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DID "TAX HAVENS" DISSAPEAR?

Literature review

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Abstract

Purpose – *The aim of this article is to analyze the evolution of the former tax havens in terms of tax and commercial legislation and to bring forward their progress in the implementation of the international agreed tax standards in a revised and more regulated legal framework that has conferred these states the possibility to be erased from the black list of tax havens.*

Approach – *In performing this analysis, the tax havens have been grouped on the four main geographic areas where they are concentrated: Europe, Central America, Pacific Ocean and Indian Ocean. There have been analyzed the changes in both tax and commercial legislation of each state and the level of implementation of the standards of transparency and exchange of information. Also, the trends in terms of tax policy and offshore sector development have been identified in each region.*

Findings – *The results of the analysis reveal the fact that although many of the states under consideration maintained their offshore sectors, the implementation of the international agreed standards of transparency and exchange of information imposed by the Organization for Economic Cooperation and Development was the key criteria in erasing the name of many states from the tax haven headline.*

Value/Practical implications – *Contrary to the general opinion and to that of many specialty literature writers, this analysis reveals the fact that there are only two states left to meet the tax haven criteria – Nauru and Niue. The important changes brought to the tax legislation and the implementation of the international tax standards made possible for many of the black listed states to become fully compliant with the international norms.*

Introduction

Tax havens have always been on the agenda of many international institutions and organizations that had to respond with actions to the effects generated by some tax systems that were creating the so called "harmful tax competition" as described by The Organization for Economic Cooperation and Development (OECD,1998). In fact, this Organization was the major opponent of the tax systems adopted by the major tax havens and the one that imposed strict and concrete measures to be taken by these states, with further sanctions to come for non compliance.

The name and shame list published by The OECD (2000) brought to the public's attention the world's tax havens and reports continued to be released with black, grey and white listed jurisdictions according to how fast they implemented the international agreed tax standards. An important aspect to be noticed is that the no or low level of taxation of one state was not the key criteria in indentifying a tax haven. The main issues identified at these states that created so much international concern was the lack of transparency and exchange of information on tax matters.

Therefore, the aspect that must be stressed and unfortunately is so often confused is that a state which imposes only indirect taxes or a low level of direct taxation should not be nominated as a tax haven as long as the tax authorities of that country have tax information on both personal and corporate income that is available, accessible and can be exchanged upon request.

The necessary tax infrastructure had been implemented and a series of bilateral tax treaties had been concluded between states. This is the reason why in the latest Progress Report of The Organization for Economic Cooperation and Development from December 2012 the only two states that were qualifying for the tax haven status were the two Pacific islands Nauru and Niue.

Despite these developments, authors continue to maintain the terminology of *tax haven* to refer to the states once listed in The OECD Repot from 2000, without taking into account the latest changes in their status.

The aim of this paper is to present the evolution of these states in the process of implementation of the standards that put them on the white list of complying states.

The first part of the paper presents the literature review on tax havens.

In the second part there are emphasized the key criteria in identifying a tax haven as stated by the OECD, followed by a snapshot review of the steps the organization followed in order to persuade tax haven states to comply with the required standards.

The third part of the paper brings forward an analysis of the evolution of tax havens after The OECD's Report (1998). For conducting this analysis, tax havens were grouped on the four main geographic areas where they were concentrated in order to identify the trends in the region in terms of tax policy and compliance to the new standards. This analysis was focused on the steps indicated by The OECD to be followed and the manner in which the standards had been implemented, while preserving at the same time their fiscal patterns.

The conclusions are set to stress the important changes at the level of tax haven jurisdictions and also the fact that officially at the moment there are only two states left to meet the tax haven criteria.

Literature Review

Articles referring to tax havens present both positive and negative aspects of these states.

Dharmapala and Hines (2009) presented a set of characteristics of the tax haven jurisdictions: small countries, predominantly islands, with a population below 1 million; good communication infrastructure; few natural resources; British legal origins with English as an official language; parliamentary systems; proximity to the large capital-exporter countries; more affluent than other countries as they attract significant foreign investment due to the low tax rates and opportunities for tax avoidance; and high-quality governance institutions that can be translated in political stability, government effectiveness, rule of law and control of corruption. These aspects represent an incentive for many companies and especially multinationals with extensive intra-firm trade and Research and Development programs that establish tax haven operations in order to avoid high-tax jurisdictions (Desai, 2006). The same idea is emphasized by Krautheim (2011) who outlines the role of globalization which has given tax havens an increasing importance in respect of the numerous opportunities for multinationals to shift profits towards low tax jurisdictions.

