

MONEY LAUNDERING THROUGH OFFSHORE AREAS

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ABSTRACT: *In the present study we have started from the premise that from the analysis of the "money laundering", the money resulted from this is circulating in the whole world, through some geographical and institutional channels. Starting from the characteristics of "tax haven", we have made a parallel between it and the financial paradise. In the second part of the work we have explored offshore areas, adding the methods for placement of revenue in those countries and the necessary conclusions.*

KEY WORDS: *shadow economy, illegal economy, the legal economy, the latent economy, evasion from payment of taxes, manual labour, the fiscal method, criminal business, money-laundering, legalization of the means acquired in the illegal way, investment of money resources, stratification of money resources, integration of money resources, the prevention of shadow economy and money-laundering, fight against money-laundering*

If we look at the phenomenon of money laundering, there results that whatever the criminal nature of the source of origin, the "dirty" money move through certain geographical and institutional channels worldwide open to crime. Clearly there are privileged areas in this financial universe, where large transactions can be performed without any possibility of control. Using banks, the criminal appeals most times to those located in the so-called "tax havens". In a strict sense, almost every country in the world can be considered a tax haven because, in one form or another, the companies and the foreign individuals are given various incentives to encourage investment and promote the economic growth. The term "tax haven" is often incorrectly used.

To describe a country in this regard, the term financial secrecy jurisdiction should be used. A certain degree of financial and banking secrecy is characteristic of all the states. Almost all the states require a certain level of protection for banking and commercial information, but most of them will not preserve this information in case of an investigation conducted by statutory bodies from a foreign country. A banking and financial secrecy jurisdiction will almost always refuse the violation of its own laws on

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banking secrecy, even when it could be about a serious violation of the laws of a country.

The following are considered tax havens: Panama, Cayman Islands, and The Commonwealth of the Bahamas, Bermuda, The Channel Island, The Island of Man, Liechtenstein, Montserrat, and The Netherlands Antilles¹.

Gheorghe Nistoreanu and Costica Paun add to the tax havens Singapore, Hong Kong and Switzerland². The major financial scandals emerged in recent years are marked by the same feature:

- the criminal formations take full advantage of all the facilities offered by financial havens and offshore banking centres (outside the country of residence) to launder illicit profits, something which impedes the criminal investigation in this area;
- the emergence of tax havens has been determined in some cases by the lack of internal resources, which has been compensated by the state by providing tax incentives to companies and financial institutions in order for them to establish their headquarters in that country.

Thus, it has come to a situation where almost half of the global financial flows are developed through offshore channels: banks, insurance companies, mutual funds, foundations and holdings³.

An ideal financial haven has the following features:

- there are no arrangements to exchange information with other countries; international corporations can be created with minimum formalities;
- providing bank secrecy for these corporations;
- very harsh laws for the breach of bank secrecy;
- a highly developed tourist activity which may justify cash inflows;
- use a universal currency, preferably U.S. dollars, as the local currency;
- a government relatively invulnerable to external pressures;
- a high degree of economic dependence in financial services;
- availability of modern communication systems (telephone cable, telex) that bind them to other countries;
- a favourable geographical location for business trips to rich neighbouring countries⁴.

Tax havens are ultimately an important component of organized crime. They are used for laundering money from a variety of illegal activities (drug trafficking, tax evasion, smuggling⁵).

The financial havens place at the disposal of the foreign investors a wide range of services, without being obligated to disclose the origin of the money, from international corporations registration and ending with banking operations that are not subjected to the authorities. Although bank secrecy and financial paradise are two

¹ Voicu Costica, op. cit., p.171-173

² Nistoreanu Gheorghe, Paun Costica, op. cit., p.251

³ Ciobanu Petrut, op. cit., p.41

⁴ The Narcotics Police officer's Manual, Bucharest, Ministry of Internal Affairs, 1993, p.100

⁵ Bujor Valeriu, Pop Octavian, op. cit., p.17-19

distinct concepts, they share the legitimate purposes and commercial reasons. At the same time, they offer unlimited protection to criminals willing to do business at any price. It should be added that the country is considered a tax haven by foreign companies and individuals who are offered incentives for their investments, but the local people will not perceive the state policy in the same way because the government levy taxes on personal income, taxes on imports and exports, taxes on inheritances and donations, taxes on property, etc.

