



# TAX EVASION

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## CHAPTER – 1

### INTRODUCTION

*"No government can exist without taxation. This money must necessarily be levied on the people; and the grand art consists of levying so as not to oppress."<sup>1</sup>*

#### 1.1 INTRODUCTION

Taxation Law as Per Manusmriti

The concept of tax does not belong to the modern era as it is prevalent in the society since ancient times. According to Manu's tax, the profits earned by merchants and artists were taxed, which was calculated on the basis of their actual profits or estimates of their profits. He said it would be logical for them to pay 1/5 of the profit as tax for the development of the state. He even said that farmers should also be liable to pay tax according to the yield of their crops and their tax liability depends on various factors such as higher tax liability due to good rains and also the type of crop. Various influential factors were responsible in determining their tax liability. Usually at that time the farmer had to pay 1/6<sup>th</sup> or 1/8<sup>th</sup> or 1/9<sup>th</sup> or 1/10<sup>th</sup> of his crop as tax. Taxes in that time were usually paid by the people in the form of gold or silver coins or coins of any other precious metal or in the form of food grains or livestock or by giving personal services.

## 1.2 KAUTILYA'S ARTHASASTRA

He gave very concise and organized views on the taxation administration in the state. He highlighted every aspect or case where a king could levy taxes to earn high revenue for the state. Health and strength of the state depends on the wealth and treasury of the state. He left nothing undone to describe the taxation system of that era. He gave this document around 300BC. He focused on financial administration in which he tried to describe every financial matter. He said that revenue is the life blood for the development of the state and land revenue is the most important for it. He described an in-depth study of various types of taxes as a source of revenue for the

<sup>1</sup> *Frederick the Great, 18th Century Prussian king*

state, for example the agricultural tax levied on the farmer's crops and the rate of taxation that varies from time to time and depends on the circumstances.

He also had a vision for foreign trade because at that time we had foreign trade with some other countries like China and Sri Lanka. He made provision for the levy of –Vartanam|| tax on foreign nationals importing goods into India and another tax called "Dwarodi" on traders willing to sell imported goods in India. Pilgrimage tax in the name of "Yatravetan" was levied on those travellers who wanted to travel all over India for religious purpose. There was even a provision for ferry tax to increase tax collection for the state. Salt tax was also imposed by the king on extraction. And many types of taxes were also imposed such as water tax, carriage or goods tax or octroi. So it can be said that the direct taxation collection system was very well planned and systematic by Kautilya in his document. Effective study has been done on direct tax collection system.

He had explained how the development of the state increases day by day from the revenue and how the revenue comes out from the taxation of maximum number of people. According to his given study the revenue generated through tax had to be spent on the development of the state for example for the renovation of the village, establishment of educational institution, construction of well and water tank and some other social benefits like this. The power of the state is reflected through the position of its treasury, which is directly related to the amount of taxes. So he laid emphasis on financial administration along with other aspects of economics and his study seems very relevant to today's government approach.

The **Maurya Empire** had a disciplined central authority on the administrative work front in which the peasants were strictly liable to pay crop tax to the central authority instead of paying to the regional king. Their taxation system was governed by ancient economic policies, strategies and the principle of Arthasastara. The Maurya Empire also set a great example of good administration for the empire to come. They spent their revenue on public welfare activities like roads, canals, wells, water tanks, educational institutions, defence, health and various social beneficial works.<sup>2</sup>

### 1.3 DIRECT TAX EVASION

Tax evasion refers to those activities which are considered to be immoral or illegal and cannot be justified by the tax authorities on any ground that the amount evaded through tax evasion has been attempted by illegal means, it provides reduction in the revenue of the country and ultimately it helps to generate black money which is an economic threat to the economy of the country and it is harmful for the growth and development of the nation. Tax evasion includes all those transactions or steps or methods which aim to avoid tax liability by ignoring the provisions of the taxation law. It has two phases, in the first phase it includes all those techniques which are used to defeat the purpose of taxation laws and the second stage includes all those active or passive transactions which are carried out in a falsified or fraudulent manner for the purpose of avoiding tax liability.

#### 1.3.1 TAX HAVEN AND DIRECT TAX EVASION

The Exact definition of the term –Tax Haven<sup>1</sup> is not define in the national law or by UN modal and OECD model while defining tax treaty at international level. The under developing nation offers to world at large through their financial institution to keep their investment or money, in that financial institution which they made especially for this purpose. They charge either no tax on such transactions or very less amount of tax on that deposit or transaction. It is beneficial for that nation which keep the custody of that transaction because it helps to give boost of the slow economy of that nations, that is suffering of lack of cash or income and depositors took the benefit of –tax haven countries<sup>1</sup> in form of escaping from –tax on their deposit<sup>1</sup> into tax haven countries, but ultimate loss of the revenue has to bear by

<sup>2</sup> <https://courses.lumenlearning.com/boundless-worldhistory/chapter/the-maurya-empire/> visited on February 2024 that nation who was entitled to earn income through tax on such income.

#### 1.4 PROBLEM PROFILE

The analytical study of tax evasion, its administration, penalties inflicted upon tax evaders under the CBDT feature the aspects like legal, economic, social and political, in taxation system. It is observed that the objective, scope and role of CBDT, to combat with the tax evasion problem, cannot be expressly achieved with powers conferred upon CBDT, as the sole motto of tax payers is to reduce their tax liability and it would become a precedent for others having same thought process to use such tactics and techniques to evade taxes, as the wrongfully abstaining from tax liability is much profitable than the risk of punitive sections of the Act. The offence of tax evasion under the Act is non-compoundable, but the punitive provisions of the Act, for offence of tax evasion are having very less deterrent impact upon people having mentality of tax evasion, but as such no survey or study has been traced out with view to checkout if the defaulters under Act or same kind mentality people have any deterrent effect of penalty or punishments under the Act or not.

No study has been done with view to propose any mechanism to trace out the irregular or undisclosed incomes of the tax payers so that tax evasion can be curbed, as after caught the defaulters, have no deterrent effect the punitive provisions of the Act, on the other side if any mechanism may setup to critically keep tab on irregular or undisclosed income, the tax evasion problem can be reduced, and it will also put deterrent effect among defaulters and same kind people. There is flaw in studies being done yet i.e. no effort has been done to understand the fears or mindset and physiology of public or tax payers, so that some steps shall be taken to safeguard the public interest, with view to motivate the tax payers to pay direct tax honestly.

None of the studies in relevant area has focus or pointed out that evasion of direct Taxation, is essential subject. Legislatures proposed and enacts laws as per need of time almost for all disciplines, but somewhere there is lack in power or intention of administration to serve and execute the such laws, same is with Tax Laws there are some problems in enforcement of Tax Laws are like:-

1. Due to the lack of –statutory obligation of the taxpayer||, the possibility of direct tax evasion has increased because the level of the tax evasion depends on the chartered accountant and the tax lawyers, which helps the –companies, HUF, firms and individuals|| through –manipulation in the book of accounts||, transactions outside the book, manipulation of parallel books and manipulation through collaborative entrepreneurs, manipulation of capital, –manipulation of closing stock and manipulation of capital expenditure.

2. The CBDT is the apex policy making body of the I-T department. The fundamental role of CBDT is to encourage tax payers to voluntary compliance of provision of tax laws and secondly to detect tax evader and penalize (prosecution on serious offence) tax delinquent. And it has not been successfully achieved till date.

3. Tax policy and tax administration are mutually exclusively related. Tax policy mutually affected and intrinsically linked with tax administration. To enhance the work performance of CBDT, a good mechanism required which is the real intent of framer of tax policy for effective tax structure<sup>5</sup>. But there is problem like:-

i. The first important work is to frame tax policy , but ultimate object of formation of policy can't be achieved until it is implemented successfully and for this purpose it reveals from the study of given literature that CBDT has lack of understanding and co-operation with members of tax authorities.

ii. Arithmetic mistake of –tax liability|| is found in the assessment completed, on the part of Assessing Officer, but despite repeating the same mistakes, it is not rectified due to lack of accountability and sense of responsibility. The decision has not been taken by CBDT due to lack of proper mechanism<sup>3</sup>.

<sup>3</sup>[https://www.ibfd.org/sites/ibfd.org/files/.../Handbook\\_Tax\\_Administration\\_sample.pdf](https://www.ibfd.org/sites/ibfd.org/files/.../Handbook_Tax_Administration_sample.pdf)

4. The result of assessment by tax authority under the supervision of CBDT sometime not is accurate as it is based upon guess work or perceptions or estimation of tax authority. Unfortunately sometimes when assessment proceedings have been done (u/s 143(3) scrutiny assessment and –best judgment assessment u/s 144) is become ground of challenge on issue of ineffective operation performance of tax authority<sup>4</sup>.

