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# Crime Treasure Islands: Tax Havens, Tax Evasion and Money Laundering

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## Abstract

Globalization has encouraged the introduction of economic crime at the international level. Organized crime easily entered in legitimate activities through money laundering operations. In this context "tax havens" play an essential role in the globalization of financial crime. In these places, in fact, crime launders money coming from illegal activities and reinvests it in new activities. This paper intends to examine in depth the "chain" of illegal money with reference to "tax havens," starting from their definition, and detecting the existing network between tax evasion, money laundering and reinvestment in lawful activities.

**Keywords:** Tax Haven, Tax Evasion, Laundering, Off-shore company

**JEL:** F38, H26, K14

## 1. Introduction

The increasing expansion of criminal phenomena within legal economic activities has enforced the awareness that an efficient policy against organized crime cannot be exclusively a matter of criminal law measures implementation, but new strategies have to be carried out, starting from the relationship between tax crimes and criminal organizations in its multiple angles.

In this regard, indeed, it should be pointed out that the relationship between the achievement of the wealth through criminal activities and the taxation of the earnings that come about from these activities, mainly, has been examined through a tax policy focused on the research of tax revenue and the repression of the phenomenon of evasion. The struggle against tax evasion is conceived as a way to "make revenue" and to reduce tax pressure on legal activities and citizens.

In a fast-changing world and in the perspective of finding new law enforcement strategies against the presence of criminal organizations in legal markets, it is useful to analyze, on one hand, the connection between money laundering and tax evasion, and, on the other, it is necessary to make efforts and use resources, at different levels, national and international, in order to battle the so called "tax havens."

The world economic scenario, although constantly evolving, is, in fact, characterized by already integrated and highly competitive financial systems, with the presence of a widespread diffusion of banking and para-banking services aiming to offer on market appropriate operational instruments for several needs. This is the result both of the globalization of the economy and the extensive process of monetary liberalization with the consequent large fluctuation of assets at both national and transnational level, as well as with the advent of the internet. Moreover, in the intermediary sector, the international competition has solicited wide-ranging financial initiatives, at times ambitious and sophisticated, simultaneously concurrent cause and consequence of the interdependence of markets of different economies.

In this context, the organized crime easily entered in the legal market taking on the typical models of a company: the connection between the illegal and legal activities is exactly represented by money laundering, often put into practice through financial operations which generate evasion phenomena and tax elusion, both national and international. It is not by chance that the connection between money laundering and tax evasion has repeatedly been the focus of particular attention by the European Union, the OECD and the G20 countries, even if the action against money laundering and tax havens has not always been connected to the repression of crime organization, but rather to prevent the financing of terrorist organizations.

Several researches and investigations have, in fact, allowed to observe that "tax havens," carry out an essential function in the globalization of the activities related to financial crime because they ensure to their client's tax reliefs, banking secrecy and judicial immunity. Those criminal activities generate important profits, that subsequently can destabilize economic, industrial and financial sectors, in other words impeding both national and international policies. Criminal organizations take advantage and abuse of the discrepancies of the legislative, regulatory, legal and judicial systems. In this way they can prosper without being regulated by common laws to which legal activities must comply.

This paper, therefore, aims to analyze matters such as money laundering, tax evasion and elusion which through "tax havens" find the best way to avoid inspections and taxation of national States. These "sacred places," often represent the opportunity for crime to launder money that comes from illicit activities and reinvest it on legal ones. A proper "bleaching operation" of the assets with the advantage to be extremely confidential and devoid of any taxation. Therefore, while it is true, that tax havens are where it occurs one of the most form of inequality between wealth, citizens, taxed companies and wealth without any tax impositions, eluding the role of the national State as an equalization instrument, also, these places are where criminal organizations are strengthened (and nowadays we can even talk about terroristic organizations) becoming transnational and able to reinvest the huge and illicit assets in legal companies.

