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**A CRITICAL ANALYSIS OF THE TAX EVASION REGIME WITH  
SPECIAL EMPHASIS ON ANTI-EVASION LAWS: A  
COMPARATIVE INTERNATIONAL PERSPECTIVE**- Anshika Singh<sup>1</sup>**ABSTRACT**

Tax evasion poses significant challenges to economies worldwide, undermining fiscal sustainability and equity. This paper presents a critical analysis of tax evasion regimes, focusing on the efficacy of anti-evasion laws across different jurisdictions. Through a comparative international perspective, the study evaluates the effectiveness of legal frameworks in combating tax evasion and promoting compliance. The research employs a multi-dimensional approach, examining the evolution of anti-evasion laws, their enforcement mechanisms, and their impact on taxpayer behavior. By synthesizing empirical evidence and theoretical frameworks, the study elucidates the strengths and weaknesses of various approaches to tackling tax evasion. Key areas of investigation include the role of legal deterrence, the effectiveness of enforcement agencies, and the interplay between tax policy and compliance behavior. Furthermore, the analysis delves into the challenges posed by globalization, digitalization, and cross-border tax evasion schemes, highlighting the need for international cooperation and harmonization of anti-evasion measures.

*“International Tax is best regarded as the body of legal provisions of different countries that covers the tax aspects of cross – border transactions”<sup>2</sup>.*

**PRELUDE**

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In the complex realm of taxation, the intricacies of tax evasion and the laws crafted to counteract it hold a pivotal place. This prelude sets the stage for a critical examination of the tax evasion regime, with a particular focus on the anti-evasion laws, through a lens that spans across borders. Delving into the nuances of tax evasion and the regulatory frameworks designed to combat it, this analysis seeks to offer insights from a comparative international standpoint.

Tax evasion, the deliberate underpayment or non-payment of taxes by individuals or entities, undermines the integrity of a nation's fiscal system. The methods employed to evade taxes vary widely, ranging from simple underreporting of income to sophisticated offshore schemes. In response, governments around the world have enacted anti-evasion measures aimed at deterring, detecting, and penalizing such illicit activities.

However, the effectiveness of these anti-evasion laws is contingent upon various factors, including the robustness of enforcement mechanisms, the clarity of regulatory frameworks, and the cooperation between tax authorities domestically and internationally. Thus, a comparative analysis becomes imperative to gauge the strengths and weaknesses of different approaches adopted by nations in combating tax evasion.

This study will delve into the legal, economic, and social dimensions of tax evasion and anti-evasion laws across selected jurisdictions. By juxtaposing diverse regulatory landscapes, it aims to identify best practices, shortcomings, and potential areas for improvement. Moreover, the examination will extend beyond legal frameworks to explore the socio-economic implications of tax evasion, such as its impact on income inequality, public trust in governance, and economic development.

Through this critical analysis, stakeholders ranging from policymakers and tax authorities to academics and taxpayers can gain a deeper understanding of the multifaceted nature of tax evasion and the challenges inherent in combating it. By fostering knowledge exchange and promoting dialogue, this study endeavors to contribute to the ongoing discourse on strengthening tax compliance and integrity in an increasingly interconnected world.

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## **TAX EVASION POLICY IN INDIA**

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 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" 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.

## **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 Assessed 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

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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.

## **TAX PLANNING**

Tax planning is the process of thinking in advances 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>3</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.

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.

## **TAX AVOIDANCE**

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

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<sup>3</sup> <https://www.oecd.org/ctp/glossaryoftaxterms.htm> visited on March 2024

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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>4</sup>.

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 "colorable device" which shows the transaction which helps in reducing the tax liability.
- It hurts the true spirit and spirit of taxation laws.
- 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>5</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>6</sup>.

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<sup>4</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

<sup>5</sup> Justice S.R. Singh

<sup>6</sup> [postdoctor22/ph.d%20shodhganga/shodhganga%20tax%20avoidance.pdf](https://www.researchgate.net/publication/354888882_postdoctor22/ph.d%20shodhganga/shodhganga%20tax%20avoidance.pdf)

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"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.

