TAX PARADISES – THE COVER-UP FOR „LEGAL" TAX DODGINGAND MONEY LAUNDERING.THE SWITZERLAND CASE

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Abstract:

A country which does not collect taxes or in which taxes are cut down, for just some or may be for all the categories of goods, a country in which there a high level of bank and commercial secret, minimal requests from the part of the central bank and lack of restrictions on the exchange value, such a country represents a tax paradise.

The tax dodger will make use of the tax paradise in his attempt to make more complicated his action of archiving the undeclared income, of studying the fund wave and of destroying the defence by referring to the non-taxable fund sources.

The tax paradises are used in order to give birth to some apparently legal documents, documents which are of use to the tax dodger when proving, in case of an administrative control, the continuous activity of the society set up in the fiscal paradise, although these documents are just formally made up.

The lack of whatever value and bank control, as well as the absolute anonymity, give to the collectors the opportunity to transfer the cash from the country of origin into banks from a tax paradise. After the entering into the offshore banks, the money circulates freely all over the world.

Both deposits and withdrawals from a fund accompanied by some enclosed papers which prove the legal origin of the cash are eased up by the lack of control over the cash.

Key words: tax paradise**,** tax dodging, money laundering.

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bank and lack of restrictions on the exchange value, such a country represents a tax paradise.[121]

The tax paradises are characterized by:

- Reduced taxes. The tax paradises practice a reduced level of taxes, this kind of action being part of their politic of attracting money from outside the country and also foreign economic and financial corporations[122];
- Bank secret. In this kind of countries the bank and commercial information are protected, this protection being assured even if a law was broken;
- the relative importance of the bank activity. The bank activity from the tax paradises represents the main attraction for citizens who are not residents for this reason have to pay a symbolical tax and whose bank operations are not checked, etc;
- the promotional publicity, many of the tax paradises have at their disposal a high tech communication network, phone and TV services, a network who offers the opportunity to be in contact with the most important countries from which come the deposited funds or, with the countries towards which go the financial waves;
- the lack of control over the money. Inside the tax paradises, only the residents have to pass through a money and exchange control, the non-residents being left alone.

These characteristics of the tax paradise make it attractive to tax dodgers and money launders.

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The apparently legal documents are also used to show the firm's solvency in case that it will be involved in commercial or bank relations with organisms outside the tax paradises and in which these were registered.

The tax paradises are used also for another type of activities than taxes, for example the secret of a fiscal paradise may be used as proof in divorce cases, partition and inheritance.

Moreover, we may exemplify the case in which the branch of a bank is registered in a fiscal paradise in order to avoid the requests regarding the minimal reserve compulsory in the country of origin.

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[121] Stefan Popa, Adrian Cucu, *Underground Economy and Money Laundering,* Expert Publishing House, Bucharest, 2000, page 41.

[122] Voicu Costica, Alexandru Boroi, *Business Criminal Law,* C.H. Beck Publishing House, Bucharest, 2006, page 177.

Switzerland is the country in which it is very easy to bring in illicit funds in a bank by using, extremely strict, the professional secret.

The Swiss banking system is very old and preferment, having at its disposal branches all over the world.

The aspect which makes the Swiss banking system attractive regards the structure and the integrity of the bankers, their reputation inside international financial community, the wide range of services put at their clients' disposal, the possibility offered to the depositors to convert their money reserves in Swiss francs or in other money in order to cover up the inflation or depreciation risks, lack of control over the operations and also the lack of regulation or state intervention in the activities of the bank, as well as a special political stability.

The bank secret is safe. The banking system is the most developed from the world, the sums being estimated at about 615 billions USD in banking deposits and 1715 billions USD in investment instruments.

The fund collectors are attracted by the tax paradises because, as we mentioned before, these paradises assure the secret over the transactions so that a manager of a society registered in such a paradise will not be linked to the fund wave.

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An aspect that is characteristic to Switzerland is the obligation imposed to the local companies and that is referring to the fact of not undertaking any kind of activity related to the banking system, investment funds, insurance and reinsurance.

