INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

 ISSN: 2582-6433

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur.Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time &Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

 ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

 ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

 ISSN: 2582-6433

STRATEGIES FOR THE EVASION AND AVOIDANCE OF TAXES USING INTELLECTUAL PROPERTY

AUTHORED BY - ARUSHI SONKER

Abstract

Multinational firms use intellectual property (IP) manipulation as one of several ways to evade and avoid taxes, as discussed in this chapter. Tax evasion refers to unlawful activities committed with the intent of hiding one's taxable income, whereas tax avoidance refers to legal but proactive preparation. Profit shifting to tax haven subsidiaries via IP transfers, strategic use of cost-sharing agreements, and transfer pricing manipulation are important methods of IP-based tax avoidance. This chapter also explores some of the most infamous structures, including the "Double Irish with a Dutch Sandwich," as well as the utilization of inactive shell businesses and intellectual property holding firms. It also discusses treaty shopping, which is the practice of taking advantage of tax havens via the use of Double Taxation Avoidance Agreements (DTAAs). Including the OECD's BEPS framework and minimal global tax policies as well as India's anti-abuse regulations such as GAAR and LOB requirements, this chapter provides a critical evaluation of the global and Indian legal remedies. In the end, it shows how profit mobility is made possible by IP's intangible nature, which makes tax enforcement more difficult and causes legislative revisions all around the world.

Chapter 4: Strategies for the Evasion and Avoidance of Taxes Using Intellectual Property

1. The Evasion of Tax Using Intellectual Property Strategies (Legal but Aggressive)

Tax avoidance strategies based on intellectual property utilize loopholes in international taxation to achieve lower taxes. One of the more common approaches is profit shifting through IP location, where companies relocate the ownership of their intellectual property—like patents or trademarks—to subsidiaries existing in tax haven countries like Ireland or Bermuda. These subsidiaries then charge high licensing or royalty fees to branches in high-tax countries, thus shifting profits from the high-tax state to the low-tax state. Another method that is equally popular is manipulation of transfer pricing, where the pricing of transactions between related parties constituting a business unit deals with IP is structured in a way that minimizes taxable

 ISSN: 2582-6433

income in higher tax jurisdictions. Because tax authorities do not have uniform policies to apply to the valuation of IP, and its valuation is subjective and complex, companies have a lot of flexibility in setting the prices.[1]

On top of that, corporations have cost-sharing agreements, where the development of new intellectual property is divided among the parent company and its subsidiaries located in tax havens. This allows for more profits to be recorded for low-tax jurisdictions. A notorious historical case is the Double Irish with a Dutch Sandwich, which used Irish and Dutch subsidiaries to escape tax obligations in the United States. The strategy was largely phased out due to regulatory pressure, but it shows the extent to which companies have been willing to utilize company IP for tax avoidance purposes.

2. IP-Based Tax Evasion Strategies (Illegal)

While avoidance strategies are within the legal frames, strategies based on inventions are considered illegal tax evasions. These include made-up IP transfers, where a company simulates issuing an intellectual property certificate to an off-shore shell company with no real business activity purely for tax evasion purposes. Another aspect includes hiding the value of some royalty payments, where a company under- or overstates the amount due to taxable income. There is also some misleading invoicing, where firms distort the actual allocation of profits and tax obligations by raising or creating subsidiary and parent company cross-charging fees.

3. Global Response

Governments and global agencies have been taking these measures more seriously. The OECD's Base Erosion and Profit Shifting (BEPS) framework sets out certain guidelines to control aggressive tax planning involving IP. One of its pillars, Pillar Two, recommends a worldwide minimum tax to lessen the incentive of relocating profits to tax shelters. In addition, some countries have enacted Digital Services Taxes (DSTs) aimed at large multinational IT companies that routinely depend on IP-centric business models to evade taxation in the countries where they earn substantial revenue.

[1] Wade, R. H. (2003). What strategies are viable for developing countries today? The World Trade Organization and the shrinking of 'development space.' *Review of International Political Economy*, *10*(4), 621–644. https://doi.org/10.1080/0969229031000160190 2

 ISSN: 2582-6433

4. Research Objective

1. This project aims to analyze how multinational firms use intellectual property (IP) to avoid taxes in different countries. It will look at their tactics, methods, and legal frameworks to see how they do this. The purpose of this study is to
2. Recognize and assess the intellectual property (IP) tax avoidance tactics that are both lawful and aggressive, including profit shifting, cost-sharing agreements, royalties payment structuring, and transfer price manipulation.
3. Among the many illicit aspects of intellectual property (IP) tax avoidance include the use of shell companies, falsely claiming royalty values, and fraudulent IP transfers.
4. Analyze the domestic and international measures taken to combat intellectual property (IP) tax avoidance and evasion, such as the Digital Services Taxes (DSTs) in India and the General Anti-Abuse Provisions (GAAR) in the OECD.
5. Within the framework of intellectual property, explain the differences between tax evasion and tax avoidance and discuss the legal ramifications, economic effects, and ethical considerations of each.
6. Determine the effect on revenue loss in high-tax nations of IP value manipulation and treaty shopping.
7. Analyze how intellectual property holding corporations, tax havens, and shell firms are used to avoid paying taxes on certain profits.
8. Make policy suggestions to improve international tax administration, guarantee tax fairness, and protect the economic content of intellectual property transactions.