## 2. Definition and business

According to the most common definition "tax havens" are those Countries or territories with lower taxation or where, as it often happens in many cases, it is not applied any taxation<sup>1</sup>. The aim of these tax havens is to attract non residents companies or natural persons, in order to let them start commercial activities or move their assets, avoiding or bypassing the regulations of their Countries where they actually carry out their activities. The expression "haven or off-shore financial center" is related to islands such as Cayman or Bahamas, and the states of the hinterland such as Switzerland (Tab 1). Actually we are referring to offshore activities when a subject resident in a country – more or less falsely - holds assets or domiciles the business in another Country in order to benefit of tax breaks. One of the peculiarity of many tax havens is the secrecy or opacity that guarantees the anonymity of the subjects that own financial activities and commercial companies.

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<sup>1</sup> There are several definitions of "tax haven." According to the OECD, in the strict sense, they are those countries with no or only nominal income tax, which do not exchange information on tax matters with other countries, which are characterized by substantial financial opacity and do not require, for the purposes of residence, the requirement for the exercise of the effective activity on the national territory. Many countries with no or only nominal taxation, but which declare tax cooperation with other states, are therefore not included in the tax havens list in the strict sense. Below a broader concept of tax haven will be used, as in the aforementioned text of Zucman. For defining and methodological aspects, see: M. CARBONE, M. BOSCO, L. PETESE, *The geography of tax havens*, IPSOA Manuals, Wolters Kluwer, Milan, 2015. See also: M. GARA, P. DE FRANCESCHIS, *Tax havens: operational characteristics, empirical evidence and financial anomalies*, Bank of Italy, Financial Information Unit for Italy, anti-Money Laundering notebooks, n. 3, 2015.

The way these territories or states work is relatively simple, although each of them is regulated by a specific legislation. Many banks receive money coming from all over the world – without any preclusion related to the identity of the owners often requesting moderate bank charges compared to those applied by others credit institutions. In this way they can let money "work" legally on international financial markets, and clients cannot have the obligation to justify the origin of their capitals. The protection of the anonymity is guaranteed. Therefore these places are far from being little faraway lands, rather the off-shore areas are represented by a geography that closely corresponds to the main centers of the economic activity: United States, Europe, Asia.

**Table n. 1 – The main tax havens**

<b>Tax havens</b>	<b>Under the administration of:</b>	<b>Offered services</b>
City of London	Great Britain	<ul style="list-style-type: none"> <li>On the tax front, rates of 5% and 1% and numerous legal loopholes</li> <li>Administrative facilities in corporate management</li> <li>Taxes on natural persons are very favorable and often insignificant, with the acquisition of the status of "resident not domiciled" it is possible to benefit of the taxation of incomes produced only in the United Kingdom.</li> </ul>
Jersey, Guernsey, Isle of Mann, Cayman Islands, British Virgin Islands, Turk Islands, Caicos, Bermuda, Bahamas, Anguilla, Antigua and Barbuda, Belize	Great Britain	They refer to the tax system of Great Britain
Delaware	United States of America	<ul style="list-style-type: none"> <li>Among the best off-shore state in the world for secrecy and low taxation</li> <li>Under the tax profile, very low taxation on companies incomes and profits</li> </ul>
Switzerland	Switzerland	<ul style="list-style-type: none"> <li>Absence of obstacles to international capital transfers</li> <li>Fiscally it is a state with a strong competitive regime</li> <li>Banking secret is protected by the art. 28 c.c swiss, art. 27 federal banking law and art. 23-ter federal banking law</li> </ul>
The Principality of Liechtenstein	Switzerland	Banking secrecy is guaranteed by strict rules
The Grand Duchy of Luxembourg	Luxembourg	<ul style="list-style-type: none"> <li>Extremely favorable tax laws with a net cut of 80% of taxable income</li> <li>absence of withholding tax</li> <li>banking secrecy</li> </ul>
Netherlands and Netherlands Antilles	Netherlands	<ul style="list-style-type: none"> <li>Tax exemption on income flows to other jurisdictions in exchange for very low charges</li> </ul>
The Principality of Monaco	The Principality of Monaco	<ul style="list-style-type: none"> <li>Tax system based on indirect withdrawals</li> <li>no taxation for those who acquire the status of a Monegasque citizen</li> </ul>

