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Tax evasion & black money generation in India: A conceptual analysis with reference to income tax law

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Abstract
Tax evasion in India is a serious affair and for any defaulters or fraudsters, the Income-Tax Act provides for adequate repercussions. The study has made an attempt to assess the overall profile of tax evasion and black money in India, particularly in terms of causes, impacts and government initiatives. Tax evasion occurs when individuals deliberately fail to comply with their tax obligation. The resulting tax revenue loss may cause serious damage to the proper functioning of the public sector, threatening its capacity to finance its basic expenses. The results indicate that tax evasion and black money has been expanding very rapidly in India as well as in developing countries. It is evident from the study that government of India already introduced various commissions for estimating black economy but estimation reports are not same. This study also investigated the overview of the opinion of tax professionals regarding the tax evasion in India, delineating the number of factors responsive for tax evasion and examining the possible remedies to reduce the problem of tax evasion**.** The Indian government is more concerned about the prevalence of the tax evasion and black money and various commissions are formed for controlling it but results are not so impressive. Thus, the paper suggests that recommendations of the commissions or laws should be implemented correctly for reducing bad effects of tax evasion and black money and need of separate direct tax code. The study shows that there is a significant positive impact of taxation on the economic development of India with Income tax being least effective. Corporation tax apart from other taxes was found to be one of most productive in such a shorter extent of time since its obligation. To control the generation of black money there should be a strong and appropriate legislative framework.

Keywords: tax evasion, black money, economic development, GDP, real estate, income tax law

Introduction

As tax is the major source of income for any government, an attempt for reformation may be viewed by other stakeholders very seriously and doubts may be aroused due to fear of loss of revenue. Since the beginning of human civilization, the tax seems to have been imposed by the state in one form or the other. In the age of slavery, slaves were treated as a wealth of landlords (feudalists) so they have imposed a tax based on a number of slaves they kept and on the land they had. After the end of slavery, the concept of capital emerged and tax started to be imposed on capital, assets or income. With the development and modification of state structure and production process, the concept of tax changed and tax system also modified. Tax evasion is the term for the efforts by individuals, corporate, trusts and other entities to evade taxes by illegal means. It is the deliberate, misrepresentation or concealment of the true state of their affairs to the tax authorities to reduce their tax liability or to avoid the tax liability by declaring fewer incomes, profits or gains than actually what they earned or overstating their expenses. So, economists at that time had an opinion that tax should be imposed at the minimum rate so that it becomes just sufficient to cover security expenses of government. They thought, more tax is a disincentive for people to undertake income-generating business activities which retards growth and development. Thus the amount which would have been used for economic and social development is used for anti-social activities. All this creates black money and social evils in the society. Thus tax evasion is not a problem in the development of the country but also harmful to the country. As tax is the major source of income for any government, an attempt for reformation may be viewed by other stakeholders very seriously and doubts may be aroused due to fear of loss of revenue. Constitution has given powers to the union government, state governments, and local bodies to collect the tax. The Article 265 of the Constitution states that "No tax shall be levied or collected without an authority of law." Tax Evasion is a crime in all major countries and the guilty parties are subjected to imprisonment and fines. Government raises finance through taxes. *In the words of Dalton "Tax is a compulsory contribution imposed by a public authority irrespective of the exact amount of service rendered to the taxpayer in return and not imposed as a penalty for any legal offence".*

Income tax system and structure in India

In 1918 a new income tax has implemented and was replaced by another act in 1922. Under British rule, they set up administrative and taxation systems. There were two taxes namely direct tax and indirect tax. This was remained in force up to the assessment year 1961-62 with a number of amendments from time to time. Later Finance Ministry has introduced income tax Act 1961 which was approved by the Parliament. This came into force on 1st April 1962. This applies to whole India and Sikkim including Jammu and Kashmir. The central board of revenue or department of revenue under Ministry of Finance, Government of India is the apex body charged with the administration of taxes. It came into existence as a result of Central Board of Revenue Act 1924. Due to the difficulty in the administration of both direct and Indirect tax, it has been split into CBDT (Central Board of Direct Taxes) and CBEC (Central Board of Excise and Customs) in the year 1964 by Section 3 of Central Board of Revenue Act 1963.

Definition of tax evasion and tax avoidance

Tax Evasion

The-an illegal practice where a person intentionally avoids paying his/her/its true tax liability. Those caught evading taxes are generally subject to criminal charges and substantial penalties. It is illegal.