5. Under section 143(3) scrutiny assessment and –Best judgment assessment u/s 144 there is minimum time period for completion of proceeding is 12 months as per section 153 ITA<sup>5</sup>, but due to negligence on part of the tax authority, some case are not resolved within that limit of time period. If required notice has not been sent to Assessee, tax assessment processing would be "time- barred" after the expiry of given time limit and it would be beneficial for tax evader and harmful for tax revenue, just because of negligence of tax authority<sup>6</sup>.

6. Being a member nation of the international treaty (i.e. United Nations and OECD Model Conventions<sup>7</sup>) Information received by CBDT, which is result of free exchange information of "potential tax payer" under the international treaty on tax, information has been exchange between foreign or national bank. That information received would be play a significant role to determine tax evader but CBDT usually does not

visited on February 2024

<sup>4</sup> *Gujarat Travancore Sasi Agency v. CIT (1989), 177 ITR 455(SC), Sasi Enterprises Vs. Assistant Commissioner of Income Tax, AIR 2008 SC 1528, Central Bureau of Investigation v. Ravi Shankar Srivastava, 2006 Cri LJ 4050*

<sup>5</sup> *Section 153, the time limit for making assessment under section 144 is:- 1) Within 21 months from the end of the assessment year in which the income was first assessable. [For assessment year 2017-18 or before] or 18 months from the end of the assessment year in which the income was first assessable. [for assessment year 2018-19] or 12 months from the end of the assessment year in which the income was first assessable [Assessment year 2019- 20 and onwards]*

<sup>6</sup> *Direct Taxes Enquiry Committee, (1971), Final Report, The Wanchoo Committee Report, Ministry of Finance, Government of India.*

<sup>7</sup> *India has ratified the convention on OECD MODEL in June 2011. India has become the first country outside the membership of the OECD and the Council of Europe to become a Party to the Convention.*

use this information effectively to curb direct, like that it should be used.

7. Penal provision is not regular to that extent to which it should be against the direct tax evasion and this is one of the base reason for direct tax evasion, just because of weak enforcement of penal law

8. As per section 2(l) of Criminal Procedure Code 1973, the offences having punishment of 3 years or more are treated as cognizable offences, whereas under Income Tax Act 1961, Section 276B, 276C, 276 CCC, 277, 278 provide punishment of severe imprisonment up to 7 years are considered as non-cognizable offence as per the Section 276(e) of income tax act. These discrepancies in penal provision of Criminal Procedure Code and ITA make penal provision of ITA very weak, and it does not give the desired deterrent effect among the masses.

If we plug the loopholes in all these areas, definitely, we have an edge.

### **1.5 RESEARCH OBJECTIVE :**

The researcher has done this study with the following objectives:-

1. To compare and contrast and other laws and regulations governing tax evasion.
2. To underscore the effects of tax evasion
3. To make a critical analysis of the provision of DTAA.

### **1.6 RESEARCH QUESTIONS**

1. What is the Concept of Direct Tax Evasion?
2. What are the Reasons or Causes for Direct Tax Evasion in India?
3. Whether Socio-economic and Legal Problems exist due to Direct Tax Evasion in India?
4. What are the efforts being undertaken at International and National level to curb direct tax evasion?
5. What are the issues in successful implementation of policy framed by CBDT?

### **1.7 RESEARCH METHODOLOGY**

In the present research, doctrinal methodology has been adopted. Data used in the study is primary in respect of Bare Act and secondary for information collected through books, journals and through internet by visiting government website.

### **1.8 LIMITATION OF THE STUDY**

With a view to give a conclusive and turning point in the field of –Direct Tax Evasion the researcher has done her best, in this research work, but due to technical, procedural and resources restraints, the study somewhere lacks from the following viewpoints:-

- i. The researcher has focused on various aspects under Direct Tax Evasion, and role of tax department in general sense, and not on any specific segment, due to which there is possibility the study may have overlooked various perspectives of the field.
- ii. The resources of information or data used in the present study are auxiliary and not primary, due to which it may vary in contrast to actual data or information. Due to prevailing pandemic COVID-19 situations, and otherwise limitation of resources the study lacks to provide the data of recent years.
- iii. That during this study number of important changes has been proposed in field of Income Tax, some of the problems in earlier Income Tax Laws, may have removed in those enactments like The Finance Act, 2019 & The Finance Act 2020, which may lacked in this research.
- iv. Possibility of being prejudice during study cannot be ruled out as observations, analysis and interpretations of the researcher may vary from the reality.

## 1.9 REVIEW OF LITRATURE

### ARTICLE

**Stuti Manchanda**<sup>8</sup> in her article she has thrown light on today's entire taxation scenario prevails in the country .she has analyzed so many records to find the exact position of the tax payer. She concluded on the basis of the record she has collected that out of the population of 125 crores only 4.5 crores people are covered under the definition of tax payer. And out of this tax payer base people only three percent tax payer have paid their tax liability to the government. It is quit surprise fact that out of the huge mass only a small fraction of the people have been paid tax liability. She stressed there is need to be find the potential tax payer, who have liability to pay tax but they did not pay it, should be come under the scheme of taxation law by legally <sup>8</sup>Stuti Manchanda, —Widening

*Of Taxpayer Basel Lexis Nexis, (2016)*

,economically, and evidentially. Her intention is not to know the exact number of taxpayers, but only to find out how to fill the gap in tax evasion who is not complying with the taxation law.

Innovative and non-intrusive method of investigation should be followed for better implementation of taxation law. Income Tax officials to be use forensic skills instead of old skills on paper basis to curb tax evasion. Medium level Income Tax Officers should be given training programs to improve their forensic skills to control tax evasion

activities.

**M. Chandrapa**<sup>9</sup>In this article, he explained the various causes and factors which are responsible for tax evasion in India. It is the wilful act of individuals, corporations, trusts and entities, who concealed their income and showed less income and misappropriation in the book of account in order to reduce their tax liability through these illegal sources. Due to low revenue generated in the form of tax receipts, government sector units, public sector units and co-operative units have been unable to meet their basic needs or expenses and it has started shutting down its production units on a large scale since a few decades. When people started losing their jobs or employment as a result of the closure of these public sector units, there is an increased social threat among the people.

The author researched the basic level of tax evasion in detail and found out what could be the factors responsible for tax evasion and possible measures to prevent tax evasion. They found, people avoid tax liability by taking advantage of loopholes in the existing structure and poor administration of tax authorities. Individuals, corporations, companies, trusts and institutions have consulted chartered accountants and tax advocates to reduce their tax liability through illegal sources. These professionals must follow professional ethics while rendering their services to these individuals to avoid tax liability. Misappropriation of bookkeeping, rigging of

<sup>9</sup> M. Chandrapa —*International Journal Of Management Research & Review*, *ijmrr/oct. 2016/ volume 6/issue 10/article no-2/1376-1381*

opening stock and closing stock, manipulation of books and journals, manipulation of vouchers and books of accounts, by making counterfeit vouchers and cash transactions, all these steps are usually taken by accountants to reduce tax.

Tax evasion helps to encourage anti-social activities in the country if the money was used for the development activities of the nation instead of anti-social activities, then the picture of development could be better than it is today. Hence it can be said that tax evasion is hollowing out the roots of the country day by day which can pose a serious financial threat to the economy in the near future.

**Sanjay Kumar**<sup>10</sup> In his article he emphasized that from the very beginning higher tax compliance by every taxpayer is the objective of the tax authorities and it is to be continued in future also but later it was found by the Income Tax Administration that this would be a bit much. It is difficult to exercise control over every taxpayer as it is time consuming and non-economical task and is of no value if the tax compliance rate remains the same from year to year. And regular examination of the taxpayer would be a waste of human capital of the tax administration as it is impossible to mark each and every taxpayer's report. Hence he stresses on the importance of self-assessment process and techniques of self-tax compliance. Because it will encourage the people to follow



the tax law from their inner consciousness and will help in increasing their moral value to pay the tax on time. He suggested that training programs should be given to the tax officers to build good relations between the taxpayer and the tax administration and to create a consultative and cooperative relationship between the parties. It will help them in enhancing their capabilities to work efficiently in the digital medium. A new audit process is needed for better implementation of tax compliance audit. Tax compliance audit means re-verification of information filed or verification of tax returns filed by tax payers. It does not directly affect the determination of tax liability of the taxpayer. This is called a fully operational risk based compliance system. For the betterment of this system, CBDT will have to develop a suitable training program for work management of Income Tax Officers. So first of all they should try to know what is the gap in existing task management, Identifying the requisite capabilities as per the requirement, Training programs should be given to the employees and officers of the Income Tax Department in order to regenerate or improve capabilities according to the changes taking place, and to successfully completion of more complex tasks.

