

SECTION: FINANCIAL AND ACCOUNTING POLICIES AND CORPORATE GOVERNANCE IN THE GLOBAL CONTEXT

THE REDUCE OF FISCAL PRESSURE USING THE OFFSHORE COMPANIES

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ABSTRACT

Always, there have been controversies, regarding the interpretation of the activity of the companies of shore, if their activity is a legal one, if it is at its limit or simply, these are some organizations that hide and do everything, to evade from the duty to pay the debts to the state. However, the tax havens have not disappeared, they still have clients, of the most reducible and most potentate, in economic and financial aspect and despite the sharp comments, each sees his activity, without giving account, except rarely. , that is when international scandals occur. In our opinion, it is observed that offshore companies are highly rated in the business world and highly sought after. So, we need them. They will be part of the economic-financial landscape, with or without our will.

Key words: Tax heaven, Fiscal pressure, Evasion, Fraud

JEL Codes – G23, G32

1 Introduction

The sensitive aspect of the tax system is represented by excessive taxation. Taxation has been at the center of the economies of the early despotic and feudal as well as colonialist regimes, whose histories are full of revolts against taxes.

The unprecedented development of the world economy, the accentuation of economic and political interdependencies between different regions of the world, the emergence and remarkable evolution of transnational corporations, as well as the excessive taxation practiced by some states have made it necessary to worry about the fiscal planning of the businesses - from the economic agents and adopting legal measures to stimulate the development of international economic relations - from the participating states in the world economy.

Traders, bankers and shipping companies were the first to benefit from the benefits of international trade in a world where information on investment opportunities abroad had to be collected practically from the spot. The information had to be encoded or stored in sensitive political situations. The possession of the information materials, even of the books, was limited to the classes only, but in most cases the information gathered and stored with care was not current even before being used.

Undoubtedly, the first multinational companies gathered the most honest wealth in the world; using the power of information and exchange, they have grown so much that they have come to compete with national economies.

These findings converge to a single conclusion: in the situation of the availability of resources, it is more advantageous to be an international investor, than one acting at national level.

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2 Tools for reducing fiscal pressure

In 1947, Learned Hand, a distinguished federal judge, said: "No one has a public duty to pay more than required by law. Taxes are mandatory, not voluntary." In the current world economy situation, with the introduction of new taxes onshore, tightening of offshore operating restrictions, competitiveness focused on lowering costs, multinational firms and not only, they raise the question of new financial strategies that should be followed by the company or individuals in view tax reduction; The current practice demonstrates the use of four working tools in particular:

a) International financial centers "are represented by important cities, characterized by impressive portfolios of financial services and operators benefiting from these services". (Voicu and Boroi, 2006) They are represented by: London, New York, Cayman Islands, Zurich, Hong Kong, Tokyo, etc. Within these cities / countries transfers of both offshore funds and flows generated by international trade take place. Even if some cities are in tightly controlled countries, governments rarely get involved in these transfers, as interventions could lead to disastrous effects for all, especially foreign trade.

b) States with favorable tax agreements are represented by countries such as Switzerland and the Netherlands, which have a large number of treaties to avoid double taxation concluded with other countries, using their provisions offering a number of tax advantages to companies registered in these states. In some cases, these countries may have low internal taxes for certain types of investments, being as useful as the tax pads.

There are still many possibilities for avoiding tax burdens. There are "countries with low taxes, for certain types of income, and evasion gates can be found in any tax law if someone is silent: a low tax is applicable to a certain type of income in one of the countries that have concluded conventions. taxation with the country of residence and the tax collector and then the source of income is modified to produce that type of income in that country". (Voicu and Boroi, 2006) With the source of income has been concealed by the tax convention, it can be directed anywhere in the world.

c) Tax havens are states such as the Bahamas, the Channel, the Cayman Islands and Bermuda, which have harsh laws on securing banking secrecy and tax foreign transactions that take place in their territory. Lacking natural resources, "they have very little to offer, apart from the lightness and the secret of operations. Many tax havens have attracted companies that offer a whole range of financial services to standards existing in major cities of the world" (Văcărel, 2008).

In addition to the classic strategies that are applied in the offshore area, which I will explain in more detail during this paper, the complementary advantages offered by these special jurisdictions are the following: (Birşa, 2005)

- the possibility to hold and operate bank accounts in complete confidentiality;
- the possibility to run business without being charged or with minimal taxation;
- the possibility of insuring (protecting) the heirs (through the use of trusts);
- the secret of financial operations and properties;
- increased adaptability to the requirements of individuals or investor groups;
- absence or reduced character of governmental control.