Singapore	Great Britain	<ul style="list-style-type: none"> <li>• Bureaucracy is next to nothing for entrepreneurs</li> <li>• common law is the legal system</li> </ul>
Other European Tax havens		Ireland, Cyprus, Malta, Principality of Andorra, Gibraltar, Vatican, San Marino
Other tax havens of the United States of America		Nevada, Wyoming, Panama, Marshall Islands, US Virgin Islands
Oceania Tax Havens		Narau, Niue, Samoa, Tonga, Vanuatu, Cook Islands
Asia tax havens		Malaysia, the Philippines, Brunei, Dubai, Saudi Arabia, Qatar, Kazakhstan, United Arab Emirates, Kuwait, Hong Kong.
African Tax havens		Lebanon, Seychelles, Liberia, Kenya, Mauritius, Ghana, Morocco, Tunisia, Somalia, Angola, Djibouti.

*Source: our elaboration on the OECD (The Organization for Economic Co-operation and Development) data*

According to the International Monetary Fund (FMI), seeing as the phenomenon of money laundering is between 2 and 5% of the global gross domestic product (GDP) and that half of international capital flows pass through or is kept in those territories, it is assumable that the money in circulation is between 600 and 1500 billions of Euro. In addition the financial wealth of families and companies is kept in these tax havens. Gabriel Zucman economist of Berkeley University of California, through a transparent methodology, has estimated, that 8% of financial capital of families is kept in these tax havens. The financial asset is the wealth kept by natural persons in bank accounts, in the shape of shares and obligations in mutual funds and insurance contracts, after deducing the debts. In 2014, this capital amounted, at the global level, 87.000 billions of Euro; 6.900 of this amount should be kept in open accounts in tax havens. Thirty percent 30% of off-shore assets, 2.100 billions are located in Switzerland. The rest is scattered among Singapore, Hong Kong, Bahamas, Cayman Islands, Luxembourg, and other tax havens that offer banking and financial services to Billionaires of all over the world. Where does the wealth kept in these tax havens come from? The main part of 2400 billions of euro comes from Europe, 1050 billions from United States and 1200 from Asia. The remaining part from other nations. In Europe, 10% of families financial assets is kept offshore, in the United States 4%. The percentages are higher in the emerging and developing Countries. In Africa, the wealth kept abroad is around 30%. In Russia and middle east oil-producing Countries is more than 50%.

Beyond the fact that companies or individuals that keep their assets in tax havens, are not obliged to pay taxes, or just a small part, these privileged areas carry out a remarkable role in the economy of developed countries. Not all tax havens offer the same level of advantages: some do not apply any taxation; others mainly agreed a tax exemption for the companies which keep their assets on their territories; others, instead, agreed to do not tax residents. Corporations take advantage from this situation, that seems, sometimes, to be deliberately studied for them. Whereas the tax evasion is one of the segments of the market of the offshore centers, these areas easily attract those who wish to avoid to pay taxes for their assets and incomes. The holders of large private assets, such as companies and corporations, are considered as privileged clients for these marketplaces. The money flow of these marketplaces has a central role in the system of global finance.

Because of their legal vacuum and the tolerance of large States, tax and financial havens accept many other activities. The money coming from corruption seeks refuge in tax havens, through a two ways system: it becomes possible to bring out illicitly, the money used for the corruption, and make the money resulting from corruption get back. Some security companies, larger providers of contractors and weapons for any local conflict, can seek refuge here in total discretion. In the end, for some time now, but recently with a strongly increasing, these countries give to merchant fleets a nationality called "of convenience," in other words "a shadow flag" in order to take advantage, in low tax conditions, of ships whose safety is extremely dubious.

In short, tax havens represent, therefore, a requisite increasingly significant for the global economy, especially with an impact on developing countries on the basis of four main modalities:

