Tax Havens within Legal Boundaries. Older and Newer Cases

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Abstract

Tax havens, where many businesspeople, including the Romanians, keep the businesses to pay less taxes, but also away from the authorities and the media have become the subject of journalistic and legal investigations worldwide (see the case of Panama Papers). In this paper we reveal some form of offshore fraud known more or less recent and famous.

Keywords: fiscal paradise, off shore, fiscal fraud, fiscal advantage, fiscal arbitrage

IEL Classification: E62, G34, H21, H26

Introduction

Every year 320 billion dollars are laundered through the international banking network. Banking and tax havens have witnessed an important development since the 70s and are designed to facilitate the functioning of markets and the recycling of petro - interest then quickly to house dirty money obtained from drug trafficking. These tax havens were established especially at the outskirts of the industrialized countries in North America, Europe and Asia, almost half of them are under the British flag and almost all European states host them on national territories.

Offshore frauds are mainly related to joint stock companies and suspicious banks and investment societies. The simplicity of incorporation formalities and lack of control from the authorities makes almost all offshore jurisdictions to be infiltrated by various species of scammers.

The economic crime cases recordes famous characters that influenced the dayly lives of millions of people. Cali Cartel, for example, had 65% of the "export" of Colombia's cocaine (500 tonnes per year), and one of Gilberto Rodriguez Orejuela its bosses, was the chairman of First Interamerican Bank of Panama. The

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fact that a large part of the cartel incomes were recycled through offshore companies and banks in Panama is notorious. Moreover, at a time when the Medellin cartel dominated the Colombian drug smuggling, Ramon Rodriguez was arrested, an emissary of the cartel who "transfered" 5.4 million dollars with his plane in Panama. The police investigations revealed that from 1982 to 1983 AI Rodriguez had transported 151 million dollars in Panama. All funds by Panama were cleaned by the Mafia in Chicago, the Cardinal Paul Marcinkus was an intermediary and was involved in illegal businesses which some Vatican offshore financial institutions - Bank Ambrosiano Holdings Ltd. in Luxembourg, Swiss Banco del Gottardo in Switzerland and Banco Ambrosiano Overseas Ltd. of the Bahamas . Moreover, several offshore centers have gained a reputation for cleaners of dirty money: Panama and the Bahamas - for the Americas, Hong Kong - Asia, Liechtenstein and Switzerland for Europe.

The crisis of 1975, triggered by the discovery of money laundering operations originating from drug trafficking has led to tightening relations with the United States Cayman Island. Federal authorities claimed unbundled access to information on American citizens with bank accounts in Cayman Island. Faced with refusal the Americans resorted to means lacking of fair play as intimidation of the American bank clerks employed in Cayman Island, who were threatened with indictment and arrest at the time of repatriation U.S. Caymen reaction was immediate: bank secrecy was strengthened by clear laws and the US government was invited to produce incriminating evidence in court to get access to the bank information requested.

The calm restored relations with US lasted only a decade, in 1985 the issue was again put on the table during the negotiations on a double taxation treaty, treaty which otherwise remained unfinished. Although drug trafficking and "bleaching" cash mob reasons are mentioned by the United States treasury, the most important problem is actually tax evasion (legal or not) that is not considered a crime and has no legal consequences in tax heavens, making it impossible to prove.

The sinking of the Lucona

A famous case is sinking Lucona, in the late 70s.

The deal involved several offshore companies in Hong Kong and Switzerland, handled skillfully by two familiar names: Udo Proksch and Hans Peter Daimler. The purpose of the maneuvers of the two partners was to collect vessel insurance and cargo, and the lawsuits that followed involved hundreds of institutions, companies and individuals, including Ceauşescu's Security Agency, which had close connections with Proksch.

Several banks in the Caribbean (Bahamas Island Caynan) were used by white-collar criminals involved in illegal transactions with stock values related

Drekel Durnham Lanbert in past decade. Incidentally, the investigations that led to the scandal started from the suspicion that confidential information is used for stock speculation by a bank customer of the Leo bank in the Bahamas.

Markets, finance, tax havens are the new masters of the world, writes Jean Millard in his book "A world without law" in which several judges from different European countries, which were faced directly with politico-financial businesses, describing circuitry that were increasingly sophisticated, clean or dirty money crossed in order loss origin. The judges often find themselves that their investigations stop at tax havens gates or skating in front of banks of neighboring countries. Pending, often fatal to those investigations, the judicial cooperation is chaotic. All these judges signed an appeal in Geneva in 1996, where hundreds of their European colleagues asked governments to strengthen legislation. But it has not to date produced any effect. So the book addresses the general public on this occasion that "financial markets everything is allowed because nothing can be prohibited". How to get the money trail coming from illicit activities or simply trying to get rid of the IRS, the huge mass of capital that changes daily master.