<sup>10</sup> Sanjay Kumar —*Risk-Based Audit For Improved Compliance* Lexis Nexis, (2016)

It was suggested in this paper that the information filed by the taxpayer is scattered at various places in the tax department and this information should be kept at one place first for the verification of each and every taxpayer. Hence developing IT infrastructure for a systematic digital medium to keep records or data of each and every taxpayer at one place is the need of the hour. For this purpose OECD and G20 countries follow the agenda set out in BEPS along with developed nations. In which 15 measures are given to fix the problem of tax evasion by multinational countries. Usually MNCs try to move them to countries where they get easier taxation rules as per their convenience to avoid tax liability on their profits. But as per BEPS measures, profit should be taxed at the place where economic activity and value creation has taken place. He suggested improving the harmony between domestic taxation rules and international taxation rules, the country's government should follow the measures given by BEPS/OECD.

**Megnha Nagpal**<sup>11</sup> In her article, she has done a thorough study on the establishment, administration, constitution, methodology, procedure, methods to be followed by the Central Board of Direct Taxes. Initially a single board handled all tax matters, but later when the tax law became complex, it became difficult for one board to handle all the functions, so it was divided into two boards. The Central Board of Excise and Customs has been constituted to deal with indirect taxes and the Central Board of Direct Taxes has been settled by the government to deal with direct tax matters. CBDT is a statutory body constituted under the Central Board of Revenue Act of 1963. It is a government agency under the Department of Revenue, under the Ministry of Finance, Government of India. The Chairperson and other members are selected from the Indian Revenue Service (IRS) from the Civil Services cadre. Being a civil service officer, he has a high level of intellectual ability and advises the government regarding policy formulation, inputs, suggestions, measures with regard to direct taxation laws.

<sup>11</sup> Megnha Nagpal —*what is the role of the central board of direct taxes (cbdt)?* —25/06/2016

She analyzed the structure and role of Income Tax Officers. They found that the Income Tax Department is made up of three tiers vis-a-vis top-level, middle-level, lower-level. The top-level officers are made up of a chairman and six other members. And all of them have supervisory control over the territory. Generally, collective decisions are taken by the Board regarding income tax policy, statutory obligations and direct tax laws. She also studied the methods adopted by the Income Tax Officers, weaknesses and strengths of the officers, what changes are needed to comply with the tax law more efficiently and personal training, transfer, promotion, suspension of the Income Tax Department. She suggested that the government should provide appreciation certificate or award to the genuine taxpayer with a view to encourage the motivation of the taxpayers for better compliance of tax laws.

## 1.11. Chapter Scheme

### Chapter 1: Introduction

This chapter will cover overview of tax evasion and its impacts on economics globally.

Importance of effective tax evasion laws objectives and scope of the study

### Chapter 2: The concept of Tax evasion

This chapter will cover definition and types of tax evasion and consequences of tax evasion for government and societies

### Chapter 3: International Tax evasion landscape

This chapter will cover the comparative analysis of tax evasion across different countries. Notable cases in international tax evasion, critical analysis of provisions of DTAA.

### Chapter 4: Anti- evasion law: legal framework

This chapter will cover the comparison of legal frameworks for tracking tax evasion and key principals and components of effective anti-evasion laws.

### Chapter 5: Anti-Evasion measures

This chapter will cover, examination of enforcement agencies responsible for implementing anti-evasion laws. Investigative techniques used to detect tax evasion and areas for improvement in the fight against tax evasion.

## Chapter 6: Conclusion and suggestions

### CHAPTER 2

## THE CONCEPT OF TAX EVASION

*"Taxes are how we pool our money for public health and safety, infrastructure, research, and services—from the development of vaccines and the Internet*

*to public schools and universities, transportation, courts, police, parks, and safe drinking water."*<sup>30</sup>

### 2.1 INTRODUCTION

—Evasion is a word that derived from the Anglo-French or Late Latin word "evader", consisting of "e" + "vader". "E" (former version of -ex) means "out" and "vader" means "to go". It means to go out or run away or escape. The word was used for the first time in an English dictionary in the 15th century. With the passage of time in the 17th century, it began to be used in activities showing fraudulent activities or showing loss of revenue by breaking the law.<sup>12</sup> The word evasion is used in two ways in taxation law, however, both the servers have the same meaning i.e. reducing the burden of tax liability. But there is a clear line of difference in both the words. When reducing tax by using the method within the dimensions of the law, it is called tax avoidance; the opposite of reducing the tax liability by breaking the law is tax evasion. The problem of tax evasion has not emerged overnight.

Tax evasion in India is mostly done by persons and persons include trusts, corporations, individuals and other institutions. It is operated through illegal means and by taking advantage of loopholes in the existing taxation policies. Usually illegal sources help these persons in tax evasion. There are many ways to evade tax

<sup>12</sup> *The Dictionary of English Law, Clifford Walsh, Vol.I, (1959), p.740.*

from income and we can say that by showing short income to the tax authority or by —misrepresentation in the book of accounts or by misrepresentation in the profit and loss of —business and profession by concealing the actual earned income or by Shown over expenditure. This has happened intentionally to deceive the Income Tax officials and to save from excessive tax liability. As a result of such practices by the people it helps to generate funds for illegal activities which are generally counted as anti-social phenomenon. Instead that fund can be used for social welfare; it started using in anti-social activities which actually have very dangerous consequences for the society. Tax evasion is directly related to black marketing, black money, money laundering and other social evils. Tax evasion is the dark truth of the educated or professionals of the society and it are the result of their

unethical professionalism. Tax evasion is done to achieve many objectives and one out of that is to reduce or avoid tax liability. But if a person tried to reduce his income tax liability from legal sources or in the sphere of law, it amounts to "tax Avoidance"<sup>33</sup> and is legally permitted by law and considered valid. But when a person illegally evades income tax liability it is called –direct tax evasion which is called an offense under the law and –is punishable with imprisonment or fine or both.

## 2.2 TAX PLANNING, TAX AVOIDANCE AND DIRECT TAX EVASION

Every person should be aware of the importance of tax for the development of the nation. The government of nations earns revenue from various sources, among which income tax is the most important source of revenue for the government. Income tax is a mandatory duty levied by the government on the income of the Assessee and is called tax. It is often heard that individuals reduce their tax liability by using illegal and legal techniques. And often these activities are called tax planning, tax avoidance and tax evasion. Generally these three words are used to reduce the tax liability as people have no idea about the exact meaning of these three words. To understand the exact meaning of these three words, there is no need to know the gist, and to understand the exact meaning of the three words one must go to its technical meaning. Let us discuss it briefly in the following.

### 2.2.1 TAX PLANNING

Tax planning is the process of thinking in advance that how to reduce the tax burden to achieve the desired result to earn optimum level of profit and it should be done in advance within the scope of provisions of income tax laws. It is called a legal remedy to reduce the tax burden of the Assessee. Tax planning is not a strict rule of science, even it is an art used by income tax experts to help reduce the tax liability of their clients. The Income Tax Act provides so many provisions by making them applicable that an Assessee can reduce his income tax liability. This includes deductions, exemptions or rebates and expenses. Tax planning is the analytical study of financial position. It gives advice on when is the right time to claim benefits, adjust expenses, and claim deductions to reduce taxable events. This is totally permissible as per the tax law of the country.

—*Tax Planning is Arrangement of a person's business and /or private affairs in order to minimize tax liability.*<sup>13</sup>

There are many types of it like short term/long term tax planning, permissive tax planning, purposeful tax planning. It is an ethical activity undertaken by a prudent person to take advantage of the Income Tax Act with a view to reducing his tax burden.<sup>36</sup>

Tax planning depends on various factors such as the type of Assessee, time of claiming deduction, residential status of the Assessee, and the type of expenditure claimed and the head of income through which the Assessee has to pay tax. Hence tax planning is the whole art of giving advice to achieve tax efficiency in the right way at the right

time.

