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Lists of abbreviations

OFC – Offshore Financial Center

OECD - Organisation for Economic Co-operation and Development

FSF - Financial Stability Forum

IMF - International Monetary Fund

UN - United Nations

FATF - Financial Action Task Force

IFC – International Financial Center

RFC – Regional Financial Center

TJN – Tax Justice Network

OEEC – Organisation for European Economic Cooperation

Model TIEA - Model Agreement on Exchange of Information on Tax Matters

BEPS – Base Erosion and Profit Shifting

Model CAA - Model Competent Authority Agreement

FSB – Financial Stability Board

Introduction

Offshore financial centers (OFCs) are complicated and essential element of the global economy. At the current time, during the process of constantly evolving international financial relations the role of OFCs is growing.

The functioning of offshore financial centers has both positive and negative consequences. In this regard, certain states and the international community in general have the contradictory attitude to the very existence of the offshorebusiness.

On the one hand,OFCs promote the development of international financial markets, stimulate economic activity, develop tax competition and contribute to the prosperity of the states in which they are created. Likewise, OFCs yield positive results in relation to legal persons, which are developingand increasing their competitivenessdue to existing of OFCs. Furthermore, OFCscontributetoamoreharmoniousdevelopmentoftheworldeconomyasawhole.

While on the other hand, such features of their activities, as low tax rates, the lack of effective exchange of financial information, the low level of transparency, the existence of anonymous bank accounts, the lack of mandatory identification of customers give rise for development of harmful tax competition, tax evasion, money laundering and financing of terrorism. These damages causedbyOFCsforced totakemeasurestoregulatetheiractivity.

The efforts to combat the negative factors of OFC are conducted at several levels:

i. global level - on the part of the international organizations;
ii. regional level - mostly within the European Union;
iii. bilaterally level - on the basis of signing international agreements;
iv. nationallevel – by means oftightening the national anti-offshore legislation or legislation on controlled foreign companies, imposing certain restrictions on its residents for transactions with offshore companies or introducing additional control over currency operations and other measures taken by governments.

The lack of regulation of OFCs poses a threat to the global markets and international economic relations. Therefore, the influence of international organizations, which focus on the regulation of relations associated with functioning of OFCs is strengthened.

The international organizations create a set of international legal norms and form a mechanism of control and influence on OFCs. These measures aim to overcome the negative effects of OFCs' activity, to bring them closer to international standards, as well as to settle the tax harmonization and stability. The regulation of OFCs is carried out bythe International Monetary Fund, the Organisation for Economic Co-operation and Development, the Financial Stability Forum, the United Nations, the Financial Action Task Force and various other organizations created according totheir type.

One of the main tasks of the international organizations is finding a balanced approach that will set obstacles for using of OFCs for illegal activities, while not limiting the use of the advantages of OFCs by law-abiding businesses.

In the paper is proposed to consider the essence of offshore financial centers, the role of international organizations in the regulation of its activity, and the measures that have been taken in relation to the offshore activity at the regional and national levels.

1. Legal status of offshore financial centers

Offshore Financial Centersare fairly complex phenomenon, which difficult to interpret without preliminary analysis. Today, one of the main shortcomings in regulation of offshore activities is the lack of understanding of what exactly an offshore financial center is. Moreover, universal concept of OFC, which would be enshrined at the international level and used in national legislation or by international organizations, which have certain influence on offshore activities, has not been developed yet.

Typically offshore financial centers are the small countries with the strong financial and supporting serve industries, which might be characterize with certain features and privilegesthat distinguish them from other jurisdictions. For instance, OFCs are very restrictive with information exchangewith other countries. They offer law taxes and high financial confidentiality. In general, they levy little or no corporate income tax on companies in their jurisdictions. OFCs typically have laws oradministrative practicesunder which businesses can benefitfrom a strict secrecy rules andother protections against scrutiny bytax authorities of other countries.

It is obvious that the absence of the universal concept makes cooperation with offshore jurisdictions from both theoretical and practical sides more complicated. Each single international organization that regulates the activities of OFCs has developed its own approach to the definition and characteristics of OFCs. Moreover, during the performance of the main tasks they use different terms for the phenomenon, such as a tax haven or an offshore financial center.

As already mentioned, the main organizations which deal with OFCs are the Organisation for Economic Co-operation and Development (OECD), the Financial Stability Forum (FSF), the International Monetary Fund (IMF), the United Nations (UN) and the Financial Action Task Force (FATF). Certainly, these organizations are not the only ones thatconstitute international legal basis for activity of OFCs, but their contribution is the most wide-scaleand noticeable. Therefore, inthethesisthemaineffortswillbefocusedon the practices of the aforementioned organizations.

The first attempt in elucidation was submitted by the OECD in 1998. In its report "Harmful Tax Competition:An Emerging Global Issue"weredefined distinctive factors inherent tax havens and harmful preferential regimes.[1]

According to the report the key features in identifying tax havens are:

- No or only nominal taxes;
- Lack of effective exchange of information;
- Lack of transparency;
- No substantial activities.[2]

The OECD suggests the first factor "No or only nominal taxes" as aninitial point and necessary condition for the identification of a tax haven.This criterion is the basis of the examination a jurisdiction for the presence of other features. At the same time,existence of just one first factor is not enough to classify a jurisdiction as a tax haven.Furthermore, the last criterion "No substantial activities" was excluded by the OECD in 2001.

In the FSF's Report of the Working Group on Offshore Centers (April 5, 2000)was confirmed the complexity of clarifying the offshore phenomenon. The FSF mentioned that "any jurisdiction can be considered "offshore" to the extent that it is perceived as having a more favourable economic regime than another, e.g., low corporate tax rates, light regulation, special facilities for company incorporation, or highly protective secrecy law".[3]

The FSF did not provide the definition of OFCs, but developed its own characteristics, which identifying OFCs. These characteristics include the following:

- Low or no taxes on business or investment income;
- No withholding taxes;
- Light and flexible incorporation and licensing regimes;
- Light and flexible supervisory regimes;
- Flexible use of trusts and other special corporate vehicles;

[1]OECD, *Harmful Tax Competition: An Emerging Global Issue* (1998).
[2]ibid 23.
[3] Financial Stability Forum, *Report on the Working Group on Offshore Centers* (2000) 9.

- No need for financial institutions and/or corporate structures to have a physical presence;
- An inappropriate high level of client confidentiality based on impenetrable secrecy laws; and
- Unavailability of similar incentives to residents.[4]

The report also stipulates that the above criteria are inherent to OFCs, but not all of OFCs possess all defining features.Considering the above, the FSF repeated some of the mentioned criteria of the OECD, but at the same time provided more additional characteristics that belong to OFCs.

On June 23, 2000 the IMF published a working paper entitled „Offshore Financial Centers. IMF Background Paper".In this document the IMF made several attempts to define the notion of OFCs. In broad sense "an OFC can be defined as any financial center where offshore activity takes place".[5] At the same time, the IMF gave the definition of offshore finance, which means "the provision of financial services by banks and other agents to non-residents".[6] According to this approach OFCs are jurisdictions where financial services are provided for non-residents. But this definition does not include all the features and nuances of offshore activity; therefore the approach to identifying the phenomenon based on one criterion is not complete.

However, the IMF also presented more practical definition, which sounds as following: "OFCs are centers where the bulk of financial sector transactions on both sides of the balance sheet are with individuals or companies that are not residents of OFCs, where the majority of the institutions involved are controlled by non-residents".[7]In accordance with this explanation the IMF referred OFCs to following:

- Jurisdictions that have financial institutions engaged primarily in business with non-residents;

[4]ibid.
[5]IMF, *Offshore Financial Centers. IMF Background Paper* (2000) <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm> accessed 25 April 2015.
[6]ibid.
[7] IMF, *Offshore Financial Centers The Role of the IMF*(2000) <https://www.imf.org/external/np/mae/oshore/2000/eng/role.htm> accessed 25 April 2015.

- Financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies; and
- More popularly, centers which provide some or all of the following opportunities: low or zero taxation; moderate or light financial regulation; banking secrecy and anonymity.[8]

Based on the OFCs' assessment which was made by the FSF, the IMF put OFCs in a one row with International Financial Centers (IFCs) and Regional Financial Centers (RFCs). On the one hand, the IMF described OFCs with comparison to IFCs and RFCs as "mainly much smaller, and provide more limited specialist services".[9] On the other hand, the IMF emphasized that OFCs may be a subject to the first two categories: IFCs and RFCs as well.

