CHAPTER - ONE
INTRODUCTION

1.1 Introductory

The term ‘International Taxation’ is an oxymoron.¹ The different meanings which are assigned to this term, *inter-alia*, include ‘International Tax’, ‘International Tax Law’ and ‘International Tax Regime’ etc. etc. There is no such thing as ‘International Tax’ as no international organisation, which so ever, has the power to levy a tax. This term refers to the uneasy interface between national tax rules, transnational taxpayers and the transnational transactions. This interface, a creature sometimes of a national statutory law and sometimes of bilateral or of multilateral treaties, attempts to answer the two vexing questions that arise in this area: how much total tax should be paid on the income generated by transnational transactions and to which government(s) should such payment be made? The answers government provide to these questions affect not only the amount of the revenue collected by the affected governments, but often the scope and direction of transnational investment activity.

Similarly, the term ‘International Tax Law’ in a strict sense may have to be regarded as a misnomer.² There is no codified law as such relating to levy and collection of a tax on income in all, or a group or groups of, countries of


the world. Nevertheless, the term ‘International Tax Law’ has come into vogue and is widely used in tax literature as referring to those elements of the tax system of a country which come into play whenever a person subject to its jurisdiction assumes ‘international’ relationship, that is, when a ‘foreign’ person has income which becomes taxable in that country by virtue of its tax laws or a ‘domestic’ (or resident) person has income from sources in another country. Thus, international tax law consists essentially of the following two parts:

(i) Those provisions of the basic national tax law, which apply to the ‘foreign’ income of the domestic taxpayers and to the ‘domestic’ income of foreigners; and

(ii) The tax treaties, if any entered into by that country with other countries and which have been invested with the force of law.

These two elements, when taken together, constitute ‘International Tax Regime’. This regime is sometimes referred as the ‘International Taxation’ and sometimes as the ‘International Tax Law’.

1.2 Different Concepts Under the International Tax Regime

Every tax law must identify its distinct concepts. The scope of these distinct concepts formulates the basic framework of such tax. Value added tax is a type of commodity taxation. It is levied on the value addition made by a dealer after he purchases and then subsequently makes sale of the commodity. Thus, value added tax is concerned with the purchase value, the tax paid on such purchases, the sale value and the tax paid on such sale value. The distinct concepts for such tax shall be definition of dealer, taxable commodity, input tax credit (tax paid on purchases) and out tax (tax paid on sale value).
Similarly, if we take up service tax, it deals with the tax services provided by the service provider. It shall be concerned with the consumption of services, tax paid by the service provider on such consumption, service provided by the provider and tax levied on such service. The distinct concepts for such tax shall be definition of service provider, taxable service, input tax credit (tax paid on services consumed) and out tax (tax paid on services provided).

The distinct concepts for income tax, *inter alia*, include definition of income, basis of charge, residential status, heads of income, assessment and penalty proceedings. International tax regime also identifies some different concepts which have been discussed in the following paragraphs.

### 1.2.1 Substance and Form

The phrase ‘Substance and Form’ is used first and foremost in the Common Law Countries and denotes what is more generally referred to as tax avoidance.\(^3\) There is always a line drawn by the government of a particular country which differentiates between tax planning and tax avoidance. Crossing this line means that the transaction may be valid under the private law as it appears to be in form but in substance, it was not intended by the concerned government. If substance prevails over form in a particular income tax, then the tax authorities can disregard the transaction entered into by the tax payer which may appear to be valid in form. There are various anti avoidance rules like the Specific Anti Avoidance Rules (SAAR) and General Anti Avoidance Rules (GAAR) which empower the tax authorities to discard transactions between the taxpayers which do not produce the desired tax effect and cause tax avoidance. It is important to differentiate between tax avoidance and other issues at this point.

Firstly, anti avoidance rules cannot take place of the established rules of evidence. The rules of evidence are foremost to find the real facts of the case and anti avoidance rules cannot be applied to deviate from these real facts.

Secondly, the ‘Tax Avoidance’ should be differentiated from the expression ‘Tax Evasion’. In case of tax evasion, the tax payer produces false evidence or provides incomplete information on facts to the tax authorities. Tax evasion, on the other hand, concerns the finding of the correct facts and tax avoidance concerns evaluation of the established facts under the tax rules. It has been said that the difference between tax avoidance and tax evasion is the thickness of prison walls. Broadly it may be stated that tax evasion takes place for failure to strictly comply with law and thus pay lesser tax than due or no tax at all whereas tax avoidance takes place by taking advantage of certain loopholes in law, the text of law is violated in spirit, though not in letter.