### 2.2.2 TAX AVOIDANCE

<sup>13</sup> <https://www.oecd.org/ctp/glossaryoftaxterms.htm> visited on March 2024

"The avoidance of taxes is the only intellectual pursuit that carries any reward."

It can be defined as a practice as a result of which a taxpayer attempts to reduce his tax liability by applying legal techniques or by taking advantage of the lack of taxation laws. It is a "sham" or "colour device" or method or intellectual method which helps in reducing the tax liability of the taxpayer, And these methods have no legal effect to take legal action against the Assessee to avoid the tax liability of the Assessee by the aforesaid methods<sup>14</sup>.

Example -: Mr. A, sold his residential house property and earns income under the head of –income from capital gains –. But to avoid his tax liability, he bought a new residential house property with that income and claims exemption under section 54. These are actual tax avoidance practices used by Mr. A to avoid his tax liability.

Tax evasion means any successful step taken which has resulted in reducing the tax liability on the taxpayer within the ambit of the law. It is an intellectual work done by professionals which helps in interpreting the taxation law in a way that gives freedom from tax payment to the taxpayer to reduce the tax liability. In many cases the Indian judiciary has defined the term "evasion of tax" as follows:

- It ignored the "theory of substance"
- It is a kind of "colourable device" which shows the transaction which helps in reducing the tax liability.
- It hurts the true spirit and spirit of taxation laws.

<sup>14</sup> [https://www.researchgate.net/publication/227451320\\_Tax\\_avoidance\\_versus\\_tax\\_evasion\\_On\\_some\\_determinants\\_of\\_the\\_shadow\\_economy](https://www.researchgate.net/publication/227451320_Tax_avoidance_versus_tax_evasion_On_some_determinants_of_the_shadow_economy) visited on March 2024

- It lays emphasis on interpretation of law rather than knowing the actual intention of the legislature.

It would be quite interesting to mention here<sup>15</sup> that tax avoidance does not give the stigma of delinquent to the taxpayer who has reduced his tax liability by using the lack of law and using intellectual knowledge. If a person has entered into a transaction for purpose to avoid his tax liability, that transaction cannot be said to be illegal. Because the law does not curtail the liberty of any person to behave like a prudent person in order to increase his profit by reducing his tax liability, if he does so in the four corners of the law. Therefore a taxpayer should have freedom from payment of tax especially in the area that the law generally allows<sup>16</sup>.

"Tax avoidance" has social implications, economic and political implications. It even directly affects the functioning of government revenue and tax administration. The lack of taxation laws has been taken advantage of due to strict interpretation of taxation laws. The rich class people succeeded in shifting the tax liability to the class of people who already lacked livelihood. The society starts only one type of business, which is generally exempted from applicable taxes, thus creating a structural change in the business. The proceeds are invested in bonds issued by the government to avoid tax liability. The individual's capital gains are usually adjusted against spurious capital losses and expenses to reduce income from the taxable slab. Taxable income earned from a territory is transferred to the territory under whose jurisdiction that income is declared as exempt from tax. Ordinary income is shown as agricultural income which is exempted under section 10 of Income Tax Act. Hence –tax avoidance is a legal way to reduce tax liability.

### 2.2.3 DIRECT TAX EVAISON

"Cheating the tax authority to avoid paying income tax illegally is direct tax evasion"

<sup>15</sup> Justice S.R. Singh of the Punjab High

<sup>16</sup> [postdoctor22/ph.d%20shodhganga/shodhganga%20tax%20avoidance.pdf](#)

Tax evasion refers to those activities which are considered to be immoral or illegal and cannot be justified by the tax authorities on any ground that the amount evaded through tax evasion has been attempted by illegal means, it Provides reduction in the revenue of the country and ultimately it helps to generate black money which is an economic threat to the economy of the country and it is harmful for the growth and development of the nation. Tax evasion includes all those transactions or steps or methods which aim to avoid tax liability by ignoring the provisions of the taxation law. It has two phases, in the first phase it includes all those techniques which are used to defeat the purpose of taxation laws and the second stage includes all those active or passive transactions which are carried out in a falsified or fraudulent manner for the purpose of avoiding tax liability.

#### 2.2.3.1 COMMON ACTIVITES OF DIRECT TAX EVASIONS

Tax evasion cannot be defined in the definition of few words and examples. It has wide scope to avoid tax liability. Here are some examples that will help in understanding the various common activities that lead to direct tax evasion<sup>17</sup>-:

- Individuals report their income as less than their actual income under allheads of income except "income from salary".
- People avoid their tax liability by doing cash transactions.
- People who do not have a permanent account number and have not attached their bank account number with PAN, generally do not pay tax and it is quite difficult for the Assessing Officer to verify that person's bank transactions otherwise that transaction Exceeding the basic exemption limit comes under taxable

<sup>17</sup> Jacob Eapenn, *'Incidence of Tax and Tax Evasion'*, All India Conference of Tax Executives, 2nd Report (1967) FICCI P. No. 7. liability.

- Small traders and medium traders often issue their raw bill of sale with a view to hide their income from tax liability. This helps them to show less income under "Business and Professional" and they were able to avoid the tax liability that is due.
- "Income Tax Return" is not filed on time by the taxpayer to avoid tax liability.
- Incorrect information filled by the Assessee in the tax return form leads to tax evasion.
- Usually merchants record their transactions in two or more books together, a book is prepared to manage the income and expenses of the business and in other ledger only those transactions are there which helps in avoiding tax payment.
- Claim of fraudulent tax deduction of expenses by issuing fake salary slips, fake bills.
- A very common form of tax evasion is "manipulating the books of accounts"

- Another recent method of tax evasion is taking advantage of "tax paradise or Heaven", in which income is transferred to a country with a much lower tax rate.
- By transferring the income in the name of "false entity" and apportioning the income in such a way that it comes out of the taxable slab to avoid tax liability.
- To convert black money into white money, people transfer their money in the name of charities and trusts and escape their tax liability.
- It is common in property matters that only some amount of payment is received in cash as accounting income and remaining income is received in black to avoid tax liability.

Since last few decades, tax evasion is emerging as a new form of crime not only in our country but also globally. It is clear from the history of taxation law that tax evasion emerged along with taxation law. It was very difficult to ascertain the exact amount of direct tax evasion by the Government of India. However, it has been ascertained by many researchers, officials, committees and institutions that what amount of direct tax has been lost in India.

The estimated amount of direct tax evasion in India in the year 1956 was around Rs 300 crore<sup>18</sup>. It was mentioned in the year 1958-1959 that people have concealed their income from tax and the amount of tax for tax evasion can be in Crores. And the amount of hidden income in the year 1968-1969 was Rs. 1400 Crores and as a result Rs. 470 Crore tax evasion has been registered by the government<sup>19</sup>. India recently lost Rs 75000 Crore as tax evasion, report released by State Tax Report.

The Government of India has several times introduced "Voluntary Disclosure Scheme"<sup>20</sup> to encourage people to show their underground income and under the benefit that they will not be accountable to any authority regarding the source of income, nor Any penalty will be imposed on them and they will be taxed at concessional rate of tax. VDS resulted in many people disclosing their underground income to convert black money into white income.

<sup>18</sup> Report (1960), Direct Taxes Enquiry Committee Vol. I, III

<sup>19</sup> Report (1971), Direct Taxes Enquiry Committee Vol. I, III

<sup>20</sup> The State of Tax Justice 2020 ENGLISH.pdf visited on April 2024

In the first VDS, a total of 2001 individuals disclosed their income and the total tax amount for that time was Rs 52.9 Crore. In the second VDS, a total of 1,13,628 persons had disclosed their income and out of this Rs 145.51 Crore was collected as tax revenue to the Government of India. And from these things it is very clear that the



amount has been hidden from tax payment by the people. All these things also show that only people from rich society evade tax, comparatively poor class and middle class persons.

Thus it cannot be left without mentioning that now a situation has come where the economy has reached beyond the level of tax evasion and this is a dangerous phase. There is a need to set up an impartial body or institution which can examine the actual mechanism of tax evasion, its causes, responsible factors, effects and the actual amount of tax evasion. Research and development program should be established so that ways and means can be found to get rid of the problem of tax evasion.<sup>21</sup>

### 2.3 REASONS OF DIRECT TAX EVASION- FLAWS OF GOVERNANCE AND LAWS

Several reasons have been cited for direct tax evasion across the country. This is the most important point of information and a matter of debate as to what are the exact reasons for direct tax evasion. The opinion is mostly against the high rate of tax across the country and the high rate of taxes is largely due to tax evasion practices<sup>51</sup>. But it is not universally true, only partially true. No person takes recourse to illegal things unless the benefit to him outweighs the harm caused by it. If the cost of tax evasion exceeds that, the tax evasion practices will automatically stop. If tax rates rise beyond a saturation point, the growth of the economy slows down. It would be appropriate for the tax authority; the tax rate should not be increased beyond a certain limit where the tax rate becomes panic for the taxpayer.

