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ЕКОСИСТЕМНИЙ ПІДХІД ДО ОЦІНКИ АГРАРНОЇ СТАЛОСТІ В БОЛГАРІЇ

Екосистемний підхід усе більше залучається до управління та оцінки рівнів сталості загалом, і в сільському господарстві зокрема. Незважаючи на значний прогрес у теорії та практиці цієї нової галузі, досі немає консенсусу щодо того, як оцінити сталість агроекосистем, зважаючи на різноманітні розуміння, підходи, методи, використані дані тощо. У Болгарії практично немає ґрунтовних досліджень рівня сталості різних агроекосистем. У даній статті оцінюється рівень сталості агроекосистем різного типу в Болгарії. Запропоновано цілісну ієрархічну структуру, включаючи 17 принципів, 35 критеріїв, 46 показників та контрольних значень, для оцінки інтегральної, економічної, соціальної та екологічної сталості агроекосистем. Оцінюється загальна сталость і її аспекти щодо великих (агро) екосистем в чотирьох географічних регіонах, а також в конкретних основних і специфічних типах агроекосистем країни. Оцінка заснована на інформації з перших рук, зібраної в ході докладних інтерв'ю з керівниками "типових"ферм відповідних екосистем. Дослідження показало, що існує значна диференціація рівня інтегральної сталості в сільськогосподарських екосистемах різних типів. Існують також істотні відмінності в рівнях економічної, соціальної та екологічної сталості агроекосистем різного типу, а також критичні показники, що підвищують або стримують загальну і особливу сталість окремих агроекосистем. Результати інтегрального рівня аграрної стійкості, засновані на даних мікроагроекосистем (ферм), подібні до попередньої оцінки на основі сукупних галузевих (статистичних та інших) даних. Беручи до уваги важливість цілісних оцінок такого роду для покращення аграрної сталості, управління фермерськими господарствами та аграрної політики, вони повинні використовуватися у повному обсязі, а їх точність та репрезентивність має бути покращана.

Ключові слова: агроекосистема, сталість, оцінка, економічна, соціальна, екологічна, Болгарія.

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ЭКОСИСТЕМНЫЙ ПОДХОД К ОЦЕНКЕ АГРАРНОЙ УСТОЙЧИВОСТИ В БОЛГАРИИ

Экосистемный подход все больше вовлекается в управления и оценивание уровней устойчивости в целом и в сельском хозяйстве в частности. Несмотря на значительный прогресс в теории и практике этой новой области, до сих пор нет консенсуса относительно того, как оценить устойчивость агро-экосистем, несмотря на различные понимания, подходы, методы, использованные данные и тому подобное. В Болгарии практически нет фундаментальных исследований уровня устойчивости различных агроэкосистем. В данной статье оценивается уровень устойчивости агро-экосистем различного типа в Болгарии. Предложена целостная иерархическая структура, включая 17 принципов, 35 критериев, 46 показателей и контрольных значений для оценки интегральной, экономической, социальной и экологической устойчивости агро-экосистем. Оценивается общая устойчивость и ее аспекты относительно крупных (агро) экосистем в четырех географических регионах, а также в конкретных основных и специфических типах агро-экосистем страны. Оценка основана на информации из первых рук, собранной в ходе подробных интервью с руководителями "типичных"ферм соответствующих экосистем. Исследование показало, что существует значительная дифференциация уровня интегральной устойчивости в сельскохозяйственных экосистемах различных типов. Существуют также существенные различия в уровнях экономической, социальной и экологической устойчивости агроэкосистем разного типа, а также критические показатели, повышающие или сдерживают общую и особенную устойчивость отдельных агроэкосистем. Результаты интегрального уровня аграрной устойчивости, основанные на данных микроагроекосистем (ферм), подобные предварительной оценки на основе совокупных отраслевых (статистических и других) данных. Принимая во внимание важность целостных оценок такого рода для улучшения аграрной устойчивости, управления фермерскими хозяйствами и аграрной политики, они должны использоваться в полном объеме, а их точность и репрезентивность должны быть улучшены.

Ключевые слова: агроэкосистема, устойчивость, оценка, экономическая, социальная, экологическая, Болгария.

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TAX ARBITRATION THROUGH OFFSHORE CENTRES AND TAX HAVENS

The aim of the study is to capture the most relevant aspects regarding the functioning of offshore centres and tax havens, focusing in particular on the most important conceptual and instrumental clarifications. There are several angles to approach the phenomenon of tax evasion that are pointed out in this article, alongside a comparison of various analytical perspectives and, based on these, a number of judgments regarding their (in)opportunity are issued. In order to make a consistent description of the tax havens, it is necessary to clarify the fundamentals, the specific determinants and the factors without which these structures could not exist in the first place, the main hypothesis being that the boundary between tax arbitration and tax evasion is highly ambiguous and this is the major rationale why polemics on this topic arise. The goal is to present as objectively as possible these offshore centres and tax havens activities, which are paramount financial centres, irrespective of the criticism made by those who deem them unfair, immoral or even evil, as well as dangerous. This article focuses on tax planning and tax arbitration practices (e.g., "treaty shopping"), concluding with a collection of rationales for a balanced view on fiscal competition.