Petruț Ciobanu⁶ underlines within the financial havens the so-called “bank heavens”, i.e. those countries more interested in banking secrecy than tax reduction. These “bank heavens” are in fact countries with strong economic potential which provides various facilities for substantial capital contributions from other countries.

The characteristics of these tax havens are especially attractive to recyclers of funds because they provide a wall of secrecy on transactions, so that the owner of a company incorporated in the tax haven may not be associated with the flow of funds. Moreover, modern communications and banking systems of the countries that have tax havens allow the rapid movement of funds. All the types of corporations registered in the tax havens - generic companies, offshore banks, captive insurance companies, etc. - can be used to recycle the funds in all the stages of money laundering: placement, stratification and integration.

In Eastern Europe one of the most common schemes is the money laundering through offshore areas. For example, the illegal income is placed in an account of a bank. The depositor, concluding a fictitious loan agreement with an operator of the offshore area, transfers this money to the borrower’s account. The latter, in turn, concludes a loan agreement with a third operator. The assignment of claim is performed, the third party transferring the money in a bank, for example in Switzerland or Austria into the account of the “money launderer”.

The offshore territory is dedicated to international financial centres and to some banking transactions. Offshore areas are a powerful source that absorbs international organized crime, operating as a channel of capital exploitation in the country, money laundering and tax evasion. They have a dominant role in the laundering process, being widely used.

Offshore areas are characterized primarily by the absence of records relating to the de facto rulers of companies, the legislative prohibition on disclosure of information on these areas, their obvious reluctance to cooperate, on the grounds that in most areas the tax evasion is not an offence of money laundering. In some states, internal laws prohibit operations through the financial institutions in the offshore areas; in others the law does not prohibit such operations. In the states where the national currency is always subject to inflation, the legislature may establish limitations on the currency exchange in order to impede the achievement of its stronger currency. Offshore areas are usually the ones providing services for foreign currency conversion. In the states with a stable currency, the participation in offshore banking is usually allowed.

⁶ Ciobanu Petrut, op. cit., p.41

The distinctive feature of the offshore is the privacy. Moreover, most offshore areas do not recognize judgments of foreign courts. The placement of the revenues in these areas is carried out through various methods, such as:

- the physical transportation - illegally obtained currency may be placed in offshore areas through luggage, intermediaries, etc.;
- bank transfers;
- checks sent by mail or handed personally;
- trustworthy persons, the accountant - transferring money from the trust account, and then another person transfers it to the offshore area;
- telegraph services (Western Union, American Express, etc.) - can be made through transfers without requiring precise identification of the consignor and through the application of passwords the identity of the beneficiary can be avoided.

Once arrived in the offshore areas, the revenues are layered and are to be subjected to reinstatement.

The most common methods for replacing the income in the country of origin are⁷:

- *fictitious loans* - fictitious corporations can open bank accounts abroad, and then the checks are sent by post to the original state as fictitious credits from these companies;
- *fictitious investors* - illegal business is organized in the state of origin and fictitious investors usually located abroad are used for capital granting;
- *fees* - are paid for finding investors for the pursuit of business, negotiations for the purchase of buildings etc.;
- *checks and transfers; physical transfer.*

These methods can be applied both separately and in aggregation. At the same time, other methods can be highlighted, such as:

- customers presented by a subsidiary, branch or other foreign bank, established in the country where the manufacturing activity or the drug trafficking is an important component of the economy;
- the use of letters of credit or other financial methods to transfer money to countries that do not meet the customer's usual business;
- customers that carry out large and systematic transactions, including electronic transfer, which can not be clearly identified as good faith or customers receiving large and systematic payments from countries that are normally associated with the production, processing and manufacturing drugs, with terrorist organizations prescribed "tax havens", the composition of large balances that do not meet the normal turnover of the client and subsequent transfers to accounts held abroad;
- unexplained electronic transfers of funds on an inner or outer basis or without passing through an account;

⁷ Mutu, Maria, Off-shore - between Legal and Illegal // National Law Magazine, no.7/2003, p.36-37

- frequent requests for issuing travelling checks, foreign currency drafts or other negotiable instruments;
- payment frequency of the travelling checks and other negotiable instruments, especially if they come from abroad.

The countries, the territories, the cities or the areas with typical features of financial havens are⁸:

- *Europe*: Andorra, Cyprus, Gibraltar, Isle of Man, Channel Islands, Liechtenstein, Luxembourg, Malta, Monaco;
- *Asia and Pacific*: Cook Islands, Hong Kong, Macao, Marshall Islands, Nauru, Samoa, Singapore, Bahrain, Lebanon;
- *Africa*: Liberia, Mauritius, Seychelles;
- *Caribbean Sea and Central America*: Antigua, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Costa Rica, Panama.

