ANALYSIS OF THE PRACTICE OF INTERNATIONAL TAX EVASION AND AVOIDANCE

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ABSTRACT

Famously, Denis Winston Healey once said that "the thickness of a prison wall is the difference between tax avoidance and tax evasion." This article seeks to provide a quick summary of the ongoing global problem of tax evasion and avoidance. Making a quick, clear distinction between the two can be difficult since they can overlap as a result of the many tax laws that apply to different countries and are particular to each one. Additionally, it becomes challenging to identify and categorise the motives underlying tax avoidance and evasion. As a result, it is vital to compare tax avoidance and tax evasion using the present Indian Income Tax Law of 1961 as well as other international legal frameworks.

A comparative analytical approach is used, and it revolves around its significance, fundamental reasons, traits, distinctions, legality, case study reports, frauds, remedies, and outcomes for the same. It is imperative to write down a fundamental overview of the tax system, which is at the mercy of these tax evaders and exploiters, because a staggering amount of money is on the line, directly affecting not only a country's income and developmental processes but also the very welfare of its residents.

A CONCEPTUAL NOTE ON TAX EVASION AND AVOIDANCE

Overview

Since tax payments are essential to the operation and overall development of a nation, it is necessary for the government to collect taxes from qualified residents in order for the country to be managed wisely. The Latin term "taxare," which meaning to value or estimate, is where the English word "tax" originates. It is a tax that a nation's government imposes as a requirement on a person. The entity extracting and collecting the tax is referred to as the "Assessor," and the person paying the tax is known as a "Assessee."

How Tax Evasion Is Committed

Tax evasion is the failure to pay or underpayment of taxes. Typically, this is done by providing false information to the tax authorities or by failing to declare certain information, such as reporting gains, profits, or income that is lower than what was actually received or increasing deductions. cause grave legal repercussions of a criminal character. Tax avoidance is a legal activity that aims to lower taxes by taking advantage of tax law exceptions, loopholes, and unexpected interpretations. It basically refers to the act of seeking to avoid paying taxes by abiding by the letter of the law but disobeying its intent. Because purpose is challenging to establish, the distinction between avoidance and evasion is frequently confused. Tax avoidance is encouraged by secret ownership, complex organisational structures, and ambiguous ownership. Mandatory public registries that show trust and business ownership and make it simpler to track the movement of illicit cash should be established by governments.

While developing rules to prevent tax evasion, tax evaders are coming up with new strategies to close the gaps they can still find in the tax laws. The following are some of the most typical methods used to catch tax evaders:

This is a frequent technique for tax evasion. Even if the tax is owed, the person or business willfully fails to pay it.

Smuggling allows for unequal taxation: Through smuggling, many businesses are able to avoid paying government taxes, tariffs, import and export taxes, and other levies. Smuggling is a serious offence in India, and the punishment is increased if it is done in order to avoid paying taxes.

Filing an erroneous tax return involves submitting a person's return while including fictitious or fraudulent information in an effort to lower their tax burden or avoid paying taxes. Individuals are also impacted by tax evasion because they do not disclose all information and pay less tax. It is challenging to identify and prevent this kind of tax avoidance.

False accounting: Businesses may maintain incorrect balance sheets and other financial records in order to forecast low annual earnings. For instance, a business cannot withhold sales data in order to lower total annual income and pay taxes.

External accounts: International bank accounts are not the responsibility of IT. Some individuals use a foreign bank account to conceal their total income.

Fake paperwork for exemptions: The government grants exemptions to people so they can have more money. Even though they are phoney documents, many people use these vulnerabilities to make them.

Bribery: Another way to avoid paying taxes is to pay income tax officers to reduce the amount of tax due. People offer bribes to have their tax records erased or reduced.

The construction of parent corporations in tax-exempt nations like the Cayman Islands through offshore accounts and global components like shell firms is only one example of the widespread tax evasion that is known to occur in these nations. Tax evasion primarily refers to failing to pay taxes in spite of having a valid income. There are numerous cases involving tax avoidance. Notably, the Court in Commonwealth of India v. Playworld Electronics Pvt society with limited responsibility held that "colour equipment cannot be part of tax planning" and that "it is the duty of every citizen to pay taxes honestly and there is no excuse." The Hon'ble Supreme Court stayed the former in Calcutta Chromotype Ltd. v. Collector of Central Excise of Calcutta. a murky strategy that, in reality, uses cunning or deception to avoid paying taxes on unearned income and is actually a brilliant attempt by intelligent individuals, but it should be strongly criticised and penalised."

What Is Tax Evasion, and Why Is It Important?

