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OFFSHORING AND FINANCIAL MARKETS

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ABSTRACT

During the 20th century all economic structures underwent the impact of two epochal phenomena, the communications revolution and the financialization of economy. As a consequence of the never ending technological progress, the first has repeatedly reduced the friction of distance, provoking a radical change in the map of locational advantages. The result was a new model of international distribution of production that projected its effects to the core of business management, triggering a disintegration of production cycles in contrast with the integrative pattern typical of the first industrial revolution.

The second phenomenon, strictly linked to the first one, apparently regards only the tertiary sector, but in reality it is becoming the driving force that influences, directly or indirectly, a growing share of corporates. It follows that the reassuring models of spatial economy theorized during the 19th and 20th centuries (Thünen, Weber, Christaller), despite their updates (Berry, Hoover, Alonso etc.) are no longer suitable to understand the present-day economic landscape.

At the same time it appears of primary importance to define a model of financial space, shaped by the intertwining of capital movements, as a sort of virtual reality largely superordinated to the real economic world, the latter receiving from the former the impulses which command the geographical distribution of productions. Obviously in the frame of a globalized economy the geographical range to be considered is the whole of our planet.

Following the postulates at the basis of an isotropic space, where we must arrange both homogeneous and heterogeneous phenomena, various approaches are available. In fact we may begin studying a) the areas considered homogeneous according to some parameters concerning the capitals market; b) the “strong points” (representing concentrations of financial capital); c) the “discontinuity faults”; d) the capital flows itself. In the present work that is part of a wider effort to formalize the subject we focus a peculiar type of discontinuity surfaces, the so-called “tax havens”.

In the economics domain, tax havens are the tantamount of black holes in astrophysics. These latter swallow matter and eject energy and water. What the two concepts have in common is a deep transformation of the input and the capacity to modify the surrounding environment, changing its architecture and the way it works.

With the emergence of the financial crisis in 2008 the subject of tax havens has attracted growing attention from the governments of the leading Western economies. This stimulates the economic geographer to fill the academic gap and make the subject more readable. On the basis of real cases that have recently gained wide publicity we outline the role of such institutions in the financial space.

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1. Foreword

The literature about tax havens and offshoring at large is particularly abundant, especially in economics, business studies and law. This might induce the geographer to give it up and concentrate on less studied subjects. At the same time, the awareness that a geographer's vision on the matter is lacking and that without a deeper comprehension of the mechanics of finance any interpretation of contemporary world is impossible represents an intellectual provocation.

This paper is presenting one of the first results of this investigation. Others have been already presented to the Eurogeo meeting in Bruges (May 2013).

2. The nature of the offshore world

In the present international system anybody can promote a company abroad and operate through it not only in a different state but worldwide. To this purpose, any jurisdiction located outside the state of residence is considered offshore as regards the jurisdiction internationally recognized where the actor takes his official residence. This means that the whole world is offshore to any state, offshore becoming a synonym of foreign jurisdiction.

In the past only the economic elite could afford operating abroad, thanks to the consensus of the political authority. Such activity was the bulwark of banking and finance companies that specialized in the transferring of capitals. Nowadays, owing to the generalized growth of wealth this capacity has been spreading to an ever enlarging social group. As the advertising of a company specialized in enabling these activities reads: "with a moderate cost and new rules common businessmen and professionals can avail themselves of offshore strategies to protect their business, their properties and exploit their advantages" (Prime Investment, 2013).

Why do they do it? The company's website is explicit: to benefit of

- low tax and fees requirements with reduced and controlled charges;
- the protection of savings and real estates;
- minimal formalities for the company's management and bookkeeping;
- strict protection of bank secrecy
- favorable rules for the setting up of financial services
- the possibility to issue anonymous bearer shares.

The list, though concise, is undoubtedly revealing that in the essence the aims mentioned to the potential clients are fiscal elusion and tax evasion towards all states.

To the man in the street, this is possible thanks to the so-called *tax havens*, but in reality the phenomenon is widely diffused. In the globalized world all countries are competing, each of them for managing the factor of production *par excellence* - capital. To this purpose they equip

themselves to become attractive towards all foreign residents who are looking for new ways to increase their wealth. As a consequence, this praxis is involving, more or less, almost all countries.