Tax havens take many forms. Some have appeared in the post-war period, others have been born in the last two decades. They all have advantages and disadvantages. Some adhered to ethical standards of the highest caliber, and others harbored blatant deceptions. The legal structures of tax havens are constantly changing, like those of ordinary states.

"The most successful investors are those who carefully prepare for business opportunities". (Bocănete, 2010) Tax burden reduction strategies are an important part of the essence of offshore financial operations. Many of the players in international financial operations are located offshore due to excessive taxes and onshore restrictions.

d) International tax planning - in principle, international tax planning is very simple, the details being those that complicate the problem. The international planning of the fiscal obligations is based on the fact that the laws of any state, regarding the taxation are limited, only to its internal economy. Tax authorities frequently encounter difficulties in crossing the borders, however, companies / rich people and their money make it very easy.

Fiscal planning has two components:

- national fiscal planning that refers to the tax legislation existing in the taxpayer's state of residence;

- International tax planning, which is based essentially on the following two elements:

- use of tax havens;

- the use of treaties to avoid double taxation.

One of the biggest dangers in international financial and fiscal planning is the conduct of inadequate research, the lack of knowledge about the relationships between different jurisdictions, national and international laws. What is legal in one area, can be considered totally illegal in another jurisdiction, not talking about the pitfalls where you can fall from lack of information.

However, offshore business is business based on reputation. Most financial institutions and brokers in the offshore world “sell as a result of their reputation of correct institutions and always available to the client. Experienced investors and consultants know reliable offshore operators, knowing the scammers who trick investors or other institutions. For this reason, one of the first lessons of the offshore operation history is the appreciation of the experience and the letters of recommendation of the potential business partners”. (Birşa, 2005)

It is no longer a secret for anyone, the situation of the world economy: it wants to go through an inevitable period of globalization and capital mobility. The next phase of economic evolution has already begun. The most sophisticated transnationals are now being competed by financial experts with global expertise, who are fully exploiting the government's struggle to attract transnational wealth. Although the players of the international financial market (and not only) have the information and expertise of the highest class, the techniques used by the players in the international money game are very simple, but the best players raise the basic principles to the art rank. .

3 Legal tax evasion vs tax fraud

"The exodus across the borders, of the tax payers, in order to minimize taxes presents two ways of approaching". (Bârle, 2006) One of them characterizes a taxpayer who "intends to violate the tax provisions of the country of residence, using the discretion offered by the tax havens and the logistical difficulties encountered by the border investigators. These offshore transactions are taxable items by the Treasury, but taxpayers hope inspectors will never find out the truth. This is called tax fraud". (Mănăila, 1999) Another approach concerns a taxpayer who cleverly uses all the inadvertencies and breaches in the national tax system to legally reduce its tax obligations, which is called legal tax evasion.

Often, it is very difficult for anyone to detect if a transaction is for the purpose of tax avoidance or is simply tax fraud. The terms are not well defined at all, and the law regulating new types of transactions is often vague and variable. Then “when the Treasury detects new types of transactions, it tries to judge them based on the existing laws, the problem is that they were created in a previous context and are considering other aspects. This is where the confusion results, what was last year legal becomes illegal this year. At the same time, there are still a number of gray areas which, in particular, in developing countries, are used for the material benefit of tax inspectors and "consultants" in the area of civil servants" (Mănăilă, 1999).

From this point of view, we present below a classification of the transactions that take place in the offshore areas:

a) Transactions without fiscal impact are transactions that have no impact on the tax paid in the state of residence. For example, a bank could open a branch in a tax haven to avoid the demands of the national bank regarding the establishment of legal reserves. Another company might use a subsidiary registered in a tax haven to avoid currency control or other regulations imposed by the country in which it does business. A tax haven can be used to reduce the risks of expropriation that accompany business in most third world countries. A public person may use a tax haven or an account opened on behalf of another person to defend his assets from his political enemies, etc.

b) Tax impact assessments, but in accordance with the letter and the support of the law - some examples of such transactions are: (Mănăilă, 1999).

- the use of compliance pavilions in order to obtain fiscal benefits (minimizing / avoiding direct and indirect taxes on international shipping activities);

- intra-group lending operations (which defer tax on interest arising from loans granted to group entities);

- transactions between subsidiaries of different companies (which are created to avoid VAT and to carry out certain transactions that benefit from the gates of the legislative framework).

c) Aggressive fiscal planning operations - these are “transactions for reducing tax burdens by forcing vulnerable sections of the legislative framework, for example setting up captive insurance companies, investment companies, construction and service providers, which are managed through through representatives from offshore jurisdictions” (Birşa, 2005).