However, in these days of movement of capital, goods and services across the borders of countries, the thin line of division between tax avoidance and tax evasion, becomes even thinner and it is so much easy to evade tax in one country by taking advantage not only of the provisions in one’s own country’s tax law but also of the other country’s tax laws. Thus, tax evasion and tax avoidance may occur in the same case. It may be noticed that even all the international tax agreements entered into by India use the words ‘Fiscal Evasion’ however they also incorporate provisions which prevent ‘tax avoidance’.

Thirdly, there is an important sub group of tax evasion in shape of pro forma or sham transactions. In such cases the parties to contract proclaim externally

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4 Fredrick Zimmer, 2013, p. 27.
that a contract has special private law content whereas between the parties the content is different. For instance, A and B declare that A has sold his shares to B but between A and B it is clear that A is still the owner. It is probably a universal rule that in such cases, the tax assessment shall be based on the real and not on the simulated facts. No tax avoidance rule is required to reach this result.

1.2.2 Double Taxation

The principle of double taxation in the strict legal sense means taxing the same subject matter twice for the same purpose by the same authority during same taxing period. To constitute double taxation, the two or more taxes must have been: (i) levied of the same property or subject matter; (ii) by the same government or authority; (iii) during the same taxing period; and (iv) for the same purpose. International double taxation arises due to overlapping of two or more tax claims of two or more countries. It can be of two kinds namely, ‘juridical double taxation’ and ‘economic double taxation’.

The phenomenon of international ‘juridical double taxation’ can generally be defined as the imposition of comparable taxes in two (or more) states on the same taxpayer in respect of the same subject matter and for the identical period. Say Mr. A who is resident of country N has a term deposit in country M. The country N levies tax as Mr. A is the resident of that country and even the interest income earned on term deposit in other country can be taxed on grounds of residential status. The country M levies tax as the source of earning income that is, the term deposit is situated in its country and can be taxed on grounds of source rule. Thus, both country M (country of source) and country

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6 Krishna Das v. Town Area Committee, 183 ITR 401 (SC).

N (country of residence) levying tax on interest income of Mr. A on grounds of source and residence principle respectively amounts to juridical double taxation.

In contrast to juridical double taxation, the term ‘Economic Double Taxation’ is used to describe the situation that arises when the same economic transaction or asset is taxed in two or more states during the same period, however, in the hands of different taxpayers. Economic double taxation takes place if assets are attributed to different persons by the domestic law of the states involved. This dichotomy occurs when the tax law of one state attributes the asset to its legal owner while the tax law of the other state attributes it to the person in possession or control. Further, economic double taxation can result from conflicting rules regarding the inclusion or deduction of positive and negative elements of income and assets such as in cases of transfer pricing.

1.2.3   Different Kinds of Companies

In an ordinary parlance, company means an artificial legal person created by registration of charter documents with its regulator and having the distinct features of separate legal entity, perpetual succession and common seal. The different kinds of companies which one finds under the international tax regime are quite different from what we study under the company law. Company law discusses kinds of company on the basis of ownership (public, private and government), control (holding and subsidiary) and incorporation (statutory, registered and charter). On the contrary, international taxation is more concerned about the structure of a company. Some of the kinds on the basis of structure are conduit companies, base companies and letter box companies.

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Conduit companies are a legal entity created in a particular state with a purpose to obtain treaty benefits which are not available to the person creating such company directly. For example, a company X in country M creates a conduit company Y in country N to do business in country O. The main purpose of creating such company in country N is to take benefit of the treaty between country N and country O (say exemption from capital gains tax) which is not available under the treaty between country N and country M.

The base companies are similar to the conduit companies, however, the only difference being that the base companies are used as the accumulation centres whereas in case of the conduit companies, the income earned by them is transferred to the ultimate beneficial owner. The concept of base companies was given a systematic treatment by Gibbons.\(^9\) He labelled the foreign bases of incorporations in a country having negligible or no taxes at all as ‘base companies’ in the following words: “Corporations or other limited liability companies organised in a base country for the purpose of conducting third country operations will be referred to as ‘base companies’.” By third country operations he meant both business through agents or branches and holding companies. Thus, the essential element of base companies is holding of legal title by a person outside the country where base company is formed.