Key words: cross-border transaction, capital mobility, offshore financial centres, tax havens, tax planning, fiscal competition

Introduction. Globalization has produced fundamental changes, blurring the traditional role of borders and trading barriers and creating an international economic system that accommodates some of the national operating mechanisms. [1]. This process of deepening economic interdependence has created a new international order, opened new opportunities for actors involved in cross-border transactions, and has transformed the main facets of the economic life. In the transition from traditional cross-border flows to global economic governance, the international economy has experienced impressive rates of growth, but has also faced ever-increasing obstacles that have stifled its momentum. Increasing the level of interconnection at international level has encouraged not only the mobility of

goods and services, but also of production factors, such as technology, labour, and capital. Technological progress in communications and the build-up of infrastructure, state policies geared towards extracting value from globalization, as well as the removal of barriers to trade and foreign exchange flows allowed horizontal and vertical disintegration of production, the outsourcing of production and marketing processes and directing profits to new destinations. The freedom to act where it is most profitable has stimulated the search for advantageous tax solutions as well. For these reasons, the attractiveness of tax havens, which are arbitrageurs of the international financial system, has increased considerably in recent decades, raising concerns regarding whether they play or not a sound role within the world economy.

One of the main features of the world economy in the late 20th century and the first two decades of the 21st century was the increase in international capital mobility, a phenomenon that generated the most complex effects. Industrial production, especially highly-intensive in capital, has become increasingly dominated by transnational corporations that create global localization, dislocation and relocation networks with the aim of gaining access to economic areas where they find low wages, friendly-tax systems and permissive environmental regulations. This increase in international mobility has limited the ability of national governments to introduce specific national legislation in areas such as environmental protection or social and technological relationships for fear that such actions may lead to a delocalisation of productive processes to places with lower levels of regulatory rigor, a key-element in this process of accentuating international capital mobility being the growing importance of offshore financial centres, be they "tax havens" or not. In recent years, these novel tax architectures have become an important part of the emerging globalized financial system. The existence of what could be labelled as "offshore interfaces" has fortunately undermined the ability of national governments to impose burdensome taxes on both individuals and companies, but also unfortunately facilitated legally dubious activities or worse (cross-border crime, money laundering and other illegal activities), thus weakening the powers of financial (national, regional or international) supervisory and regulatory bodies, creating an image of global financial anarchy.

Nowadays, a significant part of global financial transactions is being routed through offshore international financial centres. However, there are also many large states that offer preferential tax regimes for certain activities or feature internal jurisdictions with such regimes (states in a federal state). Choosing an appropriate tax hierarchy depends, largely, on two basic criteria, namely: the nature of the company's activity and the characteristics of that territory. In addition to tax issues, there are also non-fiscal considerations that need to be taken into account, such as: political and economic stability, lack of currency restrictions, administrative procedures for setting up legal entities, commercial infrastructure, quality of workforce and of professional assistance, geographic location, etc. Embracing a specific tax haven in order to achieve the most favourable tax position requires the management of risks associated to the established areas and targets. As the legitimacy of the tax collection system is unanimously recognized globally – but also the need to keep it disciplined and in the interest of the taxpayer, irrespective of it being individual or corporate –, the most plausible excuse for striving to evade it is the dissatisfaction of economic agents with the use of taxation system as an instrument for redistribution of income within the society. It remains, therefore, the governments' obligation to improve the tax legislation so that an individual (or a company) should not feel so acutely the need – before blocking the means – to shirk his (its) tax obligations. This article aims to offer a balanced perspective on the problems concerning tax havens.

Some conceptual approaches within the literature. As the phenomenon of the proliferation of tax havens and the global understanding of the specificity of their problem emerge, it has become imperative to correctly define the term *tax haven* (or *fiscal paradise*) in order to delineate the territories that are likely to be classified as such. It has proven very difficult to develop a comprehensive definition of tax havens, because the term refers to activities of a very high complexity. The vast majority of analysts who have studied this thematic area tried to define the concept as elaborately as possible without reaching full consensus.

● *"Analytical" yet relatively ambiguous definitions for tax havens*

– Palan, Chavagneux, and Murphy [23] believe that state or sub-state entities that host tax havens represent territories that have sufficient autonomy to enforce their own financial and fiscal regulations; they take advantage of this to enact rules designed to help individuals and non-resident companies to evade the regulatory obligations of the territories where such both natural and legal persons *de facto* carry out their economic activities.

– Adam Starchild [26] focuses on a slightly smaller segment – the *tax planning* of multinational companies – when he tries to define tax havens, considering that tax havens are a geographical area in which special tax legislation is designed to encourage the establishment of branches and subsidiaries by a non-parent company having its principal place of business inside an industrialized country where an onerous tax treatment is applied.

– Nicholas Shaxson [25] offers a definition of tax havens that one may find quite vague, arguing that the term refers to places that try to attract money by providing politically stable facilities to help people and entities circumvent rules, laws and regulations of other jurisdictions. He conveys that it is perfectly normal for some jurisdictions to exercise their sovereign right to become richer via undermining the sovereign laws of other places.

– Of course, there are various "rule of thumb" definitions. Mark Hampton [11] considers tax havens are jurisdictions that do not have or, at best, have low tax rates compared to other jurisdictions.

