

## TAX-HAVEN COMPANIES

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*Tax haven companies have extremely different configurations and sizes. Some are incorporated as mutual associations, others as joint-stock companies. A captive company performs the functions of a traditional insurance company (submission, documentation, legal positions, trading, investment, damage settlement, etc) but some of them are actually transferred to foreign experts or advisers.*

*The most important advantage of such companies is the anonymity and the secrecy that come along.*

*Key words: economic, offshore company, tax haven, advantages.*

The amazing development process as underwent by the Romanian economy brought within the discussions and practical applications certain elements or concepts that turned out to be either new or little known and used on the Romanian legal and economic level. One of such concepts is the “offshore company” having as main role to protect all profits derived there from.

According to the British specialized language, “offshore” actually refers to the territory on the other side of the shore. According to the American economic slang, “offshore” refers to economic activities and companies performing their lines of business outside the national territory of the country they fiscally reside in.

In other words, we actually refer to enterprises that do not perform their trade activities in the country of registration and which are considered as foreign businesses as to the trade and accounting instruments thereof.

Offshore companies can theoretically be incorporated in any country in the world but not all locations provide tax advantages as well.

The tax haven concept- actually a tax refuge- refers to administrative and territorial units that provide particularly favorable conditions for offshore corporate capital development as well as operation. The following must be complied with in order for a territory to be classified as tax haven:

Low tax ratios: offshore companies are exempt from tax payments and due tax charges are quite reduced while all other tax-related duties are moderate.

Low bureaucracy: offshore companies are exempt from book- keeping, accounting records and trade registers and do not fall under the obligation to submit the accounting balance sheet and tax returns. Nevertheless, any interested party can easily be issued either certificates or testimonials attesting to the company’s current business activity (e.g. Certificates of Good Standing)

Anonymity: both shareholders and managing directors related data are confidential (i.e. cannot be identified in public records)

Patrimony protection: the shareholder’s right to fully have at his/her disposal the entire company patrimony is guaranteed by law. The offshore company profits may be used as the company beneficiary deems fit at all times. The infrastructure is well developed, there are perfect telecommunications services, the banking system is stable and well organized, etc. Yet, the most significant feature of the tax haven is the fact that offshore companies are not subject to taxation. This non-taxation regime is law-guaranteed and is not at all, as some may believe, the result of fraudulent schemes.

### **Tax-haven company classification**

Captive companies have extremely different configurations and sizes. Some are incorporated as mutual associations, others as joint-stock companies. A captive company performs the functions of a traditional

insurance company (submission, documentation, legal positions, trading, investment, damage settlement, etc) but some of them are actually transferred to foreign experts or advisers.

1. Private captive companies- which only cover the risks of the owner thereof. These can also be organized as:
  - a. exclusive, which only cover the risks of the only company they belong to
  - b. common interest (inter-enterprises) provided they belong to and insure or reinsure several companies (entities). These were incorporated by either trade or professional associations, in order to meet the insurance-related requirements of the members thereof; they resemble the mutual insurance system from this perspective
2. Diversified captive companies, which, besides the risk insurance of their owner also provide third party insurances.

Another captive company-related classification is based on relations between captives and the parent-company and the implementation location thereof as compared to the nationality and the registered office of the owner company. The following two categories may be identified:

1. Onshore companies (domestic captives) – host country of of-right companies, that perform their business lines in said country and are subject to the local taxation system. Such companies account for approximately 15% of the total number of captive companies in the U.S., Germany, Australia, Belgium, Canada, Denmark, Finland, Hong Kong, Norway, Great Britain and Sweden.
2. Offshore companies (foreign captives) – foreign of-right companies that perform their business activities in these countries in compliance with the host country legislation. Offshore companies stand for most of the captive companies, 85 % respectively, of the aggregate and are located in countries that provide tax facilities, low tax rates or even tax exemptions, as well as other advantages. Most of the offshore companies are based in the Bermuda Islands (over 850), in Cayman Islands (over 275), Guernsey (approximately 125), Bahamas, Seychelles, which host together approximately 75% of the worldwide captive companies. The rest of them are located in Curacao, Gibraltar, Man Islands, British Virgin Islands, Nauru, Singapore, Vanuatu and, most recently, Barbados, as well as in a limited number of Asian and Latin-American countries.

