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*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.*

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# **TAX LAWS: KILLING THE INDIAN ECONOMY?**

AUTHORED BY - HIMANSHU GUPTA & MUSKAN SAHARAN

## **ABSTRACT**

Around the world, tax is the primary and most common source of revenue for any government collected by them from the citizens to run the nation. Each nation has its own tax laws and jurisdiction some nations even help people outside their nation by keeping the money with them in the banks which encourages inflow of money from around the world. This may sound unethical as this is mostly used only by High-net-worth individuals to hide their black money but it helps their economy to grow.

Tax evasion is an issue faced by almost every nation in the world. The concerned authorities are always on a run to catch tax evaders but some get successful in escaping to other nation where it is difficult of extract them and if that evader brings a decent amount some countries even offer citizenship. There are immense challenges that come in the way of authorities they need to counter and catch these evaders.

## **INTRODUCTION**

A tax is a legal obligation of an individual residing in that country to pay a financial charge levied by government of that country. Tax is the main source of income for any government in the world. The government of every country collect taxes from its citizens to run a country effectively. In India marginal tax rate system is applicable and said to be the 2<sup>nd</sup> most complex tax jurisdiction in the world and the amount of tax levied on the income is also on higher side due to which high new worth people now prefer to settle outside India in other countries where tax rates are comparatively low which eventually increases their revenue by saving taxes and increase their standard of living but, this trend has a adverse effect on the Indian economy as there is a heavy outflow of money from the Indian economy.

The revenue collected in form of taxes is used by the government to fund projects for the public welfare at large scale and develop infrastructure. It helps the government to undertake many such projects which may not provide financial benefit to the government but are beneficial for the society, projects like maintaining local sanitation, providing fresh and clean water. In India, taxes

are levied both on legal entities and individuals but the taxability depends on the income slab of that particular individual or entity. The government of India also provides benefits to taxpayers in the form of exemption and deduction which a taxpayer can claim. Taxes help central and state government provide public services which helps in uplifting the living standards of the citizens.

## **TYPES OF TAXES**

Any individual / legal entity operating and earning in India is broadly charged 2 types of taxes: Direct tax and Indirect tax. Every individual and legal entity is bound to pay tax on time otherwise the government can impose penalties depending upon the category under which the violation has arised.

### **DIRECT TAXES**

Direct taxes are the taxes that are paid directly to the government by individuals and legal entities. These taxes are monitored by the central board of direct taxes (CBDT). This type of tax is purely dependant on the level/slabs of income an individual/legal entity falls into. There are many types of direct taxes such as:

#### **CESS AND SURCHARGE**

CESS is defined in the article 270 of the constitution of India as a fee/tax imposed for a specific purpose. It is collected by the government from public at large and used for the specific purpose it was collected for.

Surcharge is defined under article 271 of constitution of India, the central government takes surcharge from only those taxpayers who have higher level of income and it can be spent by the government for any purpose unlike cess.

#### **INCOME TAX**

This tax is levied on the personal income or profit earned by individuals and legal entities in an assessment year. The amount of tax also depends on the age and total taxable income. There are different tax slabs already prescribed by government and tax is to be given according to the tax slab your income falls under.

In India, if anyone earns up to Rs 2.5 lakhs per annum then that income falls under non-taxable category

## **CORPORATE TAX**

This tax is only levied on corporations/ businesses. The profit or revenue generated by the corporation in a fiscal year determines the amount of tax. It is applicable both on public and private companies incorporated under companies act, 2013.

## **CAPITAL GAINS TAX**

This tax is levied on revenue generated from the sale of capital assets such as shares, real estate, etc. capitals gain tax is further classified into two types depending upon their duration:

- **LONG TERM CAPITAL GAIN**

This tax is generally levied on capital transaction where the time gap between sale and purchase is more than 36 months (3 years). In some cases, the time duration is reduced to 24 months (2 year) and 12 months (1 year) depending upon the nature of transaction.

