

IMPACT OF TAX EVASION & AVOIDANCE: INDIAN CONTEXT

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ABSTRACT

In a Welfare State, the Government takes primary responsibility for the welfare of its citizens, as in matters of health care, education, employment, infrastructure, social security and other development needs. To facilitate these, Government needs revenue. The taxation is the primary source of revenue to the Government for incurring such public welfare expenditure. In other words, Government is taking taxes from public through its one hand and through another hand; it incurs welfare expenditure for public at large. However, no one enjoys handing over his hard-earned money to the government to pay taxes. Thus, taxes are compulsory or enforced contribution to the Government revenue by public. Government may levy taxes on income, business profits or wealth or add it to the cost of some goods, services, and transactions.

There are some of unlawful & unacceptable practices which reduce the revenue collection for government, followed by the tax payer's like tax evasion & avoidance. This paper focus on concept of tax evasion & tax avoidance, reason for tax evasion, different ways of tax evasion & avoidance, preventive measures taken by union govt. & taxation laws of 2020 & 2021.

KEYWORDS: Tax evasion, Tax avoidance, Economic growth, Tax Payer.

I. INTRODUCTION

Tax is a prominent and most significant important source of revenue of the government. The government needs money to maintain law and order in the country; safeguard the security of the country from foreign powers and promote the welfare of the people. Since our government is wedded to the socialistic pattern of society it is the foremost duty of the government to bring out such welfare and development programmes which will bridge the gap between rich and poor. All this requires mobilization of funds from various sources. These sources may be direct (Income tax, property tax, wealth tax, capital gain tax, etc.) or indirect (goods and service tax, sales tax, value added tax, customs duty etc.). Tax is charged on every person as defined under section 2 (31) on the tax rates fixed by the annual Finance Act.

The tax is to be deducted @ source of income or paid in advance as provided under provision of the Act, on the basis of residential status [Sec.5] of an assessee [2(7)]. The Income [2(24)] is classified into the following five heads.

1. Income from Salaries;
2. Income from House Property
3. Income from House Property; profits and gains of Business or Profession;
4. Capital Gains; and
5. Income from other Sources.

The concept of income is not conclusive. It includes some other receipts also which are ordinarily treated as income. In fact, income means a monetary income which is derived from definite sources (mentioned above) with some sort of regularity or expected regularity. Besides this, there are some other important rules regarding income, like

- a. There should be a definite source of income
- b. An income earned, whether *legally or illegally*, is taxable under the Income Tax Act.
- c. Lump-sum receipts can also be income
- d. Income may receive from outside.
- e. Receipts in kind or service having money equivalent etc.

II. OBJECTIVES OF STUDY

- A. To study of concept of tax evasion and tax avoidance.
- B. To examine relationship between tax rates, tax evasion and tax avoidance.
- C. To investigate why people evade and avoid tax.
- D. To study the role of government in curbing tax avoidance and tax evasion.

III. TAX EVASION

It is the cancer of modern society and work as a clog in the development of the nation. When a person reduces his total income by making false claims or by withholding the information regarding his real income, so that his tax liability is reduced is known as tax evasion. Tax evasion is not only illegal but it is also immoral, anti-social, and anti-national practices. Therefore, under the direct tax law provisions have been made for the imposition of heavy penalty and the institution of prosecution proceedings against the tax evaders.

IV. TAX AVOIDANCE

Tax avoidance is an art of dodging tax without actually breaking the law. It is a method of reducing tax incidence by availing of certain loopholes in the law. It is

The **Royal Commission on Taxation for Canada** has explained the concept of 'avoidance of tax' as "the expression 'tax avoidance' will be used to describe every attempt by legal means to prevent or reduce tax liability which would otherwise be incurred, by taking advantage of some provisions or lack of provisions in the law. It excludes fraud, concealment or other illegal measures. There are two thoughts about tax avoidance –

a) As per first thought it is legal. Such thought is also supported by various judgments of the Supreme Court; one of them is as follows

- **Helvering vs. Gregory (1934)**

"Anyone may so arrange his affairs that his taxes shall be as low as possible. He is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes."

b) As per second thought it is not a legal way to reduce tax burden and it should be prohibited.

- **McDowell & Co. Ltd. vs Commercial Tax Officer (1985)**

Supreme Court observed "we think time has come for us to depart from Westminster principle...tax planning may be legitimate provided it is within the framework of law. Colorable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the honestly without resorting to subterfuges."