4.1 Understanding the Distinction Between Tax Evasion and Tax Avoidance

As with many other countries, individuals and companies in India try to lower their tax burden illegally by using different methods. In this regard, two phrases that frequently come to mind are tax evasion and tax avoidance. While the purpose of both is the same—to reduce taxes—these terms differ significantly from one another in terms of law, processes, and behaviors. This blog aims to provide you the clear distinction between these two and their common strategies, examples, and a comparison table highlighting the differences.

Tax Evasion

Tax evasion is the illegal practice of not paying taxes by deliberately hiding or misrepresenting information. Examples include concealing income, manipulating a paycheck; stating one earns less than they actually do, claiming more expenses than one actually pays, and personal

 ISSN: 2582-6433

spending that is pretended to be for the work's purpose. In India evading taxes is considered a serious matter with loss of a lot of money and even jail time, harmful results. This is not something innocently done, tax evasion with intent is deception and is seen as breaking the law.

Common Tax Evasion Tricks

Tax evasion has several methods through which taxpayers are defrauded into believing the information given to them is the correct one. A good number of these tricks stem from actively failing to report various accounts like part time jobs and interest earned from investments or claiming to have paid for things never done. Some of these methods also constitutes concealing funds in outer bank accounts and black market dealings where work claimed to be done is paid for stealthily.

Tax Evasion Examples

Very rich freelancers that don't report their income and still participate in the taxation schemes are a primary example of tax evaders and the same goes for business owners that treat themselves to luxury shopping which they pass off as business expenses. Another case could be a person that doesn't want to pay taxes on certain funds and hides them in foreign bank accounts. Engaging in cash transactions in industries that don't maintain records of any sort also serves as a classic means of avoidance.

Tax Avoidance

Tax Avoidance is contrary to tax evasion as it makes use of legal means to minimize their tax liability. The main objective is to reduce tax liability through careful planning and the use of deductions, exemptions, and other advantages provided by law. In most cases, legally defining exploitation of a "grey area" evading law will earn a lot of scrutiny, but allows the taxpayer to avoid paying taxes without breaking the law.

Avoiding Taxes

There are numerous legal strategies that people use to lower their tax payments. Most common methods that help lower the payment include claiming medical expense deductions, making donation deductive tuition fee payments, investing in the Public Pension Fund (PPF), National Pension System (NPS), or Equity-Linked Savings Schemes (ELSS).

 ISSN: 2582-6433

Lowering tax payment also includes using available credits tax relief related to the courses taken or educational loans. All of these approaches either lower the income tax or reduce the direct tax payment.

Ways of Avoiding Taxes

A common form of avoiding taxation is making investments under section 80C in PPF or ELSS mutual funds as a way of reducing taxable income. Claiming tax relief on health insurance expenses, fees of schooling children, and home loan interest payments all assist greatly in reducing tax expenses. Additionally, these eligible donations aid in achieving taxation relief under certain conditions in the Income Tax Act.

4.2 Mechanisms of IP-Based Tax Avoidance

Tax strategies involving intellectual property (IP) are used by multinational companies to lessen their global taxing exposure. By aggressively utilizing these strategies, legal boundaries are not crossed. Since intellectual property is not bound to a specific location, it can be effectively used in minimizing taxes by relocating "branded" profits to different territories. Global corporate structures often involve multinational subsidiaries where operations are carried out in foreign locations. They are W-registered, meaning they are shell companies set up to reduce taxes on overseas profits.

1. Use of Low-Tax Jurisdictions and Tax Havens

A hallmark of IP based tax avoidance is registration of 'branded' companies streamlined in servicing low or no corporate tax jurisdictions called tax havens. Oftentimes those are considered offshore shield jurisdictions. Entities can obscure their company information from creditor scrutiny and bypass the publications restrictions offered in domestic oversea registration shields as anglicised territories such as Bermudas, The Caymans and Ireland (oftentimes referred to tax havens) along with various Commonwealth regions pose very favorable taxing policies enduring few reporting obligation and strict confidentiality clauses.[2]

Multinational corporations (MNCs) save or evade taxes in a parent country by relocating a subsidiary to a foreign location where taxes are lower, referred to as a tax haven. One of the

[2] Evers, L., Miller, H., & Spengel, C. (2014). Intellectual property box regimes: effective tax rates and tax policy considerations. *International Tax and Public Finance*, *22*(3), 502–530. https://doi.org/10.1007/s10797-014-9328-x

 ISSN: 2582-6433

main techniques MNCs use to save taxes are through Transfers of ownership of intellectual property (IP) to subsidiaries located in tax havens. Intellectual property includes patents, trademarks, software and copyrights among others. They are highly mobile assets during business operations, meaning they can without affecting company business activities. By relocating their IP to companies in tax havens like Bermuda, the Cayman Islands, or British Virgin Islands, MNCs can literally make sure that the income generated from that IP, like royalties and licensing works, is booked in those tax havens instead of countries with higher tax systems.