All amounts legal or illegal, is 1,300 billion dollars every day: The world's annual gross product of the circuit of the organized crime is estimated at \$ 800 billion, half of which comes from drug trafficking. To wash a large amount of money simply jamming tracks is needed; and author of the book plays a tour of banks and financial markets in the world, simulating the placement of 250 million francs in an offshore account in Virgin Islands, Pacific Ocean in full. He ordered some three banks in New York, Hong Kong and London to transfer each part in London and Luxembourg. The banks were to transfer money that was available to other European capital and then invest them in three different financial markets, where disappeared into the mass exchange. Ni vu. And perfectly recycled, funds could be transferred to Zurich. Or between banking secrecy and geographical dispersion, the dispersion can no longer trace the roots.

Today's sophisticated financial techniques also facilitate large-scale operations. "Swaps", "howala banks," "guaranteed loans", "offshore accounts", "tax havens" constitute the basis. A computer and some knowledge is enough sometimes to scroll through the entire supply chain. A criminal organization eg.: Russian mafia, used the US banking system to convert occult funds in dollars. There are of course methods ... "craft" such as recycling money through the purchase of works of art, challenging a transaction by "carriers". However, in this area the imagination knows no boundaries and the economy at sight is efficient and galloping contaminated by the underground economy. The first symptoms appeared without being noticed and judges from the distant Sicily shaken the entire Italian state in two decades, where the organized crime has moved from folklore to reality appearing on the agenda of many international conferences.

Author of the book, quoted by the magazine "L'Express" in a long article on the subject, added that magistrates are witnessing a breathtaking developments but can only watch helplessly as those solutions could consist only in "banking and financial transparency", "legal cooperation, "sanctions against rogue states", "exclusion from international trade".

The specialists estimate that the euro changeover is a unique opportunity to fight against black money and banking reform.

The fake process

The technique is extremely simple in principle, the experts consider. The fake process runs between two companies, one of the region where the black funds are and the country the money will be laundered. But, the only drawback is that you must have time, since justice is slow. However, the process can be accelerated by recourse to arbitration, widespread in the international trade. Police will have difficulties to prove that the process is just a sham. Moreover, the compensation charged by the company that won the lawsuit is not taxable and thus justice serves as washing money institution.

Dirty money are deposited in bank accounts located in the Cayman Islands. The company that must recover laundered money brings suit against the company in Cayman, asking millions of dollars. Here are two possibilities – agreement or the loss of the process.

A. Transact

Cayman Islands company agrees to pay the sum of money in return for the abandonment of the process.

B. Process or arbitration

Cayman society accepts to be convicted and pay the amount ordered by the arbitrage court.

False Tenders

Trade in artifacts is one of the least controllable means as identifying objects of art can be difficult, sometimes impossible. Moreover, the value of a work of art is very subjective and therefore difficult to verify. As such, numerous transactions of money laundering take place on the market of works of art, often resulting in an overall and artificial increase of the market.

A dealer is selling contemporary art and pre-Columbian art or African statuettes. These objects are very difficult to identify. Before the auction it emits a sum of money on behalf of an accomplice.

The trafficker sells the works of art at auction and the complice buys them. Paying the price for their own works of art, the first receives money at a threshold

which he wants to wash. After auctioning the complice returns the works of art and its former owner receives the commission.

Money laundering at home

How to launder money without leaving their office? It is enough to know a bank willing to accept to serve as intermediary without ever appear as itself in the circuit. The bank sends one of its customers, whose specialty is liquid money laundering but has worthiness, to take a suitcase of banknotes from another client, the one who washes the money. Once the exchange is conducted a bank transfer is operated from the account of the sender into the "washer's". With an international bank card, the latter will be able to use the money deposited in the account of a previously established company.

He who wants to launder money creates a company "shell" in Liechtenstein, on whose behalf a bank account is opened in Vaduz, the calls the bank from Paris to flush one million liquid dollars. The bank sends a person who transports and is a client of the bank as well. He receives the suitcase with the million for money and phones the bank in Vaduz ordering the transfer of \$ 900,000 from his account to the account of the company that wants clean money and even if the police finds the money, since they were transferred by telephone from one account to another, the holder of the original dirty money is not found.

Potenkin Collection

History begins in Vaduz, Liechtenstein. The object of the "business" is a collection of paintings worth around 12,000 pounds, brought forth by an ingenious character, which we will call Mr.A.