V. TAX PLANNING

Defined as an arrangement of one's financial affairs in such a way that without violating in any way the legal provisions of an Act, full advantage is taken of all exemptions, deductions, rebates & reliefs permitted under the Act, so that the burden of the taxation on an assessee, as far as possible, is the least.

VI. TAX MANAGEMENT

Tax planning is not possible without tax management. Tax management refers to the compliance with the statutory provisions of law. It covers matters relating to

- Compliance with legal formalities;
- Taking steps to avail various tax incentives;
- Savings from consequences of non-compliance of statutory duties;
- Review of department's orders and if need apply for rectification of mistakes, filing an appeal, request for revision or settlement of a case.

VII. CONCEPT OF TAX EVASION

The tax evader reduces his taxable income by one or more of the following steps;

- a. Unrecorded sales.
- b. Claiming bogus expenses, bad debts and losses (in case of profit and gain from business or profession).
- c. Charging personal expenses as business expenses, e.g., car expenses, telephone expenses, travelling expenses, medical expenses incurred for self or family may be shown in the account books as business expense. It violates the accounting concept of separate entity.
- d. Submission of bogus receipts for charitable donations for deduction u/s 80G like donation to individuals, donation in cash etc., are not permissible.
- e. Non-disclosure of capital gains on the asset (reducing the value of sales consideration or cost of acquisition or cost of improvement).
- f. Non- disclosure of income from 'Benami transactions'.
- g. By showing excessive or bogus salary payments to near relatives.
- h. By not showing taxable incomes in return of income.

In a brief to evade tax, he/she suppresses or omits receipts, inflates expenses and claims bogus deductions.

VIII. REASONS OF TAX AVOIDANCE & TAX EVASION

The problem of tax evasion and reasons can be categorized into economic reasons, administrative, legislative causes and even social reasons and others. Some of all causes are as follows.

- a. Social psychology for taxpayer. In society tax evader is not a bad person. If he is rich, he is respectable person in society.
- b. Deterioration of moral values
- c. Declaration of voluntary disclosure schemes by the government from time to time. The tax evader knows that in such a scheme he can pay tax at a lower rate and save interest and penalty.
- d. The tax management is not accountable for the increase in tax evasion.
- e. The tax management & tax experts help in tax evasion
- f. Misutilisation of public fund by the government and its employees.
- g. Imparting no education regarding the advantages of tax payment and disadvantages of tax evasion to the people.
- h. The level of tax rates is probably the most important reason for tax evasion. High tax rate makes tax evasion more tempting, any increase in tax rate is likely to produce a reduction rather than an increase in tax revenue. Lowering of tax rate may not solve the problem of tax evasion. One percentage point increase in tariffs increases evasion by about 0.1 percent. **(Prachi Mishra, February 2007)**
- i. The level of tax system complexity and the level of taxpayer compliance are important matters for taxpayers, government and policy makers for a number of reasons.
- j. Inequitable distribution of amenities, leads to a disgruntled taxpayer of the government.
- k. Tax evasion depends on the basis of nature of economies, it widespread in under developed countries
- l. The complexity of tax laws and procedures increases the magnitude of Tax evasion in the tax system.
- m. In some developing countries, such as India, the extreme unwillingness of taxpayers to comply with the law and hence their readiness to bribe tax collectors in order to reduce their tax liability.
- n. Corruption in Tax Administration is also a reason for tax evasion, depends on an empirical study based on fieldwork conducted in 1994–95 indicates that Tax evasion in India occurs partly through collusion between taxpayers and tax officers.
- o. Parallel or black economy transactions involve tax evasion (Keith Blackburn and other, 2009, 2).

- p. Absence of spirit of civic responsibility (kiabel, 2009, 9)
- q. The instability of tax legislation and the multiplicity of amendments.
- r. Tax fines play an important role in the decision of the taxpayer. When there are strict and harsh penalties, the taxpayer may alter his decision & when tax penalty is weak, no strict tax evasion will increase and government loses a lot of money from that as the case of developing countries.
- s. Political corruption and tax evasion are two faces of a single coin it seek a share in the distribution of government largesse and patronage. (Suraj B.Gupta, 1992, 34).
- t. Lack of taxpayer education leads to evade the tax.