In the tax heavens, these entities impose little to no taxes, yielding to obtain amassed income over IP. This shift allows companies to deduct royalty payments as business expenses driven to high-tax jurisdictions and lower profits there, deeming the proceeds taxable, while the wealth stays in tax heavens. Multinational companies usually use internal licensing agreements with their subsidiaries to facilite these operations. Due to the difficulty of accurately valuing IP at the time of transfer, these firms will classify their IP as containing little value if tax rates on their region origin are higher and thus cut down on long-term expenses.

The data relating to the applications of patents supports this pattern: The countries considered tax havens showcase an unusual pattern of the number of applicants in relation to the inventors. This means, a lot of the patent applications which have been made are from countries which are tax havens, and their inventors are located somewhere else. It is highly likely this data shows the fact that moving Intellectual Property to tax havens is done purposely to exploit profits, and is not the result of local innovation, or any sort of research and development activities.

2. Shifting Ownership of Intellectual Property

One way that coporations execute is by assigning the control of an important Intellectual Property asset to a subsidiary in a country where taxes are low. After relocating the IP, Mos other group members are obliged to pay licensing or royalty payment for its usage. This type of payment restructuring changes the location where the tax is paid within a group of companies.ônicosempresariais de jurisdição, these payments reduce tax revenues in high tax locations, such as where services are sold or products are marketed, and move it to tax haven IP holding businesses. The followers is a dramatic cut in taxable revenues in high sections, but without changing company business activities.

 ISSN: 2582-6433

Multinational corporations (MNCs) use **intellectual property (IP)**—such as patents, trademarks, and copyrights—to **shift profits** from high-tax countries to **low- or zero-tax jurisdictions**, a practice known as **IP-based profit shifting**.

To curb malpractices of income tax avoidance, 136 member states agreed to implement a minimum global corporate tax rate of 15% on corporate income in October 2021. This agreement ensures that companies are taxed in the countries where their sales occur. This decision removes the incentive for countries to lower their corporate tax rates excessively, also known as a 'race to the bottom, while at the same time reducing erosion to the tax base.

One measure of profit shifting is the number of applicants peers in the role of an inventor for filing patents. In examining the residence of inventors in contrast to the place where the patents applicants are located, scholars observed a striking trend that many of the tax havens have most of the patent applicants arising from overseas MNCs instead of local sponsors. British Virgin Islands, Bermuda, Barbados and the Cayman Islands are for instance exhibit extremely high ratios of applicants to inventors e.g. BVI with 53.19, which gives rise to the suspicion that such territory is mainly ideal for holding IP for over the taxation jurisdiction rather than the innovation itself.

According to this argument, corporations are allowed to claim income in the low tax jurisdictions while deducting claimed expenses in the high tax jurisdiction through royalties, resulting in a lower global tax bill. This reinforces external evidence that tax escapee firms profit more than local firms based in tax havens, which suggests that there is an intention of mobility of intangible assets as part a global tax strategy.

3. Royalty Payments and Licensing Structures

Once the parent company assigns the IP to a subsidiary in a low-tax jurisdiction, the parent company or its affiliates make payments to that entity through royalty or license agreements. These payments are usually considered deductible business expenses in the high-tax countries, further eroding taxable profits there. On the other hand, the low-tax receiving company reports income from other royalties, paying little tax on it due to the advantageous regime. This royalty structure allows substantial profit to be shifted around the globe with little tax liability.

 ISSN: 2582-6433

4. Valuation Manipulation of IP Transfers

Another method is changing the value at which the IP is transferred between entities. Because determining a single market value for unique IP assets is nearly impossible, companies make an effort to set lower value for them when shifting to subsidiaries based in jurisdictions with low tax. That results in a diminished taxable gain in the origin country, but most of the future profits gets routed in the low tax haven. While many jurisdictions dispute those valuations, it is often challenging to enforce because of the lack of objectivity surrounding the IP valuation.

5. Famous Structures: Double Irish with a Dutch Sandwich

With respect to IP-based tax evasion schemes, perhaps the most notorious one is "Double Irish with a Dutch Sandwich." It was used by some of the larger tech companies and entailed bouncing profits through two Irish and one Dutch subsidiary to take advantage of gaps in the tax system. The intention was to divert revenue from high-tax countries like the US or UK to Bermuda or other no-tax areas. Even if global standards force Ireland to stop using this structure because of its geography, it does show the creativity with which multinational companies use IP and legal entities to avoid taxes.