P.G. Keller\(^10\) has further made a distinction between a ‘Typical’ base company and ‘Atypical’ base company. In case of a ‘typical’ base company, three countries are involved. An entity X in country one incorporate a base company in country two to invest in country three. In


‘Atypical’ base company, only two countries are involved and it is a case of reinvestment in country one by forming a base company in country two.

The ‘Letter Box Companies’ are those companies which exist only on papers and they exclude any actual performance by managing directors or other employees of manufacturing or even certain commercial activities. The underlying activities like invoicing are performed elsewhere.

1.2.4 Tax Havens

There is no dearth of studies on the concept of ‘Tax Havens’.\(^{11}\) In common parlance, tax haven refers to a jurisdiction with negligible or no rate of tax. However, the Rotterdam Institute of Fiscal Studies\(^{12}\) has discussed tax havens under three categories. The First category includes those countries where there is no income tax on individuals or the corporations, net wealth, inheritance or gift taxes. This list includes Bahamas, Bermuda and Cayman Island etc. The second category refers to those countries where taxes are levied at low rates and it includes Cyprus, the British Virgin Island and the Isle of Man etc. Such countries give special exemptions to the foreign operations but levy a low rate of tax on local operations. The third category countries levy normal taxation, however, give some special advantage like Canada, Greece, Ireland and Luxembourg etc.

1.3 Statement of the Problem


\(^{12}\) Rotterdam Institute of Fiscal Studies, 1979, p. 70.
The current international tax regime is a flawed miracle.\textsuperscript{13} It is a miracle because taxes are the last topic on which one would expect sovereign nations to reach a consensus. International taxation, to some extent, is a zero-sum game: one country’s gain in revenue is another’s loss. If income is derived by a resident of one country from sources in another, and if both countries have a legitimate claim to tax, that income and the ability to enforce that claim, then either country will lose revenue by agreeing to grant the other the primary right to tax that income.

All countries assert a right to tax the income generated within their borders regardless of the identity of the taxpayer earning such income. Countries also claim the right to levy income tax on the worldwide income of their residents and, in case of the United States and a few other countries, their nationals.\textsuperscript{14} Therefore, an immediate and an overwhelming difficulty faced by the international tax regime is the prospect of double taxation caused by the overlapping jurisdictional bases of national income tax systems. For example, one country’s tax rules may provide that income from performance of personal services is taxable in the country in which the benefits of those services are enjoyed whereas other country’s tax rules may provide that income from performance of personal services is taxable in the country where those services are performed. Hence, an architect working in an office in the second country to design a dam to be built in the first country could find himself taxable in full on the income from this project in both the countries, without any concessions by either, as each would consider itself the source country.\textsuperscript{15}


\textsuperscript{15} American Law Institute, \textit{International Aspects of United States Income Taxation II: Proposals of the American Law Institute on United States Income Tax Treaties}, American Law
Income taxes, like tariffs, can impede international trade and investment. Most economists, therefore, believe that maximizing worldwide wealth and economic development requires eliminating impediments to international trade and investment. Elimination of this barrier to transnational transactions requires the source or the residency country to cede portions of its normal tax claim.

It did not take very long to realize that the income derived from transnational business transactions should not be subjected to full sets of national income taxes. Nor did it take them long to decide which of the affected countries should cede taxing jurisdiction. By the 1920s, an international consensus had developed granting primary taxing jurisdiction to the country of source, leaving the country of residence with secondary taxing jurisdiction. This regime has been embodied both in the model tax treaties developed by the

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Organization for Economic Co-operation and Development (OECD)\textsuperscript{20} and the United Nations\textsuperscript{21} and in the multitude of bilateral treaties that are based on those models. The existence of this regime shows that despite each country's claim to sovereignty in tax matters; it is possible to reach an internationally acceptable consensus that will be followed by the majority of the world's taxing jurisdictions. This international tax regime, based on voluntary consensus, can be regarded as one of the major achievements of the twentieth-century international law.\textsuperscript{22}

Yet the miracle is flawed. The current regime suffers from significant weaknesses, especially in two areas in which the development of the world economy has made the principles that were agreed upon in the 1920s and 1930s obsolete: the growth of internationally mobile capital markets for portfolio investment and the rise of integrated multinational enterprises (MNEs).\textsuperscript{23} Thus, it is necessary to re-examine the prevailing international tax regime and to ask whether a new consensus can be reached to remedy the regime's major weaknesses and ensure its continued viability in the coming time.