- **SHORT TERM CAPITAL GAIN**

This tax is generally levied on capital transactions where the time gap between sale and purchase in less than 36 months (3 years). In some cases, the time duration is reduced to 24 months (2 year) and 12 months (1 year) depending upon the nature of transaction.

## **INDIRECT TAX**

Indirect taxes acts as a major source of revenue for both central and state government. Indirect taxes are not paid directly to the government instead they are to be paid on consumption of goods and services. The tax is collected by the seller from the customers at the time of sale of goods and services. It is the responsibility of seller to pay the collected tax to the government. Indirect taxes are same for everyone despite their level of income unlike direct taxes which differ from factors like age, level of income, etc. some types of indirect taxes are:

## **GOODS AND SERVICES TAX**

This tax was implemented by government on 1 July 2017 to replace and combine all the other taxes prevailing in the country like value added tax (VAT), service tax, etc. this tax is applicable on the cost of goods and services sold in the country. It is collected by the seller from the customers at the time of transaction and later passed on to the government. The amount of GST applicable depends on the nature of goods and services. There are pre-defined tax slabs for each. It is governed by central goods and services tax, 2017.

## **CUSTOM DUTY**

It is imposed only on those goods which are imported in India. It is a way that helps the government to regulate the flow of goods in the country. The rate of customs depends on various criteria like weight, worth of goods, size, etc.

## **NEW TAX REGIME VS OLD TAX REGIME**

With the introduction of new tax regime in the fiscal budget of 2020 it became a bit confusing for the taxpayers to choose between the old regime and new regime. Both of the regime has their own tax slabs and offerings it depends on the taxpayer which regime will suit the best.

But generally, the old tax regime is beneficial for the people who can claim deductions which are offered under that regime which can help the taxpayer to save a substantial piece of tax. Deductions are offered under section 80 of income tax act, 1961. Some of the major deductions can be taken under section 80c for payments like life insurance policies, purchase of residential property, fixed deposit for not less than 5 years, etc. up to 1.5 lakh rupees.

The new tax regime is beneficial for taxpayers who don't have much deductions to claim in their revenue as new regime offers relaxed tax slabs as compared to old regime. There is only one deduction available under section 80TTB for up to 50k rupees.

A taxpayer can opt for any of the regime every year which provides the most benefit but cannot be changed in between that particular area.

## **TAX EVASION**

In India, tax evasion is a serious offence issue as only 1% of Indian population actually pays tax which leads to a financial loss to government. Tax evasion can be described as illegal act done intentionally to evade from the liability of paying taxes. Tax evasion can also be termed as tax fraud. Tax evasion arises in both situations when there is no payment or under payment of taxes by taxpayers. Tax evasion is a punishable offence dealt with criminal charges and penalties but to charge a taxpayer with criminal charges it is necessary to identify if the act was done intentionally or not.

Income tax department is responsible to identify and charge people and legal entities involved in tax evasion. There is a difference between tax evasion and tax avoidance as in tax avoidance

taxpayers try to find legal ways within the law to save their taxes unlike tax evasion in which there is a deliberate illegal attempt to save taxes. In India, income tax department is also responsible for enforcement of tax laws and ensuring that every taxpayer pays their due tax on time but still taxpayers find different methods to evade taxes such as:

- **REPORTING INFLATED DEDUCTIONS**

Income tax department provides certain deductions which a taxpayer can avail in its total taxable revenue to save taxes but some misuse these deductions provided under section 80 of income tax act, 1961 by intentionally reporting deductions more than the actual expense to evade taxes.

- **UNDER REPORTING INCOME**

Taxpayers use fake bills and other methods to increase expense and decrease actual revenue generated to evade taxes. Under reporting can also take place when taxpayers do not disclose there all sources of revenue which leads to under estimation.

- **CASH TRANSACTIONS**

Taxpayers know that it is difficult for the authorities to establish a chain in cash transactions as they don't leave a paper trail behind them and they use this loophole to evade taxes by doing their major transaction in cash which helps them in hiding their actual revenue.

- **USING OFF SHORE ACCOUNTS AND SHELL COMPANIES**

This is one of the most popular used methods by ultra rich people to evade from their liability to pay taxes. They create shell companies and open off shore accounts to disguise the real ownership of the money and saving it from the eyes of income tax department.