6. Usage of IP Holding Entities and Shell Companies

One of the most used methods of international tax avoidance is the establishment and use of shell companies along with IP holding entities in a jurisdiction with low tax rates. These entities frequently lack a physical location, employees, and tangible business operations. Their main purpose is to own and hold intellectual property (IP) for the benefit of the parent company, allowing easier profit eroding away from taxing countries. After the IP is sold to the shell company usually located in a tax heaven such as Bermuda, the Cayman Islands, or Luxembourg, it becomes the legal owner of intangible assets like patents and trademarks and other valuable proprietary technology.

Higher-tax country subsidiaries pay significant royalties or licensing fees to IP owning companies with which they hold inter-company licensing agreements. These expenses are booked as deductions in the high-tax jurisdictions, extracting income from there. In effect, the income is taxed at very low or zero rates in the jurisdiction where the shell entity is based. This approach is particularly appealing because it takes advantage of the mobility of intangible assets and the often vague benchmarks authorities use to value IP rights, which cannot be easily substantiated or contested by tax officials.

 ISSN: 2582-6433

The establishment and use of shell companies and IP holding houses are tax defensive, but they raise questions about the unsurpassed economy substance and fairness of tax. They exist only in name, without any value added to real world areas such as innovation and development. Their existence is solely to implement a tax scheme instead of serving as a commercial prerequisite. This has led some countries together with international organizations such as the OECD through its BEPS (Base Erosion and Profit Shifting) framework to adopt rules requiring demonstrable local economic activity and clear reporting of profits to combat abuse of such arrangements.

7. Shopping Treaties and Abuse of DTAAs

Tax evasion and avoidance related to income tax is problematic especially in the case of individuals or companies doing treaty shopping. This refers to changing borders by routing investments through a Third Country with a beneficial treaty. Businesses that do treaty shopping do so in order to lessen their taxes and save money.

In India, companies set up holding structures in tax havens like Mauritius, Singapore, or even the Netherlands, and this has been a noticeable problem for India due to India's DTAA agreements. This practice enables them to minimize their liabilities under capital gains tax, dividend withholding tax, and several other taxes. To prevent such practices, India has very strict anti-treaty shopping rules such as the Limitation of Benefits (LOB) provision in its treaties. The General Anti-Avoidance Rules (GAAR) passed in 2017 allow tax administrators to unilaterally reverse treaty benefits if they conclude that the main reason for the structure is tax avoidance. In addition, India's joining of the Multilateral Instrument (MLI) provisions under the Base Erosion and Profit Shifting (BEPS) initiative enhances its ability to defend itself against treaty shopping.

While still legal, treaty shopping is controversial when performed solely for the purpose of tax avoidance without real economic presence in the third-party country. The OECE marks aggressive treaty shopping as a harmful tax practice and advocates the BEPS Action Plans to prevent such practices. As a result, there is now a need for companies to show real economic presence in the treaty locations in order to receive tax relief.

Treaty shopping is a method of tax avoidance where firms or individuals exploit Double Taxation Avoidance Agreements (DTAAs) by routing transactions through third-party

 ISSN: 2582-6433

countries with more beneficial tax policies. When it comes to treaties and international law, treaty shopping refers to owning intellectual property rights through offshore companies, which minimizes taxes on royalties and licensing income, leading to lower taxes for multinational corporations.

This usually requires setting up shell companies or IP holding firms in countries with useful DTAAs, especially those with low or no withholding taxes on royalties. For example, some corporation may transfer the legal ownership of its patents or proprietary software to an affiliate in an offshore financial center such as Mauritius, the Netherlands or Singapore, and receive royalty payments through that affiliate. Because of the DTAA that is in place between some of these patent owning countries and the country from which the income is sourced (e.g., India), the said company becomes eligible for reduced tax rates on royalty payments which could be even 5% or at times none. These savings become relatively large considering the high number of international licensing deals that are done.

A s a result, most of these intermediary firms do not perform any real economic activity in the treaty country. In essence, they are often called "shell" corporations created solely for the purpose of tax evasion or abuse of DTAAs. This abuse undermines the goal of tax treaties which intend to avoid double taxation and foster real economic activity across borders for the purpose of growth for the country instead of evasion or avoidance of taxes.

To combat this challenge, India, for example, has started incorporating Limitation of Benefits (LOB) clauses in their treaties and applying General Anti-Avoidance Rules (GAAR). These rules define critical boundaries for the avoidance of treaty benefits in the presence of lacking economic substance. In addition, as per the OECD Base Erosion and Profit Shifting (BEPS) Initiative, India, under the Multilateral Instrument (MLI), has signed agreements that allow modification of existing DTAAs in order to avert treaty misuse of income derived from Intellectual Property (IP).

