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THE OFFSHORE CENTRES IN SOUTHEAST ASIA

Abstract: The globalization of economy way has changed relations between native tax systems. It gives an option to relocate business into offshore centres and tax havens (countries, where terms to register and manage activity, because of their tax legislation, are profitable), where they can be registered and make tax duties in minimum range (it depends on the type of offshore centre). Because of lots of privileges companies are looking for places, where their activity can be profitable. Those privileges are for example: temporal transfer of incomes to tax haven for changing the deadline to pay the tax, cooperation with an offshore company which is a middleman in selling articles abroad or using international agreements to avoid double taxes.

Keywords: liberalization of capital flow, tax havens, offshore centres, global tax legislation.

1. Introduction

The globalization of economy has changed remarkably relations between native tax systems. The number of firms have developed their foreign business. The liberalization of capital flow, and the facility to find trade partners in global market have developed an easy way to find tax optimum for contractors – one way is to create offshore business. On the one hand, this possibility is a problem for domestic tax forces – this is a restriction to make independent tax system. But on the other hand, this is an option to relocate business into place, where firms can be set up and exist – into offshore centres and tax havens, where they can be registered and make tax duties in minimum range. Polish firms can also simplify their activity – since 1 May 2004 they can register business at discretion. For example real tax havens in the European Union are Cyprus and Malta. It becomes more and more obvious that the demand for offshore finance and services is growing. The development of new financial instruments, derivatives, with growth of electronic communication, has created the meaning of offshore centres. Asia, especially South-East region, is still developing and has the chance to become a new centre of worlds economy. This is the reason, why it is important to look on Asian offshore centres, as a new world, not only regional, destination for the global capital flow.

The offshore regions with low taxes have increasing meaning in functioning of world economy. Every year over 60,000 offshore companies are registered, and most of banks have at least one department in tax havens.¹

2. Tax havens, oases, offshore centres – definitions and types

Tax havens (or offshore international financial centre, taxes oases – we know of about 300 of them in the world,² because it is subjective opinion of a company or resident to call it – just have to offer lower taxes than in their domestic regulation. Financial Stability Forum, which was set up by G7 countries, says about 42 real tax havens³) is a common name for group of countries, where terms to register and manage activity, because of their tax legislation (low or even no taxes) are profitable. Another definition of offshore centres says that they “host financial activities that are separated from major regulating units (states) by geography and/or by legislation”.⁴ These countries attract contractors with offers for releasing them from income taxes. They also give guarantee of safety and anonymity for commercial and financial data. Charges are low and annual for running a company. In tax havens there are modern conditions in using Internet or videoconferences. There are even some privileges in registering cars, ships and airplanes, also patents.

Tax havens are also called the offshore jurisdictions or offshore zone. The literal meaning of the word *offshore* is *over the land*. The offshore company can be registered in offshore zone, but her activity is located beyond its boundaries. Tax havens give these companies lots of convenience: financial and administrative.

There are different types of offshore centres, but there are also some features that are characteristic of those regions. Most of them were British colonies or overseas territories. That is the cause why the jurisdiction there is often based on common law. Most of offshore centres are islands, often at popular sea trail. The infrastructure and banking system are always on high level of development. Offshore centres are mostly located near big economies (for example: Gibraltar in Europe, the Caribbean Islands for Americas, Singapore, Hong Kong, and Labuan in Asia).⁵

In the literature there are different classifications for tax oases. One of them says that there are three types of them:⁶

¹ <http://www.attac.org.pl/?lg=pl&kat=2&dzial=128&typ=2&id=130>, Attac Polska (Association for the Taxation of Financial Transactions for the Aid of Citizens), (9.12.2009).

² J. Rymarczyk (Ed.), *Międzynarodowe stosunki gospodarcze*, PWE, Warszawa 2006, p. 131.

³ <http://www.attac.org.pl/?lg=pl&kat=2&dzial=128&typ=2&id=130>.

⁴ M.P. Hampton, J.P. Abbott, *Offshore Finance Centers and Tax Havens. The Rise of Global Capital*, Macmillan Press, London 1999, p. 3.