Because there is no general agreement on the definition of tax havens, international bodies and the academic world have tried to determine the criteria by which a geographic area can be recognized as belonging to this domain. Differences in the qualifications of tax havens by various international bodies and by numerous experts constitute proof of the opacity of the phenomenon, despite the concern of (inter)national *fora*.

– In 1998, the Organization for Economic Cooperation and Development (OECD), the most important inter-governmental "crusader" against tax havens, found four key-factors for identifying them: the absence of a nominal income tax or its existence at a very low rate; the absence of exchange of information with foreign tax administrations; the lack of transparency of banking activities; the absence of "material" activities [32].

– At its turn, the International Monetary Fund (IMF) has set the following criteria for recognizing tax havens: jurisdictions that have a relatively large number of financial institutions engaged in business in general with non-residents (hypertrophied financial systems); financial systems in which mainly foreign assets and liabilities are traded; centres offering nominal or zero taxation, poor or

moderate financial regulations, banking secrecy as well as anonymity [31].

● *De-homogenizing offshore financial centres from tax havens*

Unlike the relatively more "judgmental" treatment of tax havens coming from the OECD [33], the IMF provides a more practical definition of an *offshore financial centre*, considering it to be the centre where most of the financial sector activity is offshore on both sides of the balance sheet (i.e., the majority assets of financial institutions are formed by non-resident activities), where transactions are initiated elsewhere, and where most of the institutions involved are controlled by non-residents. It is important to know the meanings of the terms used, while noting that it is difficult to make a clear-cut analytical distinction between a tax haven and an offshore financial centre. An offshore financial centre is a structure in which complex financial techniques could be used to provide customers in international financial markets with a comparative advantage in fiscal matters.

Offshore financial centres are usually established in tax havens and benefit from their favourable tax laws. Branches or subsidiaries of major international banks and financial service providers (fund managers, trusts, company directors, accountants, law firms) are set up in offshore financial centres which are usually tax havens, although not all tax havens are concurrently offshore financial centres.

Ahmed Zoromé [27] finds the offshore financial centre as representing "a territory or a country providing financial services to non-residents on a scale that is disproportionate to the size and level of financing flows of its domestic economy", Mark Hampton [11] portrays offshore financial centres as "places hosting separate financial activities either legally or geographically by the major regulatory units", while Palan & Chavagneux [21] identify ten criteria that a territory should meet in order to fall into the category of tax havens, be they offshore financial centres as well or not: a reduced or non-existent taxation of non-residents; banking secrecy; professional secrecy; easy registration procedures; high capital mobility; quick deployment; support from an important financial group; economic and political stability; good reputation; a net of bilateral tax avoidance agreements.

It is noted that in virtually all attempts to define or delimitate tax havens, the principle of residence is invoked as essential. The concept of fiscal residence becomes crucial in an internationally-based fiscal system. While the registration of a company can be compared with the acquisition of citizenship by individuals, in many countries the corporate equivalent is the venue where the firm is actually run.

The place of effective management does not tell the whole story though. Typically, tax systems use a combination of these criteria to determine whether a company is resident in their territory. Conversely, non-residents are usually identified as all those not resident in that jurisdiction. Applying different criteria by states can lead to a situation where a company is resident in several states for tax purposes: e.g., a company incorporated in a state which uses the registration criterion to determine its tax residence but which is actually managed from another state using effective tax management as a tax residence criterion will be seen as resident in both states for tax purposes. This may trigger adverse tax consequences on companies that are usually resolved through *double taxation avoidance treaties*. Also, dual tax residence can have beneficial effect on firms' tax expenditures.

● *The "synthetical" path of avoiding biased analytical definitions*

Because of the divergence of views on the criteria that delimit the territories that can be considered tax havens or similar structures, there is no unanimously accepted list of them. In 2017, the European Union first published a so-called "blacklist" of tax havens comprising 17 jurisdictions and a list of 47 supervised territories that agreed to make changes to national tax regulations. The overall purpose of the EU list was to improve good global tax governance and ensure that EU partners comply with the same standards as EU member states. Among the 17 states there are: American Samoa, Bahamas, Barbados, Grenada, Guam, Republic of Korea, Macao, Marshall Islands, Mongolia, Namibia, Palau Republic, Panama, Saint Lucia, Samoa Integral State, Trinidad and Tobago, Tunisia, the United Arab Emirates [30].

Also, in 2017, following the G20 Summit in Hamburg, the OECD published a list of so-called "non-cooperative tax jurisdictions", noting, in the same time, that "great progress has been made" in the fight against tax evasion. The global standard to which jurisdictions that do not want to appear on the OECD blacklist adhere is cooperation through the automatic, multilateral exchange of tax information between tax authorities. The OECD blacklist contains surprisingly one country: Trinidad and Tobago [34]. Researchers [19] believe that there are 45 to 60 tax havens worldwide, differences among analysts coming from the subjective perception on cooperation propensity of tax haven-like states.

Regarding the value of wealth held in tax havens, there is again a variety of opinions. This is due to the incomplete data available and the different calculation methods. James Henry [12], former chief economist at McKinsey, concludes that the value of offshore wealth falls somewhere between $2 and $21 trillion. A French economist [28] estimates "that it would be a three to four times lower sum – $7,500 billion". Therefore, it can be concluded that the successes in the research of tax havens are faltering and there is no consensus and consistency in terms of opinions in the literature. It is certain that tax havens are an element of the world economy whose existence has tangible negative (and positive) effects.

