TRENDS IN INTERNATIONAL TAX PLANNING: NEW QUALIFICATIONS AND TAX JURISDICTION SHOPPING

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Abstract

In 2015 the unprecedented leak of 11,5 million files from Mossack Fonseka, one of the world's biggest offshore law firms, echoed around the globe after demonstrating variety of sophisticated ways in which the wealthy can use offshore tax jurisdictions. It brought public concern about tax evasion to an exceptional level and put pressure on governments to make world financial system even more transparent. The Panama Gate became a strong trigger to start the last phase of new international tax control system formation.

Six years before, in 2009, a meeting was held by The Organization for Economic Co-operation and Development (OECD) in Mexico City. Although the official agenda pointed at transparency and global economic growth as targets, some commentators described the goal of this gathering as "creating a global high-tax cartel". The practical output of this meeting was establishment of the new global "tax standard" based on a wide information exchange between the tax authorities. The OECD negotiators persuaded eighty-seven states to join the standard.

Since 2010, with the enactment of the Foreign Account Compliance Act, known as FATCA, by the United States, the free flow of money, which seemed to be an essential attribute of open market, doesn't look that free any more. FATCA now requires non-US financial organizations – foreign financial institutions - to implement advanced compliance system and report directly to the US Internal Revenue Service (IRS). Due to the size of the US economy and globalized world economy the number of those affected directly or indirectly is overwhelming.

The article is analyzing changes in international tax planning as a business process and a type of consulting service through research of regulatory changes and law enforcement practices worldwide. Particular focus will be made on several jurisdictions that used to provide or still offer now beneficial tax regimes.

Keywords: *tax planning, tax optimization, low tax jurisdiction, offshore, compliance*

1. Introduction

The fundamental changes in international tax regulations taking place in the course of last two decades have virtually redrawn international financial systems, letting the freedom of capital movement become history and turning the banking secrecy into a combination of words with no semantic meaning. This all happened within twenty years after governments leaded by OECD adopted their views that tax havens or offshores were causing the tax shortfall in the industrialized countries. That changed the hierarchy of the core principles in regulating international markets. Freedom of entrepreneurship was widely replaced by the principles of tax harmony, avoidance of tax competition, transparency and ability of governments to get "fair share".

The described situation inevitably caused transformation of tax planning process for companies and individuals. Though changes were stretched in time, the comparison of the tax-planning process twenty years ago and today would bring us to "revolution" as a more appropriate characteristic of this change rather than "evolution". It is not just that tax planning is far more difficult now than it has ever been before but it is also about the revision of the very nature of this process.

With a very slight degree of exaggeration we can state that the practice of international tax, enforced by the developed countries, turned to consider governments the ultimate clients of banks and even tax advisors. In fact, one of the main concerns for a modern bank now is to dutifully make sure all clients and their operations fully comply with all possible rules and "recommendations" of regulative authority, which means complying with the dictates of every tax system worldwide in case bank works with any type of foreign transactions. International tax planners and advisors have been transformed into agents of the tax authorities spending time and clients' money on researching numerous complex regulations.

There were several publications released in recent years covering various topics of new tax planning reality. A comprehensive review of planning techniques without taking into account a specific jurisdiction was made in 2017 by authors of "Fundamentals of international tax planning" edited by Raffaele Russo[1], which is a new edition of previously published work. A more practical guide to international tax planning incorporating real life case studies was published by Rohit Gupta in 2015 under the title "Principles of International Tax Planning"[2]. One of the

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[1] Russo, Raffaele, ed. Fundamentals of international tax planning. Amsterdam: IBFD, 2017.

[2] Gupta, Rohit. Principles of International Tax Planning. Taxmann, 2015.

most recent comprehensive publication under the title "Principles of International Taxation" by Lynne Oats, *Angharat Miller, Emer Mulligan presents tax planning in a global context, explaining policy, legal issues and planning points central to taxation issues*[3].

