron_other.asp

⁶ Fortune's 50, 2001, http://money.cnn.com/2006/01/13/news/companies/enronoriginal_fortune/index.htm

⁷ <http://manager.euroconta.net/2010/12/inginerii-financiare-frauduloase-cazul.html>

⁸ Tabara Neculai, Emil Horomnea, Mirela-Cristina, *International Accounting*, (Publisher Tipo Moldova, Iasi 2010)

⁹ Financial Action Task Force, “The Misuse of corporate vehicles, including trusts and service providers”, 2006, <http://www.fatf-gafi.org/dataOCDE/30/46/37627377.pdf>

trafficking and to prevent confiscation. The Jury's strategy, phases of money laundering were carefully created, because the goods to pass from a high level of risk to the one below.

The first phase was originally a warehouse, because money was still very close to their origin and so very "hot", it shall be carried out in Panama.

The second step consists in transferring money from Panama in Europe. Jurado coordinate transfer of panamaneze u.s. dollars in American banks in more than 100 accounts of 69 by banks in nine countries: Austria, Denmark, United Kingdom, France, Germany, Hungary, Italy, Luxembourg and Monaco, with deposits between 50,000 and 1 million dollars. This step was followed by the transfer of sums of money in the accounts opened in the name of European citizens – to hide the account holder's nationality, European open under the name such as: Peter Hoffman and Hannika Schimdt, to increased surveillance of allocated accounts opened on behalf of Hispanic or Colombians.

The last stage represent the return of funds in Colombia – through investments by companies in the Legal Affairs of facade of Santacruz, such as: restaurants, construction companies, pharmaceutical companies and real estate.

According to a later report, the Jury had washed around 30 million francs through the accounts opened by the major banks in France. He noted that France deserved attention to and identified the French financial institutions that were accessible to money laundering. The highest score earned him, then Austria Hungary (because it wanted the Western capital) and the Channel Islands (which were a tax haven)¹⁰.

An extremely important role in the economy of a tax haven is banking. In general, tax havens, develop a policy to encourage foreign banking activities, distinguishing legal regime for residents and non-residents¹¹.

In July 1991, over 12 billion dollars, representing assets of BCCI – were confiscated after investigators discovered evidence of widespread fraud. The Bank's collapse was not a surprise, but he was already provided. Checks were made on driving a few years in the United States and United Kingdom, but the actions taken by the Bank and the collapse of Bank inspectors have caused great shock waves throughout the financial system.

As the results of the investigation were made public, the most shocking was the bankruptcy itself, but the fact that the Bank was allowed as long as the operation without any intervention on the part of Governments and supervisors. The Bank did not discriminate in regards to its clients, providing services to drug traffickers, dictators, terrorists, frauduloși merchants, arms traffickers and many others. Furthermore, the BCCI has not only worked on a system based on privacy and deception, but it deliberately sold to customers as essential part of banking services¹².

Agha Hasan Abedi founded the Bank for developing countries, at the time of the collapse of the BCCI was known in some circles as the Bank scams and international criminals – Bank of Crooks and Criminals International¹³.

Corporate structure by splitting, bookkeeping, regulatory controls, auditing, accounting by the intricacies of the internal structures of the BCCI group, he was able to get around frequently and rutinier legal restrictions on the movement of capital and goods.

BCCI was unable to commit or to facilitate a series of crimes, through means including numreouse companies use cover "shell companies" (for these companies is to act as a way to launder money or to hide from tax inspectors), exploitation of offshore financial centres and banking paradisurilor and its diverse corporate structure.

¹⁰ <http://offshorestyl.wordpress.com/2011/05/02/criminalitate-financiara-internationala>

¹¹ Sorin Gifei, The payment of taxes using offshore companies and tax havens, in Law Magazine nr. 9/2008, p. 213

¹² US Senate Report "Report Kerry Brown"

Although having its headquarters in Luxembourg, the purpose for which it was founded BCCI (stimulate the developing economies) has been that it is not responsible to a specific jurisdiction or subject to a specific set of national rules.

Surveillance system was weak at that time and this weakness was fully exploited by the Bank, which had divided operations between two auditors, none of whom have access to the picture of its activities, the position of which would have been able to give a true sense of involvement in the Bank and money washings in other forms of fraud and corruption. In addition, the BCCI has used the Cayman Islands and the Netherlands Antilles to create a maze of facade companies to form a curtain to cover the depositors and their activities. Although authorities such as the Bank of England have learned about criminal activity of BCCI, for two years have not made arrangements for closing them.

Most of the money transfers were made by BCCI Overseas, in Grand Cayman. When the new-yorkeze have prompted Bank BCCI to present data in Cayman, they were struck by a stone wall, on the ground of bank secrecy.

Finally, the US authorities have made significant progress in strengthening cooperation with the British Serious Frauds Office. Judge of Grand Cayman, a lawyer in the Midlands-England, appointed by the British Government, made an official visit "collegiate", these new Police Department but receiving only part of the information requested.

The company American Express (AMEX, Amexco) was founded in 1850 in New York as a delivery and courier company. Immediately after launch, the company has become the most successful express delivery company in the United States.

American Express has launched in the financial sector in the year 1882 in 1958, due to advances in technology, the company has managed to produce their first "charge card" (the predecessor of credit cards). The business has been run very well for this purpose, and now American Express operates in over 130 countries. Even if AMEX mainly focuses on financial transactions, the company is also known for other services, making it one of the largest travel agencies in the world. Moreover, the company is listed on the stock exchange in New York.