\subsection*{1.4 Scope of the Study}

The scope of the present study is limited. The present study is confined to

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those cases of international tax evasion that have been put to judicial scrutiny and have also been reported. The study carries out a critical analysis of the existing international tax agreements as well as of the agencies governing them. In other words, the present study has involved an in-depth examination of the regulatory framework set-up at national as well as at the international levels. An appraisal of the remedial measures taken at the international level in which India is a participant as well as certain best practices existing at international level which can be adopted by our country have also been included in the scope of the present study. Efforts have also been made to identify the various pro-active steps that may be initiated at the various levels for determining tax evasion matters.

1.5 Research Questions

The following research questions emerge on the basis of the above discussion:

(i) What is the nature and type of the existing International Tax Agreements?;

(ii) What are the features of domestic tax structure and the mechanisms available to curb the menace of tax evasion?;

(iii) What is the organisational structure of tax administration which deals with international tax disputes?;

(iv) Are the international tax evasion disputes of similar nature?; and

(v) What changes may be brought in the existing system to deal more effectively with the tax evasion disputes?

1.6 Objectives of the Study

In the light of the above mentioned research questions, the following objectives have been outlined for the present study:
(i) To study nature and types of the International tax evasion cases reported in Income Tax Reports;

(ii) To study nature and types of the existing Double Taxation Avoidance Agreements in India;

(iii) To study the features of domestic tax structure and the mechanisms available to curb the menace of tax evasion in India;

(iv) To study the existing national and international agencies dealing with tax evasion disputes; and

(v) To propose suitable recommendations for dealing with International Tax evasion disputes on the basis of the findings of this study.

1.7 Significance of the Study

The present study primarily focuses on the steps taken in combating tax fraud and evasion which is one of the major components of international financial crime. The microscopic area of focus has been international tax regime and administrative agencies - their role, efforts and effects. The study also aims at studying the efforts made at the international level specifically in which India is a participant and others by which our country can be benefited. An endeavour has been made to suggest some solutions for curbing this problem, strengthen international co-operation, improving regulatory framework and developing the human resource of administrative bodies.

The present study is likely to help the researcher in understanding the various agreements signed by the countries and the various agencies working for solving tax disputes. The main significance would be to highlight the nature of the existing tax evasion disputes. On the basis of the study, the researcher has offered some workable suggestions in the existing international tax regime.

1.8 Review of the Existing Literature
The literature on the topic of international taxation is immense though not exhaustive. Many authors have written on the theoretical aspects of the concept of International taxation. These documents provide the very basics of international taxation law and the concepts underlying it.

The best recent surveys of the entire international tax regime are by Sol Picciotto, Adrian Ogley and Robert A. Green. Sol Picciotto\textsuperscript{24} focuses mostly on corporate tax issues. The author provides a systematic introduction to the major problems of international taxation of business income. In doing so, he retrieves some of the important policy issues that have become buried in the technical intricacies of the international taxation system. The subject matter has been dealt through three perspectives, namely, law, economics and social science. Picciotto highlights that the application of national taxes to income from international business has created complex yet fascinating issues. The co-ordination of national jurisdiction to tax international income has rested formally on a network of bilateral treaties, but its practical administration has relied on a community of specialists; business advisers on the one hand and national officials on the other. In addition, the author takes up the major problems of various international tax systems like transfer pricing, administrative cooperation, tax havens and national sovereignty.

Adrian Ogley has provided a brief though an excellent general overview of the international tax regime.\textsuperscript{25} His book is divided into two distinct parts. After the introductory chapter, Part I of the book deals with the principal types of tax system and their interaction, with special emphasis on the question of double taxation at the shareholder level. This is followed by a chapter entitled double taxation and double tax agreements which deals with the double


taxation of profits accruing within companies and explains how double tax agreements seek to avoid, or at least mitigate this. Part II of the book deals with the principles of international tax planning. Ogley is concerned exclusively with international tax in so far as it affects multinational companies (and not individuals). He adopts a multinational perspective in considering the issues involved in international tax, as opposed to simply considering these in the light of the tax legislation of one particular, national regime.