Some more specific studies address particular jurisdictions or types of business planning activities. In 2018 and 2019 several publications appeared reviewing tax planning issues for particular countries in regards to specific types of businesses. The 4th Edition of International Taxation in Canada - Principles and Practices, by Jinyan Li, Arthur Cockfield, J. Scott Wilkie released in 2018 provides a Canadian view on policy governing international tax rules as well as how foreign tax laws interact with Canadian laws[4]. Meyyappan Nagappan published "The Indian approach to taxing virtual presence" analyzing complex nature of taxing IT services[5], "Chile's approach to the taxation of the digital economy" by Manuel José Garcés addresses related issues but with the focus on Chile and MERCOSUR regulations[6]. Due to the dynamic nature of the subject, earlier publications can mostly be used as a good source of information to conduct a comparative study and review changes in international tax planning.

This article focuses mostly on identification of trends in international tax planning rather then on a comprehensive research of tax planning mechanisms and practices or tax regulation in particular jurisdiction. Such study based on analyses of legislation and real cases from various jurisdiction with particular attention to problem of tax planning qualification, tax compliance growing importance and nature of modern tax jurisdiction shopping will enable drawing conclusions on what is tax planning process now after such drastic policy changes that took place in course of last two decades.

2. Tax optimization and its legal qualification

The legality of the very idea of business allocation and structuring aimed at tax optimization is widely questioned. Many governments strongly believe that taxes do not distort the allocation of resources by private enterprises and therefore companies which consider taxes as a cost of business operations should be treated as engaging in illegal activities. This thought that would sound ridiculous twenty years ago is becoming the dominant point of view for the world tax authorities. Yet in 2017 in the article "New trends in international tax planning and international tax control"[7] , I was referring to the IRS website recommending US taxpayers along with other useful tips to choose the corporate structure and place for domiciliation so that a business would pay minimal taxes. This recommendation is not there anymore. It was replaced by a much more neutral one. "The business structure you choose influences everything from day-to-day operations, to taxes, to how much of your personal assets are at risk. You should choose a business structure that gives you the right balance of legal protections and benefits."[8] The broad interpretation of this text still allows the entrepreneur to infer that tax optimization criteria is something that is allowed to be considered while choosing the corporate structure, but it is now far more ambiguous. It would be still wrong to say that new tax philosophy is that private business operations generate the maximum tax for the government to distribute to various social groups but the shift in tax policies that could be observed in a course of the last ten years is drastic. Earlier, tax planning consisted of jurisdiction shopping, proper business structuring, meaning potential necessity to split business between several units, selection of appropriate corporate form, structuring business processes the way it would minimize the tax base, consider all possible allowances, deductions, rebates, exemptions, and so on as well as any other imaginable measures to diminish tax burden as soon as they are not directly forbidden by law. Now most of these steps moved to the "gray zone" and are often treated as illegal. So, what is the extent to which entrepreneurs are still free to do anything to structure their businesses in case such activities cause tax savings?

There is no unequivocal answer. Practice of courts and tax authorities worldwide allows to say that the criteria widely applied are whether such structuring, choice of jurisdiction and other steps were *exclusively* or *predominantly* aimed at benefiting from tax savings or there were other business-related motivations. The Supreme Arbitration Court of Russia on 12.10.2006 adopted a Resolution N 53 "On evaluation of the validity of tax savings" which interprets as unjustified tax saving any mode of taxpayer's behavior different from the most reasonable behavior from commercial point of view and having tax saving as a main purpose.

The practice formed in the United Kingdom adds to this that tax planning can be seen as aggressive and hence potentially illegal "when it involves using financial instruments and arrangements not intended as, or anticipated by governments as a vehicle for tax

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[3] Oats, Lynne, Angharad Miller, and Emer Mulligan. *Principles of International Taxation*. Bloomsbury Professional, 2017.

[4] Li, Jinyan, Arthur Cockfield, and J. Scott Wilkie. *International taxation in Canada: principles and practices*. LexisNexis Canada, 2018.