"Supply side" and "demand side" of tax havens. One of the distinctive features of tax havens on which experts have reached some consensus is the low level of taxation or even the absence of any tax burden on companies and non-residents. Tax havens distinguish between resident and non-resident taxpayers in order to apply a more favourable treatment to non-residents, in particular an exemption from taxes on residents. It should not be understood from this that non-residents would benefit from full and absolute gratuity. Although they benefit from consistent tax-related facilities, they will have to bear quite a lot of costs, which may take various forms, such as: royalties if they resort to licensing, rental or other forms of transfer of usage rights; payments for hiring (sometimes even fictitious) local experts or managers; the costs incurred by the operation of non-resident entities. Amounts earned for the maintenance of small local offices, property taxes, employing fictional residents contribute to the compensation of public authorities' "revenue loss". It is nevertheless difficult to assess the contribution of such "indirect"/"collateral" taxes to national revenues.

A way to maintain low tax rates on non-residents comes from the magnitude of transfers from developed countries or from the corporate environment to tax havens, thus allowing for significant revenue collection and the creation and maintenance of taxpayers' dependence on these derogatory areas. Noteworthy, there is a complementary group of actors operating in a financial offshore "ecosystem", adding to its fluent functionality: the service providers associated with tax havens, including banking institutions, mutual funds and other similar categories. For instance, most international banks have subsidiaries in tax havens. What keeps all these

actors together, apart from the obvious motive of the diminished fiscal costs, is the strict confidentiality of all operations. Opacity in obtaining information on the nature, scale and identity of business people is one of their jurisdictional attractions, besides the nominal level of taxation. Another equally appealing feature of a tax haven is the ease and anonymity with which the entities can be recorded. This means that most tax havens do not even require corporations registered in their territory to be "physically" present [22].

Broadly speaking, there are three principal reasons for choosing to act in a tax haven:

– avoiding or reducing taxes and duties in the state of residence;

– the confidentiality enjoyed by clients of offshore financial structures (regardless of the nature of the business);

– the circumvention of national regulations (the IMF adds a basic sense of legality into the picture, distinguishing tax havens with legal coverage from those that are placed at or beyond the limit of legality).

As can be seen in the literature, among legitimate reasons we can find, in a detailed enumeration: lower explicit taxation and, consequently, the increase in profit after tax; regulatory frameworks that reduce implied taxation; simple registration procedures; the existence of adequate legal frameworks to protect the integrity of relations between service providers and customers; proximity to major economic powers; the reputation of certain financial centres and specialized services provided; making currency exchange without restrictions; means of protecting assets from the impact of litigation; the instability of the political and economic environment in the jurisdiction of residence [8].

Offshore financial structures can also be used for illicit purposes, such as pure tax evasion and laundering money from criminal (even terrorism-related) activities. This type of motivation derives from the advantages of tax havens – mainly the opacity of the operating environment and the confidentiality that prevents the exchange of information with the authorities of the real beneficiary's home. A great challenge when wanting to capture the amplitude of the phenomenon is the access to continuous and relevant statistical series. There are no comprehensive international databases, most information coming from information leaks (e.g., produced in 2015 as part of the Panama Papers scandal) [20].

Corporate tax planning – why opt for a tax haven. Through an effective international tax strategy and a global approach to the interaction between fiscal and financial functions, companies can maximize profits seen globally and at the same time minimize certain types of risk across the entire group.

One way to streamline the financial results of multinational companies is to appeal to international tax arbitration. Unlike avoiding tax payments by registering companies in tax havens or engaging in non-economic transactions, international tax arbitrage is a result of legal differences and inconsistencies between two or more solid tax systems, whilst the law is not violated. Even though the concept of tax arbitrage is present in specialized papers dealing with taxation or with the structure of capital, there are very few empirical studies showing how companies use tax arbitrage as an integral part of the long-term financial strategy. At the same time, a number of authors point out that asset prices only partly reflect the effects of fiscal differences across countries. For instance, Engel, Erickson and Maydew [5] found that the tax benefits generated by debt are approaching the maximum, thus contradicting Miller's [17] research which argues that there is no tax benefit in the case of indebtedness. Furthermore, as tax systems evolved and diversified, companies began to invest in countries where the concept of withholding tax is missing, as well as in tax havens from some developing countries. In the same vein, Clausing [3] documents the fact that governmental revenues sourced from US companies' profits were about 35% lower, due to a change in the source of those profits.

In order to achieve the highest degree of profitability for a company, its financial and fiscal functions need to be linked to each other, and taxes and fees must also be taken into account when choosing a company financing option. Fama and French [7] studied how taxation of dividends and debts affects the value of the company, while Mackie-Mason [16] and Graham [9] found that companies facing high marginal tax rates are more inclined to choose loans. Graham [10] presents the effects of taxes and duties on the organization form and company restructuring, on the risk management policy, and also on various decisions on financing or granting compensation / benefits to its managers. From further literature analysis, it also transpires that some researchers are wondering what are the reasons for companies and managers to engage in exclusive transactions to minimize taxes and fees. An extensive literature analysis shows how the managers' benefits determine their behaviour and the company's activity, especially in terms of tax arbitrage. The spectacular increase of managers' compensations and bonuses during the 1990s coincides with an increase in the mismatch between the returns on capital markets and the profits reported by tax authorities [4].

