Advanced Research Journal
Volume 4, Number 1, 2025, 17-22
DOI: 10.71350/3062192540
ISSN: 3062-1925

Article

Tax havens: An overview

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Abstract

Tax havens have become a major challenge in the globalization era, since they are facilitating the erosion of national tax bases and enabling both legal and illegal economic activities. Despite the international efforts to reduce their power, the inability of criminal policy to effectively combat the prevalence and impact of tax havens remains a critical issue. In this paper, we argue that the failed attempts to combat the phenomenon of tax havens are related to the fact that they constitute a fundamental mechanism of the capitalist system and the unwillingness of states to deal effectively with white collar crime. Future research is needed for anti-criminal decision makers as to form effective and holistic policies.

Article History
Received 03.01.2025
Accepted 06.04.2025

Keywords
Tax havens; money laundering; tax evasion; anti-criminal policy; white-collar crime

Introduction

The main features of globalisation are the development of capital and commodity markets, the high mobility of economic transactions, the creation of new methods of payment due to the rapid development of technology and the growth of investment. In the context of capital transfers, the aim is to move them into countries where tax controls are weakened, idle political oversight is inactive and tax avoidance techniques are adopted. A safe tax shelter is therefore ensured, with main features these of confidentiality, in particular banking secrecy, secrecy and the prohibition of access to information that infringes privacy.

The Evolution of Tax Havens

In Europe, since the Renaissance, large cities such as Antwerp, Venice, Genoa and Amsterdam have been economic centres of capital concentration. This was followed by the creation of colonial states, exemplified by Belgium and the establishment of a colony in the Congo on a strictly private basis, allowing trade to flourish and capital to be hidden. Colonialists portrayed indigenous territories on the one hand as places of violent man-eaters justifying violence against them, and on the other as an idyllic place of luxury for the rich and a place for committing sexual exploitation and abuse without the fear of penal consequences.

Commercial transactions were regulated by the legal order and the rules of the powerful (lex mercatoria) prevailed. Development was a function of political sovereignty and the privileges of nation-states. The right to full jurisdiction of the state within its own territory

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and the obligation not to interfere with the sovereignty of other states was created (Denault, 2011: 27-28). The idea of the sovereign state is adopted through state sovereignty and the defense of territoriality (Treaty of Westphalia).

In their attempt to attract large corporations, islands, cities, princedoms provided tax exemptions, creating legal confusion on tax issues. These practices led to the creation of the so-called tax havens. Deneault (2011: 30-33), attributes to tax havens a number of specific characteristics in addition to the lack of taxation. Through tax havens a) the formal state is weakened as it loses resources and turns to indirect taxation which burdens the economically weaker strata, b) political elites are negatively affected, c) the economic elite becomes dominant, d) the capitalist system is strengthened and finally e) power is identified with the possession of capital.

Another important point is the evolution of some tax havens into international offshore finance centers. These centers are recognised as territories belonging to economies that have deliberately sought to attract international trade by offering low taxation and reduced or non-existent business restrictions. As a result, their economic activity is primarily focused on serving the niche, international trade and investment needs of foreign firms (Johns, 2013:20).

Tax Havens, Tax Evasion and Money Laundering

The role of tax havens is central to the process of tax evasion and money laundering, as they are one of the main routes through which this process is being achieved (Palan, Murphy & Chavagneux, 2010). As Deneault (2011:33) points out, tax havens are an unrestricted anchorage for international capital. In fact, the economic independence observed in these states and the absence of transparency also contributes to the strengthening of organised crime since it offers opportunities to hide the proceeds of unlawful activities (Paoli, 2003:152)

Tax evasion and money laundering are included in white collar crimes (McBarnet, 1991), the definition of which was introduced by Sutherland (1940) and focused on economic and business crimes, such as embezzlement, tax evasion, financial fraud, abuse of power and unfair competition between businesses. These crimes are committed by individuals of high economic and social standing in the context of their professional activities. Later, the concept of white-collar crime was broadened and now it is understood as a multitude of harmful and illegal activities, which are committed by natural and legal persons in legitimate and respectable positions who commit these illegal activities with the scope of gaining financial benefits and expanding their power (Friedrichs, 2010).

Tax evasion and money laundering can be characterized as white collar crimes. The latter belong to the spectrum of dark crime and are characterized by a high degree of invisibility and therefore their detection and punishment rates are inversely proportional to the great social harm they cause (Bonger, 1969). The causes of the high degree of impunity for these crimes are due to the selectivity of the criminal justice system and the inability of victims to recognize their victimization, resulting in a climate of tolerance towards tax evasion and money laundering. Indeed, despite the extent of the damage caused to the wider community, the majority of citizens consider these crimes to be less serious than street crime (Rosenmerkel, 2001; Karlinsky, Burton & Blanthorne, 2004).

Traditional criminology, which from the beginning refused to recognize white collar crimes as real, contributed to this. Businessmen, executives of large multinational companies and

those who held a powerful social and economic position were not considered as criminals by the traditional school of thought in criminology, but instead, any illegal activities were justified as necessary due to the complexity of economic transactions and for the sake of economic progress (Vasilantonopoulou, 2014). Thus, the criminological interest was directed towards the lower social classes, leaving the crimes of the upper social strata, such as tax evasion, untouched.

