

Forum: Legal Committee**Issue: Promoting measures to increase banking transparency in order to limit offshore and cross border money laundering and tax evasion****Student Officer: George Ermis Ioannou Makrynikolas****Position: Co-Chair****INTRODUCTION**

The global economy has seen in the last 15 years one of the most dramatic declines in the human history, after the Great Depression. The financial crisis that broke out in 2008 affected many countries on the planet. Nations bankrupted, wars were triggered, humanitarian crises were spread amongst most of the developing countries. To the escalation of this tremendously harmful phenomenon contributed various man-made factors, two of which will be the subject of analysis in the following Study Guide, namely “money laundering” and “tax evasion” (above depicted diagram). These will be explained and delved deeply concerning their socio-economic outcome, intending to foster the creation of innovative and as much as possible effective solutions, so as for the issue to be combatted, seeing that its exponentially increased continuation deteriorates the situation in the world.

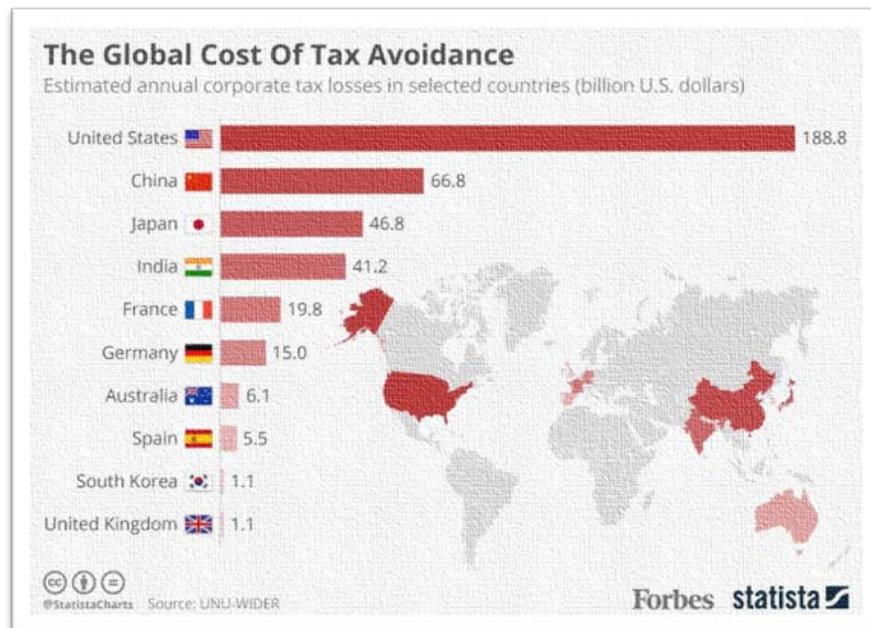


FIGURE 1: “THE GLOBAL COST OF TAX AVOIDANCE” AND IT’S IMPACT ON COUNTRIES

Tax evasion and money laundering have long before appeared in the economy, ever since humans started to exchange goods with currency and taxation was imposed. However, due to lack of means and methods (no Internet, no direct communication with

institutions overseas) the impact of these two illicit actions, till the end of the 20th century, on the economy was not a significant one.

Nevertheless, nowadays following the rapid technological evolution money laundering and tax evasion have been dramatically facilitated and become more efficient. Secrecy and non-transparency by banks and corporations are two of the most common characteristics of the institutions that promote and make it possible for people with felonious intendancies to commit financial crimes. Therefore, banking transparency, as stated in the topic above, should be the main parameter that must be taken into consideration and materialized by the UN with the cooperation and the assistance deriving from the international community.

The afore-mentioned problem has the special particularity to affect the whole world, with some exceptions of course. It is amongst the so few issues that threatens the sovereignty and security of both More Economically Developed Countries (MEDCs) and Less Economically Developed Countries (LEDCs). Taking the former into account, it is clear that the collaboration of every nation is essential. As long as these two illegal actions are not being reduced, the global economy will be a step forward towards collapsing.

DEFINITION OF KEY-TERMS

Tax evasion

Tax evasion refers to illegal methods used by individuals or corporations in order to avoid their tax obligation to the state, in which they are reported in.

Money Laundering

Money laundering is a crime in which the perpetrator tries to conceal the criminal origins (human trafficking, arms selling, drugs, theft) of his/her earnings and make them look like they come from a legitimate source. The initial money is considered as “dirty” and after “laundering” it becomes clean. The procedure can be divided into three stages, namely placement, layering and integration. After the last stage the money is already placed in the legal financial system of the world and legitimate purchases can take place.