IX. DIFFERENT WAYS OF TAX AVOIDANCE AND EVASION

a. Income from salaries

Salaried tax payers evades tax by using any of the following methods, like claiming higher rent receipts than the actual, claiming exemption for school fee, donations and other abnormal indirect expenses like conveyance allowances, claiming for exemptions of certain Perquisites like LTC, claiming HRA exemption though residing in own house etc.

b. Income from House property

While computing total income from house property tax payer may evade taxes by claiming unrealized rent, vacancy allowance and also interest on borrowed capital by generating documents.

c. Corporate tax evasion and/professional income

Corporations and professional persons evade taxes generally by non-recording under reporting of receipts and claiming over stated deductions. Companies usually adopt over depreciation of assets, claiming exemption for amount spent on scientific research activities, advertising expenses, bad debts, issue of salaries and wages in the names of their family members, excess bonus fees and commission paid to employees. Professionals like doctor's, chartered accountants, lawyers, Engineers etc., evade taxes by not recording their receipts like consultation fees, gifts given by patients and clients and over stating their personal expenses as Professional expenses, claiming for depreciation of office equipment are which are hired or leased.

d. Capital gain

Capital gain shall be one of the most important area of tax evasion because of the taxpayers adopt under valuation of properties sold and purchased for registration and evading the stamp duty by real estates and others, claiming for brokerage, stamp paper and other selling expenses more than the actual expenditure, purchasing another property even though they are the owners of more than one property, declaring industries as sick units and also transfer of industries to rural areas because of different rates of tax for long term capital gains and short-term capital gains.

e. Income from other sources

Since, it is a residuary head of income and tax payers follow self-assessment method of tax payment, don't disclose information on winning from lotteries, puzzles, gambling, betting, card games, Interest on deposits, royalty's, interest on securities through bond washing transactions, director fee and other additional revenues received by them in any financial year.

f. Evasion under incentives as per the IT Act

Indian income tax Act, 1961 provided various incentives to encourage general public for social savings under section 88 of the Act. The same provisions are misused by tax payers in the form of Rebate in respect of tuition fees of children, expenditure on medical treatment of self and handicapped dependents, donations to various institutions, interest on educational loans, deduction for rent paid etc.

Other ways of evasion and avoidance are numerous like

- Over stated expenses like, children school fee, hostel expenses, conveyance allowances, rent expenses, , expenses on purchase of securities, collection charges of interest and dividends, medical expenses, welfare expenses of employees, transportation expenses, advertising expenses, salaries and wages, etc.
- Procurement of Materials without bills either from registered or unregistered dealers according to their convenient.
- Level of tax evasion depends on the Dishonesty and Individual behavior of the tax payers in declaring their actual income earned by them from all sources and also Chartered Accountant and lawyers who help the company, firms and individuals to evade taxes.
- Many tax payers have lack of knowledge on filing the tax returns and they think ITR is a tedious process and many provisions of the Act which they can't understand.

- Lack of responsibility and integrity of tax officials in collection of taxes by adopting various methods of assessments of tax collection by organizing the adalat's, workshops and public meetings.
- The splitting of income between more than one taxpayer preferably among the family members, so as to reduce the marginal rate of tax chargeable thereon.
- Income or asset shifting to another person or entity in which the taxpayer has a beneficial interest and which is Chargeable to less tax.
- Numerous sheltering techniques evolved by the smart assesses which reduces their tax liability, for example, maintaining head offices in 'tax heaven' countries
- Capitalization of income like conversion of taxable income into capital which may remain untaxed or taxed at a lesser rate. For example, letting the property on lease at a large premium and much reduced rent.
- Dividend stripping thereby tax liability will reduce. For example, a solvent company is bought by a shareholding Company, then a large dividend is declared and shares sold at a less than market value (loss) to the former shareholders which than is used as a basis for tax refund claim.
- One way a person or company may lower their taxes by changing one's tax residence to a tax haven.
- Double taxation within that country regardless of the country of residence of the person or firm. There are certain well-known exceptions to this: Cyprus has a heavily exploited double taxation relief treaty with Russia, treaty between Mauritius and India, similar case with British Virgin Islands and Switzerland.
- Failing to pay the due or they simply won't pay tax to the government, smuggling, submitting false tax returns, inaccurate financial statements, using fake documents to claim exemption, bribery & Storing wealth outside the country etc., are some other tactics used by tax payers to evade the tax.

X. MEASURES TAKEN BY UNION GOVERNMENT TO REDUCE TAX AVOIDANCE & EVASION

- **Income tax reward scheme**

- **Minimization of controls and licenses**

A committee of experts should be appointed to enquire into the utility of all existing controls, licensing and permit systems, and suggest elimination.