To sum up, treaty shopping concerning IP permits multinational corporations to exploit international taxation treaties with the sole purpose of alleviating tax burdens imposed on royalty income irrespective of any actual business activity undertaken in the intermediary country. Such abuse has led many nations and international organizations to introduce stern

 ISSN: 2582-6433

policies aimed at ensuring the extension of treaty benefits are only provided where there is real commercial activity.

4.3 Case Studies of Multinational Corporations Using IP for Tax Avoidance

Milestone decisions regarding IP-driven tax avoidance and misuse of treaty provisions, particularly in India and globally.

As a consequence of the Union of India taxation in 2012, 6 SCC 613- **Vodafone International Holdings**[3], the later claimed jurisdiction over the deal, regarding it as a "share purchase of a foreign company," therefore, not taxable in India.

Fact: The Indian authorities considered that the $11 billion offshore purchase of 67% stake in Hutchison Essar Ltd. held by Vodafone constitutes a capital asset transfer in India for tax purposes.

Cite: Vodafone International Holdings B.V. v. Union of India, (2012) 6 SCC 613
Verdict: The Court sustains the Department of Trade and Industry position that a foreign entity's acquisition of shares is not taxable when residents of the country do not control or manage the company that is the transferor company. The Supreme Court confirmed the position that the transfer took place outside India between non-resident entities, therefore offshore transfers did not incur taxes. Furthermore, the Court decided that the tax department does not control jurisdiction over the earning claimable gain tax on Vodafone.
Result: This expanded the confines of the indirect transfer of Indian assets exit to MNCs with IP and subsidiaries.

2. Azadi BachaoAndolan v. Union of India (2004) 10 SCC 1

Case Details: The petition sought to question the validity of the Indo-Mauritius Double Taxation Avoidance Agreement (DTAA) on the grounds that its misuse by certain companies circumventing tax obligations, particularly capital gains, by funneling investments through Mauritius was suspected.
Citation: Union of India v. Azadi BachaoAndolan, (2004) 10 SCC 1

[3] Teece, D., & Pisano, G. (1994a). The Dynamic Capabilities of Firms: an Introduction. *Industrial and Corporate Change*, *3*(3), 537–556. https://doi.org/10.1093/icc/3.3.537-a

 ISSN: 2582-6433

Judgment: In this case, the Supreme Court upheld the Indo-Mauritius DTAA, affirming that the taxpayers received the treaty benefits if they presented a Tax Residency Certificate (TRC) as proof. The possibility of treaty shopping was acknowledged by the Court, but it was not viewed as illegal so long as it was conducted within the bounds of the law.[4]

Significance: This is a landmark case reinforcing the principle of the absolute maintenance of tax treaties while permitting treaty shopping as long as it obeys the stipulated laws.

3. McDowell & Co. Ltd. v. Commercial Tax Officer (1985) 3 SCC 230

Facts: McDowell entered into an artificial scheme of selling and leasing back bottles to claim the excise duty was deductible as a tax saving device.

Citation: McDowell & Co. Ltd. v. CTO, (1985) 3 SCC 230

Judgment: As per the Supreme Court's ruling, substantial reasoning should be considered in place of form, given that tax planning with the intent to avoid paying tax and which does not possess commercial essence, is prohibited. The supreme court further stated that "the approaches to avoid taxes should be dealt with promptly before they become larger issues."[5]

Significance: This case provided the groundwork for the "abuse of law" principle and legally validated the later adoption of General Anti-Avoidance Rules (GAAR) in India.

4. GE India Technology Centre (P) Ltd. v. CIT (2010) 10 SCC 29

Facts: The GE Indian subsidiary did not deduct withholding taxes on royalties and technical service fees paid to the foreign parent company claiming that Indian tax laws did not impose any obligation of tax withholding on such payments. [6]

Citation: GE India Technology Centre (P) Ltd. v. CIT, (2010) 10 SCC 29

Judgment: The Supreme Court decided in favor of GE. The payment of withholding tax is only required when the payment in question is subject to Indian tax laws. Likewise, if the payment is not taxable in India, then there is no obligation to deduct tax at source.

Significance: This decision has broadened the scope of TDS (tax deduction at source) liability pertaining to cross-border payment of royalties and intellectual property rights to which payment is associated.

[4] Gunputh, R. P., Jha, A., & Pudaruth, S. (2017). Round Tripping and Treaty Shopping: Controversies in Bilateral Agreements & Remedies Forward - The Double Taxation Avoidance Agreement (DTAA) between Mauritius and India and the Dilemma Forward. *Kathmandu School of Law Review*, 29–41. https://doi.org/10.46985/jms.v5i2.985

[5] https://www.ebc-india.com/lawyer/articles/2003v5a5.htm

[6] GE India Technology Cen. P. Ltd. v. CIT [2010] 327 ITR 456/193 Taxman 234/234 CTR 153/44 DTR 201/10 SCC 29/7 taxmann.com 18 (SC)

 ISSN: 2582-6433

5. DIT v. Morgan Stanley & Co. (2007) 7 SCC 1

Facts: Back Office Support Services were being provided by Morgan Stanley's Indian arm to the US parent. The tax department proposed to bring the Indian operations within the fold of a "permanent establishment" (PE) and consequently, tax the worldwide income of the parent.