Due to the very favorable fiscal environment these territories have attracted intensive foreign investment and they registered important growing rates in the past 25 years (Hines, 2005).

The process of globalization has intensified tax competition among countries and mobile capital tends to be directed towards the jurisdictions that offer the lowest rates in terms of taxation. This would be a disadvantage for the high tax countries and much of the debate on tax competition presumes that tax havens divert activity from these countries. This fact will lead eventually to a “race to the bottom” in terms of tax levels of countries aiming to attract capital and investment (Slemrod, 2004).

Contrary to this believe, Desai, Foley and Hines (2006) provide evidence that tax haven operations enhance activity in nearby non- havens. Companies with growing activity in high tax jurisdictions are most likely to employ tax haven operations. As a consequence, the reduced costs of using tax havens represent an incentive for these companies to invest in the nearby high tax countries in order to enter new markets with high purchasing power.

Opposing the idea that increased mobility of goods and services can erode corporate tax bases in high tax industrialized countries, Hong and Smart (2010) sustain the fact that the investment-enhancing effects of international tax planning can dominate the revenue erosion effect. This can be explained by the fact that income shifting to tax havens may reduce revenue of high tax jurisdictions but it will make the location of real investment less responsive to tax differentials.

The latest changes at the level of tax havens’ legislation stand to fight numerous assumptions that were connecting money laundering and tax evasion activities to these jurisdictions. The creation of a network of bilateral tax treaties, which Killian (2006) considered impossible to be established by these countries had been enforced; the availability, access and exchange of information on tax matters upon request employed by the tax havens’ authorities had also created more transparency on the operations performed in these territories.

Although Schwartz (2011) admits that there is no clear cut answer to the question of whether tax havens promote money laundering, the results of his research show that only the poorer tax havens with lack of credible reputation provide lax regulatory legislation in this respect. Also, he concludes that the tax haven status should not be automatically associated with poor anti money laundering policies because these states do not differ significantly in their policies with the non-tax havens. This opposes significantly to the idea promoted by Rose and Spiegel (2007) that tax havens always appear on the list of the countries whose money laundering legislation is lax. Masciandaro (2008) on the other hand supports the idea that tax havens are politically stable countries that provide a healthy regulatory climate. In this respect, the latest legislative changes in the tax haven jurisdictions show the alignment of these states to the international agreed tax standards and also to the principle of transparency that govern the activities performed in these territories.

The OECD has exercised great power in setting the standards for the international tax competition and has imposed corrections to the countries whose tax practices were found prone to distort the fairness of this competition. Under the strict supervision and direction of the OECD's Global Forum, the transition from a tax haven status to a complying state meant substantial regulatory enforcement for these countries (formerly blamed for adopting harmful tax practices).

The criteria in identifying tax havens

An early attempt in providing a definition of the tax havens came in 1987, when The OECD launched the so called "Reputation test" where a country was playing the role of a tax haven if it offered itself or it was generally recognized as a tax haven. Yet, this test was subject to interpretation and a more specific set of indicators was needed in order to address the areas of concern where change had to be brought.

The OECD set these criteria as a first step in its long term effort to bring important administrative tax changes to these countries.

The Report released in 1998 by the organization came under the name of "Harmful tax competition" and it comprised a set of four key characteristics of a tax haven. Those were:

- No or only nominal tax rates;
- Lack of effective exchange of information;
- Lack of transparency; and
- No substantial activities

Therefore, a country was classified as a tax haven as long as the four criteria were met.

In respect of the first criteria, the fact that a country was imposing no or a low tax rate on revenue could not have been alone a criterion to put a country under the status of a tax haven. Every sovereign state has the right to construct its own fiscal system in a way that best fits its economic interest.

The second and the third criteria related to the area of effective exchange of information and transparency presented the main problems to which the organization addressed the need for improvement. A better cooperation between the states in terms of exchange of information and transparency in tax matters was needed in order to prevent any unlawful actions to take place.

The lack of economic substance of the activities carried out posed the question of whether these countries were attracting investment and activities that were only tax driven.

The Organization under the Global Forum on tax matters put pressure on the nominated tax havens (OECD, 2000) to take commitments to adhere to the key principles of exchange of information and transparency. This focused action on these two problems reflected their critical importance and the need for immediate measures to be taken in order for these two areas to become better regulated and to eliminate any unlawful activities being carried out in these jurisdictions.

The key principles of transparency and information exchange for tax purposes to which the countries under the *tax haven* headline had to adhere to were mainly focused on: the implementation of a mechanism for the exchange of information for tax purposes between countries upon request; the strict confidentiality of the information exchange; the access of the state to reliable bank, ownership identity and accounting information and the power to exchange such information upon request (OECD, 2009).