<sup>21</sup> [http://ijmrr.com/admin/upload\\_data/journal\\_m.chandrappa%20%20oct16mrr.pdf](http://ijmrr.com/admin/upload_data/journal_m.chandrappa%20%20oct16mrr.pdf) visited on March 2024

It is often said that the rich people of the country have the intensity of temptation, so they indulge in more tax evasion practices than the middle class and low income group people. But in the year 1965 in the second<sup>22</sup> "Voluntary Disclosure Scheme" maximum income was disclosed by the business and professional who belong to the group of low and middle income. And these facts were in stark contrast to the facts of the first "Voluntary Disclosure Scheme" in which only the wealthy had disclosed their income. Significantly, the lure of tax evasion is more among the upper class people than the middle and lower class people.

The reason for direct tax evasion is not only the high rate of tax, it depends on favourable circumstances and opportunities for tax evasion, however, most of the situation is favoured by the rich income group. They have the availability of additional funds to hire talented professionals who help them to hide their income through anti-social activities and criminal acts. Tax evasion is depends - resources available to the taxpayer, favourable cost of tax evasion but is not the only reason for higher rate of tax. The only high rate of taxes cannot be blamed for tax evasion across the country "actually the fault lies elsewhere". An attempt has been made in the foregoing paragraph to briefly know the exact reasons for tax evasion. It is mentioned as follows<sup>23</sup>:-

- The understanding of taxation law is very complex in nature, the technical language and the way of applying the provisions are very difficult, and hence it creates an area of tax evasion for the taxpayer.
- The quantum of punishment in taxation law is very less and rarely does it punish the offender with imprisonment. Small businessmen and individuals are

<sup>22</sup> <http://ijrcm.org.in> › download › ijrcm-1-IJRCM-1\_v... India time to time announced 'Voluntary Discloser Scheme' to make Black Money to white ... 05 during first half year to the second half year of 2004-05.

<sup>23</sup> *Report (1971), Direct Taxes Enquiry Committee Vol. I, III wanchho report-The committee was of the opinion that high tax rates, controls and licenses in the economy, donations to political parties, ineffective enforcement of laws and deterioration in moral standards were the main causes responsible for tax evasion. It was also observed that tax arrears were a chronic problem with the income tax department. Unrealistic and over assessment of income, administrative delays, shortage of personnel and lack of coordination were identified as main causes responsible for tax arrears*

often traced very rarely by the tax authorities for filing incorrect returns or making them liable for not filing tax returns. Hence it instills less fear among tax offenders about punishment which results in tax evasion.

- No reward or incentive is given to those persons who have paid their tax on time, so it defeats the spirit of timely tax payment and starts indulging in tax evasion practices.
- Lack of coordination among tax officers regarding their duties.
- There is a shortage of staff in the tax department who are familiar with new technology to deal with tax matters.
- Lack of training or low remuneration or lack of salary or incentives to the employees of Income Tax Department and poor working conditions, lowers the ethics of the tax officers and it gives opportunity to the tax delinquent for tax evasion.
- Lack of proper legal advice of lawyers in case of occurrence of tax evasion and lack of legal action on how to deal with case of tax evasion with small traders/businessmen/professionals/individuals, hence automatically intensifying tax evasion.
- Lack of awareness among the public about effective taxation laws that's how the economy works adequately if the taxpayer doesn't evade tax.
- Decreased consumption propensity and unfavourable economic condition of the country also encourages tax evasion.

- The role of media is also counterproductive for building tax ethics among the people. The media often ignores news related to tax evasion or either pays little attention to tax crimes.
- The NGO/Non-Profit Organization has also not given any coverage to the tax program and did not spread awareness for the tax law, everyone should comply with it for smooth running of the country's development.

## 2.4 EFFECTS OR CONSEQUENCE OF DIRECT TAX EVASION

Tax evasion is like a termite, which gradually destroys the entire economy and eventually retards the growth, prosperity and wealth of the entire country and creates chaos among the citizens. In the long term the consequences of tax evasion can be very dangerous which would be out of control? Tax evasion is like an evil and it affects the economy fatally and has many bad consequences socially, morally, psychologically, economically, politically and technologically. Only individual or group of individuals is not affected by tax evasion, it has affected the society at large, unlike crimes that affects only particular victim. From a legal point of view it would be difficult to calculate its consequences on every aspect of society. However, a necessary effort has been made to find its result as follows:

### 2.4.1 LOSS OF GOVERNMENT REVENUE

The growth and prosperity of a nation depends upon the treasury of the country. Revenue is the most important way to fill the revenue coffers. Often it is collected by the government through tax receipts and non-tax receipts. Direct tax evasion creates hurdles in the path of development of the country. Every year the government has to suffer as a result of direct tax evasion. The contribution of Direct Taxes to the total tax in the year 2014-2015 was 56.16%, which decreased to 51.03% in the year of 2015-2016, 49.65% in the year of 2016-2017 and in year 2017-2018 and in 2018- 2019 it was only 52.24%, 54.78% respectively. And it decreased due to the declining rate of return as compared to the year 2014-2015. It hinders the growth and success of the economy.<sup>24</sup> Direct Tax Collection of the last two decades has been given below<sup>25</sup> - :

**Table 2.1: Direct Tax Collection (Rs. crore)**

<sup>24</sup> <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/980/PressRelease-Gross-Direct-Tax-collections-for-FY-2021-22-register-a-growth-of-47-24-9-21.pdf> visited on March 2024

<sup>25</sup> <https://incometaxindia.gov.in/Pages/Direct-Taxes-Data.aspx> visited on March 2024

Financial Year	Corporate Tax	Personal Income Tax <sup>@</sup>	Other Direct Tax	Total
2000-01	35,696	31,764	845	68,305
2001-02	36,609	32,004	585	69,198

2002-03	46,172	36,866	50	83,088
2003-04	63,562	41,386	140	1,05,088
2004-05	82,680	49,268	823	1,32,771
2005-06	1,01,277	63,689	250	1,65,216
2006-07	1,44,318	85,623	240	2,30,181
2007-08	1,93,561	1,20,429	340	3,14,330
2008-09	2,13,395	1,20,034	389	3,33,818
2009-10	2,44,725	1,32,833	505	3,78,063
2010-11	2,98,688	1,46,258	1,049	4,45,995
2011-12	3,22,816	1,70,181	990	4,93,987
2012-13	3,56,326	2,01,840	823	5,58,989
2013-14	3,94,678	2,42,888	1,030	6,38,596
2014-15	4,28,925	2,65,772	1,095	6,95,792
2015-16	4,53,228	2,87,637	1,079	7,41,945
2016-17	4,84,924	3,49,503	15,286	8,49,713
2017-18	5,71,202	4,19,884	10,951	10,02,037
2018-19*	6,63,571	4,73,121	993	11,37,685

Source: Union Finance Accounts of respective years and reports of C&AG/Receipt Budget. @ Figures under Personal Income Tax include collections of Securities Transaction Tax.

Contribution of Direct Taxes to Total Tax Revenue<sup>26</sup>:-

<sup>26</sup> <https://incometaxindia.gov.in/Pages/Direct-Taxes-Data.aspx> visited on March 2024

**Table 2.2: Contribution of Direct Taxes to Total Tax Revenue**

<b>Financial Year</b>	<b>Direct Taxes (Rs. crore)</b>	<b>Indirect Taxes (Rs. crore)</b>	<b>Total Taxes (Rs. crore)</b>	<b>Direct Tax As % Of Total Taxes</b>
2000-01	68,305	1,19,814	1,88,119	36.31%
2001-02	69,198	1,17,318	1,86,516	37.10%
2002-03	83,088	1,32,608	2,15,696	38.52%
2003-04	1,05,088	1,48,608	2,53,696	41.42%
2004-05	1,32,771	1,70,936	3,03,707	43.72%
2005-06	1,65,216	1,99,348	3,64,564	45.32%
2006-07	2,30,181	2,41,538	4,71,719	48.80%
2007-08	3,14,330	2,79,031	5,93,361	52.97%
2008-09	3,33,818	2,69,433	6,03,251	55.34%
2009-10	3,78,063	2,43,939	6,22,002	60.78%
2010-11	4,45,995	3,43,716	7,89,711	56.48%
2011-12	4,93,987	3,90,953	8,84,940	55.82%
2012-13	5,58,989	4,72,915	10,31,904	54.17%
2013-14	6,38,596	4,95,347	11,33,943	56.32%
2014-15	6,95,792	5,43,215	12,39,007	56.16%
2015-16	7,41,945	7,11,885	14,54,180	51.03%
2016-17	8,49,713	8,61,515	17,11,228	49.65%
2017-18	10,02,037	9,15,256	19,18,210	52.24%

2018-19*	11,37,685	9,39,018	20,76,703	54.78%
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\* Provisional, source IT department.