- **Creating Confidence among Small taxpayers**

The instructions issued by the Central Board of Direct Taxes on the new procedure for making assessments in small income cases make a bold departure from the past and are likely to achieve more significant results than the earlier small income scheme.

- **Changes in Penal Provisions**

Penalty serves its purpose only so long as it is within the reasonable limit. Once it crosses that limit, it is more likely to increase the rigidity of the taxpayer's recalcitrance than to reform him.

- **Compulsory maintenance and audit of accounts**

A statutory provision may be made requiring maintenance of accounts by all persons in profession and by businessmen where the income from business is in excess of exempted limit or turnover.

- **Arousing social conscience against tax evasion**

Tax evasion cannot be checked by stringent legal measures alone. It can be dealt with effectively only if such measures are backed by strong public opinion against black money and tax evasion

- **Tax treaties for exchange of information relating to tax evasion**

Section 90 of the Income-tax Act, 1961 may be suitably amended to enable the government to enter into agreements with foreign countries for prevention of fiscal evasion.

- **Checking under-valuation of immovable Properties**

It would be expedient for the government to assume powers to acquire immovable properties in cases of understatement of cost of construction as well.

- **Reintroduction of expenditure tax**

Introduction of an expenditure statement as a part of the form of return of income should be quite effective in checking evasion through consumption expenditure, without disturbing the existing tax structure.

- **Changes in the form of income-tax return**

To start with, the requirement to furnish this additional information should be applicable only when the total income exceeds Rs. 5 lakh.

- **Co-ordination between Banks, other offices and the Income tax department**
- **Power of Survey**

A new provision may be introduced as an adjunct to section 133A of the Income-tax Act, 1961 to enable the Income-tax Officer to visit any premises of an assessee for the purposes of counting cash, verifying stocks, and inspecting such accounts or documents.

XI. SIGNIFICANT DIRECT TAX AMENDMENTS

THE TAXATION LAWS (AMENDMENT) ACT, 2019

➤ **Prescribed electronic modes for purpose of section 269SU**

It has been notified that W.e.f 01.01.2020, any debit card powered by Rupay, UPI (BHIM-UPI) (UPI QR Code) shall be the prescribed electronic modes are mandated. For accepting payments by businesses whose total sales exceeds Rs. 50 crore in the year immediately preceding the financial year.

➤ **E-Assessment scheme-2019**

In order to remove existing human interface and personal interaction prevailing in the assessment, a scheme of faceless assessment in electronic mode has been notified vide Notification No. 61/2019 dated 12.09.2019 through S.O 3264(E) published in the Official Gazette.

➤ **Document identification number (DIN)**

Every communication of the department whether it is related to assessment, appeal, investigation, and rectification, issued after 01.10.2019 onwards will mandatorily have a computer generated unique document identification number.

➤ **Relaxation in norms for prosecution**

It has been provided that prosecution in appropriate cases will be launched only if the quantum of tax evasion is above a minimum threshold. Further, the 12 month time for filing compounding application has been relaxed as a one-time measure, to mitigate hardship in genuine cases.

➤ **Enhanced depreciation on automobiles**

In order to provide relief to the taxpayers purchasing new vehicles for the purpose of business or profession, enhanced depreciation of 30% for motor cars and 45% for motor busses/lorries has been provided with effect from 23.08.2019.

XII. THE FINANCE ACT, 2020

A. TAX RATES

Concessional slab rates for individual and HUFs

New section 115BAC inserted to provide an option to an individual or HUF to pay tax in respect of their total income if they don't avail certain exemptions/deductions like LTC, standard deduction under the head "Salaries", interest on housing loan, deduction under chapter VI-A [other than 80CCD(2) or section 80JJAA] etc.

Concessional tax rates for Co-operative societies

New section 115BAD has been inserted to provide an option co-operative society, resident in India, to pay tax @ 22% (plus applicable surcharge, if any, & HEC @ 4%) in respect of its total income subject to certain conditions. Such co-operative societies opting for section 115BAD will not be liable to pay MAT (Minimum Alternate Tax or Alternate Minimum Tax) under section 115JC.

B. PERSONAL TAXATION

➤ **Period upto which loan can be sanctioned for availing deduction u/s 80EEA extended.**

Section 80EEA provides an additional deduction upto Rs. 1, 50,000 for interest paid on loans sanctioned between 1.4.2019 to 31.3.2020 for purchase of an affordable house.