The Progress report from 2009 was meant to make public the implementation stage of these key principles by each of the initially nominated states. The fact that some states committed to implement the standards but failed to take real action in this respect didn't stop the organization from listing them under the tax haven headline. Yet, in December 2011, the new listing showed only two remaining tax havens – Nauru and Niue – (OECD, 2011), as they didn't succeed to meet the minimum threshold of 12 treaties needed to be signed on exchange of information with other OECD countries.

Therefore, according to the criteria set by the OECD, in 2013 only two countries were qualifying for the tax haven status, as all the other states formerly found under the same designation were now *white listed* jurisdictions.

Given the present situation, the era of tax havens almost disappeared, but will the concept disappear as well?

Analysis of the evolution of the tax havensafter The OECD's Report from 1998

The transition from the tax haven status to a white listed jurisdiction came after a commitment had been made, followed by effective tax policy restructuring, commercial laws revised and international accounting principles adopted. The way, order and implementation stage of all these commitments differed from one country to another. Yet, an effective way to analyze these changes is to group tax havens on the four main geographic areas where they are concentrated and see the major tax restructuring movements that took place.

Based on the OECD's listing of tax havens from 2000 it can be observed that at a global scale these states were concentrated in: Europe, Central America, the Pacific Ocean and the Indian Ocean.

Commitment to the international tax standards set by OECD

In Europe, Malta and Cyprus, together with San Marino were the first to take advanced commitments to implement the tax standards and by taking this step they had not been included on the list of tax havens from 2000. Malta and Cyprus took these rapid measures as they were already under a major tax reform imposed on them by The European Union. Any delay in this step would have been an impediment in their accession to The European Union in 2004.

In December 2000 the first British Crown Dependency that signed the commitment letter was the Isle of Man followed by the other two islands from the English Channel – Guernsey and Jersey- in 2002. The British overseas territory – Gibraltar signed the letter in the same year.

The last commitments sent to The OECD's headquarters were in 2009, being those of Andorra, Liechtenstein and Monaco, previously found on the list of *uncooperative tax havens*. These three European states had been the last countries to sign the commitment and the most fervent opponents to the tax standards, which they eventually accepted.

Central America also had its own commitment signing race. Bermuda, Cayman Island and The Netherlands Antilles were the first to accept the process of adhering to the standards, followed by Aruba in 2001. The rest of 15 tax havens from the region followed the commitment signing procedure in 2002. Out of these tax havens 13 were state islands located in the Caribbean Sea.

In the North Pacific Ocean the signing of the commitment letters started with Tonga in 2001, followed by Cook Island, Niue and Samoa in 2002 and Nauru and Vanuatu a year later. The last island that had refrained from any commitment until 2007 was Marshall Island which eventually was erased from the list of uncooperative jurisdictions.

In the Pacific Ocean the three islands nominated as tax havens progressively started to take commitments, starting with Mauritius in 2000, Seychelles in 2001 and Maldives in 2002.

Although the commitments to implement the international tax standards had been made by all the nominated tax havens by 2007, the stage of implementation was expected to be more rapid. This is what actually happened under the pressure of the frequently published Progress Reports that were closely monitoring the staged progress of the nominated countries in the implementation of the international tax standards. The major result was first seen in the Progress report from December 2011 which presented only 2 states left to implement the standards.

Revised tax policies and commercial laws

A revised tax legislation of the countries found under the headline of *tax haven* meant either the elimination or the revision of the offshore tax regimes. The tax laws had been amended in order to counteract any differential treatment in the level of taxes imposed on foreign and domestic companies and at the same time amendments to the Companies Act had been made in order to eliminate or modify some types of companies.

Europe. In order to analyze the fiscal reforms of the European tax havens, they can be grouped as it follows: Malta and Cyprus; The English Channel Islands (Isle of Man, Guernsey and Jersey); Gibraltar; Andorra, Liechtenstein and Monaco; San Marino.

Malta and Cyprus had to amend their laws in both fiscal and commercial area in their attempt to join the European Union in 2004 and then to stay in line with the European Commission (EC) requirements.

Malta adopted in 1995 a new Companies Act in order to set up a new regime for the commercial entities and to abolish *the offshore companies*. Then in 2006 the EC required that both the Maltese Companies with Foreign Income (CFI) and the International Trading Companies (ITC) regimes be eliminated as they were favoring foreign owned companies over domestic owned companies.

At present, companies in Malta are being taxed based on residence and source of income, which means that taxation is imposed on the income of the Maltese companies or on income which is sourced from Malta. A flat rate of 35% combined with a full imputation and refund system which provides the shareholders the right to claim refund of tax paid on income at the point where the dividends are distributed to them, results in an effective tax rate of 5%. In addition to this advantage, there is no withholding tax on dividends, interests and royalties.