To achieve its mystification, Mr.A called the collection "Potenchin" and created a dramatic story (as in Sandra Brown's novels) to justify why the paintings are not known: a Jewish industrialist would have brought before the War the collection in England and the heirs being in financial embarrassment had to sell, even with a lower price, the entire collection.

Having a story, Mr.A leaves to the United States, where exhibits Patenkin in several areas, particularly in provincial cities, where the chance of being discovered its true value are minimal. Festive praise from local mediaare cut with care and presented as references as the "pedigree" of the collection. Meanwhile, Mr.A convinces a friend to send him a false offer to purchase from an Oriental government. Another friend, being of good faith evaluated empirically the collection at 6.5 million pounds, although the later declares himself of lacking of proficiency in arts.

Manipulating this strange and heterogeneous set of qualifications Mr.A establishes an offshore, a closed investment fund, whose sole activity is the

collection "Potenkin". The profit made by the Fund as a result, on the one hand, is the purchase at a lower price as valuated of 6.5 million, and on the other hand, the sale of spare peices, piece by piece, through the prestigious auction houses (Sotheby's , Chriestie's). The business is too right, the paintings from the collection are signed Rembrandt, Reynolds, or Marxt Ernst.

Retirement and fatty income needy individuals flocked to become shareholders of the Fund, N.A., and they shortly clutched more than 3.5 million pounds. Even an investor's waste paper collection seemed so persuasive that it contributed less than 200,000 pounds.

The moment of truth occurred when the fried that made the evaluation, scared by the size of the business and he indirectly endorsed, asked for a third opinion as from an independent consultant. The latter conclusion, as the team subsequently employed by the association of the people who had this loss showed that the forgeries known as Potenkin collection was worth no more than 12,000 pounds.

Untill the shareholders realized this, Mr.A disappeared. So money from the offshore fund.

Numismatic investments

In the same area, we may mention the investments in numismatic values, strongly promoted by some offshore ghost companies.

Basically, the naive are urged to invest in old coins under the promise that there is a buyer, or that later will be sold at auction at prices two to three times higher than the amount invested

The chosen example refers to Harrison McBride Company Ltd., incorporated in the Isle of Man on 21 December 1990 with a paid up capital of ... pounds. The company's shareholders were two companies from the Man Isle, located at the same address, namely in the office that incorporate the staff from the three companies.

Especially between 1992 and 1993, the representatives of Harrison McBride insistently phoned the potential customers from the Anglophone countries, offering them for purchase numismatic minicolections which could record profits of 250% in just 12-18 months. One such investor, a British citizen resident of Greece, bought coins worth \$ 50,000, with the hope that in a few months will double its investment by selling them at an auction organized also by Harrison McBride. Trying to find out details about the forthcoming auction, the man in Greece found that the three individuals, that "gird" the phones (Paul Welsh, John Nichols and Andrew Harrison) disappeared from the address in Brussels. But the story does not end here. Nearly a year after the "donation", the person tricked in Greece was contacted again by those from Harrison McBride. They notified that their company was "swallowed

up" by a larger company, Valetra SA - I wonder how appetizing can £ 2 be firm, like Harrison McBride can be? Not long after, the person from Greece received a letter with the letterhead Rothwell International Wumismaties of New York (part of the holding Veletra SA), with two pieces of news: the good was that the company above undertakes to sell with 125,000 dollars in Japan the coins Harrison bought from Mc Bride, the bad and the good news was that is was a conditional purchase of an additional amount of numismatic "values". This time, the "investor" not "bite" and hired an expert for an investigation. The subsequent investigation determined that Harrison McBride, registered in the Isle of Man, was dissolved at September 20, 1993 which stopped research in this direction. One of the directors of the company (between September 1991 and July 1992), Simon Gaches, worked as deputy director in another fraudulent company, International Coin Group Limited from Dublin (Ireland) involved in scams of the same way. The Irish company was evaporated in March 1993.

The fellow had to settle finally to selling at a loss the pieces he purchased so easily, recording a deficit of 80%.

Grimaldi Hofmann et Cie Case

Frauds with stock are extremely numerous and are based on lack of information or specific knowledge of potential investors (the phenomenon was exploited by some fraudulent investment funds in Romania). The basic idea is to sell (very well researched methods) of large equity stakes in phantom companies at prices several hundred times higher than their actual value.