Tax Avoidance

The art of dodging tax without breaking the law. It seems legal

As per Oliver Wendell Holmes, Justice Supreme court of USA [1]

When an act is condemned When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. Evasion, what is meant is that it is on the wrong side of the line.

Review of Literature

V. Kalpana (2015) [2] this review paper focused on highlighting the causes and ill effects of tax evasion in the overall development of the Indian economy. Low tax morale, low quality of services in return for taxes and low transparency and accountability of public institutions have led to high tax evasion in our country.

Mr. Ghuge and Katdare (2016) [3] they found that Indian tax structure lags behind on almost every indicator. There is a strong requirement for a serious review and actions from the government are needed in simplifying the tax structure.

Dr. Devarajappa S. (2017) [4] they opinioned that we should support the government by complying with the tax procedures and pay taxes promptly. So let us fulfill our duties first and claim our rights next. They also suggested that is also a need to educate the people about Indian Tax law and create such an environment in which they pay their due taxes, do not evade the tax and feel proud in discharging their duty to pay the taxes.

Komal Jaiswal (2017) [5] in her paper tried to study the evaluation of direct tax revenue. She suggested that it Necessary to the appropriate in policy reforms or administrative to the increase the tax collection. To increase the income tax either by increasing tax base or encouraging the people to pay tax by simplifying the filing procedure and awareness.

Objectives and Methodology of the study

This study is carried out with the following objectives:

1. To Study tax evasion and black money generation in perspective to Income Tax Law in India.
2. To study the main reason behind the tax evasion & generation of black money.
3. Legal remedies under Income Tax Law for prevention of tax evasion and courts view on the issue.
4. To find out the impact of tax evasion & black money on Indian economy and remedial measure to curtail the tax evasion and black money.

To meet the above objectives of the study, the required data have been collected from secondary sources, such as the internet, websites, professional magazines, research journals, and newspapers. In addition to books on income tax and reports published are also used.

Importance of the study

In India, the meager are distress more from the hobble of taxes as indirect taxes on basic necessities is rising because of inelastic demand compared to the tax rate on luxury goods, which sounds regressive, where rich are paying less than poor as compare to their tax to income ratio. Due to the policy research, the burden of tax has shifted from rich onto the poor which results in the utilization of their income on basic consumption and with very little or no saving of the masses. The optimal tax rate is necessary for both direct and indirect taxation to reduce market distortions and inefficiency along with high revenues for public expenditures. Tax evasion of indirect tax ultimately helps in tax evasion of direct tax i.e. income tax. This will decrease the burden on both the consumers and producers.

Government data on direct tax collection & analysis there of

Table 1: Direct tax collection {Rs. in crore}

Financial Year	Corporate Tax	Personal Income Tax@	Other Direct Tax	Total
2010-11	298688	146258	1049	445995
2011-12	322816	170181	990	493987
2012-13	356326	201840	823	558989
2013-14	394678	242888	1030	638596
2014-15	428925	265772	1095	695792
2015-16	453228	287637	1079	741945
2016-17*	484924	349270	15624#	849818

***Source*:** Union finance accounts of respective years and reports of C&AG [6].

* Provisional/ Unaudited

@ Figures under personal income tax include collections of securities transaction tax.

Collection under other taxes in FY 2016-17 includes collection under IDS-2016 and PMGKY-2016.

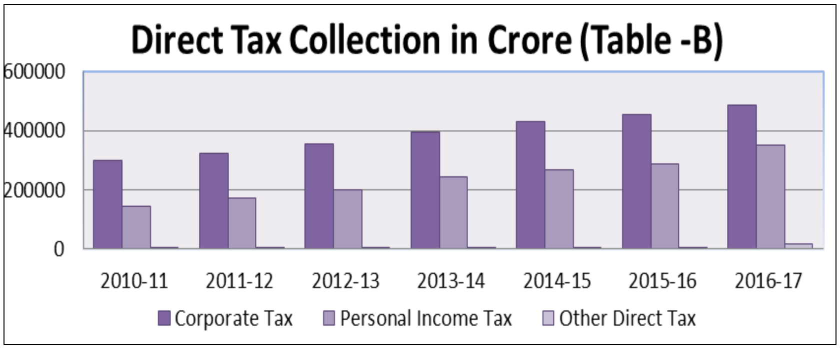

Fig 1

On analysis of the above figures mention in Table-1, it is found that the during the financial year 2010-11 the income tax collection was 51% of the corporation tax whereas during the financial year 2016-17 the income tax collection was 61% and of corporation tax. Thus the gap of between corporation and income tax has the downward trend and collection of income tax has the positive trend.