#### 2.4.2 INJURY TO PUBLIC MORALS

It has been observed that tax evaders are generally not treated like criminal offenders, even those who pay taxes regularly and honestly, usually feel cheated because the tax the life and status of a thief is a luxury much more than his lifestyle. Tax evaders succeed in becoming rich and reputed person of the society<sup>58</sup>. All this demoralizes and demoralizes the moral of the obedient taxpayer. In order to boost the morale of the taxpayer, CBDT did a very good job in which a certificate of appreciation has been issued to the taxpayer for his contribution in national building. In which four types of appreciation letters have been issued.<sup>59</sup>

- Platinum for taxpayers who contribute more than Rs 1 crore to tax payments.
- Gold for taxpayers who contribute between Rs 50 lakh to Rs 1 crore. • Silver for taxpayers contributing between Rs 10 lakh to Rs 50 lakh • Bronze for taxpayers contributing between 1 lakh to 10lekhs.

Though it is good initiative have been taken to make proud to obedient payer, but what about the small taxpayers who paid the tax on time and their small amount forms a major part in the total direct tax collection. This is the need of the hour government should think about that small taxpayer to intensify the taxpaying spirit to make them feel proud of their acts.<sup>27</sup>

<sup>27</sup> *Ibid*

**CHAPTER 3****INTERNATIONAL TAX EVASION LANDSCAPE**

*"International Tax is best regarded as the body of legal provisions of different countries that covers the tax aspects of cross – border transactions.*

*It is concerned with Direct Taxes and Indirect Taxes"<sup>28</sup>*

**3.1 INTRODUCTION**

Today the whole world has come within easy reach due to invention, transportation or trend of globalisation. It has come with many developments and some challenges, and evasion of direct tax is also one among all problems. The concept of direct tax evasion has become very popular these days as a social evil. This can be done using online tools and it becomes very difficult to ascertain the actual amount of tax evasion. International taxation laws are not defined in the terms of the water tank definition, but in common parlance it can be called taxation laws throughout the country. It is essential to know the taxation law of countries other than own country as the need of the hour. If a person wants to know penal law then one should go to study "Penal code" and go by "contract act" to learn about contractual agreement but to understand the concept of —international taxation law like this No specific law exists. Any special court has not been established to deal with such cases when disputes arise in respect of transactions relating to

—international taxation law. The "Income Tax Act 1961" provides some provisions that define the rules and procedure for dealing with international transactions. The term "international taxation law" is found in some way in international treaties or international agreements, and in domestic laws.

**3.2 INTERNATIONAL TAX AGREEMENT IN REFERENCE TO DIRECT TAX EVASION**

The establishment of taxation statutes has led to various developments which have resulted in border effects and it was felt that the need for determination of tax liability on that income made that income taxable. An income in the hands of the same taxpayer should not be taxable twice in different countries as it would violate the "rule of natural justice". Double tax on the same transaction will increase the financial burden on the taxpayer and it will lead him to hide his taxable income to reduce his income which may result in direct tax evasion. Hence it was felt that some agreements and treaties were made which aim to avoid the "effect of double taxation" and encourage the taxpayer to pay his tax duty and pay the tax on time.

<sup>28</sup> Kevin Holmes

**3.2.1 TYPES OF INTERNATIONAL TAX TREATY**

It was felt to introduce certain rules internationally for the avoidance of double taxation and the prevention of direct tax evasion, so countries began to enter into treaties to control tax evasion at the international level, using these. The categories are classified as following –

• **Double tax convention-:** More than 3000 bilateral tax treaties have been initiated and many more are to be announced as the need of the hour. The purpose of these treaties is to prevent tax evasion as well as protect the taxpayer from the trap of double taxation on similar transactions by determining their taxation rights.<sup>29</sup>

• **Tax Information Exchange Agreement (TIEA):** In April 2002, it was created by the "Global Forum of their Task Force" of OECD member states, for the smooth operation of international tax laws. And the rules so made are not binding on the member states. It was signed by the nations with a view to enhance international cooperation regarding the implementation of cross-border tax laws. In which the information relating to the taxpayer is exchanged between the governments of two sovereign states at the request of each other.<sup>30</sup>

• **Convention on Mutual Administrative Assistance in Tax Matters:** It is a multilateral agreement on international tax matters and in 1988 it was jointly set by the OECD and Europe and ultimately it was amended by protocol in 2010. It is that type of multilateral agreement which deals with direct and indirect tax

<sup>29</sup> India has signed double tax avoidance agreements (DTAAs) with a majority of the countries and limited agreements with eight countries

<sup>30</sup> The purpose of this Agreement is to promote international co-operation in tax matters through exchange of information. It was developed by the OECD Global Forum Working Group on Effective Exchange of Information. The Agreement grew out of the work undertaken by the OECD to address harmful tax practices. The lack of effective exchange of information is one of the key evasion and avoidance at international level. By keeping in consideration the fundamental right of tax payer it determines the tax right by establishing co-operation between domestic tax law and international tax standards. From head to toe means it keeps records of tax payer from assessment to collection of tax with themselves. In 2018 in G20 summit all members countries were requested to become part of the treaty. As result it has now more than 144 area of jurisdiction across the world<sup>31</sup>.

### 3.2.2 HISTORY AND DEVELOPMENT OF DOUBLE TAX TREATY • League of Nations

In the year of 1920 League of Nations was established which had consisting of famous economists viz —Prof. Gijsbert, Prof. Luigi Einaudi, Prof. Edwin Seligman and Prof. Josiah Stamp and it was the gist of their experience of research on problem of double taxation has been faced since a long period by developed and developing nations. They recommended for establishment of certain international rules which can provide assistance to tax payer in determination of their tax liability and it would help from prevention from double taxation on the same income. They said that while fixing the tax duty the two things must be taken into account first the residence status of the tax payer and second is source of origin of income. So it would be help in determination of tax liability of the person and it would be can't deny that today's rules of international taxation laws are the enhance view of this rules.

In the year of 1927 international taxation law and related model was presented by league of nation. In the year of April, 1976 United Nation's Social and Economic Council gave a brief of this model in —Geneva Convention in which challenging



methods was introduced to prevent double taxation effect on the person. In the year of July 1963 —organisation of European economic co- operation (OEEC) had made a draft on the issue of double taxation and the role of the taxation authority where a

<sup>31</sup> [https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters\\_9789264115606-en](https://read.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrative-assistance-in-tax-matters_9789264115606-en) visited on March 2024

transaction has multilevel effects that hit the boundaries of two nations. The successor of OEEC was come in the name of —Organisation of economic co operation and development (OECD) which gave authentication to the draft prepared by OEEC and it is known as —OECD Modal Tax Convention. These modal of tax has been amended<sup>32</sup> in the year of 1974, 1977, 1992 and 2019 and recently in the year of 2021 and it shall be modified according to the need of time. The very first time OECD was provided the own technical language on the international taxation laws and tried to defined the every relevant word used in international taxation law.

Tax treaties tend to be bilateral, by which countries of particular convention are bound to comply with the provisions. Tax treaties are of great importance in international tax planning such as-:

- It prohibits discrimination and provides facilities to taxpayers to encourage international investment and trade.
- It provides stability in the benefits of cross-border transactions and widens the scope of foreign investment and transactions.
- It assists in the evasion of direct tax evasion at the national and international level.
- It facilitates the member country in the collection of international taxation. It provides better scope for activities to cherish the development of international taxation goals.