After subscribing to various foreign publications, the address of Mr.B entered into the database of a certain shipping companies, which increased revenues (nothing illegal in this field) by selling information to direct marketers. Thus, Mr.B received and still receives offers to invest in derivatives (securities "popularized" by Nick Leeson, which caused the bankruptcy of Barings), futures, shares, more or less listed bills treasury bonds, "broth" (precious metals) etc. Also, he has been suggested subscriptions to clubs or publications claimed exclusive, MLM products (Multi Level Marketing, a pyramid scheme like Caritas) and many other things without which modern human existence cannot be conceived.

In general, the literature of this kind, says Mr.B, entertains him, but those behind them can become dangerous if one senses little interest from the part of the recipient.

In December 1993 Mr.B was offered a free subscription to a pamphlet called Grimaldi Hofman Papers, emanating from Grimaldi Hofmann et Cie, a company based in Barcelona which by appearance and name wanted to give the impression that it is a branch Swiss companies. At New Year's Eve in 1994 Mr.B received from his new "friends" by mail a greeting card, for 4-5 months newsletter of the company

arrived regularly. The information contained was financial news related to Grimaldi Hofmann Miscellaneous and were taken from known international publications and (invariably) laudatory articles about two obscure companies: VRD (Virtual Reality entertaiment Dynamics Ltd) and Optimal Robotics.

Considering probably the preparation phase completed, the team at Grimaldi Hofmann sent in May 1994 a letter inviting him to buy shares in VRD. In the envelope there was a flyer, perhaps a substitute for the prospectus of the shares. Eight-page flyier provided general information about the dynamics of computer programming and images taken from various business magazines (Business Week and Forbes) and 15 (fifteen) lines of information about the two executives from VRS-Richard Smitten and Matt Elson. On the back of the leaflet an address in California, a phone number and one fax were printed.

After studying the material seriously, Mr. B decided it was not worth attention, for obvious reasons:

- There were not provided information (mandatory) on capital, number of shares, owners, stock prices and their evolution, the stock market the shares are traded on.
- The absence of other information, for example the firm's clients, sales volume, balance sheet data, contracts.
- Abundance generalizations about software and photos to the detriment details and figures.

A week later Mr.B was searched on the phone by a certain Nigel Howard who advised to buy shares in VRD because some confidential information showed an increase in their value. A fabulous contract with a giant movie company, allegedly, to propel VRD the share price to heaven. That confidential information being divulged as wealth generators seemed at least suspect, if not proof of stupidity from Mr Howard.

After a few days Mr.B was called again and ordered to buy VRD shares at least \$5,000 by Grimaldi Hofmann, at the latest within the next three weeks. At Mr.B's question where its shares were listed, he received a quick response - secondary market in Vancouver, Canada. Mr.B expected the reply to OTC, which would have shown in 99% of cases fraud. Under pressure, Mr.B resorted to the most secure version: he requested a copy of the balance sheet for 1993 and an official stock exchange quotation from Vancouver. Thus ended the business relationship between Mr.B and Grimaldi Hofmann, who considered him too blunt to sense a good deal from the start and stopped "educate" him anymore.

Unfortunately, those from Grimaldi Hofmann found more receptive individuals. Thousands of people have put their money in worthless shares, promoted by Grimaldi Hofmann among which the best sellers being VRD.

Moreover, after the losers have discovered the extent of the damage, two companies other appeared: Argesim (Barcelona), which offered to try to recover the money taken by Grimaldi Hofmann against a modest fee of \$ 300 and Moore and McKenzie (with operations conducted in Manila, Philippines), that tout the same actions in the Asia Pacific of Virtual Reality Dynamics Entertainment Ltd.

Here is who is behind the mystification of Grimaldi Hofman. The company was established in Bahamas in 1992 by Francis Winter, also known as Paul Norpole, the name by which is director of McKenzie Moore! He was known a long time by the name Paul Nor Agate, manager of Grimaldi Hofmann and some people have identified as Michael Reeve, a young apprentice crook involved in a fraud famous in the 80s, First Gibraltar in Marbella. For this name there still in force a warrant issued by the Spanish police in 1988. Of course, his real name is neither Reeves nor Norpole nor others mentioned above, but Sheridan Cox, born in 1952 in Germany, parents Britons. Under this name is wanted by the Belgian police for his role in the Grimaldi Hofmann business.

As for the "officials" VRD company, Richard Smitten, President, Jack Gilbert, former president and Donald Badger, director, the have been involved in promoting hollow actions that caused outrage in Britain, several years before the operation VRD.