We will make a short presentation of the most representative tax havens as they are catalogued by a UN report from 1999⁹.

Panama quickly became an important international tax haven and banking centre. By adopting a very least demanding law on corporate establishment in recent years more corporations have been established in Panama (about 50,000) than all other tax havens in the Caribbean / Central America together. Except for an annual fee of \$ 100 there is no tax on foreign entities, no requirement to declare income and no supervision by the government. There is no minimum requirement on capital invested, no requirement to maintain records and no stipulation on the frequency and scheduling corporation appointments, as there is no need to indicate the location of any corporate records that someone may keep. To these, a banking law which allows numbered and coded bank accounts is added¹⁰. According to several experts in tax planning and consulting, offering advice on selection and use of tax havens, bank and corporate secrecy laws in Panama make it an ideal haven.

The Bahamas Islands form an independent British colony located in the Caribbean Sea about 30 minutes flight from the U.S. east coast. In the Bahamas there are over 350 different banks, including most of the major banks around the world. About 95% of the total volume of financial transactions that take place here is related to international transactions for foreigners. Bank accounts are easily opened and can be created even by post.

There are no constraints on the currency or the currency exchange for the foreign funds that can be transferred easily to and from the country¹¹. The bank secrecy is strictly applied by banks and governments that depend on them.

Liechtenstein is an independent country located between Switzerland and Austria. The bank secrecy is applied more strictly than the one in Switzerland. Until recently trusts could be set up to protect the assets. Unlike most trusts, Liechtenstein's

⁸ United Nations Organization Report / Synthesis Documentation no.1/2000, Bucharest, Ministry of Internal Affaires, 2000, p.57

⁹ Ibid

¹⁰ Floricel Constantin, International Financial-Monetary Relations and Techniques, Bucharest, Didactica si Pedagogica Publishing House R.A., 1995, p.186

¹¹ Floricel Constantin, op. cit., p.187

"Anstalt" is a trade body able to perform various activities, which can ensure the person who transfers his ownership of assets to the trust the revocability of the transfer. Most experts¹² consider Liechtenstein and Switzerland interchangeable in terms of tax havens.

But it is acknowledged the fact that corporate traditions of secrecy in Liechtenstein provide probably the superiority of Swiss banking. Sophisticated foreign investors have created a financial nightmare by using secret bank accounts in Switzerland, on behalf of the corporations incorporated in Liechtenstein.

While some small states have certainly attracted the "dirty money", the defiant attempt to attract illegal profits was initiated by the *Seychelles*, which, in the '90s, recorded an economic growth by unconditionally offering citizenship to all those who deposited at least 10 million dollars in the banks of these islands. Under the pressure from the United States and other members of the international community, the Seychelles gave up selling its sovereignty.

One of the tax havens criticized for the lack of any discrimination related to its customers is *Antigua*. In 1996, an American Senate report commented that nobody drew more "dirty" money than Antigua, with a banking industry lacking regulations, which did not apply the reporting requirements, but penalized the disclosure of bank secrecy. The number of banks in Antigua increased by 75% in 1995, any person having a capital of \$ 1 million could open a bank, and many of them were nothing more than a simple room with a fax¹³.

The authorities in Antigua tried to downplay the European Union Bank when the bank managers 'disappeared' with the amount of 8 million U.S. dollars, suggesting that they had taken steps to prevent the occurrence of such situations. However, they failed to explain convincingly how a country with a population of about 70,000 inhabitants could ensure adequate supervision of the many existing institutions and financial services on the island.

Until there will be such a capacity, the changes in Antigua will be purely cosmetic. A clear example of how bank secrecy laws encourage this practice is the rule whereby an officer, director, shareholder, agent or attorney of a bank may provide information relating to the affairs of a client only when there is a written order of the court Justice of Antigua. What is quite interesting is that this order may be issued only in connection with a proven offence.