- **BRIBERY**

In India, corruption has always played a major role in weakening the back bone of the economy. Income tax officers are bribed heavily by the Ultra rich to prevent any proceedings against them in cases like hoarding of black money or money laundering.

- **TAX AUDITS EVASION**

Tax audits are made in the big corporation and places of high revenue to ensure that the revenue generated is fully disclosed and the tax is paid accordingly but to evade taxes they try to evade from these audits also and try to hide the actual revenue by manipulating the books of account.

## **PENALTIES FOR TAX EVASION**

As tax evasion is treated as a criminal offence, any individual/legal entity found guilty will have to face criminal charges and penalties imposed by income tax department. The punishment depends on the degree of fraud committed.

## **CASE LAWS RELATED TO TAX LAWS**

- ***Commissioner OF CGST AND Central Excise vs M/S Edelweiss financial services ltd., 2023***

In this matter the supreme court gave a landmark judgment about “Valid Consideration is Necessary for a Service to be Taxable”. The Supreme Court of India has held that a valid consideration is necessary for a service to be taxable as per section 65(44) of Finance Act, 1994 and dismissed the GST departments’ appeal. The coram comprising Justice Hrishikesh Roy and Justice Manoj Misra observed that since the assessee had not received any consideration while providing a corporate guarantee to its group companies and would not be a taxable service.

- ***Commissioner of income tax vs. D. P. Sandu Bros. Chembur Pvt. Ltd., 2015***

In this matter the court held that if the conditions of Section 80-IA are met, a deduction cannot be denied on the ground of technical defects.

- ***The State of Karnataka vs M/s Ecom Gill Coffee Trading Private Limited, 2023***

In this matter the supreme court gave a landmark judgment about ‘Payee Cheque and Copies of Invoices not ample to prove genuineness of Transactions’. the Supreme Court of India, which was presided over by Judge M.R. Shah. The bench observed that mere production of invoices or even payment to the seller by cheque cannot be said to be sufficient and may not be said to discharging the burden to claim Input Tax Credit, to be discharged under Section 70 of the KVAT. The order issued by the High Court and the ITAT approving the ITC was declared unsustainable by the Supreme Court (SC), and as such, it is thus quashed and set aside.

- ***Commissioner of income tax vs. L&T Finance Ltd., 2016***

In this matter, the court held that the taxpayer is entitled to deduction of interest on borrowed capital, even if the capital is utilized for non-business purposes.

- ***Commissioner of Income-tax v. D.N Memorial Trust, 2023***

In this matter the Commissioner declined the registration applied by the assessee-trust, stating that

the trust did not prove the genuineness of its activities and claimed that the trust had generated surplus (profit) from its total receipts, which was not in line with the provisions of Section 12AA but Commissioner failed to provide any proof that the trust's activities were noncharitable or for personal purposes of the trustees and The funds acquired by the trust were utilized for educational activities. The Tribunal concluded that there was no basis to reject the trust's application for registration. The court held that no substantial question of law arises as the Tribunal considered all aspects and allowed the appeal.

## **CONCLUSION**

Tax is the main source of revenue for the government which is used by them to undertake projects for public welfare at large but tax evasion has led to serious revenue loss to the government. In India, tax and its process to file both are very complicated for a layman to understand and the amount of tax levied also seems high which encourage people to evade taxes and save their money. The mindset of general public also plays an important role as people in India considers tax as a burden imposed by government upon them and tries to look out for ways so that they don't have to pay tax. People in society don't understand the importance of tax and the usage of tax money in the social welfare activities, people just look out for their own benefits and no one wants to contribute to the society by paying their taxes on time and with sincerity.

The government should make reforms in the already persisting tax laws and provide more benefit to taxpayers so they can get motivated to pay their due taxes on time. The system to regulate the tax should be made more efficient and transparent. There should be new provisions made to discourage the high-net-worth people from settling outside India which will prevent the outflow on money from the economy.

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