- the research from private and companies to find a way to considerably elude or reduce the payment of the taxes due to contribute to public finances;
- in fiscal terms transnational corporations have a relevant competitive advantage compared to national companies because they are more able than national ones to structure trade exchanges and investments through fictitious subsidiaries in territories with privileged taxation. The competition between them is unequal, no matter if local companies are technically more efficient or innovative than transnational competitors. Basically, big companies will be favored to the detriment of small ones, as well as those international compared to those national. Whereas in the developing countries most of the companies are smaller and more recent and focused on their inner dimension compared to those of developed countries, this tax system partiality will illegitimately favor transnational companies of industrialized countries to the detriment of internal competitor companies of developing countries;
- the opportunity of a safe coverage to launder the proceeds coming from political corruption, fraud, scam, illegal arms trade, drug trade, through bank secrecy and trust services provided by globalized off-shore financial institutions. The lack of transparency of international financial markets contributes, in this way, to increase globalized crime, terrorism, corruption, as well as the embezzlement of resources from political and business elite;
- the instability of financial markets, mainly to the disadvantage of poor countries. Indeed, off-shore financial centers are used as a channel for rapid transfers of assets inside and outside national economies, destabilizing financial markets.

*Trust, offshore companies, triangulation and creations of "international business companies"* are some of the main tools provided for the potential clients of tax havens. Tricks and artifices are also related to accounting: normally, in case of evasion, clients keep an illegal accounting in an offshore server (a remote accounting that leaves no traces in the computer of the client). Sometimes it can be helpful the conventional regulation: a company that deals with trade of digital products on the web, for example, although it operates on a specific market, the server will be localized in a different country, with a privileged tax system, where this integrates stable organization, with a consequent attraction to a smaller imposition of incomes produced.

In this context, organized crime finds new fields to operate, assuming by now, the same specific peculiarities of a multinational enterprise, such as a significant liquidity, becoming in this way able both to compromise the economic system as a whole and to taint the business activities themselves (Becchi, Rey, 1994). Indeed tax and financial havens have a central role in the universe of illicit finance (assets that come from criminal and illicit activities), because they are "money laundering laboratories." These welcoming territories that launder and monetize dirty money of crime and corruption are the transparent prism through which the opacity of the illicit economy can be analyzed.

### **3. Tax evasion and elusion practices**

The overview of tax havens is, therefore, quite complex and cannot immediately be identified because it is constantly evolving. The phenomenon, actually, seems to be increasing. In the last decade, during the financial crisis of 2007-2008, there was an increase of the so called "capital flight" towards tax havens. There are many people and several companies that try to hide their wealth completely or in part and mainly from public authorities (tax, financial, judicial, police). Usually it concerns incomes legally gained, but with the deliberate aim to escape from tax and social legislation: pay less taxes and hide profits. But on the other hand, it is about illicit incomes, came from arms trade, supply of mercenaries, drugs, prostitution, theft, racketeering, blackmail, smuggling and abuse of corporate assets.

Usually, within each national territory, these tax evasion and elusion practices occurred, taking the cue from legislative, administrative and judicial inadequacies. However these inadequacies have increasingly developed at the international level, also because of the lack of international organisms able to regulate, administrate and control, or rather exploiting the differences among national legislations. In a broad mobility condition of assets, disparities have turned into considerable advantages or disadvantages.

Tax elusion for multinationals occurs because of the gaps in the Law. In order to have an idea of its entity, we may consider that, in the United States, in 2013, companies made 650 billion of dollars of profits abroad. Half profits come from nations of a low or void tax imposition: Bermuda, the Netherlands, Luxembourg, Ireland, Singapore and Switzerland. The taxes evaded and eluded by corporations have been estimated, only for the United States, in 130 billions of dollars per year. Regarding 6900 billions of Euro of the assets that families keep in tax havens, according to Zucman, only 20% has been declared. The remaining 5.500 billions would escape, therefore, to taxation. The global loss of tax revenue amounts to 170 billion of euros, 30 for the United States and Asian countries, and 13 billion of euro for Africa.

Firstly this phenomenon is possible, through the suppression of currency controls and the free capital movements as well as the willingness of each State to attract mobile capital through articulated forms of *tax social and environmental dumping*. Moreover, this condition, takes advantage from recent technological developments: dematerialization of financial transactions; use of new means of communication; electronic currency transfers out of any control. In the end, the same evolution of the capitalism is the main cause of this trend: the creation of a single money market at the global level that let finance dominate all others economic sectors and to impose its influence on all human activities. The interconnections between bank systems and national financial markets have, therefore generated a global financial field. At the same time, national public authorities (Police, Justice, Revenue, Customs) actually remained, despite of many agreements and international conventions, confined within their respective national borders.