Just like Malta, Cyprus had also introduced a new regime starting with the 1st of January 2003 when a *resident-based* system of taxation was introduced where both resident companies and non- resident companies who derived income from Malta were subject to a corporate tax rate of 10%. Also, starting from that date, the existing offshore companies (those 100% foreign-owned) became liable to pay tax at 10% on their income and were permitted to trade within Cyprus. Therefore, The International Business Companies (IBCs) had no longer a different tax regime than the other companies and so the offshore regime was abolished. Yet, other tax advantages offered by Cyprus to its investors were: the lack of withholding tax on dividends and interest paid to non-residents; the tax exemption on capital gains and a low corporation tax rate of 10% being imposed on all companies and public corporate bodies.

The tax reforms of the two countries had been required in order for them to be accepted as EU member states and their tax system reformation had been closely monitored for its compliance with the EU Code of Conduct on Business Taxation and the EU harmonization rules.

Although it was adopted at different time scales, the "0/10" tax system was implemented by The English Channel Islands (Isle of Man, Guernsey and Jersey) in order to eliminate their offshore sector, to enhance the islands' competitiveness in attracting investment and to create a tax system in line with the requirements of the EU Code of conduct. Under the 0/10 tax system a standard tax rate of 0% applies to all companies, except the financial service companies whose profits are subject to a tax rate of 10%. The tax system was first adopted by The Isle of Man in 2006 followed by Guernsey in 2008 and Jersey in 2009. The introduction of this tax regime came with the elimination of the International Business Companies and the Exempt companies which were formerly creating the offshore sector. The new tax regime had also been found compliant with the EU Code of Conduct despite early scrutiny of the system. The advantageous general rate of taxation in the islands combined with a 0% withholding tax on dividends, interest and royalties, and 0% tax on capital gains confer investors a very favorable business environment.

The British Overseas Territory, Gibraltar also took measures to eliminate its offshore sector. Starting with 2006, under The European Commission's guidance, Gibraltar eliminated the Tax Exempt Company regime and with effect from the 1st of January 2011, the standard corporate rate has fallen from 22% to 10%. Among other tax advantages offered by Gibraltar we can mention: the 0% withholding tax on dividends, interest and royalties, and no capital gains, wealth and inheritance taxation. Under the Income tax Act 2010, resident companies pay income tax on their worldwide income, while nonresident companies pay tax only on the Gibraltar-source income.

Despite of being fervent opponents to the implementation of the international agreed tax standards until 2007, the tax system and commercial laws of Andorra, Liechtenstein and Monaco knew important changes.

Until the 1st of April 2011 Andorra did not have any direct taxes, but after that date a 10% tax rate was levied first on the locally sourced income of nonresident companies and individuals and from the 1st of January 2013 this tax rate had been raised on resident companies as well. In order to remain competitive The Foreign Investment Law (2008) lifted the obligation that the profit seeking companies be owned by at least 2/3 by Andorran citizens. Now, the foreign investors can hold 100% in a resident Andorran company. There is no offshore sector in Andorra and the country offers as well a 0% withholding tax on dividends, interest and a 5% withholding tax rate on royalties paid to non-residents. Capital gains on the other hand are treated as general income and taxed at 10%.

Liechtenstein also made important changes to its tax system as a result of renouncing to its offshore sector. From the 1st of January 2011, The Tax Act (2010) introduced a general corporate income tax of 12,5% and at the same time *the domiciliary status* which exempted certain corporate entities from tax was abolished. At the moment all resident companies are subject to taxation but there is no withholding tax on dividends, interest and royalties.

Monaco has a fiscal system based especially on indirect taxes. There is no personal income tax or wealth tax, but the level of taxation on the corporate income is fixed at 33,33%. At the same time there is no offshore sector to be promoted by Monaco.

San Marino was the first among the nominated European tax havens to take advance commitment to implement the tax standards. Its fiscal system comprises of both direct and indirect taxes. Companies resident in San Marino are taxed on their world wide income while nonresident companies are taxed on income sourced in

San Marino. The corporation tax rate is 17% and there is no withholding tax on dividends.