The next effort in identifying OFCs was made by the IMFin 2007. In the Working Paper with a title "Concept of Offshore Financial Centers: In Search of an Operational Definition" new definition and characteristic criteria of OFCs were proposed by Ahmed Zoromé.[10] This entire document focuses on various methods which help identify the term of OFCs more detailed and carefully. Ahmed Zoromé disagrees with definition provided by the IMF, which elaborated on base of OFC' feature 'the provision of financial services to nonresidents' and presents a new definition: "An OFC is a country or jurisdiction that provides financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy".[11]

On the face of it may seem that presented definition, on the contrary, may complicate the classification of a particular jurisdiction as OFCs. The main issue is how to determine "incommensurate with domestic economy". However, in this case Ahmed Zoromé suggested indicating the level of net financial services exports to a measure of national income or domestic financial needs. In case of lack actual data provided by jurisdictions the proxy data on portfolio investment assetsshould be taken.

[8]ibid.
[9]IMF, *Offshore Financial Centers. IMF Background Paper* (2000) <http://www.imf.org/external/np/mae/oshore/2000/eng/back.htm> accessed 25 April 2015.
[10]IMF, *Concept of Offshore Financial Centers: In Search of an Operational Definition*,(WP/07/87, 2007).
[11]ibid 7.

Thereby, such definition proposed by Ahmed Zoromé characterizes OFCs relying on economic indicators and taking into account the objective point of view on this phenomenon.

In 1998 the United Nations Office for Drug Control and Crime Prevention presented the report entitled "Financial Havens, Banking Secrecy and Money Laundering". Although its report did not include a definition of OFCs, the UN indirectly describes features which possess the OFCs. "Offshore financial centers offer … freedoms and services and opportunities. Among the freedoms are freedom from exchange controls, freedom from reserve assets ratio requirements, freedom from disclosure of information, freedom from a range of taxes…".[12]Thus the dictum of the UN also pointed to certain criteria that characterize the distinctive qualities of offshore finance activity.

Also the efforts of clarifying the notion of OFCs were made by numerous researchers and scientists. For instance, S.M. Roberts distinguishes an offshore financial center from a tax haven and proposes two separate definitions of these phenomena. From his point of view, OFC is "a jurisdiction that has a deliberately less-regulated and less- (or un-) taxed financial sector and offers a range of financial services (corporate and personal banking, insurance, securities, financial management, trusts, and so on)".[13] While a tax haven is "a jurisdiction that either exempts foreigners from paying tax on saving or income from abroad, or has minimal rates of taxation so as to attract foreign companies and individuals seeking to avoid taxes".[14]

Offshore financial center and tax haven have a lot of common features, but at the same time, calling these notions identical is improperly. The tax haven itself implies tax benefits, while OFC has broader meaning, which includes additional finance characteristic. Dr. Terry Dwyer answered on question "Are 'offshore financial centers 'tax haven'?" and stressed that albeit these terms interchangeably, the term 'offshore financial center' is more accurate than 'tax haven'.[15]

[12]UN, *Financial Havens, Banking Secrecy and Money Laundering* (1998) 39.
[13]S.M.Roberts,'Finance, Offshore' [2009] International Encyclopedia of Human Geography 139, 139.
[14]ibid.
[15]Terry Dwyer, ''Harmful' tax competition and thefuture of offshore financial centres,such as Vanuatu' [2000] Pacific Economic Bulletin 48, 52.

In addition, the Tax Justice Network (TJN) worked out a list of tax haven and offshore financial centers based on attitudes of the OECD, the FSF, the IMF and the TJN. According to the list was found that "there is considerable overlap between the lists of tax havens and of OFCs. However, some tax havens are not identified as OFCs, …On the other hand, OFCs do generally offer tax advantages. Nevertheless, not all OFCs are included in the OECD's tax havens list…".[16]

Analyze of the various definitions and characteristics lead to the conclusion that the tax haven and offshore financial center aredifferent notions, which closely related to each other. On the grounds that there is no uniform approach to defining OFCs, lists of the jurisdictions that belong to this concept are also sufficient varying.

Although the concept of offshore financial center has not been officially enshrined, using of this term by international organizations make it well recognized.At this stage it is vital important to reach one universal concept of offshore financial center which help avoid further confusion andfacilitate the regulation of OFCs in the future.

2. The role of international organizations in the regulation of offshore financial centers

For quite a long periodOFCs are being under the pressure of various organizations and governments. The reason of such attitude is the fact that offshore activity raises a number of global issues that have a negative impact on the global economy as a whole and on the domestic economy of individual countries.

At this stage it is important to determine which claims are put forward to OFCs and on which specific effects international regulatory policy is targeted.

Among all complains, which get OFCs it is possible to refer them to three main issues. The first is harmful tax competition in general; the second is promotion criminal activities (money laundering, terrorism financing)and the third is flight of capital.

Let's look on these issues in more details.

[16]Tax Justice Network, *Identifying Tax Havens and Offshore Finance Centres* (2007) 6.

Harmfultaxcompetition.Tax competition is a natural process that occurs not only at the international level (between countries), but also within the country on the regional level. International tax competition is an instrument of public policy, main purpose of which is attraction of financial capital into the country. Consequently,with obtaining additional capital the country is able to develop its national economy and improve the well-being of its citizens.

The essence of tax competition is to provide more favorable business environment, in particular the preferential tax regimes, for investors and entrepreneurs.The main claimthat applied to offshore centers is the destruction of the tax bases of the countries from which capital flows away.

Fromonepointofview, theclaimsareunderstandablebecausebusinesses enjoy all the benefits of the onshore country and do not provide respectively fees for it. So, the onshore country loses the rightful taxes in its budget.

From other point of view, it is natural that countries that do not have at their national reserve global goods such as oil, gold, fertile land, are unable to compete with those countries which have these resources.Thus, at the national level of each country other alternativeattempts aimed to improve the financial situation are made.In addition, each country has the right to conduct its own policies and impose such tax rates that are deemed necessary.

Therefore, in this situation interests of two opposite jurisdictions (offshore and onshore) are touched. Positionof each side is justified and has a right to exist.

Promotion criminal activities. This claim is much more serious.Among the criminal objectives of using OFCs are various types of crimes, such as tax evasion, corruption, money laundering, the financing of crimes.

These types of crimes have large proportions and entail devastating consequences at the international level. They undermine the economy and national security, as well as the welfare of society as a whole.

Unconditionally, the advantages that offer OFCs and their quick and simple financial mechanisms considerably simplify criminal activity. These benefits include the

provision of a high level of banking and commercial secrecy, anonymity of the beneficial owners of companies, the absence of currency restrictions and customs duties, a simplified form of registration of companies and opening bank accounts.

Inthecontextof this accusation international community is united. It fully supports all methods to combat this negative phenomenon.

Flightofcapital.Indeed the problem of capital flight for today in the various countries reaches frightening sizes. Every year the states report and count the billions that leave the national economies and enter in other economies. It is obvious that a systematic and continuous capital flight outside the country generally produces a weakening of the national economy and associated negative trends, such as the reduction of production or unemployment.

One of the main ways of capital outflows abroad is the use of offshore zones. At the moment, there are a lot of stable schemes for the translation of foreign currency on bank accounts in offshore territories. Accordingly, each individual state has no control over offshore operations due to their confidentiality and it is not able to charge the real taxes from such operations, which could greatly supplement the budget of the country.Largely due to OFCs the capital is free to move around the world.

However, as such the issue of capital flightitself is the issue of each country. Its solution depends on the measures taken at the national legislative level, such as cover the export operations or foreign currency transactions.

These main negative consequences are totally different that is why the fight against them also is subject of different organizations. For instance, the OECD'sand the FSF's practices aredirected to counterwork with harmful tax competition, at the same time, the UN's,the FATF's and the IMF's practices are aimed tostruggle with criminal activity.

2.1. The Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development was created on the basis of The Organisation for European Economic Cooperation (OEEC) in 1961. The agreement was signed in December 14, 1960, and got into a force in September 30, 1961. Today, the organization brings together 34 of the most economically developed

countries in the world. The OECD plays a great role of promoting dialogue between the countries on a wide range of issues. Since its establishment, the OECD aims to strengthen the economies of both industrialized and developing countries. The OECD develops recommendation for the member states with a view to improve and coordinate international and internal policies. The OECD actively cooperates with countries, which are not the members of the OECD as well.

The OECD's campaign againstOFCs was officially started in 1998. In May 1996 the OECD'sministers expressed a great anxiety in the taxation field and suggested a new project addressed on regulation harmful tax competition between members. Furthermore, in June 1996 on the 22th summit the G7 also stressed on importance of control of the tax havens activity and authorized the OECD to develop measures aimed at eliminatingof harmful tax competition.