Bypassing barriers via tax arbitration practices. The level of globalization has generated an unprecedented deepening of interdependencies between national economies. Players participating in the current economic game operate at the confluence of several national tax territories and must take a proactive attitude to the challenges attached to this. The continued maintenance of rather different national regulations on the cross-border financial and trade flows forces firms to resort to complex tax arbitrage schemes [24] in order to achieve predictability and consolidate the earnings derived from the transactions carried out globally. However, it is virtually impossible to take into account all the possible risks and to keep up with the developments in the increasingly complex and turbulent business picture.

Arbitration, including in the field of taxation, is related to commercial law and contract practices. As stipulated in the Article II (I) of the New York Convention [29] – "Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration". As such, arbitration [2, 6] is a legitimate exercise of contractual freedom to establish a private form of justice and adjudication. At international level, there have been great successes both in terms of the regulatory and institutional framework (as exemplified by the French and American legislation in this domain).

Multinational companies' businesses face a whole series of barriers, restrictions and imperfections (Table 1). As a result, companies seek to bypass these obstacles and try to diminish their impact by resorting to arbitrage operations (Table 2).

***Table* 1. Obstacles and imperfections within (inter)national markets**

Formal barriers	Informal barriers	Imperfections in national capital markets
a. quantitative restrictions and direct taxes on the international transfer of funds b. taxes for international transfers, differentiated according to the nationality or global situation of the company c. restrictions according to the investor or investment nationality, to the access of funds on the international capital market	a. cost of obtaining information b. difficulty in concluding contracts outside the country c. trading costs d. traditional investment patterns, etc.	a. capping interest rates b. limited legal and institutional protection for minority shareholders c. limited liquidity due to reduced capital markets and / or monopolistic practices of financial institutions d. difficulty in obtaining information for evaluating actions

Source: Own synthesis from the literature.

***Table* 2. Bypassing barriers in the way of international transactions**

Tax arbitrage	Financial market arbitrage	Regulatory system arbitrage
– how companies can reduce the amount of global tax payments by moving profits from countries with high tax rates towards those with a lower level or how they can move funds from countries reporting profits to those reporting losses	– through a transfer of funds between units a company can reduce its currency risk, get better interest on available funds, reduce the cost of the loan and so on	– when the profits of subsidiaries are capped by governments, for example by capping prices or because of pressures from trade unions, companies are allowed to move their profits

Source: Own synthesis from the literature.

Emerging economies are in great need to explore and exploit these possibilities in a smart and sustainable manner, in order to reconcile own development goals (where, among other things, fiscal competitiveness as well as fiscal fairness are important) with the need of international credibility and reliability (as an originator and destination of financial transaction and a valuable piece in the gear of the worldwide economic order).

The case of the European Union member state, yet still maturing as a functional economy, Romania is illustrative in this respect. The debates in the Romanian society, at the level of business environment and policymaking authorities, assisted by Academia and civil society opinions – despite doctrinal differences between liberals and socialists –, converge to pointing out the need for actions on a number of levels, namely:

– *at a macro-economic level* – to adopt as soon as possible a modern, flexible and easily applicable legislation on the basis of which to regulate the principle of arbitration, create arbitration tribunals that are accessible to economic actors and consolidate a business culture to effectively handle these problems;

– *at a micro-economic level* – to develop new organizational cultures based on another attitude towards transactional risks, a new managerial ethos towards business internationalization and another way of conforming to the transformations that are taking place at national / European / global business levels;

– *at a meta-economic, civil society level* – to promote the principle of proactivity, militancy towards a healthy business environment and corporate sustainability, "morally and materially".

The controversial practice of "treaty shopping". Having as the main purpose the dodge of fiscal barriers to international economic activities, the "treaty shopping" phenomenon consists of a situation in which a (legal) person – *i.e.*, a corporation –, that is resident in one country ("home country") and earns income or capital gains from another country ("source country"), benefits from a tax treaty between the "source country" and yet another country ("third country") – using a (legal) person established in that jurisdiction as a diverting entity in order to secure a better fiscal treatment for that financial inflow. This particular situation arises where the benefitting person / corporation is resident in a "home country" that does not have a fiscal / tax treaty with the "source country".

Article 22 of the 2006 US model treaty on anti-treaty shopping provisions provides the following description of this phenomenon that involves "residents of third countries [...] benefiting from what is intended to be a reciprocal agreement between two countries". As mentioned by some authors [15], "Tax treaties prevent – or at least minimize – the risk of double taxation by allocating taxing jurisdiction between the treaty partners". More and more, companies use tax treaties to reduce effects of double taxation, being interested also in improving their profits through efficient corporate structures that enhance after-tax returns on equity. It is necessary to point out the difference between treaty shopping and fiscal evasion, since fiscal evasion could be considered a fraud – thus being of a criminal nature –, while tax avoidance is a legitimate form of tax planning that most sophisticated legal regimes do allow for.