⁵ M. Wotawa, *Podatkowe raje i usługi offshore*, British Royal Crown Trust, MOW KORONA, Warszawa 2000, p. 6.

⁶ J. Rymarczyk (Ed.), *op. cit.*, p. 131, after: J. Głuchowski, *Międzynarodowe stosunki finansowe*, PWE, Warszawa 1997, p. 209.

- full oases, offering banking and other financial services (often they are islands: Man, Malta, Bermuda),
- limited oases, offering special taxes for specified companies or incomes (Luxembourg – for companies connected with commerce, Panama – incomes from offshore are not under tax),
- normal tax systems with one or few peculiarities (Liberia – “abnormal” is only process of ships registering).

Another classification of tax havens can be done with criterions below:⁷

- no taxes for incomes or increase of capital (like Bahrain, Vanuatu, Cayman Islands) – countries with stable fiscal situation, liberal and elastic law system, short and simple register procedure,
- income taxes are charged with territorial rules – from incomes which were obtained in the country; the other incomes, like dividends, are not under taxes (in Panama, Philippines, Costa Rica, Haiti, Liberia),
- low tax rate (La Manche Islands),
- tax preferences for some activities (Gibraltar, Jamaica),
- holding privileges, connected with acquisitions in another companies or administration activities, like giving credits (Liechtenstein, Luxembourg, Singapore, Switzerland, the Netherlands),
- preferences for natural person (Andorra, Monaco, Bahamas, Bermuda, Cayman Islands).

Typical tax havens are countries, where labour force is weak because of its number, with no natural sources or low developed industry. This is the main reason, why these countries set up activities to encourage investors to locate capital at their territories. The base for being attractive is to create different from all tax jurisdiction. The other way is to make a normal tax rate, but with some reductions.

3. Advantages and disadvantages of investing in offshore centres

In tax havens the main sources of income are registration and license duties, paid by companies which are set there. In another category of countries there are these offshore centres, where there are reductions in tax from income which was made at the offshore territory. This is one of ways to attract companies to invest in offshore zone. The size of capital flow into tax havens inclined other countries to introduce new regulations in their tax systems – lower income taxes or no dividend tax.

In offshore centres there can be no management, personnel or even running a business by the company. That is why offshore zones are so attractive – companies do not have to spend lots of money to keep their activity. The costs are low, because they only have to make a seat and later it can be managed from all over the world, with teleconference, by correspondence or plenipotentiary.

⁷ M. Zyniewicz, D. Załupka, *Luki podatkowe*, Wydawnictwo Netnet, Wrocław 1999, pp. 28-29.

The ways in which a company can plan its tax affairs might include decisions on the following, for example:⁸

1. Where it will incorporate its head office.
2. Where it will incorporate its subsidiary companies.
3. Whether it will use tax havens or not.
4. On what terms it will trade between group companies.
5. Where it will record its sales.
6. Where it will incur its costs.
7. Where it will locate its assets.
8. Where it will employ its staff;
9. Where it will borrow money.
10. Whether it will seek special tax privileges.

In tax havens we can find companies from financial sector, industry, commercial or services. Offshore jurisdictions give different conditions to set up and run a business, in dependence on its history, administration and law system, geographical localization, political, social and economical situation. But they have one thing in common: the costs of registration and maintaining an offshore company are much lower than in countries which are not offshore zone.

The most popular methods of using privileges, which offshore companies usually use, are:

- temporal transfer of incomes to tax haven for changing the deadline to pay the tax,
- buying services from offshore company, to create higher costs and make the tax base lower,
- cooperation with offshore company which is a middleman in selling articles abroad,
- using international agreements to avoid double taxes.

There are some rules in paying taxes by an offshore company. It is of course paid in the country of registration. It can be valued in percentage from the incomes or in lump sum, or can be even released from taxes. After paying taxes, the rest of the income can be divided between stock holders or allocated for the company development.