When the tax required by law is avoided through illegal means, such as underreporting or inaccurately reporting income, it is a felony punishable by law. The practise of avoiding taxes involves using the legal system to lower one's tax burden, typically by claiming allowed expenses and interest. The lawful reduction of taxes using instruments allowed by the tax laws is known as tax avoidance. It is a proper application of the tax code for private gain. Tax avoidance is the practise of using legal strategies to lower the amount of income tax that an individual or business must pay.

Prioritizing tax-free assets, such as the purchase of tax-free municipal bonds, is another way to do this. Contrarily, it emphasises illicit actions including tax evasion, underreporting of income, and deductions. Tax evasion is a means to lower taxes via government-provided channels, however before moving forward, a complete tax evasion inquiry should be carried out. Here are a few indicators of tax fraud:

Justice Chinapa Reddy's ruling in the McDowell case served as the foundation for the judiciary's involvement in the idea of tax evasion. Tax evasion is described as "the art of dodging taxes without breaching the law" in the ruling, which makes a clear distinction between the ideas of tax avoidance and tax evasion. Everyone has the right to handle their own business, if they are able to do so, so that the tax collected under current rules is less than the law, according to Lord Tomlin's IRC against tax evasion in Britain, as stated by the Duke of Westminster.

Offshore Banking and Double Taxation Agreements as a Means of Avoiding Taxes:

The Reserve Bank of India (RBI) permits Indians to open and maintain bank accounts abroad; this does not only apply to Indian citizens; an Indian citizen who opened a bank account in Canada also opened an offshore bank account. However, while offshore banking is legal, using offshore bank accounts to store money is not; this raises the question of whether and to what extent RBI will permit offshore banking.

Money can be taxed where it is received, but taxpayers move their money to tax havens to avoid paying this tax. A tax shelter is a place where you can keep tax-free assets, like a retirement account or an IRA account. Since nations like the United Arab Emirates and the Cayman Islands don't pay tax at home, using offshore accounts means you can deposit money into those accounts tax-free. If the United States taxes these nations, it would be a tax haven.

Like all other financial crimes, offshore tax evasion is a financial crime of different types, scope, and severity. It is typically designed to combine legal and illegal transactions, making it difficult to determine the extent of all participants' activities. Participants frequently combine the two payment methods, making it difficult to determine the extent of all their activities.

CAUSES OF GLOBAL TAX EVASION AND AVOIDANCE

The majority of taxpayers reduce their tax liability by implementing adjustments to their books of accounts that are permitted by law, which does not violate any tax laws. "Tax Avoidance" is basically dependent on the taxation norms and laws of a particular country, wherein more loopholes a country has in its tax norms, more is the chance of tax avoidance.

When someone avoids paying their fair share of taxes, such as by fabricating or hiding income, falsifying deductions without justification, failing to report cash transactions, etc., it is known as tax evasion. There are many ways to do this, including smuggling money out of the country and keeping money in offshore accounts that are used without disclosing their purpose to the income tax department.

Tax evasion and avoidance have many causes, which can be summed up as follows:

As more provisions contain specific loopholes, the likelihood that people will use them to evade taxes rises. Higher tax rates will result in increased tax burdens on the taxpayer, which will motivate them to lessen their financial burden by paying less in taxes. Complexity in a country's tax law increases the likelihood that the citizens will take undue advantage of the system.

In addition to underreporting many sources of income, tax evasion is also seen to occur when there is a lack of integrity and devotion regarding tax matters on the part of citizens of the country. As a result, both the overall income and the tax burden will decrease. There are growing challenges for taxing and governing the digital economy due to the significant technological advancements in electronic commerce, collaborative platforms, digital currencies, and new business models.

The insufficient administrative functioning of the tax department of a particular country due to the aforementioned reasons, the illiteracy of the taxpayers of a country, the lack of information reporting shortage of the sense of general awareness and awareness programmes for paying tax are some of the other causes.

TAX EVASION AND AVOIDANCE AT THE INTERNATIONAL LEVEL CHARACTERISTICS

The following are key elements of international tax evasion and avoidance:

Large multinational firms and wealthy individual investors may engage in "international tax avoidance," but tax evasion does not include either of these parties.

Both lawful and illicit acts may be reflected in it.

One of the key criteria taken into account when attempting to differentiate between tax evasion and tax evasions is mens rea, or bad faith or dishonest purpose.

Government programmes to detect tax evasion make sense; however, contributing to the "fair distribution" of tax revenues is far more important to the integrity of the country than taxpayers enforcing their tax evasion arrangements. The amount of federal revenue at stake each year due to tax evasion is significant enough to cause public concern.