### 3.3 OECD MODEL OF TAXATION

A common format and precise way of wording has been given by the model conventions to follow the international tax agreements.<sup>33</sup> Around the world from the sixth decade of 20<sup>th</sup> century two model on taxation has been came forward for better understanding of taxation laws and OECD tax model is count as one of them which provides the base and structuring of tax treaty and specially emphasised on income and on capital. The genesis or origin of the OECD model has based on the concept

<sup>32</sup> <https://taxguru.in/income-tax/double-tax-avoidance-agreements-taxation.html> visited on March 2024 <sup>33</sup> Roy Rohatagi (2007) —Basic International Taxation vol 1 Taxmann Allied Services (P.)Ltd.

and values determined by the model drafted by the League of Nations after the world war-1. Before that world war ,international transactions which liable to pay tax was very limited but to provide fiancé to war expenditure and post war may leads to increase the cross border transactions with problems of double of taxation on tax payer and then it felt it would be beneficial to be launched certain treaties between member countries and non members countries in order to provide benefit from prevention of double taxation.<sup>34</sup>

**CHAPTER 4****ANTI- EVASION LAW: LEGAL FRAMEWORK****4. Introduction**

Tax evasion in India is a serious affair and for any defaulters or fraudsters, the Income Tax Act provides for adequate repercussions. The study has made an attempt to assess the overall profile of tax evasion and black money in India, particularly in terms of causes, impacts and government initiatives. Tax evasion occurs when individuals deliberately fail to comply with their tax obligation. The resulting tax revenue loss may cause serious damage to the proper functioning of the public sector, threatening its capacity to finance its basic expenses. The results indicate that tax evasion and black money has been expanding very rapidly in India as well as in developing countries. It is evident from the study that government of India already introduced various commissions for estimating black economy but estimation reports are not same. This study also investigated the overview of the opinion of tax professionals regarding the tax evasion in India, delineating the number of factors responsive for tax evasion and examining the possible remedies to reduce the problem of tax evasion. The Indian government is more concerned about the prevalence of the tax evasion and black money and various commissions are formed for controlling it but results are not so impressive. Thus, the paper suggests that recommendations of the commissions or laws should be implemented correctly for reducing bad effects of tax evasion and black money and need of separate direct tax code. The study shows that there is a significant positive impact of taxation on the economic development of India with Income tax being least effective. Corporation tax apart from other taxes was found to be one of most productive in such a shorter extent of time since its obligation. To control the generation of black money there should be a strong and appropriate legislative framework.

As tax is the major source of income for any government, an attempt for reformation may be viewed by other stakeholders very seriously and doubts may be aroused due to fear of loss of revenue. Since the beginning of human civilization, the tax seems to have been imposed by the state in one form or the other. In the age of slavery, slaves were treated as a wealth of landlords (feudalists) so they have imposed a tax based on a number of slaves they kept and on the land they had. After the end of slavery, the concept of capital emerged and tax started to be imposed on capital, assets or income.

With the development and modification of state structure and production process, the concept of tax changed and tax system also modified. Tax evasion is the term for the efforts by individuals, corporate, trusts and other entities to evade taxes by illegal means. It is the deliberate, misrepresentation or concealment of the true state of their affairs to the tax authorities to reduce their tax liability or to avoid the tax liability by declaring fewer incomes, profits or gains than actually what they earned or overstating their expenses. So, economists at that time had an opinion that tax should be imposed at the minimum rate so that it becomes just sufficient to cover security expenses of government. They thought, more tax is a disincentive for people to undertake income generating business activities which retards growth and development. Thus the amount which would have been used for

economic and social development is used for anti-social activities. All this creates black money and social evils in the society. Thus tax evasion is not a problem in the development of the country but also harmful to the country. As tax is the major source of income for any government, an attempt for reformation may be viewed by other stakeholders very seriously and doubts may be aroused due to fear of loss of revenue. Constitution has given powers to the union government, state governments, and local bodies to collect the tax. The Article 265 of the Constitution states that “No tax shall be levied or collected without an authority of law.” Tax Evasion is a crime in all major countries and the guilty parties are subjected to imprisonment and fines.

Government raises finance through taxes. *In the words of Dalton “Tax is a compulsory contribution imposed by a public authority irrespective of the exact amount of service rendered to the taxpayer in return and not imposed as a penalty for any legal offence”.*

#### 4.1. Income tax system and structure in India

In 1918 a new income tax has implemented and was replaced by another act in 1922. Under British rule, they set up administrative and taxation systems. There were two taxes namely direct tax and indirect tax. This was remained in force up to the assessment year 1961-62 with a number of amendments from time to time. Later Finance Ministry has introduced income tax Act 1961 which was approved by the Parliament. This came into force on 1st April 1962. This applies to whole India and Sikkim including Jammu and Kashmir. The central board of revenue or department of revenue under Ministry of Finance, Government of India is the apex body charged with the administration of taxes. It came into existence as a result of Central Board of Revenue Act 1924. Due to the difficulty in the administration of both direct and Indirect tax, it has been split into CBDT (Central Board of Direct Taxes) and CBEC (Central Board of Excise and Customs) in the year 1964 by Section 3 of Central Board of Revenue Act 1963.

#### Definition of tax evasion and tax avoidance Tax Evasion

The-an illegal practice where a person intentionally avoids paying his/her/its true tax liability. Those caught evading taxes are generally subject to criminal charges and substantial penalties. It is illegal.

**Table 1:** Direct tax collection {Rs. in crore}

Financial Year	Corporate Tax	Personal Income Tax@	Other Direct Tax	Total
2010-11	298688	146258	1049	445995
2011-12	322816	170181	990	493987
2012-13	356326	201840	823	558989
2013-14	394678	242888	1030	638596
2014-15	428925	265772	1095	695792

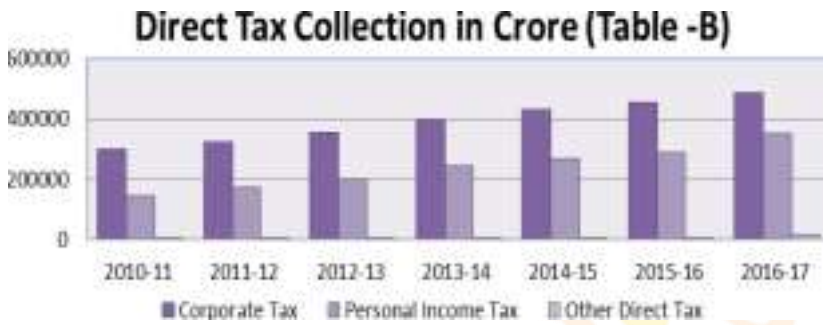
2015-16	453228	287637	1079	741945
2016-17*	484924	349270	15624#	849818

**Source:** Union finance accounts of respective years and reports of C&AG <sup>[6]</sup>.

\* Provisional/ Unaudited

@ Figures under personal income tax include collections of securities transaction tax.

# Collection under other taxes in FY 2016-17 includes collection under IDS-2016 and PMGKY-2016.



**Fig 1**

On analysis of the above figures mention in Table-1, it is found that the during the financial year 2010-11 the incometax collection was 51% of the corporation tax whereas during the financial year 2016-17 the income tax collection was 61% and of corporation tax. Thus the gap of between corporation and income tax has the downward trend and collection of income tax has the positive trend

## CHAPTER – 6

### CONCLUSION AND SUGGESTIONS

In previous chapters an attempt has been made to discuss taxation system in India, being administered by CBDT and problem of tax evasion and various factors need to address to curb the problem of Direct Tax Evasion. This chapter is an attempt to conclude this study and various suggestions are given at the end of the chapter, which may help in finding out the real basis of Direct Tax Evasion and proposed solutions to facilitate CBDT to cop up with problem of tax evasion.

#### 6.1. Conclusion of the Study:-

Public at large feel taxation as a burden, and not as a self-responsibility, and in lieu to avoid taxation generally people find various ways of flee away from taxation. The tax evasion being a white collar crime, is not treated as more serious in society, like the offences under Indian Penal Code are treated, therefore tax evasion is not treated as social stigma. Governments almost at every front are trying to curb the problem of tax evasion, but somewhere are not attaining that success as need of time. On basis of this research some of the important findings are as under:-

### 6.1.1. Lack of Definition of Direct Tax Evasion :-

Generally any filed of law is very specific and to have its proper implementation there shall be no lacuna. Like any wrongful conduct or omission of any act or any offence is specifically defined in all the related law fields. Indian Penal Code, specifically defines and provide for the offences like murder, theft, fraud etc. And from that it can be ascertain that such act of committer is fall under offence or not. But it is very unfortunate that Since Direct Tax is very essential element in growth of Nation as well as Citizens, but till date Direct Tax Evasion is not properly or specifically defined. Under Income Tax Act, only serious type of offences related to are being prosecuted, in Chapter 22 of the Act, Section 276C, of the Act provide for offences under Act as non-compoundable that particularly deals with – *Wilfully Attempt of Tax Evasion*¶. Despite having such provisions and seriousness of offences the law makers have not made an genuine attempt to define the term Direct Tax

Evasion¶ under definition clause. The Act also lacks in briefing the following factors, requisite to specifically observe or define the act or omission of act to be offence of Direct Tax Evasion, like:-

- What act or omissions of acts are necessary to constitute offence of Direct Tax Evasion?
- What are the Ingredients of Direct Tax Evasion?
- What are the exceptions for offence of Direct Tax Evasion?