In response tothese requests the OECD presented the Report "Harmful Tax Competition: An Emerging Global Issue".[17] The report consists of three chapters. The Chapter 1 reveals the essence of tax competition and which affect it has on the global economy. The Chapter 2 deals with key factors of tax havens and harmful preferential tax regimes. The Chapter 3 provides recommendations designed to discourage tax havens and harmful preferential tax regimes. As already noted, the report is dealing with two crucial issues. It stipulates as harmful not just tax havens, but also some preferential tax regimes.

Preferential tax regimes are generallya part of the tax legislationof countries with a standardcorporate income tax design.The preferential taxregime offers a benefitin comparison with the standard taxrules in that relevant country.Many countries offer preferential taxregimes for different types of entities oractivities.

Preferential tax regimes can resultfrom both a reduced tax rate,as well as a reduction in the tax base.In the aforementioned report, the OECDalso identifies four key factorsof harmful tax regimes.According to the report the factors in identifying harmful preferential tax regimes are following:

- No or low effective tax rates;

[17]OECD, *Harmful Tax Competition: An Emerging Global Issue* (1998).

- ‘Ring fencing’ of regimes;
- Lack of transparency;
- Lack of effective exchange of information.[18]

The use of tax havens and preferential regimes in international corporate tax structures was under discussion at the OECD level. It was felt that tax havens and preferential regimes drive the effective tax rate levied on income significantly below the rates of other countries and have the potential to cause the harmful effect. For example, by distorting financial investments or detracting from the normal fair tax structure.

In total, it was generated 19 recommendations, which were divided on three groups:

1. Recommendations concerning domestic legislation;
2. Recommendations concerning tax treaties;
3. Recommendations for intensification of international co-operation.[19]

The next pointafter providing control methodswas determination of the subjects of control. On the basis of the factors developed in the 1998 report, it was prepared a list of countries – tax havens comprising 35 jurisdictions, and a list of countries which possessed harmful preferential tax regimes (47 jurisdictions). These lists were presented in June 2000 in a document entitled “Towards Global Tax Co-operation”.[20]

Talking about the tax havens’ list it should be emphasized, that “this listing is intended to reflect the technical conclusion of the Committee only and is not intended to be used as the basis for possible co-ordinated defensive measures”.[21] Althoughthe significant implications of inclusion in the lists did not exist, the countries that fall in both lists were concerned about the situation and many of them agreed to cooperate and fulfill necessary requirements.

The OECD gave a time for the countries to refocus their policy and enhance the level of transparency. In case of noncompliance the OECD assumed the creation of a new List of Uncooperative Tax Havens by the time of December 31, 2005. In addition, the

[18]ibid 27.
[19]ibid 39.
[20]OECD, *Towards Global Tax Co-operation* (2000).
[21]ibid 17.

jurisdictions "must also agree to a 'standstill' during the period of the commitment, i.e., not to enhance existing regimes; not to introduce new regimes that would constitute harmful tax practices; and to engage in annual review process with the Forum to determine the progress made in fulfilling its commitment and to assess the use being made of its existing regimes".[22]Afterwards, on the results of the OECD's plural consultations with listed countries, most of them expressed the commitment of compliance with the standards.

The next part of the OECD's framework was creation of the Global Forum on Transparency and Exchange of Information for Tax Purposes (2001), which consisted of jurisdictions agreed to cooperate in the area of transparency and information exchange. The Global Forumprovides support and assistance,works out numeral recommendations targeted the improvement of national legislation in the field of increase the level of transparency and monitors the implementation of the international standards by OECD members either by non-OECD members.

Additionally, in 2001 the OECD presented a new report "The OECD's Project On Harmful Tax Practices: The 2001 Progress Report".[23] The main achievements of the report are exclusion the criterion of 'no substantial activity' and recognition the criterion "no or only nominal taxes" as insufficient by itselfin the process of identifying of tax havens. Also, in the 2001 Report the OECD developed certain conditions of using defensive measures. Bring back to the 1998 Report in which the OECD provided the right for countries to take defensive measures aimed at neutralizing the negative effects of harmful tax practices (subsequently, the defensive measures have been defined in detail in the 2004 Progress Report[24]). Thus, according to the 2001 Report:

- A framework of co-ordinated defensive measures should be proportionate and targeted at neutralizing the deleterious effects of harmful tax practices.
- The adoption of defensive measures is at the discretion of individual countries.

[22]ibid 19.
[23]OECD, *The OECD's Project on Harmful Tax Practices: The 2001 Progress Report* (2001).
[24]OECD, *The OECD's Project on Harmful Tax Practices: The 2004 Progress Report* (2004).

- Each country is free to choose to enforce defensive measures in a manner that disproportionate and prioritised according to the degree of harm that a particular practice has the potential to inflict.[25]

In addition, after significant accusations directed towards the OECD about the fact that the most jurisdictions practicing harmful tax practices were the members of the OECD, the report presented the following clause "the Committee agreed that a potential framework of co-ordinated defensive measures would not apply to uncooperative tax havens any earlier than it would apply to OECD Member countries with harmful preferential regimes".[26]

The next step that was undertaken by the OECD Global Forum was establishing in 2002 the Model Agreement on Exchange of Information on Tax Matters (Model TIEA).[27]This agreement aims to improve the international cooperation in taxation field and ensures the tax information exchange between contracting parties. The agreement can be concluded using a bilateral or multilateral form.

The Model TIEA envisages the exchange of information held by banks or other financial institutions; information regarding the ownership of companies, partnerships, trusts, foundations; information on settlors, trustees and beneficiaries, etc.[28] Moreover, Article 5 of the Agreement states that the information can be provided by one party just on the request of another party. Such request shall be made according to the principle of "foreseeably relevance" of the information. The principle settles the necessity of providing the information and the rights of the person (natural or legal) regarding whom such information is disclosed. This stipulation imposes restrictions on holding well-known"fishing expedition" and automatic information exchange. However, the Model TIEA left for the parties the possibility to expand the scope of Article 5 and agreeing of 'automatic and spontaneous exchanges and simultaneous tax examinations'.[29]

Also, it is important to note another step concerning the improvement of the situation around the exchange of information - the OECD Model Tax Convention on Income and

[25]OECD, *The OECD's Project on Harmful Tax Practices: The 2001 Progress Report* (2001) para 48.
[26]ibid para 32.
[27]OECD, *Agreement on Exchange of Information on Tax Matters*(2002).
[28]ibid art 5.
[29]ibid para 39.

on Capital, main purpose of which is to eliminate double taxation between states.[30] Although the Convention was published in 1963, from the moment of OECD's active actions against harmful tax practices it has suffered by number of changes. In particular, these changes more affected Article 26 which deals with the exchange of information. In the current form Article 26 assumes the exchange of information between the contracting parties with compliance to principle of 'foreseeably relevance'. As stipulated in the comments to Article 26 "The 2014 Update to the OECD Model Tax Convention" the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.[31]For today, there are more than 1600 agreements have signed on the base of the Model Convention.

In 2004 on the sixth G20 meeting in Berlin, Germany, the Finance Ministers and Central Bank Governors of the G20 claimed about their commitment to standards, developed by the OECD – "The G20 therefore strongly support the efforts of the OECD Global Forum on Taxation to promote high standards of transparency and exchange of information for tax purposes and to provide a cooperative forum in which all countries can work towards the establishment of a level playing field based on these standards".[32] From that moment began active cooperation between the G20 and the OECD.

In April 2009 the OECD presented another Progress Report which was met with indignation by a lot of counties. In this report, the OECD has divided countries into three categories with respect to following the internationally agreed tax standard:

1. Jurisdictions that have substantially implemented the internationally agreed tax standard (white list, included 40 jurisdictions);
2. Jurisdictions that have committed to the internationally agreed tax standard, but have not yet substantially implemented (grey list, included 38 jurisdictions);

[30]OECD, *Model Convention with Respect to Taxes on Income and on Capital*(2014).
[31]OECD, *The 2014 Update to the OECD Model Tax Convention*(2014) 41.

[32]G20, *G20 Statement on Transparency and Exchange of Information for Tax Purposes*(2004).

3. Jurisdictions that have not committed to the internationally agreed tax standard (black list, included four jurisdictions).[33]

The internationally agrees tax standards require"exchange of information on request in all tax matters for the administration and enforcement of domestic tax law without regard to a domestic tax interest requirement or bank secrecy for tax purposes. It also provides for extensive safeguards to protect the confidentiality of the information exchanged".[34]

To be enrolled in the white list the OECD set only one condition – a jurisdiction must conclude at least 12 agreements on information exchange based. As of today, the OECD's black list is empty.

