

WHY TAX HEAVENS ARE A BLESSING?

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There does not exist a single, unambiguous definition of a tax haven. Some regulatory criteria, such as secrecy and low or zero taxes, appear in one form or another in each definition. However, different tax havens are considered a blessing for corrupt and illegal economic activities. Offshore centers are used mostly by companies that conducted criminal activities for money laundering. In simple terms, they are some places a long way from honest taxpayers' paradise, but very closed to criminals' paradise, however we define it.

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Who would not want to pay lower taxes, if not at all? Probably it's a dream for any person or company to take part from a jurisdiction which does not impose taxes or impose it low. Locations which have an advantageous tax regime are called "tax heavens" (fiscal paradise). Business field uses the term "offshore" for locations with such a tax system. Tax heavens give opportunities to taxpayers to avoid or evade tax in their home countries. When individuals and companies evade their tax obligations, they deprive governments of revenues needed for schools, hospitals and other public spending projects.

There is no precise technical definition of a "tax haven". Typically, however, they are characterized by low or zero taxation, a lack of transparency and a refusal to provide information to foreign tax authorities. The main listings of tax havens have been developed by OECD, as part of the project against 'harmful tax practices' of its Committee on Fiscal Affairs (CFA). A 1998 publication entitled Harmful Tax Competition - An Emerging Global Issue, set out a series of criteria on which it based its subsequent work: "The absence of tax or a low effective tax rate on the relevant income is the starting point of any evaluation. No or only nominal taxation combined with the fact that a country offers itself as a place to be used by non-residents to escape tax in their country of residence may be sufficient to classify that jurisdiction as a tax haven."

The OECD 1998 Report defined a tax heaven as a jurisdiction which has: (a) no or only nominal taxes (generally or in special circumstances) and offers itself, or is perceived to offer itself, as a place to be used by non-residents to escape tax in their country of residence; (b) laws or administrative practices which prevent the effective exchange of relevant information with other governments on taxpayers benefiting from the low or no tax jurisdiction; (c) lack of transparency, and (d) the absence of a requirement that the activity be substantial, since it would suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven. (Op. cit. OECD 1998, pp. 22-23) However, the fourth criterion of "no substantial activities" was rejected by the new US administration in July 2001, and it was formally withdrawn in the OECD's 2002 Progress report (Op. cit. OECD 2001, p. 10). The OECD recognizes that every jurisdiction has a right to determine whether to impose direct taxes and, if so, to determine the appropriate tax rate. Transparency ensures that there is an open and consistent application of tax laws among similarly situated taxpayers and that information needed by tax authorities to determine a taxpayer's correct tax liability is available (e.g. accounting records).

Tax havens are different because: they encourage people with no other contact with their territory to open bank accounts there, to set up companies there and to operate trusts there. They make sure that while they locate these activities in their haven none of the activities they actually undertake occur in the haven. So the bank account is used to receive income earned elsewhere

and settle bills incurred somewhere else, the companies incorporated in the haven must not undertake any real trade there, the trust manage assets located elsewhere. Companies don't do anything in the tax heaven (except, perhaps pay some official fees and charges) they are exempted from tax there.

With regard to exchange of information in tax matters, the OECD encourages countries to adopt information exchange on an "upon request" basis. Exchange of information upon request describes a situation where a competent authority of one country asks the competent authority of another country for specific information in connection with a specific tax inquiry, generally under the authority of a bilateral exchange arrangement between the two countries⁷². An essential element of exchange of information is the implementation of appropriate safeguards to ensure adequate protection of taxpayers' rights and the confidentiality of their tax affairs. No developing countries currently participate in automatic information exchanges on the activities of their citizens, or with regard to the funds of non-residents deposited there. In many cases tax heavens refuse to participate in such arrangements.

Lack of transparency means that banking secrecy is strictly enforced. No bank can say what they are doing for anyone without severe penalties applying. If a register of companies exists it does not require the names of the beneficial owners to be published, the names of the people who really control the company to be published, accounts to be put on public record. *In other words, it's almost impossible to find out who is doing what in a tax haven.*⁷³

In some countries, high tax rates can lead to economic incentives for the taxpayers to relocate to areas with comparative lower tax rates and this phenomenon creates tax competition among different governments. There are many tax heavens specified for different types of taxes as well as for different groups of people and companies. Tax heaven has the potentiality to transform the tax structure of any nation. As a result, there are also some effective tax laws regulating the protections of the tax heaven such that there are no revolutionary changes within the economy.