[5] Nagappan, Meyyappan. " *Intertax* 46, no.6 (2018): 520-540.

[6] Garcés, Manuel José. "Chile's approach to the t" The Indian approach to taxing virtual presence.axation of the digital economy". International Bar Association, February 28, 2019.

[7] Troitskiy, Vladimir. "New trends in international tax planning and international tax control". *The Scientific Opinion. Economic, juridical and sociological sciences,* no. 2 (2017): 24-34.

[8] "Starting a business", Internal Revenue Service, accessed February 21, 2019, https://www.irs.gov/businesses/small-businesses-self-employed/starting-a-business

advantage. For example, the use of overseas tax havens."[9]

Many countries now have an extensive system of laws and practices designed to preserve national tax base by preventing income from being shifted among related parties through the inappropriate pricing of related party transactions. They try to enforce the transfer pricing regime, ensuring goods and services transferred between related companies are done so transparently and are priced based on market conditions that permit profits to be reflected in the appropriate tax jurisdiction. That often means that any type of business splitting among various entities which governments don't like is considered a usage of tax shelter that increases the tax gap. Based on that, entrepreneurs can suddenly face the situation when there is a bureaucratically determined taxable "profit" under some governmentally developed theory of pricing. Moreover, by not paying of this artificial "price", the company, either domestic or foreign, could not only be civilly liable but criminally liable as well. Needless to say, that fair transfer pricing criteria may differ from one country to another and eventually generate collisions when two or more tax authorities will figure that particular business unit earned the biggest share of profit in their country.

The borderline is not yet drawn, however the legitimacy criteria of tax optimization are not where they used to be before, meaning "Everything is allowed unless it is directly prohibited by the law". The line has significantly shifted towards a much more conservative form of tax planning but new coordinates will be determined by further regulations and mainly by the enforcement practice.

3. Tax compliance as a key factor for modern tax planning

Whenever tax optimization struggles for its right to remain essential part of international tax planning, tax administration and compliance have gained core positions. Modern international tax compliance is undoubtedly a heavy burden for entrepreneurs involved in any type of international commerce. The 2018 Report by the US National Taxpayer Advocate[10] points that the most serious problem facing taxpayers – and the IRS – is complexity of Internal Revenue Code (the "tax code"). It takes "excessive time, hiring costly professional tax preparers and using costly computer software, obscures comprehension, facilitates tax avoidance, and undermines trust in the tax system, among many other problems"[11]. The tax compliance became itself the critical factor for tax planning: even big companies are to consider not only financial consequences of applying one or another tax architecture but costs and risks related to tax planning as well. Governments are quite aggressive in doing various tax audits, which affect not only transnational corporations but also regional businesses on very early stages of international expansion.

The described constitutes a new Non-Tariff Barrier (NTB) for international trade and investment. Popular NTB description as restriction that results from prohibitions, conditions, or specific market requirements that make importation or exportation of products difficult and/or costly[12] totally fits characteristics of modern compliance requirements and tax audit practices. Whenever NTBs traditionally are thought of as unjustified and/or improper application of Non-Tariff measures such as sanitary and phytosanitary measures and other technical barriers to trade applied by foreign government, tax compliance and audit measures are often barriers built by the company's national fiscal authorities. This behavior conceptually is based on two beliefs which are popular among modern political establishment and tax bureaucrats. First is considering any business unit a part of national welfare and thus ought to not only contribute to the growth of GDP and create jobs but also generate maximum tax for the government that would be further distributed among different social groups. The attempt to retain part of the profit by optimizing tax burden is associated with cheating and taking money from someone. Voices of governments and social activists in the US, Europe and the rest of the world keep counting how much tax revenues "they" are losing due to offshore tax abuses. Some researchers point at about 70 billion US dollars that United States is losing every year due to the shifting of corporate profits to tax havens[13], while the official sources (Parliament Sub-Committee on Investigations of the United States Senate) report 100 billion[14]. For European Union the hypostatized numbers mount to 75 billion US dollars a year[15] as revenue costs of tax havens. The credibility of these numbers is much under doubt. Mostly, these are very rough estimations lacking real methodology and primarily aimed to raise the question of some extent of

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[9] Cable, Vincent. 2009. "This crisis must spur us to take on the tax avoiders". *The Guardian*, February 2, 2009.