In general, the OECD's Standards of Transparency and Exchange of Information were summarized in main five standards:

- Exchange of information on request where it is "foreseeably relevant" to the administration and enforcement of the domestic laws of the treaty partner.
- No restrictions on exchange caused by bank secrecy or domestic tax interest requirements.
- Availability of reliable information and powers to obtain it.
- Respect for taxpayers' rights.
- Strict confidentiality of information exchanged.[35]

At the same time, in April 2009 took place the G20 London Summit, where was made a decision about non-cooperative jurisdictions in the tax transparency direction. The G20 stated "We stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency".[36]In case the jurisdictions do not adhere the OECD's Standards the G20 can take following measures against them:

[33]OECD, *A Progress Report on the Jurisdictions Surveyed by the OECD Global Forum in Implementing the Internationally Agreed Tax Standard*(2009).
[34]ibid.
[35]OECD,*Promoting Transparency and Exchange of Information for Tax Purposes*(2010).
[36]G20, *Declaration on Strengthening the Financial System –London Summit, 2 April 2009* (2009) 4.

- increased disclosure requirements on the part of taxpayers and financial institutions to report transactions involving non-cooperative jurisdictions;
- withholding taxes in respect of a wide variety of payments;
- denying deductions in respect of expense payments to payees resident in a non-cooperative jurisdiction;
- reviewing tax treaty policy;
- asking international institutions and regional development banks to review their investment policies; and,
- giving extra weight to the principles of tax transparency and information exchange when designing bilateral aid programs.[37]

It should be emphasized that the support of G20 had a significant impact on the observance of standards developed by the OECD. Countries that were in any way falling under the pressure of the OECD and lost their prestige and attractiveness in the financial market, did not want to get under sanctions of the twenty most economically developed countries as well.

In 2013, also with the filing of G20,the OECD launched a new program aimed to counteract the erosion of the tax base and the shifting profits from taxation, so-called BEPS.[38] Action Plan stated that "Fundamental changes are needed to effectively prevent double non-taxation, as well as cases of no or law taxation associated with practices that artificially segregate taxable income from the activities that generate it".[39]BEPS affects six areas:

1. Mismatches in entity and instrument characterization;
2. Taxing profits from the delivery of digital goods and services;
3. Intra-group debt financing and captive insurance;
4. Transfer pricing;
5. Anti-avoidance measures;
6. Harmful preferential regimes.

[37]ibid 5.
[38] OECD, *Action Plan on Base Erosion and Profit Shifting* (2013).
[39]ibid 13.

Among 15 actions planned by the OECD, Action 5 deals with tax transparency increase and harmful tax practices prevention. Namely, the OECD stressed on adapting and modifying existing rules to prevent BEPS.

Recently, the new standards developed by the OECD and G20 gained a new trend. At the moment, the program focuses not only on effective exchange of information by requesting, but also on the automatic exchange of information.

The provision of automatic exchange offinancial information in tax matters was amended to the Convention on Mutual Administrative Assistance in Tax Matters in 2010. The provision states that "with respect to categories of cases and in accordance with procedures which they shall determine by mutual agreement, two or more Parties shall automatically exchange the information".[40] On this base, the OECD developed the Standards for Automatic Exchange of Financial Account Information in Tax Matters[41] where were presented theModel Competent Authority Agreement (Model CAA) and the Common Reporting Standard (CRS).The multilateral form of the Model CAA was signed by 51 jurisdictions in October, 2014 on an annual meeting of the OECD's Global Forum. Shortly, the states that signed the agreement should provide financial information to each other on annual and automatic base.

As can be seen from the above, the OECD has been taken numerous of measures aimed at reducing the harmful tax practices at the international level. Though the actions of the OECD met with multiple criticism and discontent on the part of their members and other foreign governments, however, the OECD's work has shown significant results in resolving the pressing issues and consequences that arise out of functioning of tax havens.

2.2. The Financial Stability Forum

Another organization that actively engaged in a thorough scrutiny of the activities of OFCs is the Financial Stability Forum. The association consists of various national competent authorities (central banks, ministries of finance, supervisory authorities), financial institutions and international organizations, which deal with finance. The FSF

[40]OECD, Council of Europe, *Convention on Mutual Administrative Assistance in Tax Matters* (2011) art 6.
[41] OECD, *Standards for Automatic Exchange of Financial Account Information in Tax Matters*(2014).

was established in 1999with the approval of the Group of Seven's leaders. The main task of the Forum is obvious from its title, namely it was promotion of financial stability in the international level.

Later in 2009 from submission of the Group of Twenty the FSF was replaced by a new organization – the Financial Stability Board (FSB). In fact, the FSB retains the tasks of the FSF, although it has expanded its membership and today includes countries from the G20 as well.

In April 2000 the FSF developed "Report of the Working Group on Offshore Centres".[42]In relation to the report the main targets of the FSF are to consider the role of OFCs in the context of the impact of offshoring activity on the global stability of the financial system, to assess OFCs in respect of compliance with international standards and to propose options for resolution of existing and potential issues in the future. The conformityto international standards means effective financial control and the presence of the level of bank secrecy, which would not prevent obtaining information by law enforcement agencies to conduct investigations of crimes.

As mentioned earlier in this report, the FSF developed the basic qualities that are inherent to OFCs. These singularities helped the FSF to identify 37 jurisdictions where offshore activity took place. From the point of FSF's view the issues which arise from the OFCs have their roots from insufficient supervision. Based on this criterion and in order to conduct a more thorough assessment of OFCs' compliance with the standards established by the FSF, the OFCs were subdivided into three groups. In other words, the FSF grouped the offshore centers by the level of risk to financial stability. The lower the risk, the more reliable is the offshore territory. The first group includes jurisdictions which are co-operative, have quite a high level of supervision and adhere international standards; the second group – jurisdictions which are quite co-operative and have a good level of supervision, but require some improvements; the third group – jurisdictions which have a low level of compliance with mandatory requirements and for this reason carry the highest risk.[43]The main attention was concentrate on the last

[42] Financial Stability Forum, *Report on the Working Group on Offshore Centers* (2000).
[43]ibid para 30.

two groups of jurisdictions. The list carried a recommendatory character and would not lead to any sanctions.

Paradoxically, but such criteria reliability rating of OFCs in terms of the FSF absolutely opposed to the reliability rating for persons who use the services of OFCs. For consumers, on the contrary, important criteria are the high level of secrecy, political and economic stability, the high level of safety of funds and property.

In practice, it is important for users of offshore activities to have guarantees that provide OFCs in their classic sense (privacy, secrecy, etc.). At the same time users avoid jurisdictions that are in the so-called "groups of risk" of international organizations, so they become more susceptible to additional inspections and close supervision from various angles. It is clear that such ratings albeit not directly, but indirectly affect the status and position of offshore jurisdictions in the international financial market.

According to the results of the evaluations the FSF developed a list of recommendations that apply not only to OFCs, but also toonshore financial centers and the international organizations. In particular, the IMF has been mandated to organize and conduct an assessment of OFCs in the context of compliance with international standards. The main priorities of the international standards the FSF carried as following:

- Cross-border co-operation, information sharing and confidentiality;
- Essential supervisory powers and practices;
- Customer identification and record-keeping.[44]

Moreover, it was determined the priority of sources of such standards, which attributed documents issued by various organizations and associations, such as G7 Finance Ministers, Basel Committee on Banking Supervision, International Association of Insurance Supervisors, Financial Action Task Force.[45]

Due to the fact thatthe IMF conducted a full assessment of OFCs for conformity with international standards and completed all conditions contained in the report of 2000, the FSF made new initiatives directed on OFCs. Specific steps are following:

[44]ibid 58.
[45]ibid 59.

- Actions by standard setting bodies;
- Assessment by the IMF;
- Initiatives by national authorities;
- Provision of technical assistance;
- Role of Financial Stability Forum.[46]

Unfortunately, most of the initiatives of the FSF were not widely spread and actual activity of the forum began to decline. The forum continued to publish reports on the progress,to introduce new mechanisms of stabilization and to improve old initiatives. However, such actions did not bring the global results.

During the crisis 2007-2009 the importance of financial stability began to increase again and the FSF published the new reports regarding improvement of current financial situation. This program included both the revision of old recommendations, as well as providing new mechanisms. The new framework of initiatives consisted of the Report on Enhancing Market and Institutional Resilience,[47] the Report on Addressing Procyclicality in the Financial System,[48] the Principles for Sound Compensation Practices,[49] and the Principles for Cross-border Cooperation on Crisis Management.[50]

Later, the FSF's campaign of regulatory influence of OFCs on the global financial stability was continued by its successor the Financial Stability Board. The FSB has a greater impactbecause it includesmorepowerfulcountries-participants, and also has its own charter, which givesfor participantscertain rights andresponsibilities.In particular, in order to gain membership in the FSB countries themselves must comply with the agreed international standards.