➤ **Increase in permissible variation between actual consideration and stamp duty value for transfer of immovable property, being land or building or both.**

➤ **Condition for residency modified.**

Days of minimum period of stay in India proposed to be reduced from 182 days to 120 days W.E.F Assessment Year 2021-22.

C. BUSINESS TAXATION

Incentives to start-ups: At present, an eligible start-up having turnover upto 25 crores is allowed deduction u/s 80-IAC of 100% of its the profits for three consecutive assessment years out of 7 years, if its total turnover does not exceeds Rs. 25 crore.

Deferment of tax liability on ESOP provided by eligible start-ups: ESOPs are taxed as perquisite in the hands of employees @ the time of exercising such option.

Time limit for approval of affordable housing project extended: It is extended by one more year i.e., from 31st March, 2020 to 31st March, 2021 for availing deduction under section 80-IBA.

Tax Audit under section 44AB: Turnover threshold for compulsory tax is increased audit from existing Rs. 1 Crore to Rs. 5 Crore in a case where cash receipt is not more than 5% of total receipt & cash payment is not more than 5% of total payment.

Claim of deduction under section 35AD to be optional.

D. PENALTIES

Penalty for fake entry in the books of accounts: New section 271AAD to provide for levy of penalty on a person if during any preceding it is found that in the books of accounts. Levy penalty of a sum equal to the aggregate amount of such false or omitted entry.

E-penalty scheme: Indian government is empowered to notify an e-scheme for the purpose of imposing penalty so as to impart greater efficiency, transparency and accountability.

E. OTHER SIGNIFICANT CHANGES

Transparency in Survey

Section 133A amended to provide that, in case where the information has been received from the prescribed authority below the rank of joint director or joint commissioner shall conduct any survey under this section only with the prior approval of the joint director or joint commissioner.

Taxpayer's Charter

New section 119A inserted to empower the CBDT to adopt and declare a taxpayer's Charter and issue necessary orders, instructions, directions, or guidelines for the implementation of Charter.

XIII. GLIMPS OF UNION BUDGET 2021

- Direct Tax administration, introduced the Faceless Assessment and Faceless Appeal. Seek to take further steps to simplify the tax administration, ease compliance, and reduce litigation.
- Reduction in Time for Income Tax Proceedings.
- Setting up the Dispute Resolution Committee (Direct Tax Vivad Se Vishwas Scheme) to give taxpayers an opportunity to settle long pending disputes and be relieved of further strain on their time and resources.
- Abolishing the Dividend Distribution Tax (DDT) in order to incentivize investment.
- Pre-filing of Returns, in order to ease compliance for the taxpayer, details of salary income, tax payments, TDS, etc. already come pre-filled in income tax returns.
- GST normalization includes, nil return through SMS, quarterly return and monthly payment for small taxpayers, electronic invoice system, validated input tax statement, pre-filled editable GST return, and staggering of returns filing.
- Deep analytics and Artificial Intelligence to identify tax evaders and fake billers and launched special drives against them.
- Tax Neutrality of conversion of Urban Cooperative Bank (UCB) into a Small Finance Bank (SFB).

- Relaxation of Condition for carry forward of loss for Disinvestment.
- Rationalization of Tax-free Income on Provident Funds.
- Relaxation in conditions for exemption to Sovereign Wealth Fund & Pension Fund (SWF/PF).

XIV. CONCLUSION

“Taxation is the price which civilized communities pay for the opportunities of remaining civilized”. In a truly civilized society there wouldn't be any billionaire, nor there would any homeless, for all the revenue generated through taxing the rich be distributed among the people through welfare initiatives. Payment of tax is a kind of responsibility of every tax payer & fulfils the needs of economy in direct and indirect way. If a tax payer (Individual or group or artificial) willingly do any kind of illegal, immoral, anti-social, and anti-national practice like tax evasion or avoidance it will have a direct impact on the economic system of the country. It is the cancer of modern society and work as a clog in the development of the nation. Finally the database for tax administration at all levels of government should be completely computerized to ensure that the system of information storage processing and retrieval is efficient.

Central Board of Direct Taxes need to take several measures for avoiding the Tax evasion practices in India in terms of making amendments in Income Tax law in several forms for this purpose revenue department take action against Tax Evasion, and provide proper Tax Planning opportunity for tax avoidance is better.

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