[10] The US National Taxpayer Advocate is appointed by the US Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget.

[11] "Written Statement of Nina E. Olson before the Subcommittee on Taxation and IRS Oversight Committee on Finance, United States Senate. Subject: Hearing on Improving Tax Administration Today. 07/26/2018", National Taxpayer Advocate Congressional Testimony, accessed February 26, 2019, https://taxpayeradvocate.irs.gov/about/our-leadership/testimony

[12] "Understanding the WTO - Non-tariff barriers: red tape, etc.", World Trade Organization, accessed January 20, 2019, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm

[13] Zuchman, Gabriel. "How Corporations and the Wealthy Avoid Taxes (and How to Stop Them)". *The New York Times*, November 10, 2017.

[14] "Tax Haven Banks and US tax compliance ", Government Publishing Office [US], accessed February 15, 2019, https://www.govinfo.gov/content/pkg/CHRG-110shrg44127/html/CHRG-110shrg44127.htm

[15] "Why tax havens must go!", CATDM, accessed March 2, 2019, http://www.cadtm.org/spip.php?page=imprimer&id_article=13847

additional taxes that might be paid by corporations and individuals in the country, which are not paid or paid somewhere else affecting national interests. The interests of shareholders who invested capital and are carrying all risks are considered as having subsidiary nature. Higher tax burden is an obvious decelerator of business growth and demotivation of entrepreneur incentives. The extent to which entrepreneurs will continue to generate comparable revenues when forced to give bigger share of their earnings to a third party have never been estimated.

Second belief is that tax compliance rules and expenses do not have significant impact on international trade and investment. This statement could be hardly treated as something other than a speculation. According to the World Bank, a low cost of tax compliance and efficient procedures can make a significant difference for firms[16]. The so-called Munich group, a research center consisting of the Center for Economic Studies (CES), the Ifo Institute and the CESifo GmbH (Munich Society for the Promotion of Economic Research), is regularly publishing research with deep analysis on how corporate taxation and regulatory requirements affect the localization of financial sector. Their results show obvious negative effect of host country taxes on the probability of choosing a particular host location. They also demonstrate a strong influence of regulatory compliance environment. The stronger (more expensive, complicated, time consuming) are the compliance requirements the smaller is the chance of choosing particular jurisdiction by the businesses.

4. Banking compliance

Banks are not the same type of institutions they used to be throughout their history. Forced by OECD, IRS, national central banks and tax authorities they turned into effective agents of the regulators and tax collectors. Such term as bank secrecy becomes anachronism. Banks cannot be recognized as reliable or client-oriented similarly as one cannot call reliable or client-oriented the tax collector because they are not just providing services but withdraw client’s earnings, though sometimes in a very polite way. Things were changing gradually but an active phase of this shift happened after the financial crisis of 2008. Many countries have seen a need to restrict banks’ national and especially international activities. They went unprecedentedly far introducing restrictions and controls. More and more global banks complaint about excessive compliance costs associated with stricter regulations. Many financial institutions reconsider their international strategies as the costs of being global often exceed benefits thereof.

For example, the estimate costs for a bank to meet FATCA compliance requirements might average at 10$ per account per month[17]. For smaller banks expenses per account are higher as they have to distribute fixed costs on installing software among fewer clients. This became a barrier for many European banks to enter markets of some types of financial services. It turned into a worldwide trend that non-US banks are just denying to provide services to any individuals and corporation residing or by any mean related to the United States. Many financial institutions in Eastern Europe, especially in Baltic States, went further and totally ceased all bank settlements in US dollars except intra-bank operations.