The new policy of the FSB contains similar elements with the policy of the FSF, which started in 2000. Officially declared purpose of the FSB is the coordination of actions of

[46] Financial Stability Forum, *Press Release FSF announces a new process to promote further improvements in offshore financial centres*(2005).
[47] Financial Stability Forum, *Report of the Financial Stability Forum on Enhancing Market and Institutional Resilience* (2008).
[48] Financial Stability Forum, *Report of the Financial Stability Forum on Addressing Procyclicality in the Financial System*(2009).
[49]Financial Stability Forum, *FSF Principles for Sound Compensation Practices*(2009).
[50]Financial Stability Forum, *FSF Principles for Cross-border Cooperation on Crisis Management*(2009).

national financial authorities and international organizations to develop and implement measures to strengthen financial stability at the international level.

In contrast to the FSF which laid their basic measures to the IMF, the approach of the FSB aimed at tighter regulation. The FSB outlined the coordination of their main efforts on less cooperative jurisdictions as they represent the greatest threat to financial stability.

Also, the FSB adopted many of the standards developed by various international organizations. In addition, the FSB enlisted the support of G20, which also has a great value in the development process.

Today, the Financial Stability Board has become an important element of global financial system that has influence on the activityof various international and government authorities.

2.3. The Financial Action Task Force

As mentioned above, the FATF is one of the leading organizations in the global fight against money laundering and terrorism financing. It was established in 1989.Currently, members of the FATF are 34 countries and 2 organizations; also the FATF has 25 organizations and 1 country, which are occurring observation function.The FATF is not an international organization because it was not established on the basis of an international treaty and has not approved statute. It is an inter-governmental body.

On anexample of the FATF was created several regional groups, so-called “FATF-style regional bodies“ which bring together the countries of Europe, Asia, Africa, the Caribbean, the Middle East, South America. The main purpose of the functioning of these organizations is the implementation of the FATF standards at the regional level and improvement of system for combating money laundering and financing of terrorism, taking into account the specifics features of each region. The FATF-style regional bodies are effective components of the global network of international organizations and agencies to combat money laundering and terrorism financing.

The main tools in the implementation of the FATF mandate are its 40 recommendations in the field of prevention of money laundering and 9 special recommendations on countering the financing of terrorism.

At the beginning, the FATF's 40 recommendations were published in 1990. Since that time the recommendations were revising several times with aims to improve mechanisms and to enhance techniques of preventing money laundering in more effective way. The last review was made in 2012. The updated recommendations with a title "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation"[51]were added by means of new provisions on combating terrorism financing.

In general, the FATF's "40 Recommendations" designed to ensure a set of measures against money laundering include the criminal justice system, law enforcement, the financial system and its regulation and international cooperation.

The 40 recommendations are possible to refer to the three main groups:

1. Recommendations, which concern the national legislation;
2. Recommendations, which concern the financial institutions and bodies;
3. Recommendations, which concern international cooperation.

Each set of recommendations intended to achieve certain objectives. Thus, the standards for settlement systems of national legislation offer for the countries the opportunity for independently assess the level of crimes related to money laundering, terrorism financing, financing of proliferation of weapons of mass destruction andalso identify the risk of such conducts. Also, countries are encouraged to include money laundering and financing of terrorism in the list of especially grave criminal offenses, and provide the sanctions applicable to the persons that have committed illegal activities. In particular, such measures shall include confiscation of property and freezing funds or assets.

Recommendations for strengthening the role of the financial system in general aims at improving the customer identification procedures, in particular the holding of detailed customer due diligence. Also, the standards contain requirements to increase the level of

[51]Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations* (2012).

transparency; to define of ultimate beneficial owner; to storage of information about the transaction; to identify of unreasonable and suspicious transactions and mandatory reporting of such to regulatory authorities. Inaddition, theFATFhasdeterminedtherightsanddutiesofthecompetentauthoritiesin regulation andmonitoring thecompliancewith the standards; powers and responsibilitiesof law enforcement and investigative authorities.

Recommendations aimed at settling international cooperation require an effective exchange of information between the countries; enhance cooperation in the investigation of cases, confiscation and the freezing of funds, as well as extradition.

Altogether, the FATF Recommendations "set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction".[52]

These recommendations have been recognized and accepted by many international organizations. Moreover, a lot of countries of the world have committed themselves to follow these recommendations and guided by them in the legislative process.

The following measures have been taken by the FATF are defining of jurisdictions that have a high risk in the fight against money laundering and in part refused to take measures to improve the current situation. In February 2000 the FATF published a report[53] which consisted of the criteria of identifying such countries and territories.

In aforementioned report the FATF developed 25 criteriaattributed to four groups:

1. Loopholes in financial regulations;
2. Obstacles raised by other regulatory requirements;
3. Obstacles to international co-operation;
4. Inadequate resources for preventing and detecting money laundering activities.[54]

[52]ibid 7.
[53]Financial Action Task Force, *Review to Identify Non-Cooperative Countries and Territories: Increasing the Worldwide Effectiveness of Anti-Money Laundering Measures*(2000).
[54]ibid 14-16.

On the basis of developed criteria the FATF published a list of jurisdictions which, in its opinion, contributed to the legalization of income obtained by criminal means. At that time, the list included 15 countries, namely, Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis, St. Vincent and the Grenadines.[55]It means that countries above hadsignificant shortcomings in the national legislation, for instance the absence of criminal liability for money laundering, the lack of effective control for financial institutions, low level of transparency and low mechanism of information exchange.

These countries were invited to take certain measures to eliminate the impact of negative factors:

- Mandatory customer identification for residents of non-cooperative jurisdictions when opening of bank accounts or other financial transactions;
- Careful attention to the financial transactions made with the residents of such countries, and compulsory notification supervisory authorities of such transactions;
- Restrictions or a comprehensive ban on financial transactions with territories listed into the list of the FATF;
- Other sanctions, such as restricting of access to information, a high level of verification.

Characteristically, that the vast majority of non-cooperative countries have fallen into the list of the FATF are OFCs. It is important to understand the reason of close link between money laundering and OFCs.

The money laundering is quite long-established phenomenon. In its essence it is the process during which the illegally obtained money takes the form of the legally obtained money. The process consists of implementationof "dirty" money into the stream of the financial system. After that, a number of operations over the capital are made with a purpose of its overextension and further displacement. After a number of

[55]ibid 12.

transactionsover the capital, it becomes difficult to determine the true source of profits and money getting absolutely legal status.

The main and most important criterion, which ensures the success of the process of money laundering, is secrecy. The secrecy regime is provided on one of the levels of capital transforming by one or another country. As it was defined earlier, the one of the characteristics of OFCs is the high level of secrecy. In this regard, the criminal element also enjoys the advantages provided by the offshore jurisdictions. Thus, OFCs are becoming one of the stages of money laundering.

Today, due to the huge amount of initiatives aimed at increasing the level of transparency the definition of secrecy changes its initial value. Many countries, including offshore's, have adopted at the legislative level the order of access to the regime of secrecy, provided grounds and a list of persons to access, developed an algorithm to provide such information to third parties.That is, by far, the high level of secrecy no longer exists and third parties may request and receive information that was previously considered confidential.

Since 2000 the list of uncooperative jurisdictions changed almost every year. Some of the countries were excluded from the list, some of them, on the contrary, included. Today, according to the FATF's Public Statements[56] defined just five countries that hold positions of jurisdictions with considerable shortcomings, such as Iran, Democratic People's Republic of Korea, Algeria, Ecuador and Myanmar.

The consequences of a finding of a jurisdiction in the list of the FATF are miscellaneous. In fact, each state independentlydetermines the measures that apply to transactions with residents of countries from the list, but in determining they are guided by the FATF's list. Since, the FATF lists are directly related to the banking system and international transactions any financial transactions with jurisdictions that are listed in the list necessarily fall under suspicion. Therefore, the measures taken may consist of closer control over transactions with residents of the state, and even in total ban on transactions with such counterparties, in order to avoid unnecessary questions from the

[56]Financial Action Task Force, *FATF Public Statement* (2015) <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2015.html> accessed 18 May 2015.

regulatory authorities. For this reason, most jurisdictions are trying to fulfill the conditions required for them in order to be removed from the blacklist.