Tax evasion refers to the unlawful reduction of taxes, whereas tax avoidance typically refers to the legitimate reduction of taxes.

Tax evasion is indicated on income tax forms or other forms, but tax avoidance involves designing your business to pay as little tax as possible.

LEGAL ASPECTS OF AND DIFFERENCES RELATING TO INTERNATIONAL TAX EVASION AND AVOIDANCE

The term "tax avoidance" is defined as composing business affairs with a primary objective of procuring a tax advantage while initially intending to act in compliance with the statutory provisions relating to tax.

"Motive" is a crucial component of "Tax avoidance," which firmly establishes the presence of alternatives where one of them would ensure that a lesser tax is incurred. A taxpayer who chooses one of the many potential routes to set aside the tax can be distinguished from a ta who uses the apertures in the laws of a particular country to reduce or prevent the tax liability, incurred by a citizen.

Contrarily, "Tax Evasion" is unlawful in nature and penal repercussions are meted out to a person committing tax evasion. "Tax Avoidance" is immoral but not explicitly considered to be illegal in the eyes of the Indian legislative regulations.

Tax avoidance occurs prior to the assessment of a tax burden, whereas tax evasion occurs after a natural or artificial person learns of his or her tax liability from the relevant income tax authority of the respected country.

The Taxation laws of India, despite enumerating specific anti-avoidance measures, didn't have a uniform, general anti-avoidance rules. However, over the years, various Hon'ble Courts have laid down some key general principles and parameters in interpreting whether a scheme or transaction would fall undetected by the tax authorities.

The Privy Council claimed in the matter of Bank of Chettinad v. CIT that:

However, the legal effect of a transaction cannot be displaced by looking into the details of the transaction. "The tax authority is entitled and in fact bound to determine the true legal relation resulting from a transaction. If the parties have chosen to conceal the legal relation by a device, it is open to the tax authorities to unravel the device and to determine the true character of the relationship.

The General Anti-Avoidance Rule (also known as "GAAR") was introduced in India as a result of the Apex Court's decision regarding "Vodafone International Holdings'" purchase of shares of a company outside of India with Indian shares. The Supreme Court (SC) made the following observations in its ruling:

"A tax payer's ability to arrange his affairs in such a way as to reduce his tax liability is a cornerstone of law, and the fact that a transaction's motivation is to avoid tax does not render it invalid unless a specific enactment so provides, but for the arrangement to be effective, the transaction must have some economic or commercial substance."

India is attempting to address and resolve the issues pertaining to "tax avoidance" and "tax evasion" by seeking the solace of GAAR, in addition to the other transaction related "Anti-Avoidance" provisions of specific nature. GAAR acknowledges that will not always be viable for the Hon'ble Courts to take the indications of unfollowing behaviour into consideration.

International tax evasion and avoidance case study reports

A natural or artificial person might use a variety of strategies to avoid or evade taxes within the international tax system, so it is required and practical to analyse case studies and definitive reports to better comprehend the nuances of this topic.

The following are the international landmark cases:

1. The Committee on Fiscal Affairs' 1980 Report

The report outlines the reasons that using tax havens to evade and avoid paying taxes internationally is a serious concern for the tax authorities of the OECD signatories, examines the measures taken to stop this immoral practise, and then offers some suggestions for advancing global cooperation on the tax haven issue.

There are enormous differences in the tax burdens between high tax countries and tax havens, along with some unique features of tax havens, such as secrecy rules and a refusal to cooperate with foreign tax administrations, which open many routes for using tax havens for tax evasion or avoidance. However, each nation may have a different definition of what constitutes a tax haven.

2. OECD case study on "Combating Tax Avoidance and Tax Evasion on a Global Scale to Finance the Rise and Emergence of Senegal," as mentioned in its 2021 Report.

According to the Plan Sénégal Emergent (PSE), one of Senegal's goals is to become an emerging economy by 2035 in order to reach their desired levels of development, which include transforming the economy structurally, raising living standards, and ensuring the active presence of good governance. Economic growth under the PSE has been above 6% despite being halted during the pandemic-related crisis.

With technical assistance from the OECD, BEPS measures have been taken with regard to limiting the deductions of interest and other financial transactions; stopping abuse of tax treaties; averting the avoidance and interception of taxes; and raising more revenue through domestic resource mobilisation, according to the PSE, to improve the tax-to-GDP ratio.

artificially creating the establishment status of a permanent nature while also enhancing the nation's tax dispute resolution.

Senegal is aligning the transfer pricing system with international norms as a result of substantial support and direction from the World Bank. Senegal's tax model and legislation have been modified, and an impact assessment would be finished before beginning negotiations for a tax treaty.