Offshore institution

Offshore institutions (banks, shell companies, companies) are the ones based overseas in countries or regions offering little or no tax liability (Tax Haven), which are used by individuals or corporations far away, so as to usually enjoy looser jurisdictions.

Tax havens

Tax havens are countries or specific regions which do not have strict laws concerning taxation and therefore are used by High Net worth Individuals (HNWI) or companies, intending to avoid the high taxes in their countries. Tax havens need to comply with some specific prerequisites. They protect personal information, since secrecy and non-transparency are two of the most common characteristics of those. Furthermore, they provide an economic and political stable environment and due to that fact, are preferred by various property owners. They have also created on purpose loopholes in treaties with other jurisdictions, in order to always can prove that act legitimate. Moreover, they have established very efficient and innovative ways of transportation and communication (Hong Kong). Last but not least, banks located in Tax Havens set their own rules and are not supervised by the government. Some examples are: Liechtenstein, Panama, Switzerland, British Virgin Islands, Bermuda, Cayman Islands, Hong Kong, some States in the U.S.A. like Wyoming.

Banking Transparency

Banking Transparency in this context refers to the information exchange and honesty between the banks and the states, to the availability of full pieces of information and to the clarity of the content of the information, so as for the collaboration between states and financial institutions all over the world to be established, a step forward towards eliminating any kind of financial crime (tax evasion, money laundering).

Shell Company

A Shell Company is an inactive one that exists only on paper, used by bigger corporations for financials controls or prepared to be used in the future.

BACKGROUND INFORMATION

Tax evasion

Tax evasion is the most common violation of law committed by multinational companies and high net worth individuals (HNWI). The distinctiveness of this illicit action is that it can be deemed by many as not an illegal one, but only as a small loophole in law. There have been multiple cases of corporations exposed arguing that have always abided by it. However the cases in which people really have the opportunity to enjoy loose jurisdictions of other countries are very few. Therefore we will now look deeply in the topic and analyze its legal side.

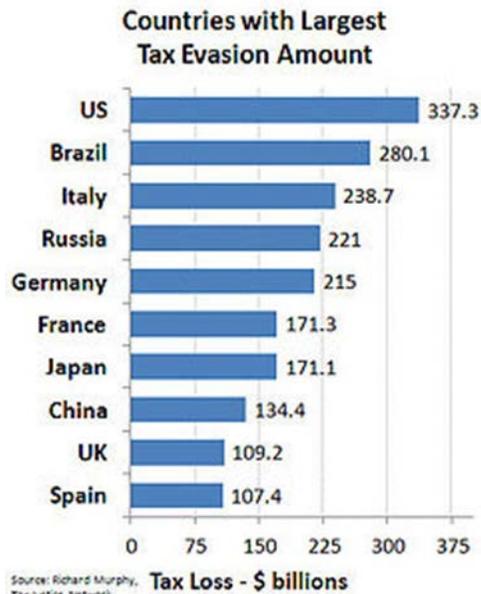


FIGURE 2: "COUNTRIES WITH LARGEST TAX EVASION AMOUNT"

HNWI sometimes deposit huge amounts of money and property in offshore financial institutions, located in countries with much looser taxation laws. This action is absolutely legitimate, as much as placing money to another bank in a nation, in which the owner is resident in, can be deemed. The bank most of the times offers them earnings with no taxation at all and as long as there is transparency between that institution and the state of the afore-mentioned individual and the required financial reports are filled in, everything is perfectly legal. Only in this case somebody can really enjoy such jurisdictions.

Moving on now to the phenomenon of tax evasion which is many times confused with the above-explained situation, hiding assets and interests from the state that somebody is reported to

be citizen in, in an offshore account located in a so called "Tax Haven" overseas is absolutely illicit. In such a case companies or HNWI do not comply with specific mandatory reports required by the state, since everything needs to be imposed with taxes according to its value, so that for the public sector to function and for economic and social justice to be promoted. However, due to many obstacles that will be explained in a moment the illegitimacy of such actions can hardly be proven and therefore companies continue to enjoy unfair privileges.