Also, in 2015 the FATF presented the second document entitled "Improving Global AML/CFT Compliance: On-going Process"[57], where were published jurisdictions which have some shortcomings, but they agreed on implementing the FATF's standards in the near future. Due to this reason the FATF currently are monitoring the process of implementations of 12 jurisdictions.

In its approach theFATFdemonstratesnon-discriminatorypositioninrelationtoOFCs, as it requires compliance with its rules and standards from both offshore and onshore countries.

After numerous terrorist attacks in the early 2000s, the FATF laid on a new duty –the countering the financing of terrorism. Originally, in 2001 the FATF has published eight recommendations aimed at fulfillment of assigned tasks, but laterone more recommendation was addedand now their total number is nine.

Thus, the recommendations are as follows:

I. Ratification and implementation of UN instruments;
II. Criminalising the financing of terrorism and associated money laundering;
III. Freezing and confiscating terrorist assets;
IV. Reporting suspicious transactions related to terrorism;
V. International co-operation;
VI. Alternative remittance;
VII. Wire transfers;
VIII. Non-profit organizations;
IX. Cash couriers.[58]

The FATF Recommendations are complementary to other international instruments and do not replace the relevant provisions. Elaborated packages of therecommendations

[57]Financial Action Task Force, *Improving Global AML/CFT Compliance: On-going Process* (2015) <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2015.html> accessed 18 May 2015.
[58]Financial Action Task Force.*FATF IX Special Recommendations on Terrorist Financing* (2008), 2-3.

have become internationally recognized standards. Furthermore, according to the UN Security Council Resolution № 1617 the FATF Recommendations are binding on all States that are members of the United Nations "Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing".[59]

Despite the fact that the direct impact of the FATF may cause solely on its member states, in fact, it dictates standards to combat money laundering around the world: firstly, through the participation in it of most developed countries, and secondly, through measures against non-cooperating states imposed by the FATF's member states according to the FATF's decision.

The FATF calls on countries to carry out the existing changes at the national level in accordance with the recommendations. As can be seen from the report, today, there are few of countries that have not yet put in order their legislation and they remain under the FATF's monitoring. Since the day of establishment the FATF has done a great job that influenced public policy in different countries and led to significant positive changes**.**

2.4. The International Monetary Fund

International Monetary Fund is organization which was created in the end of the Second World War with the aim to create more stable international economic system.Due to the fact that the political and economic situation has changed, the structure and purpose of the Fund also suffered from significant changes.

Primary the IMF included just 29 countries and today the scale of members is much bigger and contents 188 member countries. Since its establishmentthe main goals of the IMF areto reconstruct the international payment system and to maintain the stability of the monetary system in the international level.Moreover, the IMF provides loans to countries in need to regulate the balance of payments and to maintain exchange rates.On the official website of the IMF it is specified that the IMF "working to foster global

[59]United Nations, *Council Resolution 1617* (2005) para 7
<http://www.un.org/press/en/2005/sc8468.doc.htm> accessed 27 July 2015.

monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world."[60]

In the beginning of 21 century a lot of events, such as numerous terrorist actsall over the world,took places which considerably change the direction of activity of the IMF. In this regard, there was a need to revise the rules governing combatingmoney laundering and financing of terrorism, both at national and international level. OFCs due to its numerous advantages such as a high level of confidentiality and the lack of a proper exchange of information are becoming attractive for illicit purposes.Thus,functioning of OFCsbecomes one of the areas of monitoring and control of the IMF.

Still the FAFT and the United Nations take the main niche in the fight against terrorist financing and money laundering. However, in parallel with them, other international and regional organizations are also taking steps to improve the overall situation aroundnegative consequences which derive from the use of OFCs. Among these organizations are the Asia/PacificGrouponMoneyLaundering (APG), the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), theCommittee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Interpol, the Egmont Group, the Inter-American Drug Abuse Control Commission (CICAD) and many others. TheIMFalsoplaysconsiderablesupportingroleinthisareawithintheircompetence.

The official beginning of the IMF' practice in the regulation of offshore activities began in 2000when the FSF developed the working group and issued its"Report of the Working Group on Offshore Centres".[61]Inthe Recommendation 1 ofthereporttheFSFofferedtoconduct the assessment of OFCs in order to comply of their activitywith international standards.[62]According to the Recommendation 2 the responsibility for the assessment processhas been entrusted to the IMF. In other words,

[60]International Monetary Fund <http://www.imf.org/external/about.htm> accessed 15 July 2015.
[61] Financial Stability Forum, *Report on the Working Group on Offshore Centers* (2000).
[62]ibid 3.

the IMF in cooperation with the FSF should "take responsibility fordeveloping, organizing and carrying out an assessment process for OFCs."[63]

On the base of aforementioned recommendations experts ofthe IMF prepared the official programto strengthen the financial supervisionof OFCs, which formed the basis of the assessment process of the world offshore centers.[64] According to the main provisions of the program the assessment process is divided on the three stages:

1. Self-assessments by OFCs, assisted by outside experts (experts from supervisory agencies, central banks, consultants, or the IMF);
2. Stand-alone staff assessments of all relevant supervisory standards;
3. Comprehensive assessments of risks and vulnerabilities, institutional preconditions, and standards observance prepared by the IMF.[65]

In general, the assessment program of OFC aims to contribute the strengthening of the regulation of the activities of OFCs and increase their level of transparency of financial flows invested in the economy of OFCs. At the same time the IMF attaches great importance to assess the stability of the international offshore financial sectorsince it has a significant impact on the financial situation in the world.

Besides some requirements in respect to OFCs the IMF offers the technical assistance which should be available before, during and after the assessment process.[66] Technical assistance is intended to provide the national authorities of offshore financial centers in the implementation ofsupervision of financial institutions. Such support may include the development oflegislative and institutional frameworks, in particular, the development of national laws, regulations and guidelines; the development of bilateral ormultilateral agreements with foreign governments.

Furthermore, from the point of view of the assessment process in the program it was proposed the standards whichOFCs should comply with. These standards were presented in two boxes. Firststandards under the FSF Proposed Assessment Programand

[63]ibid 3.
[64] IMF, *Offshore Financial Centers The Role of the IMF*(2000) <https://www.imf.org/external/np/mae/oshore/2000/eng/role.htm> accessed 20 July 2015.
[65]ibid para 38.
[66]ibid para 39.

second standards under a Financial Sector Assessment Program Type Approach. In their core points the sets of standards are similar, but at the same time they have some differences. In each case and with respect to each offshore financial center the standards will be applied according to the individual approach.

In general the sets of standards are possible to summarize as following:

1. Basel Committee on Banking Supervision (BCBS):
    a. Basel Core Principles for Effective Banking Supervision (October 1997) together with the Core Principles Methodology (1999);
    b. The Supervision of Cross-Border Banking (October 1996);
2. International Association of Insurance Supervisors (IAIS):
    a. Insurance Supervisory Principles (September 1997);
    b. Principles Applicable to the Supervision of International Insurers and Insurance;
    c. Groups and their Cross-Border Business Operations (rev. December 1999);
    d. Supervisory Standard on Licensing (October 1998);
3. International Organization of Securities Commissions (IOSCO): Objectives and Principles of Securities Regulation (September 1998);
4. Joint Forum (of banking, securities, and insurance supervisors): Principles, especially supervisory information sharing, fit and proper principles;
5. G-7 Finance Ministers: Ten key principles of information sharing;
6. IMF: statistical standards; and Code of Good Practices on Transparency in Monetary and Financial Policies;
7. Financial Action Task Force (FATF): Forty Recommendations on Money Laundering (1996).[67]

The developed standards cover all main areas and issues of activity of OFCs, such as banking, insurance, security areas, information sharing and transparency issues, money laundering and terrorist financing.

[67] ibid box 3, box 4.

It is also important to realize which competence the IMF has with regard to OFCs and consequently how measures taken by the IMF could affect OFCs.

On the whole, the IMF's powers can be divided into three categories:

- oversight powers;
- the power to provide financial assistance;
- advisory powers.[68]

The IMF mandate for the assessment program derives from the Articles of Agreement of the International Monetary Fund adopted on July 22, 1944. According to which "all governments accept it both on their own behalf and in respect of all their colonies, overseas territories, all territories under their protection, suzerainty, or authority, and all territories in respect of which they exercise a mandate".[69]In other words, membership in the IMF imposes on the member-countries obligation to comply with the requirements set forth in the Articles of Agreement of the IMF.