An important article on the issues related to the taxation of multinationals is by Robert A. Green26. His article is divided into five parts. Each part deals with a dedicated aspect of the subject. For instance, the first part of the article deals with the source principle, the residence principle and the international income taxation of multinational enterprises. While continuing with this thread, in second part of his article, the author highlights the transfer pricing manipulation which is a major problem nowadays. In the third part of the article, the author takes up the issue of financial manoeuvring, and the governments’ response to an indeterminate standard has been dealt with by the author under the fourth part. Last of all, Green discusses and suggests certain alternative approaches in fifth part. In this article, the author analyzes the instability of the international system of source-based income taxation and develops the case for a residence-based system as a solution to this problem.

The existence of a coherent regime can be demonstrated by many

documents which survey various aspects of the regime on a comparative basis. One of the best works by Arvid A. Skaar\textsuperscript{27} makes a comprehensive analysis of the international case law dealing with the notion of `permanent establishment'. He has discussed more than 450 judicial and administrative decisions from 19 different countries, with emphasis on the United States of America, Germany and Norway. Skaar's book provides an excellent comparison of the legal practice in different countries. A critical discussion of the notion of `permanent establishment' in the future international fiscal law is also included. In addition to the cases previously published in law reports and other publications, a number of unpublished decisions have also been discussed in his book.

Similarly, a federal income tax project carried out by the American Law Institute also highlights certain provisions which are included in almost all the tax treaties.\textsuperscript{28} Some bare provisions of other countries also point towards the existence of a coherent regime.\textsuperscript{29} A review of the proceedings of the congresses of the International Fiscal Association\textsuperscript{30} can also be made or the comparison of any two bilateral tax treaties will also be suffice to reveal a common underlying international tax structure.

Indeed, much of the international tax regime can be regarded as customary international law. Customary international law can be defined as a general and consistent practice of states followed by them from a sense of legal


\textsuperscript{29} Section 411 of the Restatement of the Foreign Relations Law of the United States (Third), 1987.

obligation and this can be derived from a general pattern found in treaties. Anthony A. D’Amato has argued that the treaties provide a basis for customary international law separate from "the classic usage-into-custom pattern". He has considered both the treaty and implementation of treaty in actual practice. Amato attempts a theoretical explanation of the power of treaties to extend their rules to nations which are not parties to them. He alleges that treaties provide the substantive rules regulating international affairs and in some areas, the treaties have pre-empted the rules of customary international law completely.

Chantal Thomas has analysed an open question that whether a taxpayer can rely on customary international law in challenging a national law that contravenes the agreed upon consensus. He argues that establishing the separate accounting method as customary international law would not only properly incorporate valid customary international law into the United States law, but would also solve a number of problems left unanswered by the Barclays decision. Thomas gives three justifications for his argument. First, the application of such a rule would streamline a currently complicated and indeterminate body of jurisprudence. Second, the rule would resolve a longstanding source of tension between the federal and the state policy. Third, the rule would spare the United States from the negative reactions of its


34 Barclays Bank PLC v. Franchise Tax Bd. of California, 512 U.S. 298.
trading partners, which may range from friction and resentment to retaliation against the American multinationals operating within their borders.

Taxation is by itself multi disciplinary in approach as it involves the study of both Law as well as Economics. Hence, the legal principles are also decided after taking into consideration the economic underpinnings. The best article highlighting this aspect of International Taxation is by Julie A. Roin. Roin takes up various theories underlying the system of international taxation like capital export neutrality, capital import neutrality and national neutrality to highlight the justification for avoiding double taxation under international tax regime. This gives a basic understanding as to why a country should forgo its sovereignty in favour of other country and provide either exemption or deduction for taxes paid by its resident in other state.

Gordon has highlighted in his study that average tax rate on capital income in the US and in other developed countries are zero or negative. Further, he has also highlighted certain divergent views of the various economists who prefer value added taxes to income taxes for labour as well. His paper attempts to foster discussion on whether, where, and how capital income should be taxed. Gordon argues that following the introduction of the euro, the European Union has started to debate the desirability and feasibility of more co-ordination in the field of capital income taxation. In contrast with the product taxes, the EU Treaty does not provide for explicit authority to

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harmonize income taxes. So far, little co-ordination has taken place, even though the capital income tax base is much more mobile and hence more difficult to tax than consumption.