Senegal is a signatory to and has ratified the Convention on Mutual Administrative Assistance for subject matter on Income Tax, as well as having established an Exchange of Information Unit inside its tax administration to handle requests for information.

3. Alex Cobham and Peter Jansky's Case Study Report on International Corporate Tax Avoidance, as it appeared in February 2020:

Although estimates of losses are high globally (ranging from $200 to $650 billion), findings show that only a small number of jurisdictions gain from profit shifting, and that lower-income countries lose the current benefits. This report highlights "tax avoidance" by MNCs (multinational corporations) as the most recognised abuse of tax and among the most illicit financial flows in the world.

Following is the domestic case study for India:

The Vodafone Tax Case, first

India has been actively participating in organisations that bring together nations to discuss important policy changes, such as the G-20 and the G-8, and it has ratified "Double Taxations Avoidance Agreements" (DTAA) with a number of nations that are considered tax havens.

The Vodafone tax case raises an important issue regarding the taxability of a non-resident company acquiring a stake in a resident company through an indirect route. The aforementioned case-law is one of the most revolutionary ones in tax law because the tax authorities have chosen to tax a company using a mechanism wherein the source of acquisition is being followed for the first time.

This has established a unique precedent in which Indian authorities have successfully brought multinational corporations (in our instance, Vodafone) under their control by painstakingly deciphering the current tax laws.

"Hutchinson Telecommunications International" (HTIL), which bore a fair share in "Hutchinson Essar Ltd" (HEL), which handled the remote functioning of the company set in India, sold the managing interest and share of the "CGP Investments Holdings" (hereinafter referred to as CGP) located in Cayman Island to "Vodafone International Holdings," a company established in the Netherlands and thoroughly managed via the UK office.

The High Court of Bombay ruled in September 2008 that Vodafone was liable for tax deducted at source (TDS) under Section 201 (1) of the Internal Revenue Code of 1961, read with Sections 9(1), 5(2), and 195, which dealt with the behaviour of a firm acting as an assessee by default.

The Supreme Court carefully evaluated the facts of the case and the legislative provisions using the relevant principles of interpretation and concluded that the tax is levied taking into account the source of the tax. This ruling by the High Court of Bombay was challenged.

In the case at hand, the source of revenue would be outside of India since VH and HTIL are foreign companies and could be made taxable only when this trade is securely protected by a legislation Laws pertaining to taxation must be strictly construed and tax may only be collected where the sale occurs, regardless of where the product is purchased from.

The provision for charging tax must not be expanded to impose a tax burden that would be non-taxable in nature; therefore, indirect movement of capital assets of nature cannot be covered by merely expanding the provision. be levied only when the language in the statute expressly and unambiguously states so.

The Effects of This Decision:

Through this landmark decision, the Apex Court set forth and sharply recognised numerous principles and removed some difficulties pertaining to the enforcement of taxes in India.

This includes the use of sound tax planning and policy principles, the creation of corporate structures by various multinational corporations for commercial and business purposes, the legitimacy of tax avoidance, and giving honest taxpayers the right to minimise their tax obligations to the maximum extent possible through legal arrangements of their business affairs and income that do not conflict with the applicable tax law. This judgement also advances Avo's cause.

IMPLICATIONS OF ESCAPING AND AYEING TAX

Both tax evasion and non-payment inherently reduce tax revenue, which can result in financial difficulties and other situations, as we previously discussed; tax evasion tactics can have a negative impact on the government; and all of this is detrimental to the long-term development and progress of society as a whole as well as the country.

They have enough money to do anything for the weaker sector since they are not being properly taxed, yet government policies make the rich richer and the poor suffer more as a result. Tax evasion dominates the production of causes or ill-gotten riches that people strive to hide and avoid in this way.

The gap between wealth and poverty is growing, which increases the need for large sums of money, price increases, and essentially an increase in the cost of living, making it more difficult to live in the nation, which in turn results in higher taxes because there aren't enough resources, creating a vicious cycle that leads to a vicious cycle.

We may anticipate that non-taxpayers would not pay taxes in full, thus the government will not be able to meet the fund's requirements for growth and development, which is one of the reasons for the decline in GDP. This is the first and most evident effect of tax evasion.

Because people flee with corrupt intentions and make more money, we can declare that corruption or deception are the cause and effect of tax evasion. On the other hand, witnessing others evade taxes encourages people to do the same, encouraging them to engage in such activities simply to make more money.

Most tax evaders work to invest their illicit wealth in alternatives, one of which is gold jewellery, to ensure that their wealth can only be recovered by converting the jewellery into legal currency, so that their wealth can only be recovered by converting the gold into legal currency. If we try to calculate, it will undoubtedly improve.