Citation: Director of Income Tax v. Morgan Stanley & Co. Inc., (2007) 7 SCC 1

Judgment: The Supreme Court ruled that the Indian subsidiary was indeed a PE, but because a claimed proper value was paid for the performed services, no additional profits could be allocated to the Indian entity.[7]

Significance: A defining case dealing with allocation of income and expenses concerning Intercompany agreements involving Intellectual Property and Services.

6. Apple State Aid Case – European Commission v. Ireland (2016)

Facts: The European Commission looked into the tax arrangement of Apple whereby it was discovered that it paid effective tax rates as low as 0.005\% on account of funneling revenue through Irish subsidiaries owning IP rights.

Citation: European Commission Decision SA.38373 (2016/C) (ex 2014/NN) – Ireland – Alleged aid to Apple

Judgment: The Commission held that Ireland permitted unlawful state aid by letting Apple avoid paying taxes on almost all its profits earned in Europe, which resulted in Ireland being ordered to collect €13 billion in back taxes from Apple. The General Court of the European Union has annulled the ruling, but the case is still under appeal at the Court of Justice of the European Union (CJEU). It is in the process of being appealed after the Commission's decision was annulled in 2020.[8]

Significance: A notable example of the misuse of IP borders accompanied with internal transfer pricing schemes to strategically minimize tax exposure through lower-tax jurisdictions.

7. Amazon EU S.à r.l. v. European Commission (2021)

Facts: Amazon funnelled its European sales through a subsidiary in Luxembourg that owned the IP, and paid royalties to a pass-through LLP. The Commission argued that this arrangement excessively lowered Amazon's taxable income in Luxembourg.[9]

[7] https://www.taxriskmanagement.com/morgan-stanley-v-dit-india-case-analysis/
[8] Ruggie, J. G. (2017). Multinationals as global institution: Power, authority and relative autonomy. *Regulation & Governance*, *12*(3), 317–333. https://doi.org/10.1111/rego.12154
[9] https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7777

 ISSN: 2582-6433

Citation: The General Court of the European Union Case T 816/17, Amazon EU Sàrl and Amazon.com Inc. v. Commission of the European Union (12 May 2021)

Judgment: The General Court of the EU annulled the Commission's decision on the basis that the Commission did not demonstrate with evidence that Luxembourg provided Amazon illegal state aid. It explains that the royalty agreement did not contravene the arm's length principle concerning transfer pricing.

Significance: Highlights the problematic nature of IP assets in tax strategies, as well as the difficulty for authorities in demonstrating unfair advantage.

8. Google Ireland Ltd. - "Double Irish with a Dutch Sandwich" (Ended in 2020)

Facts: Google employed a tax avoidance strategy that utilized subsidiary companies based in Ireland, Netherlands, and Bermuda. Google Ireland negotiated and paid a royalty to Google Netherlands for the right to operate an IP holding company in Bermuda, which resulted in the bulk of their taxes being avoided in the EU.

Citation: Not as a court case, but under the spotlight of investigation by the United States Senate Permanent Subcommittee on Investigations in 2012 and by European tax authorities.

Judgment: These tax strategies were legally acceptable at the time, but were subject to international scrutiny, resulting in the abandonment of the "Double Irish" strategy by the Irish government. Google ultimately ceased using this structure in 2020 due to changes in BEPS and Irish tax legislation.[10]

Importance: GlaxoSmithKline's failure to report royalties illustrates the complexities of international taxation and how easily IP asset ownership can be manipulated under tax avoidance schemes.

9. GlaxoSmithKline vs. IRS – United States Tax Court Settlement (2006)

Facts: It was alleged that GSK underreported profits on the sale of drugs in the United States due to paying exorbitant royalties to controlled UK companies that held IP in the United Kingdom. [11]

Citation: U.S. Tax Court Docket No. 5750-04 (settled 2006).

Judgment: GSK agreed to a settlement of $3.4 billion, marking the largest tax settlement in the history of the IRS at that time. The IP assets and operating entities involved in the case

[10] https://taxguru.in/income-tax/global-tax-avoidance-double-irish-dutch-sandwich.html
[11] https://www.irs.gov/pub/irs-news/ir-06-142.pdf

 ISSN: 2582-6433

prioritized IP profit centers which created a diversified multi-national corporate structure highlighting transfer pricing.

Importance: A considerable case on the transfer pricing of IP in parent-subsidiary relations. Enhanced the need for arm's lengths IP valuations.