### 6.1.2. Performance of Direct Tax administration

In administration of direct tax many policies and developments has been taken by the government for successful implementation of direct tax, human resources workforce are guided and is motivated by giving many facilities in services. Better use of technology and software and –risk management strategies¶ helps in generate good revenue to the government. Revenue is like spring in growth of national prosperity. To receive maximum amount of revenue CBDT managed proper mechanism for better result and as a result in FY of 2018-19 there has been increase in direct revenue receipts by 13.5 % as comparison to the amount of direct tax receipt of the FY 2017-2018. In comparison to FY of 2017-18 & 2018-19, the Direct Tax has been collected with an enhancement of Rs 1,34,980 crore, which is just because better administration of direct tax department.

To determine the success of a country the –gross domestic product|| plays a vital role to understand the gist of the policy in development program. As per the analysis of the study done in the previous chapters it is evident that administration of tax reformed has taken "day by day" as per the need of time and the process of improvement would be continue till that extent as per the changes will be come and to compete better in that changes, the process of use better technology would be continue. In the previous year share of direct tax in total direct tax has been increase with better percentage in comparison with FY of 2018-2019 and 2019-2020. For the former it was only 52.2% and in the later year it was 54.7%.<sup>35</sup>

Due to the computerization and advancement in technology since 2009 there is provision of online filing return has been given by the CBDT, and all data of handling of tax return is done by CPC at Bangalore. Due to this advancement of E- filing of return, a swift of return filing has been considerably noticed and in the year of 2018-2019 at pre- assessment stage 82.6% –voluntary complianc|| was recorded and that was a very good example of tendency of individual to comply voluntary tax laws. The non –corporate Assessee has been increased by 0.82 crores as comparison to the previous year and in the process of registration number of Assessee has been increased day by day and in year of 2018-2019 it was increased by 15.2%.

<sup>35</sup> Union Government Department of Direct Taxes Report No. 11 of 2020

Generally before filing the return, it is the mandatory to make payment of tax and then after, return is to be applied. This amount of paid tax is based up on the self assessment of the Assessee. At Bangalore in CPC centre the process of verification of return is operated through online and automatically which is base up on –Risk Management technique|| initiated by CBDT and during this verification when actual assessment if found inaccurate and less than the amount of tax assessment by tax authority, the arrear of a demand is issued by the AO. And it may said it is the result of poor assessment proceeding and due to complexity of taxation law, people does mistake while calculating tax liability, that the –arrears of demand|| is increased to 12.3 lakh in the year of 2019 which was only 11.1 lakh in the year 2018. But demand difficult to recover due to increased number of cases and in the FY 2018-2019 –net collected demand|| decreases to Rs. 14,593 crore which was 20,159 crore in the previous year. As per the CAG report 98.8% amount of arrear of demand or uncollected demand, is difficult to recover.

## BIBLIOGRAPHY

### BOOKS

- Acharya, Shankar and Associates, Aspects of the Black Economy in India, National Institute of Public Finance and Policy, New Delhi, 1985.
- Ansari, M.M., —Determinants of Tax Ratio: A Cross-Country Analysis||, Economic and Political weekly, Vol. 17, No. 25, June 1982, pp. 1035- 1042.

- Arora, R.S. and Kumar, Rakesh, —Performance of Income Tax Department: An Appraisal, Indian Management Studies Journal, Vol. 9, 2005, pp. 133- 148.
- AtulKhurana,|| An Insight Into Tax Audit||, Jain Publishers (2<sup>nd</sup> Edition 2017)
- Bagchi, Amaresh, —Inflation and Personal Income Tax||, Economic and Political Weekly, Vol. 17, No. 17, May 1982, pp. 733-738.
- Bagchi, Amaresh& Nicholas, Stern, Tax Policy and Planning in Developing Countries, Oxford University Press, Bombay, 1994.
- Das, Geeta, —Penalty in Tax System||, Taxman, Vol. 165, No. 45, December 2007, pp. 157-160.
- Das Gupta, Arindam, —Recent Individual Income Tax Reform||, Economic and Political Weekly, Vol. 41, No. 14, April 2005, pp. 1397-1405.
- Frey, B.S. and Feld, L.P., —Deterrence and Morale in Taxation: An Empirical Analysis||, Cesifo Working Paper No. 760, August 2002.
- Gandhi, V.P., Some Aspects of India's Tax Structure- An Economic Analysis, Vora& Co. Publishers, Bombay, 1970.

International Research Journal

## RESEARCH PAPERS

- Acharya, Shankar, —Thirty Years of Tax Reform in India||, Economic and Political Weekly, Vol. 40, No. 20, May 2005, pp. 2061-2069.
- AnanditaBagchi And Kalyan Chand, —Taxpayer Information Services||, Lexus Nexsis, (2016) March
- —Direct Tax Reform—A Critical Evaluation of Task Force Paper||, Economic and Political Weekly, Vol. 37, No. 48, November 2002, pp. 4765-4770.
- Harish Kumar,|| Tax Debt Recovery – A Challenge—, Lexus Nexsis,(2016)
- K.R. Sekar&GautamMallick, —Transfer Pricing Documentation Requirement|| Lexus Nexsis, (2016)

- M. Chandrappa —International Journal Of Management Research & Review, ijmr/oct. 2016/ volume 6/issue 10/article no-2/1376-1381
- MeghaNagpal —what is the role of the central board of direct taxes (cbdt)?  
—25/06/2016
- MukeshButani, Tax Dispute Resolution Lexis Nexis, (2015)
- ParasDawar, understanding general anti avoidance rules – GAAR(2016)
- RajivaRanjan , —Tax Data Analysis, Lexis Nexis,(2015)
- R.K. Rao, and B. Sen, —Raising the Tax-Ratio by Reining in the Tax Breaks An Agenda for Action, Tax Research Unit Working Paper, No. 2, December 2005, National Institute of Public Finance and Policy, New Delhi.
- Sanjay Kumar —Risk-Based Audit For Improved Compliance Lexis Nexis, (2016)
- StutiManchanda, —Widening Of Taxpayer Base Lexis Nexis, (2016)
- V. Krishnamuthy, —Bulletin For International Taxation, 2016 (VOL. 76).

#### **GOVERNMENT REPORTS / PUBLICATIONS**

- Report of the Indian Taxation Enquiry Committee, (President: Sir Charles Todhunter), 1924-1925.
- Report of Taxation Enquiry Commission, (Chairman: Mitthai John), 1953 • Indian Tax Reform-Report of a Survey, (Chairman: Nicholas Kaldor), 1956.
- Final Report on Rationalisation and Simplification of the Tax Structure, (Chairman: S. Bhoothalingam), 1968.
- Final Report of Direct Taxes Enquiry Committee, (Chairman: Justice K.N. Wanchoo), 1971.



• Direct Tax Laws Committee, (Chairman: C CChokshi), 1978. • Economic Administrative Reform

Commission, (Chairman: L.K. Jha), 1983. • Interim Report of Tax Reforms Committee, (Chairman: Raja J.

Chelliah), 1991. • Final Report of Tax Reforms Committee, (Chairman: Raja J. Chelliah), 1992

## WEBSITES

• [www.cagindia.org/](http://www.cagindia.org/)

• [www.finmin.nic.in/](http://www.finmin.nic.in/)

• [www.planningcommission.nic.in/](http://www.planningcommission.nic.in/) • [www.rbi.org.in/](http://www.rbi.org.in/)

• [www.ssrn.com](http://www.ssrn.com)

• [www.taxationindia.com/](http://www.taxationindia.com/) • [www.taxmann.com/](http://www.taxmann.com/)

• [timesofindia.indiatimes.com](http://timesofindia.indiatimes.com) • [www.thehindu.com](http://www.thehindu.com)