Table 2: Direct-tax GDP ratio in India {Rs. in crore}

Financial year	Net collection of direct taxes	GDP current market price	Direct tax GDP ratio	GDP growth rate
2010-11	445995	7674148	5.81%	18.84%
2011-12	493987	9009722	5.48%	17.4%
2012-13	558989	10113281	5.53%	12.25%
2013-14	638596	11355073	5.62%	12.28%
2014-15	695792	12541208	5.55%	10.45%
2015-16	741945	13567192	5.47%	8.25%
2016-17*	849818	15183710@	5.60%	11.91%

* Provisional

@ Advance Estimates as per Press Release dated 31.05.2017 of MOSPI.

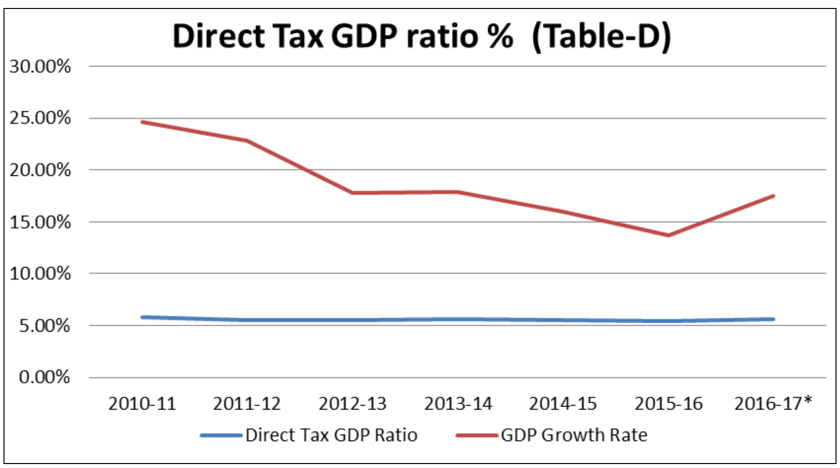

Fig 2

From the analysis of the above Table-2, it is revealed that the direct tax GDP ratio shows the straight line in the graph of table. It indicates that there are no drastic changes during the financial year 2010-11 to 2016-17. But the GDP growth rate was 18.84% which was declined to 11.91% during the financial year 2016-17 and graph showed the movement accordingly.

Table 3: Pan allotment–tax payers status [7]

Taxpayer status *	PAN allotted up 31.10.2017	Percentage (%) #
Association of persons	9,02,206	0.26
Body of individuals	54,136	0.02
Company	15,62,767	0.45
Firms	3,96,21,887	1.14
Government	14,208	0.0

Hindu undivided family	19,08,470	0.55
Artificial judicial person	34,470	0.01
Local authority	53,049	0.02
Individual	33,78,26,101	97.34
Trust	7,30,992	0.21
Total	34,70,49,762	100%

Note:-* 'Taxpayers status' means the status of taxpayers as per PAN database of Income tax
"Percentage means" percentage of the number of PAN allotted for a given status with respect to total number of PAN allotted.

From above Table-3 it is noticed that 97.34% PAN allotted to the Individual under income tax law and massive tax evasion will be involved in this category. It was accepted by the Finance Secretary Shri Hasmukh Adhia on February 05, 2018 and stated that there is "unevenness" in the taxes paid by the salaried class and business people, as 50% of the 7 lakh companies which file Income Tax returns show zero or negative income. The government, he said, is working on removing the "unevenness in the tax paid by different classes of people" by using the foolproof technological system. In the category of individual, the salaried ones are paying more income tax compared to business people. For the assessment year 2016-17, 1.89 crore salaried individuals have filed Income Tax returns and paid the total tax of Rs 1.44 lakh crore, which works out to an average tax payment of Rs 76,306 per individual salaried taxpayer. As against this, 1.88 crore individual business taxpayers, including professionals, have paid total a tax of Rs 48,000 crore which works out to an average tax payment of Rs 25,753 per individual business taxpayer [8].

