

TAX HAVENS

I. Tax haven

Tax havens are countries or territories in which natural or legal persons established here are subjected to privileged conditions, because they are not taxable or because they pay income tax or benefits tax less high than that paid in the country they come from. Tax havens are social, economic and political entities created in order to attract investments.

These countries divide into **five types**: there can be chosen here fiscal residence, place of establishment of the working place, it can be lived here, earn money or obtain citizenship. There are approximately 70 tax havens in the present moment.

1. Incentives granted by tax havens

a) Incentives granted by tax havens for **natural persons**: null or decreased taxation.

b) Incentives granted by tax havens to **legal persons**:

- in certain countries, benefits are taxable in the year immediately following the year of their making, the tax being calculated on the ensemble of the national and foreign benefits. This fact allows for the enterprises having subsidiaries abroad delaying the taxation subordinated to the repatriation of benefits.
- these countries are often used in order to perform transactions of patents, trademarks, know-how which are incorporated goods.
- the use of a tax haven facilitates the drawing up and circulation of commercial documents justifying the compliance with the commercial regulations;
- investments made do not imply plus-values taxes in the situation of their assignment;
- the accounts in convertible currencies and the banking secrecy may ease the managers' obligations in the period of fluctuation of currencies and of the interest taxes;
- the establishment of a new subsidiary in such a country allows for a greater flexibility and an increased discretion in administration;

- a subsidiary established in such a country may be used by an enterprise as a point of purchasing for its own commodities that can be resold to the plants abroad, taking advantage of the obtained remises without losing the benefit of sale;
- establishment of a subsidiary in a tax haven allows for the purchasing of material for the price of the domestic market, which allows for the making of non-taxable benefits.
- Multinational firms interested in becoming their own insurer, establish captive insurance companies, because of the high cost of insurances and because of the non-insurable character of some of their activities.

2. Systems of taxation

Tax havens may be classified depending on the practiced taxation system, in three categories:

- a) countries in which incomes made abroad are totally profit tax exempted. In this situation a fixed annual amount is paid. For example, Virgin Islands, Belize, etc.
- b) countries in which the taxation base is not the profit made but the value of the registered capital. For example Stiftungul from Lichtenstein owes a tax equal to 0.1% from the value of the registered capital, but not less than 1,000 Swiss francs.
- c) Straight line taxation; regardless of the value of the profit made, a fix income is taxed. The best known tax haven using this system is Cyprus, where offshore companies pay a tax of 4.25% from the profit made.

3. Offshore company and taxes

Offshore – company at the limit – designates a company that does not perform a commercial activity in the country of incorporation. Therefore, such a firm does not make profits from the country of residence. Theoretically, offshore companies may be registered in any country of the world, but not everywhere fiscal incentives may be obtained.

Offshore companies may be used in many fields: banking, real estate, marine transportation, insurances, intellectual property, investments, finances, services, commerce field, etc.

The most often used forms of offshore companies are;

- Non-resident company
- International Business Company (IBC)
- Exempt Companies
- Limited Liability Company (LLC)

➤ Trust

a) Advantages of the offshore companies

Low fiscality. In all tax havens the low taxation regime is guaranteed by law. The fiscality is zero or almost zero. The profit accumulated by offshore companies is taxed in the state of residence and these states do not apply any tax on the obtained profit, or this tax is a very small one (maximum 5%).

Low bureaucracy. Offshore companies are exempted from the obligation to keep accounts, trade ledgers and are not obliged to the presentation of the balance sheet.

Anonymity. The shareholders' and managers' identification data are not public.

Patrimony protection. Law guarantees the shareholder's right of absolute disposition on the entire patrimony of the company. The profit of the offshore company may be used anytime according to the will of the beneficiary of the firm.

Well developed infrastructure. Tax havens offer perfect telecommunication services, well developed and stable banking system.

b) Establishment of offshore companies

Offshore companies are subjected to all the normal regulations from the jurisdiction of origin.