The main purpose of treaty shopping is to diminish source taxation – typically on dividends, interest, royalties and on business income not connected to a permanent establishment. The main method used in respect to this phenomenon is to interpose an intermediary entity between the potential taxpayer, the real investor and the investment; this intermediate entity is located in a country that has a tax treaty with the country in which the investment is made. This intermediary entity may obtain income (as dividends, interest or royalties) from the investment that will not be taxed on the basis of residence (according to the tax treaty, the tax is payable to the tax haven). Thus, the tax haven does not collect or charge this income, so the untaxed profit can then be shifted to the real investor.

"Treaty shopping" is a form of the international tax strategy and consists of comparing the advantages and disadvantages of applicable conventions. Although this technique itself is not illegal, it is often considered to be an abusive form of tax planning, consisting in artificially creating the conditions for benefiting from the conventional tax advantage, by allowing the increase of the net benefit by lowering the tax cost. Given the changes that have taken place over the last two decades in the regional and global economic landscape and the emergence of situations perceived by authorities in many countries as disruptive to the specific financial and fiscal balances for the modern economy, there has recently been a diversification of the means by which business practices which are not in line with the "fairness" required by a modern business environment could be settled inter-governmentally.

The disruptive "base erosion and profit shifting". Base erosion and profit shifting (BEPS) is defined as a host of actions related to tax planning whose main goal is to shift profits to other locations with little or no economic activity. Usually, these kinds of locations impose very low taxes and the result will be a very low corporate tax as well. The latest statistics show that around 200 billion dollars of global corporate income tax revenue are "lost" annually, that is from 4% to 10% global GDP. Over 60 countries in the world have joined to fight tax avoidance (OECD – G20 BEPS Project) by developing fifteen actions against this kind of corporate behaviour. The BEPS package is supported by all the leaders of the OECD – G20 countries and other non-members who have all urged a fast implementation of the measures through changes made to the tax treaties. The implementation of the OECD-inspired measures regarding the fight on base erosions and profit shifting is perceived as "the end" for "treaty shopping".

Romania, like the OECD member states whom it aspires to join, had the deadline to implement the BEPS package by the end of 2018, with the exception of the exit tax rules, ending in 2019. For this, a number of legislative changes are needed, which will have the aim to redefine the internal institutional framework, changing the way of organization and the behaviour of the tax authorities, as well as background transformations at the level of the business environment. The extent of the phenomena of diminishing the tax base and those of the transfer prices used by the companies that carry out economic activities in Romania is very large, the state complaining that it is deprived of important income and domestic companies complaining that they are unfairly competed against by external corporate competitors, a fact leading to the distortion of the economic game. However, a point can be made against the obsession itself to pin down and tax every stream of profit irrespective of the unintended consequences of this.

Big picture discussions and pending conclusions (The "ethics and economics" of tax havens: a free-market-supporter "minority report"). The dominant line in academic and political fields, in the vast majority of the tax-paying civil society, as well as in that part of business dealing with small and medium activities looks with disapproval, if not with anger, towards "tax havens". Despite the allegations that highlight the inequality of treatment among taxpayers or the lack of loyalty to the country, there are both ethical and economic (counter)arguments. In their logic, the emphasis is no longer obsessively on the deviant behaviour of tax-evading speculators, but on the need to discipline regulators' conduct in their relation with the taxpayers. Below, we will discuss some of them, pointing out that, despite their marginal nature, they are relevant (Jora [13]; [14]; Mitchell [18]; [19]).

● *Tax havens strengthen global tax competition, softening the global tax burden*

Low tax jurisdictions serve an important role in the global economy: they "force" indirectly the other governments to behave equitably and efficiently in relation to their taxpayers. The global tax competition initiated by the Thatcher (UK) and Reagan (US) fiscal reforms of the 1980s stimulated the industrialized nations (OECD) to cut personal tax rates from an average of over 67% in those days to less than 40% at present. Similarly, corporate income tax was reduced from an average of about 50% to less than 24% today. In addition, the revolution of flat tax generated, in comparison with 1980s, when there were only three such jurisdictions, the increase in number of these systems (24 nowadays), encouraged by Estonia in 1994.

● *Tax havens favour companies' activities even in countries with excessive taxes*

Although "tax planning" can reduce the revenues of high tax jurisdictions, it can have compensatory effects on real investments, politically attractive for governments. Thus, the existence of some international opportunities, specific "loopholes" made available by tax havens and by the "fiscal planning" based on them, can have relief effects. They allow countries to maintain the (high) tax rates on capital in their territory, while at the same time preventing a "final exit" of foreign direct investment (which could be relocated entirely to other jurisdictions), relocations that would lead to (politically) undesirable (social) effects, such as job losses, with all their budgetary repercussions.

● *Tax havens are specifically helpful in reducing irresponsible taxation of capital*

Populist politicians are tempted to impose capital taxes, hoping to accumulate more fiscal revenues and votes from those seduced by the idea of class war against the rich. But the excess tax on capital inflows causes major economic damages because it reduces people's incentives to save some of their current income to fund tomorrow's economic growth. High tax rates applied to savings and investments (e.g., taxes on capital, wealth, inheritance, etc.) generate at the same time a socially harmful behaviour of tax evasion. Tax havens are a wake-up call for governments willing to avoid "capital drain", attracting their attention to the Laffer effects.