Besides obligations regarding exchange arrangements and currency practices, the IMF has power to request the information which isnecessary to implement its activityfrom the members. Such information can concern national income,balance of payments, foreign exchange reservesand other statistical data on economy of a country.

IMF's initiatives in the field of information exchange aimed at improving transparency in the activities of OFCs, as well as providing information to the IMF's ongoing monitoring of the financial development of OFCs.

At the time of publication of the IMF's report on offshore financial centers fromthe list of 42 OFCs that was prepared by the FSF, 23 OFCs were members of the IMF, and 13 OFCs were dependencies or territories of members of the IMF.[70]

OFCs that are the members of the IMF shall comply with all requirements of the IMF.As for those of OFCs which are not members of the IMF, the participation in the

[68] IMF, *The Fund's MandateThe Legal Framework* (2010)para 4 <http://www.imf.org/external/np/pp/eng/2010/022210.pdf> accessed 22 July 2015.
[69] IMF, *Articles of Agreement* (1945)Article XXXI, Section 2(g) <http://www.imf.org/external/pubs/ft/aa/#art8> accessed 22 July 2015.
[70] IMF, *Offshore Financial Centers The Role of the IMF*(2000) para 30 <https://www.imf.org/external/np/mae/oshore/2000/eng/role.htm> accessed 22 July 2015.

program is voluntary; however they have the right to apply to the Fund for a consultation or technical support.Respectively, obligations arising from the Articles of Agreementare not extend on the non-members. Asnotedpreviously, around 85% from the general list of OFC are members of the IMF. On the basis of their membership they are required to promote the cooperation and fully support the IMF in all areas of its activities, in particular to comply with provisions stipulated in the programs on offshore financial centers.

In 2003 the IMF Board of Directors approved the program as part of the Fund. The process of assessing offshore financial centers carried out by the IMF is coordinated with programs established by the FATF, the FSF and other international organizations.

Most OFCs, which fell under the IMF program, have passed two modules of the assessment. After a thorough analysis and assessment of OFCs' compliance with internationally standards the IMF may recommend an action plan forimproving the situation in specific jurisdiction.

For instance, in 2009 took place the financial assessment of the Cayman Islands by the IMF. On the basis of the results of the assessment process the IMF presented the report "Cayman Islands. Assessment of Financial Sector Supervision and Regulation".[71]During the analysisit was evaluated different sectors of the economy such as banking regulation and supervision, investmentfundandsecurities, insurance regulation and supervision, the field of anti-money laundering and combating the financing of terrorism and other issues concerned pension system. Almost in all areas the IMF found out some risks and proposed the recommendations with the view of its avoidance.

Of the proposed recommendations possible to identify following:

- Empowering the Cayman Islands Monetary Authority (CIMA) concerning the amendments to rules or guidance;
- Increase fines for violationrules and regulations issued by CIMA;
- Securing on the legislative level capital adequacy and solvency requirements;

[71] IMF, *"Cayman Islands. Assessment of Financial Sector Supervision and Regulation"* (2009) <https://www.imf.org/external/pubs/ft/scr/2009/cr09323.pdf> accessed 27 July 2015.

- Ratificationthe UN International Convention for the Suppression of the Financing of Terrorism (1999);
- Implement more stringent standards for preventive measures in the field of money laundering regulation;
- Include into the legislation that regulate the combating the financing of terrorism, the provision of confiscation of property as a penalty for committing a crime in this field;
- Enhance disclosure requirements of financial entities;
- Monitor international best practices and implement theminto the own system.[72]

As noted in the report, as a whole, despite some issues the Cayman Islands followed all the recommendations developedon the basis of the 2003 OFC Assessment Program and comply with required international standards.[73]

Certainly, the Cayman Islands are not the only one of OFCs that showed their willingness to cooperate. Most states which are the offshore centers have also taken some steps to establish appropriate legal framework for combating money laundering and terrorist financing in accordance with the recommendations of the IMF and the World Bank.

In addition, a significant number of OFCs have taken into consideration and followed the IMF recommendations to correct deficiencies in the sphere of legal regulation, identified during the assessment of such centers according to the program.

3. Regional and national regulation of offshore financial centers

The rapid growth and development of the offshore business caused theconcernby the governments of the countriesfrom which the capital is moving to areas with more favorable taxation. Due to the shortfall of proper funds to the state's budgets and uncontrolled capital flight developed countries have a negative attitude towards the use of offshore centers by its residents.

Among the reasons that explain the concerns of developed countries are: the export-import transactions are performed without payment of relevant duties; funds held in

[72]ibid Appendix I.
[73]ibid para 3.

accounts in offshore centers are not subject to any taxation; foreign currency held in the offshore bank account is not subject to income tax and is free to move to other bank accounts.

Due to the current situation and with purpose to reduce the negative effect of this practice the developed countries take special so-called "anti-offshore" laws, toughening control over the movement of capital across their borders and limiting the business opportunities through offshore jurisdictions. In addition, significant work is carrying to improve the legislation regarding identifying and eliminating the opportunities enjoyed by unscrupulous companies.

The measures taken by each country, primarily aimed at the residents of that country. In turn these measures have a significant effect on the non-resident contractors which related to them. The provisions that are relevant to OFCs are located in various laws or regulationsgoverning the banking or insurance activities, taxation, crimes combating, the provisions of international agreements, etc.

In recent years a more assertive position in relation to offshore centers is taken by the US and the EU, since the majority of offshore centers created for operations mainly with theirjurisdictions.

The EU almost since its establishment is taking measures to combat harmful tax competition and other negative factors of offshore activities. But the basic package of initiatives started in 2010.

Thus, in 2010 the Council of the EU adopted the Regulation on administrative cooperation and combating fraud in the field of value added tax.[74] Accordingtotheregulationit was created the public system to combat tax evasion called Eurofisc. The main objective of this innovation is the fight against fraud in the financial sector within the EU. One of the principles of this system is the exchange of tax information between EU member states, which will allow for rapid response and prevent crimes committed on these grounds.

[74]Council Regulation (EU) 904/2010of 7 October 2010on administrative cooperation and combating fraud in the field of value added tax [2010] OJ 268/1.

In 2011 the Council of the EU adopted the Directive on administrative cooperation in the field of taxation.[75] Such document requires exchanging the tax information between the member states. The Directive provides the exchange of information on request, automatic and spontaneous exchange of information, administrative notification and feedback, time limits on providing information. In addition, this directive provides conditions for the exchange of information with third countries.

Moreover, in 2012 at a sight of the public was presented anActionPlantostrengthenthefightagainsttaxfraudandtaxevasion.[76]This document has also brought a number of significant changes. The plan provides the improvement and progress of existing tools to combat tax evasion, as well as the introduction of new provisions. Among the new initiatives were presented recommendations on the application of measures against aggressive tax planning.

In addition, one of the recommendations closely concerns OFCs, namely thosethat refuse to comply with international standards and being blacklisted. Thus, the members of the EU should develop its own criteria of the definition of such jurisdictions and create their own black lists with the purpose to limit possible tax benefits for such states or territories.

One of the latest andsignificant innovations relating to anti-offshore measures isthe 4th Anti-Money Laundering Directive, which was adopted on 20thMay 2015.[77]The new legislation provides for the following:

- Credit and financial institutions in the EU is prohibited to have anonymous accounts;
- Current owners of such accounts are required to undergo a thorough check namely customer due diligence;

[75]Council Directive (EU)16/2011 of 15 February on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC [2011] OJ 64/1.
[76]Communication from the Commission to the European Parliament and the Council (EU) 722 of 6 December 2012 an Action Plan to strengthen the fight against tax fraud and tax evasion [2012].
[77]Directive of the European Parliament and of the Council (EU)849/2015 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC[2015] OJ 141/73.

- Customer due diligence should be applied in specified cases, such as when the transaction amount is more than EUR 15 000 or when the rate in casino or other entertainment venues of one customer exceed EUR 2 000;
- Member States should create a register of information about the ultimate beneficial owners of corporations, trusts and other entities on its territory, including in offshore jurisdictions;
- Fornon-compliancebylegalentitiestheEUintroduces penalties that can reach double size of illegally obtained income, or EUR 1 million.

The United States has also been fighting with OFCs on a regular basis. Apart from taking their own measures to combat offshore activity, the US also initiated some sorts of restrictions and sanctions against offshore centers by international organizations.

The most significant regulatory act was adopted in 2010 under the title Foreign Account Tax Compliance Act.[78]The main purpose of this law is to tax the foreign income of US residents. The provisions of the law affect the activities of financial institutions worldwide.Thus, according to the law, foreign financial institutions need to identify the account holders for determining whether they are residents of the US and report about such accounts to Internal Revenue Service (IRS) within the framework of intergovernmental agreements on the exchange of information.