The developing of fraud and tax evasion is also the consequence, direct or indirect, of some political choices at the European level. Since 1992, governments of the European Union approved the total freedom of the circulation of assets without rapidly start a balancing process of tax systems and capitals and income taxation. This lack of balance, naturally pushed the owners of these assets to move them towards those European Union States which guarantee a low taxation. Recently this trend has crossed UE borders (even if some European Union States are real tax havens) involving other national entities that are specialized in these kinds of activities. The concern to attract mobile assets has brought about some States to adopt *tax dumping* policies. In order to finance national public expenditure, the tax burden on labour and income have been increased, extremely less mobile, causing an increase of internal social inequalities.

In the end, legal economy globalization has been followed by the globalization of criminal economy. Several criminal activities have been internationalized and their networks of relations have adopted a transnational logic. In the context of general economy, globalization through deregulation has facilitated also the integration of legal economy together with the criminal one causing serious social and economic consequences.

#### 4. Money laundering

As already mentioned, criminal organizations easily break into the market assuming the characteristics of business activities where the connection between illicit and legal activities has been represented by money laundering, often through financial transactions connected to tax evasion and elusion. The tax evasion phenomenon and the money laundering coincide on the fact that they both locate illicit assets in tax havens. The interrelation between the legislation against money laundering and the one that aims at reducing the phenomenon of tax evasion it can be identified in the legislation of many OECD countries, which are progressively adapting their legislations to the measures identified by the FATF (International Financial Action Group) in the 49 recommendations, as well as the standards developed by the Global Forum on the subject of transparency and exchange of information on tax matters.

FATF has developed a model of laundering phenomenon, called “triphasic” because is composed by three phases:

- the first phase is represented by the *placement* of illicit assets, and it occurs through the introduction of these illicit capitals inside the financial system. The easiest and more common transaction consists to fractionate a significant amount of cash to obtain many little amounts, in order to make them less

- suspicious and more difficult to be identified when they are deposited on bank accounts;
- the second phase is the *layering* that consists, instead, in the subsequent movement of assets through a set of transactions (transfers, bank transfers, loans, payments) in order to hide the connection between the money and its illicit source. Practically it concerns to transfer these amounts on bank accounts of other marketplaces, particularly in those countries that do not collaborate with anti-money laundering inspections. These interbank transfers, therefore, start from the many bank accounts came about from the fractionated deposits and that are direct to a main collector account in an off-shore center. It is clear that uncontrolled electronic transfers facilitate these transactions;
- in the last phase, in the end, called *integration*, financial resources are introduced in the legal economic cycle through investments in properties, luxury goods, companies or other. The introduction of funds in legal economic activities occurs through shell companies constituted in tax havens countries: real estate acquisitions; companies takeovers through stakes; purchases of companies, clinics, restaurant chains etc.. During the money laundering procedure can be involved: lawyers specialized in company law, accountants, notaries, real estate agents, insurance agents, trust companies, banks, financial institutions. It is estimated that a bank which operates in the field of money laundering, for instance, gains a source of income between 10% to 40% of the amounts paid for this purpose.

Different money laundering techniques are mainly applied through a double typology of transactions: on one side, those having a fictitious economic purpose that aim to dissimulate the illicit origin of the money; on the other, those transactions that aim to hide the real owners of the assets through figureheads. The first kind of transactions, for example, uses fake invoices to justify money transfers through fictitious imports, that can provide a justification regarding funds transfers to suppliers located abroad. The second type of transactions is, instead, carried out through a simulated negotiation with the purpose to hide the real owner of the wealth.

In both cases it is possible to detect similar techniques and patterns used for tax evasion: indeed, both the use of fake invoices and the fictitious use of intermediaries constitute an extremely diffused phenomenon in the field of evasion conducts. Therefore, criminal phenomena (and *firstly* the money laundering) and tax evasion are extremely connected.