Cause of tax evasion and black money generation

The foremost reasons for tax evasion in an India are listed below:

a. **Low level of voluntary tax compliance:** Majority of the population does not voluntarily comply with the tax procedures. The reasons contribute the black money & tax evasions are following-

- Low tax morale value in tax assesses.
- The tax system and perception of fairness
- Insufficient use of technology for processing the income tax returns.
- Low transparency and accountability of public institutions.
- High level of corruption.
- Lack of rule of law and weak fiscal jurisdiction.
- High compliance costs

b. **Weak enforcement of tax laws & shortage of manpower:** Even though the tax laws are very strong and rigid, the effectiveness of their enforcement still remains a question mark as the tax evasion cases are rapidly growing up. The implementation of tax laws is ineffective due to the following reasons:

- Insufficient amount of tax collection
- Weak capacity in detecting and prosecuting inappropriate tax practices
- Shortage of manpower the income tax department.

Black money and GDP ratio in India: The black money is hampering the government's revenue generation from taxation. There are various estimates of black money in India. India's black economy currently could be up to 75% of the GDP, as per a confidential report submitted by National Institute of Public Finance and Policy (NIPFP) in December 2013, accessed by The Hindu.

A Business Standard report in January 2013 estimated it at 30% of GDP or Rs. 28 lakh crore. A report by NIPFP in December 2012, estimated black money at above Rs. 10 lakh crore or 10% of the GDP. An earlier report by NIPFP in 1984 had estimated black money generated in the country to 19 percent to 21 percent of GDP or Rs. 36,000 crore [9].

Table 4

Year	The estimate for the black money (Rs. Crore)	Percentage of GDP
1975	958 to 11,870	15 to 18
1980	20,362 to 23,678	18 to 21
1983	31,584 to 36,784	19 to 21
2012	>10,00,000	10

The income-tax act provides for adequate repercussions for curb the tax evasion

For a nation to prosper on social and economic indicators, an efficient tax system and collection is critical. However, tax evasion or fraud by individuals or companies is akin to cancer which threatens to infect and damage a nation's economic system.

Despite being aware of the necessity of tax, the incidence of tax fraud is always present. While accidental cases do happen, incidental fraud is a criminal offence and causes a decline in a State's growth. Tax evasion in India is a serious affair and for any defaulters or fraudsters, the Income-Tax act [10] provides for adequate repercussions.

1. **Not filing income tax returns:** If a taxpayer is required to file income tax returns before the due date as required under Section 139, subsection (1) of Income Tax Act and fails to do so, the assessing officer can impose a penalty of Rs. 5,000 or more.
2. **Failure to pay tax as self-assessment:** As per Section 140 A (1) of the Income Tax Act, if a taxpayer fails to

pay wholly or partly-self-assessment tax or interest and fee or both, the taxpayer is declared as a defaulter. The assessing officer can as per Section 221(1) declare the taxpayer as a defaulter and impose a fine that does not exceed the tax in arrears. However, if the taxpayer is able to provide sufficient proof for default, the assessing officer can exempt the taxpayer from paying the penalty.

3. **Failure to comply with demand notice:** If a taxpayer receives a demand notice asking for tax payment, the taxpayer has to pay the requisite amount in 30 days to the name and department mentioned in the notice. Failure to do so will result in further penal provisions and the taxpayer will be treated as a defaulter.
4. **Failure to get accounts audited:** If a taxpayer receives a demand notice asking for tax payment, the taxpayer has to pay the requisite amount in 30 days to the name and department mentioned in the notice. Failure to do so will result in further penal provisions and the taxpayer will be treated as a defaulter. Section 92(E) requires the taxpayer to furnish a report from the taxpayer. Failure to do so will incur a penalty of Rs. One lakh or more. If any document is not furnished or attached, a penalty of 2% of the transaction's value (international or domestic) is levied, this is under Section 92(D)3.
5. **Concealment of income:** Income concealment to not pay tax is a disease that needs eradication before its effect throws the economy into a downward spiral. Under section 271(C) of Income Tax Act, there is a 100% to 300% penalty of the tax evaded if someone is caught concealing tax. The tax evasion penalty varies under certain conditions.

- If the taxpayer admits to the concealed tax, he or she will have to pay 10% of the previous year's undisclosed income along with interest.
- If the taxpayer does not disclose the undisclosed amount but does so in the return of income furnished in the previous year, 20% penalty of the undisclosed amount along with an interest is levied.
- If the previous year's amount is undisclosed, the minimum penalty that can be levied is 30% and the maximum is 90%.