In addition to implementation of new legislation, the United States on the contrary terminates the existing international agreements on avoidance of double taxation. The main objective is not to providing tax incentives for offshore companies. Such measures have already revoked a number of long-established tax planning schemes.

The main issue directly affecting the activities of offshore financial centers is confidentiality because this factor is the most attractive for users of offshore financial centers. Therefore, with the purpose to improve the transparency of such jurisdictions the US is actively signing international agreements with OFCs on the exchange of tax information.

[78]Foreign Account Tax Compliance Act (US) of 18 March 2010enacted by the 111th United States Congress [2010].

In addition, the United States often practiced imposition of sanctions and prohibitions on transactions with certain persons or jurisdictions by adopting certain regulations.The United States has its own black list of unfavorable jurisdictions cooperation with which it is better not to exercise.

The above measures are absolutely logical continuation of the policy aimed to combat tax evasion, anti-terrorism and money laundering on the territories of the EU and the US.But at the same time they are significantly and directly affect OFC.

OFCs getting under the pressure from all possible sides are forced to implement radical changes in its legislation and to sacrifice of those advantages, which attract businesses on their territory and bring the basic profit.

Conclusions

Today, around the activities of OFCs an ambiguous situation has developed. Adherents of OFCs consider them from the positive impact on the economy and propose the measures of developing this direction. In turn, the critics insist that OFCs harm the global economy and national economies of individual countries, so propose to take tough measures against OFCs and limit their activity.

It was found that indeed in the activities of OFCs, as well as in any other new emerging phenomenon possible to identify both positive and negative aspects. Therefore, the main approach in relation to OFCs should be the balance of the distribution of forces. No need to fight against OFC as individual phenomenon,it is necessary to fight and prevent the negative factors, which resulted from functioning of OFCs.

The states with developed economy and the international organizations currently aredealing with such negative factors.

Ongoing initiatives on OFCs can be divided as follows:

- reduction of direct tax evasion, combating harmful tax competition is led by the OECD;
- increasing transparency and strengthening financial control in order to eliminate loopholes in the system of regulation is headed by the FSF;
- strengthening the fight against money laundering and terrorist financing is led by the FATF with support from the IMF;

• flight of capital is led by the states at the national level.

International and regional organizations over the last few years have made a great contribution to the improvement of the situation around offshore zones. Unfortunately, taken measures possible to implement only by means of soft law.It is theconsiderable shortcoming of their work.In fact, they do not have the competence of law-making and are not entitled to apply any sanctions against states that refuse to carry out their decision. So the measures taken are more consultative or advisory. An exception may be only those countries which are members of such organizations. On the basis of their

membership, they must comply with the rules and regulations that are being adoptedby the organization.

On the other hand, their status as such does not diminish the role of international organizations in the regulation of international legal relations. They found other equally effective measures and ways to influence OFCs. One of such method is the publication of so-called “blacklists”.

It should be noted that many OFCs want to have an excellent reputation as willing to develop their offshore business for a long time. Correspondingly, getting into the lists has anegative effect on the further opportunities to develop.

That is why today almost all major financial centers, carrying out offshore operations, seek to cooperate with international organizations and to implement of their demands so as not to appear on a "blacklist" of offshore jurisdictions. A number of OFCs tightened their legislation to enhance the transparency of financial transactions of non-residents. Also, they continue to conclude international agreements on the exchange of information between countries and taking measures to combat money laundering and financing terrorism.

The countries that manage to combine offshore activities carried out by them with the membership in major international organizations are in more advantageous position.

Although the results of the work of organizations quite noticeable, they would be more extensive if the lists and other documents issued by the international organizations had clear and unambiguous terms of international - legal interpretation of legislative regulation at both the international and the domestic levels.

Another drawback in the process of monitoring and control of OFCs is the lack of universal definition of "offshore financial center" at the international legal level. This nuance entails certain issues from the theoretical and practical points of view.

For example, some states do not agree with the criteria that formed the basis of the definition of an offshore financial center and do not consider themselves as such. For this reason, they do not tend to cooperate and comply with the requirements imposed on them.

To improve the situation around offshore there is a need to develop universal model multilateral international agreements that will govern the relations in the operation of offshore financial centers. Currently, such regulation is carried out by means of measures taken in the fight against the money laundering and terrorist financing; regulation of banking, insurance, tax activities.

In addition to international organizations, the measures in relation to OFCsare applied by the states on whose territory the activity of OFCs take place. The measures are taken on the basis of national legislation or international agreements.

However, in order to overcome the negative effects of offshore activities, improve the results that were obtained and achieve great success in this area, the work of some international organizations and developed countries is not enough. The work must be carried out in close cooperation with OFCs.

The main task lies on OFCs. They should direct all their efforts on cooperation and compliance with internationally agreed principles and standards. The whole complex of tasks that developed at the international and national levels, in the case of its successful implementation, should have a significant effect on financial stability and the world economy.

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Abstract

Das Offshore-Geschäft ist ein sich rasch entwickelndes Phänomen. Die Zahl der Länder und Gebiete die ihre Dienste in der Offshore-Gerichtsbarkeit anbieten wächst und parallel dazu steigt das Bedürfnis an den angebotenen Leistungen. Aus diesem Grund sind Offshore-Gerichtsbarkeiten heute ein integraler Teil des globalen Finanzsystems.

Neben dem positiven Beitrag den Offshore-Finanzzentren auf ihre Hoheitsgebiete und auf die Weltwirtschaft als Ganzes beisteuern, haben sie eine Reihe negativer Auswirkungen. Der Kampf mit den negativen Faktoren vollzieht sich auf unterschiedlichen Ebenen, in diversen Organisationen und in der Verwendung einer Vielzahl an Methoden.

Zu den wichtigsten Problemen die aus dem Betrieb von Offshore-Finanzzentren wachsen, lassen sich folgende zuordnen: die Kapitalflucht aus dem Gebiet der Industrieländer, der schädliche Steuerwettbewerb, Steuerhinterziehung und Steuerflucht, Geldwäsche, Terrorismusfinanzierung usw.

Die Konzentration dieser Trends hat die Entstehung von Regulierungsmaßnahmen begünstigt, um ihnen durch die internationale Gemeinschaft zu begegnen. Erstens spezialisierte internationale Organisationen deren Hauptziel die Bekämpfung der Phänomene ist, die zur Entstehung von Offshore-Finanzsystemen führen. Zweitens, neue Strukturen um die Entwicklung von Offshore-Finanzzentren zu bekämpfen, die auf Basis bereits bestehender Organisationen entstehen. Drittens haben Länder mit entwickelten Marktwirtschaften auch begonnen Maßnahmen, in Bezug auf die Offshore-Finanzzentren, auf legislativer Ebene zu ergreifen.

Alle Initiativen haben unterschiedliche oberste Ziele, aber die Ergebnisse der gesetzten Maßnahmen beeinflussen in jeglicher Weise die Offshore-Finanzzentren.

Das Hauptziel aller laufenden Initiativen ist es, den Offshore-Finanzzentren ihre Primär- und Grundfunktion zurückzubringen. Offshore-Gerichtsbarkeit sollte ein effizientes Instrument internationaler Steuerplanung sein, ohne nationale Volkswirtschaften zu gefährden und das Gesetz zu verletzen.

Abstract

Offshore business is rapidly developing phenomenon. The number of countries and territories that offer their services as offshore jurisdictions are increasing, and in parallel with them the need for offered services is growing as well. For this reason,today the offshore jurisdictions are an integral part of the global financial system.

Besides the positive contribution that OFCs bring for their territories and for the world economy as a whole, OFCs include a number of negative consequences. The struggle with these negative factors is implementing at different levels, by various organization and by means of using a variety of methods.

Among the main problems that arise in the operation of offshore financial centers, it is possible to allocate following: the capital flight from the territory of the developed countries, harmful tax competition, tax evasion and tax avoidance, money laundering, terrorist financing, etc.

The concentration of these trends has stimulated the development of regulation to counter them by the international community.Firstly, specialized international organizations whose main objective is combating those negatory phenomena that arise from functioning OFCs were established. Secondly, new structures to combat OFCs were created on the basis of already existing organizations.Thirdly, the countries with developed market economies also began to take measures at the legislative level in relation to OFC.

All of their initiatives have different ultimate goals, but the results of the measures taken, in any way, affect OFCs.

The main goal of all the ongoing initiatives is to return to OFC its primary and basic function – offshore jurisdictions should be used as an efficient instrument of international tax planning, without prejudice to national economies and violations of the law.