Also for this, in the new community directive regarding anti money laundering is now expressively provided the reference to tax crime related to direct and indirect taxes. New anti-money laundering regulations, approved by the European Commission, jointly to the regulation regarding informative data of transfers of funds, in order to guarantee the "traceability," clarify, in fact, that anti-money laundering and evasion are more and more two sides of a coin. In fact, the Commission underlines that the inclusion of tax crimes linked to direct and indirect taxes is the result of the indications of the FATF (Financial Action Task Force).

Definitely, money laundering is useful and profitable for financial and economic crime and it is an important aspect in order to accelerate and expand global crime in the economy and finance. Moreover the complexity of this phenomenon has caused economic and social consequences: it contributed to accelerate the instability of international capital movements and currency prices and could destabilize the bank system. In the end money laundering put entire sectors under the control and the influence of organized crime altering the competition: companies can easily cut prices or even "producing at a loss," by virtue of the fact that their real financing comes from other sources. Actually, money laundering can put entire countries under the control of the organized crime.

## 5. International instruments against tax havens

The OECD struggle against the illegal use of tax havens officially started in 1998 with the publication of the Report named "*Harmful Tax competition- an Emerging Global Issue*," drafted following the request proposed by the Ministers of the member States to develop specific measures against the distorted effects of harmful tax competition on investments and financing decisions as well as on national tax bases. The first issue examined by the Report concerned the identification of the criteria in order to distinguish legal tax practices from harmful ones. The second one concerned the elaboration of a list of countermeasures summarized in nineteen recommendations that member states were invited to adopt in order to impede the diffusion of the phenomenon in question efficiently.



In particular, those recommendations aimed to increase the efficiency of the internal measures already adopted by the member states, avoiding the application of the international conventions that could favor harmful tax competition phenomena and eventually intensifying the international cooperation. The first recommendation concerns the introduction of an internal disposition regarding the CFC – Controlled Foreign Companies. Precisely, the Organization invited member states without any regulation regarding this issue to adopt the CFC rules or equivalent regulations as a possible solution for the harmful tax competition. Countries which are already provided by this regulation were instead invited to extend the implementation to all tax practices that could be considered harmful by the virtue of the criteria mentioned in the Report. The Report of 1998 ended with the commitment of the member States to avoid any measure that could be harmful as well as to remove, within 5 years from the date of the approval of the guidelines by the Council (within April 2003), all the harmful aspects present in their tax regimes.

On the basis of the previous indications, in June 2000, the OECD published a new Report named “*Towards Global Tax Co-operation*,” in which 47 tax regimes considered potentially harmful have been identified. In this mentioned Report was also published the first blacklist which includes 35 states or territories labeled as tax havens where the deadline for the removal was more urgent compared to the potentially harmful tax regimes. In particular, States were invited to send by 31 July 2001 an *advance commitment letter* that is a letter with which they committed to eliminating the harmful tax practice adopting new measures, and avoiding the introduction of new others, and ensuring an appropriate information exchange with foreign financial administrations. Moreover, the OECD requested a detailed plan where it was indicated the timing and the conditions through which the tax haven would have eliminated the harmful practice.

A determining change of direction occurred with the publication of the report “*The OECD’s Project On Harmful Tax Practice*” where the lack of a proper exchange of information became according to the OECD the main criterion to identify tax havens. According to the organization, in a now global economic context, each single government could not longer rely solely on information from internal sources to guarantee the fulfillment of the tax obligations by their taxpayers. Therefore, the exponential increase of transnational transactions made by these taxpayers requested a close collaboration of the different foreign tax administrations.

In the following Reports, remarkable progresses reached by the organization against the harmful tax practices were put into light. Following the publication of the first black list in 2000, in fact, States included in this list have promptly shown their willingness to remove any harmful tax practices in their tax systems. In particular in 2002 only seven of the thirty five Countries were again considered tax havens, subsequently reduced to five in 2003. As regards to potential harmful tax systems, instead, the Report of 2006 underlined that 18 of the 47 harmful tax systems initially identified were abolished, 14 modified and 13 considered more harmful after more accurate analysis.