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.

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## 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.

### 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>7</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

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<sup>7</sup> India has signed double tax avoidance agreements (DTAAs) with a majority of the countries and limited agreements with eight countries

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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>8</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 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>9</sup>.

## CONCLUSION

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.

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

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<sup>8</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

<sup>9</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

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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?

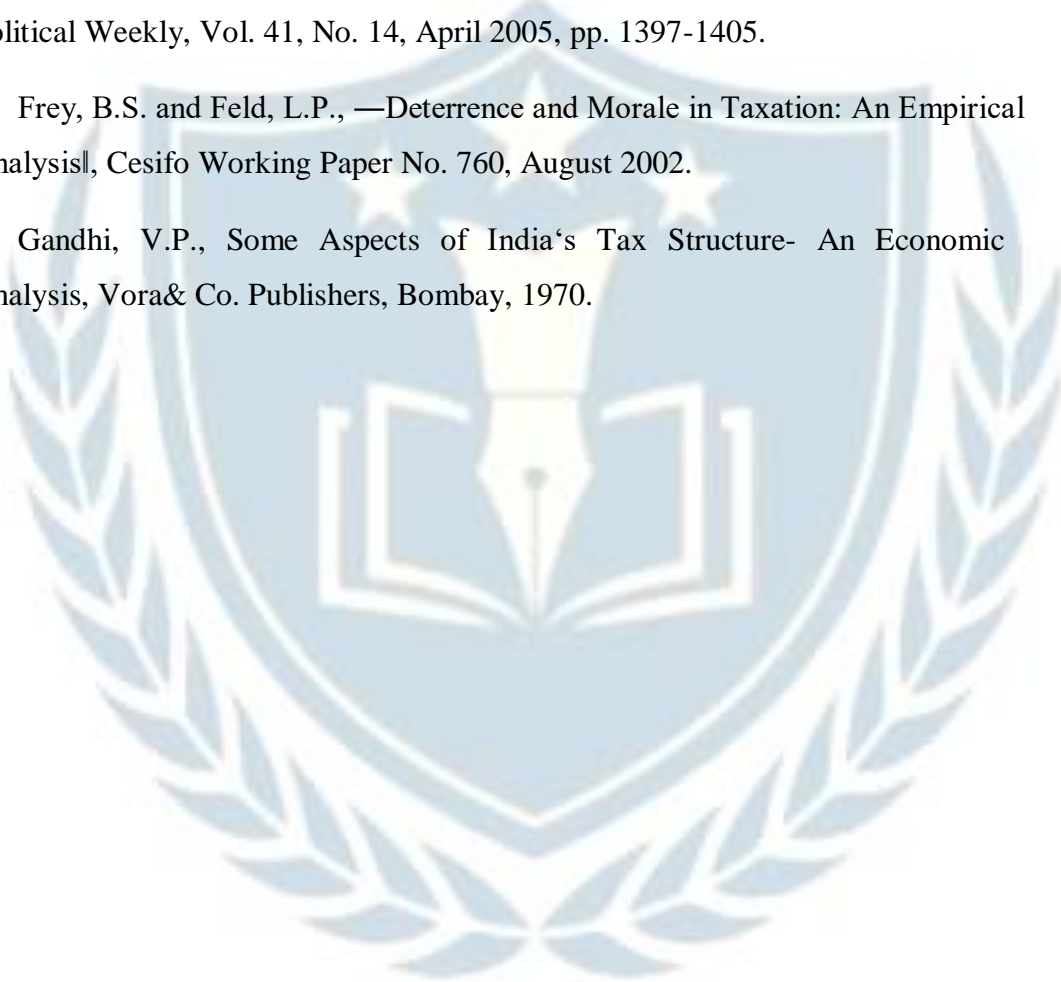
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