One of the main elements constituting ‘International Tax Regime’ is the network of International Tax Agreements entered into by different countries. These tax agreements are usually based on the model tax treaties developed by the United Nations, the United States and the Organisation of Economic Co-operation and Development. A precise introduction to the double taxation agreements has been provided by Frank Mosupa from the South African perspective which is quite relevant for other countries also. Mosupa tries to establish the similarities between the treaties entered into between different countries and the model conventions. Mosupa’s work highlights the clear linkages between the two by comparing the different clauses which are present in them.

Isaac Hadari has discussed the importance of tax treaties for doing business abroad as the primary purpose of tax treaties, to relieve the burden of double taxation of taxpayers’ subjected to the laws of two countries, has now been overshadowed by their importance for the conduct of international operations by multinational corporations and their affiliated entities or their business partners abroad. He highlights that now a days various financial planning methods are adopted by the multinational enterprises which have ‘tax treaties’ as their main constituent. He also points towards the practices like treaty shopping in his paper.


The function of the tax treaties in the United States tax system has been explored in the best treatise ever written on an instrument of the U.S. international taxation policy by Elizabeth A. Owens.\(^{39}\) It may be noted in this context, that Owens alleges that the most extensive research on tax treaties has been done on the United States tax treaties which can be found in several articles written by tax experts in the government and law firms.\(^{40}\) The references provided in this work are of a great use for researcher engaged in research with the United States as an epicentre.

From the Indian perspective, Sonntag and Mathur\(^ {41}\) have discussed various treaties signed by the Indian Government. They have considered the OECD and the UN Model Tax Conventions and their impact upon India’s Bilateral Treaty Network. Their work is divided into different chapters which exclusively deal a particular point of the tax treaties like permanent establishment, business profits and income from immovable property etc.e.t.c. They claim their work to be written with reference to construction industry in India. However, it is quite useful for other industries and sectors as well.


Roy Rohatgi has taken up the subject of International Tax from an Indian perspective in a holistic manner. His work is divided into two volumes. Volume one deals with the principles of international taxation. The author makes an analysis of model tax treaties and provides a broad overview of various domestic systems. Volume two discusses the practical aspect. It includes practical guidance on international tax planning techniques. The author has extensively dealt with anti avoidance rules and their use in various countries. A review of the role of offshore financial centres and corporate tax profile in seventy five countries has also been provided.

I.P. Gupta has dealt with the tax agreements as a source of International Law in relation to double taxation of income. He takes up the principles of the Vienna Conventions and their applicability to the tax treaties. Gupta’s main thrust is towards the jurisprudential aspect underlying international agreements. His book contains a heavy index with collection of some rare tax treaties of the past.

Apart of International Tax Agreements, the other main element constituting ‘International Tax Regime’ is the provision of the basic national tax law which applies to the ‘foreign’ income of the domestic taxpayers and to the ‘domestic’ income of the foreigners. Hence, studying the different tax structures of the world is an indispensable task for any researcher or other professional in this field. There are a number of documents and other material available on this topic.

H.L. Bhatia has discussed different sources of revenue for any government

out of which tax is considered to be the most prominent one. Bhatia’s book is divided into two parts. Part one deals with the theories of public finance. In this part, the author has mentioned various theories on the basis of which one country has to decide its tax structure, that is, the optimum mix of direct and indirect taxation. Part two of the book deals with the aspects of public finance in India. The author takes up various concepts like the federal structure, financial commissions, financing of various sectors in this part. Although the author has written the book from an economic perspective, however, it is quite useful for knowing the effect of tax evasion and tax collection in this perspective.

As far as the existing tax structure of different countries is concerned, the researcher has referred to the official departmental websites of these jurisdictions which are updated on regular basis. Some authors have also written different documents highlighting the prevalent tax systems in other countries which are quite useful for the present study.

There are a number of international tax organizations, the taxpayers’

45 For tax structure of United Kingdom, visit www.hmrc.gov.uk; For the position in the United States, visit www.treasury.gov; For Japan, visit www.nta.jp/foreign_language/index.htm; For Mauritius, visit http://mra.gov.mu; For Switzerland, visit wwwefd.admin.ch/e and www.estv.admin.ch/index.html?lang=en.