The company had unofficial offices in several cities in Europe, and the "communication center and telephone pressure" office was in Prague. Police in Brussels arrested Michelle van Aerde, laundress (money) at Brimaldi Hofmann and Ronald Schipper, from the team of phone "Operators", Ronald Laurens. The authorities also managed blocking bank accounts (well trimmed after information provided by the police) opened in Belgium.

Bank fraud

Banks represent a delicate area of offshore activities. The reputation of a tax haven can be easily destroyed by one bank involved in suspicious transactions. But what happens when a bank with questionable behavior has branches in all offshore jurisdictions?

BCCI (Bank of Credit and Commerce International) was founded in Luxembourg in 1972, by the Pakistani financier Agha Hassan Abedi, with the stated aim of becoming the first multinational bank for third world countries. Operating mainly from several offshore centers (Luxembourg, Gibraltar Islands (Cayman), BCCI has accumulated funds exceeding \$ 20 billion, expanding its operations in 73 countries. In the late 70s, BCCI managed to penetrate the US market and being (apparently) assisted by the CIA in the illegal purchase of bank Financial General Bankshares in 1982.

Business seemed to go smoothly, when, in 1988, a branch of BCCI in Tampa (Florida) was closed and sent to court under the charge of recycling dirty money. From this first accusation until 1991, the bank charged crunching blows being indicted for almost all financial crimes possible: cooperation with the drugs barons (BCCI was Noriega's banker), bank fraud (worth 5 billion dollars, stolen from one million depositors) involvement in terrorism (Abu Nidal had accounts in BCCI and used the bank as a front for biting its funds), illegal arms (with North Korea and the countries of the communist bloc) double accounting hijacking funds (two billion dollars transferred by the US administration through BCCI to the Afghan muyahedines, were split between senior Pakistani officials) etc. When the Bank of England on 5 July 1991 banned the BCCI longer make transactions, it was total disaster. Depositors incited by the press and local officials have accused the governments and banking supervisors in offshore jurisdictions for the lack of protection for their deposits. On the other hand, the latter were justified by showing that the setting up of offshore BCCI subsidiaries was indirectly endorsed by the Bank of England, most of the branches being opened in the name of the branch in London - so the Bank of England would have had to supervise and control the international activities of BCCI.

By the '80s, setting up a bank was a simple thing for those who had the necessary funds, countries like Luxembourg, Bahamas or Cayman Islands offering attractive facilities. After the BCCI scandal, all respectable offshore jurisdictions have self-imposed high standards for acceptance of new financial institutions and entities which were obliged to align to the existing internal regulations of clearing of small depositors in case of bankruptcy.

Gibraltar prestige suffered most. More than five years after the closure of BCCI, the depositors in that branch were still waiting for compensation laws, which will amount to only 24.5% of the entire deposit, plus interest on the years of waiting, since 1993. The liquidation revealed how BCCI was supervised an nd missmanaged by the local financial authorities.

The condemnation of Abbas Gokal, one of BCCI profiteers who embezzled \$ 42 billion, to 14 years in prison, did not constitute a compensation for the cheated depositors. The convict must pay 2.94 million pounds to Treasury under the threat of a new sentence of up to three years.

Conclusions

Often, the term tax haven is associated in the minds of many as imoral, unclean and even illegal activities. Today, the phenomenon has grown, and in the world there are over 200 jurisdictions where foreigners benefit from tax facilities. They include both territories bathed by the sun or shaded by palm trees, and the Caribbean Islands, and old European principalities flanked by picturesque villages

and castles. To the dismay of some, there is a clear difference between tax evasion and lawful avoidance of tax. According to the same dictionary, legal, tax avoidance, on the other hand, is structuring financial activities in accordance with the law in order to minimize tax liability. The setting and activity of the offshore companies are therefore legal transactions to avoid tax. The statutory non-tax regime is guaranteed by law and is not the result of fraudulent intrigues, as is generally believed, the big audit firms, moreover, have developed their own departments dealing exclusively with operations in tax havens for their important customers.

Also, legal advice and management offices often recommend this method in finding solutions of restructuring. Most governments and particularly ministries of finance from developed countries have an interest in believing that tax havens and offshore companies are tantamount to tax evasion. No public authority wishes its own citizens to operate in an offshore system because it would deprive the state of substantial amounts that would normally be paid to the state budget. If, hypothetically, everyone will someday invest in offshore jurisdictions protected by financial secrecy, surely no one will pay taxes to the governments of developed countries. So, all governments do everything in their power in order to discourage their citizens to move their funds in other jurisdictions where not only they would lose control, but they could no longer squeeze taxes at will. It is not illegal to invest in a tax haven country, even if the authorities are trying to convince the big mistake that you can make.

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