

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

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



14th, 2019

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

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



methodology and teaching and learning.

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

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
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.

BLACK MONEY AND TAX HAVENS

AUTHORED BY - CHANDRIKA.B

1.INTRODUCTION:

'Black money' refers to funds on which no taxes have been paid. Any unaccounted money that is hidden from taxing authorities gives rise to the black market, sometimes known as the "underground economy." A tax haven is a country or location having extremely low effective tax rates. In most circumstances, a tax haven also provides financial secrecy. Some popular tax havens include Luxembourg, Cayman Islands, Ireland, Switzerland, Bermuda, Hong Kong, Jersey, Bahamas, and British Virgin Islands. These countries profit from luring international enterprises, which create jobs for their citizens. Despite a nominal tax rate, these governments earn far more tax money than they would otherwise. These governments supplement government earnings through a variety of means. For example, tax havens such as the Cayman Islands levy extremely high indirect taxes such as customs and import levies, raising the cost of living significantly. Furthermore, the governments of such places gain from the presence of thousands of enterprises registered in their jurisdictions. This is because tax haven governments levy a registration fee on all newly formed corporations and partnerships. These entities must additionally pay a renewal fee each year in order to be recognised as a functioning company.

In such countries, additional fees are placed on specific corporations, such as those in the financial services sector. Some tax havens, such as Switzerland, which has a thriving tourism economy, can generate additional cash through exit taxes.

2. BLACK MONEY: NOTE ON A CONCEPT:

Inherent elements of the Indian taxation system, such as pervasive corruption, a lack of strong penalties for offenders, the public procurement process, many taxes, high rates, and so on, encourage tax cheating, giving rise to a parallel black economy. The common practise of Indian firms engaging in transfer mispricing creates a shadow economy. The promoters and investors of such public limited firms might make black money abroad by under-invoicing their exports and over-invoicing their buys from tax haven nations such as Hong Kong or Singapore.

Trade mispricing, under-invoicing of inventories, over-invoicing of assets such as plant and machinery, illegal holding of precious gems and metals, and illegal activities such as smuggling and prostitution are some other sources of black money¹.

The following are the various initiatives made by the government to combat black money thus far.

1. Efforts have been made to lower exorbitant tax rates and high transaction costs, resulting in an economic environment that encourages tax cheating.
2. Efforts have been made to combat corruption by conducting periodic audits of government offices, introducing timely redressals, and enacting a whistle blower policy.
3. Following OECD suggestions to combat illicit money, the Indian government decided to remove old notes and replace them with new 500- and 2000-rupee notes.
4. Over time, successive waves of economic liberalisation have fostered compliance and tax revenue for the government.
5. Various tax amnesty programmes have been implemented.
6. These schemes enable taxpayers a limited time to pay a set amount in exchange for the forgiveness of a tax liability from a previous tax period without danger of criminal prosecution. These strategies assist in bringing dark money into the mainstream and increasing future compliance. Some of the most effective tax amnesty programmes are as follows:
 - Gold Bond plan, 1993- This plan collected at least 500 grammes of gold from tax evaders and issued bonds in exchange. Interest in the amount of Rs. 40 was to be paid. After 5 years, the gold was to be returned. The initiative was able to mobilise 40 tonnes of gold, which was critical in increasing the country's reserves during the 1991 balance of payment crisis.
 - The Voluntary Disclosure of Income Scheme of 1997 required the disclosure of funds in the form of cash or assets, whether in India or overseas. Through this scheme, the government earned Rs. 10,000 crore.
 - Income and Assets Declaration programme- Under this program, which was implemented in the 2016-17 budget, declarants of undeclared income might legalise

¹ Tax Evasion & Black money in India, URL- http://ijariie.com/AdminUploadPdf/Tax_evasion_ijariie9684.pdf

their holdings by paying a 45% inclusive of GST tax. Under this scheme, 64,275 persons came forward to report Rs. 65,250 crore in dirty money.