Central America. The greatest concentration of tax havens was in Central America and most of the nominated states were islands located in the Caribbean Sea. These islands whose economies were previously dependent on tourism and small scale agricultural production, had embraced the development of the financial service sector which brought an important contribution to their GDP. The existence of fiscal systems based entirely on indirect taxation and an offshore sector created for non-residents and based on a *custom made* type of company that brought the level of taxation to zero, represented important advantages in order to attract foreign investment and capital. Some of these states revised both their tax systems and commercial laws, while others continued to function using the vehicles that promoted them from the very beginning. One of the most important structures used by the offshore sector is the International Business company (IBC) which can be found in the commercial laws of many Caribbean states. This type of company is especially created for non-residents who do not indent to do business within the jurisdiction where the company is incorporated. The IBC offers the advantage that the foreign-sourced income generated by the company is not subject to taxation; it usually takes the form of a limited liability company and the setting up process is easy and fast. The availability of this type of company combined with various tax advantages made the Caribbean state islands the hub of massive foreign capital inflow which led to the development of their financial service sectors.

A classification of The Caribbean tax havens can be made according to their tax systems. There are states that impose only indirect taxes and others which combine direct and indirect taxation.

Anguilla, Bahamas, Bermuda, Cayman Islands and Turks & Caicos are the states that raise revenue through a system of indirect taxation.

In Anguilla taxes are levied on tourism-related services, property development or business licenses, the same as in Bahamas where export, import, excise and stamp duties can be added as important sources of revenue. These two states also have in common the existence of the IBCs structures which outnumber the other forms of companies (OECD Anguilla, 2011).

Bermuda, Cayman Islands and Turks and Caicos, all British overseas territories, have in place a consumption-based tax system, focused especially on custom duties and to which is added the government fees and taxes. Also, these states have in common the existence of the *Exempt* type of company which is similar to the IBC in that it is permitted to trade only outside the country where it is incorporated (OECD Turks and Caicos, 2011; OECD Bermuda, 2012; OECD Cayman Islands, 2013).

The states with both direct and indirect taxation are: Antigua & Barbuda, Barbados, Dominica, Grenada, St. Lucia, St Vincent & Grenadines, St. Christopher and Nevis, Montserrat, The British Virgin Islands, Aruba, Curacao, Saint Maarten, Belize and Panama. Despite the level of direct taxation imposed on corporate profits, the existence of the IBCs structures create the gateway of many companies to trade outside the country at a 0% tax rate.

Antigua & Barbuda as well as Barbados have in place a corporate income tax of 25%, yet the existence of the International Business Corporation Act, under which the IBCs operate, create a range of business opportunities to be explored in a tax free environment (OECD Antigua & Barbuda, 2012; OECD Barbados, 2012).

Dominica, Grenada and St. Lucia, impose a 30% corporate income tax, followed by St Vincent & Grenadines

(32,5%), St. Christopher and Nevis (35%) and Montserrat (up to 40%). Despite these high tax rates, the existence of the IBCs and Exempt companies structures, provide foreigners substantial advantages in conducting businesses (OECD Dominica, Grenada, St. Lucia, 2012).

On the other hand The British Virgin Islands under the pressure of the United Kingdom to comply with the EU Code of Conduct on Business Taxation reduced the corporate tax rate for all types of companies to zero starting with 2005. Also, it introduced The BVI Business Companies Act in order to eliminate the distinction between local and foreign companies. By 2007, all the IBCs turned into BVI Business Companies.

Aruba, together with the former Netherlands Antilles – Curacao and Saint Maarten- which are part of the Kingdom of The Netherlands had to comply as well with the requirements of the EU Code of Conduct. Aruba imposed a 28% corporate tax on all types of companies, including those which previously had been under the Exempt status. Yet, exemption from tax is possible under certain conditions. Curacao with a corporate tax rate of 34,5% and Saint Maarten (30%) still have in place the tax-exempt limited liability company which offers the possibility to decrease the level of tax to zero.

Belize and Panama has the same level of corporate tax, which is fixed at 25%. Yet, Belize offers IBCs structures by which income sourced from outside its territory is tax exempt, while Panama tax system, which is based on the Territoriality principle, offers the same tax exemption to profits derived from external sources (OECD Belize, 2013).

We can observe that the Caribbean state islands present important advantages to non residents in terms of 0% tax rates imposed on income sourced from outside the country where the company is incorporated. Yet, these offshore sectors have been under continuing revise in order to comply both with the EU Code of Conduct on Business Taxation (since many of the Caribbean islands are either dependencies of EU states or have very close connections with these) and with the OECD's requirements. Although business structures such as the IBCs and Exempt companies still exist in many of these states, the offshore sector has been considerably restructured in order to comply with the standards of transparency and exchange of information.

Pacific Ocean. The tax haven states from the Pacific Ocean didn't develop strong financial sectors as those from Central America. Their economies are still relying on tourism, small scale agricultural activity and some of them are dependent on financial aid and external funding.