In 1974, it launched the blue box logo which has managed to impose over time and today one of the most famous and powerful 10 brands worldwide. In 2000, AMEX, Western Union and a subsidiary of First Data Corp. signed an agreement to send money from an agent of Western Union became possible and ATM with get¹³.

To receive money, customers do not need a card. They only need to enter their identification number and the system will confirm the transaction. Datorită combinației unique identification codes for each transaction, the process is extremely assured.

First off the service is available only on the US market through a network of 6,000 ATMs of AMEX. After 150 years of existence, the AMEX is today a company with over 72.000 deangajati who achieved a net profit of USD 2.8 billion at 31/12/2004. At the end of last year there were almost 52 million cards in circulation care realizau a volume of 300 billion dollars of transactions throughout the world.

Currently, ALL MAJOR payment cards are charged in 45 national currencies and accepted in approximately cincimilioane of locations in over 200 countries and territories¹⁴.

The scientific study of the practicability of the face could contribute to developing and improving measures on combating tax evasion, as well as for the use of their advantages in order to reduce illegal migration and regular capital concepts of tax haven and tax evasion under the

¹³ OXFAM, "Tax havens – Releasing the Hidden Billions for Poverty Eradication", (2000, Oxfam GB Policy) Paper, www.oxfam.org.uk

¹⁴ In 1958, Bank of America headquartered in San Francisco, California, issued BankAmericard. The whole marketplace, californian State is a succesincă card from the beginning, being the first product of its kind with facilities discovered the statement "revolving". Card holders allowed in repayment of amounts drawn with multerate pay monthly fees applied to the balance of the account

internationalization of national economies; the improvement of the methods of combating tax avoidance and reduction or suspension of the escape of lawful and illicit capital; as well as national practices in the application of certain tax advantages arising from the use of offshore jurisdictions.

Internationally it argues that offshore jurisdictions is not a way to tax fraud, but there are still professionals who argue that tax havens are ideal for those who obtain income goals¹⁵.

Through these financial mechanisms and the transfer pricing practice, companies can afford the option of applying the taxation in a given country.

In this way the residents tax (natural persons or legal persons) in a State with high taxes can set up companies in the areas of taxation and benefit their business profits may accumulate in these areas. The owner of these companies may be subject to the laws of restriction of such types of operations (which can affect the effectiveness of these strategies), but a smart texturing shall compass coercive efforts may of these legal provisions. If the company making the distribution of profits, they will be charged at your destination and keeping the profits in the company, taxes are sometimes delayed or even avoided.

Conclusions

The volume of money laundering, and tax evasion techniques achieved through offshore jurisdictions are very hard to quantify, it is therefore necessary that the Member States should act to a reform of the international financial institutions and bodies to improve transparency of financial flows and avoidance of international financial imbalances.

As a consequence, States with high/normal taxation came into conflict with offshore financial centres, each side trying to protect their interests, respecting both the rules of international law. Onshore jurisdictions offshore financial centers accused of unfair tax competition and legal rules practice favours operations dirty money-laundering.

We believe that in future, offshore jurisdictions should promote a healthy competing tax, based on the transparency legislation to eliminate the possibility of financial crime as well as the creation of global financial imbalances.

References

Books:

- Cristian Bisa paradisurilor, Use between tax evasion and tax fraud, (legal Publisher BMT Publishing House, 2005), p. 92 .
- George Cristian Buzan, tax havens and offshore financial centres in the world economy contextul, (Publisher C.H.Beck, Bucharest 2011), p.110.
- Popa S., Cucu A., Shadow economy and money laundering, (Publisher Expert, Bucharest, 2000), p. 46.
- Radu Buziarnescu, *Taxation*, (Publisher Universitaria Craiova, 2009), p. 129 .
- Tabara Neculai, Emil Horomnea, Mirela-Cristina, *International Accounting*, (Publisher Tipografia Moldova, Iasi 2010).

Studies and Published Articles:

- Sorin Gifei, *The payment of taxes using offshore companies and tax havens*, in Law Magazine nr. 9/2008, p. 213.

Internet studies and articles:

- Center for Responsive Politics, „Enron: Other Money în Politics Stats”, www.opensecrets.org/news/enron/enron_other.asp

¹⁵ Popa S., Cucu A., *Shadow economy and money laundering*, (Publisher Expert, Bucharest, 2000), p. 46.

- Financial Action Task Force, “The Misuse of corporate vehicles, including trusts and service providers”, 2006, <http://www.fatf-gafi.org/dataOCDE/30/46/37627377.pdf>
- Fortune’s 50, 2001, http://money.cnn.com/2006/01/13/news/companies/enronoriginal_fortune/index.htm
- <http://manager.euroconta.net/2010/12/inginerii-financiare-frauduloase-cazul.html>
- US Senate Report “Report Kerry Brown”, http://www.fas.org/irp/congress/1992_rpt/bcci
- OXFAM, “Tax havens – Releasing the Hidden Billions for Poverty Eradication”, 2000, Oxfam GB Policy Paper, www.oxfam.org.uk
- <http://offshorestyl.wordpress.com/2011/05/02/criminalitate-financiara-internationala>
- Z.Ahmed, Identificarea paradisurilor fiscale și a centrelor financiare offshore, http://www.taxjustice.net/upload/pdf/identifying_tax_havens_jul_07.pdf