The basic principles of banking regulations have shifted. For example, paragraph 3 Article 845 of Russian Civil Code states: “The bank shall have no right to determine and control the trends of using the client's monetary funds and introduce other restrictions on his right to dispose of cash at his discretion which are not provided by the law or the bank account agreement”. Article 849 adds: “The bank shall be obliged to charge cash placed on the client's account within the day that follows the day of the receipt by the bank of the relevant payment document, unless the bank account agreement provides for a shorter period. The bank shall be obliged to pay out cash or transfer it from the depositor's account within the day that follows the day of the receipt by the bank of the relevant payment document, unless the law, the bank rules introduced in accordance with it or the bank account agreement provide for different time-limits”. 10 years ago, Russian Central bank was actively penalizing banks for any delays in executing wire transfers or refusal to withdraw cash. The bank license could be suspended as a result of repetitive violations of that type. It is not that case anymore. Banks in Russia and all over OECD can virtually block anyone’s accounts with minor suspicion of the account owner carrying malicious operation or formal refusal to present activity related documents. Financial institutions got the right and sometimes obligation to request almost unlimited amount of information and documents, including those containing trade secrets or personal data. Being “de facto” turned into another law enforcement institution, banks had to change core basics of their businesses.

Bank compliance became also a tool to stop wide use of offshores. Once again suppressed by OECD and IRS, banks just stopped opening accounts to offshore companies thus making even survived tax havens useless for international businesses. The old account holders were gradually forced to close their accounts or disclose ultimate beneficiaries.

[16] “Why do tax rates and tax administration matter?”, Doing Business – World Bank Group, Accessed March 10, 2019, http://www.doingbusiness.org/en/data/exploretopics/paying-taxes/why-matters

[17] Wood, Robert W. “FATCA Carries Fat Price Tag”. *Forbes*, November 30, 2011.

5. New jurisdictions and tax havens

While traditional jurisdictions are increasing their transparency levels and closing doors to foreign businesses, some new players come to the empty market. The jurisdictions with growing popularity could be divided into three groups.

I. Previously known as relatively low tax jurisdictions that try to adjust legislation in order to formally meet the OECD criteria to be removed from various grey and black lists. United Arab Emirates, Singapore, Hong Kong, Cyprus and some other countries and territories are examples of this class. Normally, they bring up costs of maintaining a company to foreigners by introducing requirements of presence in the country, meaning owning or renting real office (not a post box), hiring at least some local employees (normally 3 to 6) and reporting regularly to the local tax authorities. That allows these jurisdictions to claim that they are not tax havens but countries with friendly environment for "local companies" carrying international operations. Such jurisdictions are normally successful in case of having relatively developed national banking system. The transparency is reasonably high and requests disclosure of beneficiaries and at least formal explanation of income sources.

II. Jurisdictions that have never been considered as "offshores" but are proposing businesses formally moving to their territory a relatively low tax burden. Romania, Latvia, Estonia, Montenegro, Bulgaria, Paraguay are belonging to this category. All of these countries request regular tax reporting and accountability but under some conditions allow using either very low tax rate or even avoid paying some or all of the taxes.

For example, Romania imposed a special tax regime for micro-companies. Under the condition of having a maximum revenue of 1 million euros (EUR) at the end of the previous year, the income tax rates could be as low as 1% for micro-companies with one or more employees and 3% for micro-companies with no employees. Hence for companies carrying no operations inside the EU (meaning they are not subject to VAT taxation) the overall tax burden can be effectively limited to 1%[18]. Estonia is another example. All undistributed corporate profits in this country are tax-exempt. This exemption covers both active and passive types of income as well as capital gains from the sale of assets, including shares, securities, and real estate. This tax regime is available to Estonian resident companies and permanent establishments of non-resident companies that are registered in Estonia[19]. The transparency level and corporate data accessibility differs from jurisdiction to jurisdiction. Estonia has one of the most IT developed governments and its registers are open and easily accessible. Paraguay, on the contrary, doesn't have any open corporate or tax register.