In order for the process of tax evasion to be completely understood the multinational company "Apple" will be the subject of analysis. It is based in American territory and due to that fact, needs to comply with the laws of the state. The government, specifically the Department of Treasury, has set the amount of almost 21% of all earnings as a corporate tax. The multinational corporation, so as to of course avoid tax obligation in as many branches as possible, has established multiple shell companies in various tax havens around the globe. For instance, all earnings from iTunes are been controlled thorough a shell company in the British Virgin Islands (Tax Haven). This means that every possible income of Apple coming from iTunes is a subject of the legislation system in the area. Because of the high secrecy it seems that the corporation does nothing illegal and abides to the American law. Nevertheless, practically it hides from the U.S. government billions of dollars every year, seeing that a necessary prerequisite of a Tax haven is the absolute secrecy, lack of transparency and no cooperation with other countries concerning financial reports. In that way Apple is obliged by the law of the British Virgin Islands to pay a corporation tax between 0% and 1,6%. Last but not least due to jurisdiction problems the U.S. DOJ (Department of

Justice) cannot conduct any unauthorized investigation into the banking reports of institutions that are accused of facilitating tax evasion.

Apple is unfortunately just an example of multinational corporations that evade taxes through that procedure. One must take into account that according to the 2013 report conducted by the TJN (Tax Justice Network) almost 21 to 32 trillion dollars have been lost from governments around the world due to financial crimes of that nature. It is clear now why this phenomenon has played such a cardinal role in the financial crisis of 2008-2009 and that it must be eliminated immediately, since it destroys the healthy and fair competition in the private sector and deteriorates the situation in the public sector of many states.

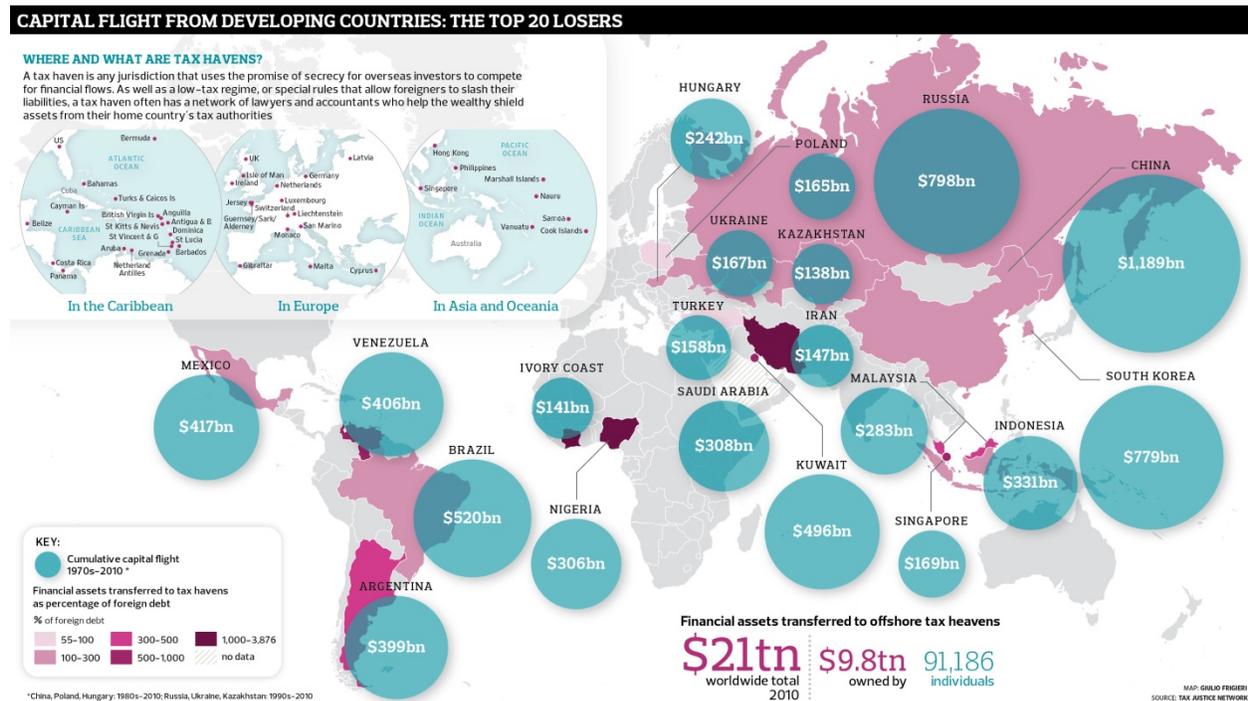


FIGURE 3: THE IMPACT OF TAX EVASION THROUGH TAX HAVENS ON THE WORLD

Money laundering

Criminality is maybe the major socio-economic and political problem that humanity is challenged to face ever since it existed. Most of the times, excluding the cases of psychological illnesses, crimes are committed intending to “easily” maximize the perpetrator’s profits through an unethical way (theft, drugs selling, human trafficking). Nevertheless, in this world in which every country has a complex taxation and report system it is not that simple to just appear one day with an unusual amount of money without a way to justify it (lottery win, heritage). Such an action would immediately be deemed suspicious by the authorities and after a little investigation the criminal origin would be explored and the legal prosecution would follow. In order to avoid such possible outcomes and scrutiny by the police and other investigative offices