In Switzerland, tax dodging is considered to be an infringement of the civil law. There are societies of limited responsibility and action societies (the disclosure of the managers is forbidden).

In what concerns the fight against money laundering, the Swiss judicial system deserves a special attention.

The fame of the Swiss bankers and the stability of the country made that the Swiss banking system earns an excellent fame and the trust of its clients.

Moreover, the conditions in which this system was exploited by the translational criminal organizations were excellent.

The Swiss solutions became a model for all the others European countries.[123]

Switzerland has today an entire system of provisions meant to counteract and fight against laundering dirty money, provisions which establish how to

[123] Graham, Saltmersh, *Money laundering in Central and Western Europe*, The emergence of organized crime in the financial and business sector, Praga, 1994, page 26.

proceed and define the scale of obligations for the banks' scrupulosity. This system comprises:

Art.305bis from the Swiss Penal Code punishes the carrying out, with knowledge, of transactions concerning money laundering, as being a felony.

The action of laundering dirty money, but with no intention, is not punished, but the prohibition referring to such an attitude results undoubtedly from the Banking Law (art. 3, paragraph 2, letter c), this interdiction being a sine qua non condition for the activity of the leading team of the bank, eventually of the bank itself.

Art.305 from the Swiss Penal Code punishes any person who professionally accepts, keeps on deposit, manages or transfers assets, contrary to the provisions referring to the bank's scrupulosity.

The Agreement from July 1987 concerning the compulsory professional rules, agreement signed between the Swiss Bankers Union and the other Swiss banks and it establishes aspects regarding the identification of some persons suspected of using banks for money laundering, for undertaking operations covering fraudulent actions, the persons who have to investigate and look into the suspect cases.

The special circular of the Federal Banking Commission from 6thApril 1990 referring to establishing the identity of the persons who have administrative prerogatives and to the interdiction endorsing the application of the so-called B formulary.

The Directives of the Federal Banking Commission from 6th April 1990 regarding the provisions in the field of qualified commerce with banknotes inside the banks refers only to the more important banks which have developed activities in this field.

The Directives of the Federal Banking Commission from 18th December 1991 regarding the counteracting and fighting against the laundering of dirty money, document which came into force since 1st May 1992.

The project of modification of the Swiss Penal Code contains provisions like: the punishment for participation in a criminal organization will be the seizure, the recognition of the bank officers' right to give to the tracking officers' information regarding their professional activity, as well as to establish the criminal responsibility of the institution. The last two provisions endorse also the banks. The consequences, rather tough, will be the result, first of all, of the sanctions proposed to the concerns in case of a malfeasance. These consequences could start from the obligation to pay a large sum of money, the prohibition to develop – on a certain period of time or not – some concrete activity and arrive up to the bringing the guilty ones in front of the justice[124].

An important step made at the Swiss banking-administrative level in the 70ies, that endorsed the contract of the cleaning up dirty money phenomenon, was

[124] Voicu Costica, cited paper work, page 139.

the „deal" from July the 1st, 1987. This agreement was signed between the Swiss Bankers Union and the Swiss National Bank.

One of the agreement's main objectives was to combat the abuses made when talking about banking secrecy, in view of keeping the fame of the Swiss banking system.

In this way, when starting to do a financial transaction, we have to strictly establish the identity of the bank customer, the provisions in the second article from the agreement stating that "the banks are obliged to identify the parties of the agreement if there is to establish a certain financial relation". This aspect endorses mainly:

- opening accounts and safe deposits;
- carrying out some confidential activities;
- renting safe deposit boxes;
- transactions made over the counter, if the a transaction exceeds 100000 francs, especially transactions made with cash, as: exchange value, selling or buying noble metals, paying cheques, etc.

The identity of the physical persons is checked during a preliminary face to face talk, and the presenting of some official identity cards. When someone wants to open a deposit account through correspondence, the provisions in force make some difference between the customers who live in Switzerland and the ones who live abroad.