“As terms, the words *offshore business* and *offshore company* have no precise legal, tax or general business meaning, as the word *offshore* often means nothing more than *anywhere other than the place of physical location of the person using it* (i.e. overseas). Many companies are incorporated in the many onshore countries which have tax regimes that are by statute tax advantageous for specific international purposes (...). The word *offshore* is more complex than the black-and-white tax world inhabited by the media. Offshore business consists not only of tax havens but also of onshore high tax countries fiercely competing to attract international companies and individuals with all manner of tax planning, regulations and opportunities. So today the offshore world includes structures domiciled in high tax onshore countries as different as the UK, Portugal Austria, Switzerland and the Netherlands.” (Ocro, 2013).

A glance at the conditions offered by Great Britain is enlightening. Here the final burden is generally lower than elsewhere and many taxes and fees simply don't exist. In the UK one can incorporate a limited liability company, ready to perform whatever activity also on the international market in just three working days. To further reduce the technical time required, there is availability of ready-made companies, incorporated six months to two years in advance. That is, a market of empty shells.

One wonders which kind of urgency would justify the need to avail oneself of a ready-made company in one day. Perhaps to take part in an expiring competitive tender? Or to put a sum of hot money safely away? As for the details, one learns that the company accounts are not compulsory when the turnover is less than GBP 350,000. At the end of the fiscal year one must only file a copy of the Annual Returns to the Register of Companies in Cardiff. The VAT number is not compulsory for turnovers less than GBP 55,000. The Corporation/Company Tax Return is to be filed only by those with a regular activity. Dormant accounts have only to file an informal return to the Inland Revenue every year. These are regulations clearly written for dummy companies.

Another noteworthy jurisdiction as for company regulation is Delaware. A member state of the American Union, it hosts 40% of the companies listed in the New York Stock Exchange. The shares are registered, but the partners indicated at the incorporation are not reported in any list or registry. So they are, *de facto*, anonymous.

“One gets the maximum operative advantages for the Limited Liability Companies (LLC) in the case of a single shareholder, with residence outside the US, a circumstance exempting from tax withholding. No taxation is due for activities performed outside the US, nor is the annual account compulsory”.

“It is possible to increase the level of anonymity by asking for a nominee director and trustworthy shareholders who act in the place of the beneficial owner.

These names are recorded in the Company Registration Office in Delaware and are public. All of this does not restraint the faculty of the beneficiary/owner to maintain the control of the company and to make bank movements. Besides, official documents (not public) are drafted to guarantee the beneficiaries the control of their company. The trustees have no executive power and no signature on the company’s bank accounts.” (Ocra, 2013).

Similar conditions are offered in a plenty of other places. In the British Virgin Islands (an archipelago of forty Caribbean islands), International Business Companies do not have “the burden to keep official or tax registers. At will, they may be opened anywhere in the world, a methodology that guarantees perfect anonymity to the partners. There are no taxes, either on capital or on profits, dividends, interests, copyrights, clearings, successions. Finally, the annual accounts are not registered nor recorded by government offices” (Ocra, 2013). As we can see, the conditions are quite similar, yet only the last of these countries was popularly reputed as a tax haven. The other two are among those respecting international regulations.

If all the world is *offshore* towards any single country and any company can operate abroad, being somehow “insulated” from the local regulations, whatever differences between onshore and offshore is losing sense. Actually, in the case of a company incorporated abroad, the country of residence of the possible owner becomes for its part “abroad”.

This is the architecture of multinationals, which this way combine the advantages obtained from the different locations. The nature of these advantages allows us to distinguish meaningful categories of countries (or jurisdictions) as for the prevailing economic function. In this respect, the mentioning of “favorable regulations to the establishment of financial services”, as in the case of London, is of particular interest. Not surprisingly, in each European country the biggest company using offshore subsidiaries is a bank (Shaxson, p. 15).

An offshore bank is a credit institution located outside the country of its depositors. As all the banks may deal with foreign capitals, each of them belongs to this category, at least for a part of its activity, without the need to resort to subsidiaries. When this is the case, it is to avail itself of the special advantages mentioned before. The typical location of the banks generally considered as offshore is not casually in a jurisdiction characterized by low or no taxation, granting also legal advantages (secrecy) and protection against political instability. They must have an easy access to the deposits, and this is why such institutions were originally established in the Channel Islands, about halfway between London and Paris. Obviously the evolution of modern telematic communications has overcome the importance of geographical constraints. Wherever we register an

anomalous concentration of banking institutions, i.e. a financial structure oversized for the needs of local economy, we are witnessing an offshore financial center (Zoromé, 2007).