## **Company registered capital**

The authorized registered capital refers to the number of shares the company is entitled to issue or sell to the shareholders. The registered capital may be increased based on the shareholders general assembly decision.

The issued registered capital refers to the number of shares the company issues and sells to shareholders, and may differ from the authorized registered capital. E.g.: a company may be registered as having a 1,000 USD authorized capital but may issue only 600,00 USD. This means that the company has the right to issue another 400 USD.

## ***Company stocks***

Stocks may be either registered or to bearer. The registered shareholders are recorded in the company records as well as in public records with the Registry of Commerce and Companies. Bearer shares are not nominal and it suffices to simply possess them. Mind that there are many banks that do not accept to open bank accounts for companies that issue bearer-type shares since the owner detection is rather difficult. As a protection measure against money laundry operations, the National Bank of Cyprus instructed all commerce banks not to open bank accounts for companies that issue bearer-type shares.

Association memorandum- the company articles of incorporation and company by-laws – is a document that all company shareholders sign and which outlines the main company lines of business. According to the legislation, the company is authorized to perform only the business activities as stipulated under said document. The company may include a number of activities that provide the client with the freedom to perform any trade transactions as wished. Association agreement- the Agreement refers to a contract between shareholders and the company and it contains details regarding the corporate business management, the rules regarding the cooperation between shareholders, company and the company management staff.

Shareholders- company legal owners, who may be either individuals or legal entities. The minimum number of shareholders varies from one jurisdiction to another. Executives- are in charge with the entire company-related activity and are liable before both shareholders and authorities. The executive staff is also liable for the company actions before a court of law. The number also varies depending on jurisdiction. Certain jurisdictions accept that the chief executive office position be taken by another company.

Secretary- the company secretary position may be filled in by either an individual or a legal entity. The secretary is in charge with the company's relations with the Register of Commerce and Companies and with government organizations. He/she keeps all company records and prepares all documents as requested by the Register of Commerce and Companies.

### **Offshore company advantages**

The most important advantage of such companies is the anonymity and the secrecy that come along. Most offshore owners use authorized agents (chief executives and shareholders) in order to make sure that their anonymity and confidentiality is preserved.

Such choice is based mainly on the following:

- in most cases, the offshore company is used as a third party, in order to perform local transactions. In such case, the companies cannot have the same chief executive, since a contract between the companies cannot be signed by the same person acting as chief executive on both sides.
- in many countries, the tax payment obligation is related to the company administration location. Should it be obvious that the chief executives and the shareholders of a foreign company are registered on the local market, the foreign company income shall be considered as belonging to local owners and shall therefore be subject to taxation.
- clients wish to remain anonymous in all business activities, all profits and investments.
- one can no longer remain anonymous once the company was registered with its real owners and the documents stipulating shareholders and chief executives are filed. When the company is registered as anonymous and, at a given time, the owners no longer wish to remain unknown, the structure may be changed in the contract whenever so wished for.

The mandated shareholders provide the rightful company owners with the following instruments and deeds:

1. Power of attorney statement. This document is signed by the authorized shareholder and it attests to the fact that said person owns shares on behalf of and for the beneficiary and it also specifies related duties. The authorized agent can only vote, pay dividends, transfer or mortgage shares, increase the registered capital amount, etc, based on a prior written consent from the beneficiary.
2. The original shares are held by the owner
3. Pre-signed Transfer Document, by means of which the authorized agents transfer the shares back to the beneficiary. This instrument is signed by the authorized agents but does not bear a date. In order to release the authorized agents from their duties, the rightful owner must sign this document as a proof of having accepted the shares and submit the changes with the Register of Commerce and Companies.

Before deciding upon the jurisdiction of the offshore company incorporation, it is advisable that the beneficiary should give close regard to all conditions as provided by various jurisdictions. The following should be considered when deciding upon the offshore company jurisdiction:

- a correspondence between the company purpose and line of business
- respectability
- existence of certain double taxation treaties and agreements
- Embassy document legalizations and the apostille-bearing documents
- offshore taxation system jurisdiction
- incorporation costs and annual operating expenses

- statements as requested by each jurisdiction in particular

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