After the publication of the Report “Addressing Base Erosion and Profit Shifting” in February 2013, OECD initiated a new international project to obstruct tax base erosion phenomenon through the fictitious transfer of incomes in tax havens. Unlike the previous reports, this project do not focus on the identification of the peculiarities of harmful tax practices, but rather, on what let corporations practice tax strategies particularly aggressive. In other terms, the attention of the Organization moved from the requisites that let a Country to attract foreign investments in its territory to the detriment of third countries, to the ways used by States to erode the tax base of their resident country through the fictitious transfer of incomes in tax havens.

The requirement to adopt a new action plan came about from the awareness that international tax regulations contained in each single legal system were not more adequate to regulate an economic system where interactions between different tax systems became more and more frequent. Up to then, therefore, member States planned their own tax system without taking into consideration the effects caused by the tax regulations of other foreign countries, because, in a closed economic context, cross- border transactions were rather marginal because of the insufficient mobility of the capital. Globalization process and the subsequent increasing of international exchanges have meant that existent *mismatches* between the different national legal systems caused numerous cases of double non-taxation, punctually used by multinational companies to reduce their tax burden. Recent studies in this matter

have in fact shown how tax plan schedules adopted by societies became by the time particularly aggressive because they were focused to transfer the produced wealth to locations with a particularly low level of taxation. Therefore, these strategies have caused a mismatch between the State where the incomes were produced and the State where these were effectively taxed. The project aimed to bring back the taxation of the profits in the Countries where the activities took place and where the added value was actually produced, so as to render ineffective those planning strategies that exploiting the obsolete rules and the scarce coordination between the different national tax systems, reducing the tax revenue of the single States. For this purpose, in July 2013, the organization published an international Action Plan composed generally by 15 actions that member states should have implemented within two years from the date of publication.

The 29<sup>th</sup> October 2014, in Berlin, G20 Countries and small off-shore tax havens, signed an historic agreement with regard to combating international tax frauds. All this, thanks to the commitment of the OECD. More than 90 Countries signed an agreement to pass to the automatic exchange of tax data about taxpayers around the world, including information such as for example having a bank account abroad, the collection of income or interest, the purchase of company shares. In 58 Countries it started from 2017, while in others 34 from 2018. Only Panama, Bahrein, Cook islands, Nauru and Vanuatu confirmed their refusal to conform themselves to this agreement. It was important, because among the signatories there were states or territories that up to then, were based on the policy of bank secrecy, such as Luxembourg, Austria, or off-shore centers often labelled for their lack of transparency, such as Cayman or Bermuda. It does not concern to a symbolic agreement, because it has obliged tax administrations to transmit data according to the OECD regulations regularly. This exchange mode would have improved the procedure, which was based on request of data only following administration or judicial investigations on subjects suspected of fraud.

In accordance with the developing of the OECD, also European Commission has recently reinforced the struggle against aggressive tax plan. On the 28<sup>th</sup> January 2016 the Commission, in fact, published a new anti-evasion package of measures with both legislative and non-legislative initiatives in order to impede aggressive tax plan and increase tax transparency to create in the European Community a more fair context for companies. Particularly remarkable is the Council Directive that contains regulations against tax evasion practices that directly have an impact on the internal market<sup>2</sup> (so called “*Anti Tax Avoidance Directive*” or ATAD), adopted by the Council on the 12<sup>th</sup> July 2016. The objective of the provision is to facilitate the implementation of the recommendations disposed by the OECD in the European Community. In particular the Directive introduced specific disposals in matter of:

- deductibility of the interest expenses (art.4). This regulation aims to prevent the fictitious transfer of intra group debts in Countries where more favorable deductibility regulations are applied;
- outbound tax (art. 5). The purpose of this provision is to discourage the transfer of the tax residency of tax payers and/or their assets in low taxation countries solely in order to reduce the due tax burden;
- general anti abuse clause (art. 6). This provision is intended to fill any possible gap in the anti-abuse regulations in force;
- foreign subsidiary companies (art. 7 and 8). The regulation aims to prevent the affected transfer of profits to low taxation jurisdictions, exclusively to obtain a remarkable tax saving and divert the taxation of the country of residence;
- Hybrid mismatches (art. 8). This provision is meant to avoid those practices that through the mismatch of national tax systems they obtain situations of double non-taxation.

With regards to the implementation, member States must apply the Directive by 31 December 2018.