Nauru and Vanuatu have in place a fiscal system based on indirect taxes.

With an economy dependent on foreign aid, Nauru's attempt to build a financial service sector in the 1990s based on offshore banking was a failure. Today, custom duties, excise and tourism-related taxes represent the state's own sources of revenue. Nauru's Corporation Act amended in 2004 provided the infrastructure of company creation in a 0% tax environment but the lack of the financial service institutions, such as banks, represented an impediment in conducting business on the island (OECD Nauru, 2013).

Having in place a similar indirect tax system, Vanuatu amended in 2010 The International Companies Act (ICA) by which the *Exempt* company status was replaced with the *International Company*. The revenue of these companies is not subject to taxation, yet despite this advantage the lack of a consolidated banking sector do not attract much interest in the company formation. Fishing, small scale agricultural activity and tourism represent the main sectors which have a significant contribution to the state's GDP (OECD Vanuatu, 2011).

Cook Islands, Marshall Islands, Niue and Samoa impose both direct and indirect taxes.

Cook Islands impose a 20% corporate tax rate for resident companies and 28% tax rate on nonresident companies. Yet, the existence of the IBC structure can bring the level of tax imposed on foreign-sourced income to zero.

Having in place a territorial taxation system, The Marshall Islands impose tax only on the income sourced from the island. In Niue all companies are subject to income tax at the rate of 30% as in December 2006 the International Business Companies Act was abolished (OECD Niue, 2012).

In Samoa the International Companies are subject neither to direct or indirect taxes, although the standard corporate tax rate is 27%.

The same as with the Caribbean states, the need to comply with the OECD's international tax standards have put a lot of pressure on the Pacific Islands. Yet, compared to their more economically developed counterparts from the Atlantic, the islands in the Pacific faced major financial problems at the implementation stage of the standards. Some of the islands chose to totally eliminate their offshore sector, while others kept it in place but once again, under a better regulated environment characterized by the transparency of the operations.

Indian Ocean. Regarding the three tax haven states from the Indian Ocean, The Maldives had been recognized as early as 2002 as not having an offshore sector that is to differentiate between the tax treatment of domestic and foreign entities; Yet, Seychelles and Mauritius made available a different tax regime for the companies that were trading abroad and did not conduct business affairs in the island.

Seychelles, whose tourism and fishing exports represent 83% of its GDP, developed a financial sector offering a wide range of opportunities to the international business community. The utilization of the IBCs structures offer a totally tax exempt status to income sourced from outside the island.

In Mauritius the financial services represent 11% of the GDP. The fiscal system is based on both direct and indirect taxation, and the corporate income tax is set at 15%. The availability of Category 1 and 2 Global Business License companies offer important tax advantages. Category 1 is represented by the management companies whose profits are taxed at a rate of 3% and Category 2 is dedicated to non-tax resident companies.

Weather it is called an IBC or a Global Business Company the availability of the offshore sector is obvious in the case of both Seychelles and Mauritius due to the existence of special tax regimes available for non-residents. Faced with similar impositions to regulate this sector in order to comply with the standards, the two islands took rapid steps to comply with the international tax norms.

Availability, access and exchange of information

The almost universally agreed principles of transparency and exchange of information on tax matters to which the OECD has asked adherence are based on three basic components: the availability, access and exchange of information upon request. The information to which the principles refer is: ownership, identity, accounting and bank information. Tax havens had been closely monitored in the implementation of these standards.

Information on the identity of the owners of all companies and other legal entities must be made available to the competent authorities. Also, where bearer shares are permitted to be emitted the identity of the owners of these shares must also be made available.

Reliable accounting records must be kept by all companies for a period of at least 5 years. The accounting information should explain correctly the transactions, provide the financial position of the entity and enable the preparation of the financial statements. Also, all the accounting records must be supported by underlying documentation that is to reflect details of the cash flow, sales and purchases transactions, as well as the assets and liabilities of the company.

Banking information of all the account holders should be available in order to explain all the transactions performed.

Competent authorities must have the power to have access to all these information and to be able to provide de requested information under an exchange of information arrangement.

A peer review process was put in place in order to assess in the first phase if the legal and regulatory framework stands to sustain the requirements mentioned above, followed by a second phase of monitoring and reviewing the actual implementation of the standards. At the moment most of the jurisdictions have completed the 1st phase review with only some states which have combined the two phases.

In order to analyze the degree of adherence by each tax haven to the principles stated by the standards we consider a review of the countries under question.