● *Tax havens help protecting the property rights of politically persecuted persons*

These so incriminated jurisdictions also play a key (moral) role in protecting people subject to religious, ethnic, sexual, political or racial persecution. Most of the world's population lives in political regimes that have inadequate protection of human rights, and individuals who hold assets are often targets for oppressive governments. The ability to place money in a fiscal paradise offers a solid refuge to such potential political victims. Even the United Nations, in a 1998 report directed against tax havens, admitted that governments have the habit of chasing and harassing complaining-citizens, and political freedom cannot be decoupled from the protection of personal and patrimonial privacy.

Due to the complexity of tax havens, there is no agreement on their definition, proportion or quantifiable effects. There are, however, some convergent aspects in the views of experts and international bodies. The main characteristics of the tax havens on which the experts in the field have reached a certain consensus are: the low tax rate for individuals and non-resident companies; bank secrecy, considered to be the fundamental distinctive feature of tax havens and other jurisdictions practicing a preferential tax regime; ease of registration of entities in the territory of tax havens. These peculiarities of tax havens encourage the use of services they offer both for legitimate and illegal purposes. Tax evasion (as an "un-civil" behaviour) and money laundering (as an obviously "criminal" one) associated with tax havens' operations are the main concerns that harness the efforts of major states and intergovernmental organizations.

In relation to the increasing sensitivity of the geo-economic and geopolitical challenges in this field (from economic turbulences contagion to terrorist threats), the actions taken at national and international level in the field of countering the negative effects of the operations carried out in tax havens are conducive to the idea that the adoption of a firm solution to the problem of tax havens is only a matter of time. The actions of the authorities target the un-transparent character of the operations taking place within the territory of these entities. Reducing the opacity of

offshore financial activities would result in a significant reduction of spill-over effects. As the lines between tax arbitrage, tax avoidance and tax evasion are often vague and the corporate tax arbitration can be subject to interpretation, there is a great need for balancing accusations to taxpayers for jilting their countries of residence with appeals for fiscal moderation from the latter.

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ПОДАТКОВИЙ АРБІТРАЖ ЧЕРЕЗ ОФШОРНІ ЦЕНТРИ ТА ПОДАТКОВІ ГАВАНІ

Мета дослідження – охопити найбільш важливі аспекти функціонування офшорних центрів і податкових притулків, приділяючи особливу увагу найбільш важливим концептуальним та інструментальним роз'ясненнями. Є кілька точок зору на підхід до явища ухилення від сплати податків, на які вказано в цій статті, поряд з порівнянням різних аналітичних точок зору, і на підставі цього видається ряд суджень щодо їхньої (не) можливості. Щоб зробити послідовний опис податкових притулків, необхідно уточнити основи, конкретні детермінанти і чинники, без яких ці структури не могли б існувати і в першу чергу основна гіпотеза полягає в тому, що межа між податковим арбітражем і податком є вельми неоднозначною, і це є основним підгрунтям для виникнення полеміки на цю тему. Мета полягає в тому, щоб якомога об'єктивніше уявити діяльність цих офшорних центрів і податкових притулків, які є головними фінансовими центрами незалежно від критики з боку тих, хто вважає їх несправедливими, аморальними або навіть злом, а також небезпекою. У цій статті основна увага приділяється податковому плануванню та практиці податкового арбітражу (напр., "покупка за договором"), а на закінчення наводиться набір обґрунтувань для збалансованого погляду на податкову конкуренцію.

Ключові слова: транскордонна операція, мобільність капіталу, офшорні фінансові центри, податкові притулки, податкове планування, податкова конкуренція.

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НАЛОГОВЫЙ АРБИТРАЖ ЧЕРЕЗ ОФФШОРНЫЕ ЦЕНТРЫ И НАЛОГОВЫЕ ГАВАНИ

Цель исследования – охватить наиболее важные аспекты функционирования оффшорных центров и налоговых убежищ, уделяя особое внимание наиболее важным концептуальным и инструментальным разъяснениям. Существет несколько точек зрения на подход к явлению уклонения от уплаты налогов, на которые указано в этой статье, наряду со сравнением различных аналитических точек зрения, и на основании этого формируется ряд суждений относительно их (не) возможности. Чтобы выполнить системное описание налоговых убежищ, необходимо уточнить основы, конкретные детерминанты и факторы, без которых эти структуры не могли бы

существовать и, в первую очередь, основная гипотеза заключается в том, что граница между налоговым арбитражем и налогом весьма неоднозначна, и это является основным обоснованием возникновения полемики по этой теме. Цель состоит в том, чтобы как можно более объективно представить деятельность этих офшорных центров и налоговых убежищ, которые являются главными финансовыми центрами, независимо от критики со стороны тех, кто считает их несправедливыми, аморальными или даже злыми, а также опасными. В этой статье основное внимание уделяется налоговому планированию и практике налогового арбитража (напр., "покупка по договору"), а в заключение приводится набор обоснований для сбалансированного взгляда на налоговую конкуренцию.