6. **Failure to comply with income tax notice:** When the Income Tax department issues a tax notice; the recipient taxpayer has to comply. Failure to comply enables the assessing officer to send a notice under Section 142(1) or 143(2) asking the taxpayer to:

- File the return of income.
- Furnish in writing all details of assets and liabilities.

7. **To curb the tax evasion government passed the black money law:** (BML) [11]. As far as the jurisdiction for tax, penalty and prosecution are concerned; Black Money Law (BML) and Income-tax Act (ITA) both operate simultaneously. Black Income or Asset may be taxable under one or the other; or both laws. However, once an income/ asset are taxed under any one law; it cannot again be taxed under the other law. Double taxation within India is not envisaged. BML is targeted only against "Foreign" black money. ITA covers foreign as well as domestic black money.

Judiciary view on tax evasion and tax avoidance

There is a very thin difference between tax evasion and tax avoidance. The Indian and foreign courts have decided the issue in the following landmark cases-

1. IRC Vs. Duke of Westminster (1936) [12] Found that tax savings by planning for the same cannot be treated as impermissible tax avoidance.
2. W.T Ramsay Ltd Vs. IRC(1981) [13] Where a self-canceling readymade device, artificial in nature without an independent business purpose was employed, it was treated as impermissible tax avoidance What is to be looked at is the legal nature, which does not rule out genuine strategic planning. The Revenue can't start with the question, whether there is any tax deferment or tax saving.
3. McDowell Co. Ltd. Vs. Commercial Tax Officer (1985) [14] Tax planning may be legitimate provided it is within the framework of the law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.
4. Azadi Bachao Andolan Vs. Union of India(2003) [15] Held that a citizen is free to carry on his business within the four corners of the law and that mere tax planning, without any motive to evade taxes through colourable devices is not frowned upon.
5. Vodafone International Holdings B.V. Vs. Union of India & ANR (2012) [16] Companies and other entities are to be viewed as economic entities with legal independence vis-a-vis their shareholders/participants. It is fairly well accepted that a subsidiary and its parent company are totally distinct taxpayers. While ascertaining the legal nature of the transaction the Revenue/Court has to look at the entire transaction as a whole and not to adopt a dissecting approach. Corporate business purpose of a transaction is evidence of the fact that the transaction is not undertaken as a colourable or artificial device.
6. CIT Vs. Vallabh leasing & Finance Co. (P) Ltd.(2004)[17] Provisions of sub-ss. (1) and (2) of s. 94 were not attracted to a one-time transaction of transfer of shares by assessee-company to its director at face value; there is no systematic effort by an assessee to avoid tax, the transaction comes within the ambit of s. 94(3)(b).
7. CIT v. Bihariji Construction (India) Ltd (2007) [18] Held that reduction in tax burden is not an offence, unless the transactions were not genuine and were contrary to the provisions of income-tax law.
8. CIT v. Punjab State Electricity Board (2010) [19] Held that a sale and leaseback transaction could not be dismissed as the sham. It has legal effect. The fact that it reduces tax burden cannot by itself justify the inference, that it is a colourable device. It is not every case of tax planning, that is illegal/ illegitimate.

The Government Measures to effectively tackle the issue of black money, particularly black money stashed away abroad. Such measures include policy level initiatives, effective enforcement actions on the ground, putting in place robust legislative and administrative frameworks, systems and processes with the due focus on capacity building and integration and mining of information through increasing use of information technology.

Recent major initiatives in this regard include:

1. Constitution of the Special Investigation Team (SIT) on Black Money under Chairmanship and Vice Chairmanship of two former Judges of Supreme Court,
2. Constitution of Multiagency Group (MAG) consisting of officers of Central Board of Direct Taxes (CBDT), Reserve Bank of India (RBI), Enforcement Directorate (ED) and Financial Intelligence Unit (FIU) for investigation of recent revelations in Panama paper leaks,
3. Proactive engagement with foreign governments to facilitate and enhance the exchange of information under Double Taxation Avoidance Agreements (DTAAs)/Tax Information Exchange Agreements (TIEAs)/Multilateral Conventions and furthering global efforts to combat tax evasion/black money, inter alia, by joining the Multilateral Competent Authority Agreement in respect of Automatic Exchange of Information (AEOI) and having information sharing arrangement with USA under its Foreign Account Tax Compliance Act (FATCA),
4. Enactment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015' to specifically and more effectively deal with the issue of black money stashed away abroad. This Act amended after Neerav Modi case and the new legislation has provisions for a steep 120% tax and penalty on undisclosed foreign assets and income, besides carrying a jail term of up to 10 years.
5. Enabling attachment and confiscation of property equivalent in value held within the country where the property/proceeds of crime is taken or held outside the country by amending the Prevention of Money laundering Act, 2002 through the Finance Act, 2015,
6. According to high priority to the cases involving black money stashed away abroad for investigation and other follow-up actions including prosecutions in appropriate cases.
7. The Income Tax Department has accorded the highest priority to tackle the menace of black money. With this objective in mind, the Department has initiated criminal prosecution proceedings in a large number of cases of tax offenders and evaders. During Financial Year 2017-18 (up to the end of November 2017), the Department filed Prosecution complaints about various offences in 2225 cases compared to 784 for the corresponding period in the immediately preceding year, marking an increase of 184%. The number of complaints compounded by the Department during the current financial year 2017-18(up to the end of November 2017) stands at 1052 as against 575 in the corresponding period of the immediately preceding year, registering a rise of 83%. Compounding of offences is done when the defaulter admits to its offence and pays the compounding fee as per stipulated conditions [20].