Nevertheless, the rapid expansion of the phenomenon of tax havens since 1990 and their decisive contribution to facilitating tax evasion and money laundering, which resulted in the leakage of huge financial flows from the economies of developing countries, has led to initiatives to tackle tax competition (Palan, 2009). Arriving in the early 1990s, tax havens have flourished to such an extent that 50% of international lending and 1/3 of international direct investment has been channeled through them. Thus, tax havens have become a major means of tax avoidance and played an important role on the largest drain on the economies of developing countries. This has resulted in initiatives to address harmful tax competition.

However, the applied international anticrime policy towards tax havens is limited to continuous international actions and pressure on states to implement specific measures (Vidali, 2014:103-133), which in many cases leads to opposite results. Typical cases are Directive 2003/48/EC (European Saving Directive) and the Bank Recovery and Resolution Directive (BRRD). The former refers to the taxation of savings income in the form of interest. Article 9 of this European Directive provides for the automatic notification of information, which is carried out at least once a year, within six months after the end of the tax year of the Member State of the paying agent, on all interest paid during that year (Official Journal of the European Union, 2003). Similarly, the Bank Recovery and Resolution Directive (BRRD), established the principle of bail-in, i.e. enabling banks to use their customers' deposits in the event of their potential failure (Amato & Greco, 2015). In both cases, these provisions have had the opposite effect, as they have led powerful investors to deposit their funds in less regulated jurisdictions, which are not bound by these directives (Falciani & Minguzzi, 2015; Ruggiero, 2017).

Inefficient Policies Against Tax Havens

The pretextual nature of the policies against tax havens is confirmed by the communication management of this issue. States are distinguished between ethical and immoral, depending on their degree of compliance with international guidelines and recommendations, which particularly favours European tax havens and almost legitimises their operation as such (Palan, 2009). Also, the use of grey and black lists promoting the distinction of states into tax havens and non-tax havens obscures reality, as many countries, despite not being labelled with the conventional term of tax havens, apply multiple levels of financial secrecy. Jurisdictions therefore differ in their degree of tax haven in quantifiable ways. The world is full of different types of tax havens operating under different levels of financial secrecy, and because of its breadth, the term "tax haven" cannot capture the true complexity (Cobham, Janský and Meinzer, 2015).

Another element that confirms the actuarial turn of anti-crime policy regarding the fight against tax havens is the two different directions followed in the fight against money laundering and tax evasion, the two offences directly linked to the states designated as tax

havens. In the case of money laundering, anti-crime policy consists of over-criminalising the activities concerned, as they are unilaterally linked to organised crime and terrorism.

In contrast, the measures taken to combat tax evasion are limited to the enactment of transnational agreements, such as the automatic exchange of tax information (Vidali, 2014; Douvlis, 2015). However, as anti-money laundering measures, officially triggered by the desire to combat drug traffickers and confiscate their profits, proved unable to separate the proceeds of organised crime from those of white-collar criminals, they have served to encourage the consolidation of the two offences. Consequently, the traditional reluctance to treat with white collar offenders extends to the treatment of conventional criminals, as the complex practices used to hide proceeds in tax havens make it almost impossible to ascertain whether these funds are derived from tax evasion or organised criminal activities (Ruggiero, 2017:204).

Besides, the actuarial character that has been acquired by anti-crime policy has resulted in the latter focusing on the assessment of the probability of risk and the management of crime, moving it away from the objective of effectively addressing the social causes that trigger criminal acts, such as tax evasion and money laundering. Indeed, most efforts to curb white collar crime are only made when necessary to protect the stability of the state and mitigate growing social discontent.

In this context of false impressions, state intervention criminalises more those economic activities that primarily threaten capital itself, while in those forms of criminality where business is more involved, such as tax evasion through money laundering; any state action is limited to inactive provisions or rhetorical declarations. It is no coincidence that so many organisations have been set up and so many international conventions have been signed to prevent corruption, but so far the system of financial crime continues unabated. Thus, state control over business is avoided or exercised to a certain extent, so that capital does not feel threatened in order to avoid it to migrate to more favourable economic havens (Snider, 1991; Vasilantonopoulou, 2014).

Conclusion and Implications

The existence of tax havens is not just a diversion of the capitalist system, but a fundamental mechanism that functions as a means of relieving the pressure exerted by tax and regulatory policies, ensuring the perpetual flow of capital at the international level. Through them, large multinationals, financial elites and criminal networks exploit loopholes and favourable regulations, by means of tax evasion, tax exemptions and money laundering from illegal activities such as drug trafficking and arms trafficking.

Despite efforts by international organisations and governments to curb the phenomenon, the measures taken are either inadequate or deliberately ineffective. The very economic and political structures that shape the global system favour the maintenance of this 'grey zone', where wealth is concentrated in a few hands, far from social obligations and tax requirements. Further research is needed on using block chain technology by financial institutions and regulatory authorities (Pappa, et al., 2024: 98-99) as a useful tool to unveil money laundering practices (Pappa, Georgitseas and Tantis, 2024) and bridging the gap between tax havens, money-laundering and block chain technology enriching the existing literature review.

Declarations

Authors' contributions: Both authors contribute jointly to the whole manuscript.

Competing interests: The authors declare that they have no competing interests.

Funding: This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

Publisher's note: Advanced Research Journal remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

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