Name. The right to use a certain name is granted to companies by the Trade Registry. In certain tax havens there are restrictions regarding the name of an offshore company. Under no circumstances names shall be accepted containing words like crown, royal, and words like international, European, national are accepted under certain circumstances. Words like bank, insurances, investments, and fund require a certain granting procedure and the fulfillment, prior to granting, of certain material conditions.

Registered capital. Regarding the registered capital, the distinction must be made between the jurisdiction based on the Anglo-Saxon legal system and the continental one.

- ✓ The Anglo-Saxon legal system is much more flexible. This flexibility is the most pronounced in the Caribbean.
- ✓ In the continental legal system, the size of the registered capital and the modality of putting it at the firm's disposal is rigorously regulated. For example, in **Liechtenstein**, the company's shares must be subscribed and paid.

Company's shares. These can be bearer or registered. The holders of registered shares are registered in the company's documents, as well as in the public records from the Trade Registry. Bearer shares are not nominal.

Memorandum of Association. This is a document signed by the company's shareholders through which its fields of activity are established. The company shall be authorized to perform activities stipulated in this document exclusively. In certain tax havens the insertion in this document of a general paragraph stipulated that the company has the right to perform those activities that may yield significant profits from the directors' point of view, is allowed.

Shareholders. Company's shareholders may be both legal persons and natural persons. These are lawful holders of the company.

Directors. They are responsible for the entire activity of the company, both beside shareholders and the authorities.

Secretary. It may be both a natural person and a legal person. It keeps all the company documents and is liable for the company's relations with the Trade Registry and governmental organizations.

For the incorporation of an offshore company the following conditions are necessary:

- registered office in the respective country/territory;
- company's accountancy to be kept in the respective country/territory (**Andorra, Hong Kong**);
- the owner to be a non-resident in order to benefit from offered fiscal incentives (**Bahamas, Jersey, Bermuda**);
- the holding of a general meeting every year (**Ireland, Hong Kong, Nauru, Bermuda**);
- one representative in that country/territory (**British Virgin Islands**);

- establishment of the administration and management in that country/territory (**Uruguay**);
- performing of the activity mainly abroad;
- proof of the shareholders' banking references (**Gibraltar**);
- at least one resident secretary (**Cook**).

Incorporation of the company can be made rapidly (24 hours) without the necessity of the owner's presence. However, in order to be incorporated and to be able to function, these companies must comply with additional conditions connected with the extra-territoriality of their activities and the domiciliation.

c) Accounting

From the point of view of the book-keeping compulsoriness, offshore companies may be classified into two categories:

- companies that do not have to keep any kind of accountancy, being only liable to a fix duty (**Bahamas, Belize**, etc.).
- companies are obliged to keep accounts. For example, **Ireland, Cyprus, Uruguay** etc.

d) Organization of offshore companies

However in the majority of tax havens there is no legal limitation regarding the owners or the directors of the offshore companies, there are certain jurisdictions imposing certain conditions that must be fulfilled by the owners or managers of these companies.

Thus, in certain countries representing tax havens the number of owners / directors is established by law (for example: in **Panama**, companies must have at least three directors).

Other countries impose conditions regarding the directors' nationality, following to ensure jobs for the citizens of the state in which the company is incorporated (for example in **Liechtenstein** at least one of the directors must be citizen of this state).

e) Publicity of the owners' / directors' data

In most of the cases the owners of offshore companies use directors and empowered shareholders in order to maintain the anonymity and the confidentiality.

Full anonymity. The data regarding the directors' / owners' identity do not have to be communicated to authorities. For example, **Bahamas, Belize, Virgin Islands.**

Partial anonymity. In **Panama** for example, in the Trade Registry only the identification data of the directors are registered, but no those of the owners.

Full publicity. Both directors and the owners are written in public registries, for example Cyprus. When the real owners do not wish for their name to appear in the constitutive documents of the company, it is resorted to the use of nominal owners / directors. Thus, against a fee, one or many persons accept to be registered in the constitutive documents. Usually the nominal officers only appear in the constitutive documents. All these operations are performed against payment.