criminals go through a procedure in order to turn this “dirty” money into “clean” one, the so called “money laundering”.

The process of money laundering is divided into three stages (below depicted figure), that always must take place, so as for it to be effective. To begin with, after the criminal act has been committed the earnings that need to be “cleaned” have to be placed, therefore the name “placement”, into the financial system without of course drawing the attention of any official. Since most of these earnings are significantly enormous amounts of money there is also one more obstacle that raises the risk of that operation. Most of the countries require financial reports by the bank in case of a deposit or withdrawal in excess of 10,000\$ per day. This means that perpetrators are forced to divide the money into many pieces to multiple accounts and deposit it in different days. However, with the technological evolution criminals can turn it into Cryptocurrencies, like Bitcoin, and transfer them to the account they want since these are not yet subject to the same strict regulations.

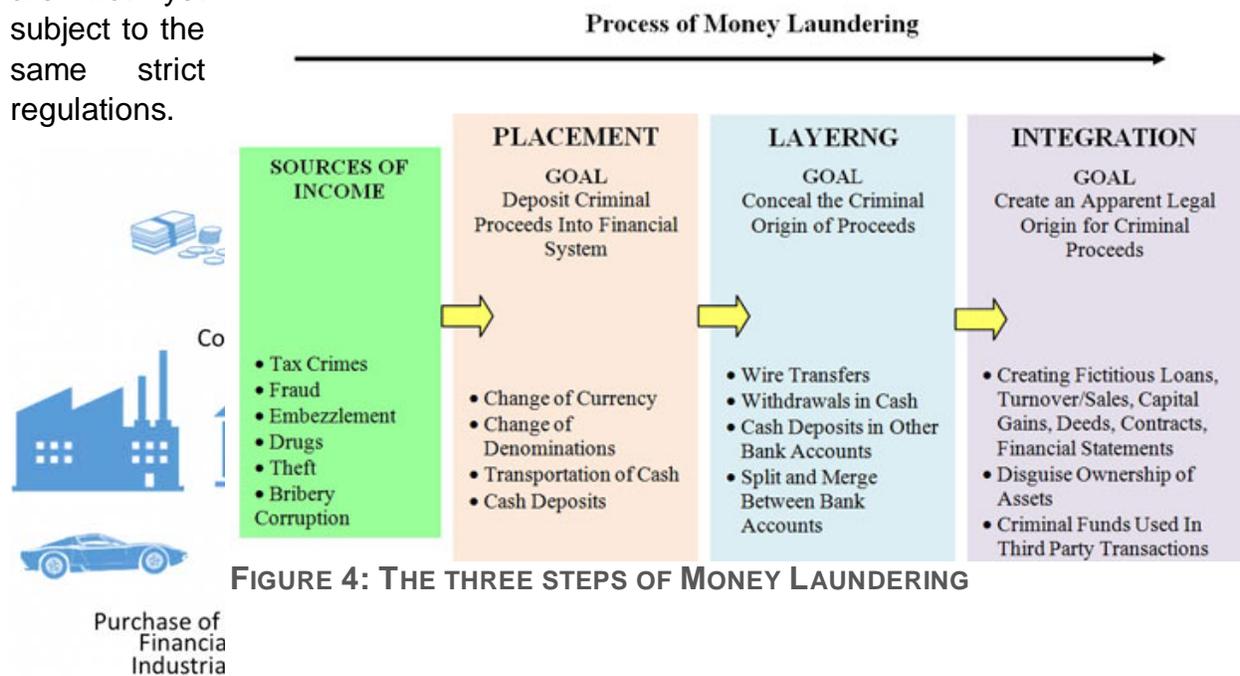


FIGURE 5: A TYPICAL SIMPLIFIED PROCESS OF MONEY LAUNDERING

Once the first stage, which constitutes the most dangerous part of the procedure, concerning the possibilities of getting caught, has been accomplished, the second one, the “layering”, follows immediately. Since all of the money is now placed in banks, the criminal has to eliminate every piece of evidence that could link him/her with that money. The goal of this part is to create confusion in the system. Therefore many wire transactions take place or fictitious loans between shell companies overseas. In such cases two companies are needed, this way a bank gives the loan to the one that officially facilitates the process with the other displaying the dirty money as an

accidental transfer of the loan from the first company to it (above depicted diagram). Also, through that procedure real estate properties can be bought or life insurances in the name of an associate or of the spouse. The larger the amount of money, the more complicated this process is.