Taxes in the offshore centres, as a separate subject, are settled in separation from taxes of partners in company. Taxes are paid in the country of registration. If there is dividend from the rest of the income, shareholder must pay taxes in their own countries. But in offshore centres companies can conceal personal details of their owners or data from activity, so tax forces are not able to control capital flow between company and shareholders. This is why they cannot prove hiding the income by a person, who has been given the dividend. There is always a doubt, whether the whole

⁸ *Tax havens Creating Turmoil*, Treasury Committee of the House of Commons by the Tax Justice Network UK, June 2008.

income of the company was allocated for company activity and development. In this case shareholders have to pay no taxes.

Setting up a company in offshore centre is connected with choosing the right form of it, demanded by law on this territory. This is called GEM – global earning management, to find the best place and way to start up a new activity. The most popular form in tax havens are public limited companies. There are also business organizations which offer services to register new companies or even sell done offshore companies (it is called *sleeping* company – ready and waiting for activity).

To register a company there are also another obligations. One of them is to have a local seat in offshore centre, with official address, and to inform about changes in this matter. In the seat companies have to keep some of the documents. It is only a formal obligation, in fact a company can run business from all over the world. In some of tax jurisdictions there is a duty to have a plenipotentiary, sometimes even a citizen of the offshore centre. Often there is also a duty to appoint management or board of directors, with definite number of members (it depends on the law of the tax haven, how many of them should be local citizens). There are also different duties in audit and accountancy, in keeping documents in archives or in confidentiality of data. Entrepreneurs who want to move their business out of their country to the offshore centre should watch all law demands about having an activity abroad.

There are lots of advantages to set up business in an offshore centre:

- the registration procedure and firm managing can be done with keeping anonymity of its owners,
- the offshore company can be used as a middleman between importers and exporters; in this case the whole income will be moved into the offshore company (without taxes), and the real firm will have minimum income and taxes,
- the company can buy services (for example consultations) in the offshore, payment will decrease the income in the domestic firm,
- registered offshore company can set up a representation (agency) in another country, to move out place where contracts are signed,
- the income of offshore company can be invested again in the country, this time as a foreign direct investment (FDI) and receive new reductions in payments,
- registered offshore company can be a shareholder of another, domestic companies,
- there are no rules in flow of foreign exchange,
- the political and economical situation is stable,
- foreign institutions cannot get any information from companies offshore offices.

4. The effects of being an offshore centre

There are also advantages for countries which are offshore centres. What is important, financial facilities can lift even small jurisdictions from poverty. By offering financial services, they participate in the growth of the global financial markets. Other benefits

are: increasing government revenue, local salaries for workers, paid by offshore banks and companies. The financial system is improving and gives wider access to international capital markets. The internalization of local economy can attract foreign direct investment.

It is popular to think that in offshore centres the law can be broken without punishment. It is not true: for example Singapore is shown as a great place to locate money, because of its stable climate for investments and law infrastructure. There also low index of corruption and criminality (see Table 1). “Singapore is a great localization for offshoring processes which need the safety of database and intellectual property”.⁹

Table 1. Tax havens economies ranked amongst the least corrupt countries

Country rank	Tax havens jurisdictions	CPI score
1	New Zealand	9.4
3	Singapore	9.2
5	Switzerland	9.0
6	Netherlands	8.9
12	Luxembourg/Hong Kong	8.2
14	Germany/Ireland	8.0
19	USA	7.5
20	Barbados	7.4
43	Macao	5.3
56	Malaysia	4.5

Source: own study based on: *Transparency International's 2009 Corruption Perceptions Index*, http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table.

In 1998 OECD started to give some restrictions for tax havens activity.¹⁰ At first a new definition of tax haven was formulated – it was called detrimental (damaging) tax competition. OECD also started to publish “black lists” of these countries. It was a necessity to state in which conditions the offshore centre can be placed on that list. In fact, there are three criterions:

- 1) the height demanded taxes in relation to special kind of income,
- 2) identification of beneficiary – the demand of transparency,
- 3) effective information flow (bank confidentiality, availability of data).

⁹ A. Szymaniak (Ed.), *Globalizacja usług. Outsourcing, offshoring i shared services center*, Wydawnictwa Akademickie i Profesjonalne, Warszawa 2008, p. 295.