Income tax law and recent bank fraud

India has the Income Tax Act, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, Foreign Account Tax Compliance Act, Double Taxation Avoidance Agreements (DTAAs) and so many investigating agencies. Even though the Lalit Mody, Vijay Malia, Mahul Chokshi and Nirav Modi have parked their assets in the aboard after frauds with various banks but the agencies could not take the remedial action within time. In the recent case the Income Tax department has slapped fresh charges under the new anti-black money law against jeweler Nirav Modi, involved in the Rs 11,400/- Crore Punjab National Bank fraud, for allegedly holding an illegal asset abroad, officials said [21]. The Income Tax department had slapped charges against Modi under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 after it suspected that Modi allegedly held a bank account in Singapore, which hadn't been disclosed to the authorities. The new anti-black money law deals with cases of overseas illegal assets, which till recently were probed under the Income Tax Act, 1961.

Impact on Indian economy

1. **Less tax for the government:** Many times, the Indian Government has failed to collect the estimated amount of tax from the people of our country and for this, credit has to go to the black money driven the underground economy.
2. **Uncontrollable Inflation:** When black money is out in the market, the amount of money in the system is higher than the Government expects to cause the prices of commodities to increase to a level beyond normal.
3. **Leads to mass poverty:** The distribution of wealth and income in our country has been severely affected by the growth of the underground economy.
4. **Lack of technology:** Due to the existence of black money, India is facing the problem of the shortage of capital. This has the direct impact on the up gradation of technology in all sectors. The major reason behind such backwardness is the parallel economy.
5. **Inflated real estate:** Generally, people involved in black money market are always3/24/2018 Tax Evasion in India ready to pay more for a piece of land as this helps in converting their colored money to legal money.
6. **Transfer of Indian funds abroad to safe heavens:** The black money generated in India is kept in foreign tax havens Under- invoicing of exports and over- invoicing of imports are two of the main methods used by black money holders for transferring money overseas.

Conclusion and Suggestions

After the above study, it can say that income tax evasion is prevalent in India since long. Having been aware of the ill effects of tax evasion, it becomes each one of our responsibility to support the government by complying with the tax procedures and pay taxes promptly. It concludes that high tax rates, corruption in public sector units, multiple tax rates and inefficient tax authorities are the main causes of tax evasion. It is found that the positive development on the assumption that direct taxes are more equitable in impact and poor as compared to indirect taxes. It is suggested that reduction in tax rates, simplifications of tax laws, remove loopholes in the tax system and some extent proper processing of information available the under the annual information return can be the best tool for improving Indian tax compliance. Co-ordination in all the tax evasion/black money investigating agencies is necessary. Therefore there is also a need to educate the people about Indian Tax law and create such an environment in which they pay their due taxes, do not evade the tax and feel proud in discharging their duty to pay the taxes.

In the light of this study, some suggestions that necessary care should be taken at the appropriate level either by policy reforms or administrative flexibility to increase the tax collection. As the growth of Income tax is not at par with corporate tax, thus steps should be taken to increase the income tax either by increasing tax base or encouraging the people to pay tax by simplifying the filing procedure and awareness. Effectively implementation of income tax law is necessary. The tax assessment of income under the category of HUFs should abolish in the present time. The Direct Tax Code Bill, 2010 should be passed and Double Taxation Avoidance Agreements (DTAAs) also reviewed in respect of tax haven countries.

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