III. The third group is presented by the only state that is the major economic power in the modern world. And this example is mostly not about low tax burden but about low transparency level. FATCA enables the government of the United States to obtain the most intimate of individual financial information, financial relationship, and future financial plans. This expansion of power is being exported out of the US via intergovernmental agreements to other countries, which then coordinate their exchange of information. These agreements are made through a simplified procedure and do not need approval of Congress. Even more effective mechanism for spreading FATCA is through direct enforcement of banks worldwide to search their records and to report to the IRS about any individuals having connection to the US.

Although the United States is fully devoted to the target of obtaining all possible tax information from all foreign sources, the US tax information collection machine is not working in a reciprocal way. It is against the US law to provide information about any taxpayer's affairs unless the US has signed a treaty that allows such information exchange. US is not part of OECD Automatic Exchange of Information (Common Reporting Standards) and has not so many bilateral treaties on financial or tax information exchange. This makes the situation when a non-US resident owns a US company or account is quite the opposite stance to the situation when a US resident opens an account in Europe or anywhere else. In real life, this almost fully shields the foreigners' US financial activities from the scrutiny of foreign tax authorities. The situation does not look like something temporary. In 2017 a bill named "The International Counter-Money Laundering Act" was turned down by the Congress. This bill would have given foreign authorities the right to ask US banks to release customer information based on "reasonable grounds". The US congress was firm to keep financial information secrecy even though FINCIN (Financial Crimes Enforcement Network – part of US Treasury department) reported before Congress hearings that almost $300 billion US dollars is laundered in US each year.

The corporate registers are available online in most states. However, only directors and officers are listed in the registers. Furthermore, there are easy ways to hide their names using legal nominee services or registering a factitious DBA (doing business as) name and placing it into the registers. Hence, any foreigner

[18] "Romania - Taxes on corporate income", Worldwide Tax Summaries, accessed March 1, 2019, http://taxsummaries.pwc.com/ID/Romania-Corporate-Taxes-on-corporate-income

[19] "Estonia - Taxes on corporate income", Worldwide Tax Summaries, accessed March 1, 2019, http://taxsummaries.pwc.com/ID/Estonia-Corporate-Taxes-on-corporate-income

keeping his funds either on his own name or on the name of a corporation in the US has really low chance to be disclosed to his national tax authorities. There are virtually no "know your customer" mandatory regulations in US requesting disclosure of actual owners of a limited company or corporation.

The US active participation in international anti-offshore campaign may be used in the future by other nations as a precedent to force the US authorities raise taxes and step to more transparent policy, but it doesn't look like something that can change the situation in the next few years.

In addition to extremely low transparency for foreign businesses' data, US tax legislation offers "inshore" low tax jurisdictions like Delaware, Vermont, Nevada, Alaska, Rhode Island or Kentucky that virtually turn United States into the dominant safe-haven in the world. Several of the named states have recently enacted legislation allowing the establishment of structures, which previously were an attribute of offshore notoriety. For example, Alaska and Delaware have passed asset protection trust law. Montana and Colorado have established onshore financial centers offering foreign investors exemption from estate tax as well as financial privacy and advanced asset protection.

If the US limited company is fully owned by the foreigners and operates foreign sourced transactions with other non-US entities there is no US tax implied. However, for the rest of the world such transaction will look as a transaction with US company and will not arouse any suspicions.

For individuals the US tax system also provides a myriad of tax avoiding opportunities. For example, the US has relatively high estate tax ranging from 18% to 40%. However, it could be fully avoided by foreigners. The criteria for applying estate tax is not based on residency, but on whether the alien is domiciled. Hence the non-US individual who may be resident in the US for the purposes of income taxation may not be considered to be domiciled in the US and consequently can avoid exposure to the US estate and gift tax by using any foreign corporation.

The US 30% withholding tax on dividends, interests and other fixed periodical income paid to foreign persons. But US tax legislation gives a special benefit to foreign investors. Foreign investment paying interest can be structured as "portfolio debt" which can legally pay interest free of any withholding tax. Such debt structured as debentures are allowed to be in bearer form, which gives the highest possible level of anonymity.