3. The tax havens

In a book as fascinating as not academically structured, N. Shaxson describes with plenty of details the most opaque face of globalization, i.e. the international management of capitals. Referring to the mechanism of transfer pricing, the author notes that every set of commercial exchanges gives origin to a “value chain” following a double route, one for the real goods and another for the related records. The latter circuit represents the very heart of globalization, which is based on the concept of offshore.

For a country traditionally facing the sea, the term *offshore* means far from national regulations. In essence, “out the law”. In this dimension, fundamentally without limits, there is space for a variety of jurisdictions, in which the national jurisdiction tends not to interfere. This allows the birth of the so called *tax havens*, a word that appears somehow reductive.

Shaxson proposes a wide definition, that of “a place seeking to attract companies by offering politically stable structures to help individuals and legal entities to bypass the norms, laws and regulations of other jurisdictions” (*Id.* pp. 15-16). In this light, one understands why since the end of the 1990’s in the US they began to speak of “secrecy jurisdictions”. Secrecy integrates and reinforces legal separateness, both outward and inward. These jurisdictions preserve “systematically a clear separation between the respective economies and the offered services, in order to protect themselves from their own offshore tricks” (*Id.* p. 16).

Rebus sic stantibus, it is difficult to maintain that these are non-places, or better, realities very far from the rest of the world. It appears evident when we look at the various lists prepared by international bodies (OECD, IMF, etc.), where it is common to find countries seemingly “normal” such as Great Britain, New Zealand, the US. The geographer finds himself in trouble when trying to frame the phenomenon. Shaxson is suggesting that the geographical character may be somehow misleading; nevertheless, we can answer that the geographical dimension remains a key aspect, better, a prerequisite of the involved jurisdictions.

Shaxson points out that we ought to look at the offshore as a process instead of as an object. So we are not facing a set of geographical entities, though exceptional, but an activity that is being carried out through a net of relationships. These are not necessarily characterized by their spatial attributes, yet they rely on specific structures, that have by necessity a geographical base. In modern geographical thought, nets and flows allow us to trace new, meaningful partitions of the world, no more linked to the classic logic of Ratzelian origins.

To the geographer, the first and simplest operation consists in collecting the existing documentation and locating on the map the different “noteworthy places” of this “outlaw archipelago”. The lists circulating at the international level help us in this task, but at first sight the results appear to be very poor. This is not, as is documented by an accurate economic analysis, recognizing a meaningful role for the geographical distance between the offshore financial centers and the development of the financial markets (Rose and Spiegel, 2007). It is therefore necessary to divide the set following the intrinsic characteristics of each element.

A first step in this direction was made by the OECD. In the 2009 list the 82 jurisdictions considered have been divided into three: white, grey and black countries. The criteria used were the monitoring of the progress in implementing the international agreed tax standards. The white list reports the jurisdictions (40) that have substantially implemented these standards; the second, those committed but that have not yet substantially implemented them (30 tax havens and 8 other “financial centers”); the third, the jurisdictions that have assumed no commitment (4%).

The OECD classification divides the set into three categories, but it does not allow to go further.

In fact, whatever categorization is functional to a precise purpose and in this case it seems to be the measure of the advancement progress towards the “new international order”, that is to say the degree of integration in the global economic system. The real purpose is not linked to the monitoring of tax havens. Such kind of jurisdictions seems to be off limits, if only for their not being (in general) members of the organization. On a total of 42, only 5 (the Netherlands, Austria, Belgium Luxembourg and Switzerland) meet this requirement. This criterion would distinguish the world of the good and that of the bad countries, which, not casually, result generally to be small and poor.

At this point, it appears of more interest to list the jurisdictions on the basis of the type of companies/corporations that they may host, prepared by a specialized operator (Ocro, 2013). The categorization, functional to the mentioned activity, distinguishes among *Key International Business Company Jurisdictions* (10, none of them appears in the OECD white list, and one - Dominica - is totally ignored), *Popular Jurisdictions for International Trade, Investment and Tax Planning* (19, 8 of which reported in the white list, 3 - Cyprus, Luxembourg and Rumania - not mentioned), and *Countries with other Types of Companies* (20, 12 mentioned in the white list).