Lastly the integration of the earnings is to be implemented. In this stage the criminal is pretty much safe since all transactions and loans have already been done. Now the owner can sell the properties and the items purchased with the “dirty” money and receive “clear” and justified. The whole procedure is brought to the end.

The impact on the people should once again not be left aside. The procedure of money laundering disempowers the government, seeing that the taxation system is of course avoided, thus leading to a raise of the outcome of the population. Moreover, through the process, due to rapid transactions of big amounts of money stable institutions face many problems, which would force them sometimes to fire personnel. At the end it is also worth mentioning that the competition in the private sector is disrupted, because companies that facilitate these criminal procedures suddenly earn more than the others, thus thriving economically and outpointing the honest ones.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

Switzerland

Switzerland has a tradition on bank secrecy and non-transparency, thus making it one of the oldest tax havens in Europe. There have been also many cases in which not even the names were mentioned in the financial reports. However, the country was blacklisted in 2013 following the investigation of TJN and therefore a lot of pressure evolved around it. Due to that fact it agreed some years ago to comply with some standards concerning information sharing.

Cayman Islands

The Cayman Islands are one of the most known tax havens without a corporation tax. Therefore they are a preferred place for multinational corporations located in the Caribbean Sea and constituting an independent territory of the United Kingdom. The islands demand nevertheless from the companies with assets a license fee directly to the government depending on the amount of capital based there.

British Virgin Islands

The British Virgin Islands, in the Caribbean, are also one of the most common loose jurisdictions and became more famous after the disclosure that the multinational corporation “Apple” has established an offshore company on the region controlling the profits deriving from “iTunes”.

USA

The United States of America is located in the first position in the list regarding the countries that have been affected severely by tax evasion. It is estimated that the government loses annually an amount of 180-330 billions of dollars¹. The corporation tax was on 34% of all profits, but was however significantly reduced to 21%².

The Internal Revenue Service (IRS) tries to combat the issue so that for the loss to be eliminated.



FIGURE 6: "ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

OECD

The Organization for Economic Co-operation and Development is an intergovernmental organization, consisting of 35 countries and was established in 1960. Its goal is to create policies in collaboration with the before mentioned member states concerning the socio-economic life of the world citizens. Specifically it is focused on eliminating tax evasion and on the proliferation of work places.

European Union (EU)

The European Union, which was created in 1993, constitutes an economic, social and political collaboration between 28 countries located in Europe. There has been significant work by its members and especially by their financial ministers towards the elimination of tax evasion and money laundering. The “common reports papers”, an idea initiated by this group, exerted effective pressure to tax havens that were blacklisted, thus forcing them to comply with some of the measures.

¹ "Tax Evasion." *Wikipedia, the Free Encyclopedia*, Wikimedia Foundation, Inc, 18 July 2005, en.wikipedia.org/wiki/Tax_evasion. Accessed 21 June 2019.

² "United States Federal Corporate Tax Rate | 2019 | Data | Chart | Calendar." *TRADING ECONOMICS | 20 Million INDICATORS FROM 196 COUNTRIES*, 3 July 2019, tradingeconomics.com/united-states/corporate-tax-rate.

Tax Justice Network (TJN)

The Network was founded in 2003 and provides the world with reports, analyses and generally many researches concerning the impact of tax evasion on the global economy.

Financial Action Task Force (F.A.T.F.)

F.A.T.F. was established in 1989 by the G7 in order to combat money laundering in international level, through creating policies against terrorism financing and other economic crimes. It consists of 38 member states and thus can be characterized as an intergovernmental organization.