In case a foreigner is not doing real business or trade in the US and simply parks his capital in a US bank, insurance company or other type of financial institution in form of a deposit, the interest earned is qualified as foreign-sourced income and is not taxable in the United States. Besides, as such funds are deemed to be foreign property, they are not subject to estate tax as well.

Foreigners investing on stock exchange independently on the amount and frequency of operations are not subject to capital gain tax on securities transactions.

These benefits obviously do not cover all business needs and all possible situations but are an effective mechanism to attract international businesses. However, these advantages come at a cost. The US tax legislation is convoluted, the tax code is very complicated and precedents volume is enormous. The tax advisors are costly and need to be highly qualified to guide clients through an extremely complicated tax system. Moreover, there are significant discloser requirements set by IRS and sometimes by the state authorities. Hence, the US is an attractive jurisdiction for those businesses and individuals that can allow high level of tax professionalism, costly tax consulting and are ready to restructure their business architecture.

6. Customized jurisdiction solutions

Years ago, costs of company establishment and maintaining were key criteria for picking particular jurisdiction. Nowadays, both survived offshores and low tax jurisdictions are customized to accommodate particular types of businesses. If businesses are closely tied to the ground and physical presence are hardly objects of international tax planning through tax optimization, some new and old businesses which have little connection to particular territory can highly benefit from international corporate architecture.

For example, traditional intellectual intangibles obviously have tremendous value for the global business. They have no actual physical presence. There are hardly many good reasons for entrepreneurs to hold intellectual property in a high tax jurisdiction when by means of sophisticated tax planning the exposure to tax can be limited or avoided in a low or no tax country. Especially if such jurisdiction is participating in major international treaties on intellectual property and has a developed double taxation avoidance treaty network.

Another example is related to Internet businesses. Cyberspace is a new humongous business environment, which undermines traditional relationship between what is considered legally significant and physical presence. World wide web is gradually eroding the direct connection between geographical location and business activities, thus dramatically mitigating power of governments to control online businesses and the ability of physical location authorities to cover cyberspace by its regulations.

As states are still an important social institution even most of IT businesses need to have a harbor. Creating such harbors became a priority task for some traditionally "offshore" jurisdiction. Unable to continue their "no tax for everyone" regime they compete in creating more attractive climate and regulation for those who by the nature of their businesses are almost not depending on major regulators. Switzerland, Puerto Rico and Singapore are working hard to be pioneers in

accommodating various blockchain project, facilitate use of crypto currencies and introduce regulations for advanced business technologies like smart contracts. This might eventually turn into a world where major businesses would exist without being covered by any government regulations. However, this trend is only in its nascent stage and is beyond the scope of this article, thus, requires a separate research.

Conclusions

Last decade brought tremendous changes to international tax planning as a service and as a business process. The legality of tax optimization as a form of retaining part of personal or corporate earnings by means of using foreign companies is widely questioned by governments and OECD. Banks, financial institutions and tax consulters have deviated from their traditional roles and converted to executers of governments' policies requesting full transparency, compliance, disclosure and total governmental control over any international monetary or asset transactions.

Traditional "no tax" jurisdictions are disappearing as a result of international tax and monetary authorities pressure on their government and on banks carrying international operations.

Simultaneously some new tax planning opportunities have appeared as a response to ubiquitous tightening of international tax regulation. Some of these new solutions brought growing popularity to the new "low tax jurisdictions" which were not qualified as offshores before. Estonia, Latvia, Hungary and Romania became comfortable European shelters for some businesses agreeable to some level of transparency and regular reporting and prepared to pay a very low tax calculated based on revenue. Same characteristics can be given to jurisdictions from other parts of the planet like Paraguay or Georgia. Few traditional "offshores" like UAE and Singapore are trying to preserve their place on this market by implying rules demanding some extent of physical presence in their country meaning having real office space and some paid employees in order to formally avoid being qualified as offshores. Surprisingly, one of the quickly growing safe harbors is the United States with its extremely low transparency level for foreign authorities due to not participating in Global Reporting Standard and tax regulations in some states allowing international businesses to effectively minimize their tax burden.