Europe. In Europe the countries that have all responded affirmatively to the availability of: ownership and identity information for all relevant entities, reliable accounting records, banking information and the power of the competent authority to obtain and provide information are: Malta (OECD Malta 2012), Monaco (OECD Monaco, 2012), San Marino (OECD San Marino, 2011), together with the English Channel Islands: Guernsey (OECD Guernsey, 2013) and the Isle of Man (OECD Isle of Man, 2011).

Jersey's review presented some problems of this state in addressing the need to maintain reliable accounting records and underlying documentation. Also, the competent authorities may face some restrictions when it comes to the access to the information (OECD Jersey, 2011).

Andorra, Cyprus, Liechtenstein and Gibraltar presented more areas where improvement is necessary.

Andorra does not provide sanctions for the non compliance of the companies, partnerships, foundations and trusts to maintain and transmit ownership information to the government authorities; reliable accounting records for the foreign trusts are not kept; and there are problems in respect of the competent authorities' ability to access ownership information (OECD Andorra, 2011).

In Cyprus, ownership information in respect to the constituent parties of a trust is not made available; the legislation does not provide for specific accounting records that are to be maintained and neither for the time period of at least 5 years for which they should be kept. In respect on trusts there is no obligation to keep accounting documentation (OECD Cyprus, 2012). Also, Cyprus is allowed to exchange information only under a double tax information treaty.

Information on the ownership of foreign companies that are tax residents in Liechtenstein is not available in some circumstances. Yet, reliable accounting records are held by all the entities in Liechtenstein and banking information is available for all account-holders (OECD Liechtenstein, 2012). The competent authorities in Liechtenstein have the power to access all this information.

In Gibraltar information on the identity and ownership of the trusts is restricted from being accessed under certain circumstances, also the requirement of relevant accounting documentation to be maintained is not in place and in the case of the partnerships and trusts there are no specific accounting records that need to be held (OECD Gibraltar, 2011). Access to banking information is available to the competent authorities.

We can observe that in the case of the last four countries the major obstacle faced by their competent authorities is to have access to information on identity and ownership of the trusts. Also, problems can appear in accessing accounting information where the state does not impose by law specific accounting records to be held by each type of entity for a period of no less than 5 years. Banking information is available upon request and situations where the competent authorities might counter problems in obtaining and providing information upon request under an exchange of information arrangements can be met in Cyprus and Andorra.

Central America. In Central America, the only state that is able to provide to the competent authorities complete information related to the ownership, identity, accounting and banking information of the legal entities is Antigua & Barbuda. By 2011, this state had in place all the elements needed in order to exchange information with other states on tax matters.

In respect of ownership and identity information, Bahamas, Cayman Islands, St. Lucia, and St. Christopher & Nevis are the states that can ensure this type of information is available for all the relevant entities. The rest of the states under review from the region need to implement the recommendations made in the Peer Review Report of the country in order to provide access to complete identity information of the owners of legal entities (OECD St. Christopher and Nevis, 2011; OECD Bahamas, 2011; OECD St. Lucia, 2012; OECD Cayman Islands, 2013).

The states that passed legislation in order to ensure that all relevant entities keep reliable accounting records that meet the requirements of the OECD's standards are: the Cayman Islands, Aruba, Curacao and Saint Maarten (OECD Aruba, 2011; OECD Curacao, 2011; OECD Saint Maarten, 2012). The next four countries which respect the standards but still need to make improvements in this area are: Barbados, Bermuda, St. Christopher & Nevis and Turks & Caicos. On the other hand the competent authorities of the other nominated states in the region have limited access to accounting information because there is no binding legislation in place to impose the maintenance of proper accounting records by all entities (OECD St. Christopher and Nevis, 2011; OECD Turks and Caicos, 2011; OECD Barbados, 2012; OECD Bermuda, 2012).

Banking information for all account holders is made available in all the Caribbean states.

The majority of the Caribbean state islands under review have the competent authorities empowered to obtain and provide information upon request. Anguilla, Aruba, Barbados, Grenada and St. Lucia, received recommendations for further improvements in these areas, while in Dominica and Panama the access to information is limited in most of the cases.

Pacific Ocean. The islands in the Pacific Ocean present the following stages in the implementation of the standards of transparency and exchange of information: The Cook Islands, Niue, Samoa and Vanuatu ensure ownership information for all the relevant entities with the exception of trusts, while The Marshall Islands and Nauru do not make available such information.

Except Niue, all the other nominated islands from Pacific do not impose reliable accounting records be kept by all relevant entities, while the banking information availability is present in all states.

In the Cook Islands, the Marshall Islands, Niue and Samoa the state's authorities have the power to obtain information that is subject to an official request, while Nauru and Vanuatu do not confer such powers (OECD Cook Islands, 2012; OECD Marshal Islands, 2012; OECD Niue, 2012; OECD Samoa, 2012).