10. Starbucks Corp. v. European Commission (2021)

Facts: The Dutch subsidiary of Starbucks was found admitting profit and paying royalty tax in excess of value-add in the United Kingdom, leading to reduced profit tax in the Netherlands, paying gouged royalties for IP over coffee roasting.

Citation: Case T-760/15, Starbucks Corp. and Starbucks Manufacturing EMEA BV v. European Commission

Judgment: In 2019, the General Court annulled the Commission decision, as there was not enough proof available to demonstrate that the Dutch tax rulings provided Starbucks with a selective advantage. The case was an obstacle for the European Union in its efforts to curtail the use of aggressive IP-related tax planning.

Significance: Demonstrated the extent to which IP licensing arrangements are integral to international tax planning and the challenges of implementing judicially mandated equitable taxation through legal action.[12]

4.4 Impact of IP-Based Tax Avoidance on Global and National Economies

Tax havens pose significant problems for developing nations. From an economical perspective, these nations are exposed to heightened challenges associated with revenue generation and the creation of an equitable taxation framework.

These effects are complex as well as harmful towards the social and economic growth of the country.

Loss of Tax Revenue: Tax havens aid in aiding multinational corporations as they attempt to avoid paying taxes completely, and this affects developing countries as they lose out on receiving important revenue. Strategies like transfer pricing andentellectual property licensing allow profits to be reported in low-tax jurisdictions, hence resulting in lower taxes being paid where the economic activities actually occur. The revenue loss has a negative effect on a government’s ability to provide essential public services like healthcare, education, and

[12] https://ec.europa.eu/commission/presscorner/detail/es/ip_24_6105

 ISSN: 2582-6433

infrastructure. For instance, companies operating in Nigeria or Kenya may declare profits in tax havens like Mauritius, presenting these nations with a denial of tax income.

Capital Flight: Tax havens are commonly used by high earning individuals in developing countries as enclaves to shelter their wealth from overseas taxes. This removal of funds can also drain the economy of encouraging investment, due to its effect on economic growth. Rather than enhancing local businesses or infrastructure, this money will remain parked overseas and use little to no aid to the economy.

The Opportunity Gap: When the wealthy and large corporations avoid taxes through offshore trusts, it makes income inequality far worse. Middle and lower-income groups are left to finance the taxes. This is an unequal distribution of tax obligations which can cause far greater social tension, economic conflict, trust erosion and instability across the system.

Disregard for Social Justice: Tax havens breed illicit flows of finances as they offer secrecy which is the perfect breeding ground for both money laundering schemes and corruption to access unchallenged funds. Business elites and public officials in many developing nations siphon away their public wealth with the use of offshore banks and thus inviting eroded trust into their governance. Such lack of transparency equally makes rule of the law weaker and impunity unrestrained.

Unfair Advantage In International Trade: Corporations who make use of offshore trusts while doing business internationally have unfair advantage multi-nationally over local businesses in developing nations. Unchallenged funding enables them to not pay any taxes, subsequently undercutting fully taxed competitors. This freezes entrepreneurship and inhibits the growth of local enterprises.

Strategies for Solving Tax Havens Negative Impacts

A blend of local and global policies should be the go-to solution for tax havens negative impacts.

Global Cooperation: International organizations like the OECD try to limit tax evasion through their Base Erosion and Profit Shifting (BEPS) initiative by closing gaps in accounting practices and enhancing transparency. These initiatives only work when there is equal and

 ISSN: 2582-6433

consistent participation from both developed and developing countries in enforcement measures.

Strengthening Domestic Tax Laws: Developing nations can improve their tax collection by enforcing stricter laws on transfer pricing and monitoring capital movement. Becoming a member of international agreements for the exchange of tax information can aid in tracking offshore assets and recovering lost tax revenues.

Public-Private Partnerships: The government, international agencies, commercial banks, and the business sector need to work together in order enforce tax reforms. Such partnerships help lower tax avoidance by tax havens and lower capital outflows from fragile economies.

Encouraging Domestic Investment: These nations should use tax breaks, stable policies, and improved infrastructure to motivate domestic investments. Investment made from within the country strengthens the economy by reducing dependence on foreign aid and external loans while retaining wealth within the country.

Expert Opinion

Economist Gabriel Zucman has documented the damage that tax havens inflict on developing countries, estimating that profit shifting alongside concealed wealth results in losses of billions every year. His research suggests applying worldwide taxes with consideration to the needs of developing countries. Others in the field report that many low-income countries do not possess the administrative capabilities and the aid resources necessary to deal with sophisticated schemes of tax evasion, thus requiring more international enforcement and support.

Link to Current Events

Recent data leaks including the Pandora Papers and Panama Papers have brought to light the contribution of tax havens to the global financial secrecy ecosystem. These revelations laid bare the extent to which politicians, businesspeople and other public figures offshore their taxable income, and has once again sparked public outrage for tax justice. In the wake of these developments, international organizations such as OECD and UNCTAD have stepped up the fight against illegal financial flows, especially from vulnerable countries in Africa.