Another tax planning opportunity is related to customization of jurisdictions to be capable to accommodate particular types of businesses especially having low connection to particular territory. IT businesses and particularly businesses based on blockchain technologies are to be the easiest ones to accept formal link to any territory that will provide better environment and lowest tax. In the future, this trend may further develop in fleeing of many businesses out of any governmental control and regulations and this topic deserves separate research efforts.

References

- Cable, Vincent. 2009. "This crisis must spur us to take on the tax avoiders." *The Guardian*, February 2, 2009. https://www.theguardian.com/commentisfree/2009/feb/03/vince-cable-tax-revenue
- CATDM. "Why tax havens must go!" Accessed March 2, 2019. http://www.cadtm.org/spip.php?page=imprimer&id_article=13847
- Garcés, Manuel José. "Chile's approach to the taxation of the digital economy." International Bar Association, February 28, 2019. https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=D3E7922E-930F-4B12-B11A-B56EBC0EA3DA
- Government Publishing Office [US]. "Tax Haven Banks and US tax compliance." Accessed February 15, 2019. https://www.govinfo.gov/content/pkg/CHRG-110shrg44127/html/CHRG-110shrg44127.htm
- Gupta, Rohit. *Principles of International Tax Planning*. Taxmann, 2015.
- Internal Revenue Service. "Starting a business." Accessed February 21, 2019. https://www.irs.gov/businesses/small-businesses-self-employed/starting-a-business
- Li, Jinyan, Arthur Cockfield, and J. Scott Wilkie. *International taxation in Canada: principles and practices*. LexisNexis Canada, 2018.
- Nagappan, Meyyappan. " The Indian approach to taxing virtual presence." *Intertax* 46, no.6 (2018): 520-540.
- National Taxpayer Advocate Congressional Testimony. "Written Statement of Nina E. Olson before the Subcommittee on Taxation and IRS Oversight Committee on Finance, United States Senate. Subject: Hearing on Improving Tax Administration Today. 07/26/2018". Accessed February 26, 2019. https://taxpayeradvocate.irs.gov/about/our-leadership/testimony
- Oats, Lynne, Angharad Miller, and Emer Mulligan. *Principles of International Taxation*. Bloomsbury Professional, 2017.
- Russo, Raffaele, ed. *Fundamentals of international tax planning*. Amsterdam: IBFD, 2017.
- Troitskiy, Vladimir. "New trends in international tax planning and international tax control". *The Scientific Opinion. Economic, juridical and sociological sciences,* no. 2 (2017): 24-34.
- Wood, Robert W. "FATCA Carries Fat Price Tag". *Forbes*, November 30, 2011, https://www.forbes.com/sites/robertwood/2011/11/30/fatca-carries-fat-price-tag/#4cecf8b64ae9

- World Bank Group. "Why do tax rates and tax administration matter?". Accessed March 10, 2019. http://www.doingbusiness.org/en/data/exploretopics/paying-taxes/why-matters
- World Trade Organization. "Understanding the WTO - Non-tariff barriers: red tape, etc." Accessed January 20, 2019.
- https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm9_e.htm
- Worldwide Tax Summaries. "Estonia - Taxes on corporate income." Accessed March 1, 2019. http://taxsummaries.pwc.com/ID/Estonia-Corporate-Taxes-on-corporate-income
- Worldwide Tax Summaries. "Romania - Taxes on corporate income." Accessed March 1, 2019. http://taxsummaries.pwc.com/ID/Romania-Corporate-Taxes-on-corporate-income
- Zuchman, Gabriel. "How Corporations and the Wealthy Avoid Taxes (and How to Stop Them)". *The New York Times*, November 10, 2017, https://www.nytimes.com/interactive/2017/11/10/opinion/gabriel-zucman-paradise-papers-tax-evasion.html