Indian Ocean. While in 2002 the Republic of the Maldives was declared by the OECD as not meeting the tax haven criteria, Seychelles and Mauritius remained the only two islands in the Indian Ocean to adhere to the principles of transparency and exchange of information. By 2012, Seychelles had in placed all the required elements in terms of availability, access and exchange of information upon request (OECD Seychelles, 2012).

Mauritius on the other hand needed to revise some aspects in terms of availability of ownership and accounting information (OECD Mauritius, 2011).

The full implementation of the standards imposed by The OECD is a long time process for many of the countries under review. It is the necessary infrastructure that each of the countries needs to set in order to comply effectively with the norms and this involves new legislation to be passed and time to be implemented.

Yet, the most important step taken by all the states under consideration and the key reason for which they were erased from the tax havens list was the signing of the agreements that provided for the exchange of information upon request with at least 12 OECD countries. Whether these agreements were Double Taxation Conventions (DTC) or Tax Information Exchange Agreements (TIEAs) the threshold of 12 signed agreements was a good indicator of the progress of these countries in their attempt to implement the OECDs standards. The latest OECD Report shows that the only two states that meet the tax haven criteria are Nauru and Niue.

Conclusions

Nowadays, the phenomenon of tax competition between countries cannot be denied. It is the continuous race in attracting capital and foreign investment into their territories which will bring lots of benefits to their economies. Yet, in this scenario the presence of *tax havens* was considered by the OECD to be harmful. In the case of tax havens, it hasn't been questioned or directly addressed the minimum and sometimes nonexistent level of tax imposed over different types of income, but the concern was over the administration of these tax systems. The absence of transparency, the lack of exchange of information between states on tax matters and the lack of economic substance of the activities were matters of concern. Adherence to the international tax standards was requested and step by step the implementation process began. The progress of these states had been monitored by the OECD and its latest report presents the list of the last two states that meet the tax haven criteria.

The analysis of the evolution of the *tax haven* states presented certain trends at the level of the four main geographic areas where they were concentrated.

The process of tax policies review of the EU and future EU countries was first launched as a result of the ECOFIN Council's decision to set the Code of Conduct for business taxation. Therefore, the EU countries had to make amendments to their tax laws in order for their fiscal policies to be in line with the articles of this code of conduct. At the same time the overseas territories and crown dependencies of the European Union's member states committed to adopt the tax conduct required by the Code. Important changes had also been made in Europe in terms of commercial laws and the principles based on which the companies' profits were subject to taxation.

Following the commitment made to the OECD to implement the standards of transparency and exchange of information, the European states under review implemented the entire infrastructure necessary to provide for the availability, access and exchange of information.

Formerly known as presenting the highest concentration of tax havens, Central America is home to the states that sustain a well developed offshore sector. With structures like the IBCs and the Exempt companies characterizing this sector, the nominated states committed to make available ownership identity, accounting and bank information in order to provide a high degree of transparency. Although, at the moment the states do not have in place all the elements needed to be fully compliant with the standards, recommendations made within the Peer Review Reports are soon expected to be followed and improvements be made. An important aspect to be noticed here is that their offshore sector is still in place and it continues to offer numerous advantages in terms of tax planning to both personal and corporate clients. Therefore, the OECD did not condemn and neither imposed the elimination of this sector but it wanted a better regulated sector in terms of transparency and exchange of information.

Pacific Ocean's tax havens developed a weaker offshore sector than their counterparts from the Atlantic. This was caused by their economic development that couldn't sustain and create the financial sector needed for attracting foreign capital. The lack of Governmental funds needed to create the infrastructure for the international tax standards implementation was also an impediment to these states to be able to stay in line with the OECD requirements. Yet, efforts were made and the ability of the majority of these states to sign the minimum 12 agreement with OECD countries was a significant step forward in their progress. Despite the legislation they have in place which allows for the creation of the offshore structures, their ability to consolidate a strong offshore sector is questioned.

With only two islands that were initially listed among the world's tax havens -Seychelles and Mauritius-, the Indian Ocean presents the last region where tax havens were to be found. Both islands have developed strong financial sectors which create the infrastructure for a well constructed offshore industry. Both the existence of the offshore structures and the low tax rates make these two locations a magnet for foreign capital.

Despite the fact that today we officially have only two tax havens, we can observe that the tendency in the specialty literature written after May 2012 is to continue to address the *tax haven status* to a large group of countries. This may point out that *The Reputation test*, despite its subjectivism, tends to be preferred over the other criteria. This is the result of a disagreement in the perceptions over tax havens which will continue to exist for a long time.

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