- Pradhan Mantri Garib Kalyan Yojana, 2016- The plan required the disclosure of income in cash or bank deposits. The person making the declaration was required to pay 50% in taxes and surcharges and keep a quarter of the total amount in a noninterest bearing deposit for four years under this plan.
1. Systematic changes have been implemented in areas of the Indian economy that are more vulnerable to underground economy than others, including as gold dealing, real estate, the equity trading market, mining licences, and so on.
 2. Implementation of tax deducted at source and the Money Laundering Act of 2002.
 3. Section 90 of the Income Tax Act of 1961 allows India to enter into tax avoidance treaties with foreign nations, which aids in the resolution of the Round Tripping problem. In this regard, the Indian government has entered into a number of double taxation treaties (DTAAs) with Singapore, Mauritius, and other countries.
 7. Vodafone acquired Hutchinson Group in 2007 and entered the Indian market. The transaction was completed in the Cayman Islands. Later same month, in September 2017, the Indian government claimed over \$2 billion in taxes and issued a court notice to Vodafone. Vodafone maintained that the transaction was not taxable because it was carried out between two foreign entities outside of India. The government, on the other hand, maintained that the transaction was taxable because the underlying assets were in India. On January 20, 2012, the Supreme Court ruled in favour of Vodafone. before this regard, Pranab Mukherjee introduced the General Anti-evasion Rule (GAAR) before Parliament, stating that its goal was to combat aggressive tax evasion methods. It will take effect on April 1, 2017. The inclusion of GAAR in the direct tax code aids in dealing with anti-tax legislation. It offers officials additional authority over how to handle a suspicious transaction in the books of accounts. It could also be applied to Participatory notes. As a result, it will aid in the reduction of the circulation of black money.
 8. Some institutions have been established particularly to tackle black money. For example, the Ministry of Finance's Central Board of Direct Taxes (CBDT) oversees direct tax administration and is principally responsible for countering black money. Similarly, for indirect taxes, we have the Central Board of Excise and Customs.

Furthermore, the Financial Intelligence Unit is a governmental body established in 2004 to combat money laundering and terrorism financing. Recently, the Indian government created a Special Investigation Team for Black money on directions of the Supreme Court².

3.USE OF TAX HAVENS TO LOWER TAX LIABILITY:

Corporations around the world can reduce their overall effective tax rates by expanding operations in offshore tax havens. Many businesses can avoid paying taxes on profits by establishing operations in a tax haven country. They are able to reduce their tax liability by altering the prices at which they transfer raw materials, inputs, and so on among the subsidiaries by using such shell corporations.

4. THE ROLE OF TAX HAVENS IN THE DEVELOPMENT OF BLACK MONEY AND HOW TO COMBAT IT:

One of the most prevalent methods for people and corporations to pool their black money has been to store it in tax havens. Corporate companies have increasingly used tax havens to reduce their global tax liabilities since the 1900s. The financial opacity given by tax havens regarding foreign investment allows persons to hide and earn returns on the amount of black money they hold. One occurrence that shed light on this issue was the disagreement over the sources of cash invested in Panama, which was revealed in the Panama papers. A large amount of unaccounted money was discovered to have been invested in various shell firms in Panama by individuals from all over the world. The Panama Papers is a collection of 11.5 million leaked documents that detail financial and attorney-client information for over 214,488 offshore corporations.

Panama is a tax haven nation. According to Panamanian law, it is not necessary to declare the initial proprietors of a corporation formed in Panama. In 2016, a group of foreign journalists revealed a list of such investors whose identities had previously been concealed. Around 500 Indian residents were on the list, including well-known Indian actors, politicians, and businesspeople such as Amitabh Bachan and Aishwarya Rai Bachan. According to Indian