A total of 49 jurisdictions, 20 of which meeting the OECD requirements. A further surprise, the US, that maintains to be the highest guardian of international law, is quoted in the website with specific reference to 7 federal jurisdictions. It is not a secret, in the Tax Justice International Ranking 2009, the US is classified at the top level in the world as for secrecy, with an opacity score of 92/100, the

same level of the Cayman Islands, the British Virgin Islands and the US Virgin Islands too. But the reality is even worse, as we shall see.

To sum up, the company is openly conveying to the public a ranking of the offshore, based on the turnover and the distance from the morality in business. A picture casting heavy shadows on the comfortable view transmitted by the OECD. Particularly shocking is the scarce or no distinction between “respectable” and “non-respectable” countries. A praxis among the specialized companies. “We have experts to advise you on the selection of the best offshore company formation, or onshore company jurisdiction for your offshore or international business” (Dema Partners, 2013). In the TJN 2011 list the US gets down to the 5th position and the US Virgin Islands disappear, but the picture does not change. Leaving aside the official data (OECD, FATF), all prepared following criteria of political opportunity, the mingling of “normal” countries and “ill famed” territories appears steady. In his book, Shaxson is offering the elements to understand the reality. More than a physical space, made by a set of places, the offshore system is a set of activities performed in relatively few centers, but out of opportunism they take legal form in separated premises. Exploiting the laddering technique, certain financial structures are functional among different jurisdictions, “each of them attributing new legal or accountancy “shells” to the capitals, which are usually located elsewhere” (Shaxson, p. 34). In essence, there are a number of conveyances and here comes again the geographical factor.

It results that “offshore activities don’t occur in any jurisdiction, but take place in the interstices between the jurisdictions” (*Id.* p. 35). Only documents are transferred, and therefore from the point of view of geography, which is a discipline deeply rooted in the factual world, these are fictional transfers. The capitals, the real object of the transactions, do not move, they simply change their denomination and legal shape.

Hence the need for a net, as wide and articulated as dynamic, inside which to organize the transfers. A net offering a plurality of nodes, all of which capable of taking in turn the role of starting or receiving point. This explains the simultaneous presence on the market of highly qualified financial centers and of so-called “banana republics”.

Although fundamentally the system does not consist in geographical units, but in a net of relationships, as a whole it is possible to single out some organizational structures. Shaxson is suggesting four coherent subsystems that substantially mirror the geopolitical and geo-economic structure of the globe (*Id.* pp. 21-30). These are:

1. the offshore system of continental Europe, based upon Switzerland, Luxembourg, the Netherlands, Liechtenstein, Monaco (and occasionally Andorra and Madeira). In reality, specialized companies offer to open and manage companies in twenty-seven European jurisdictions, openly

defined as *offshore* (Dema Partners, 2013). It is a set of interrelated units which however lacks a unitary organization, thus reflecting the political fragmentation that is still a characteristic of the continent.

2. A British area, of world extension, centered on the City of London, and loosely following the borders of the former H.M.'s empire. Owing to its dimensions, it is structured in three rings. The first one is composed of units subjected to the Crown: the Channel Islands and the Isle of Man. As for the second, we have overseas territories: fourteen jurisdictions, among which the Cayman Islands, Bermuda, the British Virgin Islands, Turks and Caicos, Gibraltar. The last is made of formally independent countries, members of the Commonwealth (Singapore, Bahamas, Dubai, Ireland) or not (Hong Kong).

This net, it is estimated, is credited for more than 50% of all bank assets in the world (with about 12% booked in the City itself, which competes with New York for the role of most important financial center in the world). The whole system is however much wider and in uninterrupted evolution. Many are the Britain-related countries that we may encounter in the list of tax havens: Malta, Cyprus, Ghana, Seychelles, Mauritius, Malaysia, Singapore, New Zealand and Nauru.

3. A zone of influence centered in the US. This is also articulated, even better, along three levels. The first one is represented by the Union as a whole. Federal tax breaks and regulations favoring secrecy, analogous to those offered in classical tax havens, have been enforced since 1921 to attract foreign capitals from whatever origin. The second one is to be found at the level of member states, who offer even more attractive conditions. Delaware, for instance, was qualified in the most opaque jurisdictions in the world (TJN Report, 2009) but Wyoming and Nevada both allow to issue bearer shares. Also New Jersey, Florida, Arkansas, Oklahoma and Oregon are active in intercepting travelling capitals, as well as Washington, DC.² Third, a little net of (formally) independent countries: Panama, Marshall Islands, Liberia.