As previously mentioned, among the regulations contained in the recent Directive, also those regulations related to CFC are included. In particular, the measures contained in articles 7 and 8 of the mentioned provision can be applied to tax payers which, alone or jointly to subsidiary companies, hold in the foreign company a shareholding able to guarantee them the majority of the voting rights, to the capital namely to the profits. Therefore, the

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<sup>2</sup> Directive n.2016/1164 EU on the 12<sup>th</sup> July 2016.

aforementioned provision, includes, in the subjective context of the implementation of the regulation, both the cases of control of law and those cases related to economic control, in accordance with OECD recommendations.

## 6. Conclusions and open issues

In the light of this, we can affirm that the most dangerous issue of tax havens is represented by the real risk that large amounts of money made through business activities and transferred to tax havens in order to evade taxes once they reached bank vaults of these countries, these amounts can be confused with other available funds obtained by illicit activities (more criminal compared to tax evasion), creating new money laundering forms and other criminal practices, until the traces and the origin of financial transactions go lost. The development of the tax havens issue has been described from some recent events that involved global economy in the last years. For instance, the case "*Panama Papers*," although it has not been defined, it seems to show how recurring to tax havens has been not only a way to pay less taxes but also an instrument to hide remarkable accounting and financial statement fraud. Recent events that have involved important and consolidated industrial and financial corporations have pointed out how national control tools can be insufficient to prevent and fight against criminal phenomena perpetrated on international financial markets.

The advent of Internet and the e-commerce, in this context, has promoted new opportunities but also generated complexity. It has been noted how these instruments can be, on one side, a real and not "virtual" help to money laundering, and, on the other, an additional and dangerous obstacle for competent national authorities to control and fight against these activities. Moreover, considering the problematic peculiarities connected to the e-commerce, if this activity is managed by a company located in an off-shore center we could talk about "haven within haven," where the guarantees for the launderers are integrated and strengthened, creating an invincible juridical stronghold.

During the year, governments, being aware of this situation, have started to promote coordinated international activities to fight against money laundering through combined and common measures. Conventions have been stipulated with States included in the so-called *black list* in order to trade according to correct parameters and to demonstrate a greater sense of responsibility from financial institutions. However, up to now, some bank and financial off- shore systems continue to practice secrecy and confidentiality policies.

Several initiatives have been carried on at the international level, in order to obtain some successes regarding information exchanges, impeding that loyalty policy practiced by banks during the transfer of assets toward tax havens. The European Union established the principle of automatic exchange of information through Saving Tax Directive, and it has indicated a global model for the cooperation in tax matter. Also the OECD, independently, focused on procedure and systems of information exchange between national tax authorities. The outcome is unequivocal, there is the necessity of an international tax organization that mainly can ensure minimum standards of transparency and cooperation among states, in order to limit negative global implications came about from internal tax system, such as those of tax havens. In this regards many proposals have been carried out by experts and international organizations. Among these we can essentially mention three:

- i. the creation of "*a global register of financial assets that registers the owners of all outstanding shares and bonds.*" This would be a register, accessible to all tax authorities of the countries, indicating who owns the financial securities, shares, bonds and shares of mutual investment funds in the world. The International Monetary Fund could be the Authority able to have the technical skills to make it work in the medium term;
- ii. the provision of "*sanctions proportionate to the cost that tax havens impose on other countries,*" possibly imposing customs duties on those countries with privileged taxation that do not assume cooperative behaviors;
- iii. "*the review of corporate taxation*" based on consolidated profits around the world and not on profits Country by country.

Ultimately the fight against the phenomena just mentioned and, therefore, against crime encounters many obstacles. It is relatively easy to demonstrate how numerous proposals and concrete solutions exist but that the open questions remain mostly devolved to the governments and the national and international *decision-makers*.

As extensively demonstrated, financial globalization has favored the interweaving of licit and illicit economies, especially in those places outside the law that are financial havens. The rights of nations and people have not longer say in the matter, in these territories, because the most powerful states were those who have tolerated or favored their development. The most effective solutions can, therefore, be found only by carefully considering the fact that the issue of crime and tax havens is a purely "political" issue.

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