47 Centre for Freedom and Prosperity; Confederation Fiscale Europenne; The European American Tax Institute; The European Association of Tax Law Professors; Institute for Fiscal Studies; Institute of Internal Auditors; Institute for Professionals in Taxation; The International Accounting Standards Board; International Bureau of Fiscal Documentation; International Federation of Accountants; International Fiscal Association; International Organisation of Experts; The International Tax and Investment Organisation; International Tax Planning Association; The North American
organisations working in the field of international taxation. Apart from the analysis of the Organisation for Economic Cooperation and Development, the researcher hardly came across any document which discusses the functioning and role of such organisations. The basic information and structure of these organisations is readily available at the websites maintained by such organisations.

A basic difference between tax avoidance and tax evasion has been highlighted by William Cogger after analysing a number of decided cases from the American Jurisprudence. The hairline difference between avoidance and evasion is quite relevant for understanding the steps which can be taken curb these practices. Some countries are tolerant to tax avoidance whereas no country is tolerant to tax evasion. There is unequivocal voice against the malpractice relating to tax evasion. Thus, Cogger’s study may have been carried from an American perspective, however, it is quite relevant for present study.

Some authors have examined the problem of tax evasion from morality as well as from the ethical angle. Benno Torgler has made an empirical

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48 The World Taxpayers Association and The Taxpayers Association of Europe.

49 The Inter American Centre of Tax Administrations; The Commonwealth Association of Tax Administrations; The Intra European Organisation of Tax Administrations; and The Centre for Research and Studies for Heads of Fiscal Administrations


investigation relating to the causes and consequences of the tax morale prevailing among the citizens. He took up a scientific study by way of administering questionnaire to the various respondents. His study is quite relevant to understand the ethical causes for tax evasion.

The Indian Government\(^{53}\) has also released one White Paper on black money that highlight the practice of manipulation of accounts for the purposes of tax evasion. Apart from these documents, there are a number of other articles\(^{54}\) written specifically from International perspective of tax evasion.

In view of the ever increasing growth of international trade, free flow of capital and globalization, it has now become necessary to revisit the principles and the theory which constitutes international tax regime. The existing literature gives mixed results, apparent conflicts and suffers from arbitrage. Almost all the authors have analyzed the current international tax regime in a limited approach and have failed to give a definite framework as an alternative to the existing one. Some researchers have undertaken research work to establish the viability of having a harmonization of tax jurisprudence however, they are still under process. Another important point to be noted here is that the bulk of literature related to international taxation is concentrated to the American jurisprudence alone and very little is available with India as the epicenter. Moreover, the expert writings in this field are complex and full of economical terms which are even difficult for most legally trained researchers.

Due to these reasons, the present researcher has undertaken this study to resolve these perceived conflicts, to remove arbitrage and to suggest some


suitable changes that would eventually lead towards redesigning the existing framework of international tax regime.

1.9 Collection of the Research Material

Data refers to information or facts and is not restricted to numerical figures alone. In the present research, the data has been collected from both primary as well as from secondary sources. The primary data has been collected through field survey and the three methods that have been used for collection of primary data are interview, mail survey and observation method.

A questionnaire was prepared by the researcher for conducting interview of the sample selected. The interview sample consisted of various tax professionals, corporate representatives and tax officials who are dealing with the problems relating to international tax evasion. The interview was conducted both through personal as well as by telephonic contact.

Under this method, the researcher mailed the questionnaire to various respondents along with a self addressed and stamped envelope. A covering letter was also sent along with the questionnaire, requesting the respondents to extend their full cooperation by way of providing / furnishing correct replies and by returning the questionnaire duly filled in time.

Another method used by the researcher for collection of data was personal observation. The desired information like infrastructural facilities at various offices, physical presence of the tax officials during office hours etc. was collected by making a personal visit to the tax offices at various places like Chandigarh, Delhi, Jallandhar, Ludhiana and Patiala.

The secondary data was collected from official literature like government
papers and reports, books, referred journals, articles and case studies of different countries. The official literature was available at various tax offices and academies, libraries of the Indian Law Institute and of the Indian Society for International Law. The databases relating articles, journals and books were most extensively available at Hein online, LexisNexis, Manupatra and Westlaw. Except few, all the books on this topic were available from foreign authors and publishers in hard print. Even the articles on international taxation are concentrated towards the American authors and a very few are written by others from around the world. The database relating to reported cases on international tax evasion disputes was available from the law reporters like Business Law Reporter, Current Tax Reporter, Income Tax Reports, International Taxation, Law Reports, Taxman Weekly, and online at Google scholar. Yet another important source of the secondary data used is the one available with the Organisation for Economic Cooperation and Development, the International Bank for Reconstruction and Development (the World Bank) and some other international organisations.