4. Some strange jurisdictions, not too successful, like Costa Rica, Uruguay, the Philippines, and Somalia.

4. The politics to the offensive

Since the outburst of the global economic crisis, anger over corporate tax avoidance has been spreading through the world. No wonder that tax havens were one of the themes on the agenda for the G20 meeting in London, 2009. USA and the EU being the economies endangered by these structures, political initiatives in the field have been developed on both sides of the Atlantic. In

² All of these jurisdictions are in some way advertised by specialized companies (Ocro, 2013).

2011, the ministers of finance of Germany, France and the UK announced that they were studying a common strategy to fight the politics of fiscal optimization practiced by multinationals.

In December, 2012 the European Commission (the EU's executive body) declared war on tax avoidance and evasion, which it said cost the Union a trillion euro a year. Last April, five EU countries (Germany, France, Italy, Spain, UK) announced a "multilateral pilot agreement" on the exchange of information to fight tax evasion. For his part, the French premier F. Hollande told reporters his intent to eradicate tax havens in Europe and in the world.³

In June, the G8 group of industrialized countries approved a memorandum in 10 points aimed at a recovery of the world economy, a goal to be partially obtained through a further dismantling of state protectionism, a reduction of border bureaucracy and an improvement of transparency in fiscal matters. It was hoped for a change in national regulations allowing companies to shift their profits abroad. Multinationals were to adopt the "country-to-country" reporting, so as to nullify the advantages of the sharing agreements. Automatic sharing of detailed fiscal information would create a unique fiscal space worldwide.

At the end of the month the National French Tax Evasion Action Plan was disclosed. It was a list of goals to be transformed into operative regulations to enhance tax transparency and prevent misuse of companies and other vehicles, including trusts, as part of the commitment to the G8 group.

The escalation of statements is impressive, but which progress can be registered in this war against fiscal crime? Notwithstanding the obvious resistance, mainly with a low profile, of the business world, there are some. In November, 2012 Australia was the first non-European country to change the regulations permitting multinationals to shift their profits abroad. New rules oblige all banks operating in the US to transmit the annual accounts and documents concerning the assets held abroad by American citizens. Inside the European Union all countries known for their role in the field have been subjected to a growing pressure to modify their own regulations. Formally, they capitulated one by one, but the implementation of the agreed inter-European tax standard - that is a new code of fiscal communication among the countries - is far from being a reality. There is still a strong internal resistance both in Switzerland⁴ and in Austria. In the latter case, bank secrecy is written in the Constitution.

³ France is supposed to be a victim, rather than a protagonist, of tax evasion. The country was never on the OECD blacklists, and its inclusion in the TJN Report 2011 is pending. As for the connected jurisdictions, Monaco and Samoa appear in the last positions (64th and 68th respectively) and the problems with nearby Switzerland are well known. To tell the truth, several France jurisdictions appear in the list of tax havens produced by the Italian Ministry of Finance in 1999 and 2001. These are Djibouti, New Caledonia, French Polynesia, Samoa and Vanuatu.

⁴ Remember that Swiss banks have released to the US Inland Revenue a list of some 4,000 American citizens holding assets in the Confederation.

The most dramatic event has been however the Cyprus crisis, which in March, 2013 literally wiped out one of the most important tax havens in Europe, especially in the Mediterranean. To note, it was also the biggest pipeline for the capitals flowing away from the former Soviet Union. The event was jointly orchestrated by financial authorities in the EU and the IMF, motivated by the bankruptcy of credit institutions in the island, which recalled the cases of Iceland and Ireland. Anyway, the result was a brutal ending of a tax haven, never experienced before. But the real news, in a world where secrecy is the basic rule, is the so-called “operation offshore leaks”. It is an offensive on a global scale, accurately planned in the US inside a non-profit organization in Washington, the Center for Public Integrity.

Through an organization named International Consortium of Investigative Journalists, since November, 2012 a mass of some 2.5 million documents concerning the registration data of 122,000 offshore companies were circulated in the press. Most of the documents concerned the British Virgin Islands, till then one of the most reliable and popular jurisdictions.

As a consequence, the government of the Cayman Islands announced in January that it will prepare a public database of the companies locally incorporated. Not a big effort, for a jurisdiction that hosts some 9,438 hedge funds and played a first class role in the securitization of American assets.

Whatever the aims of the press campaign orchestrated on a world scale (Katasonov, 2013), noteworthy with the active part of British media, in the near future the offshore system might undergo radical changes in order to survive the effects of the economic crisis under way.

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