¹⁰ http://www.oecd.org/department/0,3355,en_2649_33745_1_1_1_1_1,00.html, the OECD website, (12.12.2009).

In OECD report in year 2000 there were 40 countries or dependencies, pointed as tax havens. At the same year six of them were crossed out from the list, because they had promised to change their jurisdiction. Some of them accused OECD of interfering with their sovereignty and imposing tax policy. The most popular and attractive offshore centres are not members of OECD.

Since the financial crisis in 1992 in Great Britain, and later – 1997-98 in Asia, global financial capital is not under any national government, so investors can make their own decision – which place is the best to locate, and often this place is the offshore centre. Liberalization of financial markets was indirectly caused by expansion of the competitiveness of the offshore centres – where there were no restrictions on foreign investments or foreign exchange controls.

The biggest offshore centre for managing property of wealthy foreigners is Switzerland – almost one third of their fortunes are placed in its banks.¹¹ Private banking and offshore centres, which are important for Asia, are Hong Kong – the “gate” to China, and Singapore – the most popular place to locate financial sources in South-East Asia. For example, even such exotic countries like Samoa find incomes in placing money there. There is only one problem – to entice foreign investors to Samoa and to assure them of the safety of their means in a trustworthy and legitimate jurisdiction.

Nowadays offshore is great business. There are suspicions that about 60% of the whole world deposits are saved in offshore banks, and almost one third of world foreign trade flow through offshore companies. Almost all international corporations and even small domestic firms use services of offshore companies.

Countries say that offshore centres are set up to promote the economic development. Adversaries for the meaning of offshore financial centres say that tax havens are needed only for very rich people and institutional investors, who want to cover their incomes. There is also demand for this kind of financial services from criminal groups, terrorists and money laundering. Opponents say that there is no reason for offshore centres to exist, so their economical activity should be banned. But some of big and rich countries do not want to leave their offshore statement.

5. Singapore as an offshore centre

One of the most popular financial centres in South-East Asia is Singapore. The reason for this fact is that this is a region with stable politic situation, clear jurisdiction and high level of safety and banking infrastructure.

Singapore is a country-city, situated on islands, near southern coast of Malaysian Peninsula. Before 1965 Singapore was British colony, now it is a member of British Commonwealth. The density of population is very high – on 700 km² live about 4.5 million people.¹² Singapore is also ranked highly in terms of quality of life and in

¹¹ Nie dla wszystkich, *Gazeta Bankowa*, 20.05.2009.

¹² <https://www.cia.gov/library/publications/the-world-factbook/geos/sn.html> (2.12.2009).

terms of how easy it is to settle in. The increase of GDP in 2007 was 7.4% per annum.¹³

Singapore is called one of Asian Tigers, because of the size of its economy – second in Asia after Japan. The biggest meaning for GDP have services (63.5%), especially – financial, touristic and transport. This little country is also a great junction, because of its geographical localization (between financial centres – New York and London, and new emerging economies: China and India) and a fact of being the biggest seaport and airport in the region. The availability is one of the reasons, why Singapore became one of the biggest financial centres. There are also causes, why is it called an offshore centre. Singapore, as an experienced partner in world's commerce, has signed about 50 international agreements about avoiding double taxes.

In Singapore there are over 170 banks, 80 insurance companies and a stock exchange.¹⁴ Investors from all over the world are looking for a place like this – with transparent and soft tax system. The highest tax for physical person is 20%, for law person it is also 20%, but the government wants to reduce it. The corporation tax was also reduced, so recent increase of the tax for goods and services from 5 to 7% had no meaning. Singapore is a country with free, but stable and transparent market. After Asian crisis in 1997 the government started to force growth of competitiveness of economy and to consolidate the meaning of Singapore as a financial centre of South-East Asia. This was the way to make financial sector more liberal. It was a benefit for financial institutions and in conditions for offshore companies to settle, like release of reporting or supervising. Financial sector is traditional for the economy of Singapore, it has also great contribution for GDP – almost 11% (it is worth 21 billion USD).¹⁵