Another example could be setting up a service company in a tax haven to provide services to another subsidiary of the same company located in a third country. One method widely used by multinational companies is the use of transfer prices, which consist of the distorted evaluation of international transactions for the purpose of total / partial transfer in a tax haven of the profits obtained in the areas with high taxation.

Often, the parties are aware that major adjustments may be made to a thorough verification of the transaction, but they are based on the difficulties involved in collecting specific data, international information exchange and on the complex nature of transactions.

d) Tax frauds - these “are represented by the actions by which the taxpayer tries, through fraudulent procedures to avoid legal obligations. This could be generated by simply omitting to declare the income obtained or by trying to create excess tax deductions.

Tax fraud can, in turn, be divided into two subcategories: (Bârle, 2006)

- the evasion of the tax on the income obtained by legal means;

- evasion of income tax from illegal activities (eg drug trafficking).

An example of illegal tax evasion would be “setting up a sales company that does business with companies that apparently have no connection with the sales company, but in reality they are controlled entities, hiding the fact that a person owns a corporation in the company. a fiscal paradise” (Bârle, 2006). Sometimes, offshore companies are also used to hide money from illicit corporation / firm.

However, considering fiscal paradise as a means of producing tax fraud is a bit exaggerated. This statement is based on the fact that "tax fraud is sanctioned financially and criminally, while taxpayers who use the advantages offered by these territorial entities are not sanctioned" (Naylor, 1987). Therefore, it is fairer to argue that the tax haven is a means, an instrument for international tax evasion by taxpayers seeking more favorable tax treatment.

IMF Statistics “estimates the financial sources in offshore jurisdictions, at about \$ 5.8 trillion. The competition between the approximately 7,000 offshore service providers will be

so tight that companies that have not had time to build a solid and lasting reputation will have to abandon the fight (about 2,000 have given up until 2010 and this aspect is in progress, according to expert estimates (Diamond and Diamond, 2003).

4 Conclusions

Entrepreneurs who turn their attention to offshore are basically pursuing two things:

- tax exemption, reduction or deferral;
- ensuring the protection of wealth and confidentiality.

Both goals are somewhat independent of one another. Some offshore companies effectively pursue tax reduction purposes, others serve as shields for a certain portion of their owners' assets. But more often, both goals coincide and complement each other.

An offshore company is a very flexible corporate entity. As such it can be integrated into a wide range of business arrangements. Low tax and increased privacy are just two of the main benefits that can be gained through proper offshore company application. However, it would be wrong to believe that an offshore company registered in a tax-free jurisdiction is above all the complicated tax regulations in force in high-tax jurisdictions. Contrary to popular opinion, having an offshore company itself does not absolve its owner of all personal tax obligations in his country of origin. Smart use of an offshore company, however, can completely reduce, defer or eliminate some taxes that would otherwise have been payable for its business.

Offshore companies can be used to reduce the profit of parent companies located in high tax areas and to transfer these profits to offshore companies. For example, the parent company sells certain offshore goods at a minimum price, and the offshore company finalizes contracts for the sale of these goods at a higher price. The parent company, due to the minimum price, will have a lower profit and as a result, the income tax will decrease considerably. Through these transactions the offshore company will make a serious profit.

The use of offshore investment companies provides more options in choosing investment objectives, which allows the investor to focus on the most advantageous projects or to select the areas that offer high potential returns. Moreover, it guarantees the confidentiality of the completed transactions between the company and its customers. By investing in favorable conditions for an offshore company, it is possible to transfer the available foreign currency resources without violating the laws of monetary and fiscal circulation.

Being the owner of an offshore credit company, it offers the opportunity to carry out an advantageous credit policy, minimizing the taxes on the loans granted and the borrowed funds and improving the financial and credit services offered to the clients. In addition, through an offshore company, high interest loans can be granted to a company located in an area with higher taxes, thus allowing the transfer of foreign currency resources to a third country, without violating the fiscal and monetary circulation laws, and the reduction or even the exemption from the payment of the tax on the profit obtained in a country with high taxation.

Offshore companies can be used to minimize joint venture taxes. In this case, the same citizen is the owner and manager of both companies (offshore), one local and one abroad, which jointly set up the joint venture. This creates the possibility to transfer, in a third country, the profit of the foreign company in the form of non-taxable dividends. Later, the money can be returned to the country where the joint venture is registered (in the form of investments and privileged loans).

The practical implementation of an offshore strategy will almost always be confronted with some anti-evasion laws that may be in force in the country where the beneficiary owner lives or operates. In the case of offshore companies, the laws in the offshore jurisdiction will

generally have to be taken into account with the laws and regulations of other countries, especially the countries where the offshore company will have sales, contracts and goods.

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