The customers from abroad have to authenticate their signatures, and for the business customers and the associates, the checking of the identity is made through the cross-examination of what appears as registered in the institutions' register, or if we talk about associations, foundations, etc their statutes are checked. The same procedure is to be put into practice for some foreign societies.

In view of counteracting the anonymity in business, the text of the agreement contains the denomination of person empowered economically, which replaced the term of real empowered. The provisions contained by the third article from the agreement, which settled the naming of the person empowered economically, stipulates that when opening an account, a deposit or even at the beginning of the confidential transaction there are doubts concerning the identity of the person who is engaged in an agreement with the person empowered economically, the banks have to ask to the person empowered a written statement - the person is empowered economically, and if not the bank has to find out who that person is.

This kind of declarations are the so-called A form.

Beyond doubt, when establishing the identity of the subjects empowered economically the rules of the desirable secrecy have to operate for each particular case. The bank starts from the assumption that the contractual party is the same person as the person empowered economically but, in some special cases, of course the bank gives this idea up. Doubts also appear when the bank observes aspects, like the following:

- the person empowered, it is obviously not in good relationship with the

contractual party;

- from the information the bank has, concerning the financial statute of the person who wants to open an account, a deposit etc., it results that the transferred goods or brought to be checked exceed the person's financial possibilities;
- the opening of an account, through correspondence, by a person who lives abroad, who has presented an authenticated signature to the bank, but who is still a stranger to the bank;
- other special cases, which appear from the contract signed up with a customer. If the contractual party says that a third person is empowered economically, the bank has the obligation to identify his/her name, surname, address and country where he/she lives, eventually check the company, its address and the country where it has the permanent seat.

In case of serious doubts regarding the authenticity of the customer's written declaration, which cannot be eluded by giving another declaration, the bank has to stop the closing of the transaction the customer wanted to do.

The banks have always the possibility to elaborate their own forms, corresponding to some specific needs. These documents have to contain the entire text of the model form; nevertheless, the bank are not allowed to diminish or simplify the observation in the text that refers to the exceptions – foreseen by the legal provisions – concerning the banking secrecy, compulsory for the leading bodies of the banks and for the officers. The banks have to assert their customers the control over the decisions taken by the persons empowered economically through their organism of internal audit and through other similar organisms.

From the principle according to which the bank has to know the owner of the deposited goods, it was established an exception that refers to the persons obliges to keep the professional secret, protected by law.

In Switzerland, this obligation falls back on the lawyers or notary public and in this way, the above mentioned agreement from July 1987, by applying analogy principles to the members – registered – of some institutions like: the Confidential Room, Swiss Institute of Chartered Accountants.

The Swiss Bankers Association gives to the banks a list with the members of these units, the banks having just the possibility to check, every time, if a certain account administrator is a member of the association.

As regards the persons who have the obligation to keep the professional secret, the bank is obliged just to obtain, through out the B form, a declaration according to which the identity of the person empowered economically is known and that nothing betrays – after a careful check up of the circumstances in which the transaction was made – an activity developed in view of abusing of the banking secrecy.

There are two types of B form. There is form B1 – for the lawyers and the notary public who lives in Switzerland – and form B2 – for the confidants and for the Swiss goods administrators. The B form and the A form, mentioned above, may be presented in different languages (German, French, Spanish, English and Italian).

An essential element of the text that appears in both versions of the B form is the declaration according to which:

- the subject who signs it acts according to his/hers own professional obligations;
- the mandate given does not have temporary character;
- the main goal of the mandate is not to keep secret the identity of the person empowered economically when in connection with the bank.

If the person obliged to keep the professional secret is a judicial person or an association (society), the form will be signed in the company's name, in case the subject the bank is interested in is a worker or he/she makes part of the leading bodies of the bank, he cannot present to the bank the B form, he will only present the A form.

According to the information received from the Federal Banking Commission, in 1989, 30344 B forms were prepared, the banks being in the position that until 1992 – to replace these documents with A forms or with written declarations – both forms producing the same consequences – of the parties from the sealed conventions and that referred to the identity of the person empowered economically.