²Black Money In India URL- <https://www.legalserviceindia.com/legal/article-7563-black-money-in-india.html>

legislation, an individual can transfer a maximum of US\$250,000 for education, medical expenditures, and so on. The sum found invested, which was primarily unaccounted money, far surpassed the legal limit by a wide margin. The government launched an investigation and later announced the formation of a special multi-agency group comprised of officers from the Central Board of Direct Taxes' investigative section and its Foreign Tax and Tax Research Division, the Financial Intelligence section, and the Reserve Bank of India. Similarly, Switzerland, known as the "grandfather of bank secrecy," has emerged as one of the world's largest offshore financial centres and tax havens since the 1990s due to banking secrecy laws that prohibit the disclosure of client information under a variety of federal, cantonal, and civil policies. Banks in Switzerland provide their clients numbered bank accounts in which the holder's identity is replaced with a multidigit number known only to the client and a restricted group of private bankers. The client's names, however, are not fully anonymous because they are susceptible to limited, warranted disclosure by the bank. To open this sort of account, clients must go through a multi-stage clearing process and submit appropriate proof to the bank about the legal sources of their assets. Owing to the financial secrecy provided to holders of such accounts, "Swiss Banks" have emerged as one of the most popular shelters of black money³.

5. INDIAN SCENARIO:

Since the 1960s, there has been a prevalent trend in India to retain illicit money overseas due to high marginal taxation--sometimes as high as 90%. According to the Associated Chamber of Commerce and Industry, Indians have over \$2 trillion in illicit funds stashed abroad. In recent years, a substantial number of Public Interest Litigation cases concerning tax havens have resulted in the formation of a Special Investigation Team (SIT) by the Indian government in accordance with Supreme Court directions. Furthermore, India is a member of the Financial Action Task Force and the G20. It has DTAA's with around 85 countries. Furthermore, India has taken a step forward by entering into various 'Exchange of Information Agreements,' which require participating countries to share relevant information related to legal entities and citizens of partner countries available within their own jurisdiction with the respective government authorities of those individuals and entities. India has signed approximately 17 Tax Information Exchange Agreements (TIEAs), the majority of which are with secrecy jurisdictions such as Jersey, the Bahamas, the Cayman Islands, and the British

³ Tax havens impact on the world economy, 2012. URL- <https://pdf.sciencedirectassets.com/277811/1-s2.0-S1877042812X00338/1-s2.0-S1877042812035057/main.pdf>

Virgin Islands. Similarly, India inked an agreement for automated exchange of information (AEOI), which said that both countries will gather data in accordance with global standards in 2018 and exchange it beginning January 1, 2019.

Last but not least, the implementation of GST on July 1, 2017 and the demonetisation of all 500 and 1,000 Mahatma Gandhi series banknotes by the Government of India in November 2016 played a critical part in reducing domestic black money. As an indirect tax reform, the increased transparency brought about by the implementation of GST has reduced the practise of tax payers underreporting their incomes and has increased the tax base for both indirect and direct taxes, resulting in a reduction in the generation of black money in the economy. GST necessitates extensive use of Aadhar and PAN, making it easier for tax authorities to track transactions. While alcohol has stayed outside the GST net, other large sources of illicit money, such as real estate and precious metals, have been identified. GST has mostly succeeded in building a self-policing atmosphere. The dual monitoring mechanism inside GST, which involves the Centre and the states, also reduces income tax evasion since even if one set of tax authorities fails to discover evasion, the other may not. This has improved tax compliance⁴.

6.CONCLUSION:

Black money is a socioeconomic evil. Generation of black money in a nation leads to a parallel black money which ruins its economic development. It leads to a loss of revenue to the government and widens the gap between the rich and the poor. Generation of Black money has adverse policy related consequences too. Creation of underground economy distorts the estimates of savings and consumption of nations to the national income and measurement of other macroeconomic variables which results in inaccurate policy making and planning considerations. In this regard, efforts should be taken to prevent the common practice employed by people and corporations to pool the black money by stocking it in tax havens.

⁴ Black money and tax havens. URL: <https://www.allresearchjournal.com/archives/2017/vol3issue8/PartC/5-9-89-289.pdf>