"Tax evasion" causes the administration to halt expansion programmes that would benefit the general public because of a lack of financial assets and money due to evasion. Evasion infiltrates government policies for the public and twists the administration plan by making the key resources unavailable for the mission. As the administration fails to address such malfeasance, substantial damage is done to the vulnerable strata of the nation.

FRAUDS AND SOLUTIONS FOR EVASION AND AVOIDANCE OF INTERNATIONAL TAX

Let's now talk about Robert Brockman, who is accused of operating the greatest tax evasion scheme in US history, generating over $2 billion in revenue over a 20-year period while concealing financial assets abroad, laundering millions of dollars, and engaging in wire fraud.

Anderson, a former executive of telecommunications who was charged with maintaining offshore bank accounts, using aliases and shell companies to conceal his earnings, is another well-known case of tax evasion in American history. In 2006, Anderson entered a guilty plea and admitted concealing his financial assets, which could be rounded to over $300 million.

Let's talk about the ways that countries can prevent tax evasion. The first is by lowering tax rates, which will relieve the citizens of the burden of paying high taxes. The government should understand that higher tax rates don't necessarily result in higher tax collections. Another efficient method is to keep the tax laws and regulations simple.

The tax laws of a nation should be kept as simple as possible because the more complicated they are, the more likely it is that the citizens will take advantage of them and avoid paying tax. Additionally, keeping tax laws simple will make it easier for the tax authorities to have control over it. The nations should have well-structured tax authorities for proper administration. The government shall strengthen anti-corruption policies and make stricter pe

The government should ensure that political changes don't significantly affect the tax system, as well as provide some sort of relief to heavy taxpayers and educate citizens in developing nations about the benefits of paying taxes. The countries should work to strengthen the filling out of provisions, updating of audits, and tax collecting. More straightforward methods should be used to encourage people to pay their taxes.

"Penalties for the evasion of tax" (Chapter VIII)

These penalties may also be applied to businesses that fail to register, pay taxes, or, if applicable, withhold taxes at source. Here are some examples of the fines that the Income Tax Department can impose:

If income is not stated, taxes range from 100% to 300%.

The employee may be penalised if the tax is not paid, although the fine cannot exceed the tax.

A daily fee of $200 may be assessed for each day that returns are not filed within the allotted period, and this fee is not recoverable.

If someone conceals their income or other taxable fringe benefits, they could face fines that vary from 100% to 300% of the tax due.

The penalties is Rs. 150,000 or 0.5% of sales, whichever is lesser, if the company does not conduct an internal audit or submit an audit report.

The best thing you can do is make sure you pay all of your taxes on time. The Assessor may levy fines similar to those indicated above, and in many situations, they can be severe in nature.

This document will state the crime they are charged with, the prosecution, and the maximum penalty that can be imposed under the law. Tax legislation includes three techniques to improve compliance with tax laws: (a) interest expense, (b) enforcement of penalties, and (c) prosecution of tax offenders. Sections 17 and 21 of the Income Tax Act, for example, provide that failure to comply with parts or requirements of the Income Tax Act may result in fines and, in serious cases, criminal prosecution.

Here are some examples of the sanctions and their related parts for negligence, wilful neglect, and wilful evasion of taxes payable in any financial year in India under the Income Tax Act, which also summarises the effects of failing to maintain proper records and compliance standards throughout a company's financial year.

The penalty can be up to 200% of the black income tax and imposes criminal accountability on taxpayers who attempt to lower their reported income (based on the income declaration) in order to lower their tax liability.

Taxpayers who fail to maintain records as required by section 44AA shall be subject to a penalty of $25,000, and taxpayers who fail to pay tax shall be subject to a penalty under subsections 1 of articles 220 and 221 of the Income Tax Law.

CONCLUSION

Government programmes to detect tax evasion are useful, but contributing to the "fair distribution" of tax revenues is far more important to the integrity of the country than taxpayers enforcing their tax evasion arrangements. International taxation is a very complex process. The enormous amount of federal revenue at stake each year due to tax evasion is significant enough to cause public concern.

Indian law on arbitration and mediation has changed, and while it is well in line with established international trade laws and norms, it remains difficult to understand. In India, the economic system is still developing. This is a question that requires modernity in the application of established legal statements.

Countries can formulate governance principles to suit their needs, policies, priorities, and ideals in light of international law. India needs balance for good governance. Tax treaties can raise various tax controversies that need to be wisely addressed by domestic tax forums and courts. The main issue with such forums and courts is that they are often unreliable sources of information.