The data collected has been analyzed with help of the various research methods, tools and techniques like Content Analysis, Comparative Analysis and Parametric Analysis.

1.10 The Chapter Scheme

The present thesis is divided into six chapters. The main idea behind this division is to give a dedicated consideration to the important pillars of the international tax regime, that is, the tax agreements, the tax structures or mechanisms, international tax organisations and tax authorities of different countries. Apart from these pillars, one chapter deals with the specific case studies reported on international tax evasion disputes. A brief description of all the chapters is reproduced here under:
Chapter One - Introduction

This chapter is an introduction to the research work containing the statement of the problem, object and purpose of the study, research methodology, research questions, significance and likely contribution of the study.

Chapter Two - International Tax Agreements as Tool to Prevent Tax Evasion

The international tax agreements are one of the important constituent of international tax regime. They are of several types like those covering income, gift, and estate taxation; others dealing only with duties and gift taxes; others dealing with income from maritime or air transport, sales, transfer and turnover taxes, extraordinary fortune taxes, income from movable capital, student employment, etc.

Since, the research methods on all types of tax agreements are practically the same; the researcher has concentrated on those covering taxes on income. They are most numerous and most important.55 Although the objective is same however, the provisions of any two treaties relating to taxes on income may differ materially. Hence, a specialised knowledge of all the treaties entered into by various countries (the number runs into thousands) is not possible. However, the golden line is that all such agreements are based on the model conventions evolved by the Organisation for Economic Cooperation and Development, the United Nations and the United States.

Any researcher in this field can have a holistic knowledge of the model tax conventions which form the basis of all such treaties and any variation from them may be studied specifically in relation to a particular country. Therefore, this chapter aims at studying the historical evolution of various

model conventions and making a comparative analysis of such treaties.

**Chapter Three - Domestic Tax Laws as Tool to Prevent International Tax Evasion**

There are three important terms in taxation research namely, ‘Tax Problem’, ‘Tax Model’ and ‘Tax Mechanism’.\(^{56}\) A "Tax Problem" is a tax matter that a legal system needs to address; it constitutes, or at least implies, policy issues because the rule - maker confronted with a tax problem must decide a specific course of action by enacting a set of rules. A "tax model" is a tax policy paradigm which serves a functional role in dealing with a tax problem that may be present in different countries. A "tax mechanism" is the actual implementation of a tax model by a specific country in the form of an actual set of regulatory arrangements.

In the field of international taxation, ‘Tax Model’ is the model tax agreements developed by the various organisations like the Organisation for Economic Cooperation and Development, the United Nations and the United States etc. Apart from this tax model, one needs to study the tax mechanism actually adopted by the various countries as a tax model is merely a legal archetype or paradigm which circulates in the market for tax ideas where as tax mechanism is an actual legal structure.

This chapter deals with the various legislative frameworks which have been adopted by various countries to counter the international tax problems. The researcher has selected a sample of countries and has analysed them after drawing various parameters to highlight the similarity between the different tax structures and to point out the defects in them.

Chapter Four - The Organisational Mechanisms as Tool to Prevent International Tax Evasion

Each country, after selecting a definite tax model, tries to implement it through combination of tax legislation, administrative guidelines and case law. The researcher has analysed the legislative framework in the last chapter and the organisational frameworks has been analysed in this chapter.

The administrative organisations dealing with taxation laws are the formal organisations of any country. They are established and their working is monitored through specific legislations and other bye laws. However, they do have certain limitations as far as jurisdictional issues in the field of international taxation are concerned. Thus, they need to coordinate and cooperate with the administrative bodies of other countries. The researcher has analysed the working of such administrative organs on the basis of certain benchmarks by following the research technique of ‘Benchmarking’.

Apart from the formal organisations, there are certain other international organisations which deal with the research and development of international taxation. The researcher has also done a case study of the selected informal international organisations in this chapter.

Chapter Five - Concept, Nature and Types of International Tax Evasion Disputes

In this chapter, the researcher has selected some recent case studies relating to the international tax evasion disputes from various sources like law reporters and from online databases. To the selected sample, the research technique of induction deduction has been applied to arrive at an appropriate conclusion.
Chapter Six - Conclusion and Recommendations

After analysing the entire system, some workable suggestions to improve the current situation have been made in this chapter.