TIMELINE OF EVENTS

DATE	DESCRIPTION OF EVENT
1988	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention)
1989	Foundation of F.A.T.F.
2003	UN Convention against Corruption

2013	Report by Tax Justice Network concerning the amount of money loss by the governments
30 October 2014	World Forum on Transparency in Berlin
2017	Release of the “Paradise Papers”

RELEVANT UN RESOLUTIONS, TREATIES AND EVENTS

- UN CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES;

Adopted on 1988;

This UN Convention focuses on the exchange of information so as for the transportation and the proliferation of these illegal products to be highly hindered. It is associated with the topic of money laundering since the above mentioned substances are the most common reasons for criminals to initiate this procedure;

https://www.unodc.org/pdf/convention_1988_en.pdf

- UN CONVENTION AGAINST CORRUPTION;

Adopted in 2003;

This UN Convention covers many aspects concerning the general issue of corruption, which plays a cardinal role in both money laundering and tax evasion. For the effectiveness of these illegitimate actions to be guaranteed, bribery of many officials is a very common phenomenon that was attempted to be combatted by this legally binding document.

https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

- Security Council Resolution 2462:

Adopted in 2019;

The Resolution targets terrorism financing and was passed unanimously. This illicit action is highly combined with money laundering since it constitutes one of the most important reasons that lead to this kind of financial crime. Terrorism is been deemed as one of the most serious criminal acts and therefore the ones responsible need to perfectly disguise the earnings through this process.

[https://undocs.org/en/S/RES/2462\(2019\)](https://undocs.org/en/S/RES/2462(2019))

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Offshore and cross border money laundering and tax evasion have been affecting nations for so many years that it would be irrational to think that no solutions have been implemented targeting their elimination. More specifically, the UN adopted many conventions on the issue; the EU took drastic measures some years ago; the OECD together with the F.A.T.F. blacklisted countries thus making them to comply with regulations in order for their reputation to be preserved and 95 international agencies gathered their forces to create a report exposing well known personalities and corporations.

In the former section of the Study Guide two of the most important conventions over the years are being mentioned starting with one against illegal substances in 1988. Some years later another one focusing on global corruption follows, a phenomenon that has stigmatized humanity for so many years and contributed tremendously to the escalation and success of the two illicit actions discussed.

Moving on to the attempt of the European Union, as stated before the “common report papers”, a system created by its financial ministers, has exerted so much pressure to individuals and corporations leading to a situation in which many of them eventually confessed their action, because they could not avoid this new kind of bureaucracy. In this way not only financial crimes are being reduced, but also the hard and time consuming procedure of legal prosecution is being omitted.

Last but not least, the cooperative work of the Guardian and other news agencies following a leak of almost 14 million documents has played a significant role on the attempt to tackle the problem. Politicians, billionaires, multinational companies with dramatically big reputation and well known personalities are now exposed and will hopefully be prosecuted in the future.

POSSIBLE SOLUTIONS

Taking into consideration the impact on the global economy that money laundering and tax evasion have and the proliferation of the cases, new and more efficient solutions should be brought to the negotiation table.

At first, one of the most important actions that will prove the willingness of countries to cooperate is to really collaborate concerning information sharing, something that has been already promoted a lot by organizations like the OECD and groups like the EU. Nevertheless, the ones reluctant to cooperate did not face any kind of direct penalty except for being listed as country in the "grey zone". Due to that fact economic sanctions could deal as the last opportunity to force them to change their regulations, seeing that they should be deemed as an accomplice in crime. These sanctions should however not devastate the economy of the region, acknowledging that most of the Tax havens' government profits consist of license fees received from the offshore corporations established there. One should also take into consideration that such penalties could sometimes be deemed as a breach of a state's sovereignty, thus a system ensuring the fair and proportionate imposition of punishments needs to be found (WTO). Lastly it is also important to bear in mind that no GA committee has the authority to impose any sanctions (or to encourage it in resolutions). The only thing that can be done is the proposal that the Security Council take immediate action on the matter.

Moving on regarding the promotion and accomplishment of transparency, financial institutions should provide governments of other nations with the requested information, so as to limit the discussed phenomena. Denial, secrecy and anonymity constitute the foundations for successful crime. Penalties should also be implemented for the non-cooperative ones or because of jurisdiction issues and the controversy around sanctions, pressure should be exerted through the publication of blacklists against them.

Last but not least, another era that must definitely not be ignored is the cyberspace. As seen before, wire transactions and conversion of illicit earnings to Cryptocurrencies facilitate to a great extent the process of money laundering, because of the lack of legal regulations. Therefore, all countries should enhance their cyber-security and increase regulations in the system, so as for this financial crime to be reduced.

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