Ключевые слова: трансграничная сделка, мобильность капитала, оффшорные финансовые центры, налоговые убежища, налоговое планирование, налоговая конкуренция.

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УЗАГАЛЬНЕННЯ ПОЛОЖЕНЬ ЕКОНОМІЧНОЇ НАУКИ ЩОДО СТІЙКОГО РОЗВИТКУ ПІДПРИЄМСТВА

Присвячено дослідженню основних положень теоретичної науки щодо стійкого розвитку та формуванню в хронологічному порядку його складових. Розглянуто основні цивілізаційні підходи до стійкого розвитку та подано аналіз поглядів сучасних українських і зарубіжних учених щодо шляхів його запровадження. Особливе значення надається дослідженню концепції стійкого розвитку в розрізі економічних шкіл і понять.

Ключові слова: стійкий розвиток підприємства, підходи до запровадження стійкого розвитку.

Постановка проблеми. Розвиток економіки протягом тривалого часу відбувався на основі споживацької моделі, і в теоретичній науці переважали пошуки шляхів забезпечення максимально можливої ефективності без урахування майбутніх потреб. Зі становленням ринкових відносин у XX столітті, динамічного нарощування обсягів виробництва матеріальних благ набули актуальності дослідження проблем екологічних наслідків господарської діяльності людини, що вплинуло і на розвиток науки. У сучасних умовах теоретична наука звернулася до концепції стійкого розвитку, яка визначає необхідність урахування потреб майбутніх поколінь.

Аналіз останніх досліджень і публікацій. Розвитку теорій стійкого розвитку присвячена велика кількість наукових праць зарубіжних і українських учених. Серед них слід відзначити роботи Д. Медоуза [1], Г. Дейлі [2] та П. Кругмана [3], які досліджували компоненти стійкого розвитку; Г. Гардіна [4], чиї праці присвячені шляхам переходу до стійкого розвитку; прихильників стаціонарної економіки К. Боулдинга [5], Т. Джексона [6] та Е. Сімса [7].

Українські вчені також займаються вивченням питання сталого розвитку. Досить відомими в цих наукових сферах є праці О. І. Амоші [8], який досліджував сталий розвиток промислових регіонів; М. А. Голубця [10], який піддав критиці можливість переходу до сталого розвитку країн-забруднювачів довкілля, висунувши концепцію геосоціосистемології; О. М. Невелєва та Б. М. Данилишина [11], які досліджували стратегічні напрями та механізми сталого розвитку регіону; дослідників сталого розвитку як науки, близької до біоекономіки М. Талавирі й О. Талавирі [12]; М. С. Макухи [13], чиї праці присвяченозабезпеченню потреб суспільства, підтриманню економічної ефективності виробництва та підвищенню якості життя населення; В. М. Гейця, Л. В. Шинкарук та Т. І. Артьомової [15], дослідників структурних змін економіки у зв'язку з переходом до сталого розвитку; Е. В. Прушківської та Ю. О. Шевченко [16], які здійснили аналіз концепції "зеленої економіки", сталого розвитку і зеленого зростання та ін.

Власне дослідженнями питань стійкого соціально-економічного розвитку підприємства займалися: В. А. Гросул [9], яка дотримувалася розгляду стійкого розвитку як інтегрованої системи управління підприємством з урахуванням постійних мінливих зовнішніх умов; дослідники сталого розвитку промисловості Н. В. Шандова [17] і Х. Р. Гальчак [18]; Л. Г. Мельник [14], який вважає концепцію сталого розвитку на глобальному рівні утопічною, однак вивчає інструменти еколого-економічної політики для підприємств у контексті забезпечення стійкого розвитку.

Методологія дослідження базується на застосуванні загальнонаукових методів дослідження, а саме: таксономічного – для узагальнення підходів до концепції сталого розвитку; міждисциплінарного – для цілісного розгляду сталого/стійкого розвитку з відображенням усіх його аспектів; хронологічного – для вивчення еволюції наукових поглядів на питання сталого розвитку.

Мета статті полягаєв систематизації існуючих положень теоретичної науки зі стійкого розвитку та визначенні напрямів необхідних у цьому контексті перетворень (змін) діяльності підприємства.

Результати. Забезпечення стійкого розвитку як питання соціально-філософського характеру обговорювалося до того, як було чітко сформульоване. Так, дослідження деонтичної та перформативної логіки розпочали І. Кант та Д. Юм, а продовжили філософи-позитивісти (Р. Хейр, Д. Мур та ін.).Однак поява концепції сталого/стійкого розвитку є логічним результатом еволюції теорій економічної думки, оскільки вона дає відповіді на глобальні виклики сучасності з проекцією на майбутнє.

Основа ідеології сталого розвитку – інтеграція та гармонізація економічної, екологічної та соціальної сфер суспільства. Країни з розвиненою економікою активно просуваються на шляху до втілення даних ідей у життя через послідовну реалізацію відповідної політики держави. Достатньо гнучкі та адаптивні економічні системи значно легше переорієнтувати на шлях сталого розвитку, зовсім інші можливості для цього у менш розвинених країнах, де процеси трансформації ще не завершені, а розвиток економіки характеризується значними суперечностями та кризовими явищами.

Концепція сталого розвитку, яка набула окресленого розвитку з формулюванням "Порядку денного на