 ISSN: 2582-6433

Impact Analysis

The financial toll that tax havens inflict on developing countries is staggering. Africa, for example, is estimated to lose around $50 billion annually because of illegal financial activities and profit offshoring. These financial setbacks make it exceedingly challenging to achieve the United Nations Sustainable Development Goals (SDGs)—especially in terms of alleviating poverty, providing healthcare services, and education. Additionally, tax havens worsen inequality, discourage investment into the country, and hinder development.

Community Impact

At the community level, tax avoidance has a direct impact on services provided by the government. There is a recognizable drop in educational, health care, and infrastructural services made available to the public. When corruption and offshore secrecy are laid bare, public confidence in institutions suffers. This might result in deterioration of social order and national unity.

Key Takeaways

Tax havens are critically undermining the economies of developing countries' as they are unable to invest in long-term growth. Initiatives such as BEPS aim to tackle this problem, but achieving desired results requires reliable enforcement as well as the participation of developing countries in the decision-making process. To increase transparency and fairness in the tax system, stronger partnerships, domestic reforms, and active engagement from developing countries are essential.

Call to Action

Governments need to focus on improving their tax laws and using international treaties to recuperate lost revenue. International institutions ought to help developing countries with technical and institutional assistance. Businesses need to adopt more responsible tax policies, and citizens must advocate for stronger control and visibility to ensure public resources are used for the common good.

Comparative Analysis

Unlike other developed countries, the USA has enforced laws such as FATCA which allows them to track offshore wealth. This is, however, not the case for developing countries which do not have the same resources. These nations seem to be at a greater risk of evasion and capital

 ISSN: 2582-6433

flight. In order to resolve this, there is need to improve global tax policies and practice capacity-building.

The growing use of IP-based tax avoidance strategies by transnational corporations is detrimental to both the global and national economy. By moving the ownership of IP to their subsidiaries sited in tax free countries, these corporations manage to shift profits away from the countries where real economic activities are happening.

Although this is beneficial for their profitability, it leads to devastating losses in tax revenues for said countries, which impairs their ability to provide vital services, like healthcare, education, or infrastructure.

As in the case with their economic data, at a national level, the distortion of economic data by IP-based profit shifting constitutes a different sort of disturbance. Because the income (royalties and licensing fees) IP is associated with is booked in tax havens instead of being executed, countries become less productive and less profitable than they actually are. Economically sovreign states face severe challenges based on having dependable data regarding GDP and trade figures relative to fiscal and economic policies.

This practice in particular enhances the competition among nations to lower the tax rate for corporations and compete for jurisdiction over intangible assets. This undermines global tax justice and is placing a larger burden on developing countries, which are more reliant on corporate tax revenues. The discrepancy between where economic activities are conducted and profits taxed further add to the inequality gap as wealth gets pre-concentrated in jurisdictions with low taxes along with big firm shareholders.

In order to tackle these concerns, frameworks like the OECD's Base Erosion and Profit Shifting (BEPS) policies, and the Global Minimum Tax Agreement have sought to realign taxing rights with value creation and restrict dangerous tax competition. These reforms signal a tentative step towards a more balanced global tax framework; however, enforcement hurdles and political pushback remain.

Tax avoidance leveraging IPs impacts economic measurements, diminishes a country's tax revenue, and engenders inequality within the international taxation system. It is important to

 ISSN: 2582-6433

act in unison as an international community to guarantee that profits are taxed in jurisdictions where economic activities and innovations are genuinely performed.

CONCLUSION

Today, one of the most contentious and intricate parts of international taxation is the deliberate exploitation of intellectual property to avoid or evade taxes. Legal tax avoidance strategies enable multinational firms to decrease their tax liabilities; nonetheless, these strategies frequently give rise to significant ethical and policy questions. The difficulties tax authorities encounter when attempting to tax IP and other highly mobile and intangible assets are brought to light by these tactics, which take advantage of legal gaps and variations in national tax legislation.

However, enforcement action can be taken against unlawful types of tax evasion, such as manipulative invoicing and fraudulent IP transfers, which directly threaten the integrity of tax systems. Intricacies in IP valuation and jurisdictional mismatches make it difficult to discern between proactive avoidance and criminal evasion.

A rising consensus to prevent these techniques and restore fairness in taxation is reflected in global solutions such as the OECD's BEPS framework, digital services taxes, and minimum corporation tax rate agreements. Some countries have strengthened their domestic laws to avoid treaty misuse, such as India, which has done so by implementing GAAR and restricting treaty advantages.

All things considered, IP is now a powerful tax planning tool in addition to being a highly prized asset for businesses. Protecting intellectual property (IP) while also supporting innovation is a delicate balancing act that policymakers must accomplish. To attain a more fair international tax system, it is necessary to consolidate regulations regarding intellectual property assessment and reporting, increase transparency, and fortify international collaboration.