Bermuda is another tax haven - a former British colony, with long traditions of international financial centre. It boasts with a large community of professionals in the financial business (lawyers, accountants, bankers, insurance agents), with experience in the field of relations with foreign investors. The Bermuda's financial system is old, stable and respected throughout the world and the telecommunications network is modern and efficient. The Group of Bermuda Islands is located just 350 miles off North Carolina, and enjoys good air links with the United States and Europe. Here there is no control over the foreign exchange and any amount of money can be placed or removed from the country. The Banks of Bermuda offer a wide variety of accounts

¹² See: Voicu, Costica, op. cit., p. 180; Popa, Stefan, Cucu, Adrian, op. cit., p.53, etc.

¹³ Information and Documentation Bulletin, no.4/2000, Bucharest, Ministry of Internal Affairs Publishing House, 2000, p.24

and services (current accounts, savings, trust and custody, trust accounts, investment management, brokerage services, enforcement services, management and corporate administration, management of real estate properties and real estate credit services).

There is no code of laws governing banking secrecy. But the existing bank secrecy acts as a consequence of the British common law, which is strictly observed by the banking community.

Banks in Bermuda are somewhat restrictive in terms of acceptance of new customers, at least compared to other tax havens in the Caribbean basin. In general, they prefer that new clients are recommended by a professional community member (not necessarily local professionals). However, with bank references and proper identity documents, anyone can open an account in his/her own name. Bermuda law allows the easy creation and operation of the so-called captive insurance companies.

It is interesting to note that in Bermuda there are only four banks (The Bank of Bermuda, the National Bank, Bermuda Provident Bank and The Bank of NT Butterfield and Son) and two major firms of lawyers who handle all or almost all financial transactions on the island. All these entities have their headquarters in the capital city.

The Channel Islands are a group of islands located in the Channel between Britain and France. They form an independent country and govern. Because of their unique position in relation to UK and EU, they have become an important offshore banking centre for customers in Europe and worldwide. Many major international banks have branches here. Only two of the eight islands are on the list of tax havens: Jersey and Guernsey.

Bank accounts are easily opened, personally, by proxy or by post. For foreigners there are no monetary or currency exchange restrictions. The telecommunication installations of the islands are absolutely modern, but all air routes to the islands should pass through London or Paris.

Isle of Man is a small island (227 square miles), situated in the Irish Sea between Great Britain and Ireland, under British possession, which enjoys a high degree of autonomy which allows it to operate as tax haven. There is no monetary control and, like any other tax haven, the telecommunications equipment and capabilities of the Isle of Man are excellent.

Air traffic is conducted by England and Ireland. Like Bermuda, the Isle of Man law is particularly interesting for the establishment and operation of captive insurance companies. On the island there are 45 different banks. By contrast, a recent report states that there is only one hotel which offers rooms with private bathrooms. The purchase of corporations in the Isle of Man (Man) is easy and cheap and, thus, is a means often used only for opening accounts elsewhere in the world, in the name of a company offered by the corporation from Man.

Cayman Islands (Grand Cayman, Little Cayman and Cayman Brac) are located south of Cuba and are served by several major airlines that offer systematic voyages from Miami, Houston and other cities in the United States whose number is rapidly growing. The main activity on the island of Grand Cayman is the international banking activity, the island having approx. a bank for every 30 inhabitants. The image of Cayman as a "tax haven" state is vigorously promoted by governments and private

economic sector. The legislation and the regulations in force have been deliberately designed to ensure and enhance the country's financial and corporate reputation. The law of banks and trusts and the law of confidential relations are among the most severe and restrictive in the world. Not only that disclosure is a crime, but the request for information is against the law.

Cayman has all the other feature of a successful tax haven, including: a superior telecommunications system, no currency or foreign exchange restrictions, representation of all major international banks and local specialists in international tax. Cayman boasts, also, with its specialized trusts in the establishment and administration of foreign corporations. In 1992, 2930 new corporations were constituted in the Cayman Islands, bringing to 16,712 the number of existing corporations, while the Cayman Islands population amounts to 17,000 people.

Montserrat is an island with an area of 40 square miles located in the Leeward archipelago, situated in the eastern Caribbean, about 250 miles from Puerto Rico. It is a self-governing British colony. While the telecommunications system is modern, there are no direct air flights to the United States, thus, links with the neighbouring islands are necessary. The main activity of the tax haven of Montserrat is financial of the Class B banks, which are very easy to open and to keep secret due to local banking laws, carefully prepared for this purpose. Although there are superficial rules in monetary and foreign exchange field, their application is very vague, if not ignored, so that import or export of funds is made easy.