There is even a moral case for tax heavens: they play a critical role in protecting people who are subject to religious, ethnic, sexual, political, or racial persecution. Most of the world's population lives in regimes that have inadequate human-rights protections, and people with assets often are targets of oppressive governments. The ability to put money in a tax heaven offers important protections for these potential victims.

Richard Murphy shows in *Fiscal Paradise or Tax on Development*⁷⁴ that there are at least 72 tax heavens in the world. The secrecy space that tax heavens provide encourages corruption, and it is widely accepted that this is more likely to happen in developing countries. Tax heavens are not a fiscal paradise. They are the home of anti social and illegal activity that hits the poor of the world hardest of all.

What are the reasons for using a tax haven? There are three reasons why anyone would ever use a tax haven⁷⁵: 1. they want to avoid tax, 2. they don't want people to know what they are doing; 3. they want to avoid regulation. Usually economic corrupt activities take place in fiscal paradises. Two type illegal activities use tax heavens: corrupt ones and tax avoiding ones. Corrupt activities include the receipt of bribes and illegal commissions, money laundering of all sorts or drug and people trafficking enterprises. Tax evading activities include individuals not declaring their income in offshore accounts, people relying on secrecy to avoid a tax. Liability, businesses undertaking dubious practices such as artificial transfer pricing which moves profits from high tax to low tax areas.

Tax heavens are a blessing because they encourage crime and corruption by providing the secrecy space in which it can happen, they encourage tax evasion by providing a tax free environment in

72 http://www.oecd.org/document/23/0,3343,en_2649_33745_30575447_1_1_1_1,00.html

73 Murphy Richard, *Fiscal Paradise or Tax on Development*, Tax Research Paper, 2005

74 www.richard.murphy.dial.pipex.com/Fiscalparadise.pdf

75 Murphy Richard, *Fiscal Paradise or Tax on Development*, Tax Research Paper, 2005

which it can be claimed profits are earned when the real transactions take place elsewhere, they provide a safe home for “capital flight” money that wants to be hidden from prying eyes, they provide a space in which the regulations of the developed economies put in place to protect their citizens from abuse can be avoided by unscrupulous businesses.

Currently, tax heavens are one of the best known and used procedures for international tax evasion and fraud. These are places where money are washing, "it washes whiter than white"⁷⁶. Anonymity and friendly tax regime applied to these countries are attractive not only for professionals in international tax planning, more or less knowledgeable. Many corrupt politicians have diverted funds from their countries to these areas in order to enjoy them legally.⁷⁷

Offshore centers are used mostly by companies that conduct criminal activities for money laundering.

Huge amounts of money move through tax heavens, namely, dirty money resulted from drug traffic, guns, smuggling, amounts arising from acts of corruption, tax evasion, human beings traffic, deception in financial banking.

Many specialists tried to quantify how much money is held in tax heavens. It is difficult to give any reliable figure since timely information is not widely available in respect of all jurisdictions and all asset classes. The amount of money offshore is rising. The reason is simple: the havens are innovating faster at this moment than those who are trying to nail them down.⁷⁸ This money is integrated in the financial circuits to be placed in legal business and to dissimulate their illegal origin. Money laundering has become a global business that is carried out at the line between licit and illicit.⁷⁹

Although banking secrecy and tax paradise are two distinct notions, they have in common the fact that offers the possibility of transactions witch can prove to be recycling activities, laundering some funds from illegal activities.⁸⁰ Taking advantage of the absence of any exchange rate control, the stark anonymity, recyclers carry cash from the country in which it was produced and they deposit it in banks in tax heavens. Once you get it in offshore banks, money move smoothly through electronic transfers all over the globe.

Unfortunately internet banking allows activities for money laundering, it offers the possibility to access an account in any part of the world, making almost impossible the discovery of amounts' origin.

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76 Craiu Nicolae, Economia subterană între Da și Nu, Editura Economică, București, 2004, p. 33 Op. Cit. Voicu Costică, Spălarea banilor murdari, Editura Sylvi, București, 1999

77 Bișa Cristian (coordonator), Utilizarea paradisurilor fiscale: între evaziunea fiscală legală și fraudă fiscală, BMT Publishing House, 2005, pg. 36

78 <http://www.taxresearch.org.uk/Blog/2007/07/23/what-is-a-tax-haven/>

79 Nicolescu Cătălin, Spălarea banilor mai multe repere într-o lume atipică, Editura ULB, Sibiu, 2007, pg. 7

80 Ibidem pg. 9

8. <http://www.taxjustice.net>.
9. <http://www.oecd.org>.