The biggest competitor for Singapore in the region is Hong Kong. Its stock exchange has capitalization almost four times bigger than in Singapore, Hong Kong is also a leader in Asian investment banking.¹⁶ But Singapore has advantage in other financial services, like private banking and high net worth individuals¹⁷ – for people with financial means over 1 million USD. The second competitor in region is Malaysia, especially in Islamic finances. Malaysia is Islamic country, so financial means from the Middle East naturally go there. Singapore Monetary Authority gives pressure to create modern Islamic banking, to be more attractive in the region.

One of the reasons, after the tax system, why Singapore is called an offshore centre, is the policy of banks – their confidentiality. Also stable situation causes

¹³ *Rekordowy spadek PKB w Singapurze*, <http://www.nbportal.pl/pl/np/bloki/gospodarka/pkb-w-singapurze> (14.04.2009).

¹⁴ J. Burton, FT Report – Asian Financial Centers, *Financial Times*, 12.04.2006, p. 2.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ M. Noga, M.K. Stawicka, *Globalizacja a konkurencyjność w gospodarce światowej*, CeDeWu, pl, Warszawa 2008, p. 258.

capital flow from places, where situation is not so profitable for investors – like China, Taiwan, Russia. The latest strict jurisdictions in the European Union about taxes help Singapore to attract capital flow from Europe and its popular offshore centres. There is also another easy way for wealthy people to avoid high taxes – for those, who have minimum 13 billion USD, and invest 3.1 million USD in Singapore (in its financial institution or properties) there is residential status. It means better tax rate – 20%, no matter how high is the resident's income.¹⁸

6. Hong Kong as an offshore centre

Hong Kong is the biggest centre for finance and commerce in Asia and ranks as the world's third largest financial centre after New York and London. There are over 135 licensed banks with over 120 foreign banks having representative offices in Hong Kong. About 40 finance companies, taking deposits and giving credits, were also set in Hong Kong.¹⁹ The Hong Kong territory consists of huge amount of islands and a part of continental China, about 640 km². Hong Kong was a British colony since 1894 to 1 July 1997, when it became Chinese Special Administrative Region. There was Common Declaration signed (between China and the United Kingdom) about the status of Hong Kong. One of the items was: the financial system of Hong Kong will be still independent, and China will not set any taxes there.²⁰ As we can see, this offshore centre has total liberty in activity.

Hong Kong is not normally called an offshore centre, because it is famous for being a major financial centre. "However, it is one of the few countries in the world that tax on a territorial basis. Many countries collect corporate income tax on a different basis and they tax the world-wide profits of a business, which includes profits derived from activities outside of the country. Unlike other Asian countries such as Japan, Korea, Thailand, India and China, Hong Kong does not have any exchange or capital controls",²¹ so funds are able to flow freely. This also means that a company which activity is based in Hong Kong and gets profits from another place in the world is not required to pay tax in Hong Kong on those profits. Hong Kong sourced income is currently subject to a rate of taxation of 16.5%. There is no tax in Hong Kong on capital gains, dividends and interest earned.²²

Companies in Hong Kong cannot be registered under the name which actually exists or which will be too much connected with British Royal Family or the government. The name must be in English.

¹⁸ Ibidem, after E. Taylor, C. Prystay, New Haven: *Swiss Fight Against Tax Cheats Aids Singapore's Banking Quest*; Wall Street Journal, 06.02.2006, p. A1.

¹⁹ <http://cmshk.com/hkcompany.shtml>, Hong Kong Company (8.12.2009).

²⁰ M. Wotawa, *op. cit.*, p. 225.

²¹ <http://cmshk.com/hkcompany.shtml>.

²² *Ibid.*

In 2003 Hong Kong and Belgium signed a Double Taxation Agreement (DTA). This agreement creates fiscal advantages with respect to taxes on income and capital. This tax agreement is focused on tax savings for Belgian and Hong Kong investors doing business in each other's territory. This can be done through tax rights between the two countries and tax relief in case of double taxation. Agreement is only between Hong Kong and Belgium, but because of Belgium's membership in the EU dividends that have been taxed in one member state can be remitted to other member states without further taxation.²³

The biggest part of Chinese foreign direct investments (FDI) – more than a half goes to Hong Kong. China sends its financial means also to the other offshore centres, like British Virgin Islands or Cayman Islands. Over 80% of Chinese FDI was placed in those three countries in 2003-2006.²⁴ Financial offshore centres are attractive for Chinese firms, because of great number of restrictions (in financial and tax system) in China.

Hong Kong will probably become even more important jurisdiction for tax planning. This country is not a subject to review by the OECD. It is one of the only offshore banking centres which will not be under new directive on giving taxes on savings accounts which will concern not only the EU members, but “all territories under their control”, also Switzerland and the USA. This makes Hong Kong one of the only famous international banking centres with no obligation to exchange information on savings accounts belonging to EU citizens.

7. Macau as an offshore centre

The next offshore centre in South-East Asia is Macau.²⁵ The Macau Special Administrative Region is one of the two special administrative regions of the People's Republic of China (the other is Hong Kong). Macau was the first European colony in Asia, made by Portugal (since 1999). Macau is a member of the WTO and has maintained economic and trade relations with more than 120 countries and regions, in particular with Portugal and the other Portuguese-speaking countries. The World Bank classifies Macau as a high income economy and the GDP per capita of the region in 2007 was 30,000 USD.²⁶

The offshore activity is young and small. Only one bank has been licensed as an offshore bank, and there are only 12 nonfinancial offshore companies.²⁷ The offshore law, at last defined in 1999 gives the legal regime governing financial and non-financial offshore activities. Macau has also no foreign exchange control regimes.

²³ *Ibid.*

²⁴ *Charakterystyka chińskich inwestycji za granicą*, Ministerstwo Spraw Zagranicznych, Departament Azji i Pacyfiku, 20.08.2009, p. 4.

²⁵ <http://www.attac.org.pl/?lg=pl&kat=2&dzial=128&typ=2&id=130>.

²⁶ <https://www.cia.gov/library/publications/the-world-factbook/print/mc.html> (9.12.2009).

²⁷ <http://cmshk.com/hkcompany.shtml>, Hong Kong Company (8.12.2009).

The economy of Macau is concentrated on tourism and gambling. The financial system consists of two types of institutions: deposit-taking institutions – mostly banks, and non-deposit-taking institutions, such as insurance companies and finance companies. Banks have a predominant position, accounting for more than 98% of total assets of the formal financial sector. “The banking sector is relatively concentrated with two large banks, the Bank of China, Macau Branch and Tai Fung Bank Limited, together accounting for half of total assets and deposits of the entire system”.²⁸

On October 13, 1999 (61 days before Macau was transferred from Portugal to China) there was signed and approved the Offshore Law of Macau and was effective from November 1, 1999.²⁹ This was probably one of the last “gifts” left over by the Portuguese Government before handing over Macau. Offshore Law of Macau regulates the Offshore Services Sector of Macau. The Offshore Law of Macau provides the regulation of various offshore vehicles, offshore institutions, corporations having business activities, insurance companies, banks and offshore trust. In practice, the offshore law can be seen as an instrument of attracting investments to improve the onshore economy of Macau. But because of the beginning of development of offshore sector in Macau, offshore institution in Macau is not the same as a British Virgin Islands international business company. It is also not the same as a Hong Kong company (see Table 2).

Table 2. Differences between British Virgin Islands international business company (BVI IBC), Hong Kong company (HK Company) and offshore institution in Macau (Macau OI)

	BVI IBC	HK Company	Macau OI
Jurisdiction law system	British style common law	British style common law	Portuguese style Civil (Code) law
Trade with local residents	No	Yes	No
Currency	Any kinds	Any kinds	MOP (Macau Pataca)
Office	Resident Office at the address of the Registered Agent	Resident Office at any place in Hong Kong	Office in Macau, one address can only accommodate one OI
Audit, accounting	No requirement	Required	Required
Trade restrictions	None, except prohibited by law	None, except prohibited by law	Permitted industry Orly
Name	Wide selection	Must end with Ltd (limited co)	Must contain specified expressions
Official language	English	English or Chinese	Chinese or Portuguese

Source: own study based on: <http://www.olamacauguide.com/offshore-law.html>.

²⁸ *Macao SAR – International Monetary Fund Assessment of the Regulation and Supervision of the Financial Sector*, <http://www.imf.org/External/NP/ofca/2002/eng/mac/083102.pdf> (9.12.2009).

²⁹ <http://www.olamacauguide.com/offshore-law.html> (15.12.2009).

Although this is just the beginning the offshore centre in Macau, offshore institutions can avoid various kinds of taxes, including complimentary tax, industrial tax, property tax and stamp duties.

8. Labuan (in Malaysia) as an offshore centre

The next offshore centre in South-East Asia is Malaysia, as a matter of fact – Labuan (called by International Monetary Fund: Labuan International Offshore Financial Center³⁰). The Federal Territory of Labuan is a group of islands in the South China Sea, on the coast of the east Malaysia (the state of Sabah). Labuan island has an area of 92 km² with population of 75,000 (spr), the biggest island is called Pulau Labuan.³¹ It is a free port where there are no sales tax and no import or export duties. Labuan has a famous harbour and an airport, it is also the shipping centre for much of North Borneo (citizens say that “Labuan is the garden of Borneo located in Malaysia”³²). Financial services are the main source of GDP, but also the main sectors of the economy are oil and gas (crude oil is drawn out on the seashore), shipping and tourism. Labuan is situated in the region of important sea trails and air corridors of Asia. In central position it is in the same distance from great cities: Bangkok, Hong Kong, Djakarta, Kuala Lumpur, Manila and Singapore.³³

Labuan is not a sovereign state but a federal territory, so it possesses no separate legislature. It is directly administered by the government of Malaysia. In 1990 Labuan was declared an International Offshore Financial Center (IOFC). In 1996 the Labuan Offshore Financial Services Authority (LOFSA) was established. This means that the institutions located in the IOFC work under the jurisdiction applicable only to Labuan but subject to federal legislation, such as criminal statutes, which applies throughout Malaysia.³⁴

Labuan has most of features to become a developed offshore centre: it is in near time zone to other Asian financial centres, it is politically stable. Because Labuan (and whole Malaysia) was former British colony, English is widely spoken and the legal system is similar to English standards. Labuan offers all range of financial services, including offshore banking and insurance, also investment holding companies.

The Labuan IOFC is designed to supplement the activities of the domestic financial market in Kuala Lumpur. Its main task is to strengthen the contribution of financial services to the GDP (“one of the motivations behind the commitment of a number of international banks to the Labuan IOFC was to be seen to be supporting

³⁰ *Labuan, Malaysia – International Monetary Fund Assessment of the Regulation and Supervision of the Financial Sector*, <http://www.imf.org/external/pubs/ft/scr/2004/cr04391.pdf> (11.12.2009).

³¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/my.html> (2.12.2009).

³² <http://www.labuan.net> (11.12.2009).

³³ M. Wotawa, *op. cit.*, p. 6.

³⁴ *Labuan, Malaysia...*

the Malaysian government in its long term goals”³⁵). It sets strict requirements, prime international credit rankings and demand references of the directors of offshore companies. Special economic incentives have been provided to encourage development of the offshore centre. For financial firms (and their customers) these incentives include:³⁶

- no bank reserve requirements and foreign exchange controls,
- low annual licensing fees,
- no withholding tax taking by the government on income or dividends earned in Malaysia and remitted out,
- option of a 3% annual corporate tax or fixed tax in amount about 20,000 RM (Malaysian ringgit, approximately 5300 USD),
- no tax on income from “non-trading” activities such as ownership of securities and real estate,
- absence of stamp duties, value-added taxes, death, inheritance or estate duties,
- no restriction on foreign ownership limit on Malaysian companies,
- offshore entities in Labuan, which are declared as non-residents for exchange control purposes may freely buy, borrow, sell or lend foreign currency with any non-resident.

Labuan has also signed 68 double tax treaties.³⁷

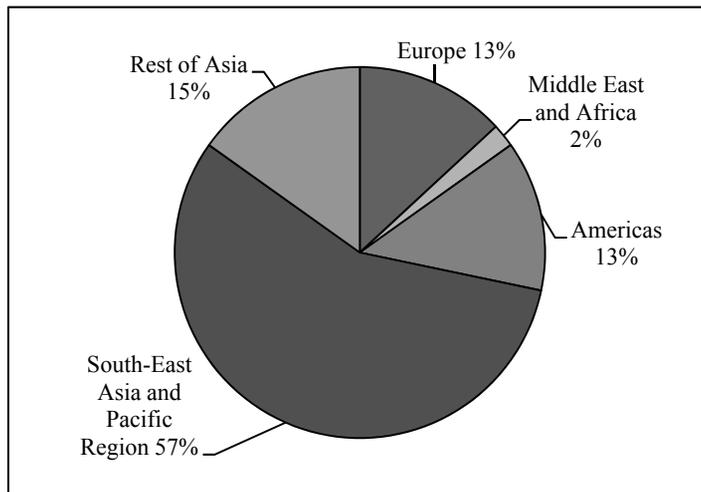


Figure 1. Source countries for Labuan Offshore Companies (in 2009)

Source: from Labuan IBFC (International Business and Financial Centre, Malaysia) <http://labuanibfc.my/Business-Opportunities/Offshore-Companies/Statistics.aspx> (12.2009).

³⁵ M.P. Hampton, J.P. Abbott, *op. cit.*, p. 9.

³⁶ *Labuan, Malaysia...*

³⁷ <http://www.lofsa.gov.my> (11.12.2009).

The IOFC is transforming itself into a competitive Islamic offshore financial centre, with such services like: Islamic financing, Islamic investment funds and Islamic capital market instruments. This development is obvious, because Malaysia is the biggest Islamic country in the world and can be a trustworthy place to locate financial means by wealthy people from the Middle East.

9. Conclusions

The offshore centres of South-East Asia became functional and still developing places, not only “booking” centres. The region is still less competitive than for example Caribbean or Europe, but is able to learn from experience of existing and elder offshore centres.

The region of South-East Asia can take advantage of capital flow during and after crisis. Since 2008 the symptoms that emerging markets will be less hurt than mature ones can be observed. In Brazil, for example, and in another countries of Latin America, financial market will probably revive. The same situation is in Asia and Pacific region, because of experiences obtained from former problems in financial sector. Symptoms of crisis are also expected in offshore centres – less money from world investors can flow, so those places have to find new advantages to attract business. Mature markets will grow slower and this is chance to overtake them by new ones. For example, in some European countries like Great Britain, Germany or Italy, there are new regulations for investing over frontiers (especially in Switzerland).³⁸ Capital sources from those countries should be managed inside, not in countries, where crisis had the same strength. More exotic offshore centres, for example in Asia, where wealth economy is developing, should focus on services for clients and advisory to increase their position in changing worlds economy.

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CENTRA OFFSHORE W AZJI POŁUDNIOWO-WSCHODNIEJ

Streszczenie: Globalizacja gospodarki wpływa na zmiany w relacjach pomiędzy państwowymi systemami podatkowymi. Dzięki temu przedsiębiorstwa mają możliwość przeniesienia swej działalności do centrów offshore i rajów podatkowych (są to kraje, gdzie istnieją dogodne warunki rejestracji firmy i osiągania zysków, z powodu ich innej od rodzimej legislacji podatkowej). Z powodu dużej ilości przywilejów przedsiębiorstwa szukają miejsc, gdzie ich działalność może przynieść największe korzyści. Są to np.: tymczasowe transfery pieniędzy do rajów podatkowych w celu uniknięcia obciążeń krajowych, współpraca z innymi firmami offshore czy też korzystanie z międzynarodowych umów o unikaniu podwójnego opodatkowania.