Some promoters / experts in tax havens have complained of the relatively higher cost of Class B banks established in Montserrat, a situation which is due at least in part to the new fees recently introduced by the government. Another complaint concerns the presence of only two major Class A banks in the island (Barclays Bank International and Royal Bank of Canada). In May 1984, Montserrat revoked the operating licenses of 22 banks of class B. This decision was considered to be the result of non-payment of the license fee, following the recent increase imposed by the government. In all probability, the same banks have moved elsewhere.

The Netherlands Antilles stretch along the Caribbean Sea, with two groups of three islands each, placed at a great distance between them (St. Martin, St. Eustatus and Saba), located about 50 miles east of Puerto Rico (Curacao, Aruba and Bonaire) and about 50 miles off the coast of Venezuela. The Netherlands Antilles is a Member State/partner of the Kingdom of the Netherlands (together with the Netherlands and Suriname), but exercises full autonomy in the internal affairs of the state.

More important as tax havens are Curacao, where the capital of the Netherlands Antilles is located, Willemstad and St. Martin, half being under French possession. For many years, the Netherlands Antilles enjoyed an advantage over other financial secrecy jurisdictions, due to an old tax treaty concluded by the Netherlands with the United States and the United Kingdom. Simply put, this treaty provides that corporations in the Netherlands Antilles, which have investments in the United States are either tax exempt or pay lower taxes than those imposed on profits earned by the companies of other countries.

This preference explains the dominance of corporations in the Netherlands Antilles (2544 new companies were created in 1983), which own real estates and other

assets or investments generating profits in the United States. This also explains why a corporation NV (Naamzloe Vennootshappen, the name of the insurance company with limited liability of the Netherlands Antilles) is usually part of a well-thought plan of tax evasion in a tax haven.

Agreements resulting from the recent negotiations between the United States and the Netherlands Antilles on the treaty will effectively put an end to the position of advantage gained through the Treaty by the Netherlands Antilles. The Netherlands Antilles offers modern and efficient services of telex, telephone and mail, a large network of international banks and direct air flights to New York and Miami. A wide variety of entities can be created with lower costs within a short time (2-4 weeks).

Corporate Confidentiality is ensured by applying the Dutch civil law system and the use of "bearer shares" in case of corporate ownership. Bank secrecy is strictly observed even in the absence of specific legislation in this area. Exemptions from any monetary and foreign exchange restrictions are normally granted to any corporation set up by foreigners. Like their great rival, the Cayman Islands, the Netherlands Antilles has developed laws and regulations to attract investors in the market of tax havens because the position obtained through the Treaty has provided a significant sector of this market.

Switzerland is not a "tax haven". Although the words "bank account in Switzerland" have become synonymous with "secret bank account" and although Switzerland is undoubtedly the most stable, secure and picturesque place to keep the money in secret, the fact is that it is not a "tax haven". The taxes for the Swiss people are high and the taxes on the income earned by foreigners in Switzerland amounts to 35%.

Of course, through the Swiss banks arrangements for investment abroad can be made to avoid the high taxes in Switzerland, such profits are transferred again in safe Swiss bank accounts.

Swiss banks offer an incredible range of services in addition to the regular banking services, including that of acting as agents of brokerage, traders in precious metals, investment managers and even travel agents for their clients. Banking secrecy and all commercial or economic transactions are a normal state of affairs in Switzerland. Laws relating to banking are part of the country's constitution and are taken very seriously.

Swiss make every effort to ensure the confidentiality of their customers' banking operations, down to the use of envelopes without heading; mailbox addresses that change frequently, personal messaging and sending the mail from France, Italy or Germany to foreign customers, to avoid the Swiss postmark.

Although the Swiss corporate law provides sufficient privacy to meet the needs of any foreign investor, there are too many other cheaper, more accessible and quicker places to set up corporations. Recently, by applying a mutual assistance US-Swiss treaty, the investigators who have worked using the appropriate channels of the Ministry of Justice and the State Department have been able to acquire data and documentation on accounts in Switzerland of American criminals.

The Swiss themselves feel disappointed and embarrassed by the abuses committed by foreign criminals through their banking system. They fear the potential

threat posed on the integrity of the system by the millions of dollars of "easy money", which might tempt the employees, otherwise reliable, from the Swiss banking network.

In May 1984, a national referendum was held which proposed mitigation bank secrecy to allow the foreign law enforcement officials the access to documents related to foreign offenders. The referendum was not approved, but the mere fact that such a